

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 4 Amendment 51 – February 2017

1. This letter provides details on Amendment 51; 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 51 affects chapters 20, 23; The changes
 - DMG Chapter 20 amendments to clarify “staying put” arrangements and new requirements for 16 to 18 years olds once school leaving age is reached.
 - DMG Chapter 23 adds new guidance on deductions from JSA(C) for pension payments.
4. The last two amendment packages amending Volume 4 were
Amendment 50 [October 2016]
Amendment 49 [June 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

Chapter 20

Conts 20568 – 20922 (1 page)
20649 – 20671 (1 page)
20750 – 20900 (2 pages)

Insert

Chapter 20

Conts 20568 – 20922 (1 page)
20649 – 20671 (1 page)
20750 – 20900 (2 pages)

Chapter 23

Conts 23801 – Appendix 11 (1 page)
23843 – 23885 (2 pages)

Chapter 23

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1. discretionary leave to remain where a person has claimed asylum. This means that the person is **not** subject to immigration control and so they **do** have recourse to public funds and will not therefore fall into the category in DMG 20165 3.. They should be treated as any UK national would in the same circumstances **or**
2. limited leave to remain as a student where the leave allows the person to attend a British educational establishment. This person would **not** have recourse to public funds (this will be noted on their UK visa) and so will fall into the category in DMG 20165 3.. However entitlement to IS is only for 42 days and only if the persons funds from abroad have temporarily stopped and are likely to resume shortly¹.

1 IS (Gen) Regs, reg 13(2)(bc)

20649 - 20663

Person is an orphan

20664 Young people can get IS if they have

1. no living parent **and**
2. no-one acting in place of the parents¹.

1 reg 13(2)(c)

20665 The condition in DMG 20664 is not satisfied if the young person does not know

1. if the parents or person acting in their place are alive or dead **or**
2. where the parents or person acting in their place are living.

If the young person has had no contact with the parents or person acting in their place consider whether they are of necessity living away from them.

20666 Young people who satisfy DMG 20664 are eligible for IS in their own right for

1. themselves **and**
2. any dependants (who will often be younger brothers and sisters).

20667 If an orphaned young person

1. goes to live with a relative or other person **and**
2. that person takes over the role of parent

the young person will be regarded as dependent on that person and not entitled to IS. This is the case even where the young person has younger brothers and sisters.

Acting in place of parents

- 20668 To determine if another person is acting in the place of a young person's parents, consider factors such as whether the person
1. provides supervision and financial, moral, social or other care and guidance **and**
 2. provides shelter, food and clothing **and**
 3. is responsible for any necessary disciplinary action
- as would be appropriate for someone the same age as the young person.

Someone claiming CHB or another benefit for the young person

- 20669 If someone other than the parent is claiming CHB or another benefit for the young person, that is a strong indication that the person is acting in place of the young person's parents¹.

1 R(IS) 9/94

Foster parents

- 20670 An LA may place a young person who is the subject of a care order with foster parents. Those foster parents will be acting in place of parents¹. The conditions in DMG 20165 **4. to 7.** will not be satisfied where a young person
1. in relevant education claims IS **and**
 2. is living with foster parents.

1 IS (Gen) Regs, reg 13(3)(a)(i)

- 20671 When the care order expires, usually on the young person's 18th birthday, a young person may choose to continue to live with their former foster parents under what is known as a "staying put arrangement"¹. In these cases the former foster parents are not acting in place of parents and the child is no longer treated as in care. The DM should consider if any of the conditions in DMG 20165 are met.

1 Children and Families Act 2014, s. 98

Example

Robin is 18 years old. Robin was the subject of a care order and the LA placed him with foster parents. The care order expired on his 18th birthday. Robin is estranged from his natural parents, he has not seen them for seven years. He continues to live with his former foster parents and is expected to make a contribution towards his upkeep. Robin is studying at the local college for his A levels. He claims IS. The DM determines that Robin is in relevant education. The DM then considers whether any of the conditions in DMG 20635 are satisfied. The DM decides that Robin is entitled to IS during the period that he is in relevant education because

School leavers

Introduction

20750 A person who has completed F/T non-advanced education may be treated as still in relevant education for both JSA and IS until the next terminal date. The terminal date is defined in DMG 20763.

