

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 4

Amendment 48 – February 2016

1. This letter provides details on Amendment 48; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 48 affects Abbs, SI's & Statutes, chapter 20, 21, 23 the changes affect
 - DMG Chapter 20 – Amendment to paragraph 20175 to incorporate reported decision.
 - DMG Chapter 21 – added reference to DMG 21443 at DMG 218551 in chapter 21
 - DMG Chapter 23 – incorporate DMG memos 19/15 and 24/15. In chapter 23

4. The last two amendment packages amending Volume 4 were

Amendment 47 [October 2015]

Amendment 46 [June 2015]

5. Using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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

Remove**Abbreviations**

RA-YT (2 pages)

Statutes

NHS Act77 – WC Act 25 (1 page)

Statutory Instruments

SS Ben (PA) Regs - SS (IB) (Trans) Regs
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Date SIR changed (1 page)

RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions
SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme

SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme
WC (Supp)	Workmen's Compensation (supplementation) scheme
WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfi	Work-focused Interview

WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

National Health Service Act 1977	NHS Act 77
National Health Service Act 1990	NHS Act 90
National Health Service and Community Care Act 1990	NHS & CC Act 90
National Insurance Act 1965	NI Act 65
National Insurance (Industrial Injuries) Act 1965	NI (II) Act 65
National Insurance contributions Act 2008	NIC Act 08
National Minimum Wage Act 1998	NMW Act 98
Pensions Act 2007	Pensions Act 07
Pensions Act 2008	Pensions Act 08
Pensions Act 2014	Pensions Act14
Pension Schemes Act 1993	PS Act 93
Registered Homes (Amendment) Act 1991	RH (Amdt) Act 91
Registered Homes Act 1984	RH Act 84
Rehabilitation of Offenders Act 1974	ROO Act 74
Social Security Act 1975	SS Act 75
Social Security Act 1985	SS Act 85
Social Security Act 1986	SS Act 86
Social Security Act 1988	SS Act 88
Social Security Act 1989	SS Act 89
Social Security Act 1990	SS Act 90
Social Security Administration Act 1992	SS A Act 92

Social Security Contributions and Benefits Act 1992	SS CB Act 92
Social Security Contributions (Transfer of Functions, etc) Act 1999	SSC (ToF) Act 99
Social Security Fraud Act 2001	SS Fraud Act 01
Social Security (Incapacity for Work) Act 1994	SS (IfW) Act 94
Social Work (Scotland) Act 1968	SW (Scot) Act 68
State Pension Credit Act 2002	SPC Act 02
Supervised Jobsearch Pilot Scheme (Designation of Employment Officers) Order 2014	SJP Scheme (Designation of Emp. O) Order 2014
Tax Credit Act 2002	TC Act 02
Tribunals, Courts and Enforcement Act 2007	TCE Act 07
Teaching and Higher Education Act 1998	T & HE Act 98
Trade Union and Labour Relations (Consolidation) Act 1992	TULR (C) Act 92
Trade Union Reform and Employment Rights Act 1993	TURER Act 93
Welfare Reform Act 2007	WR Act 07
Welfare Reform Act 2009	WR Act 09
Welfare Reform and Pensions Act 1999	WRP Act 99
Workmen's Compensation Act 1925	WC Act 25

