

Chapter 31 - Urgent case payments

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Chapter 31 - Urgent case payments

Introduction

[See DMG Memo JSA/IS 64]

Changes from 25.1.10

31001 The provisions¹ enabling payment of UCPs were revoked² for new claims made on or after 25.1.10³. However, there are transitional provisions which apply to people who were in receipt of UCPs on 24.1.10 because of

1. interruption of funds from abroad⁴ (see DMG 31002) **or**
2. income due but not paid⁵ (see DMG 31003 - 31004).

1 JSA Regs, reg 147-149; IS (Gen) Regs, reg 70-72; 2 Social Security (Miscellaneous Amendments) (No. 5) Regulations 2009, reg 2(1); 3 reg 1(2); 4 reg 2(3); 5 reg 2(2)

Transitional provisions

Interruption of funds from abroad

31002 Where a person is in receipt of UCPs on 24.1.10 because their funds from abroad have been interrupted then they will continue to receive UCPs

1. for a total of 42 days during any one period of leave **or**
2. until funds from abroad resume¹

whichever is the earlier.

1 Social Security (Miscellaneous Amendments) (No. 5) Regulations 2009, reg 2(3)

Income due but not paid

31003 Where a person is in receipt of UCPs because

1. income that the claimant is treated as having is not readily available to the claimant **and**
2. the UCP is more than the normal amount of IS or JSA(IB) that would be payable **and**
3. the DM is satisfied that the claimant or their family will suffer hardship if a UCP is not made

they will continue to receive UCPs for so long as **1.**, **2.** and **3.** apply¹.

1 Social Security (Miscellaneous Amendments) (No. 5) Regulations 2009, reg 2(4)

31004 People will not be able to receive UCPs again in the future once DMG 31003 has first ceased to apply to them after 24.1.10¹.

1 Social Security (Miscellaneous Amendments) (No. 5) Regulations 2009, reg 2(1)

General

- 31005 The rest of this Chapter gives guidance on UCPs as they applied before 25.1.10.
- 31006 DMs should note that UCPs only apply to JSA(IB) and IS. This is because the law does not allow for UCPs to be made to claimants who receive JSA(Cont).
- 31007 In urgent cases, there are special rules on how to
1. calculate the applicable amount¹, including the applicable amount applying to joint-claim couples
 2. treat income²
 3. treat capital³.
- 1 JSA Regs, reg 148 & 148A; IS (Gen) Regs, reg 71; 2 JSA Regs, reg 149(1); IS (Gen) Regs, reg 72(1);
3 JSA Regs, reg 149(2); IS (Gen) Regs, reg 72(2)*
- 31008 DMs should note that UCPs are
1. payments of JSA(IB) or IS 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 before 25.1.10

- 31009 The rules on UCPs are restricted and have changed several times in the past and the provisions enabling the payment of UCPs were revoked for new claims made on or after 25.1.10 (see DMG 31001).
- 31010 However, the rules from 3.4.00 mean that the types of claimant who may be entitled to UCPs before the provisions were revoked are

1. certain people who are subject to immigration control¹ (see DMG 31021 et seq)
2. claimants who are treated as having income that is due but has not been paid² (see DMG 31300 et seq).

*1 JSA Regs, reg 147(1), (2)(a) & (2A); IS (Gen) Regs, reg 70(1), (2)(a) & (2A); 2 JSA Regs, reg 147(1), (2)(b) & (6);
IS (Gen) Regs, reg 70(1), (2)(b) & (4)*

31011 Guidance on the rules that applied before 3.4.00 is at Appendix 1 to this Chapter.

31012 - 31020

People subject to immigration control

General rules

31021 From 25.1.10 PSICs can no longer be considered for UCPs¹. However, transitional provisions apply where there is interruption of funds from abroad (see DMG 31002). Before then, on 3.4.00, the law was changed to introduce new arrangements for asylum seekers and other PSIC².

*1 Social Security (Miscellaneous Amendments) (No 5) Regulations 2009, reg 2(1);
2 I & A Act 99; SS (I&A) Cql Amdts Regs*

31022 A PSIC means¹ a person who is not an EEA national and who

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 subject to a written maintenance undertaking
4. has had limited leave extended only because they have appealed a decision to vary or refuse to vary that leave.

1 SS (I&A) Cql Amdts Regs

31023 From 3.4.00, people subject to immigration control are not normally entitled to JSA(IB) or IS¹. But the law provides for exceptions to this rule for certain categories of persons. Such people may be entitled to JSA(IB) or IS at the

1. normal rate (see DMG 31024) **or**
2. UCP rate (see DMG 31026).

1 I & A Act 99, s 115(1)

JSA(IB) and IS

31024 JSA(IB) and IS can be awarded in full (subject to the normal rules of entitlement) if¹ the claimant is a

1. sponsored immigrant who has been in the UK for five years or more **or**
2. national of a country which has ratified the
 - 2.1 European Convention on Social and Medical Assistance **or**
 - 2.2 Council of Europe Social Charter

and is lawfully present in the UK.

1 I & A Act 99, s 115; SS (I&A) Cql Amdts Regs, reg 2(1); Sch, para 3 & 4

31025 "Lawfully present" in this context means that the person should have some form of leave to enter or remain in the UK. Asylum seekers, or people with temporary admission in other circumstances, would not be regarded as being lawfully present for this purpose.

Urgent case payments

- 31026 From 3.4.00, UCPs can only be awarded to a PSIC if¹ the claimant
1. has limited leave and is temporarily without funds (see DMG 31050 and 31080) **or**
 2. is a sponsored immigrant and the sponsor has died (see DMG 31060 and 31090) **or**
 3. is an asylum seeker who has transitional protection under
 - 3.1 the 5.2.96 rules (see DMG 31100) **or**
 - 3.2 the 3.4.00 rules.
- 1 I & A Act 99, s 115; SS (I&A) Cpl Amdts Regs, reg 2 & 12; Sch, para 1 & 2; JSA Regs, reg 147; IS (Gen) Regs, reg 70*

Claims from couples

- 31027 A PSIC who is entitled to UCPs as in DMG 31026 may have a partner. In such a case the DM should
1. consider whether the partner is also a PSIC **and**
 2. compare the amount of JSA(IB) or IS that would be payable to the
 - 2.1 claimant under the UCP rules **and**
 - 2.2 partner¹ under DMG 24513 et seq **and**
 3. advise the person with the greatest entitlement to become the claimant.
- 1 JSA Regs, Sch 5, para 13A; IS (Gen) Regs, Sch 7, para 16A*
- 31028 In most cases the amount payable under the UCP rules will be more than that payable under the rules in DMG 24513. This is because a claimant's weekly applicable amount of UCPs includes the appropriate allowances for **all** members of the family regardless of
1. the immigration status of **any** members of the family **or**
 2. whether any member of the family is in any of the circumstances in DMG 31026.
- 31029 From 8.9.05, for the purposes of the calculation in DMG 31027, the applicable amounts and premiums in respect of children¹ should not be included.
- 1 Social Security (Tax Credit) Amendment Regulations 2005, reg 2*

31030 But some income or capital that is taken into account under UCP rules would be disregarded under normal rules. In such a case it may be better for the person who is not subject to immigration control to be the claimant.

31031 If there is entitlement to UCPs the amount payable should be worked out as in DMG 31370 et seq.

31032 - 31039

Conditions for the award of urgent case payments - JSA(IB)

31040 A PSIC may be entitled to JSA(IB) at the UCP rate. Before 3.4.00, UCPs could only be awarded under JSA rules to asylum seekers who had no restrictions on taking up employment in the UK (see Appendix 1 to this Chapter). But on 3.4.00 those rules changed¹.

1 I & A Act 99, s 115; SS (I&A) Cql Amdts Regs

31041 From 3.4.00, UCPs can be awarded under JSA rules if¹ the claimant

1. has limited leave and is temporarily without funds from abroad (see DMG 31050) **or**
2. is a sponsored immigrant and the sponsor has died (see DMG 31060) **or**
3. is an asylum seeker who has transitional protection (see DMG 31100 et seq).

1 JSA Regs, reg 147(1), (2)(a) & (2A); I & A Act 99, s 115; SS (I&A) Cql Amdts Regs, reg 2(1) & 12; Sch, para 1 & 2

31042 UCPs under JSA are not payable to people subject to immigration control in any other circumstances.

31043 DMs should note that for JSA there is a risk of the claimant being sanctioned for not complying with the labour market conditions (see DMG 34001 et seq). So in most cases it may be better for the claimant to claim UCPs of IS rather than JSA(IB).

31044 - 31049

Temporarily without funds - JSA(IB)

31050 A PSIC is entitled to UCPs if¹ they

1. have limited leave to enter or remain in the UK with no
 - 1.1 recourse to public funds **or**
 - 1.2 charge on public fundsduring that period of limited leave **and**
2. have been self-supporting or supported without recourse to public funds (other than a previous payment under the UCP provisions) **and**
3. are temporarily without funds because the funds from abroad have been disrupted **and**
4. reasonably expect that the supply of funds will be resumed.

1 JSA Regs, reg 147(2)(a) & (2A); SS (I&A) Cql Amdts Regs, reg 2(1); Sch, para 1

31051 The expectation that the supply of funds will resume must be a reasonable one. But there is no set time limit within which the funds must resume. What is reasonable in this context should be decided on the circumstances of each individual case.

Example 1

Aniza is a student from Malaysia who is being supported by funds from abroad. Political unrest in her home country prevents funds from getting to the UK. But it is expected that the situation will return to normal after an election in two months time. The DM considers UCPs.

Example 2

A visitor from Nigeria is temporarily without money because of a delay in transferring funds to a UK bank. It is reasonable to expect the funds to arrive within two weeks. The DM considers UCPs.

31052 - 31059

Sponsored immigrants - JSA(IB)

31060 PSICs are entitled to UCPs if¹ they

1. have leave to enter or remain in the UK as a sponsored immigrant (see DMG 070835) **and**
2. have not been resident in the UK for a period of at least five years **and**
3. the sponsor has died.

1 JSA Regs, reg 147(2)(a) & (2A); SS (I&A) Cql Amdts Regs, reg 2(1); Sch, para 2

31061 If there is more than one sponsor they must all have died before UCPs can be awarded.

Example 1

A man enters the UK in February 1999 with indefinite leave under a written sponsorship agreement signed in January 1999. In January 2002 the sponsor dies and he claims JSA(IB). He is a PSIC with entitlement to UCPs.

