

Chapter 48 - General rules on income

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Chapter 48 - General rules on income

Introduction

General rules

Meaning of claimant and partner

48001 Claimant means¹ a person who has claimed ESA. Partner means² where a claimant

1. is a member of a couple, the other member of that couple
2. is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage.

1 WR Act 07 s 24(1); 2 ESA Regs, reg 2(1)

48002 Couple means¹

1. a man and woman who are married to each other and are members of the same household **or**
2. a man and a woman who are not married to each other but are LTAHAW **or**
3. two people of the same sex who are civil partners of each other and are members of the same household **or**
4. two people of the same sex who are not civil partners of each other but are living together as if they were civil partners.

Note 1: Where one or both members of a couple are under the age of 16, they cannot be a couple. This is because the person under 16 is a child and therefore not a man or a woman, or not eligible to register as a civil partner.

Note 2: For the purposes of para 4., two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as LTAHAW were they instead two people of the opposite sex.

1 reg 2(1)

48003 Polygamous marriage means¹ any marriage which was entered into under a law which permits polygamy where

1. one of the parties to it is married to more than one person and
2. the claimant, the other party to the marriage and the additional spouse are members of the same household

1 reg 2(1)

The calculation and treatment of income

48004 This Chapter deals with the calculation and treatment of various types of income and explains

1. how to treat the income of the claimant and any partners - see DMG 48008 et seq
2. how to decide the period over which an income should be taken into account - see DMG 48030 et seq
3. how to calculate the weekly amount of an income - see DMG 48079 et seq
4. the special rules for modifying the amount taken into account - see DMG 48091 et seq.

48005 Other Chapters deal with other aspects of income, including

1. which incomes are fully or partly disregarded - see DMG Chapter 51
2. when to treat capital as income - see DMG Chapter 51 (for income treated as capital see DMG Chapter 52)
3. when to treat claimants as possessing income they do not possess (known as notional income) - see DMG Chapter 51
4. the treatment of various types of income, including
 - 4.1 earnings of employed earners - see DMG Chapter 49
 - 4.2 earnings from self-employment - see DMG Chapter 50
 - 4.3 income other than earnings - see DMG Chapter 51
 - 4.4 liable relative payments - see DMG Chapter 51
 - 4.5 student's income - see DMG Chapter 51
 - 4.6 how to treat income when calculating part weeks - see DMG Chapter 46
 - 4.7 income in urgent cases - see DMG Chapter 54.

Income - ESA(Cont)

48006 Unlike ESA(IR), the amount of ESA(Cont) that a claimant receives is not affected by all income. It is affected by

1. any pension payments¹ **and**
2. any PPF periodic payments² **and**
3. any councillor's allowances³

which the claimant receives. Guidance on how this affects ESA(Cont) is in DMG Chapter 44.

1 WR Act 07 s 3(1)(a); 2 s 3(1)(b); 3 s 3(1)(c)

48007 Earnings which are income are also relevant to ESA(Cont) when determining whether work is permitted work¹. When the DM is determining the amount of weekly earnings for permitted work, the following guidance from this chapter should be applied: DMG 48048 - 48057, DMG 48070 - 48074, DMG 48079 - 48087 and DMG 48090 - 48095.

1 ESA Regs, regs 45 & 88

Income of the claimant's partner - ESA(IR)

48008 In a claim for ESA(IR), the DM should calculate the income of the claimant's partner in the same way as for the claimant¹. This income should then be treated as the claimant's income². But DMs should consider if the circumstances in DMG 48009 to DMG 48017 applies. Income paid to, or in respect of a child or young person who is a member of the claimant's family must not be treated as the claimant's income³. See DMG Chapter 51 for definitions of child, young person and family.

1 reg 83 (1); 2 WR Act 07, Sch 1, para 6(2); 3 ESA Regs, reg 83(2)

Treatment of income - couples

48009 Special rules apply to the treatment of income for certain couples and members of polygamous marriages where the claimant or partner is aged less than 18¹. The DM should not take any partner's income fully into account if ESA(IR) is not paid for that partner. The amount that the DM should disregard depends on how the couple's personal allowance has been calculated². The DM should treat any remaining balance of the partner's income in the normal way. A further disregard may apply.

1 reg 83 (4); 2 Sch 4, paras 1(3)(e), (f), (g), (h) or (i)

48010 The claimant's income should be calculated in the normal way.

Couple - both members aged less than 18

48011 Where both members of a couple are aged less than 18 the DM should disregard the amount of the partner's income that is the difference between the personal allowance for¹

1. couples where both members are less than 18 **and**
2. a single claimant aged less than 25.

1 reg 83(4)(a)

Example

Mark is aged 17, he claims ESA. He has a partner, Esther, who is aged 16. The DM decides that Mark is entitled to ESA(IR) of £94.95 per week.

Esther starts working 14 hours per week, she earns £55 per week.

The DM decides that

1. £47.00 (£94.95 - £47.95) should be disregarded immediately **and**
2. the balance of £8.00 is subject to the normal £10 earnings disregard.

Couple - only one member aged less than 18

48012 Where only one member of the couple are aged less than 18 the DM should disregard the amount of the partner's income that is the difference between the personal allowance for¹

1. couples where both members are aged 18 or over **and**
2. a single claimant aged less than 25.

1 ESA Regs, reg 83(4)(b)

48013

Polygamous marriage or relationship

48014 If a claimant or partner is married polygamously to two or more members of the claimant's household, the income of each of the members should be treated as the claimant's income¹ and should be calculated in the same way as the claimant's income is calculated².

Note: In certain circumstances special rules apply³ to the income of a member of a polygamous marriage who is a partner aged less than 18 (see DMG 48016).

1 reg 83(3)(a); 2 reg 83(3)(b); 3 reg 83(5)

48015 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.

48016 If a partner

1. is aged less than 18 **and**
2. is a member of a polygamous marriage **and**
3. has no amount allowed in the calculation of the personal allowance

a special disregard applies to any income that the partner receives.

48017 The amount of the partner's income that the DM should disregard is the difference between the personal allowance for¹

1. a couple where both members are aged 18 or over **and**
2. a single person aged 25 or over.

1 ESA regs, reg 83(5)

Example

Hussain claims ESA. He is a member of a polygamous marriage and has three wives. Fatima is aged 24, Parveen is aged 23 and Yasmin is aged 16. Yasmin works 15 hours per week and earns £35.

The DM decides

1. Hussain is entitled to £94.95 personal allowance for himself and Fatima. He is also entitled to £34.45 (£94.95 - £60.50) for Parveen. No personal allowance is payable for Yasmin **and**
2. no income is to be taken into account on Hussain's award. This is because £34.45 (£94.95 - £60.50) of the £35 wages can be disregarded immediately. The balance of £0.55 is subject to the normal earnings disregard of £10, therefore no income is to be taken into account.

Disregard of fractions

48018 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 advantage¹. Where ESA is awarded for a period which is not a complete benefit week and the applicable amount results in an amount which includes a fraction of a penny that fraction should be treated as a penny².

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

1 reg 3(a); 2 reg 3(b)

Calculating entitlement to ESA(IR)

48019 The amount of ESA(IR) 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 amount¹.

Note: If a claimant satisfies the conditions for ESA(Cont) and ESA(IR) see DMG Chapter 44 to decide the amount payable.

1 WR Act 07, s 4(1)

48020 When calculating whether a claimant is entitled¹, 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 ESA Regs, reg 90(1)

48021 If the claimant's income in the benefit week is more than the weekly applicable amount, the claimant is not entitled to ESA(IR).

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 ESA(IR) for a part week. Because the claimant is not entitled, nothing is payable.

48022 - 48029

Period over which income is taken into account

Calculating the period

48030 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 48058)
3. the date on which the income is due to be paid (see DMG 48031 et seq)
4. the date on which the income is treated as paid (see DMG 48048 et seq) **and**
5. **either**¹
 - 5.1 the period for which the payment is made **or**
 - 5.2 the amount of
 - 5.2.a ESA that would be payable without the income **and**
 - 5.2.b any disregard the DM would normally allow on the weekly amount of the income.

See DMG Chapter 49 on earnings disregards and DMG Chapter 51 on other income with partial disregards.

Note 1: If the income is a payment of earnings when employment ends see DMG 48075 where different kinds of earnings are received for overlapping periods, and DMG Chapter 49 for the period over which the payment is taken into account.

Note 2: The guidance in DMG 48031 - 48095 does not apply to income from self-employment.

1 ESA Regs, reg 91(2)

Date on which income is due to be paid

- 48031 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.
- 48032 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 date¹ **or**
 - 3.1.b is not considered credible **and**
 - 3.2 no further evidence can be obtained.

I R(SB) 33/83

Income other than earnings

- 48033 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

- 48034 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

48035 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 48075 where different kinds of earnings are received for overlapping periods, and DMG Chapter 49 for the treatment and effect of the earnings on ESA.

Notice given and worked

48036 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.

48037 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

48038 Where the employer terminates employment without due notice they are legally obliged to pay on the last day of employment¹

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

48039 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.

48040 - 48047

Date on which income is treated as paid

48048 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 48031 et seq.

Note: There are no longer any special rules that apply to the date on which WTC is treated as paid.

Income due before the first benefit week of the claim

48049 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 claim¹. But see DMG 48090 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 48058 2.1).

1 ESA Regs, reg 93(1)(a)

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

48050 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 on¹ 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 48090 if the payment is ESA, JSA, IS, MA, IB, or SDA, or DMG Chapter 46 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 48058 2.1).

1 ESA Regs, reg 93(1)(b)

Example 1

The claimant is sick and receives ESA(IR) fortnightly in arrears. His benefit week ending day is Wednesday.

On Friday 16 August he advises DWP that he has received his first payment of income from an insurance policy (payable when a person is unable to work) on that day. The payment is made on the day it is due. The DM treats the payment 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 due to be issued on Wednesday 21 August.

Example 2

The claimant is sick and receives ESA(IR). Her benefit week ending day is Thursday. She receives one week's benefit for the period 15 November to 21 November on 23 November.

On 22 November, she advises the office 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 issued for that week.

The DM treats the earnings as paid on 22 November, which is the first day of the first benefit week in which it is practicable to take the payment into account.

48051 - 48053

Treatment of WTC income paid incorrectly to the claimant

- 48054 If a person who has ceased employment confirms when they claim ESA 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 income¹.

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

Example 1

Janet finished work on Thursday 5.11.09 and made a claim for ESA on Friday 6.11.09. Her benefit week ending is a Tuesday. Janet 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 4 week WTC run on for the period 6.11.09 to 3.12.09. WTC was treated as paid on Wednesday 4.11.09 and taken into account by the DM until BWE 1.12.09.

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 ESA 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 ESA(IR).

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 ESA(IR) 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 ESA(IR) 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

48055 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 48031). But see DMG 48090 if the income is ESA, JSA, IS, MA, IB or SDA.

Arrears paid on due date

48056 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 account¹ **and**
2. taken into account
 - 2.1 for a period calculated in the normal way (see DMG 48070 et seq)² **and**
 - 2.2 from the date on which they are treated as paid.

1 ESA Regs, reg 93(1)(b); 2 reg 91(2)(a) & (b)

Example

The claimant's partner has P/T earnings of £30 weekly due each Thursday. ESA(IR) is paid in arrears and the claimant's benefit week ends on Tuesday.

The P/T earnings are increased to £40 weekly from 5 July, but the agreement says that the increase is not payable until 1 August, when payment is made at the new rate with three weeks arrears, a total of £70.

The DM treats the payment as made on 31 July.

The new rate of £40 is taken into account in the benefit week beginning 31 July, and the £30 arrears are taken into account for the period 31 July to 20 August.

The total amount of earnings taken into account in the benefit weeks beginning 31 July, 7 August and 14 August is £50 (£40 plus £10 arrears).

From benefit week beginning 21 August, the new weekly rate of £40 is taken into account.

Arrears paid after the due date

48057 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 claim¹.

The DM should calculate any overpayment and refer the case to the Secretary of State to consider recovery².

1 ESA Regs, reg 93(1); 2 SSA 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

48058 In ESA a benefit week¹

1. is a period of seven days ending with a day which the DM directs **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 first benefit week following the date of claim **or**
- 2.2 the last day on which ESA is paid if it is in payment for less than a week.

1 ESA Regs, reg 2(1)

48059 - 48069

Period for which payment is made

Identifiable period

48070 If the period for which a payment is made can be identified, it should be taken into account

1. for an equivalent period¹ (for example a payment for a week should be taken into account for a week) **and**
2. from the date decided in DMG 48048 et seq.

Note: A capital payment that is treated as income will often not be payable for an identifiable period. See DMG 48073 for guidance on payments not payable for an identifiable period.

1 ESA Regs, reg 91(2)(b)

Monthly paid income

48071 Where a payment is in respect of a month, it should be taken into account for a period¹

1. beginning with the date the payment is treated as paid **and**
2. ending with the date immediately before the date the next monthly payment would have been treated as paid (whether or not the next monthly payment is actually paid).

But see DMG Chapter 49 if the payment is made because the employment has ended.

1 reg 91(2)(a)

Example

John is entitled to ESA(IR) and his BWE day is Monday.

John's partner is paid SSP on the last day of each month. On 31 March she received three weeks SSP of £217.65 [$£72.55 \times 3$ weeks].

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

The weekly amount is taken into account for the following period

BWE 31 March - £50.22

BWE 7 April - £50.22

BWE 14 April - £50.22

BWE 21 April - £50.22

BWE 28 April - £50.22

The next payment of SSP would be due to be paid on 30 April (treated as paid on 29 April), and the weekly amount would be taken into account for the period from BWE 5 May to BWE 26 May.

Employer's pay arrangements

48072 Where an employer has specific pay arrangements, which means employees are paid at specific intervals, such as monthly, a payment should be taken into account for a period equal to the pay interval¹. But see DMG Chapter 49 if the payment is made because the employment has ended.

Note: Earnings from holiday pay and compensation payments (see DMG Chapter 49), which are made for part of a day should be taken into account for a day².

1 R(IS) 10/95; 2 ESA Regs, reg 91(7)

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

48073 If the period cannot be identified, the DM should calculate the amount to be taken into account¹. Where the payment is

1. earnings, by dividing the claimant's net earnings (see DMG Chapter 49)² by the total of the
 - 1.1 weekly amount of ESA to which the claimant would have been entitled had the payment not been made **and**
 - 1.2 amount of any disregard³ that would have been made on the earnings **or**
2. income other than earnings, by deducting any tax paid on the income⁴, and dividing the result by the total of the
 - 2.1 weekly amount of ESA the claimant would have been entitled to had the payment not been made **and**
 - 2.2 amount of any disregard⁵ (other than on tax) that would have been made on the income.

Note: See DMG Chapter 49 if the payment is made because employment has ended.

1 ESA Regs, reg 91(2)(c); 2 reg 96(3); 3 Sch 7; 4 Sch 8; 5 Sch 8

Example

Sam is in receipt of ESA(IR) of £45 per week and his partner 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. Sam's partner's employer offers her a payment of £6,500. 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, there is the option of taking a net payment of £650 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.

Sam's partner decides to accept the sum of £650 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 48073 1. where:

£650 is divided by £65 (ESA(IR) of £45 plus £20 disregard) = 10

The DM takes the payment into account for 10 weeks at the weekly rate of £65.

- 48074 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 week¹.

1 ESA Regs, reg 91(2)(c)

Example

Terry becomes ill and becomes entitled to ESA(IR) - his employment hasn't ended. Prior to his illness Terry worked in a bakery but did not qualify for SSP. Three weeks after he claims ESA the bakery pays Terry a one-off bonus of £150. The period for which the payment was made is not identifiable. Terry would be entitled to ESA(IR) of £70 a week without the payment. The £150 payment is divided by £70. 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

- 48075 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 48048 et seq¹ **and**
3. in the following order²
 - 3.1 normal earnings including wages held in hand
 - 3.2 pay-in-lieu of notice or remuneration
 - 3.3 payment of compensation in respect of part-time employment
 - 3.4 holiday pay received within four weeks of the date employment ended.

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

1 reg 91(5); 2 reg 91(6)

Example

The claimant is paid ESA(IR) 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 August, 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 August - 4 September
2. two weeks in lieu of notice for the period 5 September - 18 September
3. four days holiday pay for the period 19 September - 22 September.

48076 - 48078

Calculation of weekly amount

Period of a week or less

48079 Where the period for which a payment is made is a week or less, the weekly amount will be the amount of the payment¹. But see DMG 48085 et seq and DMG 48094.

1 ESA Regs, reg 94(1)(a)

Period of a month

48080 Where the payment is for a month the weekly amount should be worked out by

1. multiplying the amount of the payment by 12 **and**
2. dividing the result by 52¹.

1 reg 94(1)(b)(i)

Example

A payment of £200 is made for a period of a month. The DM calculates that the weekly amount is £46.15 (£200 x 12/52).

Period of three months

48081 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 4 **and**
2. dividing the result by 52¹.

1 reg 94(1)(b)(ii)

Example

A payment of £200 is made for a period of three months. The DM calculates that the weekly amount is £15.38 (£200 x 4/52).

Period of a year

Income which is not working tax credit

48082 Where the payment is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 reg 94(1)(b)(iiia)

Working tax credit

- 48083 Where an award 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 7¹. This means that the divisor will either be 365 days or, in a leap year, 366 days.

1 ESA Regs, reg 94(1)(b)(iii)

Example

Cath makes a claim for ESA. Her partner is in receipt of WTC. The award of WTC is in respect of a year. The amount of the WTC award is £1,800. There are 365 days in the year. The DM calculates the weekly amount of WTC by dividing £1,800 by 365 and then multiplying the result by 7. This gives a result of £34.52 (see DMG 48018 on the disregard of fractions).

Period of more than a week

- 48084 Where the payment is for more than a week, and DMG 48080 - 48083 does not apply, the weekly amount should be worked out by
1. multiplying the amount of the payment by 7 **and**
 2. dividing the result by the number of days in the period for which the payment is made¹.

1 reg 94(1)(b)(iv)

Example

A payment of £200 is made for a period of four weeks. The DM calculates that the weekly amount is £50 (£200 x 7/28).

Calculation of amount where only part of payment overlaps benefit week

- 48085 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 made¹.

Note: If the period the payment overlaps is a part week see DMG Chapter 46.

1 reg 94(2)

48086 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 made¹.

Note: If the period the payment overlaps is a part week see DMG Chapter 46.

1 ESA Regs, reg 94(3)

Example 1

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

She becomes entitled to ESA(IR) on 28 May because the payments from the policy have stopped. She will be paid fortnightly 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 ill. His benefit week ending day is Wednesday and he is paid ESA(IR) fortnightly in arrears on a Friday.

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

On Monday 9 December the claimant notifies the office that his partner's final payment of sick pay has been made on Friday 6 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 5 December (the first day of the claimant's benefit week) for the period 5 December to 14 December.

The amount of sick pay taken into account for the period 12 December to 14 December is £13.50 ($£45 \times 3/10$).

48087 Different rules apply if the payment is one of the following benefits

1. ESA
2. IS
3. JSA
4. MA

5. IB
6. SDA.

48088 - 48089

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

48090 Special rules apply to payments of ESA, JSA, IS, MA, IB or SDA. 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 for¹ **and**
3. take each day's benefit into account for the day it is paid for² **and**
4. where only part of a payment is to be taken into account for some days only (relevant days) in a specific benefit week and the benefit involved is
 - 4.1 MA, IB or SDA - take into account for the relevant days the amount of benefit payable for those days³ **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 seven⁴.

Note: Because payments of ESA, JSA, IS, MA, IB 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 48091 will not apply to these benefits⁵.

1 ESA Regs, reg 93 (2); 2 reg 91(2)(a); 3 reg 94(4)(a); 4 reg 94(4)(b); 5 reg 94(5)

Example 1

The ESA(IR) claimant's partner 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 ESA(IR) claimant's partner receives IBLT of £20 for Tuesday 3 December to Wednesday 4 December. The claimant's 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.

Modifying the amount taken into account

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

48091 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 kind¹

would be taken into account in the same benefit week following the rules in DMG 48048 et seq. The amount of income should be restricted to the weekly amount which is treated as paid first.

1 ESA Regs, reg 94(5)

Example 1

A claimant is sick and receiving ESA(IR) fortnightly in arrears on a Thursday.

He is receiving a bonus payment from a former employer fortnightly on a Friday.

He receives two weeks payment on 15 November and the DM treats the payment as made on 15 November for the period 15 November to 28 November

As the claimant is due to return to work on 2 December, the claimant's former employer pays his final two weeks payment on 26 November

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 November for the period 22 November to 5 December.

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 November to 28 November, the DM restricts the amount of income taken into account to the weekly amount of the first payment.

Example 2

On 12 August, Sonya is awarded ESA(IR). She is a Monday BWE and is in receipt of CA which is paid every four weeks by Direct Payment. She receives a payment on 4 August, her next payment is due on 1 September. The DM calculates the weekly amount of CA to take into account when determining the ESA(IR) award.

On claiming ESA the CA Unit changes the way that Sonya's CA is paid. On 1 September Sonya receives four weeks CA and on 8 September 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 September - 22 September, the total amount of income to be taken into account for each week is restricted to the weekly amount of CA paid on 1 September.

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

48092 The special rules in DMG 48091 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 week¹.

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 appropriate².

1 ESA Regs, reg 94(5); 2 Sch 7 para 8 & Sch 8 para 40

Example

The claimant is sick and receives ESA(IR) fortnightly in arrears on Mondays.

His payment for 26 August is posted early because that day is a bank holiday.

On 27 August the claimant advises the office that his partner has started P/T work and has received her first weeks P/T earnings on 22 August. She is also due to receive another weeks wages on 29 August.

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 27 August, 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 29 August, and treats them as paid on 27 August 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

48093 Where the first of the two payments referred to in DMG 48091 or DMG 48092 was due to be paid before the date of claim the payment should be disregarded¹.

1 ESA Regs, Sch 7 para 11; Sch 8, para 38

Example

The claimant became entitled to ESA(IR) on 5 April and is a Tuesday BWE.

He received four weeks occupational pension from his former employer on 9 March, and the next payment is due to be paid on 6 April.

The DM determines that the payment due on 9 March should be treated as paid on 9 March and should be taken into account for the period 9 March - 5 April.

The DM determines that the payment due on 6 April should be treated as paid on 31 March which is the first day of the benefit week in which it is due.

The payment due on 9 March 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 March was due to be paid before the first benefit week of the claim.

Averaging of amounts

48094 The weekly amount of a claimant's income may be averaged¹ if the income fluctuates and has changed more than once 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 41 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 reg 94(6)

48095 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 it.

Example 1

The claimant's partner works two weeks on and one week off.

In the two weeks she actually works she works 15 hours a week and receives earnings of £80 a week.

In the third week, she 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 the claimant's entitlement.

Example 2

John is in receipt of ESA(IR). His partner Maggie works at a school 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.

48096 - 48999

Chapter 49 - Earnings of employed earners

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Chapter 49 - Earnings of employed earners

Earnings of employed earners - Employment & Support Allowance

Introduction

49001 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 sometimes be other types of payment.

49002 How payments made to employees may affect a claim for ESA will depend on whether

1. the claimant is in receipt of ESA(Cont), ESA(IR) or both
2. the work is continuing
3. the work has ended.

49003 The earnings of an employed earner are income¹. The calculation of this income can affect entitlement to ESA(IR) because it is a condition of entitlement to ESA(IR) that income does not exceed the claimant's applicable amount². The level of earnings from work performed by the claimant will also determine whether the work is within the PWK limits³. DMG Chapter 41 gives guidance on what constitutes PWK.

1 ESA Regs, reg 91(1); 2 WR Act 07, Sch 1, para 6(1)(a); 3 ESA Regs, reg 45(2), (3), (4) & 88

49004 ESA(Cont) has no condition of entitlement based on income and so earnings are not taken into account. However, where a claimant who is entitled to ESA(Cont) is working then the guidance in this chapter should be used along with the guidance in Chapters 41 and 48 to decide the level of earnings¹. The level of earnings will then determine whether the work is within the PWK limits².

1 ESA Regs, reg 88; 2 reg 45(2), (3) & (4)

49005 Guidance for ESA(IR) on the calculation and treatment of payments made on termination of employment is given in DMG 49500 - 49652. Guidance on payments made under employment protection legislation is in DMG 49300 - 49469.

Meaning of claimant

49006 Claimant means¹ a person who has claimed ESA.

1 WR Act 07, s 24(1)

ESA(Cont)

- 49007 It is only the amount of a claimant's own earnings that may affect entitlement to ESA(Cont) on the grounds of whether the level of earnings is within the PWK limits¹. The earnings of a claimant's partner cannot affect entitlement to ESA(Cont).

1 WR Act 07, Sch 2, para 10 & ESA Regs, reg 45(2), (3) & (4)

ESA(IR)

- 49008 Earnings of the claimant or any partner may be taken into account for the calculation of income for ESA(IR). The earnings of the claimant's partner are treated as being the income of the claimant¹. With regards to ESA(IR) it may well be the case that the claimant is not working due to illness or a medical condition but that their partner

1. is working **or**
2. has recently finished work **or**
3. is engaged in training.

Where that is the case, the guidance on earnings for ESA(IR) will apply to the partner².

1 WR Act 07, Sch 1, para 6(2); 2 ESA Regs 83(1)

- 49009 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 full¹.

1 ESA Regs, Sch 7, para 13

49010 - 49012

Earnings - explanation of terms

Meaning of employed earner

49013 The term employed earner means¹ a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office (including an elective office) with general earnings².

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

49014 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

49015 The phrase “in an office” includes directors of limited companies, clergy, LA councillors, MPs and sub-postmasters and mistresses.

Meaning of earnings

49016 Earnings means any pay or profit derived from employment¹ and includes

1. bonus or commission² (see DMG 49059)
2. PILOR³ (see DMG 49113)
3. PILON⁴ and certain compensation payments made by the employer because the employment has ended (see DMG 49500 et seq)
4. holiday pay (see DMG 49075), but not where it is payable more than four weeks after the employment ended, or was interrupted⁵
5. retainers⁶ (see DMG 49118)
6. payment made by the employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment⁷, including any payment made by the employer for
 - 6.1 the employee’s travelling expenses between home and work (but see DMG 49081 et seq for councillors)⁸ **or**
 - 6.2 any expenses that the employee may have for the care of a family member while the employee is at work⁹ (see DMG 49108)
7. awards of compensation under employment law¹⁰ (see DMG 49300 et seq)
8. payments such as guarantee payments and payments due to suspension from employment on medical or maternity grounds¹¹ (see DMG 49314 et seq and 49411 et seq)
9. certain payments which are treated as earnings for social security purposes¹²

10. amounts of compensation paid on the termination of employment¹³ (see DMG 49622 et seq)
11. 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 deduct¹⁴ (see DMG 49130).

This list is not exhaustive. See DMG 49046 - 49132 for more examples of what are and what are not earnings.

1 ESA Regs, reg 95(1); 2 reg 95(1)(a); 3 reg 95(1)(b); 4 reg 95(1)(c); 5 reg 95(1)(d); 6 reg 95(1)(e); 7 reg 95(1)(f); 8 reg 95(1)(f)(i); 9 reg 95(1)(f)(ii); 10 reg 95(1)(g); 11 reg 95(1)(h); 12 reg 95(1)(i); 13 reg 95(1)(j); 14 reg 95(1)(k)

49017 Earnings do not include

1. payments in kind¹ (see DMG 49111)
2. periodic payments made because employment has ended through redundancy²
3. payments made for periods when an employee is on maternity leave, paternity leave, adoption leave, or is away from work due to illness³ (see DMG 49166)
4. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment⁴ (see DMG 49108)
5. payments of occupational pension⁵
6. redundancy payments⁶ (see DMG 49506)
7. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme⁷
8. any payment of expenses paid to the claimant as a result of participating in a service user group⁸ (see DMG 49119).

1 ESA Regs, reg 95(2)(a); 2 reg 95(1)(b); 3 reg 95(2)(b); 4 reg 95(2)(c); 5 reg 95(2)(d); 6 ER Act 96, s 135; 7 ESA Regs, reg 95(2)(e); 8 reg 95(1)

Meaning of derived from

- 49018 The words “derived from” mean having their origins in¹. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 49017. Work out the period for which earnings are to be taken into account before deciding the claim (see DMG Chapter 48).

1 R(SB) 21/86

Meaning of gross earnings

49019 Gross earnings means the amount of earnings

1. **after** the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment¹ (see DMG 49036) **but**

2. **before** any authorized deductions are made by the employer. These may include

2.1 income tax

2.2 pensions contributions

2.3 NI contributions (previously called SS 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 earnings².

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

Meaning of pay period

49020 A pay period is the period for which the employee is, or expects to be, normally paid¹. This might be a week, a fortnight, four weeks, a month, or any other period.

1 ESA Regs, reg 2(1)

49021 - 49025

Calculation of net earnings

Deductions from gross earnings

49026 The earnings of an employed earner which fall to be taken into account are the claimant's net earnings¹.

1 ESA Regs, reg 96(1)

49027 Net earnings are gross earnings less¹

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

1 ESA Regs, reg 96(3)

Income tax

49028 Deduct from gross earnings any income tax deducted by the employer.

NI contributions

49029 NI contributions are often called SS 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

49030 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 ($£50 - £3 = £47$).

49031 Occupational pension schemes¹ are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are

1. normally in the form of a pension, all or part of which may be taken as a lump sum
2. payable on death or retirement.

1 ESA Regs, reg 2(1); PS Act 93, s 1

49032 - 49033

49034 Personal pension schemes¹ are

1. a scheme under certain pension and taxation legislation² **or**
2. an annuity contract or trust scheme under certain taxation legislation³.

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 ESA Regs, reg 2(1); 2 PS 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 Corporations Taxes Act 1988, s 620 or s 621; Finance Act 2004, Sch 36, para 1(1)(f) & Income & Corporation Taxes Act 1988, s 622(3)

49035 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period¹.

1 R(FC) 1/90

Expenses not reimbursed by employer

49036 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred¹.

1 R(IS) 16/93

49037 Examples of expenses for which deductions may be made under DMG 49036 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.

49038 The expense must be incurred in direct connection with the employer's trade or business¹. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed (see DMG Chapter 50). Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed².

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

49039 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 49036. Child minding expenses¹, 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

49040 See DMG 49077 and DMG 49081 if the claimant or partner is a Justice of the Peace or a councillor. See DMG 49108 for more guidance on the general question of expenses.

49041 - 49045

Treatment of particular kinds of payments from employment

Introduction

49046 The law¹ gives some examples of what earnings can include (see DMG 49016). But, there are other payments that count as earnings. Guidance on other types of earnings paid during a period of employment is in DMG 49050 - 49131.

1 ESA Regs, reg 95(1)

Employment ended

49047 Some payments are made to employees because their employment has ended. How these payments affect ESA(IR) will depend on whether

1. the work was P/T
2. the work was remunerative.

49048 Guidance on the treatment of payments made because employment has ended is given in DMG 49500 et seq.

49049 Payments made as a result of employment ending do not affect ESA(Cont).

Accommodation provided by employer

49050 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 under the notional earnings rule (see DMG 49193 et seq). The notional earning rule can only apply to ESA(IR) recipients and their partners.

Actors and entertainers

49051 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 an employed earner or employment as a S/E earner (see DMG 50007 et seq for the meaning S/E earner).

49052 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.

49053 The fact that an actor or entertainer has periods of employment during which class 1 NI 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 ESA 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 as an employed earner or otherwise.

Example 1

Laura is an actress and her partner is in receipt of ESA(IR). Laura's acting engagements are sporadic, and she is not currently working due to a broken leg. 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, Laura 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

1. decides that the claimant is gainfully employed as a S/E earner (see DMG 50022 - 50026)
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 as a self-employed earner and not under a contract of service as an employed earner. Therefore the earnings from the BBC 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 serious illness. 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

49054 Earnings should be taken into account from the date they are treated as paid¹. This is based on when they are due to be paid (see DMG Chapter 48). If they are paid before the due date, treat any amount paid as capital for ESA(IR) 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 for ESA(IR)².

1 ESA Regs, reg 91 & 93(1); 2 reg 112(5) & Sch 8, para 36

Example

Cameron is in receipt of ESA(IR). His wife earns £50 a week which is due to be paid every 4th Friday. She was last paid £200 on 8 November. On 18 November, she gets an advance of £100 from her 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).

49055 - 49058

Bonus or commission

49059 Payments of bonus or commission should be treated as earnings. DMG Chapter 48 contains guidance on the period over which they should be taken into account.

Broadcasting and publication fees

49060 Fees and royalties should be treated as earnings for ESA(IR), no matter how often or infrequently they are paid. They can be from employment or self-employment (see DMG Chapter 50) 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

49061 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 for ESA(IR)¹.

1 R(SB) 2/86

Directors of limited companies

49062 A limited company, of whatever size, is separate from its employees and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company, and is an employed earner.

1 R(SB) 57/83

Establishing a director's income

49063 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

49064 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.

49065 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.

49066 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.

49067 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.

49068 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 for ESA(IR). 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 for ESA(IR) as income due but not paid¹.

1 ESA Regs, reg 107(1)

49069 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 49193 et seq). In doing so, the DM should consider whether the company can afford to pay the director.

Share dividend

49070 Share dividend is income from capital and should be treated as capital for ESA(IR) but only from the date it is normally due to be credited to the claimant's account¹.

1 ESA Regs, reg 112(4)

Debenture interest

49071 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 for ESA(IR)¹. If any of the loan itself is repaid, the amount repaid is a repayment of capital.

1 ESA Regs, reg 112(4)

49072 - 49074

Holiday pay

49075 Any holiday pay that is payable within four weeks of the date employment ended, or was interrupted, should be treated as earnings for ESA(IR)¹. If it is payable more than four weeks after the employment has ended, or been interrupted, it should be treated as capital for ESA(IR)². Guidance on the effects of holiday pay paid on termination of employment is given in DMG 49616.

1 ESA Regs, reg 95(1)(d); 2 reg 112(3)

Income tax refunds

49076 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 for ESA(IR)¹.

1 ESA Regs, reg 112(2)

Justices of the Peace - ESA(IR)

49077 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 allowances¹
2. subsistence²
3. financial loss allowances³.

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

Travel allowances

49078 Travel allowances incurred wholly, exclusively and necessarily in the performance of the lay Justice of the Peace's duties should be disregarded in full for ESA(IR)¹.

1 ESA Regs, reg 95(2)(c) & Sch 8, para 3

Subsistence

49079 Payments of subsistence should be disregarded in full for ESA(IR)¹.

1 ESA Regs, reg 95(2)(c) & Sch 8, para 3

Financial loss allowances

49080 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 remuneration¹ (see DMG 49113)
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 ESA Regs, reg 95(1)(b)

Councillors - ESA(IR)

49081 Councillors are¹

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 area².

1 ESA Regs, reg 2(1); 2 Local Government etc (Scotland) Act 1994, s 2

Note: For the treatment of councillors and ESA(Cont) see DMG Chapter 44.

49082 Councillors are elected office holders and are employed earners¹. The official duties and responsibilities of a councillor will vary from LA to LA. Each LA must draw up a scheme² 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

49083 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 49091 et seq).

Basic allowance

49084 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.

49085 - 49088

Special responsibilities allowance

49089 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

49090 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 earnings¹.

1 ESA Regs, reg 95(1)(f)

Expenses

49091 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 duties¹, for example travel and subsistence allowances². 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 ESA Regs, reg 95(2)(c); 2 R(IS) 6/92

49092 After expenses in DMG 49091 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 49036). 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

Sophie 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.

49093 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** duties¹.

1 ESA Regs, reg 95(2)(c); R(IS) 16/93

- 49094 For the purposes of DMG 49092, 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.
- 49095 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.
- 49096 Secretarial expenses should only be deducted from the basic allowance.
- 49097 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.
- 49098 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.
- 49099 Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see DMG 49091). This is different to the normal treatment of travelling expenses (see DMG 49039). 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.
- 49100 Subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance.
- 49101 - 49104
- 49105 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 49038). 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.
- 49106 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 49027 and DMG 49030).

Payments not claimed

49107 Councillors are entitled to allowances whether they are claimed or not¹. If a councillor has not been paid an allowance and payment could be expected, the DM should consider taking notional income into account² if ESA(IR) is in payment (see DMG Chapter 51).

1 R(S) 6/86; 2 ESA Regs, reg 106(2)

Treatment of expenses

49108 Payments made by an employer for expenses which **are not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are earnings¹. These can include

1. payments for travelling expenses between home and work
2. 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 ESA Regs, reg 95(1)(f)

49109 Payments made by an employer for expenses which are wholly, exclusively and necessarily incurred in the performance of the duties of the employment are not earnings¹. They are treated as income other than earnings but are fully disregarded². 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 ESA Regs, reg 95(2)(c); R(FIS) 4/85; 2 ESA Regs, Sch 8, para 3

49110 An employer may pay for an expense from which the employee gets some private benefit. If so, divide the payment into private and business use. The part of the payment for private use is earnings¹. The rest, which is for business use, is wholly, exclusively and necessarily incurred, and is not earnings.

1 R(IS) 16/93

Example

Winston uses his own private telephone for work purposes. His employer pays the standing and rental charges for the telephone and 50% of the calls. This is because Winston also uses the phone for personal calls, and 50% of the calls made are personal. The DM decides that 50% of the amount paid by the employer for the standing and rental charges is an expense wholly, exclusively and necessarily incurred. The remaining 50% is for Winston's personal use and so is earnings. The amount paid by the employer for calls is wholly, exclusively and necessarily incurred and is not earnings.

Payments in kind

- 49111 A payment in kind, for example free accommodation, should not be treated as earnings¹. Where wages are paid at a reduced rate because of the payment in kind, consider whether notional earnings should be applied (see DMG 49193 et seq).

1 ESA Regs, reg 95(2)(a)

- 49112 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 49130).

Payments in lieu of remuneration

- 49113 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 earnings¹.

1 ESA Regs, reg 95(1)(b); R(SB) 21/86

49114 - 49117

Retainers

- 49118 Retainers¹ are payments made for a period when no actual work is done, for example to employees of school meals services during the school holidays. These should be treated as earnings. Retainer payments² include

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

These payments should not be disregarded.

1 ESA Regs, reg 95(1)(e); 2 Sch 7, paras 1 & 2

Service User Groups

- 49119 Payments other than expenses received for taking part in a service user group (see DMG 51270) should be treated as earnings for ESA(IR)¹ 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 Chapter 41).

1 ESA Regs, reg 95(1)

Example

Jenny is in receipt of ESA(IR). 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 ESA(IR). The payment is subject to the normal weekly earnings disregards.

Single status payments

49120 A payment which is made to compensate a person for past pay inequalities has to be taken into account if that person or their partner is entitled to ESA(IR). These payments are sometimes called "single status payments" but may be called something else. These payments are earnings¹.

1 ESA Regs, reg 95(1)

Example

Andrew is in receipt of ESA(IR). His partner works part-time for the local council and she has been offered a payment by her employer to redress historical pay inequalities between female and male employees. The employer offers Andrew's partner a payment of £7,200. This is paid to her with her salary and the DM treats it as a payment of earnings.

Special occupations

49121 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 legislation¹
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 forces² (see Appendix 1 to this Chapter).

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

49122 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 capital¹. 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 ESA Regs, reg 112(1)

Auxiliary coastguards

- 49123 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 49017).

Part-time members of a fire brigade

- 49124 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 49017).

Part-time crewing or launching of a lifeboat

- 49125 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 49017).

Territorial Army or volunteer reservists

- 49126 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.
- 49127 Payments for travelling expenses between the volunteer's home and place of duty, for example the drill hall, are also not wholly, exclusively and necessarily incurred. Such payments should be treated as earnings¹.

1 ESA Regs, reg 95(1)(f)(i)

- 49128 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 49017).

Tips

- 49129 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

49130 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.

49131 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 NI contributions to deduct¹.

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

1 ESA Regs, reg 95(1)(k)

49132 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 earner¹ (see DMG 49130 above).

1 ESA Regs, reg 95(3)

49133 - 49140

Earnings disregards - ESA(IR)

Application to claimant and partner

49141 Net earnings should be taken into account for ESA(IR) less any disregard¹. The amount of disregard will depend on

1. whether the earnings are from PWK and the type of PWK
2. who the earnings belong to.

1 ESA Regs, reg 96(2) & Sch 7

49142 The income of each member of a couple is worked out separately in ESA(IR). It is then treated as belonging to the claimant¹. This means that earnings of the claimant's partner can affect the award of ESA(IR).

1 WR Act 07, Sch 1, para 6(2)

49143 Disregards may apply to the claimant and partner, with an overall maximum limit set for the couple. Where more than one disregard applies, the couple is normally entitled to only one disregard. This will usually be the highest one.

49144 The exception to this rule is where amounts can be disregarded as in DMG 49166 - 49169. In such a case, those amounts may be disregarded in addition to the normal maximum set for the family.

Permitted work - claimant only working

49145 Where the claimant is undertaking PWK or exempt work (see DMG Chapter 41) then the earnings from that work are disregarded for ESA(IR) if the earnings limits for that type of PWK are not exceeded¹. See DMG Chapter 41 for guidance on the types of PWK and the PWK limits.

1 ESA Regs, Sch 7, para 5

Work with weekly earnings of £20 or less

49146 Up to £20 is disregarded for any PWK where the claimant's weekly earnings are £20 or less¹. This is known as PWLL.

1 ESA Regs, Sch 7, para 5; reg 45(2)

Supported permitted work

49147 Earnings of up to 16 x NMW¹ are disregarded for supported permitted work² which is

1. part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution **or**

2. supervised by a person employed by a public or local authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities.

1 ESA Regs, Sch 7, para 5; 2 reg 45(3)

Permitted work higher limit

49148 Earnings of up to 16 x NMW¹ are disregarded for specified work which is work done under the rules for PWHL (see DMG 41211 et seq) where²

1. the work is for less than 16 hours per week **and**
2. the weekly earnings do not exceed 16 x NMW **and**
3. the work is performed during a 52 week period beginning on the first day on which the work is done, provided that
 - 3.1 the claimant has not previously performed specified work **or**
 - 3.2 since the beginning of the last period of specified work, the claimant has ceased to be entitled to
 - 3.2.a ESA **or**
 - 3.2.b credits on the grounds of LCWfor a continuous period exceeding 12 weeks **or**
- 3.3 52 weeks or more have passed since the claimant previously performed specified work.

1 ESA Regs, Sch 7, para 5; 2 reg 45(4)

49149 - 49152

Permitted work - claimant's partner also working

49153 Up to £20 of the partner's earnings from work can be disregarded where

1. the claimant is undertaking
 - 1.1 PWLL with weekly earnings less than £20¹ (see DMG 41196) **or**
 - 1.2 SPW² (see DMG 41197 et seq) **or**
 - 1.3 PWHL³ (DMG 41211 et seq) **or**
 - 1.4 PWK⁴ (LCWRA) **and**
2. the claimant's earnings from the PWK are below the earnings limit for that category of work.

1 ESA Regs, Sch 7, para 6(a); 2 Sch 7, para 6(b); 3 Sch 7, para 6(b); 4 Sch 7, para 6(b)

49154 The amount of the partner's earnings disregarded will depend upon how far below the PWK limits that the claimant's earnings are. The maximum that can be disregarded from the partner's earnings is £20 per week.

Example 1

Jonah is in receipt of ESA(IR). He works 2 hours a week doing some gardening and he is paid £10 a week. These earnings are below the £20 PWK limit. His partner, Susan, works as a classroom assistant and earns £50 a week. The DM disregards £10 of Susan's earnings.

Example 2

Winona is in receipt of ESA(IR). She is undertaking work which is supervised by a voluntary organisation and she earns £60 a week. These earnings are below the PWK limits for that category of work. Her partner, Noah, works in a shop and earns £50 a week. The DM disregards £20 of Noah's earnings.

Other work

- 49155 A weekly disregard of £20¹ applies where the claimant is undertaking work
1. as a councillor²
 2. as a DLA advisory board member or as a member of a FtT with a disability qualification (see DMG 41155 et seq)³
 3. during an emergency to protect another person or to prevent serious damage to property or livestock⁴
 4. done whilst receiving assistance in pursuing self-employed earner's employment under certain legislation⁵.

1 ESA Regs, Sch 7, para 7(1) & para 7(2); 2 reg 40(2)(a); 3 reg 40(2)(b); 4 reg 40(2)(e); 5 reg, 45(5)

- 49156 A weekly disregard of £20¹ applies where the claimant's partner is performing work
1. as a childminder²
 2. on the self-employment route³
 3. in a special occupation⁴ (see DMG 49121 for what a special occupation is)
 4. as a councillor⁵
 5. as a disabled worker⁶ (see DMG 41511)
 6. whilst
 - 6.1 involved in a trade dispute which prevents entitlement to JSA **or**
 - 6.2 would otherwise be entitled to IS following a return to work after a trade dispute⁷

7. and would be entitled to IS as a carer⁸ (see DMG Chapter 20)
8. whilst
 - 8.1 in employment **and**
 - 8.2 living in or temporarily absent from a care home, Abbeyfield Home or an independent hospital **and**
 - 8.3 requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental illness or a terminal illness⁹.

Note: See DMG 51194 for the meaning of independent hospital.

1 ESA Regs, Sch 7, para 7(2); 2 reg 43(1)(a); 3 reg 43(1)(d); 4 reg 43(1)(e); 5 reg 43(1)(f); 6 reg 43(2)(a); 7 reg 43(2)(b); 8 reg 43(2)(c); 9 reg 43(2)(d)

Work as a DLA advisory board or first tier tribunal member and permitted work

49157 Where the claimant is working as a DLA advisory board or FtT member and is also performing PWK, up to £20¹ a week can be disregarded from the earnings where that work is

1. below the £20 weekly limit if the work is PWLL (see DMG 49146) **or**
2. below the relevant limit if the work is SPW or PWHL (see DMG 49147 - 49148).

The amount of earnings disregarded will depend upon how far below the PWK limits the earnings are. The maximum that can be disregarded each week is £20.

1 ESA Regs, Sch 7, para 7(3)

Example 1

Natalie is a DLA advisory board member and is paid £50 a week. She also earns £10 a week helping in her friend's business. The DM can disregard all of Natalie's earnings from helping her friend and £10 of the earnings from being a DLA advisory board member.

Example 2

Imran is a FtT member earning £70 a week. He also performs PWHL earning £60 a week. The DM can disregard all of the earnings from the PWHL and £20 of the work from being a FtT member.

Partner performing part-time work

49158 A weekly disregard of £20 applies where the claimant's partner is in work which isn't remunerative work (see DMG Chapter 41) and the claimant is not performing PWK¹.

1 ESA Regs, Sch 7, para 7(4)

49159 Where DMG 49141 - 49146 applies to a claimant then the disregards can only apply to the claimant's partner if the claimant's earnings are less than £20 a week. The maximum that can be disregarded from the partner's earnings is £20 a week¹.

1 ESA Regs, Sch 7, para 7(1)

49160 - 49162

Territorial Army or volunteer reservists

49163 Members of the territorial or reserve forces (see Appendix 1 to this Chapter) may stop getting ESA(IR) because of that employment. Earnings may then be due for a period when the claimant was not entitled to benefit.

49164 Take any such earnings into account as normal, if the reason ESA(IR) stops is because¹

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

1 ESA Regs, Sch 7, para 12

49165 If ESA(IR) stops for any other reason, disregard any earnings due for the period when the claimant was not entitled¹.

1 ESA Regs, Sch 7, para 12

Earnings paid for employment which has been interrupted

49166 Disregard earnings from employment that has been interrupted¹, 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 51).

1 ESA Regs, Sch 7, para 1(1)(b)

49167 This disregard does not include

1. retainers¹ including
 - 1.1 statutory guarantee payments **and**
 - 1.2 payments made where the claimant has been suspended on medical or maternity grounds
2. earnings where the claimant has been suspended from employment.

1 ESA Regs, Sch 7, paras 1 & 2

Earnings payable outside United Kingdom

49168 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 prevented¹.

1 ESA Regs, Sch 7, para 9

Earnings paid in a foreign currency

49169 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments¹.

1 ESA Regs, Sch 7, para 10

49170 - 49175

Employment and training schemes

General

49176 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 Education and Skills, Scottish Enterprise, the Highlands and Islands Enterprise, Skills Development Scotland or the 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

49177 Employees get a wage from their employer. Treat the wage as earnings. If the work is remunerative there will be no entitlement to ESA(IR). If the work is P/T, take the net earnings into account, less any disregard (see DMG 49141 et seq).

Trainees

49178 Trainees get a training allowance with no income tax or NI contributions deducted¹. Treat these allowances as other income and take them into account in full² except for

1. travelling expenses repaid to the trainee unless the same expenses have already been disregarded as student income (see DMG Chapter 51)³
2. living away from home allowance (see DMG Chapter 51)
3. training premium (see DMG Chapter 51)
4. childminding costs paid direct to the childminder⁴ (see DMG Chapter 51)
5. training bonus⁵ (see DMG Chapter 52)
6. discretionary payments made under Employment and Training Law intended to meet or help meet the special needs of a person undertaking a qualifying course⁶.

1 ESA Regs, reg 2(1); 2 reg 104(1); 3 Sch 8, para 15; 4 reg 107(3); 5 Sch 9, para 32;
6 Sch 8, para 15; E & T Act 1973, s 2

49179 - 49182

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

49183 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, Skills Development Scotland or the Welsh Ministers¹. Schemes may be known locally by a name other than Work Based Learning. Local Jobcentre Plus offices can confirm whether a particular scheme is Work Based Learning.

1 TfW (Miscellaneous Provisions) Order 1995

49184 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

49185 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.

49186 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

49187 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 work based learning).

49188 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.

49189 - 49192

Notional earnings

Notional earnings - general

49193 Notional earnings are earnings that a person does not actually have, but is treated as having. For

1. claimants in receipt of ESA(IR), notional earnings of

1.1 the claimant **or**

1.2 any partner

are taken into account as if they were actual earnings¹

2. claimants in receipt of ESA(Cont), notional earnings are

2.1 not deducted from the amount of ESA(Cont) payable **but**

do count when determining whether the claimant has breached either of the PWK limits².

1 ESA Regs, reg 109(2); 2 reg 88

49194 The DM should treat the claimant or partner as having notional earnings where¹

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 NMW. If the notional income rules are satisfied the DM must take into account at least the NMW rate relevant to the claimant, unless one of the situations in DMG 49197 applies.

Note: If it is the claimant who is working then the DM will need to consider the guidance in DMG Chapter 42 with regard to LCW.

1 ESA Regs, reg 108(3)

49195 The NMW provides that in most cases workers will be paid at least a standard hourly rate, dependent on their age and whether they are receiving accredited training.

49196 Not all the money paid to a worker counts for the purposes of the NMW. Also the hours for which NMW should be paid depends on the type of work the worker is doing.

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

- 49197 The DM should not take notional earnings into account where the claimant or the claimant's partner
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 service¹ **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 charge² **or**
 3. provides a service under an employment or training programme 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 programme³
 4. is engaged in work experience in
 - 4.1 the NDLPs **or**
 - 4.2 a scheme approved by the Secretary of State as supporting the objectives of the NDLPs⁴.

1 ESA Regs, reg 108(3); 2, reg 108(4)(a); 3 reg 108(4)(b); 4 reg 108(4)(c)

- 49198 The DM should not take notional earnings into account where the claimant is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement commences¹ and for which the claimant receives no payment.

1 ESA Regs, reg 108(4)(d) & (e)

- 49199 In DMG 49198 "work placement" means¹ work which

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

1 ESA Regs, reg 108(4)(e)

Remunerative work

- 49200 Where a service is being performed, consider whether the remunerative work exclusion applies for ESA(IR).

Meaning of voluntary organization

49201 Voluntary organization means¹ a body that is not a

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

whose activities are not carried out for profit.

1 ESA Regs, reg 2(1)

Meaning of “person”

49202 The meaning of “person” as used in DMG 49194 **1.** and **2.** includes¹

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

1 R(SB) 13/86

49203 - 49205

Performance of a service

49206 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.

49207 A service may be performed even where there is a close family relationship¹, 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 49252.

1 R(SB) 3/92

Details of the service performed

49208 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.

When earnings are not to be treated as paid

- 49209 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

- 49210 Volunteers¹ 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

- 49211 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 Children's 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

- 49212 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 ESA(IR) 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 Chapter 51).

Is it reasonable

49213 There is no definition of reasonable. The question should be considered based on the evidence before the DM in each case¹. 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)
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

49214 - 49217

Carers

49218 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.

49219 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 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 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

- 49220 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.
- 49221 Offenders who are genuinely unable to pay their fine will be able to work off their fine at a fixed rate¹. 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

- 49222 These orders¹ 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

49223 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 fine¹.

1 Criminal Procedure (Scotland) Act 1995, s 235(6)

Calculation of gross notional earnings

49224 The maximum amount of notional earnings that can be taken into account is

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

whichever is the lower. However the DM should take into account at least the NMW rate relevant to the claimant or partner.

Meaning of in the area

49225 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

49226 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.

49227 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.

49228 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.

49229 - 49232

Payments in kind

49233 Payments in kind are not earnings¹. 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 employment².

1 ESA Regs, reg 95(2)(a); 2 R(IS) 2/98

Example

Bella 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

49234 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

49235 The rate paid for comparable employment in the area is a question of fact. It should not be assumed to be the NMW. If earnings are not immediately ascertainable, the DM treats the claimant as possessing earnings that are reasonable in the circumstances.¹ The DM must treat the claimant as possessing at least the NMW rate that is relevant to them.

1 ESA Regs, reg 108(1)

49236 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

49237 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.

49238 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 level¹. It is the amount of money that they actually have available to them.

1 R(SB) 3/92

49239 The DM should consider what is reasonable in each case. Where the employer is getting JSA(IB), ESA(IR) 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.

Amount to be taken into account

49240 After determining the gross amount of notional earnings, deduct any actual earnings paid. Actual earnings should be calculated in the normal way.

49241 From the resulting figure, make notional deductions for

1. income tax **and**
2. Class 1 NI contributions **and**
3. half of any sum payable by the claimant towards an occupational or personal pension scheme¹.

1 ESA Regs, reg 109(2)

49242 - 49245

Deduction for notional income tax

49246 Calculate the notional income tax to be deducted¹ as in DMG Chapter 50.

1 ESA Regs, reg 109(2)(a) & (b)

Deduction for notional NI contribution

49247 The deduction depends on the claimant’s circumstances. Employed earners between 16 and pension age have to pay NI contributions. This is subject to the amount of their earnings. Contributions are payable at a standard rate between a lower and upper earnings limit¹ (see DMG Chapter 50 Appendix 2).

1 ESA Regs, reg 109(2)(c)

49248 Some married women can pay NI 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.

- 49249 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.
- 49250 Standard rate deductions should be made unless there is a current certificate of election.

Deduction for notional payments to an occupational or personal pension scheme

- 49251 Calculate the deduction for notional payments to an occupation or personal pension scheme as in DMG 49030¹.

1 ESA Regs, reg 109(2)(d)

Onus of proof

- 49252 In general, the burden of proof rests on the DM¹. 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

49253 - 49299

Employment protection legislation - ESA(IR)

Payments - general

Introduction

49300 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 service¹. Periods in either type of work count when working out periods of continuous employment.

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

49301 The effect of payments or awards made under employment protection legislation on ESA(IR) 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

49302 There are many different types of payments and awards including

1. statutory guarantee payments (see DMG 49314)
2. guarantee payments under a collective agreement or wages order (see DMG 49335)
3. remuneration while suspended from work on medical or maternity grounds (see DMG 49411)
4. awards made by an Employment Tribunal or Employment Appeal Tribunal for unfair dismissal (see DMG 49421)
5. interim relief pending determination of a claim for unfair dismissal (see DMG 49425)
6. remuneration under a protective award (see DMG 49441)
7. statutory redundancy payments (see DMG 49506)
8. payments for certain time off work (see DMG 49453).

Treatment of payments - general

49303 Most payments under employment protection legislation should be treated as earnings¹ for ESA(IR) (see DMG 49016 et seq). Take them into account in the normal way.

1 ESA Regs, reg 95(1)

49304 Statutory redundancy payments¹ are the exception to this general rule. They should be ignored as income but taken into account as capital for ESA(IR). Included at Appendix 4 to this Chapter is a table showing how the amount of statutory redundancy payable is calculated.

1 ESA Regs, reg 95(1)

When payments are due to be paid

49305 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 paid¹, to be ignored for ESA(IR) purposes. A payment is no longer due if the right to enforce payment of it is lost.

1 ESA Regs, reg 107(2)(c)

49306 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 decided.

49307 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.

49308 A complaint may be settled before the Employment Tribunal gives a decision. Any payments made are payments on termination of employment.

49309 - 49313

Statutory guarantee payments

General

49314 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 work¹. 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

49315 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.

49316 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

49317 Statutory guarantee payments are not payable to employees who

1. usually work outside GB under their contracts of employment
2. have not been continuously employed by their employer for at least one month¹
3. have no normal working hours fixed by a contract of employment², 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 boat³
5. are members of the police service and armed forces⁴.

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

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

49318 Statutory guarantee payments are also not payable if the Secretary of State has made an exemption order¹ (see DMG 49369 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

49319 Statutory guarantee payments¹ 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 week²) in any period of three months³. 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 State⁴. 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 September⁵. 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

49320 An employee is not entitled to a guarantee payment if

1. there is no work because employees of the same or an associated employer¹ 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 employee² **or**
3. reasonable requirements imposed by the employer to ensure that the employee's services are available have not been met³.

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

Payments not made by employer

49321 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.

49322 The reason given may seem unlikely. For example, the condition quoted may not be one that would stop payment being due (see DMG 49317). Or there may be no good reason given. The DM should make a determination based on the available evidence.

Complaints to a tribunal

49323 Employees may complain to an Employment Tribunal that they have not received all the payments that they should have¹. If this is confirmed the employer will be ordered to pay any amount owing². Settlements can also be reached by conciliation or arbitration.

1 ER Act 96, s 34(1); 2 s 34(3)

49324 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).

49325 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

49326 The period over which a payment is taken into account depends on the date it is due to be paid¹. That date is not always clear. It may not be the date they are actually paid.

1 ESA Regs, reg 93(1)

49327 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.

49328 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.

49329 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 49335 et seq).

49330 Statutory guarantee payments are a form of retainer. They should be taken into account as earnings¹ for ESA(IR) purposes.

1 ESA Regs, reg 95(1)(e)

49331 - 49334

Collective agreements

Introduction

49335 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.

49336 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 applied¹.

1 R(U) 23/55

49337 National agreements are sometimes made for an industry¹. 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

49338 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.

49339 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.

49340 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 day¹. 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)

49341 An agreement may be subject to a separate arrangement between the parties involved. Take this into account when deciding the effects of the agreement¹.

1 R(U) 21/56 (T)

49342 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 days¹.

1 R(U) 1/75

Changes to agreements

- 49343 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.
- 49344 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 changes¹.
- 1 R(U) 40/56*
- 49345 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.

49346 - 49350

Whether agreement effective

- 49351 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 contract¹ **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, s 179(1)*
- 49352 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.
- 49353 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.
- 49354 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

- 49355 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.
- 49356 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.
- 49357 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.
- 49358 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.
- 49359 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.
- 49360 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.
- 49361 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 49343 if the employees do not accept the change.
- 49362 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.