Statutory Instruments

The Social Security Benefit (Persons Abroad) Regulations 1975 No. 563	SS Ben (PA) Regs
The Social Security (Civil Penalties) Regulations 2012	SS (CPen) Regs
The Social Security (Computation of Earnings) Regulations 1978 No. 1698	SS (C of E) Regs
The Social Security (Claims and Information) Regulations 2007 No. 2911	SS (C&I) Regs
The Social Security Class 3A Contributions (Units of Additional Pension) Regulations 2014 SI 2014 No. 3240	SS Class 3A Conts (UAP) Regs
The Social Security (Child Maintenance Bonus) Regulations 1996 No. 3195	SS (CMB) Regs
The Social Security (Claims and Payments) Regulations 1979 No. 628	SS (C&P) Regs 79
The Social Security (Claims and Payments) Regulations 1987 No. 1968	SS (C&P) Regs
The Social Security Commissioners (Procedure) Regulations 1999 No. 1495	SS Commissioners Procedure Regs
The Social Security (Contributions) Regulations 1979 No. 591	SS (Conts) Regs
The Social Security (Contributions) Regulations 2001 No. 1004	SS (Conts) Regs 01
Social Security (Contribution Credits for Parents and Carers) Regulations 2010 No. 19	SS (CC P & C) Regs
The Social Security (Credits) Regulations 1975 No. 556	SS (Credits) Regs
The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 No. 769	SS (Crediting etc) Regs
The Social Security and Child Support (Decisions and Appeals) Regulations 1999 No. 991	SS CS (D&A) Regs
The Social Security and Child Support (Jobseeker's Allowance) (Miscellaneous Amendment) Regulations 1996 No. 2538	SS & CS (JSA) (Misc Amdt) Regs

Statutory Instruments

The Social Security (Deferral of Retirement Pensions) Regulations 2005 No. 453	SS (Def RP) Regs
The Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005 No. 2677	SS (Def RP, SAP & GRB) (Misc Provs) Regs
The Social Security (Disability Living Allowance) Regulations 1991 No. 2890	SS (DLA) Regs
The Social Security (Introduction of Disability Living Allowance) Regulations 1991 No. 2891	SS (Introduction of DLA) Regs
The Social Security and Family Allowances (Polygamous Marriages) Regulations 1975 No. 561	SS & FA (Poly Marr) Regs
The Social Security (General Benefit) Regulations 1982 No. 1408	SS (Gen Ben) Regs
The Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 No. 393	SS (GRB) (No. 2) Regs
The Social Security (Graduated Retirement Benefit) Regulations 2005 No. 454	SS (GRB) Regs
The Social Security (Habitual Residence) Amendment Regulations 2004 No. 1232	SS Hab Res Regs
The Social Security (Hospital In-Patients) Regulations 1975 No. 555	SS (HIP) Regs
The Social Security (Hospital In-Patients) Regulations 2005 No. 3360	SS (HIP) Regs 05
The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 No. 636	SS (I&A) Cql Amdts Regs
The Social Security (Incapacity Benefit) Regulations 1994 No. 2946	SS (IB) Regs
The Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 No. 2945	SS (IB for D) Regs
The Social Security (Incapacity Benefit) (Transitional) Regulations 1995 No. 310	SS (IB) (Trans) Regs

- 2.1 learn English **and**
- 2.2 subsequently find work **and**
3. they had been in GB for not more than twelve months on the day the course started.

1 IS (Gen) Regs, Sch 1B, para 18

People who claim asylum on or after 3.4.00

20175 People who

1. claimed asylum on or after 3.4.00 **and**
2. were granted refugee status on or before 14.6.07

could receive IS for a period when they were waiting for their asylum claim to be determined¹. From 14.6.07 only those people whose refugee status has been determined can receive IS².

1 IS (Gen) Regs, reg 21ZB; Sch 1B, para 18A; 2 HB v SSWP [2015] EWCA Civ 141; [2015] AACR 17

People required to attend court

20176 People can get IS whilst they are required to attend court or tribunal as a¹

1. justice of the peace **or**
2. party to any proceedings **or**
3. witness **or**
4. juror.

1 IS (Gen) Regs, Sch 1B, para 19

People affected by a trade dispute

20177 People can get IS if they are¹

1. affected by a TD **or**
2. returning to work for the first 15 days following a TD.

See DMG Chapter 32 for further guidance on TDs.

1 IS (Gen) Regs, Sch 1B, para 20

Certain persons subject to immigration control

20178 Certain PSICs can get IS¹. (See DMG 24509).

1 IS (Gen) Regs, Sch 1B, para 21

People in custody

20179 People in custody can get IS, but only to help with housing costs, where they are in custody pending trial or sentencing¹. This does not apply to prisoners serving a custodial sentence.

1 IS (Gen) Regs, Sch 1B, para 22

20180 People on a

1. home detention curfew **or**
2. court-ordered curfew **or**
3. restriction of liberty order **or**
4. mandatory probation service programme

are not detained in custody.