Example 2

A woman enters the UK in May 2001 with indefinite leave under a written sponsorship agreement signed by her two sons in April 2001. She lives with her elder son who dies in May 2002 and she claims JSA(IB). But her other sponsor, her younger son, is still alive. The claimant is a PSIC with no entitlement to UCPs.

31062 When the claimant has been resident in the UK for five years, JSA(IB) can be awarded in full¹ (see DMG 31024 and 070835 et seq). If there is a current award of UCPs

1. supersede the award on the grounds that reaching the five year date is a relevant change of circumstances **and**
2. disallow UCPs from the date that the claimant has been resident in the UK for five years **and**
3. award JSA(IB) at the full rate, if appropriate, from the five year date.

1 SS (I&A) Cql Amdts Regs, reg 2(1); Sch, para 2

31063 - 31069

Conditions for the award of urgent case payments - IS

31070 A PSIC may be entitled to IS at the UCP rate. Before 3.4.00, UCPs could be awarded under IS rules if the claimant

1. had limited leave and was temporarily without funds **or**
2. was a sponsored immigrant subject to a written maintenance undertaking and the sponsor had died **or**
3. was an asylum seeker for IS purposes.

But on 3.4.00 those rules changed¹.

1 I & A Act 99; SS (I&A) Cpl Amdts Regs

31071 From 3.4.00, UCPs can only be awarded under IS if¹ the claimant

1. has limited leave and is temporarily without funds from abroad (see DMG 31080) **or**
2. is a sponsored immigrant subject to a written maintenance undertaking and the sponsor has died (see DMG 31090) **or**
3. is an asylum seeker who has transitional protection under
 - 3.1 the 5.2.96 rules (see DMG 31100) **or**
 - 3.2 the 3.4.00 rules.

1 IS (Gen) Regs, reg 70(1), 2(a) & (2A); I & A Act 99, s 115; SS (I&A) Cpl Amdts Regs

31072 UCPs under IS are not payable to PSICs in any other circumstances.

31073 - 31079

Temporarily without funds - IS

31080 On 3.4.00 the law was changed to introduce new arrangements for PSICs¹. But the outcome of those changes was to retain the existing IS rules on claimants temporarily without funds.

1 I & A Act 99; SS (I&A) Cql Amdts Regs

31081 PSICs continue to be entitled to UCPs for a maximum of 42 days¹ in any one period of leave if¹ they

1. have limited leave to enter or remain in the UK with no
 - 1.1 recourse to public funds **or**
 - 1.2 charge on public fundsduring that period of limited leave **and**
2. have been self-supporting or supported without recourse to public funds (other than a previous payment under the UCP provisions) **and**
3. are temporarily without funds because the funds from abroad have been disrupted **and**
4. reasonably expect that the supply of funds will be resumed.

1 IS (Gen) Regs, reg 70(2)(a), 70(2A) & 71(2)(a); SS (I&A) Cql Amdts Regs, reg 2(1); Sch, para 1

31082 The expectation that the supply of funds will resume must

1. be a reasonable one **and**
2. not be limited to resuming within 42 days.

For example this condition could be satisfied if there was reasonable expectation of funds resuming within three months.

Example 1

Neal is a student from South Africa who is being supported by funds from abroad. Political unrest in his home country prevents funds getting to the UK. But it is expected that the situation will return to normal after an election in a months time. The DM considers UCPs.

Example 2

Babatunde is a visitor from Nigeria. He is temporarily without money because of a delay in transferring funds to a UK bank. It is reasonable to expect the funds to arrive within two weeks. UCPs can be considered.

31083 The 42 day maximum period of entitlement applies during any one period of limited leave¹. It is important to note that

1. the maximum period can be made up of a number of smaller periods. The claimant may make several claims during one period of limited leave, but the 42 day period should not be exceeded in total.
2. "any one period of leave" includes any extensions. The claimant can have up to a further 42 days of benefit if
 - 2.1 the original period of leave had expired and a fresh period of leave had been given (for example not backdated to follow on from the expiry date of the original leave) **or**
 - 2.2 the conditions of the leave had been varied (not just its duration).

1 IS (Gen) Regs, reg 71(2)

31084 - 31089

Sponsored immigrants - IS

31090 PSICs are entitled to UCPs under IS rules if¹

1. they have leave to enter or remain in the UK as a sponsored immigrant subject to a written maintenance undertaking (see DMG 070831) **and**
2. they have not been resident in the UK for a period of at least five years **and**
3. the sponsor has died.

1 IS (Gen) Regs, reg 70(2)(a) & (2A); SS (I&A) Cpl Amdts Regs, reg 2(1) & Sch, para 2

31091 If there is more than one sponsor they must all have died before UCPs can be awarded.

Example 1

A man enters the UK in February 1999 with indefinite leave under a written maintenance undertaking signed in January 1999. In January 2002 the sponsor dies and the man claims IS. The claimant is a PSIC with entitlement to UCPs.

Example 2

A woman enters the UK in May 2001 with indefinite leave under a written maintenance undertaking signed by her two sons in April 2001. She lives with her elder son who dies in May 2002 and she claims IS. But her other sponsor, her young son, is still alive. The claimant is a PSIC with no entitlement to UCPs.

31092 When the claimant has been resident in the UK for five years, IS can be awarded in full¹ (see DMG 31024 and 070835 et seq). If there is a current award of UCPs

1. supersede the award on the grounds that reaching the five year date is a relevant change of circumstances **and**
2. disallow UCPs from the date that the claimant has been resident in the UK for five years **and**
3. award IS at the full rate, if appropriate, from the five year date, subject to the normal conditions of entitlement.

1 SS (I&A) Cpl Amdts Regs, reg 2(1) & Sch, para 3

31093 - 31099

Transitional protection under the 5.2.96 rules - IS

31100 From 3.4.00, a PSIC can be awarded UCPs of IS if¹ they have transitional protection under the 5.2.96 rules. That is transitional protection which was given to certain asylum seekers who were in receipt of UCPs before 5.2.96 (see DMG 31101 et seq).

1 IS (Gen) Regs, reg 70(2)(a) & (2A); SS (I&A) Cpl Amdts Regs, reg 2(4)

The 5.2.96 rules

31101 Before 5.2.96, asylum seekers were entitled to UCPs at all stages of their asylum application, until the final decision on their application was made. But on 5.2.96 the rules changed¹ and payment of UCPs was limited to asylum seekers who claimed asylum

1. on arrival in the UK **or**
2. while in GB, if certain conditions were satisfied.

1 SS (PFA) Misc Amdt Regs 96

31102 Transitional protection¹ was provided for those asylum seekers² entitled to UCPs immediately before 5.2.96. The effect of this was that asylum seekers who were entitled to UCPs immediately before 5.2.96³ continued to be entitled to UCPs after 5.2.96.

*1 SS (PFA) Misc Amdt Regs 96, reg 12(1); 2 IS (Gen) Regs, reg 70(3A) [pre 5.2.96];
3 R(IS) 15/99; R(IS) 9/01; R v. Secretary of State for SS ex Parte T*

31103 DMs should note that transitional protection under the 5.2.96 rules is not lost if there is a break in the claim¹. It continues to apply to every claim until the asylum application has been determined (see DMG 31230).

1 Mustafa Yildiz v. Secretary of State for SS (CA); R(IS) 9/01

Members of the asylum seeker's family

31104 On 24.7.96, the rules were amended to extend transitional protection to dependants who were members of the asylum seeker's family on 4.2.96¹. See DMG 22003 for the meaning of member of the family in this context². It would not for example apply to the elderly parent of a primary asylum seeker. But it would apply to a spouse or dependent child.

1 A & I Act 96, Sch 1, para 5; 2 SS CB Act, s 137(1)

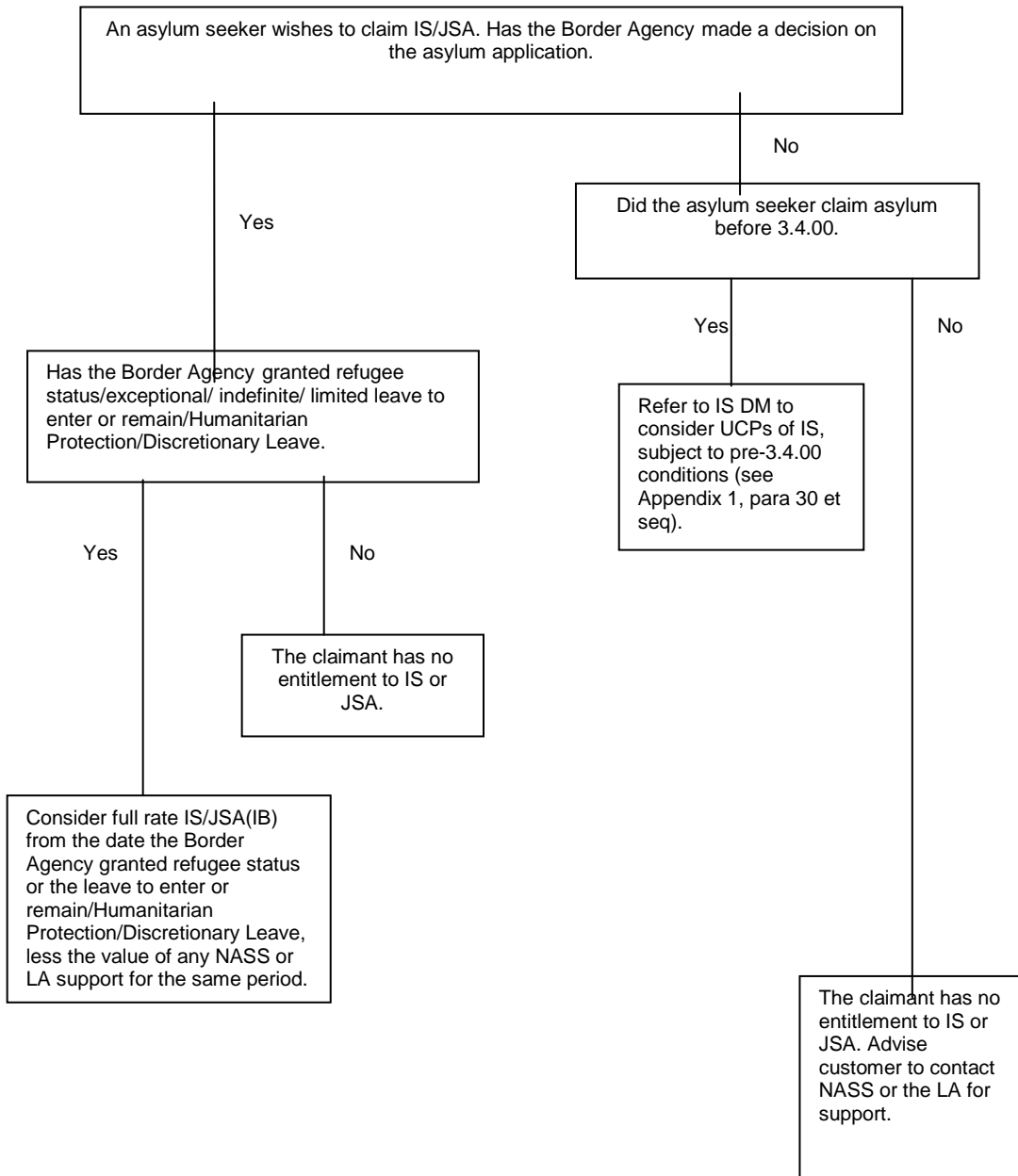
31105 Where an ex-dependant claims benefit themselves, the DM should obtain details of the relevant asylum application. This may be for another asylum applicant such as a partner or parent (the primary asylum seeker) or for the claimant themselves.