20751

Person under 16

20752 A person who is under the age of 16 at the

1. date F/T non-advanced education ends **and**
2. terminal date next following the date in 1.

will not be entitled to JSA or IS until the 16th birthday¹ and then only if the conditions in DMG Chapter 30 or DMG 20001 et seq are satisfied.

1 CHB (Gen) Regs, reg 7(2) Case 1

Person between 16 and 18

20753 While a person can leave school at 16, they must do one of the following until they are 18

1. stay in full-time education, for example at a college
2. start an apprenticeship or traineeship
3. spend 20 hours a week or more working or volunteering, while in part-time education or training.

20754 - 20762

Terminal dates

England and Wales

20763 A person continues to be treated as a qualifying young person and entitled to CHB where they have left relevant education or approved training up to and including

1. the week including the terminal date **or**
2. if they attain the age of 20 on or before that date, the week including the last Monday before they were 20¹.

Note: In this context week is a CHB week; i.e. Monday to Sunday.

1 CHB (Gen) Regs, reg 7(2), Case 1.1

20764 For the purposes of DMG 20763 above the terminal dates are

1. the last day in February
2. the last day in May
3. the last day in August
4. the last day in November

whichever occurs first after they have ceased relevant education or approved training¹.

1 CHB (Gen) Regs, reg 7(2), Case 1.2

Example

Julie is 18 and is estranged from her parents and has been receiving IS while she was in relevant education. She leaves school on 6.7.11 so the terminal date in her case is 31.8.11. The terminal date falls in the CHB week 29.8.11 to 4.9.11 so Julie is a qualifying young person until 4.9.11. Her entitlement to IS will end when the IS week in which she ceased to be a qualifying young person and therefore ceased to be in that specific prescribed category of person (subject to her not satisfying any of the other prescribed categories) ends. Her BWE day is Wednesday so the benefit week in which Julie ceased to be a qualifying young person is 1.9.11 to 7.9.11. Her IS entitlement would therefore end on 7.9.11.

Scotland

20765 In Scotland where a person

1. undertakes the Higher Certificate or Advanced Higher Certificate immediately before ceasing relevant education **and**
2. ceases relevant education earlier than they would have done had they taken the comparable examination in England and Wales

the terminal date is calculated by reference to the date that applies had they taken the examination in England and Wales¹.

1 CHB (Gen) Regs, reg 7(2), Case 1.3

Note: In England, Wales and Scotland if a person leaves school and reaches 20 before the next terminal date see DMG 20790.

20766

20767 Leaving school is not necessarily the same as ceasing relevant education. Relevant education can cease when the hours of attendance reduce to twelve hours a week or less (see DMG 20591). In this case the date of leaving school is irrelevant.

20768 See DMG 20564 if a school leaver intends to resume relevant education at the same or another educational establishment.

20769 - 20777

External examinations

20778 Where a person has ceased to receive relevant education **and**

1. was entered for external examinations before relevant education ceased **and**
2. was still entered for those examinations when relevant education ceased **and**
3. the examinations are in connection with the education received

treat them as a qualifying young person up to the first terminal date, as described in DMG 20764 and 20765 above, after the last examination¹.

1 CHB (Gen) Regs, reg 7(2), Case 2

Period up to the terminal date

20779 In the period up to the terminal date young people are not entitled to JSA or IS because they are treated as

1. a child or qualifying young person for CHB purposes¹ **and**
2. receiving relevant education²

unless they come within the exceptions in DMG 20631.

1 SS CB Act 92, s 142; 2 JSA Regs, reg 54(2); IS (Gen) Regs, reg 12

Person starts work or training

20780 CHB ceases when a young person starts work or WBTfYP but the terminal date still applies. If work or training ends before the terminal date is reached CHB can be reinstated on application.

20781 - 20789

Age 20

20790 A person who reaches 20

1. whilst still receiving F/T non-advanced education **or**
2. before reaching the terminal date

is no longer treated as receiving relevant education but may be a student (see DMG Chapter 30).