Member of a couple looking after children whilst partner temporarily abroad

20181 People can get IS where they are¹

1. a member of a couple and the other member is temporarily absent from the UK **and**
2. treated as responsible for a child who is a member of the household.

1 IS Gen Regs, Sch 1B, para 23

People appealing against a decision because of capability for work

20182 People can get IS if

1. they are found to be not incapable of work
 - 1.1 under the OOT and their GP continues to provide evidence of incapacity for work¹ **or**
 - 1.2 under the PCA² **and**
2. they have made and are pursuing an appeal against the decision that they are not incapable of work.

IS can be paid until the appeal is determined, which includes appeals to the UT where the claimant has been unsuccessful at the tribunal. It does not matter if the claim to IS was made after the incapacity determination. See DMG Chapter 24 for guidance on the amount payable.

1 IS Gen Regs, Sch 1B, para 24; 2 Sch 1B, para 25

20183

20184 When dealing with such cases DMs should consider the following

1. a person who falls within a prescribed category for any day in a benefit week shall fall within that category for the whole of that week¹
2. backdating of a new IS claim can be considered where the claimant claims IS as soon as is practical after being notified of the decision that their entitlement to IB has ceased²
3. where an existing IS award can be revised³ the date of the revision shall be the date that the IB DM terminated the award of IB.

1 IS (Gen) Regs, reg 4ZA(4); 2 SS (C&P) Regs, reg 19(6) & (7)(d); 3 SS CS (D&A) Regs, reg 3(7B) & (7C)

20185

20186 IS cannot be paid under DMG 20182 where people are treated as capable of work, for example where they have failed to return the incapacity questionnaire. Where a claimant in these circumstances appeals against an FtT decision, IS cannot be paid until the appeal is determined by the UT.

20187 For the purposes of DMG 20182 the continued medical evidence of incapacity should be dated later than the date of the decision based upon the incapacity determination which the claimant has appealed against.

20188 See DMG Chapter 3 for guidance on the revision of IS decisions when incapacity decisions are appealed.

Young person in training

20189 A person, who is not a qualifying young person or a child¹ can get IS where they are attending a course of youth training provided by, or through²

1. in England, Young People's Learning Agency for England, the Chief Executive of Skills Funding **or**
2. in Wales, a National Council for education and training **or**
3. in Scotland, a local enterprise company.

People under 18 are eligible for WBLfYP and 'Skillseekers' courses. 18 to 24 year olds may also be eligible. Training courses may be known by other names.

1 SS CB Act 92, s 142; 2 IS (Gen) Regs, Sch 1B, para 28

20190 - 20199

DM's consideration of a proposed jobseeker's agreement

When and why a jobseeker's agreement is referred to a DM

- 21840 Emp Os **may** refer a proposed JSAg to a DM to determine whether¹
1. if claimants were to do what is in the proposed JSAg, they would satisfy
 - 1.1 the availability condition **or**
 - 1.2 the ASE condition **and**
 2. it is reasonable to expect the claimant to have to do what is in the proposed JSAg (see DMG 21850 - 21851).

1 JS Act 95, s 9(6)

- 21841 The claimant can ask the Emp O to refer a proposed JSAg to a DM to decide whether
1. if the conditions were complied with, the claimant would satisfy the
 - 1.1 availability condition **or**
 - 1.2 ASE condition **and**
 2. it is reasonable to expect the claimant to have to do what is in the proposed JSAg (see DMG 21850 - 21851).

If the claimant does ask the Emp O to refer a proposed JSAg to a DM, the Emp O must refer the JSAg straightaway¹.

1 JS Act 95, s 9(6)

- 21842 Any referral to the DM should, where practicable, be disposed of within 14 days of the date of referral¹.

1 JS Act 95, s 9(7)(a)

- 21843 The DM¹
1. can give a decision on the terms on which the Emp O is to enter into a JSAg with the claimant (see DMG 21855 - 21858) **or**
 2. may direct that the proposed JSAg is to be treated as having effect on a specific date earlier than it would otherwise have effect (see DMG 21865 - 21894)
 - 2.1 if entered into **and**
 - 2.2 providing any appropriate conditions are satisfied.