31106 UCPs will be payable if

1. on 4.2.96, a person was a member of the family of an asylum seeker who satisfied the condition in DMG 31102 **and**
2. the person has
 - 2.1 not made an asylum application of their own but was included in that primary asylum seeker's application **or**
 - 2.2 an asylum application of their own outstanding on 4.2.96 **and**
3. that asylum application has not been decided or abandoned (see Appendix 1 to this Chapter).

31107 - 31199

Claims involving an asylum seeker - Flowchart for DMG 31203



Support system for asylum seekers from 3.4.00

Background

31200 On 3.4.00 the law was changed to introduce new arrangements for asylum seekers and other PSICs¹.

1 I & A Act 99; SS (I&A) Cpl Amdts Regs

31201 From 3.4.00, all new asylum seekers are excluded from SS benefits¹. So from 3.4.00, asylum seekers are no longer entitled to JSA(IB) or IS at the UCP rate (see Appendix 1 to this Chapter). Instead they receive support under a new support system provided by the Border Agency.

1 I & A Act 99, s 115(1)

31202 Asylum seekers who applied for asylum on arrival in the UK before 3.4.00 will, subject to existing rules, be entitled to IS at UCP rates (see Appendix 1 para 30 et seq). Claimants who were receiving UCPs on 3.4.00 will continue to do so until a decision has been made on their asylum application (see DMG 31276 et seq).

31203 The flowchart overleaf sets out the steps to be followed when deciding a claim that involves an asylum seeker.

31204 - 31207

Asylum applications on or after 3.4.00

31208 The NASS has been set up by the Border Agency to manage the new support arrangements from 3.4.00.

31209 From 3.4.00, support is provided to asylum seekers by

1. the NASS, to
 - 1.1 all new asylum seekers who make their application for asylum at a port of entry **and**
 - 1.2 in country asylum seekers in Scotland and Northern Ireland **and**
2. LAs, to in country asylum seekers in England and Wales, until such cases are phased into the NASS scheme.

National asylum support service

- 31210 The NASS provide support
1. whilst the Border Agency is making a decision on
 - 1.1 the asylum application **or**
 - 1.2 any subsequent appeal **and**
 2. in the form of
 - 2.1 cash
 - 2.2 accommodation.
- 31211 An asylum seeker may receive all elements of NASS support as in DMG 31210 2.. Alternatively, they may not need any support from NASS if they have enough resources of their own or are fully supported by friends or relatives.
- 31212 Accommodation is generally provided to asylum seekers in cluster areas, most of which are sited outside of London and Kent. Asylum seekers do not have a choice about the area in which accommodation is offered.

Local authority support

- 31213 LAs will provide support under interim provisions¹ until all cases are phased into the NASS scheme. Payments are made to cover essential living expenses in the form of vouchers and up to £10 in cash.

1 I & A Act 99

Claims from couples

- 31214 A claimant may have a partner who is subject to immigration control. Where the partner is supported by the NASS or an LA
1. IS/JSA(IB) is not payable for the partner¹ **and**
 2. the value of any support provided by the NASS or LA should be disregarded in full².

1 IS (Gen) Regs, Sch 7, para 16A; JSA Regs, Sch 5, para 13A; 2 IS (Gen) Regs, reg 40(5); JSA Regs, Sch 7, para 22(3)

31215 - 31229

Immigration department's decision

- 31230 When considering an asylum application the Border Agency could decide
1. to recognise the applicant as a refugee and grant immediate settlement in the UK **or**
 2. not to recognise the applicant as a refugee but grant
 - 2.1 humanitarian protection **or**
 - 2.2 discretionary leave **or**
 3. to refuse refugee status.

Refugee status granted

- 31231 An asylum seeker who is granted refugee status is no longer subject to immigration control. Such a person is entitled to claim JSA(IB) or IS at the full rate (subject to normal conditions of entitlement) from the date of decision by the Border Agency.

31232

- 31233 **[See DMG Memo JSA/IS 64]** The NASS, or LA, continue providing full support for a period of 28 days after the successful asylum seeker has received their decision from the Border Agency. This is to allow for a smooth transition from Border Agency support to benefit. Any payments made by NASS or LAs for this 28 day grace period should be taken into account as income¹.

1 IS (Gen) Regs, reg 40(4)(b); JSA Regs, reg 103(6)(b)

Humanitarian protection and discretionary leave

- 31234 From 1.4.03 two new decisions were introduced called humanitarian protection and discretionary leave. Both are granted outside the immigration rules.
- 31235 Humanitarian protection is granted only to those people who, though not granted refugee status would, if they were returned to their country of origin, face a serious risk to life or person arising from
1. the death penalty **or**
 2. unlawful killing or torture **or**
 3. inhuman or degrading treatment or punishment.
- 31236 Discretionary leave will be awarded to people who have been refused refugee status but do not fulfil the criteria in DMG 31235.

Exceptional leave to enter or remain

31237 Up to 2007 there will be people who were granted exceptional leave prior to 1.4.03 under the old rules. Exceptional leave to enter and exceptional leave to remain were both granted on humanitarian grounds. But exceptional leave to enter was granted to those people who had not previously been given leave (that is permission) to enter the UK.

31238 If the Border Agency grant a person exceptional leave to enter or remain, that person was no longer subject to immigration control. Such a person was entitled to claim IS at the full rate (subject to normal conditions of entitlement) from the date of the decision by the Border Agency.

31239

Termination of support

31240 Successful asylum seekers who have received support from NASS are issued with a termination of support letter (NASS 35) at the end of their period of support. The NASS 35

- is a secure laminated document
- is pale green in colour
- incorporates the Border Agency logo
- has the watermark "ER" throughout
- includes a photograph of the principal asylum applicant.

31241 One letter is issued to each family unit that has been supported by NASS with details of all support received including

1. the period and value of the support **and**
2. details of all adult and child dependants **and**
3. any changes of circumstance **and**
4. any accommodation provided (if appropriate) **and**
5. any emergency vouchers that may have been issued **and**
6. the date and type of leave that has been granted.

Note: The value of any accommodation provided by the Border Agency should not be taken into account when considering the question of income (see DMG 31233).

- 31242 NASS will issue a shorter letter to adult dependants who receive their decision separately from the main applicant. This letter provides details of the support they have received or that has been paid in respect of them. But it does not include a photograph.
- 31243 A successful asylum seeker who has not been supported by NASS will not have a NASS 35. In such cases, the claimant should be asked for evidence in support of their claim. Where support has been provided by an LA, the DM may need to contact that LA to obtain details of the support paid.

Negative asylum decision

- 31244 When considering an asylum application the Border Agency may decide to refuse refugee status, humanitarian protection and discretionary leave. Where such a negative asylum decision is issued, entitlement to IS under any existing award will cease. The claimant must then be advised to contact NASS or the LA to apply for any further support (see DMG 31209).

31245 - 31249

Retrospective payments

- 31250 The ability to claim back payments of IS for asylum seekers granted leave to remain in the UK as refugees was withdrawn from 14.6.07.

31251

Asylum application on or before 2.4.00

- 31252 Asylum seekers who applied for asylum on or before 2.4.00 continued to be entitled to UCPs of IS under the rules that applied before 3.4.00.

31253 - 31255

Asylum application on or after 3.4.00

- 31256 From 3.4.00, all new asylum seekers are excluded from SS benefits. So those who make their application for asylum on or after 3.4.00 are not entitled to claim IS or JSA. Support is provided instead by the NASS or LA (see DMG 31200 et seq).

31257 - 31259

31260 NASS will detail the support that they have provided on the termination of support letter NASS 35 (see DMG 31240 et seq). But a person who has not been supported by NASS will not have a NASS 35. In such cases the claimant should be asked for evidence in support of their claim. Where support has been provided by an LA, the DM may need to contact that LA to obtain details of the support paid.

31261 - 31275

Person stops being an asylum seeker

- 31276 A person stops being an asylum seeker for IS and JSA(IB) on¹ the date that the
1. claim for asylum is recorded by the Border Agency as having been decided (other than on appeal) **or**
 2. asylum application is recorded as having been abandoned.

Note: (Other than an appeal) For these purposes the **first** recorded decision on the asylum claim is effective and asylum seeker status cannot be reinstated.

1 SS (I&A) Cpl Amdts Regs, reg 12(5)

31277 When the date in DMG 31276 is reached, transitional protection comes to an end and entitlement to IS and JSA(IB) then ceases. At that point asylum seekers may be eligible for support from the NASS or LA (see DMG 31208).

