

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 5 Amendment 47 – February 2016

1. This letter provides details on Amendment 47; 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/dmg%20amendment%20packages/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 47 affects abbreviations, chapter 25, 26 & 28. The changes are
 - **Chapter 25** - Minor amendment to 25086 - added reference to NS v SSWP (IS) [2015] UKUT 0423 (AAC).
 - **Chapter 26** – Amended description of notional income tax deduction at 26227 & added effect of the new State Pension on partners and previous remunerative work at 26643.
 - **Chapter 28** - Adding references to closure of ILF and treatment of replacement schemes
4. The last two amendment packages amending Volume 5 were
Amendment 46 [October 2016]

Amendment 45 [June 2015]
5. If 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 (1page)

Statutes

NHS Act77 – WC Act 25 (1 page)

Statutory Instruments

SS Ben (PA) Regs - SS (IB) (Trans) Regs (2 Pages)

Chapter 25

25083 -25999 (1 page)

Chapter 26

26213 – 26227 (2 pages)

26640 – 26651 (1 page)

Chapter 28

28350 – 28351 (1 page)

28417 – 28421 (1 page)

28450 – 28459 (1 page)

28668 – 28684 (2 pages)

Insert**Abbreviations**

RA-YT (1page)

Statutes

NI Act77 – WC Act 25 (1 page)

Statutory Instruments

SS Ben (PA) Regs - SS (IB) (Trans) Regs (2 Pages)

Chapter 25

25083 -25999 (1 page)

Chapter 26

26213 – 26227 (2 pages)

26640 – 26651 (1 page)

Chapter 28

28350 – 28351 (1 page)

28417 – 28421 (1 page)

28450 – 28459 (1 page)

28668 – 28684 (2 pages)

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

First of two payments due before date of claim

25083 Where the first of the two payments referred to in DMG 25081 or 25082 was due to be paid before the date of claim the payment should be disregarded¹.

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

Example

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

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

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

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

The payment due on 9.3.04 is disregarded because it is a payment of the same kind and from the same source as another payment which is to be taken into account in the same benefit week, and the payment of 9.3.04 was due to be paid before the first benefit week of the claim.

25084 - 25085

Averaging of amounts

25086 The weekly amount of a claimant's income may be averaged¹ if the income varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognizable cycle of work (see DMG Chapter 20 on establishing a recognizable cycle) **or**
2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

1 JSA Regs, reg 97(6); IS (Gen) Regs, reg 32(6); NS v SSWP (IS) [2015] UKUT 0423 (AAC)

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

Example 1

Robert works two weeks on and one week off.

In the two weeks he actually works he works 12 hours a week and receives earnings of £80 a week.

In the third week, he receives a retainer of £20.

The DM determines that the earnings should be averaged over a period of three weeks because that is the period of the recognizable cycle of work.

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

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

and takes that amount into account against Robert's entitlement. This average amount is taken into account from the fourth week. For the first three weeks, the DM used the actual amounts of earnings paid to Robert before an average figure could be calculated.

Example 2

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

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

25088 – 25999

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

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

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

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

Payments in kind

26215 Payments in kind are not earnings¹. Payments in kind should not be taken into account when looking at whether a person is paid, or paid less, than the rate for comparable employment².

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

Example

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

Are earnings to be treated as paid

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

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

Reasonable rates of pay

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

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

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

Can the person afford to pay

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

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

26220 Where the service is for a person, take account of that person's actual means. This is not the amount by which their income would exceed a notional benefit level¹. It is the amount of money that they actually have available to them.

1 R(SB) 3/92

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

26222 - 26224

Amount to be taken into account

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

26226 From the resulting figure, make notional deductions for

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

Deduction for notional income tax

26227 Deduct the appropriate income tax allowance if the chargeable income figure calculated is higher. If it is equal to or less than that chargeable income figure, no notional income tax will be deducted. Income tax allowances are made up of

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

Remuneration for period before employment ended

- 26640 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. Such pay is due because of the employment itself not because of its termination. It is not a compensation payment.
- 26641 Severance payments may be made when employment ends. Such payments may be worked out on past years of service in the employment. But they are not made for a period before the employment ended. They will not be exempt from the definition of a compensation payment¹.