1 JS Act 95, s 9(7)(b) & (c)

21844 - 21846

Availability and actively seeking employment

21847 In determining whether, if complied with, the JSAg would enable the claimant to satisfy the

1. availability conditions, the DM should follow the guidance on availability in DMG 21120 - 21488
2. ASE conditions, the DM should follow the guidance on ASE in DMG 21520 - 21790.

Back to work schemes

21848 A statement about the Back to Work Schemes Guide on the JSAg is intended to signpost claimants to a source of information. This statement is not to be taken in the context of an action that the claimant is being asked to take. Therefore if the claimant does not read the guide it should not result in a sanction or disallowance of their JSA.

21849

Is the jobseeker's agreement reasonable

21850 It is not reasonable to expect the claimant to do what is in the proposed JSAg if in doing so, the claimant is unable to satisfy the

1. availability condition **or**
2. ASE condition **or**
3. both the availability and ASE conditions.

Example

A woman is highly skilled and seeking work that requires the skills she possesses.

The action that she will take to seek employment is stated in the proposed JSAg as only visiting the local Jobcentre Plus office.

The DM determines that only visiting the local Jobcentre Plus office does not give her the best chance of getting employment.

So the DM determines that

1. the proposed JSAg would not satisfy the ASE conditions if she complied with it **and**
2. it is not reasonable to expect her to have to do what is in the JSAg.

21851 The DM should not expect the claimant to do what is in the proposed JSAg if the terms of the JSAg are not reasonable. The DM should consider the impact of any relevant mental or physical health conditions that the claimant suffers from in reaching a decision¹ (see also [DMG 21443](#)). This is the case even if the proposed JSAg enables the claimant to satisfy the availability and ASE conditions.

¹ CH v SSWP (JSA) [2015] UKUT 0373 (AAC)

Severe disability premium

JSA(IB) and IS

General

23200 SDP is payable to a severely disabled person¹. There are two rates of SDP.

1 IS (Gen) Regs, Sch 2, para 13(1)

Combination of SDP with DP or HPP

23201 If the conditions for SDP are met, the appropriate SDP rate should be included in the claimant's applicable amount in addition to any other premium.

Lower rate

23202 Single claimants, lone parents and claimants who are deemed to have no partner (see DMG 23205) are entitled to the lower rate SDP if

1. they are in receipt of
 - 1.1 "AA" (see DMG 23071) **or**
 - 1.2 the middle or highest rate of the care component of DLA **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. there are no non-dependants aged 18 or over
 - 2.1 normally residing (see DMG 23209) with the claimant **or**
 - 2.2 who the claimant normally resides with **and**
3. CA or UC that includes the CE, is not in payment to anyone for caring for them (see DMG 23236)¹.

1 JSA Regs, Sch 1, para 15(1); IS (Gen) Regs, Sch 2, para 13(2)(a)

23203 Members of a couple or polygamous marriage are entitled to the lower rate SDP if

1. each member of the couple or polygamous marriage is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the middle or highest rate of the care component of DLA **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. there are no non-dependants aged 18 or over
 - 2.1 normally residing (see DMG 23209) with the claimant **or**
 - 2.2 who the claimant normally resides with **and**

3. CA or UC that includes the CE, is in payment (see DMG 23236) to someone for caring for one
 - 3.1 of a couple **or**
 - 3.2 or more, but not all, of the members of a polygamous marriage¹.

*1 JSA Regs, Sch 1, para 15(2)(a)-(c) & (d)(ii) and 20I(1)(a)-(c) & (d)(ii);
IS (Gen) Regs, Sch 2, para 13(2)(b)*

Higher rate

23204 Members of a couple or polygamous marriage are entitled to the higher rate SDP if

1. the conditions in DMG 23203 **1.** and **2.** are satisfied **and**
2. CA or UC that includes the CE, is not in payment (see DMG 23236) to someone for caring for any member of a
 - 2.1 couple **or**
 - 2.2 polygamous marriage¹.