31278 - 31299

Income due but not paid

Income due but not paid - general

31300 From 25.1.10 UCPs are no longer payable where there is income due but not paid¹. However, transitional provisions apply (see DMG 31003 - 31004). Before then a claimant may be treated as having income that is due but has not been paid (see DMG 28640 et seq). 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 claimant² **and**
2. UCP is more than the normal amount of JSA(IB) or IS that would be payable³ **and**
3. DM is satisfied that the claimant or their family will suffer hardship if a UCP is not made⁴.

*1 Social Security (Miscellaneous Amendments) (No 5) Regulations 2009, reg 2(1);
2 JSA Regs, reg 147(6); IS (Gen) Regs, reg 70(4); 3 JSA Regs, reg 147(6)(a); IS (Gen) Regs, reg 70(4)(a);
4 JSA Regs, reg 147(6)(b); IS (Gen) Regs, reg 70(4)(b)*

31301 To work out whether a UCP would be more than the normal amount of JSA(IB) or IS, the DM should compare

1. the UCP, without taking the income that is due but not paid into account **and**
2. normal JSA(IB) or IS, taking the income that is due but not paid into account.

If the UCP is less, the DM should consider normal JSA(IB) or IS.

Meaning of hardship

31302 Hardship is not defined in the regulations. When considering a UCP because a claimant is treated as having income that is due but not paid, the DM should give hardship its normal everyday meaning¹. That is severe suffering or lack of the comforts or necessities of life.

1 R(SB) 19/82

31303 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.

31304 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 JSA(IB) or IS would include a DP, HPP, SDP or DCP.

31305 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.

31306 - 31349

Claiming and calculating urgent case payments

Claiming urgent case payments

- 31350 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 JSA(IB) or IS includes a claim for any entitlement a claimant may have under the urgent cases provisions.
- 31351 If the claim is from a PSIC in circumstances for which a UCP may be awarded, the DM should calculate the amount of the UCP award.
- 31352 If the claim is from a person who has not received an income, the DM should consider whether the conditions in DMG 31300 are satisfied. If these conditions are
1. not satisfied, a UCP is not payable and the DM should consider normal JSA(IB) or IS **or**
 2. satisfied, the DM should consider JSA(IB) or IS under the urgent case provisions.
- 31353 The question of a UCP may come up when JSA(IB) or IS 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 31300 et seq are satisfied **and**
 2. supersede the existing JSA(IB) or IS following the UCP provisions.

When entitlement to an urgent case payment starts

- 31354 UCPs are payments of JSA(IB) or IS. Entitlement starts in
1. JSA(IB) (including joint-claim cases), from the 4th day of the claim. (This is because the claimant normally has to serve three waiting days) **or**
 2. IS, for claimants paid in
 - 2.1 arrears on the date of claim¹ **or**
 - 2.2 advance on the pay-day on or following the date of claim².

Note: The DM may consider a crisis loan if the claimant requests payment before the first pay-day.

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

Period for which an urgent case payment is paid

31355 UCPs are paid for

1. PSICs

1.1 if an IS claimant is temporarily without funds - up to 42 days¹ **or**

1.2 in any other case - for as long as the conditions are satisfied **or**

2. claimants who are treated as having income due but not paid - for as long as the conditions are satisfied.

1 IS (Gen) Regs, reg 71(2)(a) ; SS (I&A) Cpl Amdts Regs, reg 2(1); Sch 1, para 1

31356 Once the UCP has been awarded there is no change in the amount payable unless there are grounds for revision or supersession, for example following a change of circumstances.

31357 - 31359

Calculating urgent case payments

Applicable amounts - JSA(IB)

Normal rules

- 31360 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. where the claim is made prior to 8.9.05 the normal personal allowance for any child or young person in the family³
 3. any premium⁴
 4. normal housing costs⁵.

Note: If a child or young person's capital calculated in DMG Chapter 29 is more than £3000, no amount should be allowed for them in 2..

1 JSA Regs, reg 148(1)(a); 2 reg 148(1)(a)(i); 3 reg 148(1)(a)(ii); 4 reg 148(1)(a)(iii); 5 reg 148(1)(a)(iv)

Joint claim couples

- 31361 The weekly applicable amount in the case of a joint-claim couple is¹
1. 90% of the normal amount for the couple² (in polygamous marriage cases, 90% of the personal allowance for a member of the joint claim couple and one other member of the marriage and 90% of the personal allowance of each of the other members of the marriage)
 2. any premiums³
 3. normal housing costs⁴.

*1 JSA Regs, reg 148A(1)(a); 2 reg 148A(1)(a)(i); 3 reg 148A(1)(a)(ii);
4 reg 148A(1)(a)(iii)*

31362 - 31363

Claimants in a care home, Abbeyfield Home or an independent hospital

- 31364 From 6.10.03, the rules are the same whether or not the claimant is in a care home, Abbeyfield Home or an independent hospital. DMs should follow the guidance in DMG 31360 and 31361 when considering applicable amounts for residents in this type of accommodation.

31365 - 31366

Reduced amount payable in hardship cases - JSA(IB)

31367 The DM should apply any reduction under the hardship provisions¹ in DMG Chapter 35 before calculating the 90% figure in DMG 31360 or 31361².

1 JSA Regs, reg 145; 2 reg 148(1)(a)(i) & (1)(b)(i), 148A(1)(a)(i) & (1)(b)(i)

Example

A claimant is sanctioned because he lost his employment through misconduct. He is a 52 year old diabetic and is single. He normally receives an occupational pension from a former employer in Canada. The payment is overdue because of industrial action in the Canadian postal service.

The DM considers the hardship provisions. The DM decides that the claimant's diabetes is a chronic medical condition and that he is in a vulnerable group. He is in hardship because he has no capital and his income is less than his reduced applicable amount.

Because the claimant has not received his occupational pension payment, the DM also considers the UCP provisions. The DM decides that the claimant is in hardship because he is diabetic and would be at risk if he were not able to maintain a proper diet.

Calculation A

The JSA(IB) applicable amount is reduced by 40% because the claimant is not seriously ill.

	£54.65
less 40% (rounded to 5p)	<u>£21.85</u>
	£32.80

Calculation B

The amount of JSA(IB) payable under the hardship rules and with the occupational pension taken into account is

	£32.80
less occupational pension	<u>£15.00</u>
	£17.80

Calculation C

The amount payable as a UCP (without the occupational pension taken into account) would be

The amount in calculation A	£32.80
x 90% (rounded up to a penny)	£29.52

The DM awards the higher of calculation B and C (£29.52) as a UCP.

Applicable amount in special cases

31368 A special applicable amount applies if any of the following applies to the claimant, any partner, or in the case of a joint-claim couple, a member of that couple

1. claimants, or a joint-claim couple, without accommodation¹
2. temporarily separated members of a couple, joint-claim couple, or polygamous marriage²
3. members of a couple, joint-claim couple, or polygamous marriage, where a member is absent from GB³
4. members of a religious order (both members in the case of a joint-claim couple)⁴
5. persons from abroad⁵ (other than joint claim couples).

Note: If the claimant is a member of a religious order and the applicable amount is nil no further calculation is necessary.

1 JSA Regs, Sch 5, para 3; Sch 5A, para 2; 2 Sch 5, para 5 & 6; Sch 5A, para 4 & 5; 3 Sch 5, para 10-13; Sch 5A, para 7 & 8; 4 Sch 5, para 4, Sch 5A, para 3; 5 Sch 5, para 14

31369 The special applicable amount is

1. 90% of the personal allowance calculated as in DMG Chapter 24 for the claimant and any partner¹
2. any of the following that are applicable in the circumstances of the case
 - 2.1 any allowance for any child or young person in the family calculated as in DMG Chapter 24²
 - 2.2 any premium³ **and**
 - 2.3 normal housing costs⁴.

Note: If a child or young person's capital calculated as in DMG Chapter 29 is more than £3000, no amount should be allowed for them in **2.1**.

1 JSA Regs, reg 148(1)(d); 2 reg 148(1)(d)(i); 3 reg 148(1)(d)(ii); 4 reg 148(1)(d)(iii)

31370 In the case of a joint-claim couple the special applicable amount is

1. 90% of the personal allowance calculated as in DMG Chapter 24 for the joint-claim couple¹
2. either of the following that are applicable to the circumstances of the case
 - 2.1 any premium² **and**
 - 2.2 normal housing costs³.

1 JSA Regs, reg 148A(1)(d); 2 reg 148A(1)(d)(i); 3 reg 148A(1)(d)(ii)

Rounding

- 31371 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 JSA Regs, reg 148(2) & 148A(2)

Applicable amounts - IS

Normal rules

- 31372 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. the normal personal allowance for any child or young person in the family³ where appropriate
 3. any premium⁴
 4. normal housing costs⁵

Note: If a child or young person's capital calculated in DMG Chapter 29 is more than £3000, no amount should be allowed for them in 2..

1 IS (Gen) Regs, reg 71(1)(a); 2 reg 71(1)(a)(i); 3 reg 71(1)(a)(ii); 4 reg 71(1)(a)(iii); 5 reg 71(1)(a)(iv)

31373 - 31374

Claimants in care homes or independent hospitals

- 31375 From 6.10.03, 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 31372 when considering applicable amounts for residents in these homes.

31376

Applicable amounts in special cases

- 31377 A special applicable amount applies if any of the following applies to the claimant or any partner
1. claimants without accommodation¹
 2. temporarily separated members of a couple or polygamous marriage²
 3. members of a couple or polygamous marriage where a member is absent from GB³
 4. members of a religious order⁴

5. prisoners⁵
6. claimants entitled to a DP for a past period⁶.

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 IS (Gen) Regs, Sch 7, para 6; 2 para 9 & 10; 3 para 11 - 12A; 4 para 7; 5 para 8; 6 para 19

31378 The special applicable amount is

1. 90% of the personal allowance calculated as in DMG Chapter 24 for the claimant and any partner¹
2. any of the following that are applicable in the circumstances of the case
 - 2.1 any allowance for any child or young person in the family calculated as in DMG Chapter 24² **and**
 - 2.2 any premium³ **and**
 - 2.3 normal housing costs⁴.

Note: If a child or young person's capital calculated in DMG Chapter 29 et seq is more than £3000, no amount should be allowed for them in **2.1**.

1 IS (Gen) Regs, reg 71(1)(d); 2 reg 71(1)(d)(i); 3 reg 71(1)(d)(ii); 4 reg 71(1)(d)(iii)

Rounding

31379 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 IS (Gen) Regs, reg 71(3)

How to treat income

31380 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 31381 - 31384.