49363 - 49368

Exemption orders

49369 Where there is a collective agreement in force, the Secretary of State can make an exemption order¹. This order stops employees from being entitled to statutory guarantee payments (DMG 49314 et seq). Appendix 5 lists employers who are subject to such orders.

1 ER Act 96, s 35

49370 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

49371 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.

49372 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.

49373 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

49374 Employees may be entitled to guaranteed payments of wages. These are not statutory guarantee payments and are not usually paid at the same time.

49375 A guaranteed payment of wages is only payable if the employee is covered by an agreement. An employee is covered if the

1. agreement is in force **and**
2. employer is a party to it **and**
3. employee is within its terms **and**
4. 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.

49376 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.

49377 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

49378 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.

49379 - 49382

Effect of guaranteed wages payments

49383 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.

49384 Any guaranteed payment of wages due to be paid should be treated as earnings¹ for ESA(IR). Take it into account in the normal way.

1 ESA Regs, reg 95(1)

Work guaranteed

49385 Some employees are guaranteed employment for a limited number of days or hours each week.

49386 If employers cannot provide guaranteed work, payments may have to be made instead. Details of guarantees should be in the agreement.

49387 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.

49388 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.

49389 The guaranteed period may be shown in terms of days, shifts or hours. Employment may be guaranteed for a limited number of

1. days **or**
2. hours **or**
3. weeks.

49390 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.

49391 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 agreement¹.

1 R(U) 2/58

49392 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 employer¹.

1 R(U) 22/56 (T)

49393 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.

49394 - 49396

Short time working instead of redundancy

49397 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.

- 49398 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.
- 49399 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

- 49400 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

Wendy 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

Campbell 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

- 49401 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

- 49402 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.

49403 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

Jimmy 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.

49404 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

49405 Whenever work is guaranteed, consider whether the remunerative work exclusion applies.

49406 - 49410

Suspension from work on medical or maternity grounds

General

49411 Employees may be suspended from work under certain health and safety law. This can be on medical or maternity grounds¹. Employees may be entitled to be paid while they are suspended². Any payments due are earnings for ESA(IR)³. Take them into account in the normal way.

1 ER Act 96, s 64 & s 66; 2 s 64(1) & s 68(1); 3 ESA Regs, reg 95(1)

Employees not entitled to be paid

49412 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 suspension¹.

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

49413 Employees who are suspended on medical grounds also lose the right to be paid if they¹

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

1 ER Act 96, s 65(3) & (4)(b)

Calculation of pay

49414 Employees suspended on

1. maternity grounds can be paid for as long as they are suspended¹
2. medical grounds have a limit to the payment period. This is a maximum of 26 weeks².

The amount payable in either case is a normal week's pay for each week of the suspension³.

1 ER Act 96, s 68(1), s 66; 2 s 64(1); 3 s 69(1)

Complaints to a tribunal

49415 Employees may complain to a tribunal that they have not received their full entitlement¹. 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

49416 - 49420

Compensation for unfair dismissal

Introduction

49421 Employees have the right to complain¹ 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-engagement² **or**
2. award compensation
 - 2.1 when no such order is made³ **or**
 - 2.2 if such an order is made but its terms are not fully met by the employer⁴.

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

49422 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.

49423 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.

49424 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

49425 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 activities¹ **or**
2. the status or activities of employee representatives (redundancy and business transfers)² **or**
3. health and safety at work matters³.

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

Amount of awards

49426 An award of compensation can be made up of

1. a basic award, based on age and length of service¹. (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 dismissal².

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

- 49427 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 dismissed¹ **or**
 2. the employee's 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 law².

Note: This list is not exhaustive.

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

49428 - 49430

- 49431 Under certain recoupment law¹, 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 Chapter 09). But this only applies to formal awards and where the employee has claimed or had been granted ESA, JSA or IS.

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

- 49432 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

- 49433 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.
- 49434 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 7.10.08, he is sacked by his employer and complains to a tribunal. On 3.2.09, the tribunal decide that he was unfairly dismissed and award him £2000 compensation. The award is from 7.10.08 and has not been reduced 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 = £2,000) from 7.10.08.

- 49435 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

- 49436 Awards of compensation should be treated as earnings¹. Take them into account from the date that they are treated as paid². 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 ESA Regs, reg 95(1)(g); 2 reg 93(1)

49437 - 49440

Protective awards

Introduction

49441 Employers must consult their employees' representatives in good time about certain redundancy proposals¹. Those representatives may be

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

1 TULR (C) Act 92, s 188

49442 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.

49443 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

49444 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.

49445 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

49446 Employers may not pay all that they should do under a protective award. Employees can then complain to an Employment Tribunal¹. 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

49447 There may be cases where the

1. employer has not followed the rules **and**
2. employee representative has not complained to an Employment Tribunal **and**
3. 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 earnings¹.

1 ESA Regs, reg 95(1)(b)

Effect of payments

49448 Payments made under a protective award are earnings¹. They should be taken into account in the normal way.

1 ESA Regs, reg 95(1)(i)

49449 - 49452

Time off work provisions

General

49453 Under employment protection law, employees may be allowed time off during normal working hours

1. for duties as a TU or elected employee representative¹
2. for TU activities²
3. for public duties³
4. to look for work or make arrangements for training⁴
5. for antenatal care⁵
6. for occupational pension scheme trustees⁶
7. to make arrangements for dependants⁷
8. to undertake study or training if they are a young person⁸.

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

49454 Employees may be entitled to be paid while they are taking this time off. Any payments due are earnings¹. Take them into account in the normal way.

1 ESA Regs, reg 95(1)

49455 - 49466

Complaints to an Employment Tribunal

49467 Employees may complain to a tribunal that they have not been allowed to take time off¹. 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)

49468 Employees may also complain that they have not received their full entitlement to payment¹. 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(3); ER Act 96, s 54(1)(b), 57(1)(b), 60(1)(b), 63(1)(b), 63C(1)(b)

49469 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.

49470 - 49499

Payments on termination of employment and ESA(IR)

Payments - general

Introduction

49500 Employees may be entitled to certain payments on termination of employment, that is, when their employment ends. Payments for the termination of the employment are made because the employment has ended¹. They are not paid for any other reason. They would not be paid but for the employment ending. These payments may affect entitlement to ESA(IR). These payments do not affect ESA(Cont).

Note: The DM should consider payments on termination of employment in every case where there is evidence that employment has terminated. This applies even if the employment ended some time before the date of claim.

1 R(U) 4/92

49501 The effects of these payments on ESA(IR) 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 (Appendix 6 to this chapter provides guidance)
5. when the work ended.

49502 Guidance on how payments affect ESA(IR) is in DMG 49606 - 49652.

Types of payments

49503 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 49504)
2. holiday pay (see DMG 49505)
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 49300 et seq)
7. payments in kind (see DMG 49509)

8. income tax refunds (see DMG 49076)
9. compensation payments (see DMG 49622)
10. statutory redundancy payments (see DMG 49506).

Payments for period before employment ended

49504 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

49505 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

49506 Employees who have been continuously employed for two years may be entitled to statutory redundancy payments if they are

1. dismissed by reason of redundancy¹ **or**
2. laid off or kept on short time for more than a set number of weeks².

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

49507 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.

49508 Statutory redundancy pay is based on¹ the

1. length of continuous employment
2. age of the employee
3. 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

- 49509 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 49130)
 3. free accommodation.

Employment never existed

- 49510 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.

49511 - 49514

Payments not received

- 49515 Notional income rules allow for earnings which are due on termination of employment as a result of redundancy, but which have not been paid, to be ignored for ESA purposes¹.

1 ESA Regs, reg 107(2)(c)

49516 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.

49517 In the case of insolvent employers, benefits paid will be deducted from the amount awarded by the Redundancy Payments Service (RPS).

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

Delay in payment

49518 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

49519 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.

49520 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

49521 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.

49522 - 49526

Whether employment has terminated

49527 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 49453).

49528 Employees who are away from work temporarily may continue to be employed. Their employment is not terminated.

Recognized, customary or other holidays

49529 Employment will not have terminated if a claimant is absent because of a holiday, or an absence authorised by the employer.

49530 When considering if an absence from work is because of a holiday, DMs should¹

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

49531 An employee will generally be entitled to four weeks annual leave under the relevant legislation¹. 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

49532 Terminated is not defined in the legislation. It should be given its ordinary meaning¹. Termination of employment should also be given its ordinary meaning.

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

49533 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 end¹. Whether there is any intention of resuming the employment is not relevant.

1 R(U) 7/68(T)

49534 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.

49535 There is a distinction between the contract itself and any employment under it¹. 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)

49536 - 49540

49541 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 fact¹. 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.

49542 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 49541) **or**
3. at the end of an engagement which was for a fixed period.

Contract terminated immediately before period of absence from work

49543 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

- 49544 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.
- 49545 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

- 49546 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.
- 49547 The number of times this may have happened should be taken into account¹. 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

Jean is working P/T as a music teacher. She was originally employed for a fixed period of one term in 1998. She continued teaching at the school for many years without having to be re-appointed.

At the end of the summer term in 2008, she received no formal notification of discharge or re-employment. Early in the summer holidays the understanding between her and her employer was that she would resume next term. There was no evidence of any fresh arrangement for re-appointment.

It was decided that she was employed under a running contract. During the 2008 summer holiday her employment was merely suspended, not terminated¹.

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 terminated¹.

1 R(U) 7/68(T)

49548 People may be employed under a series of fixed term contracts. Under employment protection law¹ 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 ESA purposes. It should not influence the DM in determining whether employment has terminated.

1 ER Act 96

49549 - 49552

Teachers

49553 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.

49554 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.

49555 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.

49556 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.

49557 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

49558 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.

49559 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 agreements¹. Employment is terminated at the end of each period.

1 R(U) 8/68

49560 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.

49561 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.

49562 - 49565

Supply teachers

49566 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).

49567 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.

49568 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.

49569 The letter places no obligation on the LEA to offer employment. The teacher is not obliged to accept any vacancies offered¹. When there is a vacancy the teacher is contacted, by telephone or in writing, and offered employment.

1 R(U) 2/87

49570 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 finished¹.

1 R(U) 2/87

49571 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 continue¹.

1 R(JSA) 5/03

Whether a supply teacher's employment has terminated during a school closure

49572 It is likely that a supply teacher's employment will have terminated where¹

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

49573 - 49576

Maternity leave and absence

49577 Under employment law¹, 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 taken².

1 ER Act 96, s 71; 2 s 73; Maternity & Parental Leave etc 1999, SI 1999 No. 3312

49578 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.

49579 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.

49580 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.

- 49581 There is no statutory requirement for employment to continue for any period of additional maternity leave. But it is likely to continue unless it has been ended by agreement, resignation or dismissal.
- 49582 There may be no contractual provisions that apply to the additional maternity leave. The periods of employment before and after that period will then join together as if they are continuous.

Suspension on maternity grounds

- 49583 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.
- 49584 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.

49585 - 49588

Claim within 29 weeks of childbirth

- 49589 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.
- 49590 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.
- 49591 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

- 49592 Adoption leave¹ means a period of absence from work on ordinary or additional adoption leave under relevant legislation².

1 PA Regs, reg 2(1) & 3; ESA Regs, reg 2(1); 2 ER Act 1996, s 75A & 75B

49593 Employees who adopt a child under the age of 18 have the right to 26 weeks ordinary adoption leave¹. A further 26 weeks of additional adoption leave will also be available².

1 PA Regs, reg 18(1); 2 reg 20(2)

49594 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 leave¹.

1 PA Regs, reg 19

49595 Following a period of adoption leave, employees have the right to return to the same job¹.

1 PA Regs, reg 26

Paternity leave

49596 Paternity leave¹ means a period of absence from work on leave following the birth or adoption of a child under relevant legislation². 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 PA Regs, reg 2(1) & 3; 2 ER Act 1996, s 80A & 80B

49597 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

49598 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.

49599 - 49605

Payments on termination of employment

General

49606 Employees may be entitled to certain payments when their employment ends. These include

1. payments in lieu of remuneration (see DMG 49609)
2. payments in lieu of notice (see DMG 49612)
3. holiday pay (see DMG 49616)
4. payments of compensation (see DMG 49622)
5. payments due for any period before the employment ended (see DMG 49647)
6. statutory redundancy payments (see DMG 49653)
7. income tax refunds (see DMG 49076).

49607 How such payments affect a claim for ESA(IR) 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.

Meaning of remunerative work

49608 In this guidance remunerative work has the same meaning as in Income Support¹. This means work for which payment is made, or which is done in expectation of payment

1. in which a person is engaged for not less than
 - 1.1 16 hours a week **or**
 - 1.2 16 hours a week on average where the hours of work fluctuate **or**
2. in which any partner of the claimant is engaged for not less than
 - 2.1 24 hours a week **or**
 - 2.2 24 hours a week on average where the hours of work fluctuate.

1 ESA Regs, Sch 7, para 14; IS (Gen) Regs, reg 5(1) & (1A)

Where the hours of work are below the remunerative work levels then this is referred to as part-time work. Appendix 6 to this Chapter provides further guidance.

Payments in lieu of remuneration

- 49609 Payments in lieu of remuneration are paid in place of a person's normal wages or salary. How they affect a claim for ESA(IR) depends on whether the work that has ended was remunerative or P/T.

Remunerative work

- 49610 Where the employment was remunerative PILOR should be disregarded¹.

1 ESA Regs, Sch 7, para 1(1)(a)

Part-time work

- 49611 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the date of entitlement the PILOR should be treated as earnings and taken into account in the normal way. If it ended **before** the date of entitlement the PILOR should be disregarded¹.

1 ESA Regs, Sch 7, para 4

Payments in lieu of notice

- 49612 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 ESA(IR), such payments are earnings¹.

1 ESA Regs, reg 95(1)(c)

- 49613 How PILON affects a claim for ESA depends on whether the work that ended was remunerative or P/T.

Remunerative work

- 49614 Where the employment was remunerative the PILON should be disregarded¹.

1 ESA Regs, Sch 7, para 1(1)(a)

Part-time work

- 49615 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the date of entitlement the PILON should be treated as earnings and taken into account in the normal way. If it ended **before** the date of entitlement the PILON should be disregarded¹.

1 ESA Regs, Sch 7, para 2

Holiday pay

Employment terminated

- 49616 If holiday pay is payable more than four weeks after the employment terminated it should be treated as capital¹.

1 ESA Regs, reg 95(1)(d) & 112(3)

Remunerative work

- 49617 Where the employment was remunerative the holiday pay should be disregarded¹. However if employment was suspended earnings should be taken into account in the normal way.

1 ESA Regs, Sch 7, para 1(1)(a)

Part-time work

- 49618 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the date of entitlement the holiday pay should be treated as earnings and taken into account in the normal way. This means that ESA(IR) may be reduced for the appropriate period. If it ended **before** the date of entitlement the holiday pay should be disregarded¹.

1 ESA Regs, Sch 7, para 2(1)(a)

Employment interrupted

- 49619 Holiday pay payable more than four weeks of the employment was interrupted should be treated as capital¹. How it affects a claim for ESA(IR) depends on whether the work that has ended was remunerative or P/T.

1 ESA Regs, reg 95(1)(d)

Remunerative work

- 49620 Where employment is interrupted before the first day of entitlement all holiday pay is disregarded¹ unless the employment has been suspended.

1 ESA Regs, Sch 7, para 1(1)(b)

Part-time work

- 49621 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 way¹.

1 ESA Regs, Sch 7, para 2(2)

Payments of compensation

Meaning of compensation

49622 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 **or**
 - 2.2 only received part of the PILON they are due **or**
 - 2.3 not received any or all of the PILON they are due because they have waived their right to it¹.

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.

1 ESA Regs, reg 95(4)

49623 Payments of compensation do not include¹

1. any bonus or commission (see DMG 49059)
2. PILOR, except any periodic sums paid because employment has ended through redundancy
3. PILON
4. holiday pay
5. retainers (see DMG 49118)
6. payments for expenses which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment (see DMG 49108)
7. awards made under employment and trade union law, including any award of compensation (see DMG 49300 et seq)
8. payments in kind (see DMG 49111 and 49509)
9. payments for a period when the claimant is on maternity or sick leave (see DMG 49166)
10. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 49108)
11. any occupational pension
12. statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see DMG 49653 - 49654)
13. refunds of contributions to which the claimant is entitled under an occupational pension scheme

14. compensation payable under certain education law²
15. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme.

1 ESA Regs, reg 95(4); 2 Education Reform Act 1988, s 173 & 178(3) & (4)

Example

Julia claims ESA because she is ill. She was also made redundant and 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

- 49624 The effect of payments of compensation on ESA(IR) depends on whether the
1. work which has ended was P/T or remunerative (see DMG 49625 and 49632) **and**
 2. payment of compensation is earnings¹ (see DMG 49625 and 49632) **and**
 3. payment of compensation which is earnings overlaps with other kinds of earnings (see DMG Chapter 48)².

1 ESA Regs, reg 95(1)(j); 2 reg 91(5)

Part-time work

- 49625 Claimants are in P/T work if they work and are not treated as being in remunerative work¹ (see Appendix 6 for guidance on the remunerative work rules). All the payment of compensation is earnings to be taken into account if the work ended **on or after** the first day of entitlement to ESA².

1 ESA Regs, reg 95(4) & 91(9); 2 reg 95(1)(j)

- 49626 The period for which the payment of compensation is taken into account is one week¹. This period begins on the date on which the compensation is treated as paid² (see DMG Chapter 48).

1 ESA Regs, reg 91(8); 2 reg 93(1)

49627 - 49630

49631 Where the P/T work ended **before** the first day of entitlement then the payment of compensation is disregarded¹.

1 ESA Regs, Sch 7, para 2

Remunerative work

49632 If a person was in remunerative work then the payment of compensation is disregarded¹.

1 ESA Regs, Sch 7, para 1(1)(a)

Entitlement to notice

Statutory right to minimum period

49633 Employment protection law gives most employees the right to a minimum period of notice¹. The exceptions are

1. crew members on ships registered in the UK, employed under crew agreements approved by the Secretary of State for Transport²
2. crown servants and members of the armed forces³
3. employees who have broken their contract of employment.

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 & s 192

49634 Employees must have been continuously¹ employed for one month or more before being entitled to minimum notice² 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 one month or more but 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 ER Act 96, part 14; 2 s 86

49635 Employees who have been continuously employed for four weeks or more should give their employers at least one week's notice¹. This does not increase with longer service.

1 ER Act 96, s 86

49636 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.

Contractual entitlement

49637 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.

49638 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.

49639 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.

49640 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.

49641 There may be no written or verbal contract. Under common law a reasonable period of notice is an implied term of a contract of employment¹. 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; R(U) 10/58; R(U) 10/64; R(U) 5/74

49642 - 49645

49646 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.

Example

Ross has been continuously employed for 15½ years by Arnolds Ltd up to him being made redundant. Under his contract of employment he is entitled to two weeks notice. He did not work any period of notice on being made redundant or receive PILON.

The DM determines that the specified period is twelve weeks because

1. by statute Ross was entitled to twelve weeks notice as he had been continuously employed by Arnolds Ltd for 15½ years and this is longer than the period of notice he was due to under his contract of employment
2. Ross has not worked any period of notice or received PILON.

Note: The DM now has to consider the period using the set formula to determine if the specified period is shorter than the period using the set formula.

Payments for period before employment ended

49647 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 ESA(IR) depends on whether the work that has ended was remunerative or P/T.

Remunerative work

49648 If the work was remunerative, earnings due for the period of that employment should normally be disregarded¹. This includes any payments held in hand by the employer when the employment ends. It does not include any

1. retainers² including
 - 1.1 statutory guarantee payments **and**
 - 1.2 payments made where the claimant has been suspended on medical or maternity grounds **or**
2. awards made under employment protection or trade union law (including “out of court” settlements).

These payments should not be disregarded.

1 ESA Regs, Sch 7, para 1(1)(a); 2 Sch 7, para 1 & 2

Partner’s earnings on retirement

49649 Any earnings paid or due to be paid to the claimant’s partner should be disregarded where¹

1. the partner was engaged in remunerative work as an employed earner (or would have been if the employment had been in GB) **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 ESA Regs, Sch 7, para 3

Part-time work

49650 The work that ends may have been P/T. If it ended **on or after** the date of entitlement take any earnings into account in the normal way.

49651 If it ended **before** the date of entitlement disregard all earnings with the exception of retainers¹. Retainers should be taken into account in the normal way (see DMG 49648).

1 ESA Regs, Sch 7, para 2(1)

49652 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 49527 - 49598.

Statutory redundancy payments

49653 Employees may receive statutory redundancy payments on termination of their employment. Such payments should be taken into account as capital.

49654 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.

49655 - 49999

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 1.2.07	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 1.2.07	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	13	-	
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14	14	14	14	-
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15	15	15	15
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16	16	16
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17	17
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½	19
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½	20
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½	25
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½	26
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½	27
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½	28
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½	29
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½	30
61	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	30
62	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	30
63	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	30
64	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30	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)

Appendix 6

The Income Support remunerative work rule

The meaning of remunerative work for the ESA(IR) earnings disregards.

- 1 For the purposes of the earnings disregards in ESA(IR), the term remunerative work has the same basic meaning as in Income Support¹. DMs should note that this is only for calculating the appropriate earnings disregards and should not be confused with the ESA(IR) conditions of entitlement guidance in DMG Chapter 41.

1 ESA Regs, Sch 7, para 14

Introduction

- 2 Remunerative work is¹ work for which payment is made, or which is done in expectation of payment and
1. in which the person is engaged for not less than
 - 1.1 16 hours a week **or**
 - 1.2 16 hours a week on average where the hours of work fluctuate.
 2. in which any partner of the claimant is engaged for not less than
 - 2.1 24 hours a week **or**
 - 2.2 24 hours a week on average where the hours of work fluctuate.

Note: Work which isn't remunerative work is known as part-time employment².

1 IS (Gen) Regs, reg 5(1) & (1A); 2 ESA Regs, Sch 7, para 14

Does the person have employment

- 3 DMs should decide that a person is not in remunerative work if they do not have any employment and are between jobs. DMs will need to decide whether employment has ended if someone has been engaged in remunerative work.
- 4 DMs should decide that a person is still in employment and not between jobs if
1. the contract of employment (which can be written or verbal) is still current **or**
 2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period 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.

Off-shore oil workers

- 5 Off-shore oil workers may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.
- 6 It is a question of fact for the DM whether the work is continuing or not. The DM will need to consider, amongst other things, whether there is a continuing relationship between the person and the employer. Frequent resumption of work with the same employer may be an indication that work is continuing (see paragraph 4 **2.2**).

Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognizable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. The DM has to decide whether Dennis is in remunerative work at a time when he is not working. On looking at the facts of Dennis' past work for the company, the DM is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The DM decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

Treated as in or not in remunerative work

- 7 A person engaged in remunerative work may be **treated** as **not** being in remunerative work (see paragraph 141 et seq)¹. Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work² (see paragraphs 126 et seq).

1 IS (Gen) Regs, reg 5, para (3A) & reg 6; 2 reg 5, para (3)

Work done for payment or in expectation of payment

- 8 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The DM should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it **or**
2. it is done in expectation of payment¹.

Remunerative does not mean profitable (see para 11).

1 IS (Gen) Regs, reg 5(1); R(IS) 1/93

Payment in kind

- 9 “Payment” includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

Example 1

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work.

Example 2

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

Expectation of payment

- 10 Work “done in expectation of payment” means more than a mere hope that payment will be made at a future date¹. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

Self-employed earners

- 11 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the

time. The DM need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why¹.

1 CA, CAO v Ellis (R(IS) 22/95)

Sale of goods

- 12 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

Note: Also that payment may be derived from takings.

Business start up

- 13 An allowance payable under certain schemes to assist people to become S/E is not payment for work¹.

Note: That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

1 CA, CAO v. Smith

- 14 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

Example

Annie and her husband run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

Company directors

- 15 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director¹. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a S/E earner. In such cases paragraph 11 applies.

1 R(IS) 5/95

Establishing hours of work

Introduction

- 21 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count. See paragraph 42 for guidance on teachers.

Counting the hours

Flexible working schemes

- 22 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

Overtime

- 23 Overtime for which payment is made or expected counts towards the weekly total.

Night duty

- 24 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if
1. payment made or expected is less than for normal daytime duties
 2. the time on the night duty is spent sleeping.

Example

Edward makes a claim for ESA. His partner, Michelle, works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than for her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The DM decides that Michelle is in remunerative work.

Evidence of hours

- 25 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

- 26 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a S/E earner follow the guidance at paragraph 28 to establish any additional hours worked.

Musicians

- 27 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

Example 1

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

Example 2

A musician is engaged to perform music. The performances last for twelve hours a week. She practices the performances for ten hours a week. She is engaged in remunerative work.

Self-employed

- 28 Include all the hours necessary to run the business, for example, time spent in
1. trips to wholesalers and retailers
 2. visits to potential customers
 3. advertising or canvassing
 4. cleaning the business premises
 5. cleaning and maintaining items used in the business, for example a taxi or driving school car

6. providing estimates
7. book-keeping
8. research work, for example where the person is a writer.

29 Where a S/E person is running a business which is

1. building up **or**
2. winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

30 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

Example

Peter, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of ten customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the DM concluded that he worked six hours a day, five days a week, a total of 30 hours a week.

31 If a S/E person has been doing undisclosed work or working more hours than is claimed, the DM must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.

32 - 41

Teachers

42 The conditions of employment of most LA schoolteachers, except headteachers, are laid down in an Order¹ or Agreement². They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables
2. assessing and reporting on pupils
3. helping to administer and organize the school
4. advising pupils and ensuring their discipline, health and safety
5. discussing pupils' progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the DM is unsure whether a teacher is obliged to do a particular activity, consult the Order or Agreement.

*1 Education (School Teachers Pay and Conditions of Service) Order;
2 "Scottish Negotiating Committee for Teachers" conditions of service*

43 Before either the Order or Agreement came into force, teachers were generally required by their contracts to carry out the duties now laid down¹. Members of the teaching profession not covered by the Order or Agreement (for example higher education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work **or**
2. any such work is included in the hours of work laid down in the contract.

1 Sim v Rotherham Metropolitan Borough Council [1986] 3WLR 851; R(U) 5/88

44 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person's own evidence if it seems reasonable. If a person states that the time spent on non-teaching duties is anything up to one third of the time spent teaching, accept this without question.

45 It may be reasonable to accept a larger proportion than a third depending on the

1. teacher's experience
2. subjects being taught
3. method of teaching
4. amount of homework to be marked
5. number of pupils.

In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

46 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

Paid breaks

47 Paid breaks do not count when establishing the hours of remunerative work.

48 - 57

Calculating average hours

- 58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours¹.

1 IS (Gen) Regs, reg 5(2)

Identifying a recognizable cycle

- 59 See if there is any pattern of work over a period of time. This is known as a recognizable cycle. A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

Example 1

week 1	X hours
week 2	Y hours
week 3	X hours
week 4	X hours
week 5	Y hours
week 6	X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

Example 2

month 1	A hours
month 2	B hours
month 3	A hours
month 4	B hours

There is a recognizable cycle of two months.

Example 3

week 1	X hours
week 2	X hours
week 3	Y hours
week 4	W hours
week 5	V hours

There is no recognizable cycle.

Note: A cycle may include weeks in which no work is done¹.

1 IS (Gen) Regs, reg 5(2)(b)(i)

Permanent or indefinite contract

- 60 A recognizable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

Example

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. The DM decides that Julia's contract establishes a cycle from its outset.

Fixed term contracts and casual workers

- 61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)¹. DMs should decide each case on its facts. The DM will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. DMs should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

Example

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He does not work for the Christmas holiday but says that he has been asked to return to work after the holidays. Bill tells the DM that he expects to return to work as he did the previous January. The DM decides that Bill has established a recognizable cycle of work and that it has not been broken. Bill is in remunerative work because on average he works 16 hours or more a week.

Extra work

- 62 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle¹.

1 R(JSA) 5/02

Example

Celeste is employed as a shop assistant by a students union. The terms of her employment contract are “Monday to Friday, 8.15 am to 1.15 pm term time only”.

Celeste agrees to do extra work stocktaking during the first week of the summer holidays. The DM is asked to decide whether she is in remunerative work on the day after she finishes the extra work. The DM decides that Celeste’s contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

Probation

- 63 A recognizable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

Example

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a six month probationary period, specifies that he is expected to work during term times and not during school holidays. The DM decides that he is in a recognizable cycle from the outset of the contract and, on average, works 16 hours or more a week. He is in remunerative work.

64 - 69

Recognizable cycle established

- 70 Where there is a recognizable cycle calculate the average hours over one complete cycle¹. Include, where the cycle involves periods when the person does no work, those periods, but disregard any other absences.

1 IS (Gen) Regs, reg 5(2)(b)(i)

Periods when a person does not work

- 71 Periods when a person does not work can fall into the following categories
1. periods of absence because of sickness, maternity leave, paternity leave or adoption leave
 2. periods of unauthorized absence “without good cause”
 3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer
 4. periods during which someone can be properly regarded as on holiday.

Note: For the calculation of hours to determine remunerative work see paragraph 79.

Sickness, maternity leave, paternity leave, adoption leave and periods of unauthorised absence

- 72 When someone is absent from work due to sickness, maternity leave, paternity leave or adoption leave (see paragraph 141) the DM should decide that they are not in remunerative work during such absences¹. When someone has a period of absence without good cause the DM should treat such an absence in the same way as proper holidays² (see paragraph 79).

1 IS (Gen) Regs, reg 5(3A); 2 reg 5(3)

Holidays or periods of no work

- 73 The DM should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid¹. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

1. spread over a year in equal instalments **and**
2. enhanced to take account of a lack of holiday entitlement

should not be taken into account when deciding whether someone has paid holidays.

1 R(JSA) 5/03

- 74 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99¹.

1 Working Time Regulations 1998 No. 1833

Calculating the number of hours for which a person is engaged in work

- 75 If the DM has decided that a person is still in employment (see paragraphs 2 - 4) (and they are not absent from work due to sickness, maternity leave, paternity leave or adoptive leave) they will need to calculate the number of hours for which the person is engaged in work.

- 76 If the person works the same number of hours each week when not on holiday then that is the number of hours worked in each week.

- 77 If the person's hours of work fluctuate, the DM should take an average

1. as per paragraph 88 if there is no cycle of work **or**
2. as per paragraph 79 if there is a cycle of work.

78

Calculating the average hours

- 79 Legislation¹ requires that in cycle cases where the hours of work fluctuate the average should be calculated by taking into account periods in which the person does not work but disregarding other absences. DMs should only deduct periods of holiday, absences without good cause, sickness, maternity leave, paternity leave and adoption leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle². Periods of no work should not be deducted. Put another way, it is only periods of holiday, absences without good cause, sickness, maternity leave, paternity leave and adoption leave which are “other absences to be disregarded”.

1 IS (Gen) Regs, reg 5(2)(b)(i); 2 R(JSA) 5/03

80

Yearly cycle with school holidays or similar vacations

- 81 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, whether or not payment is made for any part of the holidays, there is a recognizable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, the DM should divide the total number of hours worked during the year by 52 weeks less any weeks of “other absence”.¹

1 R(JSA) 5/03

Ancillary school workers

- 82 Ancillary school workers are members of the non-teaching staff of schools and other educational establishments. Where such workers have a yearly cycle of work during term-time only follow the guidance at paragraph 81. Examples of ancillary school workers include
1. school meals services employees
 2. domestic staff
 3. clerical staff (such as secretaries and clerks)
 4. laboratory workers
 5. nursing assistants
 6. school bus drivers.

83 - 87

No recognizable cycle established

Estimating future hours

88 Where

1. a person has just started work or is about to start work **or**
2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work **or**
3. because of absences from work a recognizable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week¹.

1 IS (Gen) Regs, reg 5(2)(a)

89 Average the estimated hours over a period long enough to cover the expected pattern of work¹. Consider the case where there is sufficient evidence to average the actual hours worked.

1 R(IS) 8/95

Averaging past hours

90 Where the person has been in work before the date of claim and there is no recognizable cycle but the weekly hours of work fluctuate then calculate average weekly hours over

1. the five weeks immediately before the date of claim¹ **or**
2. a longer or shorter period immediately before the date of claim if the five week period in 1. does not give a fair average.

“Immediately before” in this context means the end of the last complete week before the date of claim.

1 IS (Gen) Regs, reg 5(2)(b)(ii)

91 Include in the calculation at paragraph 90 any periods of non-working within the normal pattern of employment (rest periods)¹. Do not include periods of non-working after the employment has ended.

1 R(IS) 12/95

92 Examples of circumstances in which it may not be appropriate to use the five week period in paragraph 90 1. are where the

1. five weeks contain a period of absence which distorts the average **or**
2. five weeks do not show the person’s normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**

3. person is paid at intervals of longer than a week.

In either of the circumstances in 1. or 2. a period of less than five weeks as in paragraph 90 2. might give a fairer result. Extending the period beyond the last five weeks would still include the distortions so in these circumstances estimate future hours as in paragraph 88.

- 93 If the DM bases a weekly average of hours over a period of more or less than five weeks, as in paragraph 90 2., the alternative period must still be a period immediately before the date of claim.

It should be either

1. more than the five week period in paragraph 90 1., in which case it will include those five weeks **or**
2. less than the five week period in paragraph 90 1., in which case it will be a part of those five weeks immediately before the date of claim.

- 94 The approaches outlined in paragraph 88 and paragraph 90 are alternatives. There is no provision for the DM to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

Short-time workers

- 95 Employers experiencing a fall in business may put their employees on short-time working. This can be

1. a reduction in hours worked each day **or**
2. no work on certain days of the week **or**
3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in paragraphs 88 - 89 and estimate future hours¹ at the start of short-time working until average hours over a past period can be calculated².

Periods of no work should be included in the average.

1 IS Gen (Regs), reg 5(2)(a); R(IS) 8/95; 2 IS (Gen) Regs, reg 5(2)(b)(i) & (ii)

96 - 106

Changes to the normal hours

- 107 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**

2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**
3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather and the DM decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over
 - 3.1 the cycle of work if there is now a recognizable cycle¹ **or**
 - 3.2 the five week period or other more suitable period immediately before the date of application for supersession if there is no recognizable cycle².

1 IS (Gen) Regs, reg 5 (2)(b)(i); 2 reg 5(2)(b)(ii)

Seasonal workers

108 The normal remunerative work rules apply to S/E seasonal workers.

109 - 110

Averaging the hours

111 Calculate average hours of a seasonal worker over

1. if there is a recognizable cycle - one complete cycle of work (this will usually be one year where a business continues to operate throughout the year). Include periods in which the person does no work, but exclude other absences such as holidays or sickness¹ **or**
2. if there is no recognizable cycle - over the five week period, or other more suitable period, immediately before the date of claim, the date of decision or the date of application for supersession².

Include in the calculation time spent on all activities connected with the business.

1 IS (Gen) Regs, reg 5(2)(b)(i); 2 reg 5(2)(b)(ii)

Agency and casual workers

112 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

113 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

114 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

115 - 125

People treated as in remunerative work

Introduction

126 People can be treated as in remunerative work even though they are absent from remunerative work¹. However see paragraph 141 for details of when this rule does not apply².

1 IS (Gen) Regs, reg 5(3); 2 reg 5(3A)

127 Treat people as in remunerative work for any period during which they are¹

1. absent without good cause **or**
2. absent by reason of a recognized, customary or other holiday.

1 IS (Gen) Regs, reg 5(3)

Absent without good cause

128 “Good cause” is for the DM to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorized the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause. Examples of good cause include where the absence is due to

1. bereavement or sudden serious illness in the family **or**
2. a disaster at home **or**
3. suspension from work, whether or not on full pay **or**
4. a requirement to attend court.

Recognized, customary or other holiday

129 A person should be treated as in remunerative work for any period of absence because of a recognized, customary or other holiday¹. This is the case even if there is no permanent contract of employment. But this will not apply where the

1. absence is not a holiday (see paragraph 73) **or**
2. work is not remunerative as in paragraph 1 et seq **or**
3. person goes on holiday after employment ends.

See DMG Chapter 20 for guidance on what is a recognized, customary or other holiday.

1 IS (Gen) Regs, reg 5(3)

130 - 140

People treated as not in remunerative work

Leave or absence from work

141 A person shall be treated as not being in remunerative work¹ on any day on which they are

1. on maternity leave **or**
2. on paternity leave **or**
3. on adoption leave **or**
4. absent from work because of illness.

1 IS (Gen) Regs, reg 5(3A)

Meaning of paternity leave

142 Paternity leave means¹ a period of absence from work on leave in accordance with legislation².

1 IS (Gen) Regs, reg 1(2); 2 ER Act 1996, s 80A or 80B

Meaning of adoption leave

143 Adoption leave means¹ a period of absence from work on ordinary or additional adoption leave in accordance with legislation².

1 IS (Gen) Regs, reg 2(1); 2 ER Act 1996, s 75A or 75B

Categories of people at work but treated as not in remunerative work

144 In certain circumstances a person who is in remunerative work should be treated as not being in remunerative work. These are where the person is

1. engaged in childminding in the childminder's home¹ **or**
2. engaged by a charity or voluntary organization or is a volunteer² **or**
3. engaged on a training scheme³ **or**
4. receiving assistance under the S/E route⁴ **or**
5. engaged in specific occupations⁵ **or**
6. performing duties as a councillor⁶ **or**
7. engaged as a foster parent or in providing respite care⁷ **or**
8. engaged in an activity which attracts a sports award⁸.

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

1 IS (Gen) Regs, reg 6(1)(b); 2 reg 6(1)(c); 3 reg 6(1)(d); 4 reg 6(1)(dd); 5 reg 6(1)(h); 6 reg 6(1)(j); 7 reg 6(1)(k); 8 reg 6(1)(m)

145 In addition, there are other circumstances where a person should be treated as not being in remunerative work, **regardless** of the type of work undertaken. These are where the person is

1. disabled¹ **or**
2. affected by a TD² **or**
3. caring for another person³ (IS only) **or**
4. living in a care home, an Abbeyfield Home or an independent hospital⁴ **or**
5. in receipt of IS by way of MIRO⁵.

1 IS (Gen) Regs, reg 6(4)(a); 2 reg 6(4)(b); 3 reg 6(4)(c); Sch 1B, para 4; 4 reg 6(4)(d); 5 reg 6(5) & 6(6)

Childminders

146 People who are childminders are treated as not being in remunerative work as long as the childminding is done in their home¹. If the childminding is done in the employer's home the hours worked will count towards the remunerative work exclusion.

1 IS (Gen) Regs, reg 6(1)(b)

Charity or voluntary workers and volunteers

147 People are treated as not being in remunerative work where they are engaged by a charity or voluntary organisation or are volunteers **and**

1. the only payment
 - 1.1 received **or**
 - 1.2 due to be paidis for expenses incurred **and**
2. they receive no remuneration or profit **and**
3. they are not treated as having notional earnings¹ (see DMG 26195 and 28389 - 28391).

1 IS (Gen) Regs, reg 6(1)(c) & Sch 9, para 2

Meaning of voluntary organisation

148 A voluntary organisation is a body, other than a public authority or LA, whose activities are not carried out for profit¹.

1 IS (Gen) Regs, reg 2(1)

Meaning of volunteer

- 149 A volunteer is a person who without any legal obligation performs a service for another person without expectation of payment¹.

1 R(IS) 12/92

Engaged on a training scheme

- 150 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance (see DMG 20008 - 20009) is being paid (this includes WBLA where payments are treated as training allowances)¹.

1 IS (Gen) Regs, reg 6(1)(d)

Note: For people in the S/E route of the ND for lone parents see DMG 14410.

People receiving assistance under the self-employed route

- 151 People are treated as not being in remunerative work where they are receiving assistance under the S/E route¹ (see DMG 14001).

1 IS (Gen) Regs, reg 6(1)(dd)

Meaning of self-employed route

- 152 For the meaning of S/E route see DMG 14000.

Engaged in specific occupations

- 153 People are treated as not being in remunerative work where they are
1. A P/T member of a fire brigade¹ who
 - 1.1 in Scotland is a part-time firefighter employed by a fire and rescue authority or a joint fire and rescue board as specified under certain legislation² **and**
 - 1.2 in England, and Wales a P/T firefighter employed by a fire and rescue authority **or**
 2. auxiliary coastguards for coastal rescue activities³ **or**
 3. working P/T in the manning or launching of a lifeboat⁴ **or**
 4. members of a territorial or reserve force⁵.

1 IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(aa) & (ab); 2 Fire (Scotland) Act 2005; 3 IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(b); 4 reg 6(1)(h) & Sch 8, para 7(1)(c); 5 reg 6(1)(h) & Sch 8, para 7(1)(d)

Councillors

- 154 People who perform duties as a councillor are treated as not being in remunerative work¹.

1 IS (Gen) Regs, reg 6(1)(j)

Meaning of councillor

155 Councillors are

1. in England and Wales, a member of
 - 1.1 a London Borough council **or**
 - 1.2 a county or county borough 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 area¹.

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

156

Foster parents and people providing respite care

Foster parents

157 People who receive payments from

1. a LA **or**
2. a voluntary organisation **or**
3. in Scotland, a care authority

for fostering a child or young person are treated as not being in remunerative work¹.

1 IS (Gen) Regs, reg 6(1)(k) & Sch 9, para 26

People providing respite care

158 People who provide respite care are treated as not being in remunerative work¹ if

1. the person requiring care is being cared for in the claimant's home **and**
2. the person requiring care is not normally a member of the claimant's household **and**
3. the only payments received are specified payments² from a

- 3.1 HA **or**
- 3.2 LA **or**
- 3.3 voluntary organization **or**
- 3.4 a primary care trust **or**
- 3.5 the person concerned under specified legislation³.

1 IS (Gen) Regs, reg 6(1)(k); 2 Sch 9, para 27; 3 NA Act, s 26(3A)

Sports awards

- 159 People are treated as not being in remunerative work¹ if
1. they are engaged in an activity for which a sports award has been or is to be made² **and**
 2. no other payment is made or expected to be made to them in respect of the activity³.

1 IS (Gen) Regs, reg 6(1)(m); 2 reg 6(1)(m)(i); 3 reg 6(1)(m)(ii)

Meaning of sports award

- 160 A sports award¹ is an award made by one of the Sports Councils named in National Lottery law² and out of sums allocated under that law.

1 IS (Gen) Regs, reg 2(1); 2 National Lottery etc. Act 1993, s 23(2)

Disabled workers

- 161 People are treated as not being in remunerative work where they are mentally or physically disabled¹ and as a result of that disability
1. earn 75 per cent or less of what a person without that disability working the same number of hours would reasonably be expected to earn² **or**
 2. work 75 per cent or less of the hours that a person without that disability would reasonably be expected to do in the same work or in a similar job in the area³.

1 IS (Gen) Regs, reg 6(4)(a); 2 reg 6(4)(a)(i); 3 reg 6(4)(a)(ii)

- 162 The person's own evidence of reduced earnings or hours should normally be accepted. However, if necessary, DMs should obtain further evidence for comparison purposes. This may include information from private employment agencies, social services departments or charities for the disabled.

People affected by a trade dispute

- 163 Where the claimant or partner is involved in a TD and they are treated as not being in remunerative work because

1. the seven day exclusion period (see DMG 20396)
 - 1.1 does not apply **or**
 - 1.2 no longer applies **and**
2. the payments listed at DMG 20439 are not or no longer taken into account they are treated as not being in remunerative work¹.

1 IS (Gen) Regs, reg 6(4)(b)

164

Caring for another person

165 People are treated as not being in remunerative work where they are¹

1. regularly and substantially engaged in caring for another person and that person
 - 1.1 is in receipt of "AA" or the care component of DLA at the highest or middle rate² **or**
 - 1.2 has claimed "AA" or DLA **or**
 - 1.3 has
 - 1.3.a made an advance claim for **and**
 - 1.3.b an award of **and**
 - 1.3.c not completed the qualifying period for "AA" or the care component of DLA at the highest or middle rate³ **or**
 - 1.4 has
 - 1.4.a made an advance claim for **and**
 - 1.4.b an award of **and**
 - 1.4.c completed the qualifying period for "AA" or the care component of DLA at the highest or middle rate and the award is in payment **or**
2. both entitled to and in receipt of CA⁴ and caring for another person.

Note: See DMG 20117 - 20119 for guidance on deciding whether or not a person is regularly and substantially caring for another person.

1 IS (Gen) Regs, reg 6(4)(c) & Sch 1B, para 4; 2 SS CB Act 92, s 72(3); 3 s 65(6)(a); SS (C&P) Regs, reg 13A; 4 SS CB Act 92, s 70

166 Where paragraph 165 1.2 applies people are treated as not in remunerative work until the earlier of¹

1. the date the claim for "AA" or DLA is decided **or**
2. 26 weeks from the date of claim for "AA" or DLA.

1 IS (Gen) Regs, Sch 1B, para 4(a)(ii) & (iii)

People living in a care home, Abbeyfield Home or an independent hospital

- 167 People who
1. are in employment **and**
 2. live in certain types of accommodation
- are treated as not being in remunerative work¹.

1 IS (Gen) Regs, reg 6(4)(d)

- 168 Paragraph 167 applies only to a person who
1. lives in (whether permanently or temporarily) or is temporarily absent from
 - 1.1 a care home **or**
 - 1.2 an Abbeyfield Home **or**
 - 1.3 an independent hospital **and**
 2. requires personal care because of
 - 2.1 old age **or**
 - 2.2 disablement **or**
 - 2.3 past or present dependence on alcohol or drugs **or**
 - 2.4 past or present mental disorder **or**
 - 2.5 a terminal illness.

Note: See DMG 51194 for the meaning of independent hospital.

Mortgage interest run-on

- 169 People may be entitled to IS in respect of mortgage or loan interest MIRO after they start remunerative work if the
1. remunerative work is expected to last for not less than five weeks **and**
 2. people were, for a continuous period of 26 weeks immediately before the day on which they started this work, entitled to and in receipt of JSA(IB) or IS **and**
 3. people had, on the day before starting this work, included in the applicable amount, an amount in respect of mortgage or loan interest **and**
 4. people remain liable to make payments on the loan¹.

People who satisfy these conditions are treated as not being in remunerative work for the first four weeks of that work².

1 IS (Gen) Regs, reg 6(5); 2 reg 6(6)(a)

- 170 When determining the length of time benefit has been in payment, any periods of MIRO will not be treated as part of the 26 week qualifying period¹.

1 IS (Gen) Regs, reg 6(7)

Chapter 50 - Self-employed earners

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Notional deductions for income tax **Appendix 1**

Notional deductions for National Insurance contributions **Appendix 2**

Chapter 50 - Self-employed earners

Self-employed earners - Employment and Support Allowance

General

50001 This Chapter deals with the calculation and treatment of the earnings of S/E earners in ESA. General guidance on the effect of work is in DMG Chapter 41.

50002 The earnings of a S/E earner are income. The calculation of this income can affect entitlement to ESA(IR) because it is a condition of entitlement to ESA(IR) that income does not exceed the claimant's applicable amount¹. The level of earnings from work performed by the claimant will also determine whether the work is within the PWK limits².

1 WR Act 07, Sch 1, para 6(1)(a); 2 ESA Regs, reg 45(2), (3) & (4)

50003 ESA(Cont) has no condition of entitlement based on income and so earnings are not taken into account in the same way as they are with ESA(IR). However, where a claimant who is entitled to ESA(Cont) is working then the guidance in this chapter should be used along with the guidance in Chapters 41, 48 and 49 to decide the level of earnings¹. The level of earnings will then determine whether the work is within the PWK limits².

1 ESA Regs, reg 88; 2 reg 45(2), (3) & (4)

ESA(Cont)

50004 It is only the amount of a claimant's own earnings that may affect entitlement to ESA(Cont) on the grounds of whether the level of earnings is within the PWK limits¹. The earnings of a claimant's partner cannot affect entitlement to ESA(Cont).

1 WR Act 07, Sch 2, para 10

ESA(IR)

50005 Earnings of the claimant or any partner may be taken into account for the calculation of income for ESA(IR). The earnings of the claimant's partner are treated as being the income of the claimant¹. If the claimant is not working due to illness or a medical condition but their partner is working or has recently finished work, the guidance on earnings from self-employment for ESA(IR) will apply to the partner.

1 WR Act 07, Sch 1, para 6(2)

Meaning of claimant

50006 Claimant means¹ a person who has claimed ESA.

1 WR Act 07, s 24(1)

Who is a self-employed earner

50007 A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earners employment¹.

Note: A person may also be employed as an employed earner. This does not stop the person being S/E.

1 ESA Regs, reg 2(1); SS CB Act 92, s 2(1)(b)

50008 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.

50009 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 50400), the agreed share of the net profits.

50010 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 that include self-employed earners

50011 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 41).

50012 In order to deal with claims where the question of self-employment arises, DMs should apply the following four questions in this order¹. 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 disregarded² **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 work³
 - 3.1 if the answer is yes the claimant is not entitled to ESA(IR)
 - 3.2 if the answer is no the DM considers question 4
- 4. in receipt of earnings that are to be taken into account⁴ and in respect of what period are the earnings to be taken into account⁵.

Note 1: See DMG 50023 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 41 for guidance on remunerative work.

Note 3: To calculate the assessment period in order to determine the weekly earnings of a S/E earner, see the guidance at DMG 50051 et seq.

1 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R (JSA) 1/09; 2 ESA Regs, Sch 7, para 4; 3 regs 41(1) & 42(1); 4 reg 97(1); 5 reg 92(1)(a) & (b);

50013 If the S/E earner has ceased self-employment the DM should with respect to ESA(IR) consider if

- 1. there are any capital assets from the business **and**
- 2. any capital assets from the business should be disregarded (see DMG 50032 and DMG Chapter 52).

Directors of limited companies

50014 A limited company is a legal person¹ 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

50015 A limited company, of whatever size, is separate from its employees, officers and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company² and is an employed earner (see DMG Chapter 49).

1 R(SB) 57/83; 2 McMillan v Guest 1942, AC 561

Earnings of self-employed earners

50016 In S/E cases, earnings are the gross receipts (see DMG 50125) of the employment¹.

1 ESA Regs, reg 97(1)

50017 S/E earnings do not include¹

1. charges paid to the S/E earner in return for providing BL accommodation (see DMG 50018) **or**
2. any of the payments in DMG 51255 et seq (fostering allowances and payments for people temporarily in the claimant's care)
3. any sports award² (see DMG 41499).

*1 ESA Regs, reg 97(2); 2 reg 2(1);
National Lottery etc. Act 1993, s 23(2)*

Board and lodging accommodation

50018 BL accommodation is accommodation¹

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 50019) **or**
 - 2.4 similar establishment **or**
3. that is
 - 3.1 not provided by a close relative (see DMG 50020 - 50021) 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 ESA Regs, reg 2(1)

50019 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.

50020 A close relative is¹

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, half-brother, sister, half-sister **and**
2. the partner of any of those persons in 1..

1 ESA Regs, reg 2(1); R(SB) 22/87

50021 For the purposes of DMG 50020, 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 relationship¹.

1 R(SB) 22/87

50022

Deciding if a person is a self-employed earner

50023 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 (this may be more relevant in cases where it is the claimant's partner who may be S/E) **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 work¹?
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.

1 Vandyk v. Minister of Pensions & National Insurance [1955] IQ29

50024 All nine factors in DMG 50023 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.

50025 Some of the factors in DMG 50023 may point toward the fact that a person is still trading as S/E. Others may not. No one factor is decisive. The DM should consider the weight to give each relevant factor.

50026 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

Irene claims ESA. Her husband runs a business that supplies and fits doors and windows. Due to competition in the area the business has received fewer and fewer orders, until now there are none. Irene states that

1. her husband has been unable to pay the rent on his shop and the landlord is threatening eviction
2. the business has debts and the bank has advised that the business should be wound up
3. her husband can not find a way of boosting his trade
4. there is no work in the pipeline
5. her husband is still regarded as S/E by HMRC
6. there is still an advertisement for the business in the Yellow Pages or similar publication.

The DM considers the guidance at DMG 50023 - 50026 and determines, in this case, that Irene's husband is not gainfully employed because he is not still trading.

Example 2

Sara claims ESA. Her partner is a S/E electrician. Sara states that

1. her partner still regards himself as S/E and his business as a going concern although he has no work at the present moment in time
2. there are good prospects of work in the future
3. her partner 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 50023 - 50026 and determines, in this case, that Sara's partner remains trading and is gainfully employed as a S/E earner.

Sickness

50027 If a S/E earner is unable to work in the business due to sickness, the DM should consider

1. the guidance at DMG 50023 - 50026 **and**
2. whether the person remains gainfully employed as a S/E earner.

50028 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

Bonny is a S/E dentist. She is the only dentist in the practice. She claims ESA as she has been unable to work because she has injured her hand. She is unable to work for a total of two weeks. During that time

1. the receptionist re-books the appointments Bonny had during her period of sickness
2. the receptionist continues to send out reminders for regular check-ups and books any new appointments
3. Bonny 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 50023 - 50026 and determines, in this case, that Bonny remains gainfully employed as a S/E earner because the business is still trading.

Example 2

Will is a S/E plumber. He is a sole trader. He claims ESA as he has broken both his legs and has been advised by his doctor to avoid work for six months. Will 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 50023 - 50026 and determines, in this case, that self-employment has ceased there are no earnings to be calculated and any business assets can be disregarded¹.

1 ESA Regs, Sch 9, para 10(2)

Example 3

Liza is the owner of a fish and chip shop. She claims ESA because she has had a serious operation and has been advised by her doctor to avoid work for three months. Liza 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 50023 - 50026 and determines, in this case, that Liza remains gainfully employed as a S/E earner. The DM calculates the earnings to be taken into account.

50029 - 50030

Self-employment ceased

50031 If the DM determines that self-employment has ceased DMG 50032 - 50035 should be considered.

Capital

50032 The DM should consider if the person remains the beneficial owner of any business assets. DMG Chapter 52 provides guidance on the valuation of business assets and the disregards that can apply with regard to ESA(IR).

Earnings from self-employment that has ceased

50033 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 Right payments (see DMG 50073 - 50081)¹.

Note: Remunerative work has the meaning as laid down in specified legislation² (see DMG Chapter 49, Appendix 6).

1 ESA Regs, Sch 7, para 4; 2 Sch 7, para 14; IS (Gen) Regs, reg 5

Example

Gregory was S/E. He last worked on 11.11.08. His business ceased to trade on 11.11.08. He received earnings on that day. He claims ESA on 12.11.08.

The DM determines that Gregory has ceased to be a S/E earner. The earnings received on 11.11.08 are disregarded.

Income derived from business when self-employment has ceased

50034 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.

50035 The treatment of that income for ESA(IR) will depend upon how the capital assets are treated. For example

1. income derived from certain disregarded capital remains income (see DMG Chapter 51) **and**
2. in other cases, income derived from capital remains capital (see DMG Chapter 52).

50036 - 50050

Assessment period for self-employed earners

50051 The normal weekly earnings of a S/E earner should be calculated by using the

1. gross receipts (see DMG 50125) **and**
2. expenses paid out (see DMG 50190)

during the assessment period. Different rules apply for royalties, copyright payments and Public Lending Right payments.

Note: The assessment period for determining earnings from self-employment should **not** be confused with the ESA Assessment Phase (see DMG Chapter 44).

Business trading for less than a year

50052 If the business has been trading for less than a year, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹.

1 ESA Regs, reg 92(1)(b)

Example

Christine claims ESA on Monday 4 November. Her partner 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

50053 If the business has been trading for more than a year and there is no change likely to affect the normal pattern of business, the assessment period should be a year¹ (but see DMG 50167 - 50168).

1 ESA Regs, reg 92(1)(a)

50054 The year does not need to be the year immediately before the claim or the date the award is being 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 50101 - 50111).

50055 A year means a period of

1. 365 days **or**
2. 366 days if the assessment period includes the February of a leap year.

50056 - 50059

Change likely to affect the normal pattern of trading

50060 If there has been a change that is likely to affect the normal pattern of trading, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹. The period does not need to be made up of complete weeks.

1 ESA Regs, reg 92(1)(b)

50061 The assessment period should

1. normally start on the date the change affecting the pattern of the business occurred (but see DMG 50064) **and**
2. end on the date that the most recent figures regarding earnings and expenses are available, for example, the next week or month.

50062 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 ESA. 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.

50063 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 50053). In most cases this procedure will provide the most accurate determination of a S/E earners earnings (but see DMG 50064).

Example

Paolo is S/E, he buys and sells wine. On 9.8.08 Paolo's business goes into receivership. He continues to trade but he lost some of his suppliers and customers. On 1.11.08 Paolo's wife claims ESA.

The DM determines

1. Paulo is gainfully employed but not in remunerative work (see DMG 41301 et seq)
2. that the receivership is a change that has affected the normal pattern of trading
3. that the assessment period is from 9.8.08 (the date the change affecting the pattern of business occurred) to 31.10.08 (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 30.11.08 when the figures for the following month become available.

At this point the DM supersedes the ESA award and extends the assessment period. The assessment period is now 9.8.08 to 30.11.08. The earnings for this period are averaged and apportioned on a weekly basis until 31.12.08 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.

50064 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.

50065 The DM should be satisfied that any change

1. has affected **or**
2. is likely to affect

the normal pattern of trading.

Example 1

Lucy claims ESA. Her partner Omar works P/T as a S/E draughtsman providing technical drawings for builders. Most of his work comes from one particular building firm. Six months before Lucy's claim to ESA 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 2

Alison claims ESA. Her husband, Joe, is a S/E roofer. The business has been trading for five years. At the time of Alison's claim to ESA, Joe had not been able to work due to a period of severe snowy weather. 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.

50066 - 50068

New businesses

50069 A claimant or partner may start up a new business

1. at the same time as claiming ESA **or**
2. whilst in receipt of ESA.

For the purposes of ESA(IR), the DM should consider if that person has started remunerative work and whether the work is PWK.

50070 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.

50071 The assessment period should be extended every week or month until a yearly assessment is possible (see DMG 50062). In most cases this procedure will provide the most accurate determination of a S/E earner's earnings (but see DMG 50072).

Example

Gareth is in receipt of ESA(IR). His benefit week ending day is a Monday. On 3.2.09 his partner starts work as a S/E pine furniture maker working twelve hours per week.

The DM determines

1. Gareth's partner is not in remunerative work **and**
2. that the assessment period is 3.2.09 - 9.2.09.

The earnings are taken into account for that period until 16.2.09 when the figures for the following week become available.

At this point the DM supersedes the ESA award and extends the assessment period. The assessment period is now 3.2.09 - 16.2.09. The earnings for this period are averaged and apportioned on a weekly basis until 23.2.09 when further figures are available.

The DM continues with this procedure until the assessment period has been extended to one year.

- 50072 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

- 50073 Earnings as described in DMG 50074 paid during an award of benefit have a different assessment period to that in DMG 50051 - 50072.

- 50074 This paragraph applies to¹

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 analogous 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 ESA Regs, reg 92(2)(a)

- 50075 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 ESA that would have been paid if the earnings had not been received **plus**
2. the correct disregard (see DMG 50465)¹.