*1 JSA Regs, Sch 1, para 15(2)(a)-(c) & (d)(i) and 20I(1)(a)-(c) & (d)(i);
IS (Gen) Regs, Sch 2, para 13(2)(b)*

Claimant who is deemed not to have a partner

23205 When deciding entitlement to SDP, a claimant is treated as not having a partner if the partner is

1. not in receipt of
 - 1.1 “AA” **or**
 - 1.2 the middle or highest rate of the care component of DLA **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. certified as severely sight impaired or blind by a consultant ophthalmologist or treated as severely sight impaired or blind (see DMG 23072)¹.

1 JSA Regs, Sch 1, para 15(3) and 20I(2); IS (Gen) Regs, Sch 2, para 13(2A)

23206 This means that if the claimant is a member of a

1. couple, the claimant must satisfy DMG 23202 to be entitled to SDP **or**
2. polygamous marriage, all remaining partners must satisfy DMG 23203 **1.** for the claimant to be entitled to SDP.

“AA”, DLA and CA on admission to hospital

23207 Special rules apply to the treatment of “AA”, DLA and CA when a disabled person is admitted to hospital (see DMG 23292).

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 relationship¹.

1 R(SB) 22/87

Changes to people who are not non-dependants

23224 Since IS started there have been some changes to the groups of people who are not non-dependants. The group has mainly stayed as outlined in DMG 23220. But the major changes are highlighted in Appendix 3 to this Chapter.

Shared lives

23225 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PIP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will be ignored as non-dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the SDP.

Note: The claimant will not be entitled to SDP if there are people other than the carer, carer's family or other shared lives residents in the dwelling who cannot be ignored, for example where the carer's 23 year old son still lives in the same dwelling.

Admittance to residential care

23226 The following guidance on admittance to temporary or permanent residential care applies only to the award of SDP. See DMG Chapter 61 for guidance on the treatment of "AA" when a disabled person is admitted to residential care.

Definitions for DMG 23229 - 23236

23227 Temporary residential care means any temporary stay in a care home or independent hospital. For example, respite care in a care home.

23228 Permanent residential care means permanent residence in a care home or independent hospital.

Single claimant or lone parent

23229 A single claimant or lone parent who does not satisfy the SDP conditions because there is a non-dependant, will not satisfy the SDP conditions while in temporary residential care. As the stay is temporary the claimant continues to normally reside at home¹.

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

Example

Nasreen is a single claimant living with her parents. The conditions for SDP are not satisfied. She goes into temporary residential care. SDP is not payable because she continues to normally reside at home with her parents.

23230 Claimants who live in permanent residential care are normally resident in the home providing that care. Other residents of the home are not non-dependants because they do not normally reside with the claimant as they are separately liable to make payments to a landlord¹ (see DMG 23211 **2.**). SDP is payable to a person in permanent residential care if all of the conditions are satisfied.

Note: DLA may cease when the person has been in permanent residential care for four weeks

1 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4)

Example

Ivor is a single claimant who lives at home with his parents. He is in receipt of DLA and no one receives CA, or UC that includes the CE, for caring for him. His parents are non-dependants. The SDP conditions are not satisfied.

Ivor goes into permanent residential care. The DM decides that Ivor is entitled to SDP at the lower rate from the date that he moves into permanent residential care. This is because

1. he is in receipt of DLA **and**
2. the other residents of the home are not non-dependants because they do not normally reside with him **and**
3. no one is in receipt of CA, or UC that includes the CE, for caring for him.

Entitlement to SDP continues as long as all of the above are satisfied.

Couples

23231 When a member of a couple is in temporary residential care the separation from the partner is also temporary. This means that the couple remain members of the same household¹.

1 JSA Regs, reg 78(1); IS (Gen) Regs, reg 16(1)

23232 A special assessment is necessary where one member is in temporary residential care. The claimant's applicable amount should be¹ whichever is the greater of the

1. normal amount for the couple **or**
2. total of the applicable amounts assessed as if the claimant and partner were each a single claimant or lone parent living in their present accommodation.