1 JSA Regs, reg 149(1); IS (Gen) Regs, reg 72(1)

31381 The DM should disregard tariff income when calculating a UCP¹.

1 JSA Regs, reg 149(1)(b); IS (Gen) Regs, reg 72(1)(b)

31382 If a UCP is being considered because the claimant is treated as having income that is due but has not been paid, the income due but not paid should be disregarded¹.

1 JSA Regs, reg 149(1)(d); IS (Gen) Regs, reg 72(1)(d)

31383 The DM should take the following types of income that are normally treated as capital (see DMG Chapter 29) into account as income when calculating a UCP¹

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 P/T firefighters
 - 2.2 auxiliary coastguard
 - 2.3 P/T lifeboat crew
 - 2.4 volunteer reserve in the RN, RAF or Territorial Army
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.

1 JSA Regs, reg 149(1)(c); IS (Gen) Regs, reg 72(1)(c); 2 JSA Regs, reg 110(9); IS (Gen) Regs, reg 48(9);

3 JSA Regs, reg 110(1); IS (Gen) Regs, reg 48(1); 4 JSA Regs, reg 110(2); IS (Gen) Regs, reg 48(2);

5 JSA Regs, reg 110(3); IS (Gen) Regs, reg 48(3)

31384 The DM should disregard the following when calculating a UCP

1. payments, including payments in kind, made under
 - 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 the Independent Living Fund¹
- 1.7 the Skipton fund
- 1.8 the London Bombings Relief Charitable Fund²
- 2. payments from money that came from one of the Trusts or Funds in 1.1 to 1.8³ (see DMG Chapter 28) 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. HB⁴
- 4. concessionary payments made to compensate for the non-payment of UCPs in JSA(IB) or IS or ESA⁵
- 5. SF payments⁶
- 6. any payment made by the Secretary of State to compensate for any loss of entitlement to HB⁷
- 7. **in IS cases only**
 - 7.1 payments made by the Secretary of State to compensate for the loss of HBS⁸
 - 7.2 any CTB⁹.

1 JSA Regs, reg 149(1)(a)(i); IS (Gen) Regs, reg 72(1)(a)(i); 2 JSA Regs, reg 149(1)(a)(ii); IS (Gen) Regs, reg 72(1)(a)(ii); 3 JSA Regs, reg 149(1)(a)(ii) & Sch 7, para 41(2), (3) or (4); IS (Gen) Regs, reg 72(1)(a)(ii) & Sch 9, para 39(2), (3) or (4); 4 JSA Regs, Sch 7, para 6; IS (Gen) Regs, Sch 9, para 5; 5 JSA Regs, Sch 7, para 8; IS (Gen) Regs, Sch 9, para 7; 6 JSA Regs, Sch 7, para 33; IS (Gen) Regs, Sch 9, para 31; 7 JSA Regs, Sch 7, para 42; IS (Gen) Regs, Sch 9, para 40; 8 Sch 9, para 42; 9 Sch 9, para 52 ;

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.

31385 - 31399

How to treat capital

- 31400 If the claimant receives capital made by or derived from any of the trusts or funds in DMG 31384 1. see DMG Chapter 29 for further guidance.
- 31401 The DM should follow the normal rules for calculating a claimant's capital (see DMG Chapter 29). **But** the following types of capital that would be disregarded under the normal rules should be taken into account when calculating a UCP¹
1. proceeds from the sale of one home, 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 of, the following benefits⁴
 - 3.1 AA
 - 3.2 CTB
 - 3.3 care component of DLA
 - 3.4 mobility component of DLA
 - 3.5 WTC
 - 3.6 CTC
 - 3.7 IS
 - 3.8 Mobility Allowance
 - 3.9 Mobility Supplement
 - 3.10 JSA(IB)
 - 3.11 in JSA(IB) only, JSA(Cont)
 - 3.12 in IS only, Supp B or family income supplement
 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 bonus⁷ but only for a period of 52 weeks from the date of receipt
8. in IS cases only, payments by the DM to compensate a person who was entitled to Supp B immediately before 11.4.88 but not entitled to IS from that date⁸.

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 JSA Regs, reg 149(2); IS (Gen) Regs, reg 72(2); 2 JSA Regs, Sch 8, para 3; IS (Gen) Regs, Sch 10, para 3;
3 JSA Regs, Sch 8, para 11; IS (Gen) Regs, Sch 10, para 6; 4 JSA Regs, Sch 8, para 12;
IS (Gen) Regs, Sch 10, para 7; 5 JSA Regs, Sch 8, para 14(b); IS (Gen) Regs, Sch 10, para 9(b);
6 JSA Regs, Sch 8, para 24; IS (Gen) Regs, Sch 10, para 19;
7 JSA Regs, Sch 8, para 32; IS (Gen) Regs, Sch 10, para 30; 8 Sch 10, para 32*

Effect of capital on urgent case payments

- 31402 Capital as calculated in DMG 31401 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 JSA Regs, reg 149(2); IS (Gen) Regs, reg 72(2)

- 31403 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 reawarded from is the beginning of the next benefit week.

Example

Stanley receives a loan from a friend on Thursday 24.4.03. 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 23.4.03. He is entitled to a part week payment of one day's benefit in respect of benefit week 23.4.03 to 29.4.03.

Stanley spends the money loaned to him and reclaims UCPs. The DM is satisfied that the deprivation of capital rules do not apply and reawards benefit from 30.4.03.

Arrears of urgent case payments

- 31404 Arrears of UCPs should be disregarded in the calculation of capital¹.

1 JSA Regs, reg 149(2) & Sch 8, para 12; IS (Gen) Regs, reg 72(2) & Sch 10, para 7

31405 - 31999

Appendix 1

Urgent case payments before 3.4.00 - JSA(IB) and IS

(See DMG 31040)

Introduction

1. This Appendix only applies to UCPs of JSA(IB). It contains the guidance that applied before the rules were changed on 3.4.00¹.

1 I & A Act 99, s 115

2. Before 3.4.00, a PSIC had to satisfy certain conditions to be entitled to UCPs. For JSA(IB) the rule was that UCPs could only be awarded to asylum seekers who had no restrictions on taking up employment in the UK¹ (see para 27). UCPs under JSA were not payable in any other circumstances.

1 JSA Regs, reg 147(3)

Asylum application made on arrival in the United Kingdom

3. Some people claim asylum on arrival in the UK. Before 3.4.00, a person was an asylum seeker for JSA purposes¹ if
 1. an asylum application was made on arrival (other than on their re-entry) in the UK from any country other than the
 - 1.1 Republic of Ireland **or**
 - 1.2 Channel Islands **or**
 - 1.3 Isle of Man **and**
 2. the application was recorded by the Border Agency.

1 JSA Regs, reg 147(4)(a)

Meaning of re-entry

4. People who applied for asylum on “re-entry” to the UK were excluded from the definition of asylum seeker. But this did not necessarily mean that they must never have visited the UK before. A person who has visited the UK before may have made a **fresh entry** to the UK rather than a **re-entry**.

5. Re-entry in this context means a return to the UK within the same period of leave. A fresh entry is where a person returns to the UK after a previous period of leave has run out. In such a case there should be no connection between their departure after the first visit and their return.
6. The Border Agency decides whether a person's entry is a re-entry or a fresh entry. The Border Agency usually issued a form SAL 1 to an applicant who had made a fresh entry. In such a case the SAL 1 was accepted as evidence that the person had made a fresh entry rather than a re-entry. Enquiries were only made of the Border Agency where the circumstances were unclear or there was conflicting evidence as to the situation.

Meaning of on arrival

7. The phrase "on arrival" was not defined in the regulations that applied before 3.4.00 and was the subject of many appeals to the Commissioners. In their decisions the Commissioners adopted two slightly different approaches. Those were that to be "on arrival" an asylum application had to be made
 1. while clearing immigration control at the port of entry¹ **or**
 2. before leaving the port of entry but not necessarily before clearing immigration control².

1 CIS/143/97; CIS/3231/97; CIS/1751/97; CIS/4563/97; 2 CIS/2719/97; CIS/3495/97; CIS/1137/97

8. So it was broadly agreed that to be on arrival an asylum application had to be made at the port of entry. But the Commissioners did not agree as to whether the application had to be made before clearing immigration control.
9. DMs should note that a limited degree of flexibility was intended in the use of "on arrival" in this context. This was so that DMs could take account of any unusual circumstances at the port of entry¹. For example where
 1. the Immigration Service was not available **or**
 2. an interpreter was not available **or**
 3. the asylum seeker was ill and needed to be rushed to hospital before the immigration formalities could be completed.

1 R(IS) 14/99

10. The extent of the flexibility was considered on a case by case basis. But it did not include cases where an asylum seeker
 1. made it impossible for themselves to claim asylum (for example where they are concealed in a vehicle) **or**
 2. followed advice from an agent which led them to claim asylum other than at immigration control.

Third country applicants

11. Some asylum seekers arrive in the UK via a safe third country, for example those arriving at
 1. Waterloo International on Eurostar **or**
 2. a UK port (such as Dover) on a cross channel ferry.
12. Such third country applicants may have had the opportunity to claim asylum in another country en route, for example France or Belgium. But they may not claim asylum until their arrival in the UK.

Applications for asylum

13. The Border Agency normally accept all “on arrival” applications for asylum made by third country applicants. When a passenger states that they want to apply for asylum, an immigration officer prepares paperwork on the claim. This paperwork is accepted by the Border Agency as the record of the claim having been made. It is submitted to the Asylum Directorate for a decision to be made on whether the
 1. applicant can be returned to a safe third country **or**
 2. UK should accept responsibility for considering the applicant’s substantive asylum claim.
14. There should have been no doubts as to whether an on arrival asylum seeker’s application had been accepted. If the applicant stated at the port of entry that they wanted to claim asylum, their claim would have been accepted and recorded (see DMG 31122 2.). But before 3.4.00, DMs had to be satisfied that a claim for asylum was actually made “on arrival”. UCPs could not be awarded until this was confirmed.

