

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

## Decision Makers Guide

### Volume 4 Amendment 50 – October 2016

1. This letter provides details on Amendment 50; 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/lq/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 50 affects chapter 23; The changes
  - Correct definitions and expand on further modifications for JSA(IB).
4. The last two amendment packages amending Volume 4 were  
  
Amendment 49 [June 2016]  
  
Amendment 48 [February 2016]
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).

**Remove****Statutory Instruments**

SS (LP & Misc Amdts) Regs – WP (Emp O) Des  
O 14 (2 pages)

**Chapter 23**

Conts 23424 – Conts 23553 (1 page)

23220 – 23231 (2 pages)

23236 - 23240 (1 page)

23490 – 23494 (1 page)

**Insert****Statutory Instruments**

SS (LP & Misc Amdts) Regs – WP (Emp O) Des  
O 14 (2 pages)

**Chapter 23**

Conts 23424 – Conts 23553 (1 page)

23220 – 23231 (2 pages)

23236 - 23240 (1 page)

23490 – 23494 (1 page)

## Statutory Instruments

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The Social Security Lone Parents and Miscellaneous Amendments Regulations 2008 SI 2008 No. 3051	SS (LP & Misc Amdts) Regs
The Social Security (Loss of Benefit) Regulations 2001 No. 4022	SS (Loss of Benefit) Regs
The Social Security (Mariners' Benefits) Regulations 1975 No. 529	SS (Mariners' Ben) Regs
The Social Security (Maternity Allowance) (Work Abroad) Regulations 1987 No. 417	SS (MA) (Work Abroad) Regs
The Social Security (Maternity Allowance) Regulations 1987 No. 416	SS (MA) Regs
The Social Security (Maternity Allowance) (Earnings) Regulations 2000 No. 688	SS (MA) (Earnings) Regs
The Social Security (Maximum Additional Pension) Regulations 2010 No. 426	SS (MAP) Regs
The Social Security (Medical Evidence) Regulations 1976 No. 615	SS (Med Ev) Regs
The Social Security (Miscellaneous Amendments) Regulations 1997 No. 454	SS (Misc Amdts) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2001 No. 652	SS (Misc Amdt) (No. 2) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 No. 641	SS (Misc Amdt) (No. 2) Regs 2010
The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 No. 2425	SS (Misc Amdt) (No. 3) Regs 2011
The Social Security (National Insurance Number Information: Exemption) Regulations 1997 No. 2676	SS (NINO: Exemption) Regs
The Social Security (Overlapping Benefits) Regulations 1979 No. 597	SS (OB) Regs
The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 No. 664	SS (POR) Regs
The Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 No. 30	SS (PFA) Misc Amdt Regs 96
The Social Security Benefit (Persons Residing Together) Regulations 1977 No. 956	SS (PRT) Regs

## Statutory Instruments

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The Social Security (Reciprocal Agreements) Order 1995 No. 767	SS (RA) Order 95
The Social Security (Reciprocal Agreements) Order 1996 No. 1928	SS RA Order
The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005 No. 469	SS (RP etc) (Trans Provs) Regs
The Social Security (Severe Disablement Allowance) Regulations 1984 No. 1303	SS (SDA) Regs
The Social Security (Savings for Existing Beneficiaries) Regulations 1984 No. 1696	SS (SEB) Regs
The Social Security (State Pension and National Insurance Credits) Regulations 2009 No. 2206	SS (SP & NIC) Regs
The Social Security (Treatment of Postgraduate Master's Degree Loans and Special Support Loans) (Amendment) Regulations 2016 No. 743	SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016.
The Social Security (Unemployment, Sickness, and Invalidity Benefit) Regulations 1983 No. 1598	SS (U, S, & IVB) Regs
The Social Security (Widow's and Widower's Invalidity Pensions) Regulations 1978 No. 529	SS (W & W IVP) Regs
The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 No. 642	SS (WB & RP) Regs
The Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979 No. 643	SS (WB, RP & OB) (Trans) Regs
The Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000 No. 1926	SS (Wfl for lone parents) Regs
The Social Security (Work-focused Interviews) Regulations 2000 No. 897	SS (Wfl) Regs 00
The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003 No. 455	SS (WTC & CTC) (Cons Amdt) Regs
The Statutory Sick Pay Regulations 1982 No. 894	SSP (Gen) Regs