1 R(U) 5/92

Remunerative work

- 26642 When remunerative work ends earnings due to be paid for the period of that employment should normally be disregarded¹. This includes any payments held in hand by the employer, when the employment ends. It does not include any
1. awards made under employment protection or trade union law (including “out of court” settlements)
 2. retainers including
 - 2.1. statutory guarantee payments
 - 2.2. payments made where a person has been suspended on medical or maternity grounds.

1 JSA Regs, Sch 6, para 1

- 26643 If the remunerative work of the claimant’s partner has ended because of retirement, disregard any earnings due to be paid for that employment if on retirement the partner
1. is entitled to RP **or**
 2. would be entitled if the contribution conditions were satisfied¹ **or from 6.4.16**
 3. is entitled to a state pension **or**
 4. would be entitled if the minimum number of qualifying years were met².

1 JSA Regs, Sch 6, para 1A;

2 The Pensions Act 2014 (Consequential, Supplementary and Incidental Amendments) 2015, a16

Part-time work

- 26644 The employment that ends may have been P/T, that is **not** remunerative (see DMG Volume 4, Chapter 20). How this affects the claim will depend on when the employment ended.
- 26645 If employment ends **before** the first day of entitlement disregard any earnings except¹ any
1. payment by way of a retainer including
 - 1.1. statutory guarantee payments

- 1.2. payments made where a person has been suspended on medical or maternity grounds.
2. awards made under employment protection or trade union law (including “out of court” settlements)

1 JSA Regs, Sch 6, para 2

26646 If employment ends **on or after** the first day of entitlement, take any earnings from it into account in the normal way.

26647 The employment will not have ended where

1. the contract of employment is still current **or**
2. the contract of employment comes to an end before the beginning of a period of absence and it is expected that the claimant or partner will resume employment after the period of absence because
 - 2.1 there is some express arrangement that employment will resume **or**
 - 2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

26648 - 26650

Emoluments

26651 Emoluments are forms of profit or gain from employment, including perks or advantages of the employment. They may be in money or in kind. They accrue while the claimant is employed but may not be paid until the employment ends. Examples are

1. payments made for items that the employer had previously agreed to pay, for example subscriptions to a private health scheme, or payment of a child's school fees
2. payments of employees' expenses incurred during the employment, for example a car mileage allowance, travelling expenses, or the cost of overnight accommodation
3. rights under a share option agreement¹
4. pension lump sums, where entitlement accrued during working life and not simply because of the employment ending. Employees are automatically entitled to such lump sum payments from their pension schemes.
5. lump sum payments of commuted pension where entitlement to the pension accrued before the employment ended. These may be paid under schemes that allow employees to cash in part of their weekly pension entitlement. The amount cashed in is then taken as a lump sum.

Income fully disregarded

Types of income fully disregarded

[See DMG Memo IS/JSA 64]

28350 The following incomes should be fully disregarded when calculating income for IS and JSA(IB)

1. any payment from and/or some payments from money that originally came from
 - 1.1 the Macfarlane Trust
 - 1.2 the Macfarlane (Special Payments) Trust
 - 1.3 the Macfarlane (Special Payments) (No. 2) Trust
 - 1.4 the Independent Living Fund (2006) – see note at 28351.
 - 1.5 the Fund
 - 1.6 the Eileen Trust
 - 1.7 the Skipton Fund
 - 1.8 MFET Limited
 - 1.9 the Caxton Foundation
2. any payment for a reduction of CT
3. AAs
4. AFIP
5. certain payments due to be paid before the date of claim
6. child maintenance
7. Christmas Bonus
8. compensation for loss of HB
9. concessionary payments
10. cost of conversion of foreign money
11. CTB
12. dependant's or non dependant's contributions to accommodation and living costs
13. DLA
14. discretionary housing payments (DHPs)
15. Education maintenance allowance and the 16 - 19 Bursary Fund
16. Employment Retention and Advancement (ERA) Scheme payments
17. EZ, self-employed route