Asylum application made while in Great Britain

15. Some people claim asylum while they are present in GB. Before 3.4.00, a person was an asylum seeker for JSA purposes¹ if, while they were in GB, the
 1. Secretary of State declared that a country was subject to a change of circumstances (see Appendix 3 to this Chapter for details of such countries) **and**
 2. Border Agency would not normally have ordered a person to return to that country **and**
 3. person
 - 3.1 was a national of that country **and**
 - 3.2 made an asylum application within three months from the date of the declaration in 1. **and**
 4. application is recorded by the Border Agency.

1 JSA Regs, reg 147(4)(b)

Person from abroad stops being an asylum seeker

16. A person stopped being an asylum seeker¹ and UCPs stopped on the date that the
1. **first** decision on the asylum application was recorded by the Border Agency as having been determined (unless paragraph 14 applies) **or**
 2. asylum application was abandoned.

1 JSA Regs, reg 147(4)(c)(i)

17. A decision by the Border Agency to determine an application for asylum by refusing it and recording that result was enough to show that the claim had been determined¹.

1 R v. Secretary of State for the Home Department Ex Parte Salem [1999] 2 WLR 1 (CA)

Third country applicants

18. There could be confusion between a decision on the safe third country issue and the decision on the applicant's asylum status. UCPs should only have stopped when a decision had been made and recorded on the asylum status. Border Agency could be contacted if there was any doubt about which decision had been made.

First immigration decision recorded before 5.2.96

19. A person normally stopped being an asylum seeker on the date that the first decision on their asylum application was made (see paragraph 21). But special rules applied¹ where
1. the first immigration decision was recorded before 5.2.96 **and**
 2. an appeal was outstanding in respect of that first decision.

1 JSA Regs, reg 147(4)(c)(ii)

20. The rules that applied in such a case were the same in both JSA(IB) and IS (see paragraph 8 of Appendix 2 to this Chapter).

Immigration department's decision

21. When considering an asylum application the Border Agency may decide
1. to recognise the applicant as a refugee and grant immediate settlement in the UK **or**
 2. not to recognise the applicant as a refugee but, on humanitarian grounds, grant
 - 2.1 exceptional leave to enter **or**
 - 2.2 exceptional leave to remain **or**
 3. to refuse refugee status.

Refugee status granted

22. If the Border Agency confirmed that an asylum seeker had been recognised as a refugee, that person ceased to be a PFA. Under the rules that applied before 3.4.00, the DM then
1. revised the award of UCPs on the grounds that the Border Agency letter was a relevant change of circumstances¹ **and**
 2. disallowed UCPs from the date of the Border Agency letter **and**
 3. awarded JSA(IB) at the full rate, if appropriate, from the date of the Border Agency letter.

1 SS Act 98, s 9; SS CS (D&A) Regs, reg 6(2)

Exceptional leave to enter or remain

23. Exceptional leave to enter and exceptional leave to remain are both granted on humanitarian grounds. But exceptional leave to enter is granted to those people who have not previously been given leave (that is permission) to enter the UK.
24. If the Border Agency granted a person exceptional leave to enter or remain, that person ceased to be a PFA. The DM then reviewed any current award of UCPs and considered full rate JSA(IB) from the date of the Border Agency letter.

Refugee status and exceptional leave refused

25. If refugee status was refused and exceptional leave to enter or remain was not granted, the person stopped being an asylum seeker. The DM then
1. reviewed any current award of UCPs on the grounds that the Border Agency letter was a relevant change of circumstances **and**
 2. disallowed UCPs from the date of the Border Agency letter **and**
 3. investigated the person's immigration status.
26. In these circumstances the person would normally continue to have been subject to immigration control. So from the date they stopped being an asylum seeker there would have been no entitlement to either
1. full rate JSA(IB)¹ **or**
 2. UCPs.

1 JSA Regs, Sch 5, para 14

Permission to work in the United Kingdom

27. Before 3.4.00, a decision must have been made
1. by the Border Agency
 2. removing restrictions on the asylum seeker taking up work before UCPs of JSA(IB) could be considered.
28. Such a decision was not normally given until the asylum seeker had been in the UK for six months. But the DM had to be satisfied that the restrictions had been lifted before awarding UCPs. Evidence to show that this condition was satisfied could be obtained from
1. the asylum seeker, who may have had
 - 1.1 a work permit **or**
 - 1.2 an official notification of the Border Agency decision **or**
 2. the Border Agency.
29. So before 3.4.00, entitlement to UCPs could only be considered if the DM was satisfied that the person
1. was an asylum seeker for benefit purposes **and**
 2. had no restrictions on taking up employment.

Urgent case payments before 3.4.00 - IS

Introduction

30. Before 3.4.00, a claimant who was subject to immigration control had to satisfy certain conditions to be entitled to UCPs. Under IS rules, UCPs could only be awarded if the claimant
1. had limited leave and was temporarily without funds¹ (see DMG 31080) **or**
 2. was a sponsored immigrant and the sponsor had died² (see DMG 31090) **or**
 3. was an asylum seeker for IS purposes³.
- 1 IS (Gen) Regs, reg 70(3)(b); 2 reg 70(3)(c); 3 reg 70(3)(b) & (3A) [pre 3.4.00]*
31. UCPs under IS were not payable in any other circumstances.

Asylum seekers - background

32. Before 3.4.00, claimants who were asylum seekers could be entitled to UCPs under IS rules. On 5.2.96 those rules were changed¹ to limit payment of UCPs to asylum seekers who

1. claimed asylum
 - 1.1 on arrival in the UK **or**
 - 1.2 while in GB, if certain conditions were satisfied **or**
2. had transitional protection (see DMG 31100 et seq).

1 SS (PFA) Misc Amdts Regs 96

33. But on 21.6.96, the Court of Appeal¹ decided that the regulations for asylum seekers introduced on 5.2.96 were ultra vires. So on 24.7.96, legislation was introduced² to reinstate the 5.2.96 asylum seekers provisions.

1 R v. Secretary of State for SS ex parte re B & Joint Council for the Welfare of Immigrants; 2 A & I Act 96

IS claim begins on or after 24.7.96

34. The following guidance explains the rules that applied in the period from 24.7.96 to 2.4.00. See Appendix 2 to this Chapter for guidance on the period 5.2.96 to 23.7.96.

35. If the IS claim began on or after 24.7.96, a person who was an asylum seeker had to satisfy the conditions in

1. para 38 - asylum application made on arrival in the UK **or**
2. para 50 - asylum application made while in GB

to be entitled to UCPs of IS.

36. Asylum seekers who claimed between 5.2.96 and 23.7.96 (see Appendix 2 to this Chapter) also had to satisfy those conditions for UCPs to continue after 24.7.96.

Meaning of asylum seeker

37. An asylum seeker is a person who submits an application for asylum to the IND. The asylum application is initially decided by immigration staff. If the decision is negative the person has a right of appeal and the stages of appeal are

1. a special adjudicator
2. an Immigration AT
3. the Court of Appeal
4. the House of Lords.

Asylum application made on arrival in the United Kingdom

38. Some people claim asylum on arrival in the UK. From 24.7.96, a person was an asylum seeker for IS purposes¹ if
1. an asylum application was made on arrival (other than on their re-entry) in the UK from any country other than the
 - 1.1 Republic of Ireland **or**
 - 1.2 Channel Islands **or**
 - 1.3 Isle of Man **and**
 2. the application was recorded by the IND.

1 IS (Gen) Regs, reg 70(3A)(a) & (3B) [pre 3.4.00]

Meaning of re-entry

39. People who applied for asylum on “re-entry” to the UK were excluded from the definition of asylum seeker. But this did not necessarily mean that they must never have visited the UK before. A person who has visited the UK before may have made a **fresh entry** to the UK rather than a **re-entry**.
40. Re-entry in this context means a return to the UK within the same period of leave. A fresh entry is where a person returns to the UK after a previous period of leave has run out. In such a case there should be no connection between their departure after the first visit and their return.
41. The IND decides whether a person’s entry is a re-entry or a fresh entry. The IND usually issued a form SAL 1 to an applicant who had made a fresh entry. In such a case the SAL 1 was accepted as evidence that the person had made a fresh entry rather than a re-entry. Enquiries were only made of the IND where the circumstances were unclear or there was conflicting evidence as to the situation.

Meaning of on arrival

42. The phrase “on arrival” was not defined in the law that applied from 24.7.96 to 2.4.00. But it was the subject of many appeals to the Commissioners who in their decisions adopted two slightly different approaches. Those were that to be “on arrival” an asylum application had to be made
1. while clearing immigration control at the port of entry¹ **or**
 2. before leaving the port of entry but not necessarily before clearing immigration control².

1 CIS/143/97; CIS/3231/97; CIS/1751/97; CIS/4563/97; 2 R(IS) 14/99; CIS/2719/97; CIS/3495/97; CIS/1137/97

43. So it was broadly agreed that to be on arrival an asylum application had to be made at the port of entry. But the Commissioners did not agree as to whether the application had to be made before clearing immigration control.

44. It should be noted that a limited degree of flexibility was intended in the use of “on arrival” in this context. This was so that DMs could take account of any unusual circumstances at the port of entry¹. For example where

1. the Immigration Service was not available **or**
2. an interpreter was not available **or**
3. the asylum seeker was ill and needed to be rushed to hospital before the immigration formalities could be completed.

1 R(IS) 14/99

45. The extent of the flexibility was considered on a case by case basis. But it did not include cases where an asylum seeker

1. made it impossible for themselves to claim asylum (for example where they were concealed in a vehicle) **or**
2. followed advice from an agent which led them to claim asylum other than at immigration control.

Third country applicants

46. Some asylum seekers arrive in the UK via a safe third country, for example those arriving at

1. Waterloo International on Eurostar **or**
2. a UK port (such as Dover) on a cross channel ferry.

47. Such third country applicants may have had the opportunity to claim asylum in another country en route, for example France or Belgium. But they may not claim asylum until their arrival in the UK.

Applications for asylum

48. The Border Agency normally accept all “on arrival” applications for asylum made by third country applicants. When a passenger states that they want to apply for asylum, an immigration officer prepares paperwork on the claim. This paperwork is accepted by the Border Agency as the record of the claim having been made. It is submitted to the Asylum Directorate for a decision to be made on whether the

1. applicant can be returned to a safe third country **or**
2. UK should accept responsibility for considering the applicant’s substantive asylum claim.