1 JSA Regs, Sch 5, para 5; IS (Gen) Regs, Sch 7, para 9

23233 For the purposes of the calculation at DMG 23232 **2.**

1. while in temporary residential care the person is still treated as normally residing at home¹ **and**
2. neither partner is regarded as a non-dependant of the other².

1 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1); 2 R(IS) 9/02

Example 1

Peter and Louise live in the same household. They are both named as owners of the property. There are no non-dependants. Both get DLA and someone gets CA for Peter. SDP at the lower rate is payable. Louise goes into temporary residential care.

If they are assessed as a couple, SDP at the lower rate is payable because Louise normally resides at home and CA is in payment for Peter.

If they are assessed as if they are single, SDP is not payable for Peter because CA is in payment. SDP is payable to Louise as she gets DLA, CA is not in payment and there are no non-dependants.

Example 2

Malcolm and Wendy are married and live together in the same household. Malcolm is the tenant of the property. Both Malcolm and Wendy get DLA and CA is not in payment (nor is UC that includes the CE). There are no non-dependants. Higher rate SDP is in payment. Malcolm goes into temporary residential care.

If they are assessed as a couple, the higher rate SDP is payable. Malcolm normally resides at home and Wendy continues to reside at home.

If they are assessed as if they are single, lower rate SDP is payable for Malcolm who normally resides at home and satisfies the SDP conditions for a single claimant. Wendy is not a non-dependant of Malcolm as she is in receipt of DLA. Lower rate SDP is payable to Wendy who continues to normally reside at home and satisfies the SDP conditions for a single claimant.

Example 3

Alan and Geraldine are married and live together in the same household with a non-dependant daughter. Alan gets DLA and CA, or UC that includes the CE, is not in payment. SDP is not in

payment because there is a non-dependant daughter and Geraldine is not in receipt of DLA. Alan goes into temporary residential care.

If they are assessed as a couple, SDP is not payable because Alan normally resides at home and there are non-dependants.

If they are assessed as if they are single, SDP is not payable to Alan because he normally resides at home and there are non-dependants. SDP is not payable to Geraldine because she continues to reside at home and does not satisfy the SDP conditions.

Example 4

Kenneth and Susan live together in the same household with a non-dependant son. Both get DLA and CA, or UC that includes the CE, is not in payment. SDP is not in payment because there is a non-dependant son. Susan goes into temporary residential care.

If they are assessed as a couple, SDP is not payable because Susan normally resides at home and there are non-dependants at home.

If they are assessed as if they are single. SDP is not payable to Susan because she normally resides at home and there are non-dependants at home. SDP is not payable to Kenneth because he continues to normally reside at home and there are non-dependants.

- 23234 A member of a couple admitted to permanent residential care is no longer a member of the same household as the partner¹. Each person may claim JSA or IS as a single claimant or lone parent.

1 JSA Regs, reg 78(1) & (3)(d); IS (Gen) Regs, reg 16(1) & (3)(e)

- 23235 If a claimant is admitted to permanent residential care the other residents of the home are not non-dependants. This is because they do not normally reside with the claimant, as they are separately liable to make payments to a landlord (see DMG 23212 2.)¹. SDP is payable to a claimant in permanent residential care if all of the conditions are satisfied.

Note: DLA may cease when the person has been in permanent residential care for four weeks.

1 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4)

Example

Irene and Michael are married and live together in the same household. Irene is in receipt of DLA and no one is in receipt of CA for caring for her. SDP is not payable because Michael does not get "AA" or DLA. Irene is admitted to permanent residential care.

Irene claims benefit for herself as she is no longer a member of Michael's household. The DM decides that Irene is entitled to SDP at the lower rate because

1. she is in receipt of DLA **and**
2. the other residents of the home are not non-dependants because they do not normally reside with her **and**
3. no one is in receipt of CA for caring for her.

Entitlement to SDP continues as long as all of the above are satisfied.