18. GA
19. gallantry awards
20. HB
21. income frozen abroad
22. income in kind
23. income tax refunds
24. income treated as capital
25. increases in SS benefits for absent dependants
26. jurors' or witnesses' court attendance allowance
27. local welfare provision
28. Mobility supplement
29. ND IAP, expenses and top-up payments
30. payments for foster children
31. payment for a person temporarily in the care of the claimant
32. payments from an LA in lieu of Community Care Services
33. payment by an employer of employee's expenses
34. payment of expenses to voluntary workers
35. payment of expenses to service users
36. payments to help disabled people get or keep employment
37. payments from the SF under SS legislation
38. payments from the Supporting People programme
39. certain payments made under employment and training law
40. payments made under the Return to Work Credit Scheme
41. payments made under the Repayment of Teacher's Student loans Scheme
42. PIP
43. resettlement benefit
44. special educational needs payments and budgets
45. special guardianship payments
46. training premium and expenses
47. travel or any other expenses in respect of the MWA Scheme or a prescribed scheme for assisting persons to obtain employment

- 48. vouchers including child care cheques
- 49. war widows/widowers, surviving civil partners supplementary pensions
- 50. welfare foods, NHS supplies, travelling expenses and assisted prison visits.

Note: See DMG 28450 et seq for further guidance on the payments listed at 1..

28351 For IS only any income paid to a person to whom DMG 20530 (MIRO) applies should be disregarded¹.

1 IS (Gen) Regs, Sch 9, para 74

Note: The Independent Living Fund (2006) closed on 30.6.15. Payments made under any of the replacement schemes (ILF Scotland (including NI), Welsh Independent Living Grant & Local Authorities in England) are not covered by this legislation and will be taken fully into account.

Income frozen abroad

28417 The DM should fully disregard income which is

1. payable in a foreign country **and**
2. cannot be transferred to the UK

for as long as it is frozen abroad¹. Income will usually be frozen when the foreign country does not allow its currency to be transferred to the UK.

1 JSA Regs, Sch 7, para 24; IS (Gen) Regs, Sch 9, para 23

Income in kind

28418 The DM should fully disregard any income in kind except

1. support provided to a claimant under specific immigration and asylum law **and**
2. notional income **and**
3. income paid to a claimant or member of the family because of involvement in a TD¹ **and**
4. payments made to a third party in respect of the claimant which are used by the third party to provide benefits in kind to the claimant².

Note 1: Credits received from participating in a LETS scheme (see DMG Chapter 27) are not income in kind. Credits should be taken into account in the appropriate way.

Note 2: See DMG 28670 **2.** for the treatment of concessionary coal.

1 JSA Regs, Sch 7, para 22(1); IS (Gen) Regs, Sch 9, para 21(1)

2 JSA Regs, Sch 7, para 22(4); IS (Gen) Regs, Sch 9, para 21(4)

Example 1

The claimant recently separated from her partner and claimed JSA.

The claimant's mother works in a shop and the shop owner gives the mother £10 of groceries each week for the claimant.

The DM decides the £10 a week is income in kind and should be fully disregarded.

Example 2

The shop owner (in example 1 above) then changes the arrangement and gives the claimant's mother £10 a week to buy groceries for the claimant.

The claimant's mother uses the £10 to buy food each week for the claimant.

The DM decides the £10 a week cannot be disregarded as income in kind and it should be taken fully into account as notional income.

- 28419 The exceptions at DMG 28418 do not apply¹ when the income in kind comes from
1. the Macfarlane Trust
 2. the Macfarlane (Special Payments) Trust
 3. the Macfarlane (Special Payments) (No. 2) Trust
 4. the Fund
 5. the Eileen Trust
 6. the Independent Living Fund (2006) see note at DMG 28351
 7. the Skipton Fund
 8. the Caxton Foundation
 9. MFET Limited **or**
 10. the partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

1 JSA Regs, Sch 7, para 22(2) & (3); IS (Gen) Regs, Sch 9, para 21(2) & (3)

Income tax refunds

When should tax refunds be treated as capital

- 28420 The DM should treat the following types of income tax refund as capital¹
1. PAYE refunds
 2. refunds of tax deducted from a student's income
 3. refunds of tax on business profits
 4. refunds on tax on interest received on capital or an annuity.

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

When should tax refunds be treated as income

- 28421 Income tax refunds may be taken into account in full as income¹ if the claimant or a member of the family
1. is involved in a TD **or**
 2. in IS cases only has
 - 2.1 been involved in a TD **and**
 - 2.2 is entitled to IS after returning to work.

(See DMG Chapter 32 for guidance on TDs).

Note: The rule in IS that allows people who are working to receive IS for the first 15 days after a TD does not exist in JSA.