## Statutory Instruments

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Education (Student Support) Regulations (Northern Ireland) Order SR 1999/192	Support (NI) Order
The Education (Student Support) Regulations	Support Regs
The Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 No. 938	TC Comm No. 3 Order
The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 No. 2885	TP (FtT) (SEC) Rules
The Tribunal Procedure (Upper Tribunal) Rules 2008 No. 2698	TP (UT) Rules
The Workmen's Compensation (Supplementation) Scheme 1982 No. 1489	WC(S) Scheme
Work Programme (Employment Officer) Designation Order 2014	WP (Emp O) Des O 14



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- 4.1 lives in, to care for the claimant or partner **and**
- 4.2 is engaged by a
  - 4.2.a charitable **or**
  - 4.2.b voluntary organization
 which makes a charge to the claimant or partner for the person's services. A voluntary organization is a non-profit making organization that is not a public authority or LA<sup>2</sup>
- 5. any person who is not a close relative (see DMG 23222) of the claimant or partner who
  - 5.1 is liable to make payments on a commercial basis to the claimant or partner for occupation of the dwelling **or**
  - 5.2 the claimant or partner is liable to make payments to on a commercial basis for the occupation of the dwelling **or**
  - 5.3 is separately liable to make payments to the landlord for occupation of the dwelling
- 6. any person who is not a close relative (see DMG 23222) and who is a member of the household of a person to whom 5. applies
- 7. a person or their partner who is not a close relative, except where 8. applies, who jointly occupies the claimant's dwelling and who is
  - 7.1 a co-owner of the dwelling with the claimant or partner **or**
  - 7.2 jointly liable with the claimant or partner to make payments to the same landlord for the occupation of the dwelling
- 8. a close relative who satisfies 7. and the
  - 8.1 claimant or partners co-ownership or joint liability arose
    - 8.1.a before 11.4.88 **or**
    - 8.1.b if later, on or before the date on which the claimant **or** partner first occupied the dwelling **or**
  - 8.2 the saving provision applies<sup>3</sup> (see Appendix 2 to this Chapter)
- 9. a person in receipt of
  - 9.1 "AA" **or**
  - 9.2 the middle or highest rate of the care component of DLA<sup>4</sup> **or**
  - 9.3 the daily living component of PIP at the standard or enhanced rate **or**
  - 9.4 AFIP
- 10. a person, including a close relative who

**10.1** joins the claimant's household for the first time to care for the claimant or partner **and**

**10.2** immediately before joining either the claimant or partner satisfied the conditions for SDP<sup>5</sup>

**11.** a person who is blind or treated as blind (see DMG 23072)<sup>6</sup>.

**Note 1:** When considering **7.1** it does not matter if there are other co-owners.

**Note 2:** For the purpose of **9.** receipt of the allowance will stop where the person has been a hospital inpatient for a prescribed period, at this point the person will be considered a non dependant.

**Note 3:** The provision in **10.** only applies for the first twelve weeks from the date that person first joined the claimant's household<sup>7</sup>.

*1 JSA Regs, reg 2 & Sch 1, para 15(1)(b), 15(2)(c) & 20I(1)(c); IS (Gen) Regs, reg 3; Sch 2, para 13(2)(a)(ii) & 13(2)(b)(iii); 2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 3 JSA Regs, Sch 1, para 15(8); IS (Gen) Amdt No 6 Regs; 4 JSA Regs, Sch 1, para 15(4)(a) and 20I(3)(a); IS (Gen) Regs, Sch 2, para 13(3)(a); 5 JSA Regs, Sch 1, para 15(4)(b) and 20I(3)(b); IS (Gen) Regs, Sch 2, para 13(3)(c); 6 JSA Regs, Sch 1, para 15(4)(c) and 20I(3)(c); IS (Gen) Regs, Sch 2, para 13(3)(d); 7 JSA Regs, Sch 1, para 15(6) & 20I(5); IS (Gen) Regs, Sch 2, para 13(4)*

## Commercial basis

23221 For a liability to be on a commercial basis<sup>1</sup> (see DMG 23220 **5.**)

1. there should be a legal liability to make the payment **and**
2. the payment should be broadly in line with what a lodger might pay for similar accommodation and facilities.