1 ESA Regs, reg 92(2) & Sch 7

50076 The attribution period should begin on the first day of the benefit week in which the payment is received¹.

1 ESA Regs, reg 92(2); SS CS (S&A) Regs, Sch 3C, para 1

Example

Libby is in receipt of ESA(IR) that is payable on a Monday in arrears. She receives royalties of £500 on 15.11.08. Libby has been paid ESA to benefit week ending 24.11.08. The payment is taken into account as follows

- | | | | |
|----|---------------------------------|---------------------|--------|
| 1. | current weekly rate | = | £75.10 |
| 2. | appropriate earnings disregard | = | £20.00 |
| 3. | total of weekly ESA + disregard | = | £95.10 |
| 4. | number of weeks is | $\frac{500}{95.10}$ | = 5.26 |
5. the payment is taken into account for
- 5.1 five weeks at £95.10 per week - no ESA(IR) payable for the period 11.11.08 to 15.12.08 **and**
- 5.2 one week at £24.50 (which is the balance of the payment yet to be taken into account) but £20.00 is disregarded - ESA of £70.60 (£75.10 - £4.50 (£24.50 - £20.00)) is payable on 22.12.08.

The overpayment question is referred to the DM.

50077 If at the end of the period calculated under DMG 50075

1. a further claim for ESA 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 50075. If the period extends beyond that calculated for the first payment, the second payment should be taken into account from the end of that period.

Example

(See Example at DMG 50076).

Libby receives a further payment of royalties of £600 on 5.12.08 that is taken into account as follows

- | | | | | |
|----|--------------------|---------------------|---|------|
| 1. | number of weeks is | $\frac{600}{95.10}$ | = | 6.31 |
|----|--------------------|---------------------|---|------|
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 50075) - no ESA(IR) is payable during the period 2.12.08 to 12.1.09 **and**

- 2.2 one week at £29.40 (which is the balance of the second payment yet to be taken into account) but £20.00 is disregarded - ESA of £65.70 (£75.10 - £9.40 (£29.40 - £20.00)) is payable on 19.1.09.

50078 - 50079

Expenses deducted from royalty, copyright payment or Public Lending Right payment

50080 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 payment¹.

1 ESA Regs, reg 92(3); reg 98(1)(a); reg 98(3)(a)

Example 1

Truman writes a book between June and December 2008 and it is on sale from 1.1.09. The first copyright payment is received on 3.6.09. 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

Harper writes a book. She agrees with her accountant that she will pay her accountancy fees when she receives her first payment. Harper's book is published in March 2009 and the first copyright is received on 1.5.09.

Harper 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 Harper's employment **and**
2. it is defrayed in the attribution period of the copyright payment.

Income tax, NI contributions and qualifying premium payments deducted from a royalty, copyright payment or Public Lending Right payment

50081 The DM should consider deductions for

1. income tax (see DMG 50270 et seq) **and**
2. NI contributions (see DMG 50297 et seq) **and**

3. half of any premiums for personal pensions (see DMG 50326)

from the royalty, copyright payment or Public Lending Right payment¹.

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 ESA Regs, reg 92(3), 98(1)(a) & 98(3)(b) & (c)

50082 - 50099

Calculation of normal weekly earnings

- 50100 DMG 50101 - 50244 provides guidance on the calculation of earnings of most S/E earners. Specific guidance is given for
1. child minders (see DMG 50350)
 2. crofts or small holdings (see DMG 50361)
 3. farmers (see DMG 50370)
 4. hotels, guest houses, bed and breakfast establishments etc (see DMG 50380)
 5. local exchange trading schemes (see DMG 50385)
 6. partnerships (see DMG 50400)
 7. renting out property (see DMG 50425)
 8. seasonally S/E (see DMG 50440)
 9. sub-contractors (see DMG 50450).

Evidence - cash flow

- 50101 To calculate the amount of earnings the DM will need evidence of
1. the gross receipts (see DMG 50125) **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.
- 50102 On a claim to ESA, 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.
- 50103 The figures provided in DMG 50102 **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.
- 50104

Accounts

- 50105 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.
- 50106 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.
- 50107 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.
- 50108 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.
- 50109 The figures provided in DMG 50108 **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.
- 50110 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.
- 50111 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.

50112 - 50115

Income tax certificate

50116 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

50117 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 50125) **and**
2. deduct from the gross receipts the **allowable expenses** that have been paid out during the assessment period (see DMG 50206) **and**
3. deduct from any remaining figure amounts for
 - 3.1 notional income tax (see DMG 50270 et seq) **and**
 - 3.2 notional NI contributions (see DMG 50297 et seq) **and**
 - 3.3 half of any premium paid for a personal pension scheme (see DMG 50326) **and**
4. deduct the correct **disregard(s)** (see DMG 50465).

The figure that is left is the earnings that should be taken into account.

50118 The whole process can be summarized as follows

gross	less
allowable	less
notional income tax	less
notional NI contributions	less
half of any personal pension scheme	divided by

the number of days in the assessment period	multiplied by
7 to give a weekly figure	equals
the weekly net profit	less
any disregards that apply	equals
the weekly earnings to be taken into account.	

50119 - 50124

Gross receipts

50125 Any payment of income actually received by the business during the assessment period, regardless of when it is earned should be included as a gross receipt¹. DMG 50167 provides guidance for payments received that relate to a period different to the assessment period.

1 ESA Regs, reg 98(3)

50126 The gross receipts of a business include

1. any payments for goods and services provided (see DMG 50127)
2. earnings payable abroad (see DMG 50128)
3. certain allowances paid to assist in carrying on the business¹ (see DMG 50135)
4. any business subsidies or payments of compensation (see DMG 50138)
5. personal drawings (see DMG 50139)
6. income from letting or sub-letting (see DMG 50154)
7. sale of certain business assets (see DMG 50155)
8. tips and gratuities (see DMG 50156)
9. payments in kind (see DMG 50158)
10. any VAT receipts (see DMG 50160).

1 ESA Regs, reg 97(1); E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2

Payments received for goods and services provided

50127 All

1. cash **and**
2. cheques **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

50128 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.

50129 Where the payment is made in a currency other than sterling, any

1. bank charge **or**
2. commission

payable for converting the payment into sterling should be disregarded¹.

1 ESA Regs, Sch 7, para 10

50130 Any payment due to the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

1 ESA Regs, Sch 7, para 9

Example

Ellen is in receipt of ESA(IR). Her partner 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	=	£48.07 less
Normal earnings disregard	=	£20.00 less
Special disregard for earnings abroad (£1,000 divided by 52)	=	£19.23
Earnings to be taken into account (£48.07 - £20.00 - £19.23)	=	£8.84

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 £28.07 (£48.07 - £20.00).

50131 - 50134

Schemes to help with self-employment

50135 An allowance may be payable under certain schemes to assist people to become S/E. In a business partnership one or all of the partners may be receiving payments.

50136 Any allowance paid into the S/E earner's business bank account during the assessment period should be included in the gross receipts of the business¹.

1 ESA Regs, reg 97(1)

50137

Business subsidies or payments of compensation

50138 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 (DEFRA), or the EU **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

50139 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.

50140 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.

- 50141 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.
- 50142 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

Kim 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

Tahira 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.

50143 - 50153

Income from letting or sub-letting

- 50154 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

- 50155 The amount received from the sale of a capital asset should not be included in the gross receipts of the business, unless the asset was part of the stock in trade of the business¹.

1 R(FC) 1/97

Example

Sean runs a business that manufactures computers. The sale of these computers is included in the gross receipts of the business. But when Sean 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 (see DMG 50166).

Tips and gratuities

- 50156 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.
- 50157 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

- 50158 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

Terri is in receipt of ESA(IR). Her partner does some work for a local farmer on a S/E basis. The farmer pays Terri's partner 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.

50159

VAT

- 50160 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.

50161 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 50160 **2.** exceeds DMG 50160 **1.**.

Note: VAT can also be an allowable expense of the business, see DMG 50211 - 50212.

50162 - 50165

Capital receipts

50166 Capital receipts do **not** form part of the gross receipts of the business¹. For example,

1. loans
2. injections of capital
3. grants from the Prince's Trust **and**
4. proceeds from the sale of business assets, unless that asset was part of the stock in trade of the business (see DMG 50155).

1 R(FC) 1/97

Income for a different period

50167 A payment of income **may** be assessed over a period different to the assessment period if the normal weekly amount of the item of income can be established more accurately¹.

Note: The DM should not consider any payment made before or after the assessment period.

1 ESA Regs, reg 98(10)

50168 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

Roddy is a S/E earner. He receives a payment that is a half-yearly payment under a long-term contract. As the level of trading has changed recently due to a fire on the business premises the assessment period used is 13 weeks.

The DM 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.

50169 - 50189

Business expenses

Conditions for deducting business expenses

50190 When calculating the net profit of a S/E earner the DM should deduct from the gross receipts any business expense that¹

1. was paid out wholly and exclusively for the purposes of the business² **and**
2. was paid out during the assessment period **and**
3. was reasonably incurred³ (see DMG 50198) **and**
4. is an allowable expense (see DMG 50206).

1 ESA Regs, reg 98(3)(a); 2 reg 98(8)(a); 3 reg 98(7)

Wholly and exclusively

50191 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business¹. Any such payment should be deducted in full, subject to DMG 50190 **2. - 4.**

1 ESA Regs, reg 98(3)(a)

Expenses for both business and private use

50192 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.

50193 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.

50194 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 purposes¹.

1 R(FC) 1/91; R(IS) 13/91

50195 Examples of expenses that may be apportioned between private and business use are¹

1. telephone calls and telephone rental
2. motor expenses such as fuel, road fund license (sometimes called road tax), insurance premiums, servicing, maintenance or repair charges
3. fuel costs and standing charges for gas and electricity.

1 R(FC) 1/91; R(IS) 13/91

Example 1

Shanta 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.

Shanta 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 Shanta's net profit.

Example 2

Andy uses a car for both business and private use. The total cost in the assessment period is £750. Andy 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

Darcy 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 Darcy 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.

50196 - 50197

Reasonably incurred

50198 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.

50199 To determine what is reasonable the DM should have regard to the circumstances of each individual's case¹, including the level of the person's earnings².

1 R(P) 2/54; 2 R(G) 1/56

50200 The DM may have to consider if it is reasonable for a person to reduce the hours worked to below the remunerative work level (see DMG Chapter 41 for the ESA remunerative work rule) 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.

The DM may conclude that the expense of employing another person is not reasonably incurred, therefore cannot be deducted from the gross receipts.

50201 If expenditure on a particular item is necessary to enable the person to run the business, the whole of that expenditure may be a deductible expense unless there is evidence that it is excessive¹.

1 R(G) 7/62

50202 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.

50203 - 50205

Allowable business expenses

50206 If the conditions in DMG 50190 1. - 3. are met, all day to day expenses of a business are allowable, including¹

1. accountancy charges
2. advertising costs

3. certain capital repayments on a loan used to²
 - 3.1 replace an item of equipment or machinery that has
 - 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 50210)
6. employer's contribution to an employee's pension scheme
7. employer's secondary Class 1 SS contributions
8. heating and lighting
9. hire or rental costs, but not any capital or purchase elements
10. income spent on the repair of an existing business asset, but only to the extent that cost of the repair exceeds any sum paid or due to be paid under an insurance policy for that repair³
11. interest payable on a mortgage, loan, credit sale, consumer credit agreement or a hire purchase agreement - this does not include any capital element, but see 3.⁴
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 50211)⁵.

This list is not exhaustive.

1 ESA Regs, reg 98(3)(a), reg 98(4), reg 98(5), reg 98(7); 2 reg 98(6); 3 reg 98(8)(b)(ii); 4 reg 98(8)(b)(iii); 5 reg 98(8)(b)(i)

50207 For the purpose of DMG 50206 **3.2** an asset includes buildings, plant machinery, vehicles or equipment.

Example 1

Hattie 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

Miles 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.

50208 - 50209

Partner's earnings from the business

50210 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 50206 **5.**). The wage should not be added back to the business accounts to offset any loss¹.

1 ESA Regs, reg 98(11)

Example

Rose runs a dress-making business from home and satisfies the PWK rules. She is in receipt of ESA(IR). 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 ESA purposes their income is

Rose	NIL
husband	£45

total £45 per week.

VAT

50211 A S/E person who is registered for VAT is required to submit 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.

50212 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 expense¹. This is the amount that DMG 50211 **1.** exceeds DMG 50211 **2.**.

Note: VAT can also be a gross receipt of the business (see DMG 50161).

1 ESA Regs, reg 98(8)(b)(i)

50213

Expenditure for a different period

50214 Any business expenditure paid out in the assessment period **may** be assessed over a period different to the assessment period if the normal weekly amount of that item of expenditure can be established more accurately¹.

Note: The DM should not deduct an expense paid before or after the assessment period.

1 reg 98(10)

50215 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.

50216 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 his partner claimed ESA. The assessment period is 26 weeks. In that time the annual road fund licence 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.

50217 - 50219

Expenses not allowed

50220 Business expenses that should not be allowed are

1. those expenses where the conditions for deducting a business expense are not met (see DMG 50190)
2. capital expenditure¹
3. depreciation of capital assets²
4. expenses used, or intended to be used, in setting up or expanding a business³
5. any loss incurred
 - 5.1 before the start of the assessment period⁴ **or**
 - 5.2 in any other employment⁵
6. repayment of capital on loans⁶ except where DMG 50206 3. applies
7. business entertainment expenses⁷
8. losses incurred on the disposal of a capital asset
9. payments into a contingency fund to safeguard against future bad debts⁸
10. personal drawings on income and capital
11. money on goods used for personal consumption.

1 ESA Regs, reg 98(5)(a); 2 reg 98(5)(b); 3 reg 98(5)(c); 4 reg 98(5)(d); 5 reg 98(11); 6 reg 98(5)(e); 7 reg 98(5)(f); 8 reg 98(7)

Capital expenditure

50221 Capital expenditure is the expenditure on fixed assets, sometimes called capital assets. In line with HMRC practice, 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 expense¹.

1 ESA Regs, reg 98(5)(a)

Example

Marc 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 Marc had taken out a loan to buy the car, repayments of capital and interest would have been allowed as expenses (see DMG 50206).

Depreciation

50222 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.

50223 If there are fixed assets, accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense¹.

1 ESA Regs, reg 98(5)(b)

50224 - 50225

Sums used in setting up or expanding a business

50226 The DM should not allow as a business expense any sum used, or intended to be used, in setting up or expanding a business¹. This applies to expenditure on, for example

1. fixed assets of the business, including fixtures and fittings or the cost of larger premises **or**
2. non-recurring costs such as legal services in obtaining a lease.

Note: If a business loan has been obtained the DM should consider interest on the loan (see DMG 50206 11.) and allow as an expense other items that are ongoing regular expenses.

1 ESA Regs, reg 98(5)(c)

Loss incurred before the beginning of the assessment period

50227 The DM should not allow as a business expense any loss incurred before the beginning of the assessment period¹.

1 ESA Regs, reg 98(5)(d)

50228 - 50229

Loss incurred in any other employment

50230 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.

50231 Any business loss in one employment should **not** be offset against the earnings of another employment¹. Also, any loss made by one member of a couple should not be offset against the earnings of another member.

1 ESA Regs, reg 98(11)

Example

Ethan is in receipt of ESA(IR). 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

50232 The DM should not allow the repayment of the capital part of a business loan as a business expense unless it is for replacement or repair of an asset¹ (see DMG 50206 3.).

1 ESA Regs reg 98(5)(e)

50233 - 50234

Business entertainment

50235 Any expense claimed for providing business entertainment, for example

1. business lunches **or**
2. hospitality in connection with the business

should not be allowed as a business expense¹.

1 ESA Regs, reg 98(5)(f)

Loss on disposal of a capital asset

50236 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 50155).

Payments into contingency funds

50237 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.

50238 - 50239

Personal drawings

50240 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

50241 The DM should not allow any money spent on goods for personal consumption as a business expense.

50242 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.

50243 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.

50244 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.

50245 - 50259

Calculation of income tax, National Insurance contributions and qualifying premium

Introduction

50260 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for¹

1. income tax (see DMG 50270 et seq) **and**
2. Class 2 NI contributions (see DMG 50297 et seq) **and**
3. Class 4 NI contributions (see DMG 50316 et seq) **and**
4. half of any premium for a personal pension scheme (see DMG 50326).

1 ESA Regs, reg 98(3)(b) & (c)

50261 The DM should base deductions for DMG 50260 **1.** - **3.** on the chargeable income for the assessment period.

50262 - 50265

Chargeable income

50266 The chargeable income¹, that is, the income chargeable for tax, for the assessment period is the amount of earnings

1. in the case of a S/E child minder, one third of the gross receipts of that employment² **or**
2. in the case of a partnership, the person's share of
 - 2.1 the gross receipts of the employment less
 - 2.2 any allowable business expenses³ **or**
3. in any other case, the person's
 - 3.1 gross receipts of the employment less
 - 3.2 any allowable expenses⁴.

1 ESA Regs, reg 99(4); 2 reg 99(4)(b); 3 reg 98(4); 4 reg 98(3)(a)

50267 The calculation at DMG 50266 **1.** - **3.** should not include any deductions for

1. notional income tax **or**
2. NI contributions **or**
3. premiums for a personal pension scheme.

50268 - 50269

Deduction for notional income tax

- 50270 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 ESA 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

- 50271 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.

50272 - 50273

Personal allowance

- 50274 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 ESA purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

Tax rates

- 50275 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.

50276 - 50287

Calculation of deduction

- 50288 To determine the notional amount of income tax to be deducted from a S/E earners chargeable income the DM should¹

1. establish the chargeable income
2. establish the personal allowance appropriate to the S/E earner. If it
 - 2.1 is equal to or greater than the chargeable income there will be no notional income tax to deduct **or**
 - 2.2 is less than the chargeable income, go to **3**.
3. deduct the personal allowance (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 year²
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.

1 ESA Regs, reg 99(1); 2 reg 99(2)

Example

Sam is a married man aged 45. He works P/T as a S/E gardener and claims ESA. 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	less
Claimant's personal allowance	6,035.00	
	9,465.00	
£9,465.00 at 20%	1,893.00	
Total notional income tax	1,893.00	

50289 - 50296

Deduction for notional Class 2 NI contributions

- 50297 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

- 50298 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 Appendix 2).
- 50299 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.

50300 - 50303

Calculation of the Class 2 contribution

- 50304 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 only¹. 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 income² **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 ESA Regs, reg 99(3)(a); 2 reg 99(4)

50305 - 50315

Deduction for notional Class 4 NI contributions

- 50316 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.

50317

Calculation of Class 4 deduction

- 50318 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 only¹. 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 Lower Level from chargeable income up to the Upper Level **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 ESA Regs, reg 99(3)(b)

Example 1

Assessment period is 52 weeks

Chargeable income is £7,590.85

Class 4 - Lower level is £5,435

- Upper level is £40,040

Chargeable income 7,590.85 **less**

lower level 5,435

Profit 2,155.85 x 8% = 172.47

Notional Class 4 contributions for 52 weeks is £172.47.

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 $\frac{5,435 \times 273}{365} = 4,065.09$

Chargeable income 7,100.00 **less**

lower level 4,065.09

Profit 3,034.91 x 8% = 242.80

Notional Class 4 contributions for 39 weeks is £242.80

50319 - 50324

Premiums for personal pension schemes

- 50325 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 period¹.

1 ESA Regs, reg 98(1)(b)(ii) & (3)(c)

Example

Sanjay is in receipt of ESA, his wife Parminder runs a small business from home. Her earnings are calculated over a period of a year. Parminder makes contributions under 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

- 50326 Personal pension schemes¹ are

1. a scheme under certain pension and taxation legislation² **or**
2. an annuity contract or trust scheme under certain taxation legislation³.

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 ESA 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 s 621; Finance Act 2004, Sch 36, para 1(1)(f) & Income and Corporation Taxes Act 1988, s 622(3)

- 50327 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.

50328 - 50349

Particular forms of self-employment

Child minders

50350 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.

50351 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 period¹ but make no deductions for business expenses **and**
4. calculate a deduction² for
 - 4.1 income tax **and**
 - 4.2 NI contributions **and**
 - 4.3 half of any premium for a personal pension scheme
5. deduct any disregard.

Note: See DMG Chapter 41 for the remunerative work rules for childminders.

1 ESA Regs, reg 99(4)(b); 2 reg 98(9)

Example

Fiona is a S/E child minder. 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, NI contributions and premiums that are to be deducted from the chargeable income.

50352 - 50360

Crofts or small holdings

50361 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.

50362 - 50369

Farmers

50370 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 DEFRA's Rural Payments Agency, that may be available.

50371 DEFRA are unable to supply opinions about the amount of work involved in particular farms or their likely annual returns. However, DMs may consult the DEFRA website (www.defra.gov.uk - Economics and Statistics page) for information about total farm income for the type of enterprise in question.

50372 - 50379

Hotels, guest houses, bed and breakfast establishments

50380 The normal remunerative work rules for ESA(IR) should be considered when determining a claim involving a person running a hotel, guest house, lodging house or bed and breakfast establishment.

50381 The DM should note that payments received for providing BL accommodation (see DMG 50018) are not earnings¹. These payments are income other than earnings. DMG Chapter 51 provides further guidance.

1 ESA Regs, reg 97(2)(a)

Bars and restaurants in hotels, guest houses

50382 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.

50383 - 50384

Local exchange trading systems

50385 LETS are associations that allow participants to exchange goods and services with others in the community.

50386 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

50387 Participating in a LETS scheme should be regarded as work. The credits obtained are payment for the goods or services provided.

50388 DMs should consider whether a LETS participant is engaged in remunerative work for the purposes of ESA(IR) (see DMG Chapter 41).

50389

Local exchange trading credits

50390 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.

50391 Credits can be treated as

1. capital **or**
2. earnings

depending on the circumstances of each case. Credits are **not** payments in kind.

50392 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.

- 50393 The value of credits is equivalent to the number of credits awarded for the particular goods or services at the relevant exchange rate.
- 50394 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.
- 50395 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.

50396 - 50399

Partnerships

- 50400 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.
- 50401 People can enter into a partnership under an agreement that may be written, for example a deed of partnership, verbal or implied. A deed of partnership includes details of how any profit or loss is shared between the partners. In the absence of an agreement any profit should be shared equally among the partners¹.
- 1 Partnership Act 1890, s 24*
- 50402 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 relevant legislation¹. 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.
- 1 Partnership Act 1890*
- 50403 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 relevant legislation¹), 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 entity², 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; 2 s 4(2)

50404 A partnership does not necessarily end when it ceases trading. It must be formally dissolved. The partnership deed or the legislation¹ 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.

1 Partnership Act 1890, s 38

50405 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 relevant legislation¹.

1 Partnership Act 1890, s 38

50406 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 by HMRC to such questions.

Calculation of a business partner's normal weekly earnings

50407 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.

50408 To calculate the normal weekly earnings of a business partner¹, 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"². The partner's share will be
 - 3.1 the share set out in the deed of partnership, if there is one **or**
 - 3.2 the shares agreed in an express or implied agreement between the partners **or**
 - 3.3 an equal share³ if neither 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 NI contributions
 calculated on the amount at 3. **and**
5. deduct half of any premium for a personal pension scheme
6. deduct any disregard.

1 ESA Regs, reg 98; 2 reg 98(4); 3 Partnership Act 1890, s 24

Example 1

Daniel is one of two partners in a building firm. He is in receipt of ESA. 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 NI 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 ESA(IR). 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, NI contributions and the appropriate disregard. Agnes was not paying premiums for a personal pension scheme.

50409

Salaried partners

50410 A salaried partner may be an employed or S/E earner. A salaried partner may be a person who

1. receives a salary as remuneration and maybe a profit-related bonus. This type of salaried partner is an employed earner¹ **or**
2. may be paid a fixed salary not based on profit. But in addition is included in the partnership deed and is entitled to a share of the profits. This type of salaried partner is a S/E earner.

1 Ross v. Parkins (1875) LR 20 Eq 331 at 336

50411 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.

50412 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.

50413 - 50424

Renting out property as a business

50425 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business¹.

1 R(FC) 2/92

50426 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 51 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 ESA. 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.

50427 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.

50428 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 ESA

The DM determines that Michael is a S/E earner and that all of the properties are business assets that can be disregarded¹. The DM calculates Michael's earnings, the rental income is regarded as part of the gross receipts.

1 ESA Regs, Sch 9, para 10

50429 - 50439

Seasonally self-employed

50440 If a S/E earner is seasonally S/E the DM should consider if the S/E earner is in remunerative work. If not, the DM should

1. consider the guidance at DMG 50023 - 50026 **and**
2. determine if the S/E earner remains gainfully employed as a S/E earner.

Example

Polly is in receipt of ESA(IR). Her partner Shaun is S/E as an amusement arcade owner. The amusement arcade closed 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 50023 - 50026 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. The earnings will be taken into account when considering the amount of ESA(IR) that Polly is entitled to.

50441 - 50449

Sub-contractors

50450 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.

50451 If a S/E sub-contractor claims ESA the DM should consider if the S/E earner is in remunerative work for the purposes of ESA(IR). If not, the DM should consider

1. the guidance at DMG 50023 - 50026 **and**
2. if the S/E sub-contractor remains gainfully employed as a S/E earner.

Example

Patti claims ESA. Her partner, Bruce, is a S/E electrician. He sub-contracts for other contractors. Bruce has just finished one contract and work on the next contract is not due to start for another couple of weeks. Bruce states that

1. he still regards himself as S/E and his business as a going concern but 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 50023 - 50026 and determines, in this case, that Bruce remains gainfully employed as a S/E earner.

Actors and entertainers

50452 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 (see DMG 49013 for the meaning of employed earner).

50453 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.

50454 The fact that an actor or entertainer has periods of employment during which class 1 NI 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 ESA 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 as an employed earner or otherwise.

Example 1

Laura is an actress. Her acting engagements are sporadic, and she is not currently working due to a broken leg. 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 as an employed earner and says that the fact that she paid class 1 NI 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 50023 - 50026)
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 as a self-employed earner and not under a contract of service as an employed earner. Therefore the earnings from the BBC 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 serious illness. 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 NI contributions.

The DM decides that Craig's employment with the dance company was under a contract of service as an employed earner 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.

Share fishermen

50455 A share fisherman is¹

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 British 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 British fishing boat or performing other services that help, or are connected with, a British 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.

1 ESA Regs, reg 98(1)(b); SS (Mariners' Benefits) Regs, reg 1(2)

50456 The master and all the members of the crew of a fishing boat are within the definition at DMG 50455 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 boat¹.

1 R(U) 10/51

50457 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 Appendix 2 to this chapter). Class 4 liability is the same (see Appendix 2 to this chapter).

50458 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

Note: A share fisherman may also be employed in another occupation as an employed earner. This does stop that share fisherman being S/E.

Claims from share fisherman

50459 The rules for calculating the earnings of a share fisherman are the same as for any other S/E claimant who is in partnership with another person. DMs should contact DMA Leeds if further guidance on dealing with claims from share fisherman is required.

50460 - 50464

Disregard of earnings from self-employment

50465 The following disregards should be applied to the net profit of a S/E earner¹.

1 ESA Regs, reg 98(2)

Earnings from self-employment that has ceased

50466 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 from the date the employment ceased unless the earnings are royalties, copyright payments or Public Lending Right payments (see DMG 50073 - 50081)¹.

1 ESA Regs, Sch 7, para 4

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 ESA on 12 November.

The DM determines that James has ceased to be a S/E earner. The earnings received on 11 November are disregarded.

Royalties, copyright payments and Public Lending Rights Payments

50467 DMG 50073 gives guidance on how to treat earnings from royalties, copyright payments and public lending right payments. DMs should apply a weekly disregard of £20¹ when the earnings are received. This disregard applies regardless of when the work in question was actually performed.

1 ESA Regs, Sch 7, para 5A

Example

Steve wrote a song 15 years ago which occasionally generates royalties. He has not written anything since. Steve receives a royalty payment in respect of the song. The DM follows the guidance at DMG 50073 et seq and applies a weekly disregard of £20 to the payment.

50468 Where there is already a disregard for exempt work limits¹ the total amount to be disregarded shall depend on how far below the PWK limits that the claimant's earnings are. The maximum that can be disregarded from the earnings is £20 per week².

1 ESA Regs, reg 45(2) - (4); 2 Sch 7, para 5A

Example

Jack works in exempt work (PWHL) and earns £80 per week. These earnings are below the PWK limits for that category of work (at the time it was £93). Jack wrote a book several years ago which occasionally generates royalties. On 1.6.10 he receives a royalty payment in respect of the book. The DM disregards £13 of the weekly earnings from the royalty payment. This is the difference between the maximum amount under the exempt work limits and the amount actually earned up to £20.

50469 - 50471

Earnings payable abroad

50472 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.

50473 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 applies¹.

1 ESA Regs, Sch 7, para 9

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 £1,000 received abroad)	=	£5,000
Deductions for allowable expenses, notional income tax and NI 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	=	£20.00 less
Special disregard for earnings abroad (£1,000 divided by 52)	=	£19.23
Earnings taken into account (£48.07 - £20.00 - £19.23).	=	£8.84

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 £28.07 (£48.07 - £20.00).

50474

Earnings paid in a foreign currency

50475 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 ESA Regs, Sch 7, para 10

Earnings disregard

50476 The relevant earnings disregard (see DMG Chapter 49) should be applied.

Self-Employment Route

Introduction

50477 The income of claimants who are participating in the S/E route is treated in a different way to the earnings of normal S/E earners¹.

1 ESA Regs, reg 84

Definitions

Employment zone

50478 An EZ means¹ an area within GB which has been selected under specified legislation² as a suitable place to run an EZ programme.

1 ESA Regs, reg 2(1); 2 WRP Act 99, s 60

Employment zone programme

50479 An EZ programme is¹ a programme run in an EZ to help JSA claimants obtain sustainable employment.

1 ESA Regs, reg 2(1)

Self-employment route

50480 Self-employment route means¹ assistance in pursuing S/E earner's employment whilst participating in

1. an EZ programme **or**
2. a programme provided or arrangements made under specified legislation².

1 ESA Regs, reg 2(1); 2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2

Special account

50481 "Special account" means¹ the account into which the gross receipts from trading whilst receiving assistance under the self-employment route are paid. The special account is in the names of the person providing assistance under the self-employment route and the person who is receiving it. Both of them have to authorize withdrawals from the account.

1 ESA Regs, reg 100

The self-employment route

Effect of work - claimant

50482 Unless DMG 50483 applies, the general rule is that a claimant is treated as not entitled to ESA in any week in which they work¹.

1 ESA Regs, reg 40(1)

50483 The general rule does not apply to a claimant who does work which is exempt work¹.

1 ESA Regs, reg 40(2)(f) & reg 45

50484 Work done whilst receiving assistance in pursuing the self-employment route is exempt¹ so long as the programme or arrangement the claimant is on is set up under the specified legislation² (see DMG 50480).

1 ESA Regs, reg 45(5); 2 E & T Act 1973 s. 2; Enterprise & New Towns (Scotland) Act 1990, s 2

Effect of work - partners

50485 A claimant's entitlement to ESA(IR) is affected if they have a partner who is in remunerative work¹.

1 WR Act 07, Sch 1, Part 2, para 6(1)(f)

50486 Claimants' partners are treated as not being in remunerative work where they are receiving assistance under the self-employment route¹.

1 ESA Regs, reg 43(1)(d)

Receipts - trading whilst on the self-employment route

50487 Gross receipts from trading whilst on any of the schemes or activities falling within the definition of the self-employment route are

1. not earnings, earnings from self-employment or income other than earnings¹
and
2. paid into a special account² **and**
3. taken into account in a certain way when working out ESA³ (see DMG 50489 et seq).

1 ESA Regs, reg 84; 2 reg 100; 3 reg 101 & 102

Trading after the self-employment route ends

50488 Gross receipts received after the self-employment route ends are earnings from employment as a S/E earner¹. This is because a person is no longer treated as not employed after the self-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 ESA Regs, reg 97

Treatment of income

50489 Income paid to people who are receiving assistance whilst participating in the self-employment route is subject to special rules¹ as to its calculation and the date that it is taken into account and treated as paid.

1 ESA Regs, reg 102

50490 The amount taken into account is the amount in the special account at the end of the last day on the self-employment route less

1. a deduction for income tax (see DMG 50493) **and**
2. certain disregards¹ (see DMG 50496).

The amount is apportioned equally over a period equal in length to the period the person was receiving assistance on the self-employment route starting with the date the payment is treated as paid².

1 ESA Regs, reg 102(1); 2 reg 102(2)

50491 The date on which payment of money in the special account is treated as paid depends on whether or not it is due to be paid during a benefit week. It is treated as paid on the first day of the benefit week if it is due to be paid in that week¹.

1 ESA Regs, reg 102(3)(b)

50492 If it is due to be paid before the first benefit week in which the participant or participant's partner first claims ESA(IR) following the last day on which assistance under the self-employment route was received it is treated as paid on the day of the week in which it is due to be paid which corresponds to the first day of the benefit week¹.

1 ESA Regs, reg 102(3)(a)

Deduction for income tax

- 50493 A deduction for income tax is worked out on the amount of chargeable income and as if that income is the only income to be taxed¹. Chargeable income is the amount in the special account at the end of the last day on the self-employment route².

1 ESA Regs, reg 103(1)(a); 2 reg 103(3)

- 50494 A deduction is made from the amount of chargeable income for certain personal allowances under income tax law¹ which are applicable to the person who was on the self-employment route². The rate of tax charged after deductions for personal allowances is the basic rate³.

1 Income Tax Act 2007, s 35 & s 45 to 55; 2 ESA Regs, reg 103(1)(b); 3 reg 103(1)(c)

- 50495 If the period over which the payment in the special account is taken into account is less than a year, the amount for personal allowances and basic rate tax is worked out on a pro-rata basis¹.

1 ESA Regs, reg 103(2)

Disregard as for earnings

- 50496 An amount is disregarded from the payment of money in the special account for each benefit week it is taken into account¹. The amount disregarded is the equivalent of a disregard which applies to earnings².

1 ESA Regs, reg 102(4); 2 Sch 7, para 7(1)

50497

Disregards - capital

Assets of current or future businesses

50498 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 route¹.

1 ESA Regs, Sch 9, para 10

Capital acquired for current or future business purposes

50499 The DM should disregard any capital acquired

1. by a current or former participant in the self-employment route of the Employment Option **and**
2. for the purpose of establishing or carrying on the commercial activity assisted under of the self-employment route of the Employment Option¹.

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 ESA Regs, Sch 9, para 46

50500 - 50999

Appendix 1

Notional deductions for income tax

Main income tax allowances

1. The main income tax allowances are as follows

		07/08	08/09	09/10	10/11	11/12
		£	£	£	£	£
Additional personal		-	-			
Personal	under 65	5,225	6,035	6,475	6,475	7,475
Personal	65 - 74	7,550	9,030	9,490	9,490	9,940
Personal	75 & over	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

	£	
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 National Insurance contributions

Class 1 contributions

1. The Class 1 NI 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 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.

3.	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.

4.	Earnings Bands 09/10	Earnings Limits 09/10
	Earnings	Percentage rates
	1. up to LEL	NIL
	2. LEL to UEL	11% of earnings that exceed LEL up to UEL
		LEL
		weekly £95
		monthly £412
		UEL
		weekly £844
		monthly £3,656

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 £884 per week and at 1% for earnings above £844 per week.

5.	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
			UEL
			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.

6.	Earnings Bands 11/12		Earnings Limits 11/12
	Earnings	Percentage rates	LEL
	1. up to LEL	NIL	Weekly £102
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £442

			UEL
			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

7. The weekly rate of Class 2 contributions are as follows

	£	£	£	£	£
	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£
Ordinary Class 2 rate	2.20	2.30	2.40	2.40	2.50
Share fisherman rate	2.85	2.95	3.05	3.05	3.15

Small earnings exception

8. The rates of the small earnings exception are as follows.

	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£
Earnings limit	4,635	4,825	5,075	5,075	5,315

Class 4 contributions

9. The weekly rates of Class 4 contributions are as follows.

	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£
Lower level	5,225	5,435	5,715	5,715	7,225
Higher level	34,840	40,040	43,875	43,875	42,475
Percent age rate	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

Chapter 51 - Income other than earnings

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Chapter 51 - Income other than earnings

General

Introduction

Scope of this chapter

51000 This Chapter deals with the calculation of income other than earnings for ESA(IR) as well as student's income. With the exception of payments made to a person carrying out public or local functions, pension protection fund periodic payments, occupational and personal pension payments¹, income other than earnings does not affect the calculation of ESA(Cont).

Note: For guidance on the treatment of these payments in ESA(Cont) see DMG Chapter 44.

1 WR Act 07, s 3

Meaning of claimant

51001 Claimant means¹ a person who has claimed ESA.

1 s 24(1)

What is income

51002 Income is not defined in law. 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 capital¹ is being paid by instalments each payment will be capital unless DMG 51425 et seq applies.

1 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

51003 The DM should take into account the gross amount of any income¹. References in this Chapter to income means income other than earnings. When calculating gross income disregard the sums in DMG 51006 - 51008 and DMG 51080 et seq. No disregards should be made for any other expenses or deductions.

1 ESA Regs, reg 104(1)

Deductions from benefits

- 51004 Where a payment of SS benefit has a deduction for benefit recovery, the DM should take into account the gross amount of benefit¹.

1 ESA Regs, reg 104(3)

Reduction due to a failure to attend a work focused interview

- 51005 Where IB, SDA or ESA(Cont) paid to a claimant's partner has been reduced because the partner has failed to attend a Wfl, the amount of IB, SDA or ESA(Cont) to be taken into account as income is the full amount that would have been payable before the reduction¹ (see DMG 05380).

1 SS (JPI) Regs 02, reg 12(11) & ESA Regs, reg 63(5)

Overpayment recovery from other income

- 51006 Except where DMG 51004 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 51007 apply.

Example

Ted is in receipt of ESA(IR). His partner, Libby, 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 Libby actually receives is £28 per week. When determining the amount of WTC to take into account on Ted's award of ESA(IR), the DM takes into account Libby's WTC of £28 per week.

- 51007 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 51469 et seq).

Deduction of income tax

- 51008 Any tax actually paid, or due to be paid¹, should be deducted when calculating any income that is to be

1. taken fully into account **or**
2. disregarded in part².

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 ESA Regs, Sch 8, para 1

Example

Jack makes a claim for ESA on 5 June and becomes entitled to ESA(IR). 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

51009 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.

51010 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.

51011 - 51019

Income taken fully into account

Types of income taken fully into account

51020 When calculating income other than earnings for ESA(IR)¹ DMs should take

1. Annuity income
2. BA
3. CA
4. Cash in lieu of concessionary coal
5. Ministry of Justice ex gratia incapacity allowances (previously paid by the HO)
6. IB
7. IIDB
8. ESA(Cont)
9. JSA(Cont)
10. MA
11. Personal pensions
12. RP
13. SDA
14. War orphan's pension
15. WTC
16. WP
17. Workmen's compensation

fully into account. These are the most common types of income that DMs deal with, although there are other types too. Detailed guidance is given in DMG 51022 et seq.

1 ESA Regs, reg 104(1)

51021 Normally the DM should take into account in full

1. income from certain disregarded capital (see DMG 51073)
2. income from insurance policies (see DMG 51064)
3. income from certain sub-lets (see DMG 51070)
4. occupational pensions (see DMG 51050)
5. payments for people attending court (see DMG 51071 and DMG 51229).

Benefits taken fully into account

Bereavement allowance

51022 BA should be taken into account in full. 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

51023 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.

ESA(Cont)

51024 ESA(Cont) received by a partner should be taken fully into account.

51025 - 51030

Incapacity benefit

51031 IB should be fully taken 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.

51032

Industrial injuries disablement benefit

51033 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: US was removed from the scheme on 6.4.87 but may continue in payment to people getting it before that date.

51034 See DMG 51230 for guidance on attendance allowances for the treatment of ESDA and CAA paid with Dis B.

51035 Dis G should be treated as capital. But REA paid with it should be taken fully into account as income.

51036

JSA(Cont)

51037 JSA(Cont) received by a partner should be taken fully into account. It is payable to people who are unemployed and who have paid enough SS contributions¹.

1 JS Act, s 2

Maternity allowance

51038 MA should be taken fully into account. It is payable to women who cannot get SMP.

Retirement pension

51039 RP should be taken fully into account. It is either

1. contributory (Cat A or B) **or**
2. non-contributory (Cat C or D).

51040 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 51240 if the dependant is not a member of the claimant's family)
3. an AP for people who were in non-contracted out employment
4. GRB earned between 1961 and 1975 under the graduated pension scheme
5. Incs for deferred retirement
6. invalidity and age additions.

51041 A pensioner who has been in employment that was contracted out of SERPS may be entitled to

1. GMP instead of AP through an occupational pension scheme **and**
2. Incs to an occupational pension and GMP if retirement was deferred.

The DM should take these payments fully into account as an occupational pension.

Severe disablement allowance

51042 SDA should be taken fully into account. It is a non contributory benefit payable after six months of illness. For ESA purposes, this applies only to the claimant's partner.

War orphan's pension

51043 War orphan's pension should be taken into account in full.

Widow's benefit (widow's payment, widow's pension)

- 51044 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

- 51045 WTC should be taken fully into account. It is paid to employees or to S/E earners direct to their bank account. Where appropriate WTC includes an element for childcare paid to the main carer.

Note: DMG Chapter 48 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

- 51046 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.
- 51047 Any attendance allowance paid with WC (Supp) should be disregarded. See DMG 51230 et seq for guidance on attendance allowances.

51048 - 51049

Pension payments taken fully into account

Occupational pensions

Treatment of occupational pensions in ESA(IR)

51050 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 hardship¹. This type of payment is a charitable or voluntary payment.

1 ESA Regs, reg 2(1)

Treatment of occupational pensions in ESA(Cont)

51051 See DMG Chapter 44 for guidance on the treatment of occupational pensions in ESA(Cont).

Personal pensions

Treatment of personal pensions in ESA(IR)

51052 Income from personal pension schemes should be taken fully 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 ESA(Cont)

51053 See DMG Chapter 44 for the guidance on the treatment of personal pensions in ESA(Cont).

51054 - 51059

Other income taken fully into account

Annuity income

- 51060 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.
- 51061 Annuity income should be taken fully into account apart from
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 disregard¹.
 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 full².

1 ESA Regs, Sch 8, para 18; 2 Sch 8, para 12

Cash in lieu of concessionary coal

- 51062 The DM should take into account in full¹ 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 kind².

1 R(IS) 4/94; 2 ESA Regs, Sch 8, para 22

Ministry of Justice ex gratia incapacity allowances

- 51063 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.

Income from an insurance policy

- 51064 Insurance policy income should be taken fully into account except for income from a mortgage protection policy.

51065 - 51069

Income from certain sublets

51070 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 51112 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

51071 Payments to jurors and witnesses for loss of

1. earnings **or**
2. benefits

should be taken fully into account¹.

1 ESA Regs, Sch 8, para 43

51072

Income from certain disregarded capital

51073 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

1. trusts set up from money paid because of a personal injury while disregarded (see DMG Chapter 52)
2. assets of a business partly or wholly owned by the claimant while disregarded (see DMG Chapter 52)
3. the dwelling occupied as the home while disregarded - (see DMG Chapter 52) (but not income from boarders or sub-lets which is partially disregarded)

for as long as the value of the capital is disregarded¹.

1 Sch 8, para 23

51074 - 51079

Income disregarded in part

Income that has £10 a week disregarded

Types of income that have £10 a week disregarded

51080 Disregard the first £10 a week of¹

1. pensions paid to victims of National Socialist persecution
2. payments of WDisP
3. payments of WWP, WMA and WPA
4. certain payments from the Armed Forces and Reserve Forces Compensation Scheme.

Note: Any remainder is taken fully into account, after any income tax has been disregarded. WWP includes a pension paid to a surviving civil partner.

1 ESA Regs, Sch 8, para 17

Weekly limit to £5, £10 and £20 disregards

51081 In some circumstances the overall weekly disregard should be limited to £20¹ for the family when

1. more than one payment listed in DMG 51080 **or**
2. covenant income **or**
3. a student loan

are taken into account in the same benefit week.

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 week². In these cases each payment has its own disregard.

1 Sch 8, para 39; 2 Sch 8, para 40

Pensions paid to victims of National Socialist persecution

51082 These pensions have a £10 disregard¹. 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 Sch 8, para 17(g)

War disablement pensions

51083 WDisP is paid to former members of

1. the armed forces **or**
2. 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 51087.

51084 WDisP may be made up of¹

1. wounds pension **and**
2. disablement pension **and**
3. retired pay for a disabled officer.

1 R(IS) 3/99

51085 A £10 disregard can be made for¹

1. WDisP **and**
2. a payment to compensate for non payment of WDisP **and**
3. a similar payment made by a foreign government.

1 ESA Regs, Sch 8, para 17(a), (e) & (f)

War widow's or widower's pension

51086 WWP is paid to a widow or widower 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 government¹.

Note 1: DMs should take into account in full pensions paid to war orphans or dependants. See Appendix 1 to this Chapter for details of the law under which WWPs are paid.

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 51087.

1 Sch 8, para 17(b), (e) & (f)

Armed Forces and Reserve Forces Compensation Scheme

51087 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

51088 The Armed Forces and Reserve Forces Compensation Scheme means¹ the scheme established under specified Armed Forces Legislation².

1 ESA Regs, reg 2(1); 2 Armed Forces (Pensions and Compensation) Act 2004, s 1(2)

51089 A guaranteed income payment means¹ a payment made under specified Armed Forces legislation².

1 ESA Regs, reg 2(1); 2 Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, art 14(1)(b) or 21(1)(a)

Payments from the Armed Forces and Reserve Forces Compensation Scheme

51090 A £10 disregard applies to

1. a guaranteed income payment¹
2. a payment to compensate for the non payment of a guaranteed income payment² **and**
3. a similar payment made by a foreign government, which is analogous to a guaranteed income payment³.

1 ESA Regs, Sch 8, para 17(d); 2 Sch 8, para 17(e); 3 Sch 8, para 17(f)

51091 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 pension¹.

Note: The Armed Forces Pension Scheme means either the Armed Forces Pension Scheme of 1975 or of 2005.

1 Sch 8, para 17(d)

Example

Simon is in receipt of ESA(IR). 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

51092 A £10 disregard applies to WMA. 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 WPA¹.

1 ESA Regs, Sch 8, para 17(h) & (i)

51093 - 51096

Income with partial disregards

- 51097 Income should be disregarded in part if it is
1. a civilian war injury pension
 2. a home income plan
 3. income from boarders
 4. income from subletting
 5. a living away from home allowance
 6. an income from certain disregarded capital
 7. a national lottery sports award.

Civilian war injury pensions

- 51098 Civilian war injury pensions have a disregard that is updated annually¹.

1 ESA Regs, Sch 8, para 51 & Personal Injuries (Civilians) Scheme 1983, s 27(3)

Home income plans

What is a home income plan

- 51099 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

- 51100 In this guidance an annuitant is a person to whom income from an annuity is payable.

Payments from home income plans

- 51101 The DM should establish if
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 annuity¹ **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 or 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 ESA Regs, Sch 8, para 18

51102 If all the conditions in DMG 51101 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 into account.

Notional annuity income

51103 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 51456 et seq)¹.

1 reg 106(1), (2), (3) & (4)

Income from people living in the claimant's home

51104 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

51105 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 provided¹.

Note: In this paragraph "home" means the dwelling occupied as the home.

1 ESA Regs, Sch 8, para 21

Example

Anita, who is entitled to ESA(IR), 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
	<hr/>
	£35
Deduct 50% of remainder	£17.50
Income from boarder 1	£17.50

Boarder 2

Payments for the week	£60
Deduct	£20
	<hr/>
	£40
Deduct 50% of remainder	£20
Income from boarder 2	£20
Total income	
From boarder 1 and boarder 2 =	£37.50

What is board and lodging accommodation

51106 BL accommodation means¹

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 51109) or similar establishment.

1 ESA Regs, reg 2(1)

51107 Accommodation provided

1. by a close relative (see DMG 51110) **or**
2. by any other member of the family **or**
3. not on a commercial basis

should not be treated as BL accommodation¹.

1 reg 2(1)

51108 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 premises¹.

1 reg 2(1)

51109 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.

Who is a close relative

51110 When considering BL accommodation “close relative” means¹ 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. husband and wives of any of the people mentioned above
12. civil partner and those who are LTACP or LTAHAW with any of the people mentioned above.

1 ESA Regs, reg 2(1); R(SB) 22/87

51111 For the purposes of DMG 51110, 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 relationship¹.

1 R(SB) 22/87

Income from subletting

51112 Where a claimant sublets part of the home the DM should¹

1. add together all payments made for the week by that subtenant and/or a member of the subtenant’s family **and**
2. disregard
 - 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 ESA Regs, Sch 8, para 20

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 $£30 + £20 = £50$
2. and deducts £20 = £30.

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 $£65 + £65 = £130$
2. and deducts £40 (£20 for each subtenant) = £90.

51113 - 51119

Other types of income partially disregarded

Living away from home allowance

51120 Living away from home allowance is paid by or on behalf of DWP to people attending training courses. The DM should disregard the amount of this allowance except any part of it which is equal to rent met by HB for accommodation the claimant does not normally occupy¹.

1 ESA Regs, Sch 8, para 15(1)(d)

Income from certain disregarded capital

51121 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 **and**
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 51122 do not apply to income from the home.

51122 The amount to be disregarded is

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 51123 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 for¹.

1 Sch 8, para 23(2)

- 51123 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.

- 51124 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 52) **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 52) **or**
 3. occupied wholly or partly by the claimant's former partner (see DMG Chapter 52) **or**
 4. the former marital home (see DMG Chapter 52) **or**
 5. premises that the claimant is taking reasonable steps to sell (see DMG Chapter 52) **or**
 6. premises the claimant intends to live in and certain steps are being taken to take possession (see DMG Chapter 52) **or**
 7. premises the claimant intends making home but cannot move in until essential repairs and improvements have been completed (see DMG Chapter 52).

National Lottery sports award

Meaning of sports award

51125 “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 legislation¹.

1 ESA Regs, reg 2(1); National Lottery etc Act 1993, s 23(2)

51126 The Sport Councils named in the National Lottery legislation¹ are the

1. English Sports Council²
2. Scottish Sports Council
3. Sports Council for Wales
4. Sports Council for Northern Ireland
5. UK Sports Council³.

1 s 23(2); 2 National Lottery etc Act (Amendment of s 23) Order 1996, art 2; 3 art 2

Amount of disregard

51127 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 **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 liable¹.

Note 1: “Food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person for which the sport award was made².

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 activities³.

1 ESA Regs, Sch 8, para 57(1) & (2); 2 & 3 Sch 8, para 57(3)

51128 - 51130

Maternity, paternity, adoption and sick pay

Statutory maternity pay

- 51131 SMP 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 SMP but may claim MA instead.

Statutory paternity pay

- 51132 Statutory paternity pay is payable to male employees during their paternity leave when they have average weekly earnings of at least the LEL.

Statutory adoption pay

- 51133 Statutory adoption pay is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the LEL. It is paid at the same rate as standard SMP.

Statutory sick pay

- 51134 SSP is payable by employers as part of or instead of, normal wages for up to 28 weeks in any period of sickness. People who are not employed are not entitled to SSP but may claim ESA instead.

Treatment of SMP, Statutory paternity pay, Statutory adoption pay and SSP

- 51135 The amount of SMP, Statutory paternity pay, Statutory adoption pay or SSP the DM should take into account is the gross amount less

1. any income tax paid¹ **and**
2. any employees' SS contributions or Northern Ireland Class 1 contributions² **and**
3. one half of any contribution paid by the claimant to an occupational or personal pension scheme³.

Note 1: A claimant cannot be entitled to ESA for a day which is a day of incapacity for work for SSP purposes⁴. However, SSP might be received by the claimant, for example, where it is paid in arrears, whilst the claimant is in receipt of ESA(IR).

Note 2: A claimant's partner could be entitled to SSP whilst the claimant is entitled to ESA(IR).

1 ESA Regs, Sch 8, para 1; 2 Sch 8, para 4(a) & 5(a); 3 Sch 8, para 4(b) & 5(b); 4 WR Act 07, s 20(1)

Employer's private maternity, paternity, adoption or sick pay

- 51136 Maternity, paternity, adoption or sick pay from an employer's private scheme should be treated in the same way as SMP, Statutory paternity pay, Statutory adoption pay or SSP with disregards made for the items described in DMG 51135.

Lump sum payments of SMP

- 51137 Some employers may pay SMP as a lump sum at the start of the MPP. The DM should apply the normal rules when deciding the period SMP should be taken into account¹.

1 ESA Regs, reg 91(2)(a)

51138 - 51139

Payments for housing costs and mortgage protection payments

Introduction

51140 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

51141 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 outbuildingsnormally 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
2. "qualifying housing cost" means
 - 2.1 a mortgage or loan which satisfies the conditions of DMG, Chapter 44 **or**
 - 2.2 a home improvement loan which satisfies the conditions of DMG, Chapter 44 **or**
 - 2.3 a housing cost which satisfies the conditions of DMG, Chapter 44
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 51192 - 51194 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.

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.

Payments made direct to a third party when the claimant could not receive the income direct

51142 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 ignored¹. 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.

Note: The disregards in DMG 51150 et seq do not apply to these payments².

1 ESA Regs, reg 106(3)(c); 2 Sch 8, para 31(2) & 32(2)

Example

Asif is entitled to ESA(IR). 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.

Payments made direct to a third party when the claimant could receive the income direct

51143 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 income¹

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 claimant².

1 ESA Regs, reg 106(2); 2 reg 109(1)

How should the DM decide when the claimant could expect to get the income

51144 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

51145 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.

51146 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 disregards¹.

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 Sch 8, para 31(1).

51147 - 51149

Mortgage protection policy payments

How much mortgage protection policy payment should be disregarded

- 51150 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 cost¹ **and**
 2. any capital repayments on a loan or the part of a loan that is a qualifying housing cost² **and**
 3. any amount due on insurance policy premiums for
 - 3.1 the mortgage protection policy itself³ **and**
 - 3.2 buildings insurance for the claimant's home⁴.

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 ESA Regs, Sch 8, para 31 (1)(a); 2 Sch 8, para 31(1)(b); 3 Sch 8, para 31 (1)(c)(i); 4 Sch 8, para 31(1)(c)(ii)

What if only part of a mortgage or loan qualifies as a housing cost

- 51151 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 51160 et seq.

What if the payment from the mortgage protection policy is more than the claimant's housing costs

- 51152 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 in cases
1. 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.** 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 payment¹ **and**
 - 2.2** apply any disregards to the payment received by the claimant².

1 ESA Regs, reg 2(1); 2 Sch 8, para 31(2) & 32(2)

51153 - 51159

Other payments for housing costs

Types of payment disregarded

51160 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 51163 should be disregarded¹. This disregard does not apply to payments under an insurance policy to which DMG 51218 applies.

1 ESA Regs, Sch 8, para 32(1)

51161 If the payment is from a mortgage protection policy the DM should consider the disregards explained in DMG 51150 - 51152 before considering this disregard.

51162 If a payment is made from an insurance policy the DM should decide if the policy was taken out to meet housing costs¹. If the policy was taken out to meet housing costs the DM should consider the disregards at DMG 51150 et seq before any other disregards.

1 R(IS) 13/01

51163 Disregard

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)¹
2. interest payments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount²
3. capital repayments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount³
4. insurance policy premiums for
 - 4.1 mortgage protection policies if the other payments disregarded under this paragraph come from it⁴ **and**
 - 4.2 building insurance policies for the claimant's home⁵
5. other housing costs
 - 5.1 any payment towards
 - 5.1.a service charges **and**
 - 5.1.b ground rent or rentcharge **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 amount⁶

6. rent on the home that is not met by HB⁷
7. accommodation charges⁸ 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 44 for guidance when a service charge can be met as a housing cost.

1 ESA Regs, Sch 8, para 32(1)(a); 2 Sch 8, para 32(1)(b); 3 Sch 8, para 32(1)(c); 4 Sch 8, para 32(1)(d)(i); 5 Sch 8, para 32(1)(d)(ii); 6 Sch 8, para 32(1)(b); 7 Sch 8, para 32(1)(e); 8 NA Act 48, Part III

- 51164 The disregards in DMG 51163 do not apply if the DM decides the payment is an LRP¹.

1 ESA Regs, reg 85

- 51165 If a payment for a housing cost or part of a housing cost has already been disregarded under DMG 51150 - 51152 the payment for the same cost should not be disregarded again under DMG 51163.

How should the DM treat payments for housing costs that also attract other disregards

- 51166 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.

51167 - 51169

Supersessions and payments for housing costs

- 51170 Special rules on the supersession of disregards of payments for housing costs apply in ESA¹. The special rules apply to

1. mortgage protection policies **and**
2. other payments for housing costs.

1 SS CS (D&A) Regs, regs 6(2) & 7(17E)

- 51171 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.

51172 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 reached¹.

1 SS CS (D&A) Regs, reg 7(17F)

51173 The appropriate date in DMG 51172 is the later of

1. the date when¹
 - 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 ESA(IR) for 26 weeks **or**
 - 1.3 new housing costs are awarded at 100% after the claimant has been in continuous receipt of ESA(IR) for 39 weeks **or**
2. the date of the next change in standard interest rate².

1 reg 7(17F)(a); 2 reg 7(17F)(b)

Example

Frank becomes entitled to ESA(IR) 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%.

51174 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.

51175 - 51179

51180 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).

51181 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 change¹.

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.

51182 - 51189

Payments for care home, Abbeyfield Home or independent hospital charges

Introduction

51190 DMG 51191 - 51202 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.

51191 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

51192 In England and Wales a care home means¹ 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 ESA Regs, reg 2(1); Care Standards Act 2000, s 3

51193 In Scotland a care home means¹ 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 ESA Regs, reg 2(1); Regulation of Care (Scotland) Act 2001, s 2(3)

51194 An independent hospital means¹ in

1. England, a hospital that is not a health service hospital as defined in legislation² **or**
2. Wales, a hospital which is not a health service hospital as defined in legislation³ **or**
3. Scotland, an independent healthcare service as defined in legislation⁴.

1 ESA 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

51195 The payments for accommodation may be

1. charitable or voluntary (see DMG 51390 et seq) **or**
2. other payments.

The DM should decide what type of payment is being made.

51196 - 51199

Payments to claimants not in Local Authority sponsored accommodation

51200 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 legislation¹.

Note: This disregard does not apply to charitable or voluntary payments which are fully disregarded - see DMG 51416.

1 NA Act 48, s 26; SW (Scot) Act 68, s 59

51201 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 hospital¹.