SDP and CA

23236 SDP is not payable if someone is receiving CA, or UC that includes the CE, for caring for

1. the claimant in a single person claim **or**
2. in couple cases, both the claimant and their partner¹ (or all of their partners in the case of polygamous marriage)

CA or CE has to actually be in payment before it affects entitlement to SDP unless DMG 23239 applies. Underlying entitlement to CA does not affect SDP.

Note: A claimant can be awarded SDP and CP at the same time, including where CP is awarded to the claimant because of underlying entitlement to CA (see DMG 23245 et seq).

1 JSA Regs, Sch 1, para 15(1)(c), (2)(d) & 20(1)(d); IS (Gen) Regs, Sch 2, para 13(2)(a)(iii) & (2)(b)

23237 DMs should normally treat an award of CA as a proper award until the CA decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting CA **or**
2. the award of CA is in error **or**
3. they know nothing about the CA award **or**
4. the CA claim is fraudulent

the DM should ask the CA unit to investigate whether the CA award is correctly made.

23238 Where the disabled person makes an allegation about the carer's integrity, as described at DMG 23237, the IS/JSA DM can make a decision on the claim or application before the CA DM has decided whether the award of CA should be revised or superseded. However, the IS/JSA decision should include a determination which

1. makes an assumption that the carer is properly in receipt of CA **and**
2. refuses to award SDP.

- 23239 An award of CA may be backdated for a period before the date on which the CA award is made. Arrears of CA due in such circumstances do not affect entitlement to SDP¹. SDP is only affected from the date the CA award is paid.

1 JSA Regs, Sch 1, para 15(7) and 20I(6); IS (Gen) Regs, Sch 2, para 13(3ZA)

Example

Karim is a single claimant in receipt of SDP. On 20 November a relative claims CA. CA is awarded on 23 January. It is first paid on 6 March. Arrears are included in the first payment from the date of claim. SDP is affected from 6 March.

- 23240 If a person stops getting CA because a restriction is applied under the loss of benefit provisions¹ they continue to be treated as being in receipt of CA for the purposes of entitlement to SDP².

1 SS Fraud Act 2001, s 7; 2 IS (Gen) Regs, Sch 2, para 13(2)(a)(iii), (2)(b) & (5); JSA Regs, Sch 1, para 15(1)(c), (2)(d), & (9) and 20I(1)(d) & (7)

The standard rate

23533 Prior to 28.11.04 the standard interest rate was based on the weighted average of basic rates charged by the main building societies. This figure was published monthly by the Office for National Statistics in Financial Statistics Table 7.1L. Changes to the standard rate were triggered by moves of 0.25% or more in the published figures.

23534 From 5.12.04 the calculation of the standard rate of interest applied to loans which qualify for housing costs was based on

1. the Bank of England base rate **or**
 2. any rate determined by the Treasury under its reserved powers
- plus 1.58%.

23535 From 1.10.10 the calculation of the SIR applied to loans which qualify for housing costs is based on the average mortgage rate published monthly by the Bank of England. A change in the SIR is only triggered when the Bank of England's published average mortgage rate differs by 0.5 percentage points¹ or more from the SIR applicable on that day. Any change in the SIR is effective from a date determined by the Secretary of State².

1 IS (Gen) Regs, Sch 3, para 12; JSA Regs, Sch 2, para 11; 2 SI 2014/591

23536 See Appendix 6 to this Chapter for details of the standard interest rates.

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the DM decides that a standard interest rate equivalent to the Bank of England base rate plus 1.58% should be used in the calculation of her housing costs.

Date SIR changed	Rate of SIR	Effective from
11.9.05	6.08%	11.9.05
3.8.06	6.33%	10.9.06
9.11.06	6.58%	17.12.06
11.1.07	6.83%	18.2.07
10.5.07	7.08%	17.6.07
5.7.07	7.33%	12.8.07
6.12.07	7.08%	13.1.08
2.2.08	6.83%	16.3.08
10.4.08	6.58%	18.5.08
8.10.08	6.08%	16.11.08
14.12.08	4.58%	Not implemented
5.1.09	6.08%	Amount prescribed SI 3195/08
1.10.10	3.63%	1.10.10
June 15	3.12%	Determined by SoS

