

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 8

Amendment 23 – February 2017

1. This letter provides details on Amendment 23; 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:

<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 23 affects Chapters 41 and 44. The changes
 - amends references to Young Peoples Learning Agency for England to Secretary of State and new requirements for 16 to 18 years olds once school leaving age is reached in DMG Chapter 41.
 - amendments enhance the guidance on awarding the EDP and adds new guidance on deductions from ESA(C) for pension payments in DMG Chapter 44.
4. The last two amendment packages amending Volume 8 were
 - Amendment 22 [October 2016]
 - Amendment 21 [June 2016]
5. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
6. 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).

Remove**Chapter 41**

Conts 41568 – Conts Appendix 5 (2 pages)

41011 – 41011 (1 page)

41479 – 41484 (1 page)

41556 – 41621 (5 pages)

41703 – Flowchart for 41701 (1 page)

Chapter 44

Conts 44551 – Conts Appendix 9 (2 pages)

44101 – 44110 (1 page)

44661 – 44710 (4 pages)

Insert**Chapter 41**

Conts 41568 – Conts Appendix 5 (2 pages)

41011 – 41011 (1 page)

41479 – 41484 (1 page)

41556 – 41621 (5 pages)

41703 – Flowchart (1 page)

Chapter 44

Conts 44551 – Conts Appendix 9 (2 pages)

44101 – 44110 (1 page)

44661 – 44710 (4 pages)

Meaning of course	41568
Modular courses	41570
Meaning of guided learning hours	41576
Meaning of terms used in Scotland	
College of further education	41579
Further education	41580
Higher education	41581
Meaning of sandwich course	41583
Work-related activity and education	41584
Meaning of full-time	
General	41591
Evidence from educational establishment	41598
Other evidence	41601
Number of hours involved	41611
Funded courses	41614
Higher education	41618
Non funded courses	41621
Further education and other courses	41622
Meaning of educational establishment	41624
Meaning of last day of the course	41631
Meaning of abandons	41633
Meaning of dismissed	41646
Temporary absences	41647
Re-enrolment	41650
Claimant treated as receiving education	41661
Meaning of a qualifying young person	41662
Education and training condition	41663
16 year olds (15 year olds in Scotland)	41665
Extension periods for 16 and 17 year olds	41666
Interruptions	41669
Reasonable cause	41672
School holidays	41673

Education received abroad.....	41676
Young person held in custody	41677
Cases of doubt	41678
Cases of doubt about recognized establishment or education.....	41679
Hours of attendance	41686
Evening courses.....	41687
Hours of study in education elsewhere.....	41688
School leavers	
Introduction.....	41701
School leaving dates	41702
Person between 16 and 18	41703
Person under 16.....	41704
Terminal dates	
England and Wales	41706
Scotland	41708
Leaving school	41709
When entitlement to ESA(IR) begins	41711
External examinations	41716
Period up to the terminal date	41717
Person starts work or training	41718
Age 20	41719
Claimant not treated as receiving education.....	41731
 Duration of ESA(Cont)	
Introduction	41800
Further awards of ESA(Cont)	41801
 Period of entitlement	
Contribution conditions satisfied.....	41810
Relevant maximum number of days	41811
Youth conditions satisfied.....	41815

Which days are not included

Claimant has, or is treated as having, LCWRA..... 41820

Waiting days..... 41822

Days of disqualification..... 41823

Which days are included 41830

Claimant also entitled to ESA(IR) 41840

Credits 41841

Repeat claim for ESA(Cont)

Introduction..... 41845

Claim based on later tax year..... 41847

ESA in youth..... 41850

Change in claimant’s health condition – ESA(Cont) awards 41855

Health condition deteriorates..... 41856

Application made during current award..... 41860

Application made after award has terminated..... 41862

Deterioration identified on routine WCA..... 41865

Date award begins..... 41870

Health condition improves 41875

Appeal against time limit decision 41900

Savings provisions - disabled workers and people living in
a care home, Abbeyfield Home or an independent hospital **Appendix 1**