1 ESA Regs, Sch 8, para 34

Example

Andrew receives ESA(IR). 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
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The difference between £54.65 and the charge by the hospital is the amount of the disregard.

actual charge	£300.00
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less	£54.65
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The disregard is	£245.35
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Other payments towards accommodation costs

51202 Disregard the amount of the payment intended and used for charges not met by the LA¹ under certain legislation².

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 ESA Regs, Sch 8 para 32(1)(e); 2 NA Act 48, s 26

51203 - 51209

Income fully disregarded

Types of income fully disregarded

- 51210 When calculating income for ESA(IR) disregard fully
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. attendance allowances
 4. certain payments due to be paid before the date of claim
 5. CHB
 6. child maintenance
 7. Christmas Bonus
 8. compensation for loss of HB
 9. concessionary payments
 10. cost of conversion of foreign money
 11. CTB
 12. CTC
 13. dependant's or non dependant's contributions to accommodation and living costs
 14. DLA
 15. discretionary housing payments (DHP's)
 16. Education maintenance allowance
 17. Employment Retention and Advancement (ERA) Scheme payments
 18. EZ, self-employed route
 19. GA

20. gallantry awards
21. HB
22. income frozen abroad
23. income in kind
24. income tax refunds
25. income treated as capital
26. increases in SS benefits for absent dependants
27. jurors' or witnesses' court attendance allowance
28. Mobility supplement
29. ND IAP, expenses and top-up payments
30. payments for foster children
31. payment for a person temporarily in the care of the claimant
32. payments from an LA in lieu of Community Care Services
33. payment by an employer of employee's expenses
34. payment of expenses to voluntary workers and service users
35. payments to help disabled people get or keep employment
36. payments from the SF under SS legislation
37. payments from the Supporting People programme
38. certain payments made under employment and training law
39. payments made under the Return to Work Credit Scheme
40. payments made under the Repayment of Teacher's Student Loans Scheme
41. resettlement benefit
42. special guardianship payments
43. training premium and expenses
44. travelling expenses for training schemes
45. vouchers including child care cheques
46. war widows/widowers, surviving civil partners supplementary pensions
47. welfare foods, NHS supplies, travelling expenses and assisted prison visits.

Note: See DMG 51341 et seq for further guidance on payments listed at 1.1 - 1.8.

51211

Adoption allowance

51212 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

51213 Any adoption allowance paid for a child or young person who is a member of the family is fully disregarded¹.

1 ESA Regs, Sch 8, para 26(1)(a)

Adoption allowances paid other than for a child who is a member of the family

51214 Disregard any payment¹ made under specific legislation² in respect of

1. a child who is not a member of the family **or**
2. the claimant or partner.

See DMG 51215 for adoption allowances in Scotland and Wales.

1 Sch 8, para 26 (2); 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

51215 If an 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 partner¹.

1 ESA Regs, reg 107(4)

Residence orders

Northern Ireland Children Order

51216 Payments made by an authority¹ under specified legislation² are fully disregarded³.

1 Children (NI) Order 1995, art 2; 2 art 15 and Sch 1, para 17; 3 ESA Regs, Sch 8, para 26(1)(c)

Local authority payments for children subject to a residence order

51217 Payments made by a LA under specified legislation¹ are fully disregarded².

*1 Children Act 1975, s 34(6) & 50; Children Act 1989, s 15 & Sch 1, para 15;
2 ESA Regs, Sch 8, para 26(1)(b)*

Credit insurance policies

51218 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

51219 A disregard applies to payments received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on¹

1. a regulated agreement as defined in legislation **or**
2. a hire purchase agreement as defined in legislation **or**
3. a conditional sale agreement as defined in legislation².

Note: The disregard does not apply to insurance policies for qualifying housing costs³. The disregard for these policies is explained at DMG 51150 - 51152.

1, 2 & 3 Sch 8, para 33

51220 If an agreement is a regulated agreement under legislation, the creditor is required by law to state this in the agreement¹. The DM may conclude that

1. if the agreement states that it is regulated under the legislation, then DMG 51219 **1.** is satisfied **and**
2. if the agreement **does not** state that it is regulated under the legislation, then DMG 51219 **1.** is not satisfied.

Note: The DM may depart from these conclusions where the evidence clearly supports another decision.

1 Consumer Credit (Agreements) Regulations 1983

51221 If an agreement is not regulated by legislation¹, the DM should decide on the facts whether it falls within DMG 51219 **2.** or **3.**

1 Consumer Credit Act 1974

51222 A hire purchase agreement is defined in legislation¹ 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)

51223 A conditional sale agreement is defined in legislation¹ 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 fulfilled¹.

1 s 29(1)

Amount of disregard - credit insurance payments made direct to the claimant

51224 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 51219 **and**
2. meet any amount due by way of premiums on the insurance policy itself¹.

1 ESA Regs, Sch 8, para 33(2)

Credit insurance payments made to third parties

51225 The disregard may be applied to notional income that the claimant is treated as possessing under DMG 51226 - 51227¹.

1 reg 109(1)

Credit insurance payments made direct to the creditor

51226 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 51496 et seq).

51227 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 51597. Payments made for items not listed in DMG 51597 should be fully disregarded.

51228 Payments made directly to the claimant that are immediately transferred to the creditor do not fall under the provisions of DMG 51226 - 51227. They should be treated as payments made directly to the claimant.

Jurors or witnesses court attendance allowance

51229 The DM should fully disregard any payment to a

1. juror **or**
2. witness

for attending court. But payments for loss of earnings or benefits¹ should not be disregarded.

1 ESA Regs, Sch 8, para 43

Benefits fully disregarded

Attendance allowances

51230 Disregard in full¹

1. AA²
2. CAA which is paid with a disablement pension because disablement has been assessed at 100%³
3. ESDA paid because industrial disablement has been assessed at 100%⁴
4. CAA and ESDA paid because the claimant is entitled to workmen's compensation⁵
5. an attendance allowance paid under the PB and MDB scheme
6. payments for attendance under the Civilian's Personal Injury Scheme⁶ 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 ESA Regs, Sch 8, para 11; 2 SS CB Act 92, s 64; 3 s 104 or 105; 4 s 104 or 105;

5 Workmen's Compensation Acts 1925 - 1945; SS CB Act, s 111 & Sch 8, para 7(2)(b);

6 Personal Injuries (Civilians) Scheme 83, art 14 - 16, 43 or 44

The meaning of attendance allowance

51231 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 legislation¹ and includes all the benefits in DMG 51230 (abbreviation "AA").

1 ESA Regs, reg 2(1)

Disability living allowance

51232 The DM should fully disregard

1. DLA mobility component¹ **and**
2. DLA care component².

1 ESA Regs, Sch 8, para 8; 2 Sch 8, para 11

CHB, CTC and child dependant increases

51233 The DM should fully disregard any

1. CHB¹
2. CTC²
3. CDIs³ paid with
 - 3.1 CA
 - 3.2 RP
 - 3.3 IB
 - 3.4 SDA
 - 3.5 WMA
 - 3.6 WPA.

1 ESA Regs, Sch 8, para 7(1); 2 Sch 8, para 7(2); 3 Sch 8, para 7(3)

Christmas bonus

51234 Christmas bonus should be disregarded in full¹. It is paid in the week starting with the first Monday in December to people receiving²

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 ESA Regs, Sch 8, para 37; 2 SS CB Act 92, s 148

Compensation for loss of housing benefit

- 51235 The DM should fully disregard any payment made by the Secretary of State to compensate for the total or partial loss of HB¹.

1 ESA Regs, Sch 8, para 42

Council tax benefit

- 51236 The DM should fully disregard any payment of CTB¹. CTB usually reduces the bill sent by LAs but some claimants may receive cash payments.

1 ESA Regs, Sch 8, para 65

Discretionary housing payments

- 51237 LAs may make discretionary housing payments to HB/CTB recipients requiring further financial assistance with their housing costs¹. For ESA purposes discretionary housing payments should be disregarded².

1 Discretionary Financial Assistance Regulations 2001 (S.I. 2001 No. 1167); 2 ESA Regs, Sch 8, para 62

Guardians allowance

- 51238 The DM should fully disregard any GA¹. 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 ESA Regs, Sch 8, para 6

Housing benefit

- 51239 The DM should fully disregard any payments of HB¹ 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 51104 et seq where the claimant is a landlord and receives HB.

1 ESA Regs, Sch 8, para 64

Increases in Social Security benefits and Service Pensions for absent dependants

51240 The DM should fully disregard any increase in a SS benefit¹ or a service pension² for a

1. husband, wife, civil partner or any other adult dependant **or**
2. child

who is not a member of the family for ESA 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 ESA Regs, Sch 8, para 50(1); 2 Sch 8, para 50(2) & The Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, Part 2 or 3

51241 Dependency increases can be paid as part of

1. MA
2. SDA
3. RP
4. US 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

51242 The DM should fully disregard

1. Mobility supplement **and**
2. War Pensioner's Mobility Supplement **and**
3. The mobility component of DLA¹.

Any payment to compensate for the non-payment of these benefits should also be disregarded in full.

1 ESA Regs, Sch 8, para 8 & 10

Payments from the Social Fund under Social Security legislation

51243 The DM should fully disregard any payment made from the SF¹.

Note: This disregard does not apply to payments from the European Social Fund.

1 ESA Regs, Sch 8, para 35

Concessionary payments

Types of concessionary payments that should be disregarded

51244 The DM should fully disregard concessionary payments¹ of

1. Attendance allowances
2. DLA mobility component
3. DLA care component
4. JSA(IB)
5. IS
6. ESA(IR).

1 ESA Regs, Sch 8, para 9

What are concessionary payments

51245 Concessionary payments¹ 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 reg 2(1)

51246 - 51249

Payments under the Supporting People programme

51250 Payments may be made under the Supporting People programme. The DM should fully disregard¹

1. any payment made by
 - 1.1 a LA **or**
 - 1.2 the 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 ESA Regs, Sch 8, para 63

51251 - 51253

Payments for children and people living temporarily with the claimant

Foster children

51254 The DM should fully disregard payments¹ made by or on behalf of

1. a LA under its duty to provide
 - 1.1 accommodation **and**
 - 1.2 maintenancefor a child it is looking after² **or**
2. a voluntary organization under certain legislation³ **or**
3. a LA⁴

for children who are living with claimants under fostering arrangements.

Note: These allowances should not be treated as earnings.

*1 ESA Regs, Sch 8, para 28; 2 Children Act 89, s 23(2)(a); Children (Scotland) Act 95, s 26;
3 Children Act 89, s 59(1)(a); 4 Looked After Children (Scotland) Regulations 2009, regs 33 or 51*

Kinship care

51255 In Scotland an LA may place a child with another person in an arrangement often referred to “Kinship care”¹. Any payment made by the LA to the person providing care should be fully disregarded².

1 Looked After Children (Scotland) Regulations 2009, reg 10; 2 ESA Regs, Sch 8, para 28

Payments for the welfare of children

51256 Certain legislation¹ concerning the welfare of children applies in England, Wales¹ and Scotland². This applies to certain children who are 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*

51257 The DM should fully disregard¹ payments made by LAs under child-care law²

1. to promote the welfare of children **and**
2. to prevent people being taken into care.

*1 ESA Regs, Sch 8, para 30(1); 2 CLC 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 95, s 22, 29 or 30*

51258 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 law¹ 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 fully disregarded².

1 Children Act 1989, s 23C; Children (Scotland) Act 95, s 22 or 29; 2 ESA Regs, Sch 8, para 30 (2) & (3)

Payments for people temporarily in the claimant's care

51259 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 care¹

when payments are made by a LA, HA, a voluntary organization, a primary care trust or the person concerned under specified legislation².

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 do not include payments of HB made in respect of the person concerned.

1 ESA Regs, Sch 8, para 29; 2 NA Act 48, s 26(3A)

51260 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/E¹.

1 ESA Regs, reg 97(2)

51261 - 51262

Payments of expenses

Payment by an employer of employee's expenses

51263 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 employment¹.

1 ESA Regs, Sch 8, para 3

51264 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 51263.

Payment of a voluntary worker's expenses

51265 The DM should fully disregard payments towards expenses incurred and advance payments for expenses to be incurred¹ by a person who

1. does voluntary work for a
 - 1.1 charity **or**
 - 1.2 voluntary organisation **or**
2. is a volunteer².

Note: Volunteers do not have to be engaged by a charitable or voluntary organisation. An LA or a public body cannot be a voluntary organisation³.

1 ESA Regs, Sch 8, para 2; 2 R(IS) 12/92; 3 ESA Regs, reg 2(1)

51266 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.

51267 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 49 for guidance on notional earnings.

Time-exchange schemes

- 51268 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 ESA(IR) purposes it is not voluntary work (which is done without remuneration or expectation of remuneration). The hours worked by the claimant/partner are “banked” with the organisation and accumulate each time they carry out additional work under the “time-exchange” scheme.
- 51269 Payment of expenses to the claimant/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 assessing the award of ESA(IR). This is because participation in “time-exchange” is not volunteering so the treatment of volunteers' reimbursed expenses (see DMG 51265) is not appropriate here.

Service users

- 51270 People who participate in a service user group are often called “service users”. A service user group means¹ 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 Agency² **or**
 2. a landlord authority³ **or**
 3. a public authority⁴ **or**
 4. a best value authority⁵ **or**
 5. in Scotland an LA landlord or registered social landlord⁶ **or**
 6. a relevant English or Welsh health body⁷ **or**
 7. a Local Health Board in Wales⁸ **or**
 8. the Commission or the Office of the Health Professions Adjudicator⁹ **or**
 9. the regulator or private registered provider of social housing for tenants and social landlords¹⁰ **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 nature¹¹.

Note 2: An enactment includes legislation made in or under an Act of the Scottish Parliament¹².

*1 ESA 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 ESA Regs, reg 2(1); 12 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.

51271 Any payment of expenses paid to the claimant as a result of participating in a service user group is fully disregarded¹.

1 ESA Regs, Sch 8, 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 ESA(IR). 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 ESA(IR).

Example 2

Donna is in receipt of ESA(IR). 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 ESA(IR).

51272 - 51273

War widow's, widower's or surviving civil partner's supplementary pensions

51274 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 31.3.73¹ **and**
2. supplementary pension paid to a widow, widower or surviving civil partner under the Personal Injuries (Civilians) Scheme² **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 1.³.

Note: See DMG 51086 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 ESA Regs, Sch 8, para 49; 2 Sch 8, para 51; 3 Sch 8, para 52

Other types of income fully disregarded

Certain payments due before the date of claim

- 51275 The DM should fully disregard any payment of income that
1. is due to be paid before the date of claim for ESA **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 source¹.

1 ESA Regs, Sch 8, para 38

Payments for a reduction in council tax

- 51276 The DM should disregard in full¹ any payment made because of a reduction of CT because of transitional relief² when the tax was introduced.

1 Sch 8, para 44; 2 LGF Act 92 s 13 or 80;

Dependant's or non-dependant's contributions to accommodation and living costs

- 51277 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. subtenants¹.

1 ESA Regs, Sch 8, para 19

Example

Michael receives ESA(IR). 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

- 51278 The DM should fully disregard¹ any payment paid under prescribed legislation² 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 Sch 8, para 13(1)(a) & (b); 2 Education Act 1996, s 518; Ed (Scot) Act 80, s 49, 73ZA & 73(f); F & HE (Scot) Act 1992, s 12(2)(c); Education Act 2002, s 14 & 181

Other payments to assist with non-advanced education

51279 The DM should fully disregard¹ any payment paid under prescribed legislation² 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 51278 above.

Note: Such payments may include, for example, payments to cover scholarships or school expenses.

1 ESA Regs, Sch 8, para 13(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

51280 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.

51281 Any special guardianship payment made under specific legislation¹ in respect of a child or young person who is a member of the family should be fully disregarded².

1 Children Act 1989, s 14F; 2 ESA Regs, Sch 8, para 26(1)(d)

Repayment of teacher's student loans scheme

51282 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.

51283 Any payment made to a claimant under specific legislation¹ for the repayment of a teacher's student loan should be fully disregarded².

1 The Education (Teacher Student Loans) (Repayment etc.) Regs, reg 11(2); 2 ESA Regs, Sch 8, para. 14

51284 - 51289

Employment retention and advancement scheme

- 51290 The ERA scheme¹ involves a study of different methods to help people stay in work and improve their career prospects including financial incentives known as ERA payments. People eligible for ND25+, ND for Lone Parents and people receiving WTC can volunteer to participate in the scheme.

1 E & T Act 73, s 2

Disregard

- 51291 The DM should fully disregard¹ any ERA payment.

Note: The disregard for payments made under employment and training law is fully explained at DMG 51313 - 51315.

1 ESA Regs, Sch 8, para 15

Employment zones and self-employed route

Discretionary payments in employment zones

- 51292 Claimants who have participated in an EZ programme may receive discretionary payments by the EZ contractor. Payments may be made by way of a fee, grant, loan or otherwise. These payments should be disregarded¹.

1 Sch 8, para 59

Subsistence allowance

- 51293 A subsistence allowance is¹ an allowance paid by an EZ contractor to a person taking part in an EZ programme. Where the amount of subsistence allowance paid to a person in a benefit week exceeds the amount of JSA(IB) they would have received in that benefit week less 50p, then the excess amount of subsistence allowance is disregarded².

1 reg 2(1); 2 Sch 8, para 58

Self-employment route

- 51294 Disregards are available for participants in the self-employment route. Any payments 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 out 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 his business¹.

In order for this disregard to apply, the payments have to be paid to the participant from the special account².

1 Sch 8, para 55(1); 2 Sch 8, para 55(2)

Cost of conversion of foreign money

51295 The DM should fully disregard any

1. bank charges **or**
2. commission

paid when income paid in foreign currency is converted to sterling¹.

1 ESA Regs, Sch 8 para 25

Example

Klaus claims ESA.

He receives a pension of 200 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

51296 The DM should fully disregard any gallantry awards¹. 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 Sch 8; para 12

Income frozen abroad

51297 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 abroad¹. Income will usually be frozen when the foreign country does not allow its currency to be transferred to the UK.

1 Sch 8, para 24

Income in kind

51298 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 income¹ **and**
3. 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 claimant².

Note 1: Credits received from participating in a LETS scheme (see DMG Chapter 50) are not income in kind. Credits should be taken into account in the appropriate way.

Note 2: See DMG 51397 for the treatment of concessionary coal.

1 ESA Regs, Sch 8, para 22(1); 2 Sch 8, para 22(4)

Example 1

Karen is entitled to ESA(IR). Her mother works in a shop and the shop owner gives the mother £10 of groceries each week for Karen.

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 Karen's mother £10 a week to buy groceries for Karen.

Karen's mother uses the £10 to buy food each week for Karen.

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.

51299 The exceptions at DMG 51298 do not apply¹ 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 Sch 8, para 22(2) & (3)

51300 - 51309

Income treated as capital

51310 The DM should fully disregard as income any income that is treated as capital¹.

1 ESA Regs, Sch 8, para 36

Jurors or witnesses court attendance allowance

51311 The DM should fully disregard any payment to a

1. juror **or**
2. witness

for attending court. But payments for loss of earnings or benefits¹ should not be disregarded.

1 Sch 8, para 43

Payments in lieu of community care services and payments in lieu of health care

51312 The DM should disregard any payments which are made

1. under relevant legislation¹ **and**
2. in lieu of²
 - 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 ESA Regs, Sch 8, para 53

Example

Agnes is in receipt of ESA(IR). 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

51313 DMs should disregard¹ any payment made under employment and training law² except any payment³

1. made as a substitute for ESA or for JSA
2. of a bridging allowance paid under specific legislation⁴

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 ESA Regs, Sch 8, para 15; 2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2; 3 ESA Regs, Sch 8, para 15(1); 4 E & T Act 73, s 2(3); Enterprise and New Towns (Scotland) Act 1990, s 2(5)

51314 Payments made under employment and training law¹ include

1. training allowances paid to young people in non-waged work based training (see DMG Chapter 49)
2. ND allowances
3. allowances for people on WBLA
4. Career Development Loans (see DMG 51440 - 51449)
5. ERA payments (see DMG 51290)
6. return to work credit scheme (see DMG 51317)
7. in work credit
8. lone parent in work credit.

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

51315 Living expenses to be taken into account as income are any amount for

1. food
2. ordinary clothing or footwear¹ (see DMG 51599 - 51600)
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 liable².

1 ESA Regs, Sch 8, para 15(3); 2 Sch 8, para 15(2)

Payments to help disabled people get or keep employment

51316 The DM should fully disregard payments made under certain legislation¹ to help disabled people get or keep employment². 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 51313 - 51315.

1 Disabled Persons (Employment) Act 44; 2 ESA Regs, Sch 8, para 48

Return to work credit scheme

51317 Any payment made under the return to work credit scheme is fully disregarded¹. The scheme has been set up under employment and training law² for people who stop claiming a specified benefit³ 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 51313 - 51315.

1 ESA Regs, Sch 8, para 15; 2 E & T Act 73, s 2;

3 SS (Incapacity Benefit Work-focused Interviews) Regulations 2003, reg 2

Discretionary payments for special needs

51318 A payment should be disregarded¹ if it is

1. discretionary **and**
2. made
 - 2.1 under employment and training law² **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 51916 (student income).

1 ESA Regs, Sch 8, para 15; 2 E & T Act 73, s 2

51319 - 51329

Vouchers (including child care cheques)

51330 The DM should fully disregard, in accordance with DMG 51298, 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 disregard¹ (See DMG 49129 for vouchers treated as earnings).

1 ESA Regs, Sch 8, para 22

51331 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

51332 The DM should fully disregard

1. payments made under specific legislation for healthy start vouchers, free milk and vitamins¹ **and**
2. refunds for
 - 2.1 NHS glasses **and**
 - 2.2 dental treatment **and**
 - 2.3 patients' travelling expenses made under specific legislation or any similar payments made by the Secretary of State for Health² **and**
3. payments made by the Secretary of State for Justice or the Scottish Ministers for travel, accommodation and BL costs for assisted prison visits³.

1 ESA Regs, Sch 8, para 46; 2 Sch 8, para 45; 3 Sch 8, para 47

Work- related activity

51333 Any payment made to the claimant in respect of any travel or other expenses

1. incurred **or**
2. to be incurred

due to a requirement to take part in WRA is fully disregarded¹.

1 ESA Regs, Sch 8, para 15A

The child maintenance disregard

51334 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 income¹. LRPs which do not also fall within the meaning of child maintenance should be taken into account as LRPs². DMG 51617 et seq provides guidance on LRPs.

1 ESA Regs, Sch 8, para 60; 2 reg 119

Meaning of child maintenance

51335 A payment of child maintenance is¹ 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 law² **or**
 - 2.3 a court order **or**
 - 2.4 a consent order **or**
 - 2.5 a maintenance agreement registered with the Scottish courts³.

1 ESA Regs, Sch 8, para 60(2); 2 Child Support Act 1991; Child Support (Northern Ireland) Order 1991;

3 Books of Council and Session; Sheriff Court Books

Applying the disregard

51336 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 LR¹. DMG 51642 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 immigration².

1 ESA Regs, Sch 8, para 60(1); 2 Sch 8, para 60(2)

Example

Betty is in receipt of ESA(IR) and has 2 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 ESA(IR). This is because the payment falls within the meaning of child maintenance and so has to be fully disregarded.

51337

Child or young person attending educational establishment

51338 Payments made to an educational establishment for a child or young person who is a member of the claimant's family by or on behalf of a third party or by a member of the family out of funds contributed for that purpose by a third party are fully disregarded¹. 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). The DM should consider if deprivation of capital has occurred in cases where tariff income is taken into account.

1 ESA Regs, Sch 8, para 27

51339 - 51340

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

What is the Independent Living Fund (2006)

- 51341 The Independent Living Fund (2006) is a charitable trust set up by the Secretary of State to provide money to help disabled people live independently. It replaced the Independent Living (1993) Fund and the Independent Living (Extension) Fund.

Income from the Independent Living Fund (2006)

- 51342 Fully disregard¹ 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 ESA Regs, Sch 8, para 41

What is the Fund

- 51343 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

- 51344 Fully disregard¹

1. any income from the Fund **and**
2. any income from capital that was received from the Fund.

1 Sch 8, para 41(1)

What is the Eileen Trust

51345 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

51346 Fully disregard¹

1. any income from the Eileen Trust **and**
2. any income from capital that was received from the Eileen Trust.

1 ESA Regs, Sch 8, para 41(1)

What are the Macfarlane Trusts

51347 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.

51348 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

51349 Fully disregard¹

1. any income from the Macfarlane Trusts **and**
2. any income from capital that was received or derived from the Macfarlane Trusts.

1 ESA Regs, Sch 8, para 41(1)

What is the Skipton Fund

51350 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 provisions¹.

Note: Payments from the Skipton Fund will be payments of capital (see DMG Chapter 52).

1 reg 2(1)

The London Bombings Relief Charitable Fund

51351 The London Bombings Relief Charitable Fund¹ 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 52).

1 reg 2(1)

MFET Limited

51352 MFET Limited¹ 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 reg 2(1)

Income from MFET Limited

51353 Fully disregard¹

1. any income from MFET Limited **and**
2. any income from capital that was received from MFET Limited.

1 Sch 8, para 41(1)

51354 - 51359

Payments from money which came from the Trusts

Meaning of the Trusts

- 51360 "The Trusts"¹ 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 ESA Regs, Sch 8, para 41(7)

What payments should be disregarded

- 51361 Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 51362 - 51385. 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

- 51362 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

- 51363 In this guidance a qualifying person means¹ 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 51362.

1 reg 2(1)

Payments by a qualifying person or person with HIV to partners, children and young people

51364 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 died¹ **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 family².

Note: DMG 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(2)(a); 2 Sch 8, para 41(2)(b) & (c)

Payments by the partner or former partner of the qualifying person or person with HIV

51365 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.

51366 This disregard applies if the payment is made to or for the benefit of

1. the qualifying person or person with HIV¹ **or**
2. any child or young person² 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 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(3)(a); 2 Sch 8, para 41(3)(b) & (c)

Payments by a qualifying person or person with HIV to parents, step parents or guardians

51367 Fully disregard any payment from a Trust payment by a qualifying person or person with HIV to their

1. parent **or**
2. step parent¹ **or**
3. guardian² 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 Sch 8, para 41(4)(b)(i); 2 Sch 8, para 41(4)(b)(ii)

51368 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 family¹.

Note: DMG 51379 explains for how long the payment is disregarded.

1 Sch 8, para 41(4)(a)

51369 - 51374

Payments from the estate of a qualifying person or person with HIV to a parent, step parent or guardian

51375 Fully disregard any payment from the estate of a qualifying person or person with HIV to

1. a parent **or**
2. a step parent¹ **or**

3. a guardian² 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 ESA Regs, Sch 8, para 41(5)(b)(i); 2 Sch 8, para 41(5)(b)(ii)

51376 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 family¹.

Note: DMG 51380 explains for how long the payment is disregarded.

1 Sch 8, para 41(5)(a)

For how long should the payment be disregarded

Payments to a qualifying person or person with HIV and partners

51377 Disregard payments made to or for the benefit of

1. a qualifying person or person with HIV¹ **or**
2. the partner or former partner of a qualifying person or person with HIV²

for the lifetime of the person who received the payment. Breaks in entitlement to ESA(IR) do not alter this disregard.

1 Sch 8, para 41(3)(a); 2 Sch 8, para 41(2)(a)

Payments to children and young people

51378 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 of¹
 - 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 ESA(IR) claimant's family.

1 ESA Regs, Sch 8, para 41(2)(b) & (c) & 41(3)(b) & (c)

Payments to parents and guardians from a qualifying person or person with HIV

51379 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 dies¹.

Note: In some cases this disregard may last for the length of the ESA claim, because the person with HIV may not die whilst the claimant is on ESA(IR).

1 Sch 8, para 41(4)

Payments to parents and guardians from the estate of a qualifying person or person with HIV

51380 Disregard¹ 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 Sch 8, para 41(5)

Deciding if a disregard applies

51381 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.

51382 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

51383 If a Trust payment is invested with other money to produce an income, disregard only the proportion that came from the trust payment¹.

1 ESA Regs, Sch 8, para 41(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

51384 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

51385 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.

Note: See DMG Chapter 39.

51386 - 51389

Payments with special rules

Charitable and voluntary payments

What are charitable payments

51390 A charitable payment is a payment made under a charitable trust¹. 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

51391 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.

51392 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

51393 A voluntary payment is a payment that

1. has a benevolent purpose **and**
2. is given without anything being given in return¹.

Note: Voluntary payments should not be confused with payments to volunteers.

Guidance on payments to volunteers is given at DMG 49210.

1 R(IS) 4/94

51394 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.

51395 The DM should consider

1. the background to **and**
2. reasons for

the payment when deciding if it is voluntary.

Example 1

Jim claims ESA. 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 ESA 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 ESA. She receives a payment of £10.00 a week from her former employer.

The payment of £10.00 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

- 51396 A relevant payment¹ for the purposes of the disregard at DMG 51416 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 51408)
 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 occurred²

1 ESA Regs, Sch 8, para 16(3); 2 Malekout v. Secretary of State for Work & Pensions [2010] EWCA Civ 162

Certain types of payments

Cash in lieu of concessionary coal

- 51397 Payments originally made by British Coal to
1. retired miners **and**
 2. widows of retired miners
- in lieu of concessionary coal are not voluntary¹. 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

- 51398 Treat civil list pensions as voluntary payments. They are
1. paid at the discretion of the Queen **and**
 2. voted annually by Parliament.

51399 They are awarded for distinguished service to the nation in

1. the arts
2. science
3. literature.

51400 - 51404

Payments from trust funds

51405 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.

51406 Income from any trust fund set up with money from a personal injury award is treated in the same way. DMG 51416 gives guidance on the disregard appropriate to relevant personal injury trust payments.

Structured settlements

51407 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 income¹ which fall within the definition of relevant payment at DMG 51396.

1 ESA Regs, reg 105(5)

Children's Memorial Trust

51408 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.

51409 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 51416 - 51418 gives guidance on the disregard appropriate to relevant personal injury trust payments.

51410 - 51412

Regular charitable or voluntary payments

What are regular payments

51413 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 49209 - 49211.

51414 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

51415 A payment is due to be paid where there is a promise or agreement to make a payment.

Disregard for relevant payments

51416 Fully disregard¹ any relevant payment unless one of the exceptions at DMG 51417 - 51418 apply.

1 ESA Regs, Sch 8, para 16(1)

Relevant payments that should be taken fully into account

51417 The disregard in DMG 51416 does not apply to

1. LRPs¹ **or**
2. maintenance, that is not an LRP for
 - 2.1 a member of the family **or**
 - 2.2 a former partner **or**
 - 2.3 the childrenof the person making the payment² **or**
3. a student's covenant or grant income³.

1 reg 85; 2 Sch 8, para 16(3)(a); 3 reg 135

Relevant payments paid in kind

51418 Fully disregard relevant payments that are paid in kind¹ unless one of the exceptions at DMG 51298 applies. The exceptions at DMG 51298 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 51299.

1 ESA Regs, Sch 8, para 22

51419 - 51424

Capital treated as income

Capital payable by instalments

51425 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 list is not exhaustive.

Example

Eve 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 52). The terms of the bond allow Eve to withdraw money on a monthly basis which reduces the surrender value of the bond. The DM decides that the money Eve receives is capital payable by instalments.

51426 Add¹

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 ESA(IR) 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 ESA Regs, reg 105 & 110

51427 - 51429

When is an instalment treated as capital

51430 DMs should make the calculations in DMG 51425 - 51426 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

- 51431 Treat any payment from an annuity as income¹. An annuity is an investment which produces an annual sum of money². Payments may be made monthly or quarterly as well as yearly.

1 ESA Regs, reg 105(2); 2 R(IS) 10/01

51432 - 51439

Career development loans

What is a career development loan

51440 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

51441 A career development loan should be treated as income¹. The DM should disregard any income from a career development loan² that is not intended to cover living expenses. The disregard applies for the period of education or training supported by the loan³. 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 51442).

1 ESA Regs, reg 105(4); 2 E & T Act 73, s 2; 3 ESA Regs, Sch 8, para 15

Note: The main disregard for payments made under employment and training law is explained at DMG 51313.

Living expenses

51442 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 51446)
3. fuel for the claimant's household
4. rent for which HB is payable
5. housing costs included in the applicable amount¹
6. CT or water charges for which the claimant or member of the family is liable².

1 reg 67(1)(c); 2 Sch 8, para 15(2)

51443 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.

51444 - 51445

Ordinary clothing and footwear

51446 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 boots¹.

Note: The DM should consider the wide needs of all claimants when applying the test of “for normal daily use”.

1 ESA Regs, reg 2(1)

Example

Ross is in receipt of ESA(IR). 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

51447 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 loan¹. The income from the loan should be taken into account even if the person does not complete the period of education or training.

1 reg 91(3)

51448 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 48) **and**
2. in some cases, only part of the income will overlap a benefit week (see DMG Chapter 48).

51449 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 completed¹.

1 ESA Regs, Sch 8, para 15(1)(c)

Example 1

Alice is in receipt of ESA(IR). Her benefit week ends on a Monday. On 29 September she starts a one year course for which she received a career development loan of £3,000. The course ends on 26 June the next year. 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 September to 26 June, a total of 271 days. The loan is taken into account as follows

BWE 29 September £4.43 is taken into account (see DMG Chapter 48). 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 October to 22 June £31.00 is taken into account (Chapter 48)

$$\frac{£1,200}{271} \times 7 \text{ days} = £31.00$$

BWE 29 June £17.72 is taken into account (Chapter 48). 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 ESA(IR). Her partner, Alistair starts a one year F/T course for which he receives a career development loan. The course starts on 29 September and ends on 26 June the next year. 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 September to 26 June.

On 10 December 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 June as this is the period intended to be supported by the loan.

51450 - 51455

Notional income

Notional income - general

What is notional income

51456 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

51457 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.

Actual and notional income

51458 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

51459 Calculate notional income in the same way as actual income¹. The income should be taken into account using normal rules, including applying any appropriate disregard.

1 ESA Regs, reg 109(1)

Notional income - tasters

51460 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 account¹. This is because a taster is an employment or training programme for which no training allowance is payable.

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 ESA Regs, reg 108(4)(b)

Liabile relative payments

51461 The guidance in DMG 51469 - 51614 does not apply to LRPs¹.

1 ESA Regs, reg 85

Service users

51462 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 group¹. 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 (see DMG 51270).

1 ESA Regs, reg 106(9), 107(8) & 108(5)

51463 - 51468

Deprivation of income

51469 DMs should treat claimants as receiving income that they have deprived themselves of for the purpose of gaining entitlement or increasing the amount of ESA(IR)¹, IS or JSA(IB).

1 ESA Regs, reg 106(1)

Meaning of deprive

51470 The word deprive is an ordinary English word. Its meaning is not a question of law. It should be given a normal everyday meaning¹.

1 R(SB) 38/85

51471 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 income¹.

1 R(SB) 40/85

51472 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.

51473 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 ESA(IR), IS or JSA(IB). 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 ESA(IR)¹, IS or JSA.

1 R(SB) 12/91

Questions for consideration

51474 The DM should consider the questions in DMG 51484 - 51488 where claimants seem to have deprived themselves of income.

Was it the claimant's income

51475 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 award of benefit), the DM should presume the income belongs to the claimant.

51476 - 51480

51481 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

51482 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 ESA(IR). 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.

51483 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 income¹.

1 R(SB) 38/85

Was the purpose of the deprivation to get or increase the amount of ESA(IR), IS or JSA(IB)

51484 There may be more than one reason for a person disposing of an income. Only one of those reasons might be getting or increasing ESA(IR)¹, IS or JSA(IB).

1 R(SB) 38/85

51485 Getting or increasing ESA(IR), IS or JSA(IB) need not be the most important reason for disposing of an income but it must be a significant reason¹.

1 R(SB) 40/85

51486 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.

51487 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 ESA(IR), IS or JSA(IB) the DM should calculate a notional income.

Timing of the disposal of income

51488 DMs should carefully consider the timing of a disposal of income as a claim for ESA(IR), IS or JSA(IB) made shortly after the disposal of an income may indicate that getting or increasing ESA(IR), IS or JSA(IB) was a significant reason for the disposal. A claim for ESA(IR), IS or JSA(IB) made a long time after the disposal of an income is less likely to indicate that getting or increasing ESA(IR), IS or JSA(IB) was a significant reason for the disposal. But if there is evidence that a claimant was considering claiming ESA(IR), IS or JSA(IB) at a later date, deprivation may still have been for getting or increasing benefit.

Example

Rosemary transfers a payment from an annuity to her daughter by deed of gift. A month later, after her entitlement to SSP ends, she claims ESA. The DM decides that Rosemary deprived herself of the income and that the need to claim ESA at a later date was an important factor in the deprivation.

51489 - 51495

Income available on application

General

51496 DMs should treat an income that

1. would be paid to the claimant or partner if applied for **and**
2. has not been applied for¹

as notional income.

1 ESA Regs, reg 106(2)

What types of income should not be treated as notional income available on application

51497 The DM should not take into account as notional income available on application

1. income payable under a discretionary trust fund¹
2. income from a trust set up using money paid because of a personal injury²
3. ESA³
4. JSA⁴
5. WTC⁵
6. CTC⁶
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)⁷
8. an award of damages for personal injury which is administered by the court⁸
9. a rehabilitation allowance made under specified legislation⁹
10. a student loan where
 - 10.1 the full amount of the loan has not been made in respect of that full academic year **and**
 - 10.2 the educational institution has confirmed in writing that the student has suspended their course due to
 - 10.2.a a health condition **or**
 - 10.2.b disability **and**
 - 10.3 the student is incapable of continuing the course¹⁰.

*1 reg 106 (2)(a); 2 reg 106 (2)(b); 3 reg 106 (2)(c); 4 reg 106 (2)(d); 5 reg 106 (2)(e); 6 reg 106 (2)(f);
7 reg 106 (2)(g); 8 reg 106 (2)(h) & Sch 9, para 43(1)(a) & 43(2)(a) or 44(a);
9 E & T Act 73, s 2; ESA Regs, reg 106(2)(j); 10 reg 106(2)(gb)*

51498 Apply any appropriate disregards to notional income¹. Do not take into account any income that would be fully disregarded but has not been applied for.

1 reg 109(1)

51499 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 ESA. She is sick as a result of an industrial accident but has not claimed Dis B. The DM decides that there are doubts about whether Claudette satisfies the conditions for claiming Dis B. Dis B is not taken into account as income available upon application.

What types of income should be taken into account

51500 All types of income, except those mentioned in DMG 51497, 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

51501 Take into account income available on application from the date it could be expected to be received if an application was made¹.

1 ESA Regs, reg 106(2)

51502 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 ESA(IR) 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 61 and receives ESA(IR). 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 62.

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.

51503 - 51505

Income from an unadministered estate

51506 The DM may decide that a person should be treated as receiving notional income from the estate of a dead person.

51507 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 or in Scotland applying for Confirmation as executor-dative.

51508 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.

51509 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.

51510 Usually the DM should wait for a year after the

1. granting of probate or letters of administration or in Scotland a grant of confirmation **or**
2. the deceased person's death if a grant of probate or administration or in Scotland a grant of confirmation has not been made

before referring the case to DMA Leeds.

51511 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.

51512 - 51515

Notional income - carer's allowance

51516 DMG 51517 - 51528 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

51517 If carers do something that means CA stops being paid, this is deprivation of income¹. 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 considered².

1 & 2 ESA Regs, reg 106(1)

51518 A carer should be treated as possessing income where CA has been given up for the purpose of gaining entitlement to, or increasing the amount of ESA¹ for the carer, the carer's partner or any other member of the carer's family (see DMG Chapter 43).

Note: The carer does not have to be the ESA claimant.

1 reg 106(1)

51519 Carers should **not** be treated as possessing CA which they have given up solely to secure or increase ESA(IR) for someone who is **not** a member of the ESA(IR) family. In these circumstances DMs should consider whether DMG 51525 applies.

51520 Guidance on establishing the purpose of a deprivation is at DMG 51482 et seq. DMs should note that it is not enough that securing or increasing ESA(IR) is a natural consequence of giving up CA. A positive intention to secure or increase ESA(IR) has to be shown¹.

1 R(SB) 9/91, para 8

51521 - 51524

Income available on application

51525 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 51496 et seq)¹.

1 ESA Regs, reg 106(2)

51526 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 51499 et seq.

Income due but not paid

51527 CA should not be assumed under this rule¹. CA is an exception (see DMG 51564 4.8)².

1 & 2 reg 106(2)

Notional income and changes in circumstances

51528 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 payment¹. 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 51518.

Note: This applies to notional income under either DMG 51518 or 51526.

1 reg 109(1)

51529 - 51534

Personal and occupational pensions

General

51535 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.

51536 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 SPC¹. The weekly amount of any notional income to be taken into account should be calculated as if it is actual income².

1 ESA Regs, reg 106(2)g; 2 reg 109(1)

What is a personal pension

51537 A personal pension is a pension scheme that¹ is not an occupational pension scheme **and** is established by a person within specified finance legislation².

1 reg 2(1); PS Act 93, s 1; 2 Finance Act 2004, s 154(1)

What is an occupational pension

51538 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 cases¹.

1 ESA Regs, reg 2(1)

Pension Protection Fund

51539 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

51540 Where reference is made to a pension fund holder, this means the

1. trustee **or**
2. manager **or**
3. administrator

of a personal pension scheme¹.

1 ESA Regs, reg 2(1)

Who is a person who derives entitlement

51541 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

51542 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 application¹.

1 reg 115(2)(d)

Information and evidence

51543 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 Government¹. DMs must consider evidence from pension fund holders when deciding the amount of notional income². 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 ESA Regs, regs 106, reg 6 & 7

51544 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.

51545 - 51550

Notional income - schemes where income withdrawal is allowed

When should a person be treated as having notional income

51551 Treat a claimant, who has reached the qualifying age for SPC or over as having¹

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 ESA Regs, reg 106 (3)

Amount of notional income

51552 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

51553 Take notional income into account from the date that the person could expect to get the income if an application was made¹. 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 reg 106 (3)

Example

Bernard receives ESA(IR). 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

51554 Treat a claimant who has at least reached the qualifying age for SPC as having income when¹ 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 law². 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 ESA Regs, reg 106(4); 2 PS Act 93

Amount of notional income

51555 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 withdrawal¹.

1 ESA Regs, reg 106(7)

From what date should the DM take notional income into account

51556 Take notional income into account from the date that the person could expect to get the income if an application was possible¹. 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 ESA Regs, reg 106(5)

Example

Mark receives ESA(IR). His partner Fiona is 61. On 1 November the DM receives evidence that Fiona is entitled to money purchase benefits under an occupational pension scheme.

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

51557 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.

51558 - 51562

Income due but not yet paid

51563 Treat income

1. that is due to the claimant or partner **and**
2. has not been paid

as belonging to that person¹. This does not apply to the income listed in DMG 51564.

1 ESA Regs, reg 107(1)

Income that should not be taken into account if due but not paid

51564 DMs should not take certain income into account, even though it may be due but not paid. That income is

1. earnings which are due on termination of employment by reason of redundancy¹
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 injury² **or**
4. payments, including increases for dependents, of
 - 4.1 IB
 - 4.2 MA
 - 4.3 WB
 - 4.4 BA and WPA
 - 4.5 RP
 - 4.6 AA
 - 4.7 SDA
 - 4.8 CA
 - 4.9 DLA
 - 4.10 Dis B
 - 4.11 REA
 - 4.12 WDisP and WWP that is not paid as a gratuity and any payment that the DM accepts is similar
 - 4.13 Training allowance
 - 4.14 EU benefits
 - 4.15 JSA(Cont)

which are normally recovered from or reduced by the amount of ESA(IR) that has been paid because they have not been paid when they were due)³ **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 resources⁴ **or**

5.2 have insufficient resources to meet in full the scheme's liabilities to its beneficiaries⁵.

Note: Any benefit in the form of a grant, gratuity or widows payment should not be taken into account if due but not paid⁶. These payments should normally be treated as capital.

*1 ESA Regs, reg 107(2)(c); 2 reg 107; 3 reg 107(1) (b); 4 reg 107(2);
5 reg 107(2)(b); 6 SS (POR) Regs, reg 8(1) & 9*

51565 "Resources" in DMG 51564 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.

51566 - 51568

Types of income that may be due but not paid

51569 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

51570 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 entitlement¹.

1 R(IS) 4/93

51571 - 51575

Payments of income to third parties

51576 The DM should apply special rules to income paid to a third party¹. The treatment of third party income² depends on whether it is

1. paid to the claimant and partner **and**
2. how it is used.

1 ESA Regs, reg 107(3); 2 R(IS) 4/01

51577 The special rules in DMG 51580 - 51586 apply when

1. a third party receives a payment for the claimant or their partner **or**
2. a claimant receives a payment for a third party.

Note: DMG Chapter 49 gives guidance about Fine Payment Work. The rules in DMG 51576 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

51578 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 the claimant or their partner
2. claimants and partners.

51579 DWP may make payments direct to provide for a person's participation on an Employment Programme or a training scheme. These payments are not taken into account as notional resources under third party rules. This applies to both income and capital payments¹.

1 ESA Regs, reg 107(5)(c) & 115(5)

Meaning of payment in respect of a person

51580 Payment includes a part of a payment¹. A payment can be made “in respect” of a person even if it is not made specifically or solely for that person.

1 reg 2(1)

Example

A company decides to sponsor adult learners at a local university by paying £5,000 towards their fees.

Half way through the year Candy, whose husband receives ESA(IR), starts attending the university.

Even though the payment was not specifically for Candy she is now a member of the group for which it was made.

The payment, therefore, is made for Candy.

51581 If pension payments are made to a third party such as a trustee in bankruptcy, the payment is made in respect of¹ 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 receives ESA(IR). 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.

51582 - 51584

Income paid to the claimant or partner for the other person

51585 An income paid to either the claimant for their partner or to the partner for the claimant should be treated as the income of the person it is paid for.

Example

Graham receives ESA(IR). His partner Margaret receives a payment from a trust fund for Graham.

The DM treats the payment as being Graham's income.

Income paid to a third party for the claimant or partner

Benefit paid to a third party

51586 Benefit for the claimant or a partner may be paid to a third party.

The following benefits should be treated as the income of the claimant or partner

1. SS benefits
2. SSP
3. SMP
4. a benefit under the WC (Supp) Scheme
5. a benefit under the PB and MDB Scheme
6. WDisP
7. WWP, War Widower's Pension or Surviving Civil Partner's War Pension

8. a pension paid to a forces widow or surviving civil partner under specific provisions¹ **or**
9. another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen.

if the third party pays it to or uses it on behalf of the claimant or partner².

1 Armed Forces (Pensions and Compensation) Act 2004; 2 ESA Regs, reg 107(3);

Example

Simon is entitled to ESA(IR). His wife Janet lives with him. Janet receives money from a benevolent fund from a former employer. Her employer pays the money to Janet's mother as Janet is unable to manage her financial affairs. Janet's mother gives the money to Simon. The DM treats the money as Janet's income.

Training payments to third parties

51587 A payment should not be treated as notional income under the third party payment rule where it is made

1. under certain legislation¹ **and**
2. for a person's participation in a qualifying course².

1 E & T Act 73, s 2; 2 ESA Regs, reg 107 (5)(c)(iv)

Income payments to a third party

51588 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 their partner **and**
 - 1.3 under relevant legislation¹ **and**
 - 1.4 in respect of the claimants participation in the IAP
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 ESA(IR) **or**
 - 2.5 rent for which HB is payable **or**
 - 2.6 water charges for which the claimant or partner is liable **or**
 - 2.7 CT for which the claimant or partner is liable².

1 E & T Act 73, s 2; 2 ESA Regs, reg 107(5)(c)(iii)

Other payments to a third party

51589 Except where DMG 51590 - 51592 apply, a claimant is treated as possessing certain payments paid to a third party in respect of¹ (see DMG 51581) the claimant or partner. These payments are

1. occupational pensions and payments from the Pension Protection Fund
2. pensions or any other periodical payments under a personal pension scheme².

1 R(IS) 2/03; 2 ESA Regs, reg 107(3)(b)

51590 A claimant is not treated as possessing a payment under DMG 51589 where¹

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

51591 A claimant is not treated as possessing a payment under DMG 51589 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 their partner has actual or notional income apart from that payment¹.

1 ESA Regs, reg 107(5)(d)

51592 A claimant is also not treated as possessing a payment under DMG 51589 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 their partner has actual or notional income apart from that payment¹.

1 reg 107(5)(d)

51593 - 51596

51597 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 claimant or partner for whom it is payable, to the extent it is used for that person's¹

1. food
2. ordinary clothing or footwear
3. fuel, for the household that the claimant normally occupies
4. accommodation costs covered by ESA(IR)
5. rent for which HB is payable
6. water charges for which the claimant or partner is liable
7. CT for which the claimant or partner is liable.

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 ESA Regs, reg 107(3)(c)

51598 Disregard the payment to the third party¹

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 legislation². 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 reg 107(5)(a); 2 The Coal Industry Act 94, s 19(1)(a); ESA Regs, reg 107(5)(b)

Meaning of ordinary clothing or footwear

51599 The expression "ordinary clothing or footwear" means¹ 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 reg 2(1)

51600 The DM should consider the wide needs of all claimants when applying the test of “for normal daily use”.

Example 1

Geeta receives ESA(IR). She receives a payment from a local charity to buy wellington boots for herself.

The DM decides that as it would be unreasonable for Geeta to wear wellington boots in all weather conditions they are not for normal daily use.

Example 2

Emma receives ESA(IR). She receives a payment for orthopaedic shoes.

The DM decides that orthopaedic shoes may be normal for Emma but are not normal for adults in general. The DM decides that the orthopaedic shoes are not for normal daily use.

Example 3

Rosalind receives ESA(IR). She receives a payment for an ordinary pair of shoes. The DM decides that the shoes are for normal daily use.

Payments by a third party for care home, Abbeyfield Home or independent hospital charges

51601 Treat payments made by a third party, who is not the claimant or a member of the claimant’s family, towards the cost of charges for a

1. care home **or**
2. Abbeyfield Home **or**
3. independent hospital

for the claimant or partner as the income of the claimant or partner¹.

1 ESA Regs, reg 107(6)

51602 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 income¹.

1 reg 109

51603

Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance

51604 A payment is disregarded¹ if it is

1. made for
 - 1.1 after-care under specified legislation² **or**
 - 1.2 accommodation or welfare services referred to in specified legislation³
and
2. treated as possessed under the notional income rule at DMG 51601⁴.

*1 ESA Regs, Sch 8, para 56; 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 ESA Regs, reg 107(6)*

51605 Payments that satisfy DMG 51604 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 mothers¹.

1 NHS & CC Act 90, s 42; NA Act 48, s 21(4)

Income paid to the claimant or partner for a third party

51606 Take into account in full any income paid to the claimant or claimant's partner 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 party¹.

1 ESA Regs, reg 107(4)

51607 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.

51608 The DM should decide using, available evidence

1. whether **and**
2. how much

income has been kept by the claimant or partner.

51609 Treat income as having been kept when

1. there is no intention of
 - 1.1 paying it over to **or**
 - 1.2 using it for
the third party **or**
2. if after having the income for a reasonable period of time the claimant or partner 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.

51610 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 receives ESA(IR)

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 ESA(IR). 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 ESA(IR). 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.

51611 – 51612

Employment zones subsistence allowance

51613 Participants in the second stage of EZ programmes receive a subsistence allowance from the EZ contractor so as to leave 50p benefit in payment. A subsistence allowance means an allowance which an EZ contractor has agreed to pay to an EZ programme participant¹.

1 ESA Regs, reg 2(1)

51614 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 payable¹. This notional income is in addition to the actual amount of subsistence allowance in payment. DMG 51613 provides guidance on the correct amount of subsistence allowance which should be payable.

1 reg 108(2)

51615 - 51616

Liabile relative payments

Liability to maintain

51617 Certain people are liable to maintain claimants or members of the family under legislation¹.

1 SSA Act 92, s 78 (6)-(9) & 105(3)

Husbands, wives and civil partners

51618 Under 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

51619 Under 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

51620 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 law¹ is liable to maintain that person.

1 Immigration Act 71

Action by the DM in the courts

51621 If people who are liable to maintain are not maintaining ESA claimants and members of the family the DM may apply to a court for a maintenance order¹. If liabilities are not met the DM has the power to start criminal proceedings against the person who is not paying².

1 SSA Act 92, s 106(1); 2 s 105(1)

51622 - 51624

Liabe relative payments - general

Treatment as income

51625 Payments of LRPs are payments of income¹ which fall to be taken into account (but see DMG 51641).

1 ESA Regs, reg 120

51626 There are special rules for the treatment of LRPs¹. 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 reg 85

Meaning of liabe relative payment

51627 An LRP¹ is a payment that is

1. a periodical payment made by a liabe relative
2. any other payment made by or derived from a liabe relative.

1 reg 119

Identification of liabe relative payments

51628 An LRP is not restricted to a payment from a person who is liabe 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.

51629 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 income¹. LRPs may be

1. periodical payments **or**
2. non-periodical payments.

1 ESA Regs, reg 120(a)

51630 - 51631

Liable relative payments from discretionary trusts

51632 Payments from discretionary trusts should be taken into account only if they are actually paid.

Payments made before the date of claim

51633 DMs should consider if payments received before the date that ESA(IR) 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.

51634 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.

51635 If LRPs have been made, decide

1. the period over which they should be taken into account **and**
2. the effect on ESA(IR).

51636 - 51640

When the DM should not take payments into account as income

51641 The DM may

1. arrange to collect payment if ESA(IR) 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 income¹.

1 reg 121

Meaning of liable relative

51642 Liable relative is defined as¹

1. a spouse or civil partner of the
 - 1.1 claimant **or**
 - 1.2 member of the claimant's family
2. a former spouse or civil partner of the
 - 2.1 claimant **or**
 - 2.2 member of the claimant's 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 law.

1 ESA Regs, reg 119

Meaning of parent

51643 In DMG 51644 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

51644 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.

51645 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

51646 A young claimant is a person who is aged 16 - 19 years who is an ESA(IR) claimant¹.

1 ESA Regs, reg 119

Liable relative payments and income tax

Liable relative payments subject to income tax

51647 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

51648 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.

51649 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 LRPis paid.

51650 - 51655

Payments not treated as liable relative payments

Which payments should not be treated as liable relative payments

51656 The following payments should not be treated as LRPs¹

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.

Further guidance is given in DMG 51657 et seq.

1 ESA Regs, reg 119

Payments made because of divorce or separation

51657 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.

51658 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.

51659 The payment must be part of a chain of events leading from the rearrangement of property¹. The payment itself must not be the property rearrangement.

1 R(SB) 1/89

51660 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 house¹.

1 R(SB) 1/89

51661 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.

Payments made after the death of a liable relative

51662 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

51663 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 ESA(IR). 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.

51664 - 51666

More than one gift made during a 52 week period

51667 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.

51668 The start of the 52 week period can be before the start of entitlement to ESA(IR). 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.

51669 - 51670

Payments made to or for third parties

51671 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 51642 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 51642 5. (agreement to maintain as a condition of immigration)

is not to be treated as an LRP unless DMG 51672 applies¹.

1 ESA Regs, reg 119

51672 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 means¹ that worn for normal daily use but does not include school uniform. Housing costs² means those costs which can be met as part of the claimant's applicable amount (see DMG Chapter 44).

1 reg 119; 2 reg 119

Example 1

Anna is in receipt of ESA(IR). 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 this payment is an LRP and takes it into account against Anna's ESA(IR) entitlement.

Example 2

Gill is in receipt of ESA(IR). Her young son attends a stage school every Saturday. Gill's ex-husband, Mike, pays the stage school fees directly to the school. The DM decides that the payment from Mike is not an LRP.

Types of payments made to third parties

51673 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

51674 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 ESA(IR).

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.

51675 - 51681

What should the DM do if a payment to a third party is treated as a liable relative payment

51682 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

51683 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.

51684 - 51687

Payments made for a third party

Types of payments made for third parties

51688 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 as a liable relative payment

51689 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 LRPs¹.

1 ESA Regs, reg 119

51690

What should the DM do if the payment is not treated as a liable relative payment

51691 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.

51692 If the person for whom the claimant receives a payment claims ESA(IR) the DM should not take the payment into account in both assessments.

Payments in kind

51693 Do not treat any payment in kind as an LRP. Consider any payment in kind under the normal rules for income and capital.

51694

Payments for people who are not members of the household

51695 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 51606).

Payments already taken into account

51696 Do not treat as an LRP non-periodical payments that have already been taken into account on a previous award or decision on ESA.

Payments being recovered

51697 Do not treat as LRPs non-periodical payments that

1. have been **or**
2. are being

recovered under prevention of duplication of payment rules¹.

1 SS A Act 92, s 74(1)

Payments that have been used

51698 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.

51699 Deprivation for the purposes of getting or increasing JSA or IS should not be considered if ESA is the benefit under consideration.

51700 - 51709

Liabile relative payments - periodical payments

Introduction

51710 The way in which LRPs are taken into account depends upon whether it is a periodical payment or a non-periodical payment.

What is a periodical payment

51711 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 the same or less than the rate of ESA(IR) that would have been payable if it had not been made¹.

Note: DMs must consider entitlement to ESA(Cont) when considering the amount of ESA that would have been payable if the payment had not been made.

1 ESA Regs, reg 119

51712 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.

51713 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

51714 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 payments¹.

1 reg 124(1)

Periodical payment made at monthly intervals

51715 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 52¹.

1 ESA Regs, reg 124(2)

Example

Donna receives ESA(IR). She receives periodical payments of £120 a month.

The DM calculates the weekly amount by multiplying £120 by 12 and dividing the result by 52.

Calculation

$$\frac{\pounds 120 \times 12}{52} = \pounds 27.69.$$

Periodical payments made other than weekly or monthly

51716 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 payments¹.

1 reg 124(3)

Example

Nigel receives ESA(IR). He receives an LRP 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

$$\frac{\pounds 500}{13} = \pounds 38.46$$

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

$$\frac{\pounds 500}{12 \frac{6}{7}} = \pounds 38.88 \text{ (twelve weeks and six days).}$$

Payment made up of more than one periodical payment

51717 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 calculated¹. 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 ESA Regs, reg 124(4)

Example

Marie receives ESA(IR). She is due to receive payment 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.

51718 - 51722

Period over which a periodical payment should be taken into account

Periodical payments made at regular intervals

51723 If periodical payments are made at regular intervals take each payment into account for a period equal to the length of time between payments¹.

1 reg 122(1)(a)

Periodical payments due to be made regularly but made irregularly

51724 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 payment¹.

1 reg 122(1)(b)

Example

Mario receives ESA(IR).

He is due to receive LRPs of £30 a week under a court order.

The payments are not made regularly.

He receives a payment for £200.

$$\frac{\text{£}200}{\text{£}30} = 6 \frac{2}{3}$$

It is taken into account over $6 \frac{2}{3}$ weeks. This means that the DM takes £30 a week into account for 6 weeks and the balance of £20 into account for week 7.

Periodical payments not due to be made regularly

51725 If a periodical payment is not

1. made **or**
2. due to be made

at regular intervals take it into account for one week¹. This applies to cases where a liable relative who is not usually making payments makes an occasional payment.

1 ESA Regs, reg 122(1)(c)

51726 If an occasional payment is more than the amount of ESA(IR) in payment treat it as a non-periodical payment.

When should the period start over which a periodical payment is taken into account

51727 The period over which a periodical payment should be taken into account begins on the date the payment is treated as paid¹.

1 reg 122(2)

On what date should a periodical payment be treated as paid

Periodical payments made before the first benefit week of entitlement

51728 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 week¹. The DM should decide the claimant's benefit week before deciding the date from which the payment should be taken into account.

1 reg 125(1)(a)

Example

Catriona claims ESA 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 payment was received.