20791 - 20900

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23843 The scheme entitles employees¹ to annual payments as compensation for their employment ending as in DMG 23842. These are calculated on the same basis as their annual retirement pension under the superannuation legislation². The compensation payment is a payment from a public service pension scheme.

1 Local Government (Compensation for Premature Retirement) Regs, reg 6;

2 Local Government (Superannuation) Regs

Armed Forces redundancy arrangements

23844 Pensions payable to service personnel who retire from the Armed Forces are paid under a public service pension scheme.

23845 Pensions paid to service personnel who have been made redundant

1. are calculated on the length of qualifying service completed, plus an additional number of years **and**
2. fall within the definition of public service pension schemes¹.

1 Queen's Regulations

Personal pension scheme

23846 Personal pension scheme¹ means a pension scheme that

1. is not an occupational pension scheme **and**
2. is established by a person within any of the paragraphs of specified legislation².

Note: This includes self-invested personal pensions (see DMG 23860)

1 PS Act 93, s 1; 2 Finance Act 04, s 154(1)

23847 - 23849

23850 If the member of the scheme used the personal pension to contract-out of SERPS, the part of the pension that

1. comes from DWP rebates **and**
2. is used to replace the state earnings related pension scheme

can only be drawn from age 60.

23851 - 23852

23853 The DM should refer the case to DMA, Leeds, if the

1. DM is unable to decide whether a pension is paid under a personal pension scheme **and**
2. pension payment does not satisfy any other part of DMG 23812.

Periodical payments and lump sums

23854 Periodical payments are those that are paid at regular intervals.

23855 A lump sum payment is not a periodical payment. This applies even where the claimant has chosen to receive a lump sum instead of a periodical payment¹. But where

1. a person is entitled to a lump sum payment **and**
2. the rules of the scheme allow the lump sum to be paid in instalments **and**
3. the person chooses to receive it in this way

the instalments are periodical payments.

1 R(U) 5/85

23856 – 23859

Self- invested personal pensions

23860 Self-invested personal pensions are subject to the normal rules for registered pension schemes¹. With self-invested personal pensions people able to purchase an annuity or they can receive an income by drawdown or an unsecured pension. Payments from self-invested personal pensions are payments under a personal pension scheme²

1 Finance Act 2004, s 154(1); 2 SS CB Act 92, s 30DD(6) & PS Act 93, s 1

23861 - 23865

In connection with the coming to an end of the employment

23866 A pension must be paid in connection with the end of employment of the person who it is paid for, to fall within DMG 23812 **2.** Occupational or public service pensions that are paid where the employment has not ended do not fall within DMG 23812 **2.** For example, war pensions paid

1. because of disablement **and**
2. regardless of whether the employment is continuing.

23867 In this context “employment” includes any trade, business, profession, office or vocation¹. Employment in the Armed Services falls within this definition.

1 JSA Regs, reg 3(1)

23868 Retired officers who are entitled to a war pension receive it as a disablement addition to their service pension. This disablement addition is

1. awarded by DWP **and**

2. paid by the Paymaster General in the same cheque as the person's service pension.

23869 If the claimant is a retired officer with a service pension, the DM should

1. find out the amount of any disablement addition **and**
2. deduct it from the total payment received.

Note: Other ranks have their war pension paid direct by DWP so there is no difficulty in separating their war pension from their service pension.

23870 Gallantry awards are sometimes paid to former members of the Forces in addition to their service pensions. Payment is

1. made from the date of the award **and**
2. a reward for conduct rather than a period of service.

These awards are not paid in connection with the coming to an end of an employment and are **not** pension payments.

23871 Pension payments may be payable to the claimant from the former employer of a deceased partner or other relative. Such payments should be disregarded (see DMG 23889).

23872 The amount of a service pension may be increased if the claimant has been invalided out of the Forces. The full amount should be taken into account.

23873 Police officers who retire because of permanent disability may be entitled to an ill health award¹ in addition to a pension under a public service pension scheme. If they are permanently disabled through an injury received while carrying out their duties, they are also entitled to an injury pension. It is a condition for the receipt of both payments that the officer ceases to be a member of a police force. The payments are therefore made in connection with the coming to an end of a police officer's employment and are payments as in DMG 23812 **2.2**.

1 Police Pension Regs

23874 - 23885