1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 41(4)

The Independent Living Fund (2006), the Fund, the Macfarlane Trusts and other specific Trusts

Payments from the Independent Living Fund (2006), the Fund, and other specific Trusts

The Independent Living Fund (2006)

28450 The original Independent Living Fund ran from 1988 to 1993. It was replaced by the Independent Living (1993) Fund and the Independent Living (Extension) Fund. With effect from 1.10.07 these funds were replaced by the Independent Living Fund (2006). The fund closed permanently on 30.6.15. Any payments made under any of the replacement schemes (see note at DMG 28351) are not covered by this legislation and will therefore be taken fully into account.

28451

Income from the Independent Living Fund (2006)

28452 Fully disregard¹ any income from the Independent Living Fund (2006).

Note: Income which remains unspent and becomes capital at the end of the period it was paid for is not disregarded.

1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)

What is the Fund

28453 The Fund is a scheme run by DH. It makes payments to people who are not haemophiliacs but who contracted HIV when receiving NHS

1. blood **or**
2. tissue or organ transfers **or**
3. blood products.

Income from the Fund

28454 Fully disregard¹

1. any income from the Fund **and**
2. any income from capital that was received from the Fund.

1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)

What is the Eileen Trust

28455 The Eileen Trust is a charitable trust set up on 29.3.93 to give further help to people who are not haemophiliacs but who contracted HIV when receiving NHS

1. blood **or**
2. tissue or organ transfers **or**
3. blood products.

Income from the Eileen Trust

28456 Fully disregard¹

1. any income from the Eileen Trust **and**
2. any income from capital that was received from the Eileen Trust.

1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)

What are the Macfarlane Trusts

28457 The Macfarlane Trusts were set up to provide compensation to haemophiliacs who contracted HIV when receiving NHS

1. blood **or**
2. tissue or organ transfers **or**
3. blood products.

28458 The Macfarlane Trusts are

1. The Macfarlane Trust
2. The Macfarlane (Special Payments) Trust
3. The Macfarlane (Special Payments) (No 2) Trust.

Income from the Macfarlane Trusts

28459 Fully disregard¹

1. any income from the Macfarlane Trusts **and**
2. any income from capital that was received or derived from the Macfarlane Trusts.

1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)

2. neither the person for whom the payment has been made nor another member of the family has actual or notional income apart from that payment¹.

1 IS (Gen) Regs, reg 42(4ZA)(d); JSA Regs, reg 105(10A)(d)

28668 **[See DMG Memo IS/JSA 64]** A claimant is also not treated as possessing a payment under DMG 28665 where

1. the estate of the person for whom the payment is made
 - 1.1 is subject to a sequestration order **or**
 - 1.2 has a judicial factor on it **and**
2. the payment is made to a person acting on behalf of the creditors **and**
3. neither the person for whom the payment has been made nor another member of the family has actual or notional income apart from that payment¹.

1 IS (Gen) Regs, reg 42(4ZA)(d); JSA Regs, reg 105(10A)(d)

28669 **[See DMG Memo IS/JSA 64]** Income other than a benefit may be paid to a third party. The DM should treat this type of income as the notional income of the person for whom it is payable, to the extent it is used for that person's¹

1. food
2. ordinary clothing or footwear
3. fuel, for the household that the claimant normally occupies
4. housing costs covered by IS or JSA(IB)
5. rent for which HB is payable
6. water charges
7. CT.

Ignore any part of the income not used on these items.

Note: If the income paid to the third party in the first instance is a payment in kind it would be excluded from this notional income rule.

1 JSA Regs, reg 105(10)(a)(ii); IS (Gen) Regs, reg 42(4)(a)(ii)

28670 Disregard the payment to the third party¹

1. whatever it is used for, if it is made from
 - 1.1 the Macfarlane Trusts **or**
 - 1.2 the Eileen Trust **or**
 - 1.3 MFET Limited **or**
 - 1.4 the Fund **or**
 - 1.5 the Independent Living Fund (2006) see DMG 28351 **or**

1.6 the Skipton Fund **or**

1.7 the Caxton Foundation **or**

2. if it is for the purchase and supply of concessionary coal under specified legislation². The Department of Energy and Climate Change is now responsible for the purchase and supply of concessionary coal. Coal is purchased through contracts and supplied to ex-coal workers and their families. The payment from the Department of Energy and Climate Change to the contractor is a payment to a third party and is disregarded.