Periodical payments made during the course of an award of ESA(IR)

51729 Treat a periodical payment made during the course of an award of ESA(IR) 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 or a subsequent benefit week¹. Examples of when it is not practicable to take a periodical payment into account during the benefit week in which it was received include

1. the cheque for the relevant benefit week is in issue and revision action would delay payment beyond the normal pay day
2. benefit has already been paid for the week in which the payment was made
3. the preparation of a cheque would be interrupted and delayed beyond the normal payday.

1 ESA Regs, reg 125(1)(b)

Payments under agreements or court orders

51730 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

Andrew is due to make payments under a court order of £50 a week to Sarah. Sarah is in receipt of ESA(IR).

During 2009 Andrew 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 ESA(IR). 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 1 June.

The DM decides that the due date for the arrears is now 1 June and not the date the arrears were originally due to be paid.

51731 - 51735

Liable relative payments - non-periodical payments

What is a non-periodical payment

51736 Treat any LRP that is not a periodical payment as a non-periodical payment or "other payment"¹.

1 ESA Regs, reg 119

51737 Examples of non-periodical payments include one-off payments for specific items. But if the payment is for less than the amount of ESA 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 ESA. The amount of ESA(IR) 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 ESA. The amount of ESA(IR) 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

51738 DMs should not always take the full amount of a payment into account as a non-periodical payment. Calculate the amount as follows

1. take into account as an LRP the amount of the payment less
2. any amount that has been taken into account under any previous ESA decision **or**
3. any amount that has been or is currently being recovered by the DM under prevention of duplication of payment rules¹ **or**
4. any amount that the claimant has spent unless that amount was spent for the purpose of getting or increasing ESA.

1 SSA Act 92, s 74(1)

51739 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.

51740 - 51745

Periodical payments and any other payment made by a liable relative

Period when non-periodical liable relative payment taken into account

51746 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 51714 - 51717 is less than the total of¹

1. £2 and
2. the amount of ESA(IR) which would have been paid had the periodical payment not been made.

1 ESA Regs, reg 123(4) & (10)

51747 If the periodical payment is less than the total in DMG 51746 then the DM should take the additional payment into account for a period determined by applying the formula¹

$$\frac{A}{B - C}$$

Where²:

A = the amount of the non-periodical payment

B = the total of £2 and the amount of ESA(IR) 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 week³.

1 reg 123(5); 2 reg 123(10); 3 reg 123(9)

Example

Mary has an applicable amount of £65.45 but receives ESA(IR) 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 51747 where:

$$A = £500$$

$$B = £67.45 (\text{£}2 + \text{£}65.45)$$

$$C = \text{£}25$$

This gives an answer of 11.77 ($\text{£}500 \div (\text{£}67.45 - \text{£}25)$). 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 ESA.

The weekly amount of the non-periodical payment

- 51748 The weekly amount of the non-periodical payment is equal to the divisor used to calculate the period for which it is taken into account¹. This will be the total of
1. £2 and the amount of ESA(IR) which would have been paid had the periodical payment not been made **less**
 2. the weekly amount of the periodical payment in payment.

1 ESA Regs, reg 124(5)

When should the DM start taking a non-periodical payment into account

- 51749 The period during which the non-periodical payment should be taken into account should begin on the date the payment is treated as paid¹.

1 reg 123(8)

Periodical payments change while a non-periodical payment is being taken into account

- 51750 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 formula¹

$$\frac{D}{B - E}$$

Where²

B = the total of £2 and the amount of ESA(IR) 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 ESA Regs, reg 123(7); 2 reg 123(10)

Example

Mary has had her award of ESA ended in the circumstances explained in the example to DMG 51747. Two weeks later she contacts the DWP to reclaim ESA 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 51750 where:

$$B = £67.45 (\text{£}2 + \text{£}65.45)$$

$$D = \text{£}415.10 (\text{£}500 - (2 \times \text{£}42.45))$$

$$E = \text{£}5$$

This gives a period of 6.64 weeks ($\text{£}415.10 \div (\text{£}67.45 - \text{£}5)$). 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.

- 51751 The period for which a change is said to occur begins on the first day of the benefit week in which the change took place¹. 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 51749).

1 reg 123(8)

Periodical payments cease while a non-periodical payment is being taken into account

- 51752 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) by¹

1. **£2 and**
2. the amount of ESA(IR) which would have been paid had the liable relative payment not been made.

1 reg 123(6) & (3)

51753 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 ceased¹.

1 ESA Regs, reg 123(8)

Example

Mary has had her ESA award ended in the circumstances described in DMG 51747. 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 ESA.

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 ESA in week 7.

51754 - 51755

Periodical payments not being made when a non-periodical payment is received

Weekly amount of non-periodical payment for claimants

51756 If a non-periodical payment is made and periodical payments are not being made, the amount that should be taken into account each week is¹ the total of

1. £2 and
2. the amount of ESA(IR) which would have been paid had the LRP not been made.

1 reg 124(5) & 123(3)

Period over which a non-periodical payment is taken into account

Non-periodical payments made for the claimant

51757 If a non-periodical payment is made¹ then it is taken into account for the number of weeks obtained by dividing the payment by the total of²

1. £2 and
2. the amount of ESA(IR) which would have been paid had the LRP not been made.

Any fraction is to be treated as a fraction of a week³.

1 ESA Regs, reg 123(1); 2 reg 123(2) & (3); 3 reg 123(9)

Example

Jess is currently in receipt of ESA(IR) of £35 a week. She receives a payment from her ex-partner of £120. The DM determines that this is a non-periodical payment. To decide the period over which it is taken into account the DM divides £120 by

1. £2 and
2. £35.

The payment of £120 is therefore divided by £37 (£2 + £35).

This gives 3.24 (£120 ÷ £37). The DM takes the payment into account for the first 3 weeks at a weekly rate of £37.00. The balance of £9 is taken into account in the 4th week. If Jess becomes re-entitled to ESA(IR) in week 4, the DM will have to take into account the balance of £9.

When should the DM start to take the non-periodical payment into account

- 51758 The period over which the non-periodical payment should be taken into account begins on the date the payment is treated as paid¹.

1 reg 123(8)

51759

Date a non-periodical payment is treated as paid

Non-periodical payment made before the first benefit week of the claim

- 51760 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 week¹. 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 reg 125(2)(a) & (3)

Non-periodical payment made during the course of an award of ESA(IR)

51761 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 away¹.

Consider the method of payment of ESA when deciding if it is not practicable to take a payment into account straight away. See DMG 51729 for examples.

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 ESA Regs, reg 125(2)(a) & (b)

Non-periodical payment made during a period where a previous non-periodical payment is already being taken into account

51762 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 period¹.

1 reg 125(3)

51763 - 51795

Students

Students - general

- 51796 This section deals with the calculation and treatment of certain income that is usually paid only to students. For ESA(IR) the income of a claimant, or a partner, may be taken into account¹. Any income paid because a claimant or partner is a student may affect the amount payable.

1 ESA Regs, reg 83(1)

51797 - 51799

Definitions and meaning of terms

51800 Claimant means¹ a person who has claimed ESA.

Partner means², where the claimant is

1. a member of a couple, the other member of that couple **or**
2. married polygamously, the other members of the marriage.

1 WR Act 07, s 24(1); 2 ESA Regs, reg 2(1)

ESA(IR) - income and capital

51801 A reference to a student is a reference to that person alone. It does not include the student's partner. If the student is the claimant's partner, the student's income is treated as the claimant's¹. This happens once the weekly amount to be taken into account has been worked out.

1 WR Act 07, Sch 1, Part 2 para 6(2)

51802 A student or a member of their family may have income which is not subject to the special student rules. When considering this income a reference to the claimant may be taken to be a reference to a partner¹. There may also be a question about capital. Do not treat the capital of a child or young person as the claimant's².

1 ESA Regs, reg 83(1); 2 reg 83(2)

Meaning of course and modular course

51803 See DMG Chapter 41 for the definition of course and modular course.

Course of advanced education

51804 Course of advanced education means¹

1. a course leading to a
 - 1.1 postgraduate degree or comparable qualification
 - 1.2 first degree or comparable qualification
 - 1.3 diploma of higher education
 - 1.4 higher national diploma **or**
2. any other course of a standard above that of
 - 2.1 advanced GNVQ or equivalent
 - 2.2 GCE advanced level (A levels)
 - 2.3 a Scottish national qualification (higher or advanced higher).

1 reg 131

Full-time course of advanced education

England and Wales

51805 [See Memo DMG 42/10] F/T course of advanced education means¹ a course of advanced education that is

1. a F/T course of study that is not wholly or partly funded by the Learning and Skills Council for England or the Welsh Ministers **or**
2. a course of study which
 - 2.1 is partly or wholly funded by the Learning and Skills Council for England or the Welsh Ministers **and**
 - 2.2 involves the student in more than 16 guided learning hours per week (seven days) as stated in
 - 2.2.a England in the student's learning agreement **or**
 - 2.2.b Wales in a document signed on behalf of the college.

1 ESA Regs, reg 131

Scotland

51806 In Scotland, F/T course of advanced education means¹ a course of advanced education which is

1. a F/T course of
 - 1.1 study, not wholly or partly funded by the Scottish Ministers at a college of further education **or**
 - 1.2 higher education (see DMG Chapter 41), wholly or partly funded by the Scottish Ministers **or**
2. a course of study other than higher education, which is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**
 - 2.1 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff as stated in a document signed on behalf of the college **or**
 - 2.2 21 hours a week in total as stated in a document signed on behalf of the college made up of
 - 2.2.a 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**
 - 2.2.b extra hours using structured learning packages, supported by teaching staff.

1 reg 131

Course of study

51807 A course of study¹ means any course of study including a sandwich course. It does not matter whether a grant is made for attending or undertaking the course.

A person who has started a course of study should be treated as attending or undertaking it until

1. the last day of the course (see DMG Chapter 41) **or**
2. such earlier date as they
 - 2.1 abandon the course (see DMG Chapter 41) **or**
 - 2.2 are dismissed from it (see DMG Chapter 41).

1 ESA Regs, reg 14(1)

51808 - 51810

Full-time course of study

England and Wales

51811 [See Memo DMG 42/10] F/T course of study means¹ a F/T course that is

1. not wholly or partly funded by the Learning and Skills Council for England or the Welsh Ministers **or**
2. wholly or partly funded by the Learning and Skills Council or the Welsh Ministers, if it involves the person in more than 16 guided learning hours per week, as stated in the student's signed learning agreement in England or, in Wales a document signed on behalf of the college.

Note: If a student attends more than one course the number of guided learning hours should be aggregated.

1 reg 131

Scotland

51812 In Scotland F/T course of study means¹ a F/T course of study that is

1. not wholly or partly funded by the Scottish Ministers, at a college of further education **or**
2. higher education (see DMG Chapter 41), wholly or partly funded by the Scottish Ministers **or**
3. not higher education and is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**
 - 3.1 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff, as stated in a document signed on behalf of the college **or**

3.2 21 hours a week in total, as stated in a document signed on behalf of the college made up of

3.2.a 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**

3.2.b extra hours using structured learning packages, supported by teaching staff.

1 ESA Regs, reg 131

Note: If a student attends more than one course the number of guided learning hours should be aggregated.

Sandwich course

51813 See DMG Chapter 41 for the definition of sandwich course.

Periods of experience and work experience

51814 Periods of experience means periods of work experience which form part of a sandwich course¹.

1 reg 131

51815 Periods of work experience are associated with the F/T study but are done outside an educational establishment. The experience has to be

1. industrial **or**
2. professional **or**
3. commercial¹.

1 Support Regs, reg 2(1)

51816 If the course includes¹

1. the study of one or more modern languages for at least half the time spent studying **and**
 2. periods of residence in a country whose language is a part of the course
- periods of work experience means any periods of overseas residence when the student is in gainful employment.

1 reg 2(1)

Student unable to find placement

51817 A student may not be able to find a placement in the period of work experience. This does not automatically mean that they have stopped being a student. The DM should consider whether the student has abandoned or been dismissed from the course (see DMG Chapter 41).

51818 - 51820

Meaning of educational establishment

51821 The term educational establishment is not defined and so must be given its ordinary everyday meaning. Schools, colleges and universities are clearly such places. But other less obvious places may also be included. For example, the training division of a large organisation specially set up for that purpose.

A person is attending an educational establishment if they are receiving

1. training
2. instruction **or**
3. schooling

in an organisation, or at an establishment, set up for any of those purposes.

Note: For Open University students see DMG 51854.

Academic year

51822 Academic year means¹ a period of twelve months starting on

1. 1 January for courses starting in winter
2. 1 April for courses starting in spring
3. 1 July for courses starting in summer
4. 1 September for courses starting in autumn.

Note: If a student begins a course in August or September and continues to attend throughout autumn, the beginning of the academic year will be the autumn rather than the summer.

1 ESA Regs, reg 131

Terms used in Scotland

51823 See DMG Chapter 41 for the definitions of a college of further education, further education and higher education in Scotland.

Meaning of guided learning hours

51824 See DMG Chapter 41 for the definition of guided learning hours.

Student loan

51825 A student loan¹ is a loan made for a student's maintenance under specific law². The Student Loan Company administers student loans.

1 reg 131; 2 T & HE Act 98, s 22; Ed (Scot) Act 80, s 73(f), 73B & 74; Support (NI) Order, Article 3

Grant

51826 Grant means¹ any kind of educational grant or award and includes any

1. scholarship
2. studentship
3. exhibition
4. allowance
5. bursary.

DMs should note that it does not include any payment derived from access funds or any payment of education maintenance allowance.

1 ESA Regs, reg 131

Access funds

51827 Access funds are grants, loans or other payments made under specific law¹ that are paid on a discretionary basis to assist students in financial difficulties².

1 F & HE Act 92, s 68; Ed (Scot) Act 80, s 73(a), (c) & s 74(1); Education and Libraries (Northern Ireland) Order 1993, Art 30; Further Education (Northern Ireland) Order 1997, Art 5; 2 ESA Regs, reg 131

51828 [See Memo DMG 42/10] Access funds also include

1. in England - 'Learner Support Funds' which may be made available to students under specific law¹. For those in further education they are paid out of funds provided by the Learning and Skills Council for England²
2. in Wales - 'Financial Contingency Funds' made available by the Welsh Ministers².

1 F & HE Act 92, s 7; L & S Act 2000, s 5, 6 & 9; 2 ESA Regs, reg 131

Note: Access funds do not include Assembly Learning Grants. Financial Contingency Funds are made available to prevent the financial hardship of students who are not eligible for an Assembly Learning Grant.

51829 - 51830

Education maintenance allowance

51831 Education maintenance allowance consists of means-tested payments paid under specific law¹ to support young people who remain in non-advanced education after the age of 16. Payments can be made for up to 2 years to support young people between the ages of 16 and 19, but in some cases an allowance may continue to be paid for up to 3 years between the ages of 16 and 20.

1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 & 73(f); F & H E (Scot) Act 92, s 12(2)(c) & 21; Education Act 2002, s 14 & 181

Grant income

51832 Grant income means¹ any income by way of a grant and normally includes any assessed contribution whether paid or not. However where the student is either

1. a lone parent **or**
2. a person to whom specified legislation² applies

there is an exception and only the grant and any contribution actually paid is included as grant income.

Note: Any such contribution paid by way of a covenant is also included as grant income.

1 ESA Regs, reg 131; 2 regs 14-18

Standard maintenance grant and allowances

51833 In England and Wales, the standard maintenance grant is the amount set in law¹. In Scotland it is the amount given as the 'allowance' by the Student Awards Agency for Scotland. For bursaries paid under specific law² and provided by a college of further education or a LEA, it is the amount given in the nearest equivalent to the guide.

1 Education (Mandatory Awards) Regs 2003, Sch 2(2) & (3); ESA Regs, reg 131;

2 Ed (Scot) Act 80, s 73(f), 73B & 74; ESA Regs, reg 131

Contribution

51834 The contribution¹ is the income of the student or any other person that the Secretary of State, an education authority or the Scottish Ministers, takes into account when considering the amount of grant or loan payable².

1 reg 131; 2 Awards Regs, reg 18; Support Regs, reg 92

51835 In Scotland only, the contribution¹ is also the amount that the Scottish Ministers or an education authority, consider that the student, their spouse, civil partner or parents or parent's partner could reasonably be expected to make towards the student's expenses when considering the amount of allowance or bursary payable.

The amount of support awarded to a student is reduced by the amount of assessed contribution.

1 Ed (Scot) Act 80; ESA Regs, reg 131

Education authority

51836 An education authority is¹

1. a government department **or**
2. in England and Wales, an LEA, which means² a
 - 2.1 joint education board
 - 2.2 county council
 - 2.3 metropolitan district council **or**
3. in Scotland, an education authority as defined under specified legislation³
4. in Northern Ireland, an education and library board **or**
5. any body which is defined as a research council in certain law⁴ **or**
6. any similar government department, authority, board or body of
 - 6.1 the Channel Islands **or**
 - 6.2 the Isle of Man **or**
 - 6.3 any other country outside GB.

*1 ESA Regs, reg 131; 2 Education Act 2002, s 212; 3 Local Government (Scotland) Act 1973, s 123;
4 Science and Technology Act 65*

51837 - 51840

Meaning of student and full-time student

General

- 51841 The DM must decide whether a person is a student. That broadly means a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance (see DMG Chapter 41) is not a student¹. A person who has reached pension age is not a student.

1 ESA Regs, reg 131

NHS funded students

Healthcare professionals

- 51842 NHS students may be undertaking a variety of healthcare professional courses e.g. nursing, midwifery, physiotherapy etc. To be eligible for an NHS bursary the student must be accepted for an NHS funded place. An NHS student undertaking a
1. diploma course may receive a non-means tested bursary. Such a student is not entitled to a student loan.
 2. degree-level course may be entitled to a means tested bursary and is eligible to apply for a student loan.

Return to practice courses

- 51843 Those taking part in refresher training known as 'return to practice' are students if they are undergoing a course of study at an educational establishment. Any allowances paid to such students over the duration of the course should be treated as grant income and taken into account as such.

New entrepreneur scholarships

- 51844 These scholarships have been developed to address the issue of entrepreneurs from deprived areas being given the chance to gain business management skills. Participants receive no funding for their business through the scholarships. Any payment made in respect of travel costs or books and equipment should be disregarded by DMs in the normal way (see DMG 51903).

General Social Care Council bursaries

- 51845 The General Social Care Council award two types of bursary which are
1. non-income assessed bursary known as social work bursary
 2. additional graduate bursary.

Social work bursary

- 51846 This is a non-income assessed grant which is paid as an incentive to train. It consists of three elements, grant, tuition fees and a practice learning opportunity. The grant element is payable over 52 weeks at three rates depending on where the student lives. It is offered to both full and part-time students with part-time students receiving 50% of the grant. DMs should take the grant into account over 52 weeks¹ (see DMG 51926 et seq) disregarding² the items listed at DMG 51916 and DMG 51922³ as appropriate. Tuition fees are either paid in full or the balance that has not been met by the LA is paid all direct to the University. DMs should disregard any amount paid for tuition fees² (see DMG 51916 1.). Any amount payable to a student intended for travelling expenses should be disregarded³.

1 ESA Regs, reg 132 (4)(b); 2 reg 132 (2); 3 reg 132 (3)

Additional graduate bursary

- 51847 This is paid to graduates on post-graduate courses who are in receipt of the social work bursary. It is an income assessed grant available to full-time students only. This bursary is paid for 30 weeks to cover the period of the course. There is also an additional days grant which is calculated weekly for courses that extend beyond 30 weeks. However where courses are for 45 weeks or more the bursary is automatically awarded for 52 weeks. Extra allowances may also be payable with the additional graduate bursary eg Adult Dependents Allowance and Parents Learning Allowance. These allowances are usually payable over 52 weeks.
- 51848 Where the income from the additional graduate bursary is payable for the period of study, the DM should take that income into account over the period of study¹. Where the income is payable for a different period (the automatic 52 weeks) it should be taken into account for that period². Income from the extra allowances as mentioned in DMG 51904 should be taken into account for the period for which they are payable. The DM should disregard³ any amount for items listed at DMG 51916.

1 reg 132 (4)(a); 2 reg 132(4)(b); 3 reg 132 (2)

51849 - 51852

Teacher training

- 51853 A person undertaking or attending teacher training is a student where a course of study is being undertaken at an educational establishment. Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

Open University students

- 51854 A claimant who is on an Open University course will fall within the definition of a student¹. Such courses are not F/T and are normally followed at times that would fit in with employment. Most of the course material is done in the person's home and not at an educational establishment however they are still undertaking a course of study². Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

1 ESA Regs, reg 131; 2 R(IS) 1/96

Community Orders

- 51855 Offenders on specified activity may be undertaking basic skills education which will generally be funded by the Learning and Skills Council in England and the appropriate funding body in Wales. DMs must check the number of guided learning hours and consider if the offender is a F/T student. There is no such equivalent in Scotland. In Scotland, courts have access to a number of community penalties, principally probation orders, community service orders, drug treatment and testing orders and restriction of liberty orders. Conditions can be attached to these orders including the requirement to undertake unpaid work. The activities which can be imposed as part of the orders are funded by the Scottish Ministers¹.

1 SW (Scot) Act 68, s 27A

General

- 51856 A student is a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance is not a student¹.

1 ESA Regs, reg 131

Full-time student

- 51857 A F/T student is a person who is not a qualifying young person or child under specified legislation¹ and is
1. aged less than 19 who is attending or undertaking a F/T course of advanced education **or**
 2. aged 19 or over, but under pension age, who is attending or undertaking a F/T course of study at an educational establishment **or**
 3. on a sandwich course².

1 SS CB Act, s 142; 2 ESA Regs, reg 131(2)(a)

51858 A F/T student is treated as attending or undertaking a F/T course of study from the first day of the course until

1. the last day of the course **or**
2. such earlier date as the student
 - 2.1 abandons the course **or**
 - 2.2 is dismissed from it¹.

1 ESA Regs, reg 131

Treatment of modular courses

51859 A student attending or undertaking part of a modular course on a F/T basis is treated as a F/T student from the day that part of the course begins until

1. the last day he is registered as attending or undertaking that part as a F/T course of study **or**
2. such earlier date as the student
 - 2.1 abandons the course **or**
 - 2.2 is dismissed from it¹.

1 reg 131(2)(a)(ii)

51860 The period described in DMG 51859 above includes any period

1. that the student attends or undertakes the course to retake exams or a module. The student must have been undertaking the original part of the course or modules as a F/T course of study.
2. of vacation falling within the period or immediately following it. This does not include a vacation immediately following the last day of the course¹.

1 reg 131(3)(b)

Modular course

51861 In these circumstances a modular course means a course of study consisting of two or more modules. The student must complete a specified number of modules before they are considered to have completed the course¹.

1 reg 131(4)

51862 - 51865

Meaning of full-time

General

51866 [See Memo DMG 42/10] The DM has to consider whether a person is a full time student (a F/T student). For courses funded by the Scottish Ministers, except where it is a course of higher education (see DMG Chapter 41), and for those funded by the Learning and Skills Council for England or by Welsh Ministers, the term F/T is defined by reference to the number and type of hours involved (see DMG Chapter 41). But for non funded courses there is no definition.

51867 [See Memo DMG 42/10] In courses not funded by the Learning and Skills Council, Welsh Ministers or the Scottish Ministers and in courses of higher education funded by the Scottish Ministers, the term F/T applies to the course itself and not to a person's attendance on it¹. It is the time spent by a notional reasonable student that is considered. A person who attends a F/T course on a P/T basis is still a student.

1 R(SB) 40/83; R(SB) 41/83

51868 Each case must be decided on its facts¹. The DM must look at the sequence of studies and activities that make up the course itself. The nature of the course is not affected by²

1. a person's reasons for attending it **or**
2. a person's readiness to abandon it, for example, to accept an offer of employment **or**
3. what a particular person happens to be doing.

1 R(SB) 40/83; R(SB) 41/83; 2 R(SB) 2/91

51869 [See Memo DMG 42/10] In modular courses a sequence of studies is established once a person has decided which modules to take. This sequence can be distinguished from the work that the person is putting in at any given time. When deciding whether a course is F/T, all of the studies and activities involved in it should be taken into account. This includes both supervised and unsupervised study and activity, whether done on or off college premises. In the case of courses funded by the Learning and Skills Council, the Welsh Ministers or the Scottish Ministers, take no account of private study (see DMG Chapter 41).

51870 Do not compare the total hours involved with what may be regarded as a full working week. One approach is to look at the total time the course might require of an average student. It may take up a substantial part of a week, after allowing for reasonable rest and recreation. The course might then be regarded as F/T.

Evidence from educational establishment

51871 See DMG Chapter 41 regarding evidence from educational establishments.

Other evidence

51872 See DMG Chapter 41 regarding obtaining other evidence.

Number of hours involved

51873 See DMG Chapter 41 regarding the number of hours involved.

Courses funded by the Learning and Skills Council for England, Welsh Ministers or the Scottish Ministers

51874 [See Memo DMG 42/10] DMG Chapter 41 contains guidance on

1. courses funded by the Learning and Skills Council, the Welsh Ministers or the Scottish Ministers
2. higher education
3. non funded courses **and**
4. further education and other courses.

51875 - 51879

Eligibility

General

51880 Being in education affects entitlement to ESA(IR)¹. However, a claimant who is

1. in education **and**
2. entitled to DLA

may have entitlement to ESA(IR)².

See DMG Chapter 41 for how education affects entitlement to ESA.

1 WR Act 07, Sch 1, Part 2, para 6(1)(g); 2 ESA Regs, reg 18

Partner only is a full-time student

51881 If the claimant is not a student but their partner is, the claimant may be eligible for ESA. This is subject to the normal conditions of entitlement.

ESA(Cont)

51882 Only a claimant's own earnings (if they exceed the exempt work limits) and pension payments can affect the amount of ESA(Cont) payable¹. A partner's loan or grant income can have no effect.

1 reg 74

ESA(IR)

51883 Income of a claimant or their partner can affect the amount of ESA(IR)¹ payable. Any loan or grant income paid to the partner should be taken into account.

1 reg 83

51884 - 51886

Financial support available to students - loans and grants

51887 In the case of students and their partners, some of the normal rules on income are modified¹. This means that their income may be treated differently.

1 ESA Regs, reg 87

Loans - eligibility

51888 **[See Memo DMG 48/10]** Loans are generally available to students on courses of higher education.

Designated courses

51889 Courses must¹

1. last for at least one academic year or at least six weeks in the case of flexible postgraduate courses for teaching training **and**
2. be designated **and**
3. be at institutions receiving support from public funds.

1 Support Regs, reg 5(1); SL (Scot) Regs, reg 4(1)

51890 A course is designated¹ if it is a

1. first degree course
2. course for the Diploma of Higher Education
3. course for the Certificate of Higher Education
4. course for the further training of youth and community workers
5. course for the Higher National Diploma or Higher National Certificate of BTEC or Scottish Qualifications Authority
6. course leading to an initial teacher qualification
7. course for which entry does not normally require a first degree (or equivalent) that
 - 7.1 is in preparation for a professional examination of a standard higher than
 - 7.1.a GCE A levels
 - 7.1.b Scottish highers
 - 7.1.c BTEC and Scottish Qualifications Authority National Awards (as distinct from Higher National Certificate and Higher National Diploma) **or**
 - 7.2 provides education of a standard higher than courses in 7.1, but not higher than a first degree course.

1 Support Regs, Sch 2 & SL (Scot) Regs, Sch 2

51891 Institutions receiving support from public funds means¹ that the monies are provided by Parliament. **Except** where the funds have been provided by a local council. A course is provided by an institution² if it supplies the teaching and supervision that makes up the course.

1 Support Regs, reg 2; 2 reg 5(5)(a)

51892 Loans are generally available for sandwich courses. They are available for the whole of the course. They are not reduced because of the student's periods of experience.

Personal eligibility

51893 A student must be personally eligible as well as attending or undertaking a qualifying course. A student is eligible for a loan if

1. they meet the residence conditions¹ (see DMG 51894) **and**
2. they have not received an award under certain NHS regulations² **and**
3. they are not eligible to receive an allowance under certain regulations³ **and**
4. they are not in breach of any obligation contained in a loan agreement⁴ **and**
5. after reaching age 18 they confirmed any loan agreement that was made while under that age⁵ **and**
6. they are not, in the opinion of the Secretary of State for Children, Schools and Families, unfit to receive support⁶.

Note: A student is only eligible for a loan on a single designated course, whether F/T or P/T, in any one academic year⁷.

*1 reg 4(2); 2 reg 4(3)(c); 3 Education (Student Loans) Act 1990;
Education (Student Loans) (NI) Order 1990; 4 Support Regs, reg 4(3)(d);
5 reg 4(3)(e); 6 reg 4(3)(f); 7 reg 4(6)*

Residence conditions

51894 To satisfy the residence conditions a student must¹

1. be ordinarily resident in England, Wales or Scotland on the first day of their course **and**
2. throughout the three years before the first day of the course have been ordinarily resident in the

- 2.1 UK if
 - 2.1.a the student is settled in the UK **or**
 - 2.1.b the student, their spouse, civil partner or their parent have been granted leave to remain by the HO
- 2.2 EEA if the student, their spouse, or their partner have established migrant worker status **and** their stay is not wholly or mainly to receive FTE.

1 Support Regs, Sch 1, Part 2; SA (Scot) Regs, Sch 1

European Economic Area Nationals

51895 A student, who is an EEA national or the child of an EEA national, may be eligible for a student loan if¹

- 1. the conditions at DMG 51894 **2.** are satisfied **and**
- 2. the course in
 - 2.1 England and Wales, is provided wholly or partly by an institution in England or Wales **or**
 - 2.2 Scotland, is at a Scottish establishment.

1 Support Regs, Sch 1, SA (Scot) Regs, Sch 1

Refugees

51896 A student may be eligible for a student loan if¹

- 1. they, their spouse, civil partner or parent are granted refugee status **and**
- 2. from the time they are recognised as a refugee they are ordinarily resident in the UK **and**
- 3. they satisfy the conditions at DMG 51894 **1.**

1 Sch 1

51897 - 51899

Student loans treated as income

51900 **[See Memo DMG 48/10]** Student loans are treated as income¹. Students are treated as possessing a student loan for an academic year where

- 1. a student loan has been paid to them for that year² **or**
- 2. they could acquire a loan in respect of that year by taking reasonable steps to get one³.

Note: If there is a condition of entitlement to a student loan that could not be met by taking reasonable steps the DM should not treat the student as having a student loan. If, exceptionally, the DM needs advice on whether or not a student has taken reasonable steps to acquire a loan, refer the case to DMA Leeds.

1 ESA Regs, reg 137; 2 reg 137(4)(a); 3 reg 137(4)(b)

Amount of loan

51901 The maximum amount that can be advanced to a student depends on

1. where the student is studying **and**
2. whether the student has reached the final year of the course **and**
3. whether the student lives in the parental home.

Where in any academic year a student loan is made to a student, the DM should take into account as income

1. the maximum amount of student loan the student could get by taking all reasonable steps¹ to do so (even if the student applies for less than the maximum loan) **and**
2. unless an exception at DMG 51905 applies², the amount of any contribution whether or not it is paid to the student³.

1 reg 137 (5)(a); 2 reg 137 (5)(a)(ii); 3 reg 137 (5)(a)(i)

51902 Where a student loan has not been made for an academic year, the DM should take into account as income the maximum loan that the student could get if

1. the student took all reasonable steps to obtain the maximum amount¹ **and**
2. no deduction was made from the loan because of a means test².

1 reg 137 (5)(b)(i); 2 reg 137(5)(b)(ii)

Disregards

51903 The amount of student loan to be taken into account under DMG 51901 and DMG 51902 should be reduced by¹ a fixed amount for

1. travel costs **and**
2. the cost of books and equipment

whether or not the student has to meet the cost of those items.

The disregard is £303 for travel costs and £390 for books and equipment.

1 reg 137 (6)

Example

Leslie is undertaking a P/T course of study for which she receives a loan of £500. After taking into account the disregards for travelling costs and books and equipment the DM fully disregards the loan.

Disregard for fee loans

- 51904 Changes to the student support system¹ mean that loans for course fees will be paid directly to the university or college. DMs should disregard² a loan for fees, known as a fee loan or a fee contribution loan paid under specified legislation³.

*1 Support Regs, regs 17-21 & 31-32; 2 ESA Regs, reg 139;
3 Education (Student Support) (N Ireland) Order 1998, Art 3; T & HE Act 98, s 22;
Ed (Scot) Act 80, s 73(f)*

Assessed contribution

- 51905 The education authority may decide that the student, their spouse, civil partner, parents or parent's partner should contribute to the loan. The contribution is assessed according to the income of the student, their spouse, civil partner, parent or parent's partner. The amount of loan awarded is then cut by the assessed contribution¹.

The amount of contribution assessed by the education authority may not be paid to the student in part or in full. But the full amount of the contribution should still be treated as possessed by the student unless² the student is entitled to DLA.

1 ESA Regs, reg 131(1); 2 reg 137(5)(a)(ii)

Calculation of weekly income

Course duration is for one academic year or less

- 51906 Where a student loan is made in respect of any academic year and the course is for one academic year or less, the student loan should be divided equally between the weeks in the period beginning with

1. the first benefit week that begins on or after the start of the academic year **or**
2. if the student starts attending the course in August or the course is for less than an academic years duration, the first benefit week that begins on or after the start of the course

and ending with the last benefit week that ends on or before the last day of the course¹.

1 reg 137(3)(a)

Course duration more than one academic year, any year except final academic year

- 51907 Where a student loan is made in respect of an academic year that begins other than on 1 September the DM should divide the student loan equally between the period which

1. starts at the beginning of the first benefit week starting on or after the first day of the academic year **and**

2. ends on the last day of the last benefit week which ends on or before the last day of the academic year **and**

excludes any complete benefit weeks which fall entirely within the quarter where, in the opinion of the Secretary of State, the longest holiday period is taken¹.

Note: Quarter means² one of the periods in the academic year from

1. 1 January to 31 March **or**
2. 1 April to 30 June **or**
3. 1 July to 31 August **or**
4. 1 September to 31 December.

1 ESA Regs, reg 137 (3)(b); 2 Support Regs, reg 2

51908 Where a student loan is made in respect of an academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the earlier of the first day of the first benefit week

1. in September **or**
2. that begins on or after the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of June¹.

1 ESA Regs, reg 137(3)(e)

Final academic year, other than a course of one academic year or less

51909 Where a student loan is made in respect of a final academic year of a course of more than one year that begins other than on 1 September the DM should divide the student loan equally between the period beginning with

1. the first benefit week that begins on or after the start of the academic year **and**
2. ending with the last benefit week that ends on or before the last day of the course¹.

1 reg 137(3)(d)(i)

51910 Where a student loan is made in respect of a final academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the first benefit week that begins on or after the earlier of

1. 1 September **or**
2. the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of the course¹.

1 reg 137(3)(d)(ii)

51911 - 51912

Disregard

51913 When the weekly amount has been calculated the DM should disregard up to £10 a week. This is subject to the overall limit on the disregarded income of students (see DMG 51943).

Example 1

Dilip is attending a course which lasts for less than a year. The course starts on 8.12.08 and ends on 18.4.09. He is a Tuesday BWE. He has a student loan which, after deducting the appropriate disregards, is taken into account from 10.12.08 until 14.4.09.

Example 2

Martha starts the final year of her course on 7.10.09 and ends it on 6.6.10. She is a Thursday BWE. The DM takes her student loan into account from 4.9.09 until 3.6.10 after deducting the appropriate disregards.

Example 3

Ellis is in his second year of a course. The autumn term begins on 14.10.09. Ellis is a Monday BWE. The DM takes his student loan into account, after deducting the appropriate disregards, from 1.9.09 until 28.6.10.

Example 4

Nasser's university course starts on 13.1.09. The main holiday period is between 30.6.09 and 12.10.09. He is a Wednesday BWE. After deducting the appropriate disregards the DM calculates the weekly income by dividing the loan equally between the periods 8.1.09 to 1.7.09 and 27.8.09 and 30.12.09. The DM takes the weekly amount into account from 15.1.09 because Nasser does not become a student until 12.1.09.

Note: A student loan should not be taken into account until the student commences their course of study because prior to this day they are not a student. As the weekly amount is calculated by apportioning the loan to full benefit weeks it should similarly be attributed to full benefit weeks.

Student from Northern Ireland

51914 A student from Northern Ireland may be eligible for a student loan under Northern Ireland law¹. The qualifying conditions are the same as in the rest of the UK. Treat any loan for which the student is eligible in the same way.

1 Education (Student Loans) (NI) Order 1990, art 3

Grants

51915 A student may receive a grant from a number of different sources. Grants, bursaries or allowances etc may be paid in respect of various types of study such as Nursing and Teacher training. Students who are paid under specific law¹ may be entitled to supplementary grants, as current or old system students

1. for extra costs incurred because they are disabled students²
2. for travel costs³
3. for childcare⁴
4. for living costs⁵
5. for adult dependants⁶
6. for Parents' Learning Allowance⁷.

Note: This list is not exhaustive.

1 Student Support Regs, regs 35-36; 2 reg 39; 3 reg 47; 4 reg 43; 5 reg 37; 6 reg 42; 7 reg 44

Amount of grant income

Initial disregard

51916 The DM should disregard from the student's grant income any payment

1. intended to meet tuition or examination fees¹
2. intended to meet additional expense a disabled student has for attending a course²
3. intended to meet additional expenses connected with term time residential study away from the student's educational establishment³
4. on account of the student maintaining a home at a place other than where they live during the course⁴
5. on account of any other person if⁵ that person lives outside the UK and there is no applicable amount for them
6. intended to meet the cost of books and equipment⁶
7. intended to meet travel expenses caused by the student's attendance on the course⁷
8. intended for the maintenance of a child dependant⁸
9. intended for the child care costs of a child dependant⁹.
10. of higher education bursary for care leavers made under specified legislation¹⁰.

Note: 4. applies only to the extent that the student's rent is not met by HB.

1 ESA Regs, reg 132(2)(a); 2 reg 132(2)(b); 3 reg 132(2)(c); 4 reg 132(2)(d); 5 reg 132(2)(e); 6 reg 132(2)(f); 7 reg 132(2)(g); 8 reg 132(2)(h); 9 reg 132(2)(i); 10 reg 132(2)(j)

51917 Disregard amounts under DMG 51916 only if the grant is specifically intended to be used for one of those purposes.

Higher education grant

51918 In England and Wales the Higher Education Grant¹ was introduced in September 2004. A student qualified for this grant if he began the designated course on or after 1.9.04. The grant is to defray the cost of books, equipment, travel or childcare for the purpose of attending that course. DMs should disregard² the amount of Higher Education Grant paid to an existing student. In Scotland these are not specific grants but cover other expenses incurred in taking advantage of educational facilities³.

1 Education (Student Support) Regs, 2006, reg 52; 2 ESA Regs, reg 132(2);

3 Student's Allowances (Scotland) Regs, 2007, reg 4(1)

Special support grant

51919 In England and Wales the Special Support Grant¹ was introduced from 1.9.06. The grant is to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course. DMs should disregard² the amount of Special Support Grant paid to students from 1.9.06.

1 Education (Student Support) Regs, 2006, reg 50; 2 ESA Regs, reg 132(2)

51920 Where a student is in receipt of the maximum Special Support Grant and the Higher Education Establishment charges the full £3,145 tuition fees, then the Higher Education Establishment must pay the student a bursary to at least make up the difference between the Special Support Grant and the £3,145 fee. As this bursary is for tuition fees it should be disregarded¹ in full whatever its value. In addition, a Higher Education Establishment may award other grants and bursaries and these may be disregarded if they fall within the disregards listed at DMG 51916.

1 reg 132(2)(a)

Disregards for students with child care responsibilities

51921 In England and Wales, a Department for Children, Schools and Families Parents Learning Allowance is available to F/T students with child care responsibilities. DMs should disregard this allowance in full¹.

1 reg 132(2)

Extra disregards

51922 Where a student does not have a student loan and is not treated as having a student loan, the DM should disregard from the grant a fixed amount for

1. travelling expenses (£303) **and**
2. books and equipment (£390).

1 reg 132(3)

Example 1

Georgia is a student nurse attending a diploma course. She is not entitled to a student loan. She receives a NHS bursary which includes £200 for travelling expenses but no additional amount for books and equipment. The DM disregards a total, of £893 from Georgia's allowance. This is made up of an amount awarded specifically to meet travelling expenses - £200; extra disregard for travelling costs - £303; extra disregard for books and equipment - £390.

Example 2

Isobella is a student teacher completing her last year of teacher training in a school. She receives a training bursary which does not specifically include any amount for travelling costs or books and equipment. She is not entitled to a student loan. The DM disregards a total of £693 from Isobella's income. This is made up of extra disregard for travelling costs - £303 plus the extra disregard for books and equipment - £390.

51923 - 51925

Period over which grant income taken into account

- 51926 The amount of grant income to be taken into account should be spread equally over the relevant period. The length of that period depends on
1. what elements of grant are involved **and**
 2. whether the grant is paid for the period of study.

Dependant and lone parent grants

- 51927 The DM should take these grants into account
1. for the same period as the loan **or**
 2. for the period a loan would have been taken into account had the student taken reasonable steps to get one¹.

1 ESA Regs, reg 132(6)

Example

Gregg is a student with two children who started his course in November 2008. He receives a loan for living expenses. He is also entitled to an extra amount for the children and because he is a lone parent, this is a non-repayable grant. The DM takes the extra grant income into account for the same period as the loan.

NHS dependant grants

51928 A grant or bursary paid for dependants, under relevant law¹, to an NHS student should be taken into account equally over

1. 52 weeks **or**
2. 53 weeks, if there are 53 benefit weeks (including part-weeks) in the year².

Note: These grants are apportioned over the number of benefit weeks in the year rather than over the period of study.

1 HS & PH Act 68, s 63(6); 2 ESA Regs, reg 132(5)

Other grant income

51929 Other grant income should be taken into account equally between the weeks in the period

1. of study, where it is paid for the period of study **or**
2. for which it is payable.

Period of study for grant income purposes

51930 Period of study has two different meanings. One for grant income purposes¹ and one for eligibility² (see DMG Chapter 41). DMs should not confuse the two definitions.

1 reg 131; 2 reg 2(1)

51931 For grant income purposes¹, each year of a course has a separate period of study. That period

1. starts with
 - 1.1 the first day of the course, in the first or only year **or**
 - 1.2 the first day of that years course, in any later year **and**
2. ends with
 - 2.1 the last day of the course, in the last or only year **or**
 - 2.2 the day before the summer holiday, where the grant is not for study throughout the whole year **or**
 - 2.3 the day before the start date of the next years course where
 - 2.3.a the grant is for study throughout the year **or**
 - 2.3.b if the student does not have a grant, where a loan would have been assessed as payable throughout the year.

1 reg 131(1)

Example

Jenny is on a standard three year degree course commencing in the Autumn. Her grant is not for study throughout the whole year. She has three periods of study.

These are

1. the first year - the first day of the course to the day before the summer holiday separating the first and second years
2. the second year - the first day of that years course to the day before the summer holiday separating the second and third years
3. the third (final) year - the first day of that years course to the last day of the course.

Grant payable for period of study

51932 Grant income may be payable for the period of study. If so the DM should take the income into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period of study and ending with the last benefit week which ends on or before the last day of the period of study¹.

1 ESA Regs, reg 132(4)(a)

Sandwich course

51933 Where a student is on a sandwich course, any periods of experience should be excluded from the period of study. Grant income is then spread equally between the weeks in the period beginning with the benefit week that begins on or after the last day of the period of experience and ends with the last benefit week which ends on or before the last day of the period of study¹.

1 reg 132(7)

Grant not payable for period of study

51934 Grant income may be awarded for a specific period. In these cases the grant income should be taken into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period for which the grant is payable and ending with the last benefit week which ends on or before the last day of the period for which the grant is payable¹.

1 reg 132(4)(b)

Access funds

51935 Students who are in financial difficulties may receive payments from access funds¹ (see DMG 51827). Treatment of these payments depends upon

1. when the payment is made
2. what the payment is intended for **and**
3. whether the payment is a
 - 3.1 regular payment **or**
 - 3.2 single lump sum.

51936 The DM should fully disregard an access fund payment where it is made¹

1. before the first day of the course in anticipation of the person becoming a student **or**
2. on or after the earlier of
 - 2.1 1 September **or**
 - 2.2 the first day of the course **and**
 - 2.3 the student loan has not been received **and**
 - 2.4 the payment is intended to help them manage financially until they receive their loan.

1 ESA Regs, reg 131; 2 reg 138(4)

Regular payments

51937 Any access fund payment should be fully disregarded unless it is intended and used for

1. food
2. ordinary clothing or footwear
3. household fuel
4. rent for which HB is payable
5. housing costs met in the applicable amount
6. council tax
7. water charges.

Note: The DM should disregard £20 from any payments that are intended and used for the above items. This is subject to the overall limit on disregarded income¹ (see DMG 51943 et seq).

1 reg 138(3)

Lump sum payments

- 51938 Any lump sum payment from an access fund should be treated as capital¹. Where a lump sum payment is intended and used for items other than those listed at DMG 51937 the DM should disregard the capital for 52 weeks from the date of payment².

1 ESA Regs, reg 142 (2); 2 reg 142(3)

51939 - 51942

Overall limit to income disregard

51943 A student may have income other than grant income, covenant income or a student loan. The amount of any disregard will depend on

1. what type of income is paid **and**
2. whether it is paid for a specific purpose.

Do not disregard any part of a student's grant income or covenant income as a charitable or voluntary payment¹.

1 ESA Regs, reg 135

Income for necessary course expenses

51944 The income may be specifically intended (in whole or in part) to meet the cost of any item

1. set out in DMG 51916 **and**
2. necessary as a result of attendance on the course.

51945 In such a case disregard¹

1. the total amount specifically intended for the purposes at **1.** and **2.** above **less**
2. the total amount of any grant and covenant income already disregarded for the particular item.

1 reg 136(1)

51946 Where the income does not include an amount specifically intended for books and equipment, a disregard cannot be made for those items.

51947 If after the disregard in DMG 51945 there is a balance to take into account the normal rules on attribution of income apply (see DMG Chapter 48).

Disregard of partner's contribution

51948 The student's loan or grant income may include an assessed contribution from their partner. The DM should disregard this amount when considering the income of the partner¹.

Note: The student may complain because their partner does not have an income on which the assessment was based. The DM should advise such a student to contact the authority responsible for the grant. The authority may then reassess the amount of their grant.

1 reg 140

Disregard of student's contribution

51949 Where the student's own income is taken into account when assessing the loan or grant the DM should disregard this amount when calculating the student's income¹. The amount to be disregarded under DMG 51946 and this paragraph should be spread equally between the period that the loan or grant income has been taken into account. It should be applied to the income of the spouse or the partner respectively. It cannot all be applied to the student's own income.

1 ESA Regs, reg 141

51950

Covenant income and other income and capital

51951 Where a student has other income, the normal rules apply. This is subject to the overall limit on disregarded income (see DMG 51943). Where a student has capital other than a student loan (see DMG 51888 et seq), normal rules apply.

Covenant income

51952 Covenant income is¹ income payable to a student under a deed of covenant by a person whose income is

1. taken into account **or**
2. likely to be taken into account

in assessing the student's grant or award.

1 ESA Regs, reg131(1)

51953 There are special rules which cover the assessment and attribution of covenant income. If a student declares that they are in receipt of covenant income the DM should forward the case urgently to DMA Leeds, Room GS36, Quarry House, Leeds. DMs are, however, unlikely to see this type of case as the Income Tax advantages associated with Deeds of Covenant were abolished some years ago.

Student's tax refund

51954 Treat any refund of tax taken from a student's income as capital¹. This is not restricted to tax taken from grant income. It applies to any income related tax refund.

1 reg 142

Other types of loan

51955 Students may have loans that are not made under the relevant law¹. The treatment of these loans depends on whether they are capital or income. For guidance on Career Development Loans see DMG 51440 et seq.

1 T & HE Act 98, s 22; Ed (Scot) Act 80, s 73(f), 73B & 74; Support (NI) Order, Article 3; Students' Allowances (Scot) Regs 2007, reg 4 (1)(c)

51956 - 51960

Income of former students

51961 A person stops being a student for ESA from the day after the

1. last day of the course **or**
2. date they abandon or are dismissed from the course¹.

1 ESA Regs, reg 131(2)

51962 From the date that the person stops being a student the treatment of income depends on whether the course has been completed.

Course completed

51963 When a student has completed a course the DM should disregard from the day after the last day of the course¹ any

1. grant or covenant income
2. loan
3. income assessed contribution.

1 Sch 8, para 54

Course not completed - treatment of grant income

51964 A person has not completed the course if they have abandoned or were dismissed from it. Special rules¹ apply to income that

1. is grant income (that is not taken into account in DMG 51965 et seq) **and**
2. was paid to a person who ceased to be a student before the end of the period for which the income was payable **and**
3. has to be repaid because the person ceased to be a student before the end of the period for which the income was payable.

1 reg 91(4), reg 94(7) & reg 104(7)

Period income is taken into account

51965 Other than where DMG 51964 applies, grant income is taken into account over a period that

1. begins on the date that the income was treated as paid **and**
2. ends on the earlier of
 - 2.1 the date when the repayable grant income is repaid **or**
 - 2.2 the last day of the term or holiday in which the person ceased to be a F/T student **or**

- 2.3** where the grant is paid in instalments, on the day before the next instalment would have been paid had the person remained a F/T student¹.

1 ESA Regs, reg 91(4)

51966 - 51968

51969 Students who have not completed the course, and have to repay grant income who

1. are already receiving ESA(IR), will continue to have the same weekly grant income deducted from the day they stopped being a student (see DMG 51978)
2. make a new claim to ESA, will have the net weekly grant income attributed from the date that the last payment of grant income was treated as paid until the date established at DMG 51965 2.

51970 When considering the date income is treated as paid the guidance at DMG Chapter 48 applies. The DM will first need to establish the due date of the last grant payment which will usually be the last instalment.

51971 A decision on the due date of a grant instalment must be based on evidence from the paying authority. The DM can get this

1. directly from the authority **or**
2. from documents produced by them.

51972 If the paying authority gives a due date this should generally be followed. Notices of award or authorities' general literature may say that payments are to be made available on a set date. This date should usually be accepted as the due date.

51973 It may not be possible to get specific evidence of the due date from the paying authority. The due date should then be accepted as the date of the actual payment.

51974 In Scotland the Student Awards Agency sends payments on a monthly basis by bank transfer for the maintenance element of mandatory awards to the college or university. Take such a payment as being due on the first day of the relevant term.

51975 In England and Wales the arrangements for payment of student grants vary between LAs.

Calculation of weekly income

51976 The weekly grant income of a former student to be taken into account for the period in DMG 51965 is equal to the amount which would have applied if the person was still a student¹. This means that the

1. appropriate deductions and disregards apply (see DMG 51916 et seq)
2. weekly amount is calculated in the same way (see DMG 51926 et seq).

The amount of income to be taken into account for each benefit week is calculated on the basis that the person is still a student and none of the income has been repaid². The weekly amount is not reduced by repayments of the grant.

1 ESA Regs, reg 94(7) & reg 132; 2 reg 104(7)

Course not completed, treatment of loan and dependant grant income

Relevant payment

51977 A relevant payment is either a student loan or an amount for the maintenance of dependants, or both¹, paid to a student.

1 reg 104(6)

Calculation of weekly income

51978 If a claimant abandons or is dismissed from the course of study before the final instalment of a relevant payment has been paid, the DM should calculate the weekly amount to take into account using the formula¹.

$$\frac{A - (B \times C)}{D}$$

Where

1. **A** is the total amount of relevant payment which the claimant would have received, less the appropriate deduction for travel costs, books and equipment, had he remained a student until the last day of the term in which he abandoned or was dismissed from the course
2. **B** is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course
3. **C** is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been taken into account had the claimant been entitled to ESA (IR))
4. **D** is the number of benefit weeks in the assessment period. This is the number of weeks in the period²
 - 4.1 beginning with the benefit week that includes the day on which the course was abandoned, or the claimant was dismissed **and**

4.2 ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable.

Note: A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December³.

1 ESA Regs, reg 104(5); 2 reg 104(6); 3 Support Regs, reg 6

51979 The weekly amount calculated as in DMG 51978 should be taken into account for the period in DMG 51978 **4**.¹

1 ESA Regs, reg 104(5)

Example

Erin abandons her course of study on 25.2.10 in her second year after £2,020 of her students loan allocation has been paid. Had she remained a student for the full year she would have been entitled to a loan of £3,020 which is paid in three instalments; £1,020 in October, £1,000 in January and £1,000 in April. She is a Tuesday BWE.

The DM calculates a weekly amount of £NIL to take into account from 23.2.10 to 6.4.10;

A = £1,345 (£2,020 - £295 - £380)

B = 25 (number of weeks between 2.9.09 and 23.2.10)

C = £55.84 (£3,020 - £295 - £380 = £2,345/42 = £55.84 per week which would have been taken into account (before a £10 disregard) had she remained a student)

D = 6 (number of weeks between 24.2.10 and 6.4.10)

$$\frac{\pounds 1,345 - (25 \times \pounds 55.84)}{6} = \pounds \text{NIL}$$

51980 A student who has prematurely stopped being a student may voluntarily repay some or all of their student loan. In such a case there are no grounds to revise or supersede the award. This is because the repayment of a student loan is not a relevant change of circumstances¹.

1 SS CS (D & A) Regs, reg 6(6)(a)

51981 Where the former student repays the loan because the loan company has requested repayment, the claimant is under a certain and immediate liability to repay. Under such circumstances the DM should not treat the loan as income from the date that such a liability arises.

Calculation of weekly income when loan is paid by two or more instalments

51982 When a student loan is paid by two or more instalments and a student abandons or is dismissed from the course, the DM should calculate the weekly amount to take into account by using the formula¹

$$\frac{A - (B \times C)}{D}$$

Where

1. **A** is the total amount of the relevant payments which the person received or would have received from the first day of the academic year to the day the person abandoned or was dismissed from the course, less the appropriate deduction for travel costs, books and equipment.
2. **B** is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course.
3. **C** is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been taken into account had the student been entitled to ESA).
4. **D** is the number of weeks in the assessment period. This is the number of weeks in the period²
 - 4.1 beginning with the benefit week which includes the day on which the claimant abandoned or was dismissed from the course **and**
 - 4.2 ending on the earlier of the benefit week which includes
 - 4.2.a the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued **or**
 - 4.2.b the last day of the last quarter for which an instalment of the relevant payment was payable.

Note: A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December³.

1 ESA Regs, reg 104(5A); 2 reg 104(6); 3 Support Regs, reg 6

Example

Alan abandons his course of study on 9.2.09 in his second year after receiving £2,000 of his student loan allocation. He was entitled to a student loan of £3,570 and this was being paid in monthly instalments of £400 on the 1st of each month from 1st October to 1st May with a final payment of £370 due on 1st June. He is a Wednesday BWE.

The DM calculates that there is nothing to be taken into account from the student loan:

$$A = \text{£}1,325 \text{ (£}2,000 - \text{£}295 - \text{£}380)$$

$$B = 22 \text{ (number of weeks from 4.9.08 to 4.2.09)}$$

$$C = \text{£}68.92 \text{ (£}3,570 - \text{£}295 - \text{£}380 = \text{£}2,895/42 \text{ weeks (4.9.08 to 24.6.08) = } \\ \text{£}68.92 \text{ per week which would have been taken into account had he remained a } \\ \text{student)}$$

$$D = 4 \text{ (number of weeks between 5.2.09 and 4.3.09)}$$

$$\frac{\text{£}1325 - (22 \times \text{£}68.92)}{4} = \text{Nil}$$

51983 - 51999

Appendix 1

War Pensions

War widow's, 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 specified¹ 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 ESA Regs, reg 2(1); Income Tax (Earnings and Pensions) Act 2003, s 639(2)

Chapter 52 - Capital

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Chapter 52 - Capital

Introduction

About the guidance

52001 This Chapter gives guidance on capital and its effect on ESA(IR). The ESA(Cont) that claimants may be entitled to is not affected by their capital.

Flowchart

52002 The flowchart at Appendix 1 to this Chapter shows how to decide the amount of the capital of a claimant and partner and its effect on ESA(IR).

The law

52003 The law says

1. how capital is worked out¹
2. when people can be treated as having capital they do not have²
3. when capital people have can be disregarded³
4. when income can be treated as capital⁴
5. when capital can be treated as income⁵
6. claimants cannot get benefit if their capital is above £16,000⁶
7. capital of a partner is treated as the capital of the claimant⁷
8. when the total of capital is above a certain limit, the claimant is treated as having income⁸. 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 52771)⁹.

1 WR Act 07, s 17(1); ESA Regs, Part 10; 2 WR Act 07, s 17(3)(a); ESA Regs, reg 115 & 117; 3 WR Act 07, s 17(3)(b); ESA Regs, reg 111(2), Sch 9; 4 WR Act 07, s 17(3)(c); ESA Regs, reg 112; 5 WR Act 07, s 17(3)(d); ESA Regs, reg 105; 6 WR Act 07, Sch 1, para 6(1)(b); ESA Regs, reg 110; 7 WR Act 07, Sch 1, para 6(2) ESA Regs, reg 83; 8 WR Act 07, s 17(4); ESA Regs, reg 118; 9 reg 118(3)

52004 - 52019

Is the resource capital

What is capital

52020 Capital is

1. savings from income such as money held in
 - 1.1 cash
 - 1.2 a bank or building society account
 - 1.3 a save as you earn scheme
2. a lump-sum or one-off payment such as
 - 2.1 compensation for a personal injury
 - 2.2 money which has been borrowed
 - 2.3 one made by an employer to a person who is made redundant and the payment is not earnings
 - 2.4 one made by the Home Office to people on the Refugee Resettlement Programme
 - 2.5 one made to recompense people who have incorrectly had to pay care charges in the past
3. investments such as
 - 3.1 businesses
 - 3.2 capital and income bonds
 - 3.3 individual savings accounts (ISAs)
 - 3.4 national savings certificates
 - 3.5 personal equity plans (PEPs)
 - 3.6 personal pension schemes
 - 3.7 premium bonds
 - 3.8 stocks and shares
 - 3.9 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.

- 52021 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.

52022 - 52034

Rights to capital

52035 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.

- 52036 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”.

52037 Such rights are capital because they can be sold¹.

1 R(SB) 31/83

Example

On 1.3.06 Lisa agreed to sell her house to her brother Simon for £55,000. Simon could not afford to pay his sister the full amount so Lisa agreed that he could pay £20,000 on 1.3.06 and the remaining £35,000 on 1.3.08. On 8.11.08 Lisa makes a claim for ESA. She states she has no capital but that she is owed £35,000 as Simon did not pay her as agreed. The DM decides that Lisa has rights to capital.

Note: See DMG 52647 for guidance on how to get an expert valuation of rights to capital.

52038 - 52049

When income becomes capital

52050 Income other than earnings becomes capital after the end of the period it is payable for¹.

1 R(IS) 3/93

52051 Earnings become capital after

1. all liabilities such as income tax have been deducted¹ **and**
2. the end of the period they are payable for².

Note: DMG 52051 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 52520 et seq for the disregard of the value of assets of a business.