49. There should have been no doubts as to whether on arrival an asylum seeker's application had been accepted. If the applicant stated at the port of entry that they wanted to claim asylum, their claim would have been accepted and recorded (see para 38). But before 3.4.00, DMs had to be satisfied that a claim for asylum was actually made "on arrival". UCPs could not be awarded until this was confirmed.

Asylum application made while in Great Britain

50. Some people claim asylum while they are present in GB. From 24.7.96 to 2.4.00, a person was an asylum seeker for IS purposes¹ if, while the person was in GB, the

1. Secretary of State declared that a country was subject to a change of circumstances (see Appendix 3 to this Chapter for details of such countries) **and**
2. Border Agency would not normally have ordered a person to return to that country **and**
3. the person
 - 3.1 was a national of that country **and**
 - 3.2 made an asylum application within three months from the date of the declaration in 1. **and**
4. application was recorded by the Border Agency

1 IS (Gen) Regs, reg 70(3A)(aa) [pre 3.4.00]

Members of the asylum seeker's family

51. A member of an asylum seeker's family may have claimed benefit in their own right. See DMG 22003 for the meaning of member of the family in this context¹. It would not for example apply to the elderly parent of a primary asylum seeker. But it would apply to a spouse or dependent child.

1 SS CB Act 92, s 137(1)

52. Where an ex-dependant claimed benefit themselves, the DM had to obtain details of the relevant asylum application. This may have been for another asylum applicant such as a spouse or parent (the primary asylum seeker) or for the claimant themselves.

53. UCPs could be paid in such cases if

1. a person had
 - 1.1 not made an asylum application of their own but was included in a primary asylum seeker's "on arrival" application **or**
 - 1.2 an "on arrival" asylum application of their own outstanding **and**
2. that asylum application had not been decided or abandoned (see para 54).

Person from abroad stops being an asylum seeker

54. A person stopped being an asylum seeker¹ and UCPs stopped on the date that the
1. **first** decision on the asylum application was recorded by the Border Agency as having been determined (unless para 57 applied) **or**
 2. asylum application was abandoned if either date was on or after 24.7.96.

1 IS (Gen) Regs, reg 70(3A)(b)(i) [pre 3.4.00]

55. A decision by the Border Agency to determine an application for asylum by refusing it and recording that result was enough to show that the claim had been determined¹.

1 R v. Secretary of State for the Home Department Ex Parte Salem [1999] 2 WLR 1 (CA)

Third country applicants

56. There could be confusion between a decision on the safe third country issue and the decision on the applicant's asylum status. UCPs should only have stopped when a decision had been made and recorded on the asylum status. Border Agency could be contacted if there was any doubt about which decision had been made.

First immigration decision recorded before 5.2.96

57. Special rules applied¹ where
1. the first immigration decision was recorded by the Border Agency before 5.2.96 **and**
 2. an appeal was outstanding in respect of that first decision.

1 IS (Gen) Regs, reg 70(3A)(b)(ii) [pre 3.4.00]

58. The rules that applied in such a case were the same in both IS and JSA(IB). See Appendix 2 to this Chapter for guidance on those rules.

Immigration department's decision

59. When considering an asylum application the Border Agency could decide
1. to recognise the applicant as a refugee and grant immediate settlement in the UK **or**
 2. not to recognise the applicant as a refugee but on humanitarian grounds, grant
 - 2.1 exceptional leave to enter **or**
 - 2.2 exceptional leave to remain **or**
 3. to refuse refugee status.

Refugee status granted

60. If the Border Agency confirmed that an asylum seeker had been recognised as a refugee, that person ceased to be subject to immigration control. Under the rules that applied before 3.4.00, the DM then
1. superseded the award of UCPs on the grounds that the Border Agency letter was a relevant change of circumstances¹ **and**
 2. disallowed UCPs from the date of the Border Agency letter² **and**
 3. awarded IS at the full rate, if appropriate, from the date of the Border Agency letter³.

1 SS Act 98, s 10; 2 SS CS (D&A) Regs, reg 6(2); 3 R(IS) 9/98

61. There may not have been a current award of UCPs when a successful asylum seeker is granted refugee status. See para 66 if such a person claims back payments for the period when they were excluded from IS.

Exceptional leave to enter or remain

62. Exceptional leave to enter and exceptional leave to remain were both granted on humanitarian grounds. But exceptional leave to enter was granted to those people who had not previously been given leave (that is permission) to enter the UK.
63. If the Border Agency granted a person exceptional leave to enter or remain, that person was no longer a PFA. The DM then reviewed any current award of UCPs and considered full rate IS from the date of the Border Agency letter.

Refugee status and leave refused

64. If refugee status was refused and exceptional leave to remain was not granted, the person stopped being an asylum seeker. The DM then
1. reviewed any current award of UCPs on the grounds that the Border Agency letter was a relevant change of circumstances **and**
 2. disallowed UCPs from the date of the Border Agency letter **and**
 3. investigated the person's immigration status.
65. In these circumstances the person would normally continue to have been subject to immigration control. So from the date they stopped being an asylum seeker there would have been no entitlement to either
1. full rate IS¹ **or**
 2. UCPs.

1 IS (Gen) Regs, Sch 7, para 17

Retrospective payments of urgent case payments

66. Before 3.4.00, UCPs of IS could be paid retrospectively once a person had been granted refugee status. So UCPs could be paid¹ to people who claimed asylum
1. on arrival in the UK who
 - 1.1 had their claims for asylum refused by the Border Agency **and**
 - 1.2 on appeal were granted asylum as refugees (see para 70 et seq)
 2. when already in the UK, who were subsequently granted asylum as refugees.
- 1 IS (Gen) Regs, reg 21ZA [pre 3.4.00]*
67. But this did not apply to JSA. People who claimed JSA after being granted refugee status had to also make a claim for IS if they wanted to claim retrospective payments of UCPs.
68. DMs should note that only those asylum seekers granted full refugee status were eligible to claim retrospective payments. Those who were granted exceptional leave to enter or remain were not eligible.
69. Asylum seekers remained subject to immigration control while they were waiting for their application for asylum to be decided. They stopped being subject to immigration control from the date they were recorded as refugees by the Border Agency¹. This is the date of the notification letter issued by the Border Agency. UCPs could be paid up to the date of the Border Agency letter.
- 1 IS (Gen) Regs, reg 21ZA(1) [pre 3.4.00]*

People granted asylum as refugees on appeal

70. Refugees who satisfied the conditions in para 66 1. were entitled to UCPs if
1. a claim for IS was made **within 28 days** of
 - 1.1 them receiving the letter of notification of refugee status¹ **or**
 - 1.2 15.10.96, where the date on the Border Agency letter fell between 24.7.96 and 15.10.96² **and**
 2. the claim was made by the refugee or, in the case of a couple who were both refugees, by either of them³.
- 1 IS (Gen) Regs, reg 21ZA(2) [pre 3.4.00]; 2 reg 21ZA(3) [pre 3.4.00]; 3 SS (C&P) Regs, reg 4(3C)*
71. For retrospective payments to be considered, the refugee had to make a claim for IS within the time limit as in para 70 1. But they did not have to ask for that claim to be backdated. Their claim was automatically treated as having been made on the date on which the claim for asylum was first refused by the Border Agency¹.
- 1 SS (C&P) Regs, reg 6(4D)(a)*

72. If the conditions of entitlement to IS were satisfied, UCPs could be awarded for the period¹
1. from
 - 1.1 the date on which the claim for asylum was first refused by the Border Agency **or**
 - 1.2 5.2.96, if that is later
 2. to the date of the letter of notification of refugee status.

1 IS (Gen) Regs, reg 21ZA(4)(a)

73. Once refugee status was granted, the person stopped being subject to immigration control. IS was then assessed in the normal way, if appropriate, from the date of the Border Agency letter.

74. Any IS which had already been paid for any part of the period in para 72 to

1. the claimant **or**
2. a partner the claimant had during that period

was offset against the UCPs awarded¹.

1 IS (Gen) Regs, reg 21ZA(5) [pre 3.4.00]

Claim for asylum made in United Kingdom - refugee status granted

75. Refugees who satisfied the conditions in para 66 2. were entitled to UCPs if

1. a claim for IS was made **within 28 days** of
 - 1.1 them receiving the letter of notification of refugee status¹ **or**
 - 1.2 15.10.96, where the date on the Border Agency letter fell between 24.7.96 and 15.10.96² **and**
2. the claim was made by the refugee or, in the case of a couple who were both refugees, by either of them³.

1 IS (Gen) Regs, reg 21ZA(2) [pre 3.4.00]; 2 reg 21ZA(3) [pre 3.4.00]; 3 SS (C&P) Regs, reg 4(3C)

76. For retrospective payments to be considered, the refugee had to make a claim for IS within the period detailed in para 75 1. But they did not have to ask for that claim to be backdated. Their claim was automatically treated as having been made on the date on which the claim for asylum was made¹.

1 SS (C&P) Regs, reg 6(4D)(b)

77. If the conditions of entitlement to IS were satisfied, UCPs would be awarded for the period¹

1. from

1.1 the date on which the claim for asylum was made **or**

1.2 5.2.96, if that is later

2. to the date of the letter of notification of refugee status.

1 IS (Gen) Regs, reg 21ZA(4)(b) [pre 3.4.00]

78. Once refugee status was granted, the person stopped being subject to immigration control. IS was then assessed in the normal way, if appropriate, from the date of the Border Agency letter.

79. Any IS which had already been paid for any part of the period in para 77 to

1. the claimant **or**

2. any partner the claimant had during that period

would be offset against the UCPs awarded¹.

1 IS (Gen) Regs, reg 21ZA(5) [pre 3.4.00]

How to treat income

80. Before 3.4.00, a claim for retrospective payments of UCPs was decided as if the refugee had been an asylum seeker for the relevant period. So the normal rules for calculating UCPs applied.

81. The DM took all income that the claimant had or was treated as having fully into account, with certain exceptions¹. But those exceptions did not include any disregard for income in kind. So DMs may have taken into account any support that a refugee received when working out the amount to be awarded.

1 IS (Gen) Regs, reg 72 [pre 3.4.00]

Appendix 2

IS entitlement from 5.2.96 to 23.7.96

1. This Appendix only applies to UCPs of IS. It contains the guidance that applied in the period from 5.2.96 up to 23.7.96.