Payments for gas, electricity, laundry, food and the provision of care are not payments for facilities. Payments for such items do not confer liability and should be ignored in any comparison.

*1 R(IS) 11/98*

## Meaning of close relative

23222 A close relative is<sup>1</sup>

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, **or**
2. if any of the preceding persons is one member of a couple, the other member of that couple **and**
3. similar relationships arising through civil partnerships<sup>2</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 CP Act 04, s 246*

23223 “Brother” and “sister” includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and the brother or sister of any other child of those parents. The adopted child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends on the **legal relationship** not the blood relationship<sup>1</sup>.

*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 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 home<sup>1</sup>.

*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 landlord<sup>1</sup> (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 household<sup>1</sup>.

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

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 or UC's carer element**

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 partner<sup>1</sup>(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) & 20I(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 SDP<sup>1</sup>. 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 provisions<sup>1</sup> they continue to be treated as being in receipt of CA for the purposes of entitlement to SDP<sup>2</sup>.

*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)*

2. any increases in other housing costs<sup>1</sup>.

*1 JSA Regs, Sch 2, para 4(11); IS (Gen) Regs, Sch 3, para 4(11)*

### Example

Gillian is in receipt of IS. She pays ground rent of £4 a week on her maisonette which she leases without mortgage. The ground rent is met by IS. Gillian sells up and takes out a mortgage of £10,000 to buy a sheltered flat. The interest on the mortgage is £16 a week. Gillian has to pay service charges of £12 a week related to the adequacy of her new home. The service charge later increases by £3 to £15 a week.

The allowable housing costs are calculated as

1.	ground rent before purchase of new home	£4
2.	mortgage interest before purchase of new home	nil
3.	total housing costs on new home (£16 + £12)	£28
4.	restrict housing costs to	£4
5.	service charges increase by £3. Housing costs can also be increased by £3 to	£7

### FURTHER MODIFICATIONS FOR JSA(IB)

#### Limitation applicable to qualifying loans

23490 Where the relevant benefit claimed is JSA, then any help with

1. qualifying loans taken out to buy the home **or**
2. qualifying loans for repairs and improvements **or**
3. a combination of the two

is limited to a total of 104 weeks<sup>1</sup>.

*1 The SS (Housing Costs Special Arrangements) (Amendment & Modification) Regulations 2008 (S.I. 2008 No. 3195); Reg 11, JSA Regs, Sch 2 para 4A(1)*

23491 The 104 week limitation does not apply were

1. the claimant or his partner or, if the claimant is a member of a joint claim couple, the other member of the couple was previously entitled to IS or ESA **and**
2. there were 12 weeks or less between that previous entitlement and the JSA award<sup>1</sup>.

*1 JSA Regs, Sch 2 para 4A(6)*

23492 The start of the period of 104 weeks commences from the earliest date those housing costs were first met in a JSA award on or after 5.1.09, and it is calculated disregarding

1. any weeks where the capital limit for loans was based on £100,000<sup>1</sup>
2. housing costs (as described in paragraph 24) met as the result of a previous JSA award where the claimant does not have a linked period that begins on the first day of the last period in respect of which the claimant was not in receipt of a jobseeker's allowance and which ends immediately before the claimants most recent JSA claim is made or is treated as made<sup>2</sup>.

*1 JSA Regs, Sch 2 para 4A(3); 2 para 4A(5)*

23493 - 23494