1 R(SB) 35/83; 2 R(IS) 3/93

52052 The period income and earnings are payable for starts with the day they are due to be paid.

52053 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 Cath makes a claim for ESA. She has £7,550 in a bank account. This includes a month's occupational pension of £250 which Cath received on 30 January. The DM decides that Cath has capital of £7,300 because her occupational pension payment of £250 has not become capital. On 16 February Cath 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 Cath has spent her occupational pension payment of £250 and that her capital has reduced by £70 to £7,230.

52054 - 52069

Does the person own the capital

General

Ownership of capital

- 52070 Only the capital where people are the beneficial owners is included when working out what capital they have.
- 52071 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.
- 52072 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.
- 52073 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.
- 52074 Legal owners who are not the beneficial owners of capital are holding that capital on trust for the beneficial owners¹. They cannot use the capital for themselves. It should be used for the beneficial owners.

1 R(SB) 23/85

- 52075 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.

- 52076 Only the legal owners of capital can withdraw or sell it.

People under the age of majority or without legal capacity

- 52077 In England and Wales, people under the age of majority can be the beneficial owners of capital. Those people are not usually the legal owners of their capital as businesses, such as banks, will not enter into a contract with them. A person under the age of majority cannot be the legal owner of
1. real or heritable property (see DMG 52020 4.) **or**
 2. shares.

In England and Wales the age of majority is 18 years old¹.

1 Family Law Reform Act 1969, s 1(1)

52078 In Scotland, people under the age of 16 are not usually the legal owners of their capital as they have no legal capacity¹. People over the age of 16 can be the beneficial owners of capital. However, the courts have powers to set aside any transactions made before a person reaches age 18, if the transaction was imprudent, which in practice restricts the willingness of businesses to enter into contracts with persons under 18 years old.

1 Age of Legal Capacity (Scotland) Act 1991, s 1(1)(a)

52079 The capital of people under the age of majority or without legal capacity may be held on trust if they are the beneficial owners of the capital but not the legal owners. They 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.

52080

How a person gets a beneficial interest in capital

52081 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 capital¹
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

52082 - 52089

How to work out if a person is the beneficial owner of capital

The person is the legal owner

52090 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

52091 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

52092 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.

52093 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

52094 Legal owners who use their money to get capital have a beneficial interest in that capital and are beneficial owners of it.

52095 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.

52096 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 trust¹.

Example

Dai 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 Dai 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.

The legal owners do not use their money to get the capital

52097 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.

52098 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.

52099 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

52100 DMG 52120 - 52339 gives guidance on how to work out the beneficial interest a person has in capital in certain types of cases.

52101 - 52119

Beneficial ownership in particular cases

About the guidance

- 52120 This part gives guidance on how to work out if a person is the beneficial owner of capital in certain types of cases.
- 52121 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. For example, Scots law does not have the same concept of “beneficial ownership”, but it nonetheless recognises that in some situations a person may not be the full legal owner of capital.

52122 - 52129

Businesses and limited companies

Businesses

- 52130 A person who is the only owner of a business is the beneficial owner of all of the capital of the business.
- 52131 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 equal¹. 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 1890, s 24(1)

Limited companies

- 52132 A company's capital is owned by the company. Directors of the company are not the beneficial owners of the capital of the company.
- 52133 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.
- 52134 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

52135 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 Matt makes a claim for ESA. He has a joint bank account with his mother, Olive, who is in a care home. There is no dispute that Matt and Olive are the joint legal owners of the account in which, on 8 March, there is the sum of £12,400. Matt provides evidence that he received a legacy of £2,000 which he paid into the account and that Olive has made all other deposits. The only withdrawals have been made to pay Olive's care home fees. The DM decides that Matt has capital of £2,000, the amount of his beneficial interest in the account.

52136 - 52139

Capital held by a solicitor

52140 People are the beneficial owners of capital, such as a payment of damages for personal injury, if it is held by their solicitor¹ unless

1. in England and Wales the amount to be repaid to the Legal Services Commission has not been worked out (see DMG 52141 - 52142) **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 52143 - 52144).

1 R(SB) 17/87

52141 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.

52142 Where DMG 52141 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

Joanne was awarded the sum of £25,000 as payment of damages following a road traffic accident. This money is being held by Joanne's solicitor. Joanne received funding from the Legal Services Commission. Joanne is not the beneficial owner of the sum she was awarded until the Legal Services Commission work out the amount to be repaid.

52143 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.

52144 Where DMG 52143 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.

52145 - 52149

Gifts

52150 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.

- 52151 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.
- 52152 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.
- 52153 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 gift¹. 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. The concept of the presumption of advancement does not exist in Scotland.

1 R(IS) 2/93

52154 - 52168

Interest in the estate of a person who has died

- 52169 When people die the capital they have is called the estate.
- 52170 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.
- 52171 An estate is administered or distributed by
1. executors if there is a will (in Scotland known as executors nominate) **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.
- 52172 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.

52173 An executor, administrator or executor dative does not have to distribute an estate¹ 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)

52174 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 deceased¹.

1 R(IS) 1/01

52175 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 52036). In Scotland this is described as a vested right in the estate. This can be valued (DMG 52647). 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 52815 et seq.

52176 At the end of the period in DMG 52174 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 52035). A person's rights to capital are included when working out that person's capital.

52177 Separate guidance sets out cases where DMs may require expert valuation of rights to capital (see DMG 52642 et seq).

52178 People only have a beneficial interest in the capital assets of the estate when ownership of those assets has been transferred to them.

52179

Interest in a trust

When there is a trust

52180 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.

52181 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.

52182 People for whom the capital has to be used can include the trustee.

52183 - 52184

Trustees

52185 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.

52186 A trustee has to do what the terms of the trust and the law says¹.

1 Trustee Act 1925; Trusts (Scotland) Act 1921 as amended by Trusts (Scotland) Act 1961

52187 - 52189

Terms of a trust

52190 The terms of a trust state

1. what is being held on trust **and**
2. who the donees are.

52191 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 law¹ to prove the existence of a trust.

1 Requirements of Writing (Scotland) Act 1995, s 1(2), (3) and (4); R(IS) 10/99

52192 - 52194

Interest in a trust

52195 DMG 52205 - 52243 gives guidance on

1. some interests people can have in a trust **and**
2. when they get their interest.

52196 A person's rights to capital under a trust are included when working out what capital a person has.

52197 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.

52198 The expenses of the trustees will be deducted before any payments are made out of the trust.

52199 - 52204

Contingent interest

52205 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.

52206 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.

52207 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 contingency¹.

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

52208 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.

52209 - 52214

Life interest or life rent

52215 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 52020 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.

52216 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.

52217 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.

52218 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.

52219 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.

52220 - 52224

Reversionary interest

52225 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.

52226 For example, Noah has a reversionary interest in a house if the terms of the trust say

1. Edna has a life interest in that house **and**
2. Noah gets the house on the death of Edna.

Noah's interest in the house is reversionary until he takes possession of the house. Noah takes possession of the house when Edna dies.

52227 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.

52228 If people with a reversionary interest die before they take possession of their interest the reversionary interest is included in their estate.

Vested interest

52229 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.

52230 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.

52231 If children and young people with a vested interest die before they get their interest the interest is included in their estate.

52232 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 interest¹. 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)

52233 - 52235

Discretionary trusts

52236 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. In Scotland such persons are simply called beneficiaries or more fully discretionary beneficiaries.

52237 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.

52238 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.

52239 If the trustees make a payment it is a voluntary payment. If the payment is

1. made regularly, it is taken into account as income other than earnings **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 may be disregarded - see DMG 52729

52240

Charitable trusts

52241 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.

Note: There is a more prescriptive list of charitable purposes in Scotland¹ and charities there are required to register with the Office of the Scottish Charity Regulator.

1 Charities and Trustee Investment (Scotland) Act 2005

52242 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.

52243 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

52244 In England and Wales, when two or more people jointly own real property (see DMG 52020 4.) they do so as

1. joint-tenants **or**
2. tenants in common.

52245 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.

52246 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.

52247 In Scotland property is almost always owned as common property (see DMG 52020 4.). Legal advice should be sought if it is suggested that property is held on any other basis.

52248 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.

52249 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**
2. tenants in common or, in Scotland, common owners.

52250

How to decide ownership of jointly-owned capital

52251 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

Anthony and his civil partner Guy decide to buy a house in Bedford. When asked, Guy wants to leave his share of the property to his children Paul and Sarah. Anthony and Guy therefore agree to be tenants in common. Anthony provided 75% of the purchase price and Guy the other 25%. They therefore agree that Anthony should own 75% of the property and Guy should own 25%.

52252 In Scotland the presumption is that common property is owned in equal shares, but the parties can provide in the title that different shares are to apply.

Example

Fraser and his wife Morag decide to buy a house in Dundee. They wish both their names on the title deeds. They will be common owners. It will be presumed that they own it in 50:50 shares, though they can provide in the title deeds that different shares are to apply

Other ways to become tenants in common or common owners

52253 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

1. being left real or heritable property under the terms of a will
2. contributing to the purchase price of real or heritable property, for example under the right to buy scheme (see DMG 52309 et seq)

3. changing from joint-tenants to tenants in common.

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%.

Note: In Scotland if Cecilia had bought the house in her name, then she owns 100% of the property. Ross would simply have a right to get his £32,000 back on whatever terms it was loaned. And if the property was bought in joint names (i.e. as common property), then the presumption here is that they each own 50% unless they provide otherwise.

Example 3

When Graham and Carrie were married they bought a house as joint-tenants. However, when they divorced Graham gave notice to Carrie that he wished to put an end to his 50% interest in the property. Graham did this so that in the event of his death the house would not automatically pass under the rules of survivorship to Carrie. The effect of this notice is that the joint-tenancy is changed into a tenancy in common which gives both Graham and Carrie separate and distinct shares in the property.

52254 In England and Wales where 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 52308). 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 52308 1. and the rule of presumption of advancement (see DMG 52150 et seq).

52255 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%.

52256 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 (In Scotland this would require express agreement as to how the shares were to vary). 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 mortgageon 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.

52257 If a claimant reduces his share of a jointly-owned property the DM should consider the rules on deprivation of capital see DMG 52805 et seq.

Evidence of joint-ownership

52258 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.

52259 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

52260 Two or more people may jointly own other assets such as bank accounts (see DMG 52135) 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

Alice 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 Alice's claim for ESA. Alice 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 Alice is treated as having a half share in the account (£7,500).

52261 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

52262 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 52244 et seq should be followed. DMs should send cases of doubt to Decision Making and Appeals (Leeds) for advice.

Valuation of jointly-owned capital

52263 See DMG 52637 - 52653 for guidance on how to value a claimant's share of jointly-owned capital.

52264 - 52265

Couples who are separated or divorced or whose civil partnership has been dissolved

52266 People who are married or are 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.

52267 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 how their capital should be divided. In England and Wales the proceedings in Court are called ancillary relief proceedings. There is no Scottish equivalent, in Scotland it is just a court action.

52268 A Court may take into account¹

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.

1 Matrimonial Causes Act 1973, s 25 & Family Law (Scotland) Act 1985, s 11

52269 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.

52270 People will be the beneficial owners of any capital the Court awards them outright¹.

1 R(IS) 4/96

52271 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.

52272 A person may seek an order for financial provision and property adjustment in connection with a divorce or dissolution of a civil partnership, an action to have a marriage or civil partnership declared null, or a separation¹.

1 Matrimonial Causes Act 1973 & Civil Partnership Act 2004

52273 A person does not have a beneficial interest in any capital they are seeking unless and until a property adjustment order is made¹.

1 R(IS) 1/03

52274 - 52275

Mentally sick or disabled persons

Beneficial interest

52276 People who are

1. mentally sick or disabled **and**
2. unable to deal with their capital

do not lose their beneficial interest in capital¹. Another person may be appointed to deal with it.

1 R(IS) 9/04

Court of Protection

52277 In England and Wales the Court of Protection

1. protects **and**
2. deals with

the capital of a mentally sick or disabled person¹.

1 Mental Health Act 1983; Mental Capacity Act 2005

52278 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.

52279 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.

52280 Capital held by the Court or Deputy is held on trust.

Note: The Deputy used to be known as the Receiver.

The Courts in Scotland

52281 In Scotland, the Office of the Public Guardian supervises persons who manage the financial affairs of adults with incapacity, either in general or in relation to particular items of property. Such persons are known as guardians, or financial guardians, and are appointed by the Sheriff. More than one guardian may be appointed. The person will always be a named individual (rather than, for example, a social work department) and will be issued with a certificate of appointment by the Office of the Public Guardian¹.

1 Adults with Incapacity (Scotland) Act 2000

Power of Attorney

52282 People who give another person power of attorney authorize that person to deal with

1. all of their property if they give the person unlimited power **or**
2. some of their property if they give them restricted power.

52283 People who give another person power of attorney remain the beneficial owners of their capital.

52284 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.

52285 In Scotland people with power of attorney are not authorized if the person who gave them power becomes incapable of making decisions about the matters to which the power relates **unless** the power states that it is intended to continue in that situation **and** the power has been registered with the Office of the Public Guardian. That Office will have issued a certificate of registration confirming that the power has been registered as a continuing power (a certificate that says it relates to a welfare

power is something different). However, a power of attorney that was granted prior to 2.4.01 is not subject to this condition, and will continue in force even if the granter becomes incapax, unless the power specifically provides for it to lapse in that situation. Pre-2.4.01 powers do not require to be registered with the Office of the Public Guardian.

Appointees

- 52286 A person appointed by the DM to act, for SS purposes only, on behalf of another person is called an appointee.
- 52287 Such appointment only allows a person to deal with benefit matters. An appointee is not authorised to deal with other property of the person who is unable to act (though they may, of course, have a power of attorney or hold an appointment by a court which gives them the ability to undertake such dealings).

Person not appointed or authorized

52288 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

52289 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 in England and Wales a chose in action to recover the capital that has been misused and, in Scotland, has a claim against the person for the misuse (see DMG 52036). The value of the chose in action or, in Scotland, the value of the claim, is actual, not notional, capital¹.

1 R(IS) 17/98

52290 However, a person who has power of attorney for another person can make gifts that are not unreasonable¹. 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 52289 applies but where they are not unreasonable DMG 52805 et seq should be considered².

1 Enduring Powers of Attorney Act 1985, s 3; Mental Capacity Act 2005, s 12; 2 R(IS) 17/98

Example

Helen has power of attorney for her mother, Barbara, who is in receipt of ESA(IR). 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.

52291 - 52299

Real property

Ownership of real property

52300 In England and Wales the legal owner of real property (see DMG 52020 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 52308).

Note: In Scotland the normal presumption would be that the heritable property was owned by whoever was named on the property titles until they were corrected.

52301 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.

- 52302 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.

52303 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.

52304 If there is no evidence of a mistake or a fraud the DM has to decide who has a beneficial interest in the property.

52305 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.

52306 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.

52307 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

52308 In England and Wales 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 52150 - 52153) does not apply¹.

1 R(SB) 49/83; R(SB) 1/85

Right to buy scheme

52309 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.

- 52310 In England and Wales 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.
- 52311 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.
- 52312 In Scotland a person who buys a property under the right to buy scheme would be the owner subject to any security (i.e. a mortgage) arrangements. There is no Scottish concept of beneficial ownership in this situation.

52313 - 52329

When a person is not the beneficial owner of capital

Bankruptcy

- 52330 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. In Scotland the Trustee in Bankruptcy is known as the Permanent Trustee or Trustee in Sequestration. The Trustee in Bankruptcy or, in Scotland, a Permanent Trustee or Trustee in Sequestration, may be the same person as the Receiver in Bankruptcy or interim trustee.
- 52331 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 the trustee in bankruptcy is appointed.

1 KS v SSWP (JSA) [2009] UKUT 122 (AAC) [2010] AACR 3

52332 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

52333 In England and Wales a Court can make an order such as a restraint order which stops people withdrawing or selling their capital.

52334 The order will list the capital involved.

52335 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.

52336 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.

52337 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.

52338 In Scotland an arrestment has a similar effect.

Liability to repay capital

52339 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 it¹. People are no longer the beneficial owners of the capital from the date the certain and immediate liability arises.

1 R(IS) 5/99

52340 - 52350

Can capital be disregarded

The law

52351 The law allows for all capital to be included in the claimant's resources unless it can be disregarded¹.

1 ESA Regs, reg 111 & Sch 9

Onus of proof

52352 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

52353 The DM decides if capital can be disregarded

1. at the date of claim, revision or supersession **and**
2. before it is valued.

The DM does not have to know the value of capital to decide if it can be disregarded.

52354 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.

52355 For certain disregards the DM has to decide if it is reasonable to disregard capital for a longer period. Capital is disregarded¹

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 **or**
6. for a prescribed period.

1 reg 111 & Sch 9

52356 The length of the disregard¹ depends on

1. the type of capital **and**
2. the circumstances of the claimant.

1 Sch 9

52357 - 52361

Capital disregarded indefinitely

Adoption allowance

52362 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.

52363 Payments of adoption allowances made under specific legislation¹ are disregarded indefinitely².

1 Adoption and Children Act 2002, s 2(6)(b) 3 or 4; 2 ESA Regs, Sch 9, para 57

Special guardianship payments

52364 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 legislation¹ is fully disregarded indefinitely². 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 ESA Regs, Sch 9, para 58

Annuities

52365 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 indefinitely¹. Payments made under an annuity are capital which is treated as income².

1 Sch 9, para 15; 2 reg 105(2)

Business assets

The law

52366 The assets of a business are disregarded indefinitely if

1. the person owns all or some of the business assets and is engaged in the business as a S/E earner¹**or**

2. the business 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 on the commercial activity for which the assistance is being received².

1 ESA Regs, Sch 9, para 10(1); 2 Sch 9, para 10(3)

52367 The assets of a business are disregarded for a reasonable period to allow them to be sold or otherwise disposed of if the person

1. owns all or some of the business assets and has stopped working in the business as a S/E earner¹ **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 received².

1 Sch 9, para 10(1); 2 Sch 9, para 10(4)

Example

John owns an amusement arcade in Bournemouth. He stopped working in the arcade as a S/E earner on 31 October and claimed ESA 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 52520 - 52523).

Meaning of business assets

52368 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.

52369 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 HMRC to such a receipt or holding.

Meaning of “reasonable period”

- 52370 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

- 52371 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 earner¹
- 1 ESA Regs, reg 2(1), SS CB Act 92, s 2(1)(b)*
- 52372 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 earnings¹.
- 1 ESA Regs, reg 2(1); SS CB Act 92, s 2(1)(a)*

When people are working in the business as a self-employed earner

- 52373 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 merits¹.
- 1 R(IS) 14/98*
- 52374 A partner in a business managed and worked exclusively by others is not working in the business as a self-employed earner. Even if that person receives a share of the profits of the business he is not a S/E earner¹.
- 1 R(IS) 14/98*

Capital administered by the court

52375 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 Court¹ of Protection (see DMG 52277) 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 rules².

1 Civil Procedure Rules 1998, rule 21.11(1); 2 Children (Scotland) Act 1995, s 13

52376 The disregard in DMG 52375 applies to capital which is being administered by a court or can only be disposed of with a court's permission (including in relation to a child under 18) derived from

1. an award of damages for personal injury to the person whose capital is being administered by the court¹ **or**

2. compensation for the death of one or both parents where the person concerned is under the age of 18².

Note: The disregard in DMG 52376 2. ceases to apply when the person concerned reaches the age of 18.

1 ESA Regs, Sch 9, para 43(1)(a), 43(1)(b), 43(2)(a) & 44(a); 2 Sch 9, para 43(1)(c), 43(2)(b) & 44(b)

Capital paid by instalments

52377 The value of the right to receive any outstanding instalments is disregarded indefinitely if capital is due to be paid by instalments¹.

Note: Depending on the circumstances payments of instalments can be taken into account as capital or income (see DMG 52380).

1 Sch 9, para 21

Capital which is not sterling

52378 Bank charges and commission which are payable when changing capital which is not paid as sterling into sterling are disregarded indefinitely¹. 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 Sch 9, para 26

Capital which is treated as income

The law

52379 Capital which is treated as income under ESA legislation¹ is disregarded as capital indefinitely².

1 ESA Regs, reg 105 & 137; 2 Sch 9, para 25

Capital paid by instalments - claimant and partner

52380 For claimants and partners capital which is payable by instalments is treated as income if on the date of

1. the first day in respect of which ESA(IR) is payable or date that the claim is determined, whichever is earlier **or**
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 as calculated in accordance with the guidance in this chapter¹.

1 reg 105(1)

52381

Payment made under an annuity contract

52382 Payments received under an annuity contract¹ are treated as income.

1 reg 105(2)

Earnings

52383 Any earnings which are not income are treated as income¹.

1 reg 105(3)

Career Development Loan

52384 A Career Development Loan paid under certain legislation¹ is treated as income².

1 E & T Act 73, s 2; 2 ESA Regs, reg 105(4)

Example

Roger is in receipt of ESA(IR). His wife, who is unemployed, receives a Career Development Loan of £8,000 to fund a 2 year course of vocational learning. The loan is arranged through the Learning Skills Council and with a high street bank. The payment is treated as income but is subject to a disregard (see DMG Chapter 51).

Personal injury payments

- 52385 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 claimant¹.

1 ESA Regs, reg 105(5)

Example

Lucinda was injured in a car accident and can no longer work. She is in receipt of ESA(IR). The court ordered that regular payments of £3,000 should be paid to Lucinda as a result of her injuries. The DM treats these payments as income but the payments are subject to a disregard (see DMG Chapter 51).

Student loans

- 52386 A student loan paid under education law¹ is treated as income².

1 Teaching and Higher Education Act 1998, s 22; Education (Scotland) Act 1980, s 73(3), 73B & 74; Education (Student Support) (Northern Ireland) Order 1998, art 3; Students' Allowances (Scotland) Regs, reg 4(1)(c); 2 ESA Regs, reg 137(1)

Dwelling occupied as the home

The law

- 52387 The dwelling occupied as the home is disregarded indefinitely. Only one dwelling can be disregarded¹. However in some circumstances, more than one property can be the dwelling occupied as the home² (see DMG 52397 et seq).

1 Sch 9, para 1; 2 Secretary of State v. Miah; R(JSA) 9/03

Meaning of dwelling

- 52388 Dwelling means any residential accommodation. This can be

1. all or part of a building **and**
2. separate and self-contained or not separate and not self-contained¹.

1 ESA Regs, reg 2(1)

Meaning of dwelling occupied as the home

- 52389 Dwelling occupied as the home means

1. the place normally lived in by the claimant as their 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 practicable or reasonable to sell separately

in particular in Scotland any croft land on which the place lived in stands¹.

1 ESA Regs, reg 2(1)

Onus of proof

52390 The person owning the property has to show what part of the property is occupied as the home.

52391 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 separately¹.

1 R(SB) 27/84

Example

Jack makes a claim for ESA. 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 has 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.

52392 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 52647).

52393 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 part of 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

52394 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 disregarded¹ as the dwelling occupied as the home.

1 R(SB) 27/84

Dwelling not occupied as the home for a time

52395 A dwelling which is usually occupied as the home is disregarded if

1. it is not occupied for a period of 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

52396 A small-holding is disregarded as the dwelling occupied as the home if it is like croft land in Scotland¹. 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

52397 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.

52398 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 43) **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 overcrowding¹ **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; Housing (Scotland) Act 1987, s 136 & 137; Secretary of State v. Miah; R(JSA) 9/03

52399 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 family life.

Example 1

Iain and Sharon 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 Iain and Sharon 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 Iain and Sharon own. Sharon and the five youngest children continue to live in the original house and the other children go to live in the newly purchased house. Iain 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. Iain becomes ill and claims ESA. The DM decides that Iain 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 ESA(IR). 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 falls ill and returns to London to claim ESA. 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 ESA. 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 makes a claim for ESA. 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

52400 A future interest in property of any kind is disregarded indefinitely. This does not apply to an interest in real or heritable property (see DMG 52020 4.) on which a person has given another person a continuing

1. lease or sub-lease **or**
2. tenancy or sub-tenancy¹.

1 ESA Regs Sch 9, para 9

52401 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.

52402

Income payable in a country outside of the United Kingdom

52403 The value of the right to receive earnings from employment or other 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 for the time during which they cannot be transferred to the UK from that country due to a ban¹.

1 ESA Regs, Sch 9, para 19

Life insurance policies

The law

52404 The surrender value of any policy of life insurance still in force is disregarded indefinitely¹.

1 Sch 9, para 20

Meaning of a policy of life insurance

52405 A policy of life insurance means a written document which says a payment of money will be 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 premiums¹.

1 reg 2(1)

Investments which include life insurance

52406 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 death¹.

1 R(IS) 7/98

Life interest or life rent

52407 The value of the right to receive income

1. under a life interest **or**
2. from a life rent

is disregarded indefinitely¹.

Note: Payments of income under a life interest or from a life rent are taken into account as income.

1 ESA Regs, Sch 9, para 18

Money deposited with a housing association

52408 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 law¹.

Note: A different disregard applies if the money deposited is to be used to buy another home (see DMG 52532 - 52534).

1 Housing Associations Act 1985, s 1(1); ESA Regs, Sch 9, para 13(a)

Occupational pensions

The law

52409 The value of the right to receive an occupational pension is disregarded indefinitely¹.

1 Sch 9, para 28

Meaning of occupational pension

52410 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 particular cases¹.

1 ESA Regs, reg 2(1)

Health in pregnancy grant

52411 The grant is payable to every woman from the 25th week of pregnancy after they have had appropriate health advice from a health professional. It is a one off non-taxable payment and should be disregarded when calculating the capital of the claimant¹.

1 Sch 9, para 38A

Payment for attending court

52412 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 law¹.

1 Sch 9, para 34

Payment for loss of housing benefit

52413 Any payment made by the DM to compensate for the loss of all or some of the HB a person can get is disregarded indefinitely¹.

1 Sch 9, para 33

52414

Payment for personal injury

The law

52415 The value of

1. a trust if the funds of which it consists come from a payment made because of a personal injury **and**
2. the right to receive payment from that trust

are disregarded indefinitely where the payment is made as a result of an injury to either the claimant or partner¹. 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 51 for how to treat such payments.)

Note 2: This disregard does not apply if the injury was to a claimant's deceased partner²

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 ESA Regs, Sch 9, para 16; 2 R(IS) 3/03

52416 For payments not held on trust see DMG 52503.

The Children's Memorial Trust

52417 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

52418 A payment in kind is disregarded indefinitely if made by

1. a charity
2. the Macfarlane Trust (see DMG 52458)
3. the Macfarlane (Special Payments) Trust (see DMG 52459)
4. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52460)
5. the Fund (see DMG 52461)
6. the Eileen Trust (see DMG 52462)
7. MFET Limited (see DMG 52463)
8. the Independent Living Fund (2006) (see DMG 52448)¹.

1 Sch 9, para 31

Payment made by local authority under child care law

52419 Any payment of capital made by the LA under specific child care legislation¹ is disregarded indefinitely².

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 ESA Regs, Sch 9, para 22(1)

52420 Where

1. a former child (aged 18+) who was in the claimant's care still lives with the claimant **and**
2. the LA makes a lump sum payment under certain child care law¹ 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 indefinitely², when calculating the claimant's capital.

1 Children Act 1989, s 23C; Children (Scotland Act) 1995, s 29; 2 ESA Regs, Sch 9, para 22(2) & (3)

Payment made to disabled persons to obtain or retain employment

The law

52421 Any payment (other than a training allowance) made by the Secretary of State or some other person under the law governing the employment of disabled people¹ to help disabled people obtain or retain employment despite their disability is disregarded indefinitely².

Note: See DMG 52505 for guidance on payments made to disabled people under employment and training law.

1 Disabled Persons (Employment) Act 1944; 2 ESA Regs, Sch 9, para 41

Schemes which help disabled people obtain or retain employment

52422 There are three special schemes which help disabled people obtain or retain 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

52423 Any payment made to people because they hold the

1. Victoria Cross **or**
2. George Cross

is disregarded indefinitely¹.

1 ESA Regs, Sch 9, para 45

Payment made to homeworkers under the Blind Homeworkers Scheme

52424 A payment made by the LA under disabled persons' law¹ to homeworkers who are helped under the Blind Homemaker's Scheme is disregarded indefinitely².

1 Disabled Persons (Employment) Act 1958, s 3; 2 ESA Regs, Sch 9, para 42

Payments from a local authority in lieu of community care services or health care

52425 Payments received from a LA which are in lieu of

1. community care services¹ **or**
2. health care²

are disregarded indefinitely³.

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 ESA Regs, Sch 9, para 56

Payments under the Supporting People programme

52426 Payments under the Supporting People programme are disregarded indefinitely¹.
The disregard applies

1. in respect of any payment made by
 - 1.1 a LA (including a county council) **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 ofthe claimant or partner to live independently in their accommodation.

1 Sch 9, para 55

Personal pensions

The law

52427 The value of

1. the right to receive a personal pension **and**
2. any funds held under a personal pension scheme

is disregarded indefinitely¹.

1 ESA Regs, Sch 9, para 28 & para 29

Meaning of personal pension scheme

52428 Personal pension scheme¹ means a

1. personal pension scheme as stated in pensions law²
2. an annuity contract or trust scheme approved under tax law³
3. personal pension scheme approved under tax law⁴.

*1 reg 2(1); 2 Pension Schemes Act 1993, s 1; 3 Income and Corporation Taxes Act 1988, Part XIV, Chapter III;
4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV*

52429 - 52430

Personal possessions

52431 Personal possessions such as clothing, jewellery, and cars are disregarded indefinitely (but see DMG 52432)¹.

1 ESA Regs, Sch 9, para 14

52432 Personal possessions are not disregarded if people buy them to reduce the amount of capital they have so that they can get

1. ESA, JSA or IS **or**
2. more ESA, JSA or IS¹.

1 Sch 9, para 14

Premises lived in by a partner or relative

The law

52433 Premises such as a house or flat are disregarded indefinitely if they are occupied in whole or in part as the home by a

1. partner or relative of a single claimant or any member of the family **and** the partner or relative is

- 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 dissolved¹.

Note: A claimant and former partner who are separated are not necessarily estranged.

1 ESA Regs. Sch 9, para 4

Example

Max is in receipt of ESA(IR). He goes into residential care and his wife Sheila remains in their marital home. Sheila visits Max on a regular basis. The DM decides that Max and Sheila are not estranged.

Meaning of relative

52434 Relative¹ means a

1. parent including an adoptive parent²
1. parent-in-law
2. 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 if they were their wife, husband or civil partner².

1 ESA Regs, reg 2(1); 2 R(SB) 22/87

52435 A person included under DMG 52434 18. and 19. ceases to be a relative if the wife, husband or civil partner they live with together dies.

52436

Is the person incapacitated

52437 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 ESA
 - 1.7 SDA
 - 1.8 SSP
 - 1.9 a benefit similar to the ones at 1. to 8. 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

52438 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

- 52439 The value of the right to receive rent is disregarded indefinitely as capital but not when a person has a reversionary interest in the property for which the rent is due¹.

1 ESA Regs, Sch 9, para 30

- 52440 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

- 52441 A SF payment made under social security law¹ is disregarded indefinitely². This does not apply to a payment made from the European Social Fund.

1 SS CB Act 92, Part VIII; 2 ESA Regs, Sch 9, para 23

Tax refunds

- 52442 A refund of tax which is deducted under tax law¹ from the interest on a loan is disregarded indefinitely if the loan is used to

1. buy or acquire any interest in the dwelling which is lived in as the home **or**
2. pay for repairs and improvements to such a home².

1 Income and Corporation Taxes Act 1988, s 369; 2 ESA Regs, Sch 9, para 24

The Independent Living Fund (2006)

The law

- 52443 One-off payments made from the Independent Living Fund (2006) are disregarded indefinitely¹.

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 Sch 9, para 27(1)

52444 - 52447

Meaning of the Independent Living Fund (2006)

- 52448 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 part¹.

1 ESA Regs, reg 2(1)

Payment included with other capital

- 52449 If the payment is included with other capital the disregard does not apply to the other capital.
- 52450 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

- 52451 If payment is made in kind see DMG 52418.

52452

The Macfarlane Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund or the London Bombings Relief Charitable Fund

The law

- 52453 One-off payments made from the Trusts (see DMG 52457) are disregarded indefinitely¹.

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 Sch 9, para 27(1)

- 52454 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 if the person has died, were not estranged, divorced, or part of a dissolved civil partnership at the time of death **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 family¹.

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 ESA Regs, Sch 9, para 27(2)

- 52455 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 family¹.

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 Sch 9, para 27(3)

- 52456 Any capital the person gets from the income or capital of the payment
- 1.** from the Trusts **or**
 - 2.** at DMG 52450
- is disregarded indefinitely¹.

1 Sch 9, para 27(6)

Example

Georgia is in receipt of ESA(IR). 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 Georgia 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.

The Trusts

52457 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. the Independent Living Fund (2006)
8. Skipton Fund **and**
9. London Bombings Relief Charitable Fund¹.

1 ESA Regs, Sch 9, para 27(1) & para 27(7)

The Macfarlane Trust

52458 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 haemophilia¹.

1 reg 2(1) & Sch 9, para 27(1)

The Macfarlane (Special Payments) Trust

52459 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 haemophilia¹.

1 reg 2(1)

The Macfarlane (Special Payments) (No. 2) Trust

52460 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 people¹. 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 ESA Regs, reg 2(1)

The Fund

52461 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 in Scotland on 10.4.92 and elsewhere on 24.4.92¹. 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 reg 2(1)

The Eileen Trust

52462 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 trust¹. It further benefits non-haemophiliacs who benefit under the Fund. It makes payment for occasional or continuing need.

1 reg 2(1)

MFET Limited

52463 The Department of Health funds an organisation called MFET Limited¹ to provide financial help to people who have been infected with HIV as a result of treatment with NHS blood or blood products.

1 reg 2(1)

The Skipton Fund

52464 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 provisions¹. 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 reg 2(1)

The London Bombings Relief Charitable Fund

52465 The London Bombings Relief Charitable Fund¹ 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, received lump sum payments from the London Bombings Relief Charitable Fund ranging between £3,000 and £25,000.

1 ESA Regs, reg 2(1)

Qualifying person

52466 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 Fund¹.

1 reg 2(1)

Evidence

52467 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.

52468 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

52469 If the payment is included with other capital the disregard does not apply to the other capital.

52470 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

52471 Other payments are disregarded. If the payment is made

1. in kind, see DMG 52418 **or**
2. to or for the benefit of some other person, see DMG 52485 - 52489.

Payments to persons imprisoned or interned by the Japanese during the Second World War

52472 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 indefinitely¹.

1 ESA Regs, Sch 9, para 50

Example

Jim is receiving ESA(IR). 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.

Payments made to sufferers of variant Creutzfeldt-Jakob disease and their partners

Meaning of “the relevant trust”

52473 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 eligible¹.

1 Sch 9, para 53(6)

Meaning of “diagnosed person”

52474 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 disease¹.

1 Sch 9, para 53(6)

52475 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 dies¹.

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 died².

1 ESA Regs, Sch 9, para 53; 2 Sch 9, para 53(5)

Example

Thomas died of variant Creutzfeldt-Jakob disease on 25.11.07. His widow, Helga, makes a claim for ESA. On 5.11.08 she receives a payment of £25,000 from the relevant trust. The DM decides that this payment is disregarded for Helga's lifetime.

52476 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 indefinitely¹.

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 Sch 9, para 53(3)

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 11.11.08 David claims ESA. 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.

- 52477 Trust payments may be made to other relatives of a person diagnosed with variant Creutzfeldt-Jakob disease. See
- DMG 52490 if the payment is made to a parent of the diagnosed person
 - DMG 52492 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

52478 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.

52479 The disregard in DMG 52478 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 partner¹.

1 ESA Regs; Sch 9, para 54

Age related payments

52480 One-off age-related payments are payments of capital. DMs should not take them into account for ESA(IR) purposes¹.

1 Age-Related Payments Act 2004, s 6(b)

Education maintenance allowance payments

52481 Any education maintenance allowance payable under prescribed legislation as

1. education maintenance allowance¹ **or**
2. the same as education maintenance allowance²

is disregarded indefinitely².

*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) & Education (Scotland) Act 1980, s 73ZA;
2 Education Act 2002, s 14 and 181; ESA Regs, Sch 9, para 52(1)*

52482 In addition to the disregard at DMG 52481 any payment made under prescribed legislation¹ 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 52481 above

is also disregarded indefinitely².

1 Education Act 1996, s 518; Education (Scotland) Act 1980, s 49; Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & Education (Scotland) Act 1980, s 73ZA; 2 ESA Regs, Sch 9, para 52(2)

52483

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

52484 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 FTE¹.

1 ESA Regs, Sch 9, para 27(4)

52485 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 FTE¹.

1 ESA Regs, Sch 9, para 27(5)

Note: Step-parent includes relationships arising through civil partnerships¹.

1 Civil Partnership Act 2004, s 246

- 52486 Any capital which a person gets from the income or capital of the payment at DMG 52484 - 52485 is also disregarded¹.

1 ESA Regs, Sch 9, para 27(6)

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 15.11.08 Leonard makes a claim for ESA. 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 30.01.09 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.

Payment included with other capital

- 52487 If the payment is included with other capital the disregard does not apply to the other capital.
- 52488 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

52489 Any payments made from the relevant trust (see DMG 52473) 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 date¹.

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 date².

1 ESA Regs, Sch 9, para 53(1)(c) & 53(2)(b); 2 Sch 9, para 53(5)

52490 Where a payment is made

1. by a person to whom a payment from the relevant trust (see DMG 52473) has been made or from the estate of such a person
2. to a
 - 2.1 parent of the diagnosed person (see DMG 52474) **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 hospitalon the date the diagnosed person died

the payment is disregarded for a period of two years from the date on which it is made¹.

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 Sch 9, para 53(3)(b), para 53(4) & para 53(5)

Definitions

52491 The definition of¹

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**
 - 1.1.d are or have been dependent on alcohol or drugs²
 - 1.2 in Scotland, accommodation in which a care home service is provided³. 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 legislation⁴
 - 3.2 in Wales, a hospital that is not a health service hospital as defined in legislation⁵
 - 3.3 in Scotland, an independent healthcare service as defined in legislation⁶.

1 ESA 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

52492 Any payments made from the relevant trust (see DMG 52473) 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 family¹ 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. on the day before the day the child or qualifying young person ceases FTE **or**
3. on the day before the day the child or qualifying young person reaches the age of 20

whichever is the latest². The disregard will therefore be for a minimum of two years.

1 ESA Regs, Sch 9, para 53(1)(d) & 53(5)(b); 2 Sch 9, para 53(2)(c)

52493 Where a payment is made

1. by a person to whom a payment from the relevant trust (see DMG 52473) has been made or from the estate of such a person
2. to a member of the family of the diagnosed person (see DMG 52474) who is a person in FTE or under the age of 20

the payment is disregarded for the appropriate period in DMG 52492 but only to the extent that such payments do not exceed the total amount of any trust payment to the diagnosed person¹.

1 Sch 9, para 53(3)(c), 53(4)(c) & 53(5)(b)

Example

Stephen is diagnosed as suffering from variant Creutzfeldt-Jakob disease and receives a payment of £35,000 from the relevant trust on 30.2.08. Stephen dies on 15.5.08 and leaves £10,000 of the trust payment to his son Craig, who was born on 5.3.90. Craig leaves FTE on 30.6.08 and makes a claim for ESA on 11.12.08. The DM decides that the £10,000 Craig inherited is disregarded until 14.5.10.

52494 In DMG 52492 and DMG 52493 **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.

Capital disregarded for 52 weeks

Arrears of allowances and benefits

The law

52495 **[See Memo DMG 15/11]** Arrears of certain allowances and benefits are disregarded for 52 weeks from the date the payment of arrears is received¹ (but see DMG 52510 if the arrears and any concessionary payment total £5000 or more). The disregard applies to arrears of

1. AA²
2. CAA which is paid with a disablement pension because disablement has been assessed at 100%³
3. ESDA paid because industrial disablement has been assessed at 100%⁴
4. CAA and ESDA paid because the claimant is entitled to workmen's compensation⁴
5. an attendance allowance paid under the PB and MDB scheme
6. payments for attendance under the Civilian's Personal Injury Scheme⁵ 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 law⁶
12. CTB
13. DPTC
14. HB
15. WFTC
16. IS, Family Income Supplement and Supp B
17. ESA(IR)
18. JSA(IB)
19. CTC
20. WTC.

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 received¹.

1 ESA Regs, Sch 9, para 11(1); 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 Social Security Act 1975, s 37A

Meaning of concessionary payment

52496 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 or tax credits are charged¹.

1 WR Act 07; ESA Regs, reg 2(1)

Arrears of payments to certain war widows or surviving civil partners

52497 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 special war widow's or surviving civil partner's payment which is made to persons whose husband, wife or civil partner died from
 - 1.1 injuries **or**
 - 1.2 illnesscaused by military service which ended before 31.3.73
2. a supplementary pension paid to a widow or surviving civil partner for
 - 2.1 the disablement **or**
 - 2.2 deathof service personnel before 1973
3. a supplementary pension paid to a widow or surviving civil partner under the Personal Injuries (Civilians) Scheme **and**
4. a supplementary pension paid to the widow or surviving civil partner of a person
 - 4.1 whose death was caused by service similar to being in the armed forces **and**
 - 4.2 that service ended before 31.3.73 **and**
 - 4.3 the payment is equal to the amount in 1. above¹.

1 Sch 9, para 40

Payment for certain travel costs and NHS charges

52498 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 law¹ **and**
2. a payment or repayment made by the
 - 2.1 Secretary of State for Health **or**
 - 2.2 Scottish Ministers **or**
 - 2.3 Secretary of State for Waleswhich is like those at 1.².

1 National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988, reg 3; 5 & 8; National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003, reg 3, 5 & 11; 2 ESA Regs, Sch 9, para 37

Payment made in place of milk, vitamin tokens or healthy start vouchers

52499 A payment made under welfare food law¹ 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 received².

1 Welfare Food Regulations 1996, regs 6, 8 & 12; 2 ESA Regs, Sch 9, para 38

Payment to visit a person in custody

52500 A payment made to a person by the

1. Secretary of State for Justice **or**
2. Scottish Ministers

to pay for a visit to see someone who is in custody is disregarded for 52 weeks from the date the payment is received¹.

1 ESA Regs, Sch 9, para 39

Reduction of liability for council tax

52501 A payment made because of the reduction of council tax under local government law¹ is disregarded for 52 weeks from the date the payment is received².

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 & 80; 2 ESA Regs, Sch 9, para 35

52502

Payment for personal injury

52503 Any 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 elapsedwhichever is the sooner¹.

1 Sch 9, para 17

52504 This 52 week disregard does not apply to

1. any subsequent payments made as a result of the same injury in DMG 52503 above, whether it is made by the same person or another¹ (but the remainder of the existing 52 week period could still be applied) **or**

2. payments made from a trust where the funds of that trust come from a personal injury payment to the claimant or partner².

1 ESA Regs, Sch 9, para 17(2)(b); 2 Sch 9, para 17(2)(d)

Example

Howard is in receipt of ESA(IR) and on 27.11.08 he receives a payment of £10,000 for an injury to his leg caused when it was crushed in a machine at work some 10 months previously. The DM decides that this amount can be disregarded for 52 weeks, until 25.11.09. On 24.9.09, 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 24.9.09 to 25.11.09

Payments made under employment and training law

- 52505 Certain payments made under employment and training law¹ that are payments of capital are disregarded for a period of 52 weeks beginning on the date of receipt of the payment².

Note: See DMG Chapter 51 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 ESA Regs, Sch 9, para 32

Payments to participants in New Deal and Employment Zone programmes

Capital acquired under the self-employment route

- 52506 Any sum by a person who is receiving or has received assistance under the self-employment route 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 establishing or carrying on the commercial activity in respect of which such assistance is or was received¹.

1 Sch 9, para 46

Payments made by an Employment Zone contractor

- 52507 Any discretionary payment made by an EZ contractor to a claimant taking part in an EZ programme is disregarded for 52 weeks from the date of receipt¹.

1 Sch 9, para 48

52508 Any arrears of subsistence allowance paid as a lump sum is disregarded for 52 weeks from the date of receipt¹.

1 ESA Regs, Sch 9, para 49

52509 See DMG 14600 for further guidance on the treatment of payments made by an EZ contractor.

Arrears and concessionary payments of £5,000 or more

When the disregard applies

52510 The disregard applies where

1. the claimant receives arrears of one of the benefits, allowances or payments listed in DMG 52495 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 14.10.01¹.

1 Sch 9, para 11(2)(a) & (b)

Period of the disregard

52511 The period of the disregard is

1. 52 weeks from the date the relevant sum is received **or**
2. if the sum is received in its entirety during an award of ESA(IR), for the remaining period of the award of ESA(IR) (see DMG 52512)

whichever is the longer period¹.

1 Sch 9, para 11(2)

52512 For the purposes of DMG 52511 **2.** the remaining period of the award of ESA(IR) means

1. the award of ESA(IR) 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 ESA(IR), 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 sum¹.

1 ESA Regs, Sch 9, para 11(3)

Example 1

Winston receives JSA(IB) from 8.8.07 to 8.1.08. He then receives IS from 9.1.08 to 29.1.08. On 30.1.08 he reclaims JSA(IB) which is paid for the period 30.1.08 to 30.10.08. On 17.10.07 Winston received £6,995 arrears of JSA(IB) and on 24.4.08 he receives a concessionary payment of £310 because of an official error. Winston starts remunerative work on 31.10.08 but he loses his job after becoming ill and makes a claim for ESA on 1.4.09. 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 24.4.08 can be disregarded for 52 weeks to 22.4.09 because this is a longer period than the remainder of the JSA(IB) award of 30.1.08. The arrears of JSA(IB) fall to be taken into account for the purposes of the ESA claim made from 1.4.09.

Example 2

Hannalore is in receipt of ESA(IR). On 1.2.09 she receives arrears of £4,950 and on 17.3.09 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 1.2.09 to 30.1.10 and from 17.3.09 the concessionary payment and any of the remaining payment of arrears are disregarded for either 52 weeks or the duration of Hannalore's ESA award, whichever is the longer period.

Example 3

Rhys receives JSA(IB) until 31.8.08. On 15.10.08 he receives a concessionary payment of £15,000 because of an official error. Rhys then has an accident and on 3.11.08 claims ESA. The DM decides that the concessionary payment can be disregarded for no more than 52 weeks from 15.10.08.

52513 - 52519

Capital disregarded for 26 weeks or longer

Business assets

The law

52520 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 or some of the business **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 recovers or is able to work.

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 made¹.

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 ESA Regs, Sch 9, para 10(2)

Meaning of self-employed earner

52521 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 earner¹.

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 earnings².

1 reg 2(1); SS CB Act 92, s 2(1)(b); 2 SS CB Act 92, s 2(1)(a)

Deciding if it is reasonable to disregard for a longer period

52522 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

52523 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 52371 - 52374.

Dwelling left because of estrangement, divorce or dissolution of a civil partnership

The law

52524 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 as a home by the former partner **and**
 - 2.2 the former partner is a lone parent¹.

1 ESA Regs, Sch 9, para 5

Meaning of dwelling

52525 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-contained¹.

1 reg 2(1)

Meaning of dwelling occupied as the home

52526 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 stands¹.

1 reg 2(1)

Meaning of lone parent

- 52527 Lone parent means¹ 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 ESA Regs, reg 2(1)

Meaning of child

- 52528 A child is a person under the age of 16¹.

1 reg 2(1)

Meaning of young person

- 52529 Young person
1. means¹ a person who is a qualifying young person **but**
 2. does not include a person who
 - 2.1 is an eligible child **or**
 - 2.2 is a relevant child **or**
 - 2.3 in Scotland is a person of a prescribed description
- under certain legislation².

DMG Chapter 43 provides guidance on who is a qualifying young person.

1 reg 2(1); 2 Children (Leaving Care) Act 2000, s 6

Grants made to buy, repair or alter premises

The law

- 52530 A grant made to a person by a local housing authority or LA under housing law¹ 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 received².

1 Housing Act 1988, s 129; Housing (Scotland) Act 1988, s 66; 2 ESA Regs, Sch 9, para 36

Deciding if it is reasonable to disregard for a longer period

- 52531 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

- 52532 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 law¹ **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 reasonable².

1 Housing Associations Act 1985, s 1; 2 ESA Regs, Sch 9, para 13(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 52408).

Date the disregard starts

- 52533 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

- 52534 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

52535 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 sale¹.

1 ESA Regs, Sch 9, para 3

The money

52536 Money includes a payment made to a tenant or lessee by a landlord to buy back a tenancy or lease¹.

1 R(IS) 6/95

Applying the disregard

52537 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 home¹.

1 R(IS) 7/01

Example

Ethan receives £50,000 from the sale of his previous home. He moves to another area and claims ESA. 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 Ethan will use the money to buy another home within 26 weeks or any extended period.

52538 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.

- 52539 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.

- 52540 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 home¹. Separate guidance sets out those cases where DMs may require such expert advice.

1 R(SB) 18/82

- 52541 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

- 52542 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

52543 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

52544 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.

52545 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

52546 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. is intended 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 paid¹.

Note: The disregard does not apply to money which a person gets when a landlord buys back a tenancy or lease².

1 ESA Regs, Sch 9, para 12(a); 2 R(IS) 6/95

Deciding if it is reasonable to disregard for a longer period

- 52547 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 6 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

- 52548 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 acquired¹.

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 ESA Regs, Sch 9, para 12(b)

Essential repairs and improvements

52549 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

52550 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

52551 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 occupation¹.

1 ESA Regs, Sch 9, para 2

The premises

52552 The premises must be capable of being a dwelling which can be lived in as the home¹. 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

- 52553 People can acquire premises if they buy, are given or inherit them.
- 52554 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

- 52555 The legal owners of premises own them but do not have vacant possession of them if a tenant or lessee 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.
- 52556 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.
- 52557 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 lessee does not leave the premises at the end of the tenancy or lease.
- 52558 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.
- 52559 A different disregard applies if the owner has asked for legal advice about getting or started legal proceedings to get back possession (see DMG 52563 - 52570).

Moving into the premises

- 52560 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.

52561 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.

52562 A different disregard applies from the date the owner first takes steps to have the premises repaired or altered (see DMG 52571 - 52578).

Premises which a person is taking steps to get possession of

The law

52563 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 26 weeks, or longer if it is reasonable, from the date the person asked for legal advice or started legal proceedings, whichever is earlier¹.

1 ESA Regs, Sch 9, para 7

The premises

52564 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

52565 The first date is the date 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.

52566 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

52567 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 Decision Making and Appeals (Leeds) for advice.

52568 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.

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 Decision Making and Appeals (Leeds) for advice.

Period of disregard

52569 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.

52570 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

52571 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 altered¹.

1 ESA Regs, Sch 9, para 8

The premises

52572 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

52573 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

52574 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

52575 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.

52576 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

52577 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.

52578 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

52579 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 steps¹.

1 ESA Regs, Sch 9, para 6

The premises

52580 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

52581 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

52582 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 or solicitor to market the property
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.

52583 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 ESA. 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

52584 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 or solicitor to market the property
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.

52585 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 on 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 of the property for sale being exceptional and something over which the claimant had no control, the date from which the 26 week disregard period will be calculated will be the second attempt to sell the house, i.e. 20 February 2011.

Period of disregard

52586 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.

52587 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.

52588 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.

52589 - 52600

Capital disregarded for 26 weeks

Payment of a sports award

52601 A payment of a sports award¹ is disregarded for a period of 26 weeks from the date on which the payment was received². 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 ESA **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 liable³.

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 made⁴.

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 activities⁵.

1 ESA Regs reg 2(1) & Sch 9, para 47(1); 2 Sch 9, para 47(1);

3 Sch 9, para 47(2); 4 Sch 9, para 47(3); 5 reg 2(1)

52602 - 52604

Capital disregarded for a prescribed period

Mortgage interest run-on

52605 When a person satisfies the conditions of paragraph DMG 20530, any capital should be disregarded in full¹.

1 ESA Regs, Sch 9, para 51

52606 - 52609

What is the value of capital

General

52610 All of the capital a person has, is included when working out the amount of capital but not capital which is disregarded¹.

1 ESA Regs, reg 111(1)

Capital in the United Kingdom

52611 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 that market or surrender value if there are costs of sale **and**
2. the amount of any incumbrance secured on the capital¹.

1 reg 113

52612 - 52613

Capital outside of the United Kingdom

52614 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 would 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 capital¹.

1 reg 114

Current market value

52615 Current market value means the price a willing buyer will pay a willing seller in that market on the relevant date¹. 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/supersession.

1 R (SB) 6/84

52616 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

- 52617 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.
- 52618 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

- 52619 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 value¹.

1 R(SB) 6/84

Costs of sale

- 52620 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.
- 52621 There are normally costs of sale if a person
1. uses another person to sell the capital, such as
 - 1.1 an estate agent or solicitor **or**
 - 1.2 a broker **or**
 - 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.
- 52622 There are always costs of sale if the capital is real or heritable property (see DMG 52020 4.)¹.

1 R(IS) 21/93

- 52623 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.
- 52624 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

- 52625 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 deducted¹.

1 R(IS) 21/93

- 52626 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 securedif any of the capital on which it is secured is disregarded when working out what capital a person has¹.

1 R(IS) 21/93

Example

On 29 January Anwar makes a claim for ESA. 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).

52627 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.

52628 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.

52629 - 52636

Jointly-owned capital

The law

52637 See DMG 52244 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

52638 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 asset¹ **and**
2. value the claimant's deemed share itself, under the normal rules.

1 ESA Regs, reg 117

52639 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

52640 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 share¹.

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 ESA. 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 ESA. The DM decides that their share of the value of the house cannot be disregarded. When deciding Sue's claim for ESA, the DM takes the value of her 60% share of the property into account. When deciding Melinda's claim for ESA, the DM takes the value of her 40% share of the property into account.

Capital asset in the United Kingdom

52641 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 52640). The market value is the price that a willing buyer would pay a willing seller¹ for the share the claimant is deemed to possess or actually possesses.

1 R(SB) 6/84

Land or premises

52642 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 52642 **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 sale¹.

Note 3: For the purposes of DMG 52642 **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.

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.

1 R(IS) 1/01

52643 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 made¹.

1 R(JSA) 1/02

52644 The DM should accept a valuation that satisfies DMG 52641 and DMG 52642 and not accept one that does not. If provided with more than one valuation that satisfies DMG 52641 and DMG 52642 the DM should decide between them according to which presents the stronger evidence and arguments.

52645 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 sale¹.

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 value¹.

1 ESA Regs, reg 113

52646 Administrative procedures for obtaining expert opinions on the value of deemed or actual shares in capital assets have been set up (see DMG 52647). 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.

52647 Benefit Delivery Specialist Operations Team issue guidance¹ on how to get an expert valuation of

1. real or heritable property (see DMG 52020 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

52648 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 52135) **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

52649 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 asset¹.

1 ESA Regs, reg 113

Value of a deemed or actual share in a capital asset outside the United Kingdom

52650 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.

52651 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.

52652 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.

52653 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.

52654

Business assets

52655 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 (see DMG 52035 - 52037)
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

52656 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

52657 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.

52658 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

52659 When a mentally sick or disabled person has funds held by the Court of Protection (see DMG 52277 et seq), those funds should be valued in accordance with DMG 52611 - 52614. The person's incapacity does not affect this¹.

1 R(IS) 9/04

Example

Veronica lives in a care home and makes a claim for ESA. 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 ESA(IR) because the value of her capital exceeds £16,000.

Personal equity plans

52660 A personal equity plan (PEP) was an investment. People could invest up to a certain amount of money in a PEP 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 PEP 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 PEP is income from capital.

52661 A PEP mortgage is not a mortgage. It is a PEP 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 PEP.

Note: A PEP was replaced by an Individual Savings Account (ISA) in April 1999. From that date people could no longer invest in their PEP or open a new one.

Individual savings account

52662 An individual savings account (ISA) is an investment. People can invest up to a certain amount of money in an ISA 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 ISA 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 ISA, is income from capital.

52663 Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. If someone says they are using an ISA to pay off their mortgage this is not likely to be an incumbrance secured on the ISA. The ISA should be valued as such.

52664 It is a requirement of the ISA regulations that the ISA remain in the beneficial ownership of the investor¹.

Note: If there is evidence that the ISA or PEP was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the ISA or PEP then it may constitute an equitable charge and they should be valued taking that into account.

1 The Individual Savings Account Regulations 1998, reg 4(6)

Stocks and shares quoted on the London Stock Exchange

Value of stocks and shares

- 52665 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.
- 52666 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.
- 52667 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.
- 52668 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 the claimant and partner has¹.

1 R(IS) 18/95

- 52669 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.

52670 Once the share value has been calculated as in DMG 52669, deduct 10% costs of sale as per DMG 52611, 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.

52671

Incumbrances secured on stocks and shares

52672 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 commission¹.

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.

1 R(IS) 18/95

52673 The amount of the incumbrance is the amount owed to the stockbroker.

Government securities

52674 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

52675 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 52665 et seq).

52676 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.

52677 - 52679

Unit trusts

Value of unit trusts

52680 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

52681 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.

52682 - 52684

Value of capital in certain cases

Bank and building society accounts

52685 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.

- 52686 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

52687 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.

52688 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

52689 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

52690 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 has¹. 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 less².

1 R(SB) 18/83; 2 R(IS) 2/90

52691 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.

52692 - 52719

Total amount of capital

How to work out the total amount of actual capital

52720 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.

52721 - 52724

Income which is treated as capital

52725 Certain types of income are treated as capital¹. 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 ESA Regs, reg 112

Advance of earnings or loan from employer

52726 An advance of earnings or a loan from an employer is income which is treated as capital if the person is an employed earner¹.

1 reg 112(5)

52727 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 scheme¹.

1 reg 2(1) & SS CB Act 92, s 2(1)(a)

Example

Barrie is in receipt of ESA(IR). 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. Barrie 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.

Bounty payments

52728 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 year¹. This applies to work as

1. a P/T member of a fire brigade which is kept under fire services law² **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 law³.

*1 ESA Regs, reg 112(1); 2 Fire and Rescue Services Act 2004; Fire (Scotland) Act 2005;
3 Social Security (Contributions) Regulations 2001, Sch 6*

Charitable or voluntary payments

52729 A charitable or voluntary payment which is not made or due to be made regularly is income which is treated as capital¹ but not if it is a payment from the

1. Macfarlane Trust (see DMG 52458) **or**
2. Macfarlane (Special Payments) Trust (see DMG 52459) **or**
3. Macfarlane (Special Payments) (No. 2) Trust (see DMG 52460) **or**
4. Fund (see DMG 52461) **or**
5. Eileen Trust (see DMG 52462) **or**
6. MFET Limited (see DMG 52463) **or**
7. Independent Living Fund (2006) (see DMG 52448)².

1 ESA Regs, reg 112(7); 2 reg 112(8)

52730 - 52731

Discharge grant paid to prisoners

52732 A discharge grant paid to prisoners under prison law¹ is income treated as capital².

1 Prison Act 1952, s 30; Prisons (Scotland) Act 1989, s 17; 2 ESA Regs, reg 112(6)

Holiday pay

52733 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 capital¹.