Background

2. Before 5.2.96, asylum seekers were entitled to UCPs at all stages of their asylum application, until the final decision on their application was made. But on 5.2.96 the rules changed¹ and payment of UCPs to asylum seekers was restricted (see DMG 31101 et seq).

1 SS (PFA) Misc Amdt Regs 96

3. On 21.6.96, the Court of Appeal¹ decided that the regulations for asylum seekers introduced on 5.2.96 were ultra vires. So on 24.7.96, legislation was introduced² to reinstate the 5.2.96 asylum seekers provisions.

1 R v. Secretary of State for SS ex parte re B & JCWI; 2 A & I Act 96

4. As a result of the Court of Appeal's decision, asylum seekers were entitled to IS under the rules that had applied before 5.2.96. But unless they qualified under the 5.2.96 rules, that entitlement ceased on 24.7.96 when the 5.2.96 rules were reinstated.

Person from abroad stops being an asylum seeker

5. A person stopped being an asylum seeker¹ and UCPs stopped on the date that the
 1. **first** decision on the asylum application was recorded by the Border Agency as having been determined (unless paragraph 8 applied) **or**
 2. asylum application was abandoned.

1 IS (Gen) Regs, reg 70(3A)(b)(i) [pre 3.4.00]

Asylum application decided

6. If the asylum application was recorded as decided **before** 24.7.96, UCPs stopped on 24.7.96¹. If the asylum application was recorded as decided **after** 24.7.96, UCPs stopped on the day the decision was recorded.

1 A & I Act 96, Sch 1, para 2

Asylum application abandoned

7. If the asylum application was abandoned **before** 24.7.96, UCPs stopped on the day it was abandoned. If the asylum application was abandoned **after** 24.7.96, UCPs also stopped on the day it was abandoned.

First immigration decision recorded before 5.2.96

8. UCPs continued until the date of the next immigration decision on the asylum application, or 24.7.96, whichever was later, if¹
 1. the **first** immigration decision was recorded by the Border Agency before 5.2.96 **and**
 2. in respect of that first decision an
 - 2.1 asylum application was outstanding on 5.2.96 (at any stage of the appeal process) **or**
 - 2.2 appeal was made to the special adjudicator within the immigration time limits² (see paragraph 11).

1 IS (Gen) Regs, reg 70(3A)(b)(ii) [pre 3.4.00]; A & I Act 96, Sch 1, para 2; 2 Asylum Appeals (Procedures) Rules 1993, rule 5
9. A decision was recorded by the Border Agency on the date the decision was made. This date was entered on form DLIS/726.
10. The asylum decision may have been made before 5.2.96, but not notified to the asylum seeker until after 5.2.96. If so, UCPs continued until the person was notified of the Border Agency decision and the time limit for appeal had ended. If an appeal was made UCPs continued until the date of the appeal decision.
11. The immigration time limits for an appeal to the special adjudicator were
 1. two days after receipt of the immigration decision if the
 - 1.1 only ground of appeal was that the decision was against the UK's obligations under the Convention **or**
 - 1.2 Secretary of State decided that the asylum application was without foundation **or**
 - 1.3 decision was handed to the asylum seeker **or**
 2. in any other case, ten days after receipt of the immigration decision.
12. An appeal was made when it was received by the immigration department. But the time limits could be extended if there were special reasons. If in doubt, the DM contacted the immigration department.

Appendix 3

Upheaval countries

Countries that the Secretary of State has declared are subject to a fundamental change of circumstances (upheaval countries).

Name of country	Date of the declaration
Zaire	16.5.97
Sierra Leone	1.7.97

Appendix 4

Kosovo Albanians

Evacuees

1. On 20.4.99, the Home Secretary announced that evacuees from Kosovo would be arriving in the UK as part of a humanitarian evacuation programme (HEP). The evacuees were
 1. given exceptional leave to enter the UK for a period of twelve months (on humanitarian grounds) **and**
 2. issued with a form IS KOS EX by the Home Office, which
 - 2.1 is a secure document **and**
 - 2.2 grants the evacuee permission to seek work with no need for a separate work permit.
2. The exceptional leave to enter status granted to these Kosovans gave them normal access to SS benefits. So they were able to claim IS, JSA(IB), HB and CTB, subject to the normal rules and conditions of entitlement.

Other Kosovo Albanians

3. Some Kosovo Albanians came to the UK independently of the evacuation programme. Those who asked for asylum on arrival were issued with a form SAL1 and if they claimed benefit were awarded UCPs.
4. On 15.6.99, the Home Secretary extended the arrangements for evacuees to other Kosovo Albanians who
 1. were already present in the UK **or**
 2. subsequently arrived in the UK.

Note: This temporary scheme ended on 13.9.99.
5. The Border Agency issued form KOS EX 2 to those affected by the change. If a claimant provided a KOS EX 2 confirming the change to their immigration status, the case was reviewed to
 1. disallow UCPs from the date of the KOS EX2 **and**
 2. award full rate IS/JSA (subject to the normal conditions of entitlement) from the same date.

Explore and prepare visits

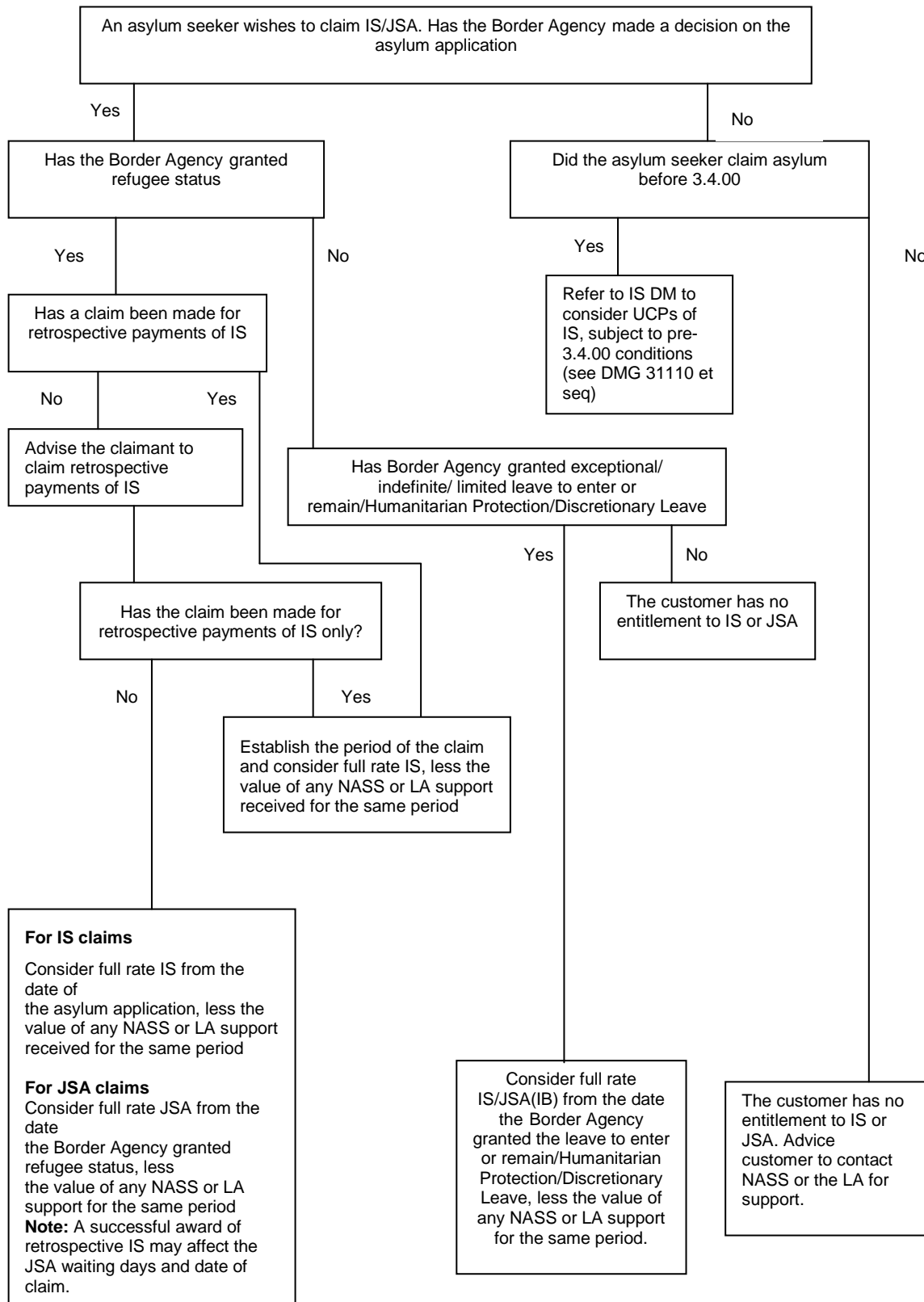
6. In December 1999, an "explore and prepare" programme of visits to Kosovo was made available in certain circumstances to Kosovo Albanians. The journeys were organised by the International Organisation for Migration (IOM) and were funded by the Government. The visits allowed families and communities to make informed decisions about when to return to Kosovo permanently.
7. Participants were those
 1. who arrived on
 - 1.1 the HEP **or**
 - 1.2 subsequent government sponsored medical evacuation flights **and**
 2. asylum applicants who were granted twelve months ELR during the period of suspension of asylum claims **and**
 3. Kosovo Albanians granted ELR outside the period of suspension of asylum claims.
8. No specific time limit was set on the length of absence from the UK. But return had to take place before the end of the participant's ELR period and only one "explore and prepare" visit was allowed.

Expiry of leave

9. When exceptional leave started to expire, the Border Agency did not issue blanket extensions to the original grant of leave. Those who wanted to remain after their leave expired had to
 1. apply for an extension/variation of their exceptional leave **or**
 2. make an asylum application

before their original leave expired. In such cases benefit continued until a decision was made on their application. Otherwise entitlement to benefit ceased at the end of the original period of leave.
10. Some Kosovans received a negative decision on their application (as in paragraph 9). Such claimants could continue to receive benefit for a further period of 28 days from the date of the negative decision. But after that period they were no longer eligible for SS benefits and so benefit ceased.

Claims involving an 'asylum seeker - Flowchart for DMG 31203



The content of the examples in this document (including use of imagery) is for illustrative purposes only