1 JSA Regs, reg 105(10A)(a); IS (Gen) Regs, reg 42(4ZA)(a);

2 The Coal Industry Act 94, s 19(1)(a); JSA Regs, reg 105(10A)(b); IS (Gen) Regs, reg 42(4ZA)(b)

Meaning of ordinary clothing or footwear

28671 The expression “ordinary clothing or footwear” means¹ clothing or footwear for normal daily use. It does not include

1. school uniforms **or**
2. clothing or footwear used solely for sport, for example football boots.

1 JSA Regs, reg 105(16); IS (Gen) Regs, reg 42(9)

28672 The DM should consider the wide needs of all claimants when applying the test of “for normal daily use”.

Example

Emma receives IS. She has a disabled son, Ben, who needs to wear orthopaedic shoes.

The DM decides that orthopaedic shoes may be normal for Ben but are not normal for children in general. The DM decides that the orthopaedic shoes are not for normal daily use.

28673 - 28675

Payments by a third party for care home, Abbeyfield Home or independent hospital charges

28676 **[See DMG Memo IS/JSA 64]** Treat payments made by a third party, who is not a member of the family, towards the cost of charges for a

1. care home **or**
2. Abbeyfield Home **or**
3. independent hospital

as the income of the claimant¹.

1 JSA Regs, reg 105(11); IS (Gen) Regs, reg 42(4A)

- 28677 This rule applies when the
1. claimant lives in or is temporarily absent from a care home, Abbeyfield Home or independent hospital **and**
 2. payment is made to the care home, Abbeyfield Home or independent hospital.

The DM should calculate the amount of income and treat it as if it was actual income¹.

1 JSA Regs, reg 105(14); IS (Gen) Regs, reg 42(7)

Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance

- 28678 A payment is disregarded¹ if it is
1. made for
 - 1.1 after-care under specified legislation² **or**
 - 1.2 accommodation or welfare services referred to in specified legislation³**and**
 2. treated as possessed under the notional income rule at DMG 28676⁴.

1 IS (Gen) Regs, Sch 9, para 66; JSA Regs, Sch 7, para 64; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25; 3 NA Act 48, Part III; SW (Scot) Act 68; 4 IS (Gen) Regs, reg 42(4A)

- 28679 Payments that satisfy DMG 28678 include payments or reimbursements by a LA for
1. persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**
 2. expectant and nursing mothers¹.

1 NHS and Community Care Act 1990, s 42; NA Act 1948, s 21(4)

Income paid to a member of the family for a third party

- 28680 **[See DMG Memo IS/JSA 64]** Take into account in full any income paid to a member of the family for a third party who is not a member of the family if
1. the income is kept by **or**
 2. is not paid over to the third party by
- the person who received it. Ignore any income that is paid over to the third party¹.

Note: CHB is the personal income of the CHB claimant. Even if the child for whom the CHB is paid is not part of the claimant's family for IS or JSA it should be taken into account as the claimant's actual income.

1 JSA Regs, reg 105(10)(b); IS (Gen) Regs, reg 42(4)(b)

28681 **[See DMG Memo IS/JSA 64]** Fully disregard any payment from

1. the Macfarlane Trusts
2. the Eileen Trust
3. MFET Limited
4. the Fund
5. the Independent Living Fund (2006) but see DMG 28351
6. the Skipton Fund
7. the Caxton Foundation

regardless of who keeps it or how it is used.

28682 **[See DMG Memo IS/JSA 64]** The DM should decide using, available evidence

1. whether **and**
2. how much

income has been kept by a member of the family.

28683 **[See DMG Memo IS/JSA 64]** Treat income as having been kept when

1. there is no intention of
 - 1.1 paying it over to **or**
 - 1.2 using it forthe third party **or**
2. if after having the income for a reasonable period of time the family member has
 - 2.1 not started paying it over **or**
 - 2.2 not started using it for the third party **or**
 - 2.3 has no plans for paying it over or using it for the third party.

28684 The DM should consider

1. the type of income **and**
2. how often the income is paid **and**
3. why the income is paid

when deciding if a reasonable period of time has passed.

Example 1

Rodney is a JSA(IB) claimant.

Rodney receives income for his cousin Roland who is a long-term patient in a local hospital.

The income is paid weekly and Rodney has been receiving it for four weeks.