1 reg 112(3)

52734 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 ESA. 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

52735 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 home¹ **or**
2. premises acquired for occupation by the claimant as his home² **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 incapacitated³ **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 partner⁴ **or**
5. premises which the person is taking steps to dispose of⁵ **or**
6. premises which the person is taking legal action or legal proceedings to get possession of⁶ **or**
7. premises which need essential repairs or improvements⁷ **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 able⁸ **or**
- 9.** the funds of a trust where the funds are a payment of compensation for a personal injury to the claimant or partner⁹
- 10.** an award of damages for a personal injury to the claimant or partner or compensation for the death of one or both parents where the person concerned is aged less than 18 where
- 10.1** in England and Wales that award or compensation is administered by the High Court, County Court or the Court of Protection and such sum can only be disposed of by order or direction
- 10.1.a** of any such court **or**
- 10.1.b** where the person concerned is under age 18, prior to that person reaching 18¹⁰
- 10.2** in Scotland, the Court of Session or Sheriff Court under certain rules¹¹.

The income from capital is treated as capital from the date it is due to be paid¹².

*1 ESA Regs, Sch 9, para 1; 2 Sch 9, para 2; 3 Sch 9, para 4; 4 Sch 9, para 5; 5 Sch 9, para 6; 6 Sch 9, para 7
7 Sch 9, para 8; 8 Sch 9, para 10; 9 Sch 9, para 16; 10 Sch 9, para 43; 11 Sch 9, para 44; 12 reg 112(4)*

52736 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 52020 4.).

52737 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 ESA. 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 ESA(IR). 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.

52738 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.

52739 - 52741

Tax refunds

52742 A refund of income tax which has been paid in respect of, or deducted from, profits or income under certain income tax legislation¹ is income which is treated as capital².

1 Income Tax (Trading and Other Income) Act 2005, Part 2 & Income Tax (Earnings and Pensions) Act 2003, Part 2; 2 ESA Regs, reg 112(2)

52743 The refund of income tax referred to in DMG 52742 covers

1. Profits or income of the S/E¹ and
2. Employed earners under the PAYE scheme².

*1 Income Tax (Trading and Other Income) Act 2005, Part 2;
2 Income Tax (Earnings and Pensions) Act 2003, Part 2*

Example

Michael is in receipt of ESA(IR). 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.

Arrears of subsistence allowance

52744 Any arrears of subsistence allowance paid to the claimant by an EZ contractor as a lump sum is treated as a payment of capital¹.

1 ESA Regs, reg 112(9)

How to work out the total amount of capital

52745 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.

52746 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 partner¹.

1 ESA Regs, reg 83

52747

Notional capital

52748 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 £16,000 or less¹.

1 R(SB) 45/83

52749 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

52750 A fraction of a penny is disregarded¹ 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 reg 3

52751 - 52759

Effect of capital on benefit

When claimant cannot get benefit

52760 Claimants cannot get ESA(IR) if the total amount of capital is more than £16,000¹.

1 ESA Regs, reg 110

When claimant is treated as having an income

52761 Claimants are treated as having an income if the total amount of capital is more than

1. £6,000 but not more than £16,000¹ **or**
2. £10,000 but not more than £16,000 if DMG 52770 applies².

The income they are treated as having is called tariff income.

Note: The total amount of capital includes any income treated as capital (see DMG 52725 et seq) and any liable relative payments treated as capital³ (see DMG Chapter 51).

1 reg 118(1); 2 reg 118(2); 3 reg 118(6)

52762 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 52770 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 £250¹. See Appendix 3 to this Chapter, for a table which shows how to work out tariff income.

1 reg 118(1) & 118(5)

When capital does not affect benefit

52763 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 52770 applies.

52764 - 52767

When the higher capital limits apply

52768 Higher capital limits apply once a claimant, lives in certain specific accommodation¹.

1 reg 118(3)

52769

Claimants in specific accommodation

52770 Where the claimant lives, or is treated as living permanently in specific accommodation¹, they will not be able to get benefit if their capital is more than £16,000.

1 ESA Regs, reg 118(3)

Specific accommodation

52771 Specific accommodation is

1. a care home¹ **or**
2. an independent hospital² (see DMG 52491) which is not a health service hospital or in Scotland an independent healthcare service **or**
3. an Abbeyfield Home³ (see DMG 52491) **or**
4. the Ilford Park Polish Home⁴ if the claimant requires personal care and it is provided by that home.

1 reg 118(3)(a); 2 reg 118(3)(a) & reg 2(1); Care Standards Act 2000, s 2(2); Regulation of Care (Scotland) Act 2001, s 2(5)(a) & (b); 3 ESA Regs, reg 118(3)(b); 4 reg 118(3)(c)

52772 In England and Wales “care home”¹ means a home, other than a hospital, an independent clinic or children’s home, which provides accommodation along with nursing or personal care for people who

- 1 are or have been ill including mental illness
- 2 are disabled or infirm
- 3 are or have been dependent on alcohol and drugs.

1 reg 2(1); Care Standards Act 2000, s 3

52773 In Scotland “care home” means a care home service¹ which provides accommodation along with nursing, personal care or personal support for vulnerable people but does not include

1. hospitals
2. schools
3. independent health care services.

1 Regulation of Care (Scotland) Act 2001, s 2(3)

52774 In Scotland legislation¹ defines an independent health care service. For the purposes of ESA an “independent health care service”² means an independent hospital or private psychiatric hospital.

1 s 2(5); 2 s 2(5)(a) & (b)

Meaning of personal care

52775 Personal care¹ in DMG 52771 **4.** means

1. care by reason of old age or disablement **or**
2. care for past or present dependence on alcohol or drugs **or**
3. care for past or present mental disorder **or**
4. care for a terminal illness.

The care includes assistance with bodily functions if such assistance is needed.

1 ESA Regs, reg 118(3)(c)

When a person is treated as living permanently in specific accommodation

52776 Claimants are treated as living permanently in specific accommodation if they are

1. absent from accommodation at DMG 52771 **1. 2. or 3.** and DMG 52772 for 52 weeks or less **and**
2. over pension age¹.

1 reg 118(4)(a)(i)

52777 Claimants are also treated as living permanently in specific accommodation if

1. DMG 52776 does not apply **and**
2. they are absent from accommodation at DMG 52771 **1. 2. or 3.** and DMG 52772 for 13 weeks or less¹.

1 reg 118(4)(a)(ii)

52778 Claimants are treated as living permanently in specific accommodation if they

1. are absent from accommodation at DMG 52771 **4.** and the manager of that home has agreed they can return to the home **and**
2. intend to return to the home¹.

1 reg 118(4)(b)

52779 - 52794

Notional capital

The law

- 52795 The law says people are treated as having capital they do not have if
1. they deprive themselves of actual 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 company¹.

1 ESA Regs, reg 115

- 52796 The capital people are treated as having is called notional capital.

What the DM decides

- 52797 The DM decides if a person has notional capital if the total of the claimant's actual capital and income which is treated as capital is £16,000 or less.

52798 - 52804

Deprivation of capital

General

The law

52805 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. ESA or IS or JSA **or**
2. more ESA or IS or JSA¹.

1 ESA Regs, reg 115(1)

52806 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 52417) **and**
2. the payment is held on trust for their benefit¹.

They are also not treated as having the amount by which notional capital is reduced under the diminishing notional capital rule².

1 reg 115(1)(a), (1)(c) & (1)(d); 2 reg 115(1)(b)

52807 The law applies if claimants use their capital to buy personal possessions, such as a car, and they bought them to get

1. ESA or IS or JSA **or**
2. more ESA or IS or JSA

The personal possessions are not disregarded if this applies¹.

Note: See DMG 52895 for guidance on the value of personal possessions if this applies.

1 Sch 9, para 14

52808

Who the law applies to

52809 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.

52810 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 52289 applies)

deprives claimants of their capital. DMG 52288 gives guidance on how to treat claimants capital in these circumstances.

52811 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 claim¹.

1 Social Security Act 1998, s 17

52812 - 52814

Have people deprived themselves of capital

Meaning of deprive

52815 The meaning of deprive is not a question of law and should be given its normal every day meaning¹. So claimants have deprived themselves of capital if they no longer have it even if they use it to

1. get
 - 1.1 other capital² **or**
 - 1.2 personal possessions **or**
2. pay debts.

1 R(SB) 40/85; 2 R(SB) 40/85

Onus of proof

52816 People have to show they no longer have capital¹.

1 R(SB) 38/85

Evidence that people no longer have capital

52817 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real or heritable property (see DMG 52020 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 settlement

which 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

52818 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.

52819 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 it¹.

1 R(SB) 38/85

Evidence which may show people had capital

52820 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.

52821 - 52824

Have people deprived themselves of capital for the purpose of getting benefit or more benefit

Onus of proof

52825 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 one¹. 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

52826 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.

52827 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 decision¹.

1 R(SB) 9/91

52828 - 52829

Facts which the DM should consider

Were people mentally capable when they deprived themselves of capital

52830 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.

52831 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

52832 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 matter¹. 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

52833 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 enforcement¹ **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

52834 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 years¹
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 52339 if a person has a certain and immediate liability to repay capital that has been given to them.

1 R(SB) 12/91

52835 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.

52836 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.

52837 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.

52838 In Scotland any valid debt can be legally 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.

52839 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

52840 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 get¹.

52841 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 benefit¹ **and**
3. the claimant's or partner's educational standing².

1 R(SB) 12/91; 2 R(SB) 12/91

52842

Did people say what they were going to do with their capital

52843 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 the 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.

52844 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 the 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

52845 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 change¹.

1 R(SB) 9/91

Example

Ruth has been in receipt of ESA(IR) since November 2008. On 25.2.09 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 ESA 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 ESA. The DM therefore decides that Ruth deprived herself of the value of her house in order to receive ESA.

What are people going to live on after they have deprived themselves of capital

52846 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 on¹.

1 R(SB) 9/91

52847 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 benefit¹.

1 R(SB) 40/85

52848 - 52854

Capital available on application

The law

52855 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 it¹.

1 ESA Regs, reg 115(2)

52856 This does not apply to capital people could get from

1. a discretionary trust¹ **or**
2. a trust and the funds of the trust are a payment which was made because of a personal injury to them² (including payments from the Children's Memorial Trust - see DMG 52417) **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 home³ **or**
4. a personal pension scheme⁴ **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 SPC⁵ **or**
6. capital administered by the Court which derives from a personal injury⁶.

1 reg 115(2)(a); 2 reg 115(2)(b); 3 reg 115(2)(c); 4 reg 115(2)(d); 5 reg 115(2)(e); 6 reg 115(2)(f) & (2)(g)

Capital which is available

52857 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 back¹

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 1974, s 68

52858 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

52859 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 claimant's partner

- 52860 Except for payments listed at DMG 52862, the law¹ states that a claimant or a claimant's partner 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 claimant's partner **and**
 2. is made under social security law² **or is a**
 - 2.1 WDisP³ **or**
 - 2.2 WWP, War Widower's Pension or Surviving Civil Partner's War Pension⁴ **or**
 - 2.3 a pension paid to a forces widow or surviving civil partner under specific provisions⁵ **or**
 - 2.4 another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen⁶
 3. is a payment
 - 3.1 of an occupational pension **or**
 - 3.2 of a pension or other periodical payment made under a personal pension scheme **or**
 - 3.3 made by the board of the PPF⁷ **or**
 4. in any other case⁸, is a payment used by the claimant or a claimant's partner
 - 4.1 for food **or**
 - 4.2 ordinary clothing or footwear **or**
 - 4.3 household fuel **or**
 - 4.4 rent for which housing benefit is payable **or**
 - 4.5 housing costs which are included when working out the claimant's applicable amount **or**
 - 4.6 CT or water charges which the claimant or partner has to pay.

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.

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 activities⁹. 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.

*1 ESA Regs, reg 115(3); 2 reg 115(3)(a)(i); JS Act 95; SS CB Act 92; WRA 07, Part 1;
3 ESA Regs, reg 115(3)(a)(iii); 4 reg 115(3)(a)(iii); 5 Armed Forces (Pensions and Compensation) Act 2004;
ESA Regs, reg 115(3)(a)(ii); 6 reg 115(3)(a)(iv); 7 reg 115(3)(b); 8 reg 115(3)(c); 9 reg 2(1)*

Capital paid to a claimant or claimant's partner for a third party

52861 Except for payments listed at DMG 52862, any payment made to the claimant or claimant's partner in respect of a third party has to be treated as being possessed by the claimant or partner to the extent that it is kept or used by the claimant or partner.¹ This does not apply where the third party is a member of the claimant's family other than the claimant's partner.

1 reg 115(4)

52862 DMG 52860 and DMG 52861 do not apply¹ to payments of capital made from

1. Macfarlane Trust (see DMG 52458) **or**
2. Macfarlane (Special Payments) Trust (see DMG 52459) **or**
3. Macfarlane (Special Payments) (No. 2) Trust (see DMG 52460) **or**
4. the Fund (see DMG 52461) **or**
5. Eileen Trust (see DMG 52462) **or**
6. MFET Limited (see DMG 52463) **or**
7. Independent Living Fund (2006) (see DMG 52448) **or**
8. Skipton Fund (see DMG 52464) **or**
9. London Bombings Relief Charitable Fund² (DMG 52465) **or**
10. a payment under relevant legislation³ in respect of participation in
 - 10.1 a specified employment programme⁴ **or**
 - 10.2 a specified training scheme⁵ **or**
 - 10.3 the Intensive Activity Period⁶ **or**
 - 10.4 a specified employment-related course⁷ **or**
11. a payment under an
 - 11.1 an occupational pension scheme **or**
 - 11.2 a personal pension scheme **or**

11.3 a payment made by the Pension Protection Fund where the payment is made

11.3.a for a person in respect of whom a bankruptcy order has been made **or** where in Scotland, the estate of that person is subject to sequestration or has a judicial factor appointed on it **and**

11.3.b it is paid to a trustee in bankruptcy or any other person acting on behalf of the creditors **and**

11.3.c neither the person in respect of whom the payment has been made nor that person's partner has actual or notional capital apart from that payment⁸.

1 ESA Regs, reg 115(5); 2 reg 115(5)(a); 3 E & T Act 73, s 2; 4 ESA Regs, reg 115(5)(b)(i); 5 reg 115(5)(b)(ii); 6 reg 115(5)(b)(iii); 7 reg 115(5)(b)(iv); 8 reg 115(5)(c)

52863 - 52864

Third party

52865 Third party includes a public body, such as a LA.

52866 - 52867

What the DM decides

52868 The DM decides

1. whether a claimant or claimant's partner 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 claimant's partner is treated as having **and**
3. DMG 52860 - 52861 does **not** apply when payments are made to a third party rather than the claimant at the claimant's own request.

Note: See DMG 52428 for the definition of "personal pension scheme".

52869 - 52874

Person treated as sole owner or partner in a company

The law

52875 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 partner¹.

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 disregarded².

1 ESA Regs, reg 115(6); 2 reg 115(7)

Like a sole owner or partner

52876 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 case¹. A person who does not work for the company can be like a sole owner or partner².

1 R(IS) 8/92; 2 R(IS) 8/92

52877 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 company¹ **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 significant influence over the day to day running of the company².

1 R(IS) 13/93; 2 R(IS) 8/92

52878 A person who has some shares in a company which has a large number of shareholders, such as BT, is an investor because such a person has no influence over the day to day running of the company¹.

1 R(IS) 8/92

Undertaking activities in the course of the business

52879 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 company¹.

1 R(IS) 13/93

What the DM decides

52880 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.

52881 - 52884

What is the amount of notional capital

How to work out the amount of notional capital

The law

52885 The law says the amount of notional capital is worked out in the same way as if the person has the capital¹.

1 ESA Regs, reg 115(8)

What the DM decides

52886 The DM decides

1. what notional capital can be disregarded (see DMG 52351 - 52605) **and**
2. the value of notional capital which cannot be disregarded (see DMG 52610 - 52691).

Disregards

Capital of a company

52887 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.

52888 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

52889 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 in order to secure entitlement to ESA, IS or JSA or to increase the amount of those benefits. 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

52890 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

52891 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.

52892 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 has¹.

It is not the value of some of the capital of the company².

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

52893 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

52894 The amount of capital a person is treated as having if capital is paid to a

1. third party for a claimant or claimant's partner **or**
2. claimant or claimant's partner for a third party

is not always the full amount of the capital paid. See DMG 52860 - 52868 which says what capital the person is treated as having.

Capital spent on a resource which is not worth as much

52895 If claimants or partners have deprived themselves of capital to get ESA, IS or JSA or more ESA, IS or JSA 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 bought¹.

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 value².

1 R (SB) 38/85; 2 R(IS) 8/04

Example

Jens makes a claim for ESA. 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.

Capital which people have deprived themselves of

52896 If claimants or partners deprive themselves of capital to get ESA, IS or JSA or more ESA, IS or JSA 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 rule¹.

1 ESA Regs, reg 115(1)(b)

52897 - 52899

Diminishing notional capital rule

The law

52900 The law says

1. when the amount of notional capital should be reduced **and**
2. how the amount of the reduction is worked out¹.

1 ESA Regs, reg 116

What the DM decides

52901 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

52902 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 52915 - 52917
2. is not getting benefit it is reduced as in DMG 52925 - 52928.

52903 - 52904

Meaning of benefit week

52905 Benefit week in this guidance means a period of seven days which ends on a day decided by the DM¹.

1 reg 2(1)

52906

Meaning of part-week

52907 In this guidance part-week means any period of less than a week when the claimant gets ESA¹.

1 reg 116(7)

Meaning of relevant week

52908 Relevant week in this guidance means

1. the first benefit week or first part-week when deprivation of capital is first taken into account to decide the claimant's entitlement to ESA (IR), JSA or IS¹
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 ESA(IR), JSA or IS the claimant can get and it is decided the claimant can

2.1 start getting ESA(IR), JSA or IS **or**

2.2 no longer get ESA(IR), JSA or IS².

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-week³.

1 ESA Regs, reg 116(7)(a); 2 reg 116(7)(b); 3 reg 116(7)

Example 1

On 12.12.08 Carol makes a claim for ESA. Her first BWE is Wednesday 17.12.08. Two days before making her claim Carol deprived herself of £8,500 and the DM decides she did so in order to get ESA(IR). The period from 12.12.08 to 17.12.08 at the start of Carol'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 11.12.08 Alan makes a claim for ESA. His BWE is Thursday. The DM decides that on 4.12.08 he deprived himself of £9,200 in order to get ESA(IR). On 23.4.09 Alan makes another claim for ESA. The DM decides that on 4.12.08 Alan deprived himself of capital to get ESA(IR) and he should be treated as having £7,685.70. Alan has no other income or capital so the DM decides that Alan is now entitled to ESA(IR). The DM also decides that the part-week from 23.4.09 to 26.4.09 is the relevant week.

52909

Meaning of relevant subsequent week

52910 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 52935 - 52940) **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 deprivation¹.

1 ESA Regs, reg 116(4), (5) & (7)

Example

On 13.6.09 Fernando makes a claim for ESA. His BWE is Monday. The DM decides that he cannot get ESA(IR) because he should be treated as having capital of £35,000 because of deprivation. On 10.4.10 Fernando makes a further claim for ESA. The DM decides that the amount of notional capital Fernando is treated as having because of deprivation has reduced to £31,934.10. The DM also decides that the relevant subsequent week is from 10.4.10 to 16.4.10.

52911 - 52914

How to work out and apply the reduction - claimant getting benefit

52915 The amount of the reduction is the extra benefit claimants would get if they are not treated as having capital because of deprivation¹.

1 reg 116(1)(a) & (2)

52916 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 capital¹.

1 reg 116(1)(a) & (2)

52917 The reduction is made from the week after the relevant week and any week after that¹.

1 reg 116(1)(a)

Example

On 5 March Mohammed makes a claim for ESA. 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 ESA(IR) 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.

52918 - 52924

How to work out and apply the reduction - claimant not getting benefit

- 52925 The amount of the reduction is
1. the amount of benefit claimants get in the relevant week if they are not treated as having capital because of deprivation, see also DMG 52926 **and**
 2. the difference between
 - 2.1 the maximum amount of
 - 2.1.a HB **and**
 - 2.1.b CTBclaimants 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 week¹.

Note: The amount of the reduction can be changed (see DMG 52935 - 52940).

1 ESA Regs, reg 116(1)(b) & (3)

- 52926 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 7¹.

1 reg 116(3)(a)

- 52927 The reduction is made if in the relevant week claimants can get benefit if they are not treated as having capital because of deprivation¹.

1 reg 116(1)(b) & (3)

- 52928 The reduction is made from the week after the relevant week and any week after that week¹.

1 reg 116(1)(b)

Example

On 9.5.09 Ben makes a claim for ESA. 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 ESA(IR). 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 10.5.09 to 16.5.09.

52929 - 52934

When to change the amount of the reduction in DMG 52925

52935 The amount of the reduction in DMG 52925 can be changed if

1. another claim for ESA is made¹ (see DMG 52936) **and**
2. claimants can get ESA(IR) in the relevant subsequent week if they are not treated as having capital because of deprivation².

1 ESA Regs, reg 116(4); 2 reg 116(5)(b)

52936 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 52935 **or**
3. the last date the claimant stopped getting ESA(IR)

If more than one date is identified after applying **1.** to **3.** the date is the latest date¹.

1 reg 116(5)

Example

On 1.9.09 Sabrina makes a claim for ESA. 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 ESA(IR) 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 10.5.10 Sabrina makes another claim for ESA. 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 ESA(IR) 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 52940 for guidance on when the new amount of the reduction begins.

How to work out and apply the new amount of the reduction

52937 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 52938) **and**
2. the difference between
 - 2.1 the maximum amount of
 - 2.1.a HB **and**
 - 2.1.b CTBclaimants 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 HB the period includes the last day of the relevant subsequent week **or**
 - 2.2.c for CTB the period includes the last day of the relevant week¹.

1 ESA Regs, reg 116(1)(b), (3) & (4)

52938 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 seven¹.

1 reg 116(3)(a) & (4)

52939 If the amount of the reduction as in DMG 52937 is less than the one before use the one before¹.

1 reg 116(6)

52940 The new amount of the reduction is made from the week after the relevant subsequent week and any week after that¹.

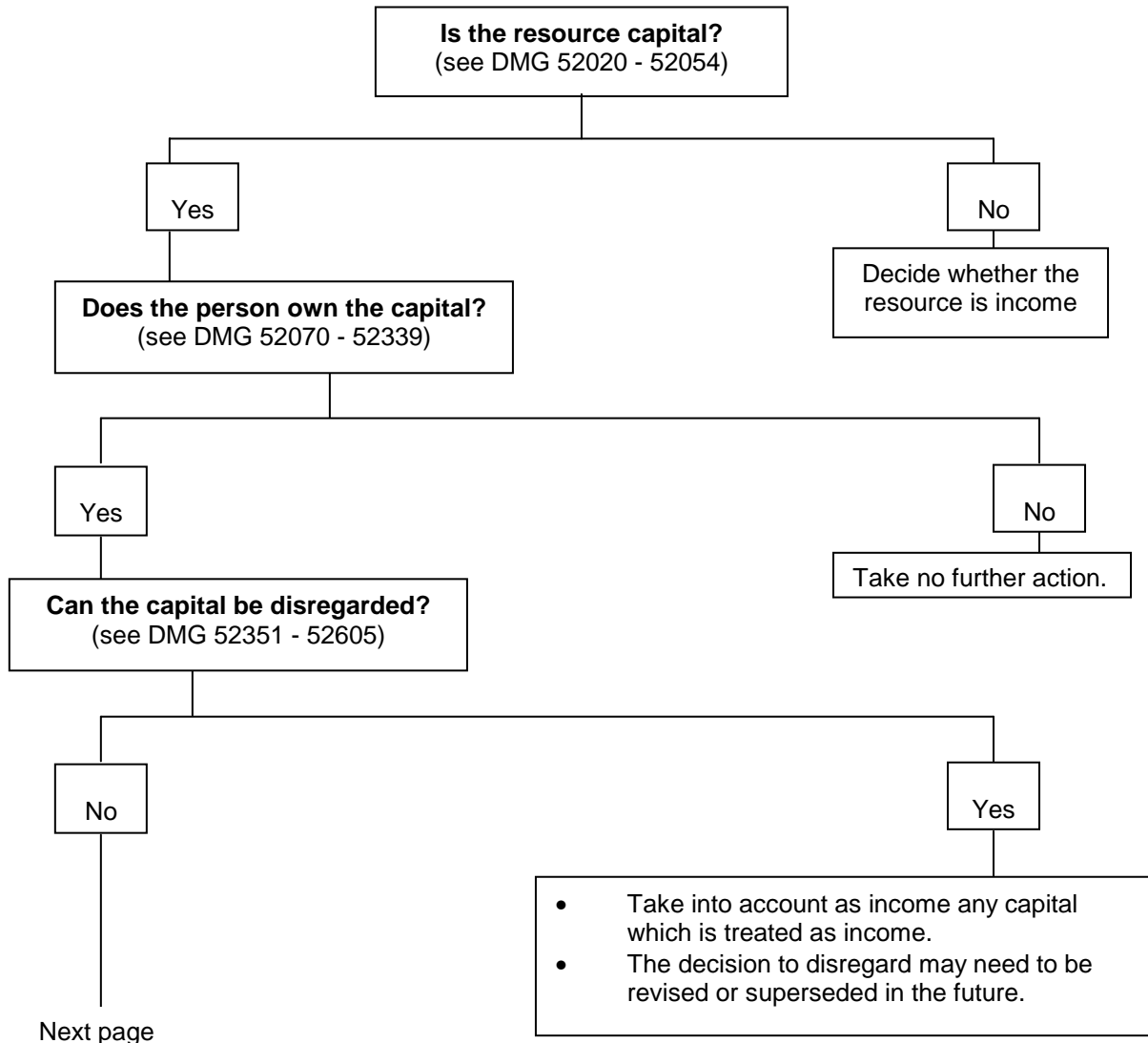
1 reg 116(4)(b)

52941 - 52999

Appendix 1

Flowchart

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 52610 - 52691) and its effect on benefit (see DMG 52760 - 52778)?

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 52795 - 52880).

More than £16,000, the claimant cannot get benefit (see DMG 52760).

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 52770 applies?

Yes

No

Work out the amount of tariff income (see DMG 52761 - 52762).

Take no further action.

What is the amount of notional capital (see DMG 52885) and its effect on benefit (see DMG 52760 - 52778)?

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 52770 applies, work out the amount of tariff income
 - 3.3 £6,000 or less, take no further action.

Appendix 2

How to work out tariff income

Table 1 - DMG 52770 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 52770 does apply to the claimant

From £	Total capital		Tariff income £
	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

Chapter 53 - WFHRA, Wfl, Disqualification and Advance awards of ESA(IR)

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Chapter 53 - WFHRA, Wfl and Disqualification

Work focused health related assessment

Requirement to take part in a WFHRA

53001 From 19.7.10, the requirement to take part in a WFHRA is suspended for a period of two years.

53002 - 53020

Work-focused interviews

Introduction

53021 All claimants in the WRAG who are required to take part in a Wfl will have an initial Wfl followed by a further series of 5 interviews with a PA or provider employee focusing on helping them back to work. The initial Wfl will take place after the first WCA, with the remaining Wfls occurring at monthly intervals after that, although there is flexibility around this. Events that will trigger a further Wfl are

1. a repeat medical assessment (WCA) **or**
2. the claimant's entitlement to a carer's allowance ceases while entitlement to ESA continues **or**
3. the claimant becomes engaged, or ceases to be engaged, in part-time work **or**
4. the claimant was undergoing education, training or a rehabilitation programme arranged by an officer and it has come to an end.

A Wfl will be triggered if the claimant has not had a Wfl as a result of any of the above circumstances in the last 36 months.

Note 1: 16/17 year olds in the WRAG will be asked to attend a Wfl (known as a learning focused interview) after the WCA. They will also be asked to attend should any of the triggers at 53021 1. - 53021 4. occur. They will not be subject to a 36 month Wfl as they will be subject to full conditionality at age 18.

Note 2: Claimants who move from the support group to the WRAG, from receiving credits only to ESA(IR) due to a change of circumstances or qualifying for housing costs will be required to fulfil 6 Wfls as above.

Meaning of support group

53022 A person is a member of the support group if the DM has made a determination that they have, or are treated as having, LCWRA¹.

1 WR Act 07, s 24(4)

Meaning of working day

53023 A working day is any day except Saturday, Sunday, Christmas Day, Good Friday or a bank holiday¹.

1 ESA Regs, reg 2(1) & Banking and Financial Dealings Act 1971

Requirement to take part in a Wfl

53024 The Secretary of State may require a claimant who satisfies the conditions at DMG 53025 to take part in one or more Wfls as a condition of continuing to be entitled to the full amount of ESA¹.

1 ESA Regs, reg 54(1)

53025 The conditions¹ referred to in DMG 53024 are that the claimant is

1. entitled to ESA **or** an advance award of ESA² has been made (DMG Chapter 45) **and**
2. not a member of the support group **and**
3. under the age at which a woman of the same age as the claimant attains pensionable age (see DMG 41014) **and**
4. not a person who is only entitled to ESA(Cont) payable at nil rate.

1 ESA Regs, reg 54(2); 2 reg 146(1)

53026 Any requirement to take part in a Wfl ceases to have effect if the claimant no longer satisfies any of the requirements of DMG 53025¹.

1 ESA Regs, reg 54(3)

53027 Partners of claimants receiving ESA are required to take part in a Wfl as a condition of the claimant continuing to receive the full rate of benefit¹ (see DMG 05520). However a partner who is undertaking significant long term caring responsibilities that make the prospect of work, paid or unpaid, unlikely at the present time may have their Wfl deferred.

1 SS (JPIfP) Regs, reg 3

Purpose of a Wfl

53028 The purposes of a Wfl¹ are

1. assessing the claimant's prospects for remaining in or obtaining work
2. assisting or encouraging the claimant to remain in or obtain work
3. identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely
4. identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so

5. identifying current or future work opportunities, including self-employment opportunities, for the claimant that are relevant to the claimant's needs and abilities.

1 ESA Regs, reg 55

Notification either in writing or otherwise and place of the Wfl

- 53029 The Secretary of State must notify the claimant of the requirement to attend the Wfl. The claimant must be given or sent a notification specifying the time, date and place of a Wfl¹. The notification may be in writing or otherwise² (for example by telephone). A Wfl³ can take place at a claimant's home if it is determined that requiring them to attend elsewhere would cause them undue inconvenience or endanger their health.

1 ESA Regs, reg 56(1); 2 reg 56(3); 3 reg 56(2)

53030

Taking part in a Wfl

- 53031 A claimant is regarded as having taken part¹ in a Wfl if they
1. attend for the interview at the place and at the date and time notified as in DMG 53029 **and**
 2. provide information, if requested, about any or all of the matters set out in DMG 53032 **and**
 3. participate in discussions, to the extent that is considered necessary by the Secretary of State, about any or all of the matters set out in DMG 53033 **and**
 4. assist the Secretary of State in the completion of an action plan.

1 ESA Regs, reg 57(1)

- 53032 The matters referred to in DMG 53031 **2.**¹ are

1. the claimant's educational qualifications and vocational training
2. the claimant's work history
3. the claimant's aspirations for future work
4. the claimant's skills that are relevant to work
5. the claimant's work-related abilities
6. the claimant's caring or childcare responsibilities
7. any paid or unpaid work that the claimant is undertaking.

1 ESA Regs, reg 57(2)

53033 The matters referred to at DMG 53031 3.¹ are

1. any activity that the claimant is willing to undertake which may make obtaining or remaining in work more likely
2. any such activity that the claimant may have previously undertaken
3. any progress the claimant may have made towards remaining in or obtaining work
4. any WFHRA the claimant may have taken part in
5. the claimant's opinion as to the extent to which the ability to remain in or obtain work is restricted by their physical or mental condition.

1 ESA Regs, reg 57(3)

Action Plan

53034 The Secretary of State must provide a claimant who attends a Wfl with an action plan¹. An action plan is a document in writing² that is completed by the Secretary of State and contains³

1. a record of a Wfl **and**
2. a record of any activity that the claimant is willing to take which may make obtaining or remaining in work more likely or which may make it more likely that the claimant will be able to do so **and**
3. any other information that the Secretary of State considers to be appropriate.

1 ESA Regs, reg 58(3); 2 reg 58(2); 3 reg 58(1)

Deferral of requirement to take part in a Wfl

53035 The requirement to take part in a Wfl may be

1. deferred **or**
2. treated as having been deferred

if at the time the Wfl is to take place, or was due to take place the interview would not at that time be or have been of assistance to the claimant or appropriate in the circumstances¹.

1 ESA Regs, reg 59(1)

53036 A decision to defer may be made at any time after the requirement to take part in a Wfl has been imposed, including after the time the Wfl

1. was due to take place **or**
2. took place¹.

1 ESA Regs, reg 59(2)

Example

Warwick was due to attend a Wfl on 25 March. However Warwick did not attend because he was taking part in a training course. On 1 April the DM decides that the requirement to attend a Wfl can be deferred.

- 53037 Where a requirement to take part in a Wfl is deferred or treated as having been deferred then the time the Wfl is to take place must be re-determined¹.

1 ESA Regs, reg 59(3)

- 53038 It may be determined that the requirement to take part in a Wfl does not apply, or is to be treated as not having applied, if the interview would not be, or would not have been, of assistance because the claimant is or was likely to be starting or returning to work¹.

1 ESA Regs, reg 60

53039 - 53040

Failure to take part in a Wfl

- 53041 The DM must determine whether a claimant who is required to take part in a Wfl has failed to do so and if so, whether they have shown good cause for that failure¹. The claimant must show good cause for that failure within 5 working days of the date on which the Secretary of State gives notification of that failure² or the claimant's ESA may be reduced. See DMG 53023 for the definition of working day. Any notification sent by post is to be taken as having been received on the second working day following posting³.

1 ESA Regs, reg 61(2); 2 reg 61(1); 3 reg 65

Example

Susan is required to take part in a Wfl on 15.4.09, but fails to attend. Notification of the failure is posted on 17.4.09, and is taken as having been received on 21.4.09. Susan has until 28.4.09 to show good cause for her failure to attend.

- 53042 In determining whether good cause has been shown¹ the DM may consider
1. whether the claimant misunderstood the requirement to take part in the Wfl due to their
 - 1.1 learning, language or literacy difficulties **or**
 - 1.2 any misleading information given or sent to them by the Secretary of State
 2. whether the claimant had difficulties with transport and no reasonable alternative was available

3. whether the claimant was attending an interview with an employer with a view to remaining in or obtaining work
4. whether the claimant was pursuing employment opportunities as a S/E earner
5. whether the claimant was attending a medical or dental appointment and it would have been unreasonable in the circumstances to re-arrange the appointment
6. whether the claimant was accompanying another person for whom the claimant has caring responsibilities to a medical or dental appointment and it would have been unreasonable for that person to re-arrange the appointment
7. whether the claimant, a dependant or another person for whom the claimant provides care suffered an accident, sudden illness or relapse of a physical or mental condition
8. whether the claimant was attending the funeral of a relative or close friend on the day of the Wfl
9. whether the physical or mental health or condition of the claimant made it impracticable for them to attend at the time and place fixed for the interview
10. whether the established customs and practice of the religion to which the claimant belongs prevented them from attending on that day or at that time
11. whether the claimant had caring responsibilities for a child and childcare
 - 11.1 was not reasonably available **or**
 - 11.2 was unsuitable due to the particular needs of the claimant or the child
12. any other matters considered appropriate by the DM.

Note 1: A relative means a close relative, grand-parent, grand-child, uncle, aunt, nephew or niece. A close relative² is a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-son-in-law, step-daughter, step-daughter-in-law, brother, brother-in-law, sister, sister-in-law and similar relationships arising out of civil partnerships³.

Note 2: "Brother" and "sister" includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and the brother or sister of any other child of those parents. The adopted 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 on the **legal relationship** not the blood relationship⁴.

1 ESA Regs, reg 61(3); 2 reg 2(1); 3 CP Act 04, s 246; 4 R(SB) 22/87

Contracting out certain functions relating to Wfls

53043 The Secretary of State may contract out¹ certain functions relating to Wfls. These are

1. the requirement to take part in a Wfl
2. the notification requirements
3. the taking part in a Wfl
4. the drawing up of an action plan
5. the deferral of the requirement to take part in a Wfl
6. the requirement to take part in a Wfl not to apply.

1 ESA Regs, reg 62

53044 - 53049

Reduction of Employment and Support Allowance

53050 Where the DM has determined that a claimant has failed to attend or participate in a Wfl without good cause (“a failure determination”) then where the claimant is entitled to the WRAC the amount of ESA payable to the claimant will be reduced¹

1. by 50% of the amount of the WRAC in each of the first four benefit weeks to which the reduction applies
2. by 100% of the amount of the WRAC in each subsequent benefit week.

The reduction is brought into effect by means of supersession². See DMG 53057 et seq for guidance on when the reduction begins.

1 ESA Regs, reg 63(1) & (2); 2 SS CS (D&A) Regs, reg 6(2)(p)

Example

Stephen is in receipt of ESA including the WRAC. He fails to attend a Wfl on 1.6.09. The DM determines that Stephen does not have good cause for not attending the Wfl. The DM makes a supersession decision to reduce the amount of benefit. The first benefit week in which the failure determination was made begins on 1.7.09 and so the DM supersedes the award of ESA from that date so that Stephen’s benefit is reduced by £12.75 per week for four weeks (50% of the WRAC) and by £25.50 (100% of the WRAC) from 29.7.09.

53051 Where 50% of the amount of WRAC results in a fraction, it is rounded down to the nearest penny¹.

1 ESA Regs, reg 3(1)

53052 In any benefit week the amount of ESA payable should not be reduced below 10p or by more than 100% of the amount of the WRAC¹ by virtue of the claimant failing to attend a Wfl. Only one failure determination relating to a Wfl can be in place at the same time². However, should the claimant’s partner fail to attend a Wfl then benefit can be reduced by more than 100% of the WRAC³. Benefit is reduced by an amount equal to 20% of the IS applicable amount for a single claimant aged 25 or over as at the date the reduction begins. See DMG Chapter 05 for further guidance. Benefit cannot be reduced to a sum that is less than 10 pence a week⁴.

1 ESA Regs, reg 63(3)(a) & (c); 2 reg 63(3)(b); 3 SS (JPIfP) Regs, reg 11(2) & (3); 4 reg 11(4)

53053 Where a claimant is entitled to both ESA(Cont) and ESA(IR) then any reduction must be applied first to ESA(Cont). Only if there is any amount outstanding is it to be applied to ESA(IR)¹.

1 ESA Regs, reg 63(4)

- 53054 For the purposes of determining the amount of any ESA(IR) payable, a claimant is to be treated as receiving the amount of ESA(Cont) which would have been payable but for any reduction made¹.

1 ESA Regs, reg 63 (5)

Example

Nathan is in receipt of ESA(Cont) of £84.50. He fails, without good cause, to attend a Wfl. After 4 weeks his benefit is reduced to £60.50. No ESA(IR) is payable because £84.50 would be payable but for the reduction.

53055 - 53056

Commencement of reduction

- 53057 The date the reduction of ESA begins depends on when the failure determination is made. The reduction can only be applied when the claimant is on main phase ESA and is receiving the WRAC. Normally, main phase ESA is paid from week 14.

Failure determination made before week 13

- 53058 Where the failure determination is made before the 13th week of entitlement, the reduction is not applied until the first day of the benefit week following week 13¹. Benefit week means a period of 7 days ending on such day as the DM may direct².

1 CS (D&A) Regs, reg 6(2)(p) & 7(35); 2 ESA Regs, reg 2(1)

Example

Toyah claims ESA from 9.9.10, with a Wednesday payday. On 2.11.10 after application of the WCA the DM determines that Toyah has LCW but does not have LCWRA. The decision awarding ESA is superseded on the same date to award the WRAC from 9.12.10. Toyah is required to attend the initial Wfl on 8.11.10, but fails to do so. She does not provide an explanation for the failure to attend. On 22.11.10 the DM determines that Toyah failed to attend without good cause, and supersedes the decision of 2.11.10 to reduce the amount of ESA by £12.97 (50% of the WRAC) from 9.12.10, and by £25.95 (100% of the WRAC) from 6.1.11.

Failure determination made during or after week 13

- 53059 Where the failure determination is made during or after week 13, the reduction begins on the first day of the benefit week in which the DM makes the failure determination¹. However, DMs should note that where the failure determination is made during week 13, the reduction cannot begin until the WRAC is in payment from week 14.

1 SS CS (D&A) Regs, reg 6(2)(p) & 7(36)

Example

Simon is awarded ESA from 9.9.10 with a Wednesday payday. On 7.1.11 after application of the WCA the DM determines that Simon has LCW but does not have LCWRA. The decision awarding ESA is superseded on the same date to award the WRAC from 9.12.10. Simon is required to attend the initial Wfl on 13.1.11, but fails to do so. He does not provide an explanation for the failure to attend. On 28.1.11 the DM determines that Simon failed to attend without good cause, and supersedes the decision of 7.1.11 to reduce the amount of ESA by £12.97 (50% of the WRAC) from 27.1.11, and by £25.95 (100% of the WRAC) from 24.2.11.

53060

Cessation of reduction

53061 Any reduction of ESA imposed as a result of a failure determination which resulted from a failure to take part in a Wfl ceases to have effect if¹

1. the claimant takes part in a Wfl **or**
2. the claimant subsequently ceases to meet the requirements in DMG 53023.

1 ESA Regs, reg 64(2)

53062 - 53066

Revision, supersession and appeals

- 53067 A decision awarding ESA is superseded where the amount payable to the claimant is reduced on account of their failure to attend a Wfi¹.

1 SS CS (D&A) Regs, reg 6(2)(p) & 7(35) or (36)

- 53068 The supersession decision imposing the reduction can be superseded again to end the reduction where the conditions in DMG 53061 are satisfied¹. It can be revised at any time if it contains an error to which the claimant did not materially contribute². See DMG Chapter 03 for guidance on revision, and DMG Chapter 04 for guidance on supersession.

1 SS CS (D&A) Regs, reg 6(2)(q) & 7(37); 2 reg 3(5C)

- 53069 The supersession decision imposing the reduction following the failure determination carries a right of appeal to a FtT. See DMG Chapter 06 for guidance on appeals.

1 SS Act 98, s 12(1)(a)

53070

Disqualification for misconduct

- 53071 Claimants entitled to ESA are disqualified for receiving it for a period decided by the DM up to a maximum of six weeks if they¹
1. have LCW through their own misconduct (except in a case where LCW is due to pregnancy or a sexually transmitted disease) **or**
 2. fail without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant's capability for work **or**
 3. fail without good cause to refrain from behaviour calculated to retard recovery **or**
 4. are absent without good cause from their place of residence without leaving word where they may be found².

1 ESA Regs, reg 157(2) & (1)

- 53072 Guidance on misconduct may be relevant if the misconduct being considered would have resulted in dismissal from employment and disqualification for receiving JSA. Conduct which is blameworthy, reprehensible, wrong or wilful should be distinguished from involuntary behaviour due to other factors¹.

1 R(S) 2/64

- 53073 Alcoholism is one example of behaviour which may be misconduct if a claimant has LCW as a result of excessive drinking on one occasion. But the mental and physical effects of alcoholism can be a condition requiring long spells of treatment, including psychiatric help.

- 53074 If a claimant has LCW as a result of an accident which occurred while intoxicated but which could have happened if the claimant was sober, LCW would not be due to misconduct.

- 53075 Drug addiction is similar to alcoholism in that the uncontrolled use of addictive drugs leads to a progressive deterioration in physical or mental condition which can be incapacitating.

- 53076 Disqualification should be applied to the exceptional cases where there is clear evidence that temporary LCW or the addiction resulted from a deliberate decision by a healthy person to experiment with drug taking.

- 53077 When deciding whether to disqualify for receiving ESA the DM should judge how far the claimant's actions have been deliberate and unreasonable rather than thoughtless.

53078 Someone who is injured or contracts a disease while committing an illegal act for which they are convicted by a court of law, is subject to being treated as not having LCW.

53079 - 53082

Treatment

53083 Treatment as at DMG 53071 **2.** has to be for the cause of LCW¹. Medical treatment means medical, surgical or rehabilitative treatment (including any course or diet or other regimen)².

1 R(S) 3/57; 2 ESA Regs, reg 2(1)

53084 The claimant has to prove

1. good cause **and**
2. that a refusal of treatment was reasonable in the circumstances.

53085 If the objection to treatment is on religious grounds, evidence of a firm personal belief is needed to support good cause¹.

1 R(S) 9/51

Rules of behaviour

53086 One example of behaviour considered under both these rules was a person with influenzal bronchitis, who drove 60 miles from home to business and was not well enough to return for several days. It was decided that the person had

1. undertaken a journey calculated to delay recovery **and**
2. also been absent from home without leaving word.

In view of certain circumstances the period of treating as capable of work was limited to two weeks¹.

1 R(S) 21/52

53087 In DMG 53071 **3.** the word "calculated" does not mean that the claimant deliberately intends to delay recovery. The question is whether the delayed recovery is likely to result from the behaviour¹.

1 R(I) 26/51

53088 Good cause for the behaviour was not proved by a person who had dermatitis of the hands and was whitewashing the kitchen, because the doctor had advised against getting wet¹. Ignorance of the rules of behaviour is not good cause².

1 R(I) 26/51; 2 R(S) 21/72

Absence

53089 DMG 53071 **4.** does not apply unless the claimant has somewhere to live. Once the relevant facts are established the claimant has to prove good cause such as a genuine difficulty in leaving a message¹.

1 R(S) 7/83, R(S) 6/55

Period of disqualification

53090 The length of the period of disqualification can be from one day to six weeks. The length of the disqualification depends on the circumstances of the case. The DM has to give reasons for the choice of period¹.

1 R(U) 8/74, R(S) 1/87, R(U) 4/87

53091 For misconduct the period of disqualification can begin on

1. the day following the date of the act of misconduct **or**
2. from the date of the decision if benefit has continued in payment¹.

If the misconduct is repeated, a fresh period of disqualification may be imposed.

1 R(U) 12/59, R(S) 4/61

53092 - 53095

53096 The period of disqualification for failure to observe the rules of behaviour depends upon the number of times, and the period over which the failure has occurred. Any extenuating circumstances can be taken into account even though good cause has not been proved¹.

1 R(S) 21/52

53097 If, during the period of disqualification, a claimant

1. submits a closed doctor's statement **and**
2. then makes a further claim

any disqualification continues for the outstanding part of the original period, unless the determination has been set aside on supersession or appeal.

53098 Disqualification does not apply if the person is a "person in hardship" or is disqualified for receiving ESA under certain legislation¹ (loss of benefit provisions).

1 ESA Regs, reg 157(3) & Social Security Fraud Act 2001, s 7

Person in hardship

- 53099 A claimant is a “person in hardship”¹ if they have informed the DM of the circumstances on which they rely to establish that fact and
1. the claimant is pregnant **or**
 2. a member of the claimant’s family is pregnant **or**
 3. the claimant is a single person aged less than 18 **or**
 4. the claimant is a member of a couple and both members are aged less than 18 **or**
 5. the claimant or their partner is responsible for a child or young person who is a member of the claimant’s household **or**
 6. the claimant or their partner has been awarded an “AA” or the DLA care component (higher or middle rate)² **or**
 7. the claimant or their partner has claimed either “AA” or DLA and the claim has not yet been determined (see DMG 53100) **or**
 8. the claimant or their partner devotes a considerable portion of each week caring for another person who has been awarded “AA” or the care component or claimed “AA” or DLA and the claim has not been determined (see DMG 53100) **or**
 9. the claimant or their partner has reached the qualifying age for SPC (see DMG Chapter 77).

Note 1: For a definition of “AA” see DMG 44085.

Note 2: The guidance at 9. applies from 6.4.10. Before that date the claimant or their partner has to be aged 60 or more.

1 ESA Regs, reg 158(2) & (3); 2 reg 158(7)

- 53100 A claimant who is a “person in hardship” **only** because they or their partner
1. have claimed “AA” or DLA and the claim has not yet been determined **or**
 2. devote a considerable portion of each week caring for another person who has claimed “AA” or DLA and the claim has not been determined

can only be a “person in hardship” for a maximum of 26 weeks from the date of the claim¹.

1 ESA Regs, reg 158(4)

- 53101 A claimant is also considered to be a “person in hardship” if the DM, having regard to all the circumstances and in particular those at DMG 53102, is satisfied that the claimant or a member of the claimant’s family will suffer hardship unless ESA is paid¹.

1 ESA Regs, reg 158(5)

53102 The circumstances referred to in DMG 53101 are

1. the resources which are likely to be available to the claimant and their family and the length of time for which they might be available **and**
2. whether there is a substantial risk that essential items such as food, clothing and heating will
 - 2.1 cease to be available to the claimant or a member of the claimant's family **or**
 - 2.2 only be available at considerably reduced levels **and** the length of time that this might be so¹.

1 ESA Regs, reg 158(6)

53103 The amount of ESA payable in hardship cases is reduced by 20% of the claimant's applicable amount¹.

1 ESA Regs, Sch 5 para 14

53104 - 53109

Disqualification for imprisonment - ESA(Cont)

Introduction

53110 A claimant is disqualified for receiving ESA(Cont) for any period during which they are undergoing imprisonment or detention in legal custody

1. in connection with a charge brought or intended to be brought in criminal proceedings **and**
2. pursuant to any sentence **or**
3. pursuant to any order of detention.

Note: See DMG Chapter 54 for guidance on how imprisonment affects ESA(IR).

1 WR Act 07, s 18(4)(b)

53111 Payment of ESA(Cont) is suspended from the first day of imprisonment or detention in legal custody. If a decision is subsequently made to disqualify the claimant for receiving ESA(Cont), that decision will apply from the first day of imprisonment or detention in legal custody.

Treating a claimant as not having limited capability for work

53112 The claimant is to be treated as not having LCW if they are disqualified for receiving ESA(Cont) during a period of imprisonment or detention in legal custody if that disqualification is for more than 6 weeks¹ (see DMG Chapter 42).

1 ESA Regs, reg 159(1)

Exceptions to the disqualification provisions

53113 There are exceptions to the provisions disqualifying ESA(Cont) on imprisonment or detention in legal custody¹. These are where

1. no penalty is imposed (DMG 53114) **or**
2. the person is suffering from mental disorder (DMG 53126).

1 ESA Regs, reg 160(2) & (3)

No penalty imposed

53114 There is no disqualification for receiving ESA(Cont) for imprisonment or detention in legal custody unless at the end of criminal proceedings the court imposes

1. a penalty **or**
2. a penalty for fine default¹.

1 ESA Regs, reg 160(2)

Meaning of court

53115 Court means¹ any

1. Court in
 - 1.1 UK
 - 1.2 Channel Islands
 - 1.3 Isle of Man
 - 1.4 any place to which certain legislation applies² **or**
2. Court-Martial within the meaning of certain legislation³ **or**
3. Courts-Martial Appeal Court.

1 ESA Regs, reg 160(5)(a); 2 Colonial Prisoners Removal Act 1884; 3 Courts-Martial (Appeals) Act 1968

Meaning of penalty

53116 Penalty¹ is

1. a sentence of imprisonment
2. detention in a young offenders institution
3. an order for detention in a young offenders institution
4. detention in GB as a result of any order made under certain legislation².

1 ESA Regs, reg 160(5)(c); 2 reg 160 (5)(d); Colonial Prisoners Removal Act 1884

53117 - 53120

53121 The term penalty includes a suspended sentence of imprisonment at the end of criminal proceedings, even if it has not taken effect¹.

Note: A suspended sentence does not disqualify a claimant who is not in prison or detained in legal custody.

1 R(S) 1/71

53122 The following are not penalties and so no disqualification is imposed for the period before the end of criminal proceedings during which the person is remanded in custody when

1. a fine is imposed (see DMG 53125)
2. the charge is withdrawn
3. there is a conditional or absolute discharge or acquittal
4. the claimant is detained in hospital by court order following conviction
5. an order putting a person under guardianship is made
6. a Community Rehabilitation order is made.

Note: This list is not exhaustive

Penalty cancelled

53123 Where a penalty has been imposed, a Higher Court can later

1. quash the conviction **or**
2. substitute another penalty

with an order which is not a penalty. The effect is as though no penalty had been imposed.

53124 Disqualification will therefore be removed for any relevant period of imprisonment or detention in legal custody. See DMG Chapter 04 for further guidance on supersession for a relevant change of circumstances and when the decision takes effect.

Imprisonment for non-payment of fines

53125 Imprisonment for non-payment of a fine can be the result of civil proceedings. The DM should consider the nature of the original offence if a person is imprisoned for non-payment of a fine. If the original offence was a criminal action, the DM should

1. regard the imprisonment as a criminal offence **and**
2. disqualify from benefit.

1 ESA Regs, reg 160(2)(b)

Mentally disordered persons detained in legal custody

53126 Subject to the exceptions in DMG 53132 disqualification does not apply¹ for any period during which a person is detained in legal custody at the end of criminal proceedings, if it is a period during which that person is liable to be detained in a hospital or similar institution as a person suffering from a mental disorder.

1 ESA Regs, reg 160(3)

53127 Hospital or similar institution means¹ any place in which people suffering from mental disorder may receive care or treatment but not at or in a

1. prison
2. young offenders institution
3. secure training centre

4. secure accommodation in a children's home
5. remand centre.

1 ESA Regs, reg 160(5)(b)

53128 - 53130

53131 If a person is found to be insane during criminal proceedings so that they cannot be tried or their trial cannot proceed, those proceedings will be treated as completed¹. There will be no disqualification.

1 ESA Regs, reg 160(5)(e)

53132 The exceptions referred to in DMG 53126 are where the person is

1. detained¹ (or liable to be detained) under specific legislation² which allows a court, which has imposed a term of imprisonment, to direct that the offender be detained in a hospital or similar institution instead of a prison where that offender suffers from a psychopathic disorder.
2. serving³ a sentence of imprisonment and is then detained in a mental hospital under specific legislation⁴ which allows the Secretary of State for Justice or Scottish Ministers to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital.

*1 ESA Regs, reg 160(3)(a); 2 MH Act 83, s 45A; Criminal Procedure (Scotland) Act 95 s 59A
3 ESA Regs, reg 160(3)(b)&(c); 4 MH Act 83, s 47*

53133 Where there is a hospital direction as in DMG 53132 1. or where the person is transferred from prison to a mental hospital as in DMG 53132 2. the person will be disqualified for receiving ESA(Cont)¹.

1 ESA Regs, reg 160(3)(a), (b) & (c)

53134 A person who is transferred to a mental hospital as in DMG 53132 may recover and be sent back to prison; the normal rules disqualifying prisoners from receiving benefits will apply.

53135 Where a person has been disqualified and is transferred to

1. a hospital **or**
2. similar institution

the disqualification will apply up to the date when the person is expected to be released, had the transfer not been made¹.

1 ESA Regs, reg 160(4)

53136 Where a prisoner is transferred to a mental hospital and detained under certain legislation¹ the disqualification as in DMG 53133 will continue until the date when they would have been released.

*1 MH Act 83, s 45A; s 47; Criminal Procedures (Scotland) Act 1995, s 59A;
MH (C & T) (Scot) Act 03 s 136*

53137 In England and Wales, where applicable, the earliest date on which the prisoner would have been expected to be discharged from prison will be notified in a certificate. Where the prisoner was sentenced to life imprisonment the certificate issued is not endorsed with a release date.

53138 In Scotland certificates are not issued on any case because the terms of the prisoner's transfer to mental hospital cease at the point that their sentence would have ended¹. Any further detention would require a fresh order which would not be made under the relevant legislation².

1 CSS/239/07; MH (C & T) (Scot) Act 03 s 136; s 217; 2 s 136

53139 In DMG 53137 - 53138 it is enough to know under what legislation the prisoner is being held in mental hospital. They will be disqualified if it is under the relevant legislation and there is no certificate.

Technical Lifers - England and Wales only

53140 A High Court judgment¹ dealt with the issue of whether there was unequal treatment under Human Rights legislation between those persons

1. sent to hospital for treatment² without having been given a prison sentence and who **are** eligible for benefit **and**
2. those given a prison sentence and are either –
 - 2.1 sent directly to hospital for treatment³
 - 2.2 transferred to hospital from prison⁴

who are **not** eligible for benefit.

*1 Regina (EM and others) v Secretary of State for Work and Pensions [2009] EWHC 454 (Admin);
2 MH Act 83, s 37 & 41; s 45A; 4 s 47*

53141 The Court found that the difference in treatment of those persons termed 'technical lifers' could not be justified.

53142 A 'technical lifer' is an administrative classification. It involves the Secretary of State for Justice accepting that the criminal court that heard the individual's case would have given an order for hospital treatment rather than impose a sentence of imprisonment, if, for example, a suitable bed had been available.

53143 The effect of this is that a person given the status of a 'technical lifer' should be treated, for the purposes of benefit entitlement, as though they had been sent to hospital for treatment without having been given a prison sentence (see DMG 53140 1. above).

Note: The practice of awarding 'technical lifer' status to eligible prisoners was abandoned in 2005.

Imprisonment or detention in legal custody abroad

53144 When a person is imprisoned or detained in legal custody abroad¹, the same benefit rules apply for

1. disqualification
2. exception from disqualification.

Note: UK benefit rules apply only for imprisonment for a criminal offence. The DM should decide whether the offence for which the claimant is convicted in the other country would be a criminal offence in the UK. A person detained abroad without trial is not disqualified for receiving benefit but see DMG 53145 if they are detained abroad pending trial.

1 R(S) 2/81; ESA Regs, reg 160(6)

Suspension of payment of ESA(Cont) during imprisonment

53145 The payment of ESA(Cont) to those claimants who are not disqualified for receiving it whilst undergoing imprisonment or detention in legal custody as a consequence of DMG 53113 or DMG 53144 is suspended¹. The suspension covers the period of imprisonment or detention in legal custody and any benefit payable during that period even if it is not in respect of that period.

1 ESA Regs, reg 161(1)

53146 ESA(Cont) is not suspended while the claimant is detained in a hospital or similar institution as a person suffering a mental illness unless DMG 53132 applies¹.

1 ESA Regs, reg 161(2)

53147 If ESA(Cont) is suspended for any period, the period of suspension is not to be taken into account in calculating any period in respect of the extinguishment of the right to sums payable which are not obtained within the prescribed time¹.

1 ESA Regs, reg 161(3) & SS (C&P) Regs, reg 38

53148 Where a person who is held in custody on remand is given a prison sentence which is less than the time already spent in custody (and is immediately released) they are disqualified for the entirety of the time spent in custody. No benefit is refunded to the value of the extra time spent in prison¹.

Example

Kenneth is detained in legal custody on 1.2.10. The DM suspends payment of his ESA(Cont). On 1.4.10 the DM is notified that Kenneth was given a custodial sentence. Therefore, the DM decides that Kenneth should be disqualified for receiving ESA(Cont) from 1.2.10.

1 WR Act s 18(4)(b)

Advance awards of ESA(IR)

General

53160 DMs may make advance awards of ESA(IR) when certain conditions are met. These advance awards are unique to ESA(IR)¹. DMs should not confuse them with other advance claims and awards², including other advance awards of ESA(IR) (see DMG Chapter 02 for full guidance).

1 WR Act 07, s 5; ESA Regs, reg 146; 2 SS (C&P) Regs, reg 13

When to make an advance award of ESA(IR)

53161 DMs may make an advance award of ESA(IR)¹ when the claimant

1. is not entitled to ESA(IR) because income exceeds the applicable amount **and**
2. would be entitled to ESA(IR) if there was entitlement to
 - 2.1 the support component **or**
 - 2.2 the WRAC **and**
3. is not entitled to ESA(Cont).

1 WR Act 07, s 5(1)

53162 Where DMG 53161 applies and DMG 53164 is satisfied

1. the claim is treated as made for a period from the relevant day¹ (see DMG 53165) **and**
2. the DM may award ESA(IR) from the relevant day².

1 ESA Regs, reg 146(1)(a); 2 reg 146(1)(b)

53163 Where DMG 53162 applies the DM should make a decision on the original claim. That decision will be that the claimant

1. is not entitled to ESA from the date of claim **and**
2. is entitled to ESA(IR) from the relevant day.

When making that decision the DM will not be able to specify the amount of the claimant's ESA(IR) entitlement. However, the DM does not need to make another decision in order for the claimant to receive payment under the award from the relevant day.

53164 For an advance award of ESA(IR) to be made

1. the DM must be of the opinion that unless there is a change of circumstances the claimant satisfies
 - 1.1 the basic conditions except having LCW **and**
 - 1.2 the additional conditions for ESA(IR)when ESA(IR) becomes payable under the award¹ **and**
2. claimants must be treated as having LCW because they
 - 2.1 are terminally ill **or**
 - 2.2 receive treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy or are recovering from that treatment **or**
 - 2.3 suffer from a specific disease **or**
 - 2.4 are a carrier or have been in contact with a person suffering from a relevant disease **or**
 - 2.5 are pregnant and satisfy certain conditions **or**
 - 2.6 are a hospital in-patient **or**
 - 2.7 receive regular treatment **or**
 - 2.8 are treated as having LCW until a determination about LCW has been made **or**
 - 2.9 may have entitlement to ESA(IR) while in education because they receive DLA

for the period before ESA(IR) becomes payable under the award².

Note 1: See DMG Chapter 41 for guidance on the basic conditions and the additional conditions for ESA(IR).

Note 2: See DMG Chapter 42 for guidance on being treated as having LCW.

Note 3: Claimants are terminally ill if they are suffering from a progressive disease and their death in consequence of that disease can reasonably be expected within six months³.

1 ESA Regs, reg 146(3)(a); 2 reg 146(3)(b); 3 reg 2(1)

Example 1

Tanya makes a claim for ESA. She is not entitled to ESA(Cont). She receives a LRP which exceeds her applicable amount. However, the DM is satisfied that Tanya would be entitled to ESA(IR) if she had entitlement to the support component or the WRAC. She is also treated as having LCW before the period ESA(IR) would become payable. The DM makes an advance award of ESA(IR).

Example 2

Paul makes a claim for ESA. He is not entitled to ESA(Cont). His partner Alison works part-time. The amount of Alison's earnings that are taken into account exceed Paul's applicable amount. The DM is not satisfied that Paul would be entitled to ESA(IR) if he had entitlement to the WRAC. However, the DM is satisfied that Paul would be entitled to ESA(IR) if he had entitlement to the support component. Paul is also treated as having LCW before the period ESA(IR) would become payable. The DM makes an advance award of ESA(IR).

Example 3

Samantha makes a claim for ESA on 1.12.08. She is not entitled to ESA(Cont). Her civil partner Ella works part-time. The amount of Ella's earnings that are taken into account is £135.00. They exceed Samantha's applicable amount of £94.95 and would still do so even if Samantha had entitlement to the support component of £29.00 or the WRAC of £24.00. The DM does not make an advance award.

Meaning of relevant day

- 53165 The relevant day is the day after the end of a period of 13 weeks beginning on the first day on which the claimant would be entitled to ESA(IR) if the claimant did not have income which exceeded the applicable amount¹.

1 ESA Regs, reg 146(2)

Example

Sergio makes a claim for ESA(IR) on 24.11.08. His wife Marta has part-time earnings which exceed his applicable amount until either the support component or the WRAC becomes payable. The DM decides that the relevant day for Sergio's advance award is 26.2.09.

Applicable amount when ESA(IR) becomes payable under an advance award

- 53166 When ESA(IR) becomes payable under an advance award, claimants do not have to serve another assessment phase as it will have been served already. Instead, they will enter the main phase when the award of ESA(IR) becomes payable. That is the date on which the claimant would have been entitled to main phase if income had not exceeded the applicable amount before the relevant day¹.

Note: See DMG Chapter 44 for full guidance on the assessment phase and the main phase.

1 ESA Regs, reg 146(4)

53167 - 53169

Changes of circumstances

53170 Except for income exceeding the applicable amount, claimants have to continue to satisfy the conditions of entitlement for ESA(IR) until the relevant day (see DMG 53165). If there is a change of circumstances which means that the claimant no longer satisfies one of those conditions of entitlement, the DM should supersede the advance award (see DMG Chapter 04 for full guidance).

Note: See also DMG Chapter 03 for guidance on revision.

53171 Also, if there is a change of circumstances which means that the claimant's income no longer exceeds the applicable amount, the DM should

1. supersede the advance award **and**
2. decide entitlement to ESA(IR) in the normal way (see DMG Chapter 04 for full guidance).

However, DMs should note that the assessment phase does not start again. Instead, claimants receive the assessment phase rate of ESA(IR) until the day before the relevant day.

Example

Cecilia makes a claim for ESA(IR) on 15.12.08. Her civil partner Alison has an income from a credit insurance policy which necessitates an advance award. The DM decides that the relevant day is 19.3.09. On 2.2.09 Cecilia reports that Alison received the final payment from the credit insurance policy on 31.1.09. Cecilia's entitlement to ESA(IR) at the assessment phase rate begins the day after the final payment from the credit insurance policy is taken into account under the attribution rules (see DMG Chapter 48) and ends on 18.03.09.

Waiting days

53172 Where a claimant has to serve waiting days, there is no entitlement to ESA for the first three days of a PLCW¹ (see DMG Chapter 41). When an advance award of ESA(IR) is made, the period before the relevant day (see DMG 53165) is a PLCW. Therefore, claimants do not have to serve waiting days when ESA(IR) becomes payable under the advance award.

1 WR Act 07, Sch 2, para 2; ESA Regs, reg 144(1)

Linking

53173 DMG Chapter 41 gives guidance on linking rules. These rules also apply to advance awards of ESA(IR) under DMG 53161.

53174 - 53999

Chapter 54 - Special cases & Urgent Case Payments

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Chapter 54 - Special Cases & Urgent Case Payments

Scope of this Chapter

- 54001 This Chapter explains how to calculate the amount of ESA where people are
1. a patient (see DMG 54003)
 2. without accommodation (see DMG 54156)
 3. members of religious orders (see DMG 54170)
 4. prisoners (see DMG 54197)
 5. temporarily separated members of a couple or polygamous marriage (see DMG 54541)
 6. absent from GB/UK (see DMG 54547)
 7. subject to a restriction under the loss of benefit provisions (see DMG 54579)
 8. from abroad or subject to immigration control (see DMG 54600)
 9. in hardship (see DMG 54612).
- 54002 The chapter also contains guidance about awarding ESA in certain urgent cases.

Patients

General

54003 A patient means a claimant (other than a prisoner) who is regarded as receiving free in-patient treatment¹. For how entitlement to ESA(Cont) is affected by being a patient see DMG 54106. For how entitlement to ESA(IR) is affected by being a patient see DMG 54091.

1 SS (HIP) Regs, reg 2(4), 2(5) & ESA Regs, reg 69(2)

Free in-patient treatment

Deciding free in-patient treatment

54004 To be receiving free in-patient treatment a person must be

1. maintained free of charge
2. receiving medical or other treatment
3. in a hospital or similar institution
4. an in-patient
5. receiving the treatment
 - 5.1 under prescribed legislation¹ **or**
 - 5.2 in a hospital or similar institution maintained or administered by the Defence Council.

Note: A person who does not meet any one of these conditions is not receiving free in-patient treatment. The DM does not need to consider the other conditions.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

Maintained free of charge

54005 A person is treated as being maintained free of charge¹ in a hospital or similar institution unless

1. accommodation and services are being provided for that person as a private patient² **or**
2. the person is meeting the full cost of their maintenance as a private patient in a private hospital³.

1 SS (HIP) Regs, reg 2(4); 2 NHS Act 77, s 65; NHS (Scot) Act 78, s 58 & Sch 7A, para 14; NHS & CC Act 90, Sch 2, para 14; 3 SS (HIP) Regs, reg 2(4)

54006 In any other circumstances the person is treated as maintained free of charge. For example when

1. a payment is made by the patient for an amenity bed but the treatment is provided under the NHS¹
2. a patient is in paid work outside the hospital during the day and pays an amount to the HA, based on earnings, towards maintenance and incidental costs²
3. a person is a patient in a care home being funded under arrangements made by the HA³.

1 NHS Act 77, s 64; NHS (Scot) Act 78, s 55; 2 NHS Act 77, s 64; NHS (Scot) Act 78, s 56; 3 NHS Act 77; NHS (Scot) Act 78

Burden of proof

- 54007 The burden of proving that a person is not being maintained free of charge rests with that person¹.

1 CS 591/49

54008 - 54014

Medical or other treatment

- 54015 To be treated as receiving free in-patient treatment a person must be receiving
1. medical treatment, for example
 - 1.1 surgical treatments
 - 1.2 administration of drugs and injections **or**
 2. other treatment which includes nursing services by professionally trained staff in the form of
 - 2.1 observations
 - 2.2 therapies
 - 2.3 support appropriate to the person's needs
 - 2.4 advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

- 54016 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment¹.

1 R(S) 26/54

- 54017 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day¹.

1 R(S) 4/84

Hospital or similar institution

Hospital

- 54018 A hospital¹ is
1. an institution for
 - 1.1 the reception and treatment of people suffering from illness

- 1.2 the reception and treatment of people during convalescence
- 1.3 people needing medical rehabilitation
- 2. a maternity home that provides obstetric services
- 3. in Scotland, any institution for dental treatment maintained in connection with a dental school
- 4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 SS (HIP) Regs, reg 2(4); NHS Act 77, s 128; NHS (Scot) Act 78, s 108

54019 Illness includes¹

- 1. mental disorder **or**
- 2. any injury or disability needing
 - 2.1 medical treatment **or**
 - 2.2 dental treatment **or**
 - 2.3 nursing.

1 NHS Act 77, s 128; NHS (Scot) Act 78, s 108

54020 Mental disorder means

- 1. in England and Wales¹
 - 1.1 mental illness **or**
 - 1.2 arrested or incomplete development of the mind **or**
 - 1.3 psychopathic disorder **or**
 - 1.4 any other disorder or disability of the mind
- 2. in Scotland², any form of
 - 2.1 mental illness **or**
 - 2.2 mental handicap.

1 MH Act 83, s 1(2); 2 Mental Health (Scotland) Act 1984

Similar institution

54021 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the DM should decide as a question of fact whether it is similar to a hospital taking into account

- 1. the purpose of the institution **and**
- 2. the type of treatment provided **and**
- 3. the level of care offered.

- 54022 A hospital or similar institution also includes those
1. maintained by or on behalf of the¹
 - 1.1 DH
 - 1.2 Welsh Assembly
 - 1.3 Scottish Executive Health Directorates **or**
 2. maintained or administered by the Defence Council, for example an army, navy or air force hospital.

Note: These include special hospitals such as Broadmoor and Rampton and the State Hospital in Scotland.

1 NHS Act 77, s 4; NHS (Scot) Act 78, s 102

Examples of hospitals or similar institutions

- 54023 A hostel or care home providing accommodation and social care to former alcoholics or drug addicts is not similar to a hospital.
- 54024 An institution caring for former alcoholics, drug addicts or psychiatric patients which provides a degree of medical treatment or rehabilitation may be a similar institution to a hospital.
- 54025 A care home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the care home. But if the provision of nursing care is minimal, for example rarely expected, the care home may not be a hospital.

54026 - 54027

In-patient

- 54028 In-patient is not defined and should be given its ordinary meaning of a patient who occupies a bed in a

1. hospital **or**
2. similar institution

rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to¹.

Note: The question of whether a person is an in-patient should be judged on the facts of each case.

1 R(I) 27/59; R(S) 8/51

54029 Examples of when a person would be included as an in-patient are where the person is

1. a patient and spends part of each day away from the hospital
2. provided with meals by close relatives.

54030 Examples of when a person would not be included as an in-patient are where the person is receiving treatment at home during the period a rehabilitation centre is closed for a holiday¹.

1 R(I) 14/56

Prescribed legislation

54031 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation¹. Whether a person is to be treated as an in-patient, depends on the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

1. the DH **or**
2. the Scottish Executive Health Directorates **or**
3. a Health Board in Scotland **or**
4. a local Health Board in Wales **or**
5. a NHS Trust.

Hospitals have a variety of functions under NHS legislation and not all of them mean that a person is receiving free in-patient treatment.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

England and Wales

54032 HAs acting on behalf of the Secretary of State in England or Welsh Ministers can

1. arrange for long term health care in a care home for a person whom they assess as needing that care¹ (in this case the service must be provided free of charge and the HA is responsible for the full cost) **or**
2. contribute to the cost of care through payments to a LA, voluntary organization or housing association² for
 - 2.1 social care **or**
 - 2.2 accommodation **or**
 - 2.3 housing costsfor a person who does not need in-patient care from the NHS **or**

3. make grants to voluntary organizations³ towards the cost of care for a person who does not need in-patient care from the NHS.

Note: If 1. applies the person is receiving free in-patient treatment under prescribed legislation.

1 NHS Act 77, s 23; 2 s 28A; 3 HS & PH Act 68, s 64

Scotland

54033 Health Boards acting on behalf of Scottish Ministers can

1. provide accommodation and services needed to meet all reasonable requirements¹
2. make the necessary arrangements to meet all reasonable requirements².

If services are provided under 2. the Health Board is responsible for the full cost.

1 NHS (Scot) Act 78, s 36; 2 s 37

Services provided under NHS legislation

54034 Examples of services under NHS legislation are¹

1. hospital accommodation
2. other accommodation for the purpose of any service the Secretary of State has the power to provide
3. medical services
4. nursing services
5. facilities which the Secretary of State considers appropriate as part of the health service for the
 - 5.1 prevention of illness **or**
 - 5.2 care of people suffering from illness **or**
 - 5.3 after care of people who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

1 NHS Act 77, s 3 (1); NHS (Scot) Act 78, s 36 & 37

Imprisonment

54035 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment because these wings are administered by

1. the Ministry of Justice **or**
2. in Scotland, the Scottish Executive Justice Department.

54036 A prisoner¹ is a person detained in custody

1. following sentence to a term of imprisonment by a criminal or civil court, and includes a person
 - 1.1 temporarily removed from prison to hospital unless DMG 54037 3. applies **or**
 - 1.2 living outside the prison under a pre-release employment scheme² **or**
 - 1.3 on temporary release which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
2. on remand awaiting trial unless DMG 54037 3. applies **or**
3. awaiting sentence upon conviction unless DMG 54037 3. applies **or**
4. released early under the End of Custody Licence arrangements.

1 ESA Regs, reg 69(2); 2 R(I) 9/75

54037 The definition of prisoner does not include a person

1. under suspended sentence
2. sentenced to community service
3. transferred from court or prison to hospital who is detained under prescribed mental health legislation¹
4. released on licence
5. released on parole.

Note: 3. applies whether or not the person is subject to an order restricting discharge.

1 MH Act 1983; MH (C & T) (Scot) Act 03; Criminal Procedure (Scotland) Act 1995

54038 - 54040

Community care arrangements

Arrangements by Health Authorities and Health Boards

54041 As part of a community care programme, a HA or Health Boards may make a variety of arrangements with care homes or hostels for

1. the continuing care of a patient in one of these homes **or**
2. a person in the community to be admitted directly to one of these homes.

The DM should consider DMG 54004 to decide whether the person is receiving free in-patient treatment in the home or hostel (if the LA is involved in the arrangements see DMG 54063).

54042 Examples of arrangements made by HAs and Health Boards under community care programmes are

1. setting up their own homes or hostels
2. by NHS trusts contracting with private and voluntary sector homes for the provision of accommodation and services
3. contracting with a voluntary agency to find suitable placements for patients
4. any combination of 1. to 3..

54043 - 54047

Points to consider

54048 The DM should consider the guidance in DMG 54049 - 54054 when deciding whether the person is receiving free in-patient treatment in the new accommodation.

54049 When deciding whether the new accommodation is a hospital or similar institution the DM should consider the definition in DMG 54018 et seq. The DM should not compare the new accommodation with the person's previous hospital accommodation.

54050 If the arrangements with the HA or Health Board and the home or hostel are under any of the provisions of the prescribed legislation¹, DMG 54004 is satisfied.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54051 If a HA or Health Board helps a voluntary sector home by awarding a grant or loan under other legislation¹, DMG 54004 is not satisfied. But if the HA or Health Board have a contractual agreement to pay a grant for future financial years, this may be evidence that the agreement has been made under prescribed legislation², and the person may be receiving free in-patient treatment.

*1 H S & PH Act 68, s 64; NHS (Scot) Act 78, s 16B;
2 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90*

54052 A HA or Health Board may agree to provide help to a home on the assumption that the person will not be treated as receiving free in-patient treatment for ESA purposes. For example they may agree to pay the difference between

1. ordinary applicable amounts of ESA(IR) **and**
2. the amount charged for the home.

Note: If the agreement is made under prescribed legislation¹, the HA or Health Board is responsible for the full cost of the accommodation and services no matter what the agreement states.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54053 A HA or Health Board can provide financial assistance or services, for example they may provide trained nursing staff. If the home reimburses

1. the **full** cost of the services to the HA or Health Board, DMG 54004 is not satisfied and the person is not receiving free in-patient treatment **or**
2. part of the cost of the services, the arrangement may be under prescribed legislation¹.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54054 The arrangement between the HA or Health Board must include continuing help. If a placement is found without any continuing commitment from the HA or Health Board to fund the care, DMG 54004 is not satisfied. For example a hospital social worker may help a patient who is about to be discharged to find a suitable care home.

54055 - 54060

Existing cases - revision or supersession

54061 The DM may decide that a person who is already living in a home or hostel under arrangements made by a HA or Health Board is receiving free in-patient treatment. The provision of DMG guidance is not grounds to revise or supersede an existing decision, and the existing decision continues to apply.

54062 Enquiries should be made to decide whether all the conditions in DMG 54004 are satisfied if

1. a person is receiving the applicable amount for a person living in a care home **and**
2. the HA or Health Board reports that the person is receiving free in-patient treatment.

If all the conditions in DMG 54004 are satisfied the person is receiving free in-patient treatment.

Local authority placements

54063 LAs have responsibilities for placing people in care homes¹. LAs

1. contract with the home owners **and**
2. are responsible for the full cost of the placement **and**
3. may be helped with funding from a HA or Health Board².

If a LA has made the placement, the conditions in DMG 54004 are not satisfied because the placement has not been arranged under prescribed legislation³. Any funding from the HA or Health Board does not affect the placement.

1 NA Act 48; SW (Scot) Act 68; 2 NHS Act 77, s 28A; NHS (Scot) Act 78;

3 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54064 - 54071

Periods of free in-patient treatment

54072 A person is receiving free in-patient treatment for any period that the conditions in DMG 54004 are satisfied. When working out such periods, DMs **should not count**

1. the day of admission to hospital **or**
2. the day of return to hospital following a period of temporary absence (for example home leave)

as days of free in-patient treatment¹.

1 SS (HIP) Regs, reg 2(5)

54073 DMs **should count**

1. the day of discharge from hospital **or**
 2. the day of leaving hospital on temporary absence (for example home leave)
- as days of free in-patient treatment.

54074 A period of free in-patient treatment therefore

1. begins on the day after the person is admitted to hospital **and**
2. ends on the day the person is discharged from hospital.

54075 If a patient is transferred from one hospital to another, the day of transfer is treated as a day in hospital¹.

1 R(S) 4/84

Example

A person is admitted to hospital on 7 March and is discharged on 15 March.

The period of free in-patient treatment is eight days.

54076 - 54090

Patients - applicable amounts

Effect of hospital admission on premiums

54091 See DMG Chapter 44 for guidance on the effect of hospital admission on premiums.

Housing costs

54092 If the claimant is treated as continuing to occupy a dwelling as the home, the DM should consider housing costs (see DMG Chapter 44).

54093 - 54096

Membership of the family

54097 The DM should consider the guidance in DMG Chapter 43 to decide whether a patient is still a member of a family if the patient is a

1. member of a couple **or**
2. member of a polygamous marriage.

If an ESA(IR) claimant is no longer a member of a family, the DM should revise or supersede benefit on the basis of the new circumstances.

Example

Rocco and Candy are married. Rocco is in receipt of ESA(IR) at the couple rate. Candy is knocked down by a car and is admitted to hospital. She is still in hospital after 52 weeks and there is no sign of recovery. The DM decides that Candy is likely to be substantially absent from Rocco for more than 52 weeks and consequently supersedes the award of ESA(IR) with the effect that Rocco receives the single claimant rate of ESA(IR).

54098 - 54105

ESA(Cont) cases

54106 The personal rate of an ESA(Cont) claimant is not affected if the claimant is in hospital.

ESA(IR) cases - detention under prescribed mental health legislation

54107 The applicable amount of a patient detained or liable to be detained under prescribed mental health legislation¹ is nil.

*1 MH Act 83 s 45A, s 47; MH (C & T) (Scot) Act 03;
Criminal Procedure (Scotland) Act 1995*

ESA(IR) cases - 52 weeks cases

54108 Where a single claimant has been a patient for a continuous period of more than 52 weeks then the applicable amount should include only the normal personal allowance for the claimant plus any housing costs. No premiums or components will be payable¹.

1 ESA Regs, reg 69(1) & Sch 5, para 13

54109 Where the claimant is a member of a couple and the other member of the couple has been a patient for a continuous period of 52 weeks then the applicable amount should include only the normal couple allowance plus any housing costs. No premiums or components will be payable¹.

1 reg 69(1) & Sch 5, para 13

54110 - 54155

Others

People without accommodation - ESA(IR)

Applicable amount for people without accommodation

54156 Where a DM decides that a claimant has no accommodation the applicable amount will comprise of the normal personal allowance for the claimant¹ plus where relevant, the amount of the support component or WRAC² (the DM **cannot** for example include housing costs or premiums).

Note: ESA(Cont) is not affected by this guidance.

1 ESA Regs, Sch 5, para 1; 2 WR Act 2007 s 4(2)(b)

54157 DMG 54156 applies only to people **without** accommodation. The fact that a person may have no fixed address is not relevant to the decision.

Meaning of accommodation

54158 The word ‘accommodation’ is not defined in the SS legislation, but in this context it means an effective shelter from the elements

1. which is capable of being heated **and**
2. in which the occupants can sit, lie down, cook and eat **and**
3. which is reasonably suited for continuous occupation.

54159 The site of the accommodation may alter from day to day, but it is still accommodation if the structure is habitable. Material which gives only a small amount of protection from the elements, for example

1. cardboard boxes
2. sleeping bags
3. bus shelters
4. park benches

do not fall within the description of accommodation.

Motor Cars

54160 Motor cars are designed as a means of transport. They are not intended for use as a dwelling house or living premises and are not suited for continuous occupation. A person who is living in a car cannot be regarded as having accommodation¹.

1 R(IS) 23/98

Mobile motor homes

54161 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and are suited for continuous occupation should be regarded as accommodation.

Absence from home

54162 Claimants should be regarded as having accommodation if they are

1. temporarily absent from the dwelling occupied as the home **and**
2. for the period of their absence, living a lifestyle as though they have no accommodation.

In these circumstances housing costs may be allowed (see DMG Chapter 44).

54163 - 54169

Members of religious orders - ESA(IR)

Meaning of religious order

54170 A religious order is

1. a group of people who have
 - 1.1 given up all their belongings **and**
 - 1.2 offered their services free for the benefit of the order **and**
2. committed to providing all that its members need for their maintenance.

Note: Monks and nuns (of the Roman Catholic, Buddhist or any other religion) are the most common examples, but there may be others.

54171

Applicable amount for members of religious orders

Member fully maintained

54172 The applicable amount is nil¹ if the claimant is

1. a member of a religious order **and**
2. fully maintained by the order (that is, it provides full BL, clothing and other needs).

Note: ESA(Cont) is not affected by this guidance.

1 ESA Regs, Sch 5, para 2

Example

Ted is a missionary for a group of priests that refers to itself as a congregation. Its members give up their personal possessions on joining the congregation and are bound by religious vows. They are not allowed to do any paid work outside and are provided with all their needs.

Ted enters a home that caters for priests of the congregation and becomes ill. He claims ESA.

The DM decides that Ted is a member of a religious order.

The order continues to provide all that the claimant needs in the care home, but says that it is becoming increasingly difficult to do so.

The DM decides that what matters is whether the order is fully maintaining Ted, not whether it finds it difficult to do so. The DM decides that Ted is being fully maintained by the order.

- 54173 The commitment to a religious order is often for life. For example, the applicable amount continues to be nil if a person retires but remains with the order and continues to be fully maintained by it.

Note: ESA(IR) should be calculated in the normal way if a person leaves the order, ceases to be maintained by it and goes to live in separate accommodation.

Member not fully maintained

- 54174 ESA(IR) may be awarded if a member of a religious order

1. leaves the order's premises, for example to nurse a sick relative **and**
2. is not fully maintained by the order during the absence.

The fact that the member has been fully maintained by the order in the past does not affect the decision on the change of circumstances.

- 54175 Claims may be received from monks or nuns

1. in very poor physical or mental health **and**
2. for whom proper care can no longer be provided by the monastery or convent **and**
3. whose order can no longer afford to maintain them.

They may be living in a nursing home or private hospital being run by a religious order. Entitlement should be considered in the normal way if they are not being fully maintained by their order.

Example

Sarah is a 59 year old nun who has been a member of and fully maintained by a religious order for 39 years. She is suffering from Alzheimer's Disease and her order is no longer able to care for her properly.

The LA find her a place in a nursing home run by another order. She is expected to contribute to the fees. She claims ESA.

Her order continues to provide suitable clothing for her but cannot afford to maintain her in the nursing home. The order makes no financial contribution to the claimant's needs.

The DM decides that Sarah is no longer being fully maintained by the order, and awards ESA.

54176 A member of a religious order may have no apparent income or capital of their own. But the DM should consider whether the rules of the order allow

1. a member to ask for financial support **or**
2. the return of money given to the order on admission.

This information can be obtained from the trust deed of the order, but enquiries should not be made into the order's financial affairs. The DM should submit cases of doubt to DMA Leeds.

54177 A member of a religious order may still be fully maintained by the order even though they may have some funds of their own, out of which they may be contributing to the order¹.

1 [2011] EWCA Civ 103

54178 - 54196

Prisoners

Meaning of prisoner

54197 A prisoner¹ is a person detained in custody

1. following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person
 - 1.1 temporarily removed from prison to hospital unless DMG 54198 **3.** applies **or**
 - 1.2 living outside the prison under a pre-release employment scheme² **or**
 - 1.3 released on temporary licence which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
2. on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital unless DMG 54198 **3.** applies **or**
3. released early under the End of Custody Licence arrangements.

1 ESA Regs, reg 69(2); 2 R(I) 9/75

54198 The definition of prisoner does not include a person

1. under suspended sentence **or**
2. sentenced to community service **or**
3. transferred from court or prison to hospital who is detained under mental health legislation¹ (see DMG 54212)
4. released on licence **or**
5. who is on a
 - 5.1 home detention curfew **or**
 - 5.2 court ordered curfew **or**
 - 5.3 restriction of Liberty Order **or**
 - 5.4 mandatory probation service programme.

Note: release on licence means release on parole after completion of a specified part of the original sentence.

1 MH Act 83; MH (C & T) (Scot) Act 03

Meaning of detained in custody

54199 The word “detains” describes the physical confinement of a person¹. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

1. in a prison
2. in a remand centre
3. in a police station when used as a remand overflow
4. of a child or young person under the direction of the Secretary of State
5. in a young offender’s institution
6. abroad.

1 R(S) 10/56

54200 Detention in custody might be

1. after the start of the proceedings, for example remand in custody¹ **or**
2. after the proceedings have ended, for example sentence to prison.

1 R(IS) 1/94

54201 Detention in custody does not include a period before proceedings begin where the person is released on bail.

54202 - 54209

Period of detention in custody

54210 When working out the period for which a person is detained in custody

1. **count** the day on which the detention starts
2. **do not count** the day of release from detention

as a day on which the person is detained in custody.

54211 A period of detention in custody therefore

1. begins on the day on which the person is detained **and**
2. ends on the day before the person is released from detention.

Prisoner admitted to hospital

54212 The DM should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation¹ is a special case patient for ESA purposes and has an applicable amount of nil **or**
2. under prescribed mental health legislation² other than that in 1. above is a patient for ESA purposes and has entitlement to their full applicable amount.

1 ESA Regs, Sch 5, para 12; MH Act 83; s 47, s 45A; MH (C & T) (Scot) Act 03; s 136, s 130; Criminal Procedure (Scotland) Act 1995; 2 MH Act 83

Applicable amount - ESA(IR)

Claimant is a prisoner

54213 The applicable amount for a claimant who is a prisoner under DMG 54197 1. is nil¹.

1 ESA Regs, Sch 5, para 3(a)

Note: See DMG chapter 53 for guidance on how imprisonment affects ESA(C).

Claimant is a prisoner on remand awaiting trial or sentence

54214 A person who is held on remand awaiting trial or sentence upon conviction (see DMG 54197 2.) may be entitled to ESA¹. The applicable amount is

1. any allowable housing costs **or**
2. nil, if there are no allowable housing costs.

1 Sch 5, para 3(b)

54215 - 54217

Claimant is a Technical Lifer - England and Wales only

54218 The status of technical lifer is an administrative classification which was given to certain prisoners with a life sentence. It was given when the Secretary of State for Justice accepted that the criminal court that heard the individual's case would have given an order for hospital treatment rather than impose a sentence of imprisonment.

54219 A technical lifer should be treated, for the purposes of entitlement to ESA, as though they had been given a hospital order with no term of imprisonment¹. This means that a person with technical lifer status is eligible for ESA(IR) as an ordinary hospital in-patient.

1 Regina (EM and others) v SoS for Work and Pensions [2009] EWHC 454 (Admin)

Note: The practice of assigning technical lifer status to prisoners was abandoned in 2005.

Life Sentences

54220 Life sentences (or indeterminate sentences) fall into two categories -

1. mandatory life sentences. Where a person is convicted of murder this is the only sentence which can be imposed;

2. discretionary life sentences where the judge holds it to be appropriate in the circumstances of the case or where it is held to be necessary, eg for public protection.

54221 In both cases the trial judge sets a tariff period which is effectively the "punishment" part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the public. Otherwise they will remain in prison. A trial judge can decline to set a tariff period. In the case of mandatory lifers this is called a 'whole life order'. It means that a prisoner can never become eligible for a Parole Board review or for release.

54222 A prisoner who remains in prison beyond their tariff date does not become eligible for DWP benefits - they are still prisoners¹. Similarly a life sentence prisoner who is transferred to psychiatric hospital for treatment does not become eligible for DWP benefits when the tariff date has been reached. Such a patient would only become eligible for benefit upon release.

1 ESA Regs, reg 69(3)-(5) & 160(3)-(4A) & Sch 5, para 12

54223 - 54224

Membership of the family - partner or member of a polygamous marriage

54225 Members of a couple or polygamous marriage are not treated as members of the household¹ and are not members of the family if one, both or all of them are detained in custody

1. following sentence to a term of imprisonment by a criminal or civil court, including a person
 - 1.1 temporarily removed from prison to hospital **or**
 - 1.2 living outside the prison under a pre-release employment scheme **or**
 - 1.3 released on temporary licence² which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
2. on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital **or**
3. released early under the End of Custody Licence arrangements.

Where the partner or member of a polygamous marriage is not treated as a member of the family then the claimant should be treated as a single claimant.

1 reg 156 (4)(b); 2 Prison Act 1952; Prisons (Scotland) Act 1989

Partner of a prisoner claims ESA

54226 The partner of a prisoner may claim ESA. The partner claiming ESA should be treated as a single claimant.

54227 - 54540

Temporarily separated members of a couple or polygamous marriage - ESA(IR)

Temporary absence - couples

54541 A couple who are temporarily separated continue to be treated as members of the same household, for example, where one member of the couple goes into temporary residential care (respite care). But see DMG Chapter 43 for some exceptions¹. But a different applicable amount applies where

1. one member is
 - 1.1 in a care home, an Abbeyfield Home or an independent hospital other than as a patient **or**
 - 1.2 in a rehabilitation centre for alcoholics or drug addicts **or**
 - 1.3 in Ilford Park Polish home² **or**
 - 1.4 living away from home to
 - 1.4.a take part in training **or**
 - 1.4.b attend a course as part of an employment rehabilitation programme³ **or**
 - 1.5 in a probation or bail hostel **and**
2. the other member is
 - 2.1 in the couple's normal home **or**
 - 2.2 a patient **or**
 - 2.3 in a care home, an Abbeyfield Home or an independent hospital.

1 ESA Regs, reg 156; 2 Polish Resettlement Act 47, s 3, part II; 3 E & T Act 73, s 2; Enterprise & New Town (Scotland) Act 90

54542 If DMG 54541 applies, the applicable amount is the greater of⁴

1. the normal applicable amount for the couple **or**
2. the total of the applicable amounts for the claimant and partner assessed **as if** they are both
 - 2.1 single claimants **and**
 - 2.2 living in their present accommodation (see DMG Chapter 44).

Note: The couple's income and capital should continue to be taken into account in the normal way. This is so even though the applicable amounts may be assessed as if they are both single.

1 ESA Regs, Sch 5, para 4

Example

A claimant and his wife live together in the same household. The claimant receives DLA and his wife receives CA for caring for him. The claimant goes into a care home for three weeks to give his wife a rest.

Assessment 1 - assess as a couple

The claimant is entitled to

1. the normal applicable amount for a couple
2. a CP.

The claimant is not entitled to SDP because only one of the couple receives DLA.

Assessment 2 - assess as single

The **claimant** is entitled to

1. the normal applicable amount for himself.

The claimant is not entitled to SDP because someone is receiving CA for caring for him **and the claimant's wife** is entitled to

1. the normal applicable amount for herself
2. a CP because she is receiving CA.

The DM compares the amount in the first assessment with the total of the two amounts in the second assessment and awards the higher amount.

Temporary absence - polygamous marriages

54543 Members of a polygamous marriage who are temporarily separated continue to be treated as members of the same household. But see DMG Chapter 43 for some exceptions. A different applicable amount is needed where a member of a polygamous marriage is absent from the home in the following circumstances

1. in a care home, an Abbeyfield Home or an independent hospital other than as a patient **or**
2. in a rehabilitation centre for alcoholics or drug addicts **or**
3. living away from home to attend a course of training or instruction **or**
4. in a probation or bail hostel.

54544 Where DMG 54543 applies the claimant's applicable amount should be the greater of¹

1. the normal applicable amount for the family **or**
2. the total of the applicable amount
 - 2.1 for the members left at home **and**
 - 2.2 for each absent member assessed as if they are each
 - 2.2.a a single claimant **and**
 - 2.2.b living in their present accommodation.

Note: The provision in **2.** does not apply when all the members of the marriage are temporarily absent from the home.

1 ESA Regs, Sch 5 & reg 68

54545 - 54546

Absence from Great Britain/United Kingdom - members of a couple or polygamous marriage

Introduction

54547 It is a condition of entitlement to ESA that a person is in GB¹. But entitlement can sometimes continue during an absence from GB². Guidance on entitlement to ESA when a person is absent from GB is given in DMG 072150 et seq and 071940 et seq.

1 WR Act 07, s 1(3)(d); 2 ESA Regs, reg 151

Claimant absent from Great Britain

54548 A claimant who is absent from GB may be a member of a couple or polygamous marriage. Such a claimant can claim ESA for themselves or a partner so long as entitlement continues (see DMG 071940 and 072150). The DM should calculate the applicable amount according to the circumstances of the family in GB¹. The family's income and capital should continue to be treated in the normal way.

1 Sch 5, para 6, 7, 8 & 9

Example

Gerhard is in receipt of ESA(IR) for himself and his wife. On 2 March he goes abroad temporarily to visit his mother. He continues to satisfy the other conditions of entitlement while he is abroad. Gerhard's entitlement to ESA can continue for the first four weeks of his absence (3 March to 30 March) (see DMG 071943).

Partner in Great Britain claims - couples

54549 Where the claimant is absent from GB, a claim for ESA may be received from the partner in GB. This may be made at any time, even where the relevant period of entitlement in DMG 071943 has not run out. But the new claimant must at all times satisfy the normal conditions of entitlement.

54550 The absent partner should be treated as a member of the family for up to 52 weeks, provided that the absence is temporary (see DMG Chapter 43). Where the absent partner is

1. still in the UK, calculate the applicable amount in the normal way **or**
2. absent from the UK, calculate the applicable amount¹ as if
 - 2.1 the absent partner was still at home, if the period abroad has lasted for the relevant period in DMG 071943 or less **or**

- 2.2** the partner in GB was a single claimant or lone parent, for any period over that of the relevant period in DMG 071943.

Note: The UK (see DMG 070880) is GB (defined in DMG 070702) together with Northern Ireland.

1 ESA Regs, Sch 5, para 6 & 7

Example

Damon is in receipt of ESA for himself and his wife Melanie. On 16 March, Damon goes abroad temporarily and Melanie claims ESA as she becomes ill. Melanie satisfies the normal conditions of entitlement and Damon is treated as a member of the family while he is temporarily absent from the UK.

For the first four weeks of Damon's absence, Melanie's applicable amount is calculated as if he was still at home. This means that Melanie is awarded a personal allowance at the couple rate for the period 17 March to 13 April.

From 14 April onwards Melanie's applicable amount is calculated on the basis that she is a single person.

54551 - 54554

Partner in Great Britain claims - polygamous marriages

- 54555 Where the claimant in a polygamous marriage is absent from GB, a claim for ESA may be received from a partner in GB. The new claimant must then satisfy the normal conditions of entitlement.
- 54556 Treat the partner in GB as a single claimant¹. Any payments made to the claimant by the partner while absent from GB should be treated as LRPs.

1 reg 156(4)(c)

Partner absent from United Kingdom

- 54557 The partner of a claimant may be absent from the UK. The absent partner continues to be a member of the claimant's family for up to 52 weeks if the absence remains temporary¹ (see DMG Chapter 43). The normal conditions of entitlement continue to apply during this period as if the absent partner were still at home.
- 54558 The normal rules for calculating the applicable amount change when the partner's absence from the UK stops being temporary.

1 reg 156(3)(b)

Amount payable

54559 Where DMG 54558 applies, calculate the applicable amount as if the partner absent from the UK was no longer a member of the household¹. This means that the claimants should be treated as if they are either a single claimant or lone parent when awarding a personal allowance.

1 ESA Regs, Sch 5, para 6, 7, 8 & 9

54560 The income and capital of the partner is taken into account in the normal way for up to 52 weeks of any temporary absence. This is so even though the claimant is being paid at the single person rate¹.

1 reg 156(3)(b), reg 83

54561 After 52 weeks, or when the absence stops being temporary, the absent partner is no longer treated as a member of the household. Any payments from the absent partner should then be treated as liable relative payments¹.

1 reg 156(3)(b)

54562 The applicable amount for the first four weeks when one member of the couple is abroad is the normal applicable amount for the couple. After four weeks the applicable amount is determined as if the claimant was single or a lone parent¹. This is extended to 26 weeks if the couple or a member of the couple takes a child or young person abroad for treatment².

1 Sch 5, para 6; 2 para 7

Example

Paul is in receipt of ESA(IR) for himself and his wife Lynda. Lynda receives a pension payment of £40 per week. On 7 June, Lynda goes abroad temporarily and Paul carries on claiming ESA. Lynda is treated as a member of the couple while she is temporarily absent from the UK.

For the first four weeks of Lynda's absence, Paul's applicable amount is calculated as if she was still at home. This means that Paul is awarded ESA at the couple rate for the period 8 June to 5 July.

From 6 July onwards Paul's applicable amount is calculated as if he was a single claimant. The pension payment made to Lynda continues to be taken into account in the normal way. This is because Lynda continues to be treated as a member of Paul's family during her temporary absence.

54563 - 54578

Restriction under the loss of benefit provisions

General

54579 There is a restriction on the payment of benefit following convictions for benefit fraud offences¹.

1 SS Fraud Act 2001; SS (Loss of Benefit) Regs

54580 The restrictions affect ESA(IR). General guidance on how to apply the restrictions is contained in DMG Chapter 08 at DMG 08400 et seq. The following guidance concerns provisions which affect ESA(IR) in particular.

Conviction, administrative penalty or caution for benefit offence

54581 Where on the determination day (see DMG 08423) the offender or a member of the family of an offender is a person in receipt of ESA¹, the first day of the disqualification period (see DMG 08430) is the day following the first pay day after the end of the period of 28 days beginning with the determination day.

1 regs 1A(a) and (c)

54582 In any other case, including where ESA is awarded after the determination day to the offender or a member of the offender's family, the first day of the disqualification period is the first day after the end of the period of 28 days beginning with the determination day¹.

1 reg 1A(6)

Second or subsequent conviction for benefit offence

54583 Where there is a second or subsequent conviction as described in DMG 08406 and, on the determination day, the offender is in receipt of ESA or has a family member in receipt of ESA, the first day of the disqualification period (see DMG 08430) is the day following the first pay day after the end of the period of 28 days beginning with the determination day¹.

1 reg 2(3)

54584 In any other case, including where ESA is awarded after the determination day, the first day of the disqualification period is the first day after the end of the period of 28 days beginning with the determination day on which the Secretary of State decides to award ESA

1. to the offender **or**
2. to the offender's family member¹.

1 reg 2(6)

Amount payable

54585 ESA(IR) payable to an offender or to an offender's partner will be reduced by 20% of the relevant single claimant's personal allowance rate for Income Support during the disqualification period (see DMG 08430) if the offender or partner is pregnant or seriously ill¹. In all other cases the reduction will be 40%² of the relevant single claimant's personal allowance rate for Income Support. DMs should note that a claimant's payment must not be reduced below 10 pence per week.

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

54586 In any week where payment has already been restricted due to a breach of a Community Sentence no further payment restrictions should be applied¹.

1 reg 3(4)

54587 - 54599

Persons from abroad and persons subject to immigration control

General

Persons from abroad

54600 A PFA is defined as a claimant who has failed the habitual residence test¹. See DMG Chapter 07 for guidance on the habitual residence test.

1 ESA Regs, reg 70

54601 The applicable amount of a PFA is nil.

1 Sch 5, para 11

Persons subject to immigration control

54602 A PSIC means a person who is **not** an EU national and who¹

1. requires leave to enter or remain in the UK but does not have it
2. has leave subject to the condition “no recourse to public funds”
3. is a sponsored immigrant (see DMG Chapter 07) **or**
4. has had limited leave extended only because he has appealed a decision to vary or refuse to vary that leave.

1 I&A Act 1999 s 115

54603 A PSIC is excluded from ESA(IR)¹ unless they fall within one of the categories in DMG 54604.

1 s 115

PSIC entitled to normal ESA(IR)

54604 A PSIC can be considered for ESA(IR) under the normal rules¹ if they are

1. a sponsored immigrant who has been in the UK for 5 years **or**
2. a national of a country which has **ratified**
 - 2.1 the European Convention on Social and Medical Assistance (ECSMA)
or
 - 2.2 the Council of Europe Social Charter (CESC) (see DMG Chapter 07)
and is lawfully present in the UK.

Note: Persons who have come to the UK in order to seek asylum are not “lawfully present”.

1 SS (Immigration & Asylum) Consequential Amendment Regulations 2000 reg 2(1), 2(4)(a), 2(5) & 12(3)

PSIC entitled to urgent case payments

54605 A PSIC can be considered for urgent case payments under the normal rules if they are¹

1. a person with limited leave whose funds from abroad have been temporarily interrupted
2. a sponsored immigrant whose sponsor has died
3. an asylum seeker with transitional protection.

1 I&A Act 99, s 115; SS (I&A) Cpl Amdts Regs, reg 2 & 12; Sch, para 1 & 2

Couples

54606 If the claimant is a member of a couple and is not a PSIC, or falls within one of the categories in DMG 54604, but the partner is a PSIC, the applicable amount will be¹

1. the claimant's personal allowance **and**
2. any appropriate premium for the claimant (but **not** the partner) **and**
3. either the work related activity component or the support component **and**
4. housing costs.

Note: There is no modification of the premiums where the claimant's partner is a PSIC therefore if the claimant qualifies for a SDP it should be paid at the couple rate.

1 ESA Regs, Sch 5, para 10(a)

54607 - 54609

Polygamous marriages

Claimant is not a PSIC and one or more of the partners is a PSIC

54610 If the claimant is a member of a polygamous marriage and is not a PSIC, or falls within one of the categories in DMG 54604, but one or more of the partners is a PSIC, the applicable amount will be¹

1. the personal allowance for the claimant and one partner who is not a PSIC (including special cases) **and**
2. an amount for any other partner who is not a PSIC **and**
3. any appropriate premium for the claimant and the partner in **1.** **and**
4. either the work related activity component or the support component **and**
5. housing costs.

1 Sch 5, para 10(b)

Income and capital of a partner who is a PSIC

54611 If a claimant is married polygamously to two or more members of the household, the income and capital of each partner should be calculated in the same way as for the claimant¹. The income or capital should then be treated as belonging to the claimant.

Note: In certain circumstances special rules apply² to the income of a member of a polygamous marriage who is a partner aged less than 18 (see DMG Chapter 51).

1 ESA Regs, reg 83(3); 2 reg 83(5)

Example

Hussain is a member of a polygamous marriage and has three wives, Fatima, Parveen and Yasmin. Yasmin has limited leave to enter the UK and her passport is not endorsed that she is prohibited from working. Yasmin works twelve hours per week and earns £60. Hussain claims ESA.

The DM decides that

1. Hussain, Fatima, Parveen and Yasmin are members of a polygamous marriage **and**
2. Yasmin is a PSIC who is not entitled to a UCP **and**
3. Hussain is entitled to a personal allowance for himself and Fatima and a separate personal allowance for Parveen, no benefit is payable for Yasmin **and**
4. Yasmin's wages should be taken into account on Hussain's ESA claim.

Person in Hardship

54612 DMG 53099 describes what a person in hardship is. The amount of ESA payable in hardship cases is reduced by 20% of the claimant's applicable amount¹.

1 ESA Regs, Sch 5 para 14

54613 - 54699

Urgent Cases

Introduction

54700 **[See Memo DMG 01/10]** ESA(IR) may be awarded in certain urgent cases¹. The guidance in the following paragraphs explains

1. who can receive UCPs **and**
2. how to calculate ESA(IR) in urgent cases.

1 ESA Regs, reg 162(2)

54701 Payments made in these circumstances are known as UCPs and DMs should note that UCPs only apply to ESA(IR). This is because no provision has been made for UCPs to be made to claimants who receive ESA(Cont).

54702 In urgent cases, there are special rules on how to

1. calculate the applicable amount¹, including the applicable amount applying to couples and polygamous marriages
2. treat income²
3. treat capital³.

1 reg 163; 2 reg 164(1); 3 reg 164(2)

54703 DMs should note that UCPs are

1. payments of ESA(IR) and to qualify for UCPs the claimant must satisfy all the normal conditions of entitlement
2. not normally recoverable unless recovery can be made under the normal recovery provisions for
 - 2.1 overpayments¹ (see DMG 09003 et seq) **or**
 - 2.2 prevention of duplication of payments² (see DMG 09320 et seq).

1 SSA Act 92, s 71; 2 s 74

Example 1

Agnes is awarded a UCP because her occupational pension is paid late due to a strike at the pensions office. When Agnes receives the pension, the DM considers recovery under the prevention of duplication of payments provisions.

Example 2

Bruno is awarded a UCP when an income is paid late because of a postal strike. Bruno fails to declare that he has capital available to him which would have removed any hardship. The DM considers recovery under the overpayment provisions, even though the income has not yet been paid.

Who can receive urgent case payments

54704 Claimants may be entitled to UCPs if they are treated as having income that is due but has not been paid¹ (see DMG 54720 et seq).

1 ESA Regs, reg 162(2)

54705 - 54719

Income due but not paid

General

54720 **[See Memo DMG 01/10]** A claimant may be treated as having income that is due but has not been paid (notional income - see Chapter DMG 51). Such a claimant can qualify for a UCP if the

1. income that the claimant is treated as having is not readily available to the claimant¹ **and**
2. UCP is more than the normal amount of ESA(IR) that would be payable² **and**
3. DM is satisfied that the claimant or their family will suffer hardship if a UCP is not made³.

1 ESA Regs, reg 162(3); 2 reg 162(3)(a); 3 reg 162(3)(b)

54721 To work out whether a UCP would be more than the normal amount of ESA(IR), the DM should compare

1. the UCP, without taking the income that is due but not paid into account **and**
2. normal ESA(IR), taking the income that is due but not paid into account.

If the UCP is less, the DM should consider normal ESA(IR).

Meaning of hardship

54722 DMG 53099 describes what a person in hardship is.

54723 There may be hardship if the claimant or the claimant's family is denied some or all of the essentials of life such as

1. food
2. clothing
3. heating **or**
4. shelter.

54724 There may be hardship in any type of case, but it is more likely in cases involving

1. young children
2. pensioners
3. lone parents **or**
4. claimants whose normal ESA(IR) would include a SDP.

54725 The DM should decide whether there is hardship by considering all the circumstances of the case, including

1. the amount of income due but not paid
2. the length of time the claimant has been or is likely to be without the income
and
3. whether the claimant or any member of the family are in poor health.

Note: The lack of even a small amount of income may lead to hardship in some cases.

54726 - 54749

Claiming urgent case payments

54750 DMs should note that

1. there is no special procedure for claiming UCPs
2. people do not have to make a separate claim for a UCP
3. a claim for ESA includes a claim for any entitlement a claimant may have under the urgent cases provisions.

54751 If the claim is from a person who has not received an income, the DM should consider whether the conditions in DMG 54720 are satisfied. If these conditions are

1. not satisfied, a UCP is not payable and the DM should consider normal ESA(IR) **or**
2. satisfied, the DM should consider ESA(IR) under the urgent case provisions.

54752 The question of a UCP may come up when ESA(IR) is already in payment. For example a claimant may report that an occupational pension payment has not been received because of a strike at the company's pension section. If this happens the DM should

1. consider whether the conditions in DMG 54720 et seq are satisfied **and**
2. supersede the existing ESA(IR) award following the UCP provisions.

54753

When entitlement to an urgent case payment starts

54754 UCPs are payments of ESA(IR). Entitlement starts in ESA(IR) from the 4th day of the claim¹. This is because the claimant normally has to serve three waiting days (see DMG Chapter 41).

Note: The DM may consider a crisis loan if the claimant requests payment before the first pay-day.

1 ESA Regs, reg 144

Period for which an urgent case payment is paid

54755 UCPs are paid for as long as the conditions are satisfied.

54756 Once the UCP has been awarded there is no change in the amount payable unless there are grounds for revision or supersession, for example a supersession following a change of circumstances.

54757 - 54769

Calculating urgent case payments

Applicable amounts

Normal rules

54770 A claimant's weekly applicable amount is¹

1. 90% of the normal allowance for the claimant and any partner² (in polygamous marriage cases 90% of the personal allowance for the claimant and each of the claimant's partners)
2. any premium³
3. any component⁴ **and**
4. normal housing costs⁵.

Note: Claimants appealing against a decision refusing or terminating ESA where there has been a determination that they do not have LCW will not receive any component⁶.

1 ESA Regs, reg 163(a); 2 reg 163(a)(i); 3 reg 163(a)(ii); 4 reg 163(a)(iii); 5 reg 163(a)(iv); 6 reg 163(c)

54771 - 54779

Claimants in care homes or independent hospitals

54780 The rules are the same whether or not the claimant is resident in a care home or independent hospital. DM's should follow the guidance in DMG 54770 when considering applicable amounts for residents in these homes.

Applicable amounts in special cases

54781 A special applicable amount applies to the claimant or any partner who is

1. without accommodation¹
2. a temporarily separated member of a couple or polygamous marriage²
3. a member of a couple or polygamous marriage where a member is absent from GB³
4. a member of a religious order⁴
5. a prisoner⁵.

Note: If the claimant is a member of a religious order or a prisoner and the applicable amount is nil, no further calculation is necessary.

1 Sch 5, para 1; 2 Sch 5, para 4 & 5; 3 Sch 5, para 6 - 9; 4 Sch 5, para 2; 5 Sch 5, para 3

54782 The special applicable amount is

1. 90% of the special cases amount for the claimant and any partner¹
2. any premium²
3. any component³ **and**
4. normal housing costs⁴.

1 ESA Regs, reg 163(b)(i); 2 reg 163(b)(ii); 3 reg 163(b)(iii); 4 reg 163(b)(iv)

Applicable amount when appealing a decision refusing or terminating ESA following the work capability assessment

54783 The special applicable amount is

1. 90% of the personal allowance for the claimant and any partner (including polygamous marriages)¹
2. any premiums²
3. normal housing costs³.

Note: No component is payable.

1 reg 163(c)(i); 2 reg 163(c)(ii); 3 reg 163(c)(iii)

Rounding

54784 Where the calculation of the applicable amount results in a fraction of a penny the fraction should be rounded up to the next whole penny¹.

1 reg 3

How to treat income

54785 There are special rules on income when calculating UCPs. The DM should take all income that the claimant has or is treated as having fully into account¹ with the exceptions in DMG 54786 - 54789.

1 reg 164

54786 The DM should disregard tariff income when calculating a UCP¹.

1 reg 164(1)(b)

54787 The income due but not paid should be disregarded¹.

1 reg 164(1)(d)

54788 Certain types of income are normally treated as capital¹ (see DMG Chapter 52). However, when calculating a UCP the DM should take

1. charitable and voluntary payments that are not paid or not due to be paid regularly²

2. bounties paid at intervals of at least one year from the following employments³
 - 2.1 a P/T member of a fire brigade who
 - 2.1.a is a P/T fireman in a fire brigade maintained under certain legislation **or**
 - 2.1.b in England and Wales is a P/T fire-fighter employed by a fire and rescue authority **or**
 - 2.1.c in Scotland is a part-time fire-fighter employed by a fire and rescue authority or a joint fire and rescue board as specified under certain legislation **or**
 - 2.2 auxiliary coastguards for coastal rescue activities **or**
 - 2.3 working P/T in the manning or launching of a lifeboat **or**
 - 2.4 members of a territorial or reserve force
 3. refunds of income tax deducted from earnings from self-employment or employed earners employment⁴
 4. holiday pay paid more than four weeks after employment has ended⁵
- into account as income.

1 ESA Regs, reg 164(1)(c); 2 reg 112(7); 3 reg 112(1); 4 reg 112(2); 5 reg 112(3)

54789 When calculating a UCP the DM should disregard

1. payments, including payments of income or income in kind, made under¹
 - 1.1 the Macfarlane Trust
 - 1.2 the Macfarlane (Special Payments) Trust
 - 1.3 the Macfarlane (Special Payments) (No. 2) Trust
 - 1.4 the Fund
 - 1.5 the Eileen Trust
 - 1.6 ILFs
 - 1.7 the Skipton Fund
 - 1.8 the London Bombings Relief Charitable Fund
2. payments from money that came from one of the Trusts or Funds in 1.1 to 1.8² (see DMG Chapter 51) but not
 - 2.1 payments out of a person's estate to that person's parent, step-parent or guardian or
 - 2.2 income from the payments in 1.
3. concessionary payments made to compensate for the non-payment of UCPs in ESA(IR)³

4. SF payments⁴
5. any payment made by the Secretary of State to compensate for any loss of entitlement to HB⁵.

*1 ESA Regs, reg 164(1)(a)(i); 2 reg 164(1)(a)(ii) & Sch 8, para 41; 3 Sch 8, para 9; 4 Sch 8, para 35;
5 Sch 8, para 42*

Example

A claimant receives £5,000 from money that came from the Macfarlane Trust. The DM disregards the payment.

The claimant puts the money in an investment account. The income from the investment is not disregarded when considering a UCP.

54790 - 54799

How to treat capital

- 54800 If the claimant receives capital made by or derived from any of the trusts or funds in DMG 54789 1. See DMG Chapter 52 for further guidance.
- 54801 The DM should follow the normal rules for calculating a claimant's capital (See DMG Chapter 52). However, some types of capital that would be disregarded under the normal rules should be taken into account when calculating a UCP¹. These types of capital are
1. the proceeds from the sale of one home which are to be used to buy another²
 2. business assets from self-employment if the assets are in liquid form³, for example cash in hand or money in current accounts
 3. arrears of, or concessionary payment to compensate for arrears due to the non-payment of⁴
 - 3.1 AA
 - 3.2 care component of DLA
 - 3.3 mobility component of DLA
 - 3.4 WTC
 - 3.5 CTC
 - 3.6 IS
 - 3.7 JSA(IB)
 - 3.8 ESA(IR)
 4. concessionary payments to compensate for arrears due to the non-payment of HB

5. any sum deposited with a housing association as a condition of occupying the home and which is to be used to buy another home⁵
6. refunds of the tax on loan interest for loans⁶ used to
 - 6.1 buy the dwelling lived in as the home **or**
 - 6.2 pay for repairs or improvements to the home
7. a training bonus, but only for the period of 52 weeks beginning on the date of receipt of the payment⁷
8. mobility supplement or any payment intended to compensate for the non-payment of such a supplement⁸.

Note 1: Actual arrears of HB should be disregarded for 52 weeks from the date of receipt.

Note 2: Payments made by the DM to compensate for any loss of entitlement to HB should be disregarded.

*1 ESA Regs, reg 164(2); 2 Sch 9, para 3; 3 Sch 9, para 10; 4 Sch 9, para 11; 5 Sch 9, para 13(b)
6 Sch 9, para 24; 7 Sch 9, para 32; 8 Sch 8, para 10*

Effect of capital on urgent case payments

54802 Capital as calculated in DMG 54801 must be taken into account against the amount of the UCP calculation. If capital is more than the UCP calculation, no UCP is payable. If the capital is less than the amount of the UCP calculation, the difference is payable¹.

1 reg 164(2)

54803 Where entitlement to UCPs ceases because of the receipt of capital, the last day of entitlement is the day before the day that the capital is received. If this day is not the last day of the claimant's benefit week, a part week calculation is necessary. If the claimant makes a further claim, the earliest date that benefit can be re-awarded from is the beginning of the next benefit week.

Example

Stanley receives a loan from a friend on Thursday 27.11.08. The loan is treated as capital. The amount of the loan exceeds his weekly UCP applicable amount. His benefit week is Wednesday to Tuesday. His last day of entitlement is Wednesday 26.11.08. He is entitled to a part week payment of one day's benefit in respect of benefit week 26.11.08 to 2.12.08.

Stanley spends the money loaned to him and reclaims UCPs. The DM is satisfied that the deprivation of capital rules do not apply and re-awards benefit from 3.12.08.

Arrears of urgent case payments

54804 Arrears of UCPs, including JSA UCPs should be disregarded in the calculation of capital¹.

1 reg 164(2) & Sch 9, para 11

54805 - 54999