Lower earnings limit..... **Appendix 2**

Recognized customary or other holiday **Appendix 3**

Common courses of study..... **Appendix 4**

National Minimum Wage rates **Appendix 5**

Conditions of entitlement

General

- 41011 Claimants are entitled to ESA if they
1. satisfy the basic conditions¹ (see DMG 41012) **and**
 2. satisfy the additional conditions for
 - 2.1 ESA(Cont)² (see DMG 41020 et seq) **or**
 - 2.2 ESA(IR)³ (see DMG 41091) **and**
 3. make a claim⁴ (see DMG Chapter 02) **and**
 4. satisfy the NINO provisions⁵ (see DMG Chapter 02).

Note 1: When people claim ESA(IR) for a partner, their partner will also have to satisfy 4..

Note 2: See DMG 41800 et seq for guidance on where entitlement to ESA(Cont) is limited to the maximum number of days.

*1 WR Act 07, s 1(2) & (3); 2 s 1(2)(a) & Sch 1, Part 1; 3 s 1(2)(b) & Sch 1, Part 2; 4 SSA Act 92, s 1(1) & (4)
5 s 1(1A)*

41479 “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 relationship¹.

1 R(SB) 22/87

Engaged on a training scheme

41480 DMs should treat claimants’ partners as not being in remunerative work where they are on a training scheme for which a training allowance (see DMG 41481 - 41482) is being paid¹.

1 ESA Regs, reg 43(1)(c)

Meaning of training allowance

41481 A training allowance is¹ an allowance payable

1. out of public funds by
 - 1.1 a government department **or**
 - 1.2 on behalf of
 - 1.2.a the Secretary of State **or**
 - 1.2.b Scottish Ministers **or**
 - 1.2.c Skills Development Scotland **or**
 - 1.2.d Scottish Enterprise **or**
 - 1.2.e Highlands and Islands Enterprise **or**
 - 1.2.f the Chief Executive of Skills Funding **or**
 - 1.2.g the Welsh Ministers **and**
2. to people for
 - 2.1 their maintenance **or**
 - 2.2 a member of their family **and**
3. for the period, or part of the period, that they are taking part in a course of training or instruction
 - 3.1 provided by, or under arrangements made with, that department **or**
 - 3.2 approved by that department in relation to the person **or**
 - 3.3 so provided or approved by or on behalf of the
 - 3.3.a the Secretary of State **or**

- 3.3.b** Scottish Ministers **or**
- 3.3.c** Skills Development Scotland **or**
- 3.3.d** Scottish Enterprise **or**
- 3.3.e** Highlands and Islands Enterprise **or**
- 3.3.f** the Chief Executive of Skills Funding **or**
- 3.3.g** the Welsh Ministers.

Examples of schemes which pay training allowances are Training for Work and Employment Rehabilitation.

Note: An allowance paid directly or indirectly by the European Social Fund is paid out of public funds². DMs will have to consider whether **2.** and **3.** are also satisfied.

1 ESA Regs, reg 2(1); 2 R(IS) 10/98

- 41482 A training allowance does not include
1. an allowance paid by a government department to, or for a person who is
 - 1.1 following a course of FTE (unless that course is arranged under prescribed legislation¹) **or**
 - 1.2 training to be a teacher² **or**
 2. an allowance paid by a LA or a voluntary organization³ **or**
 3. an allowance paid directly or indirectly from the public funds of a foreign country⁴.

*1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2; 2 ESA Regs, reg 2(1);
3 R(P) 13/56; 4 R(P) 5/56*

People receiving assistance under the self-employment route

- 41483 Claimants' partners are treated as not being in remunerative work where they are receiving assistance under the self-employment route¹.

1 ESA Regs, reg 43(1)(d)

Meaning of self-employment route

- 41484 Self-employment route means¹ assistance in pursuing S/E earner's employment whilst participating in

1. an EZ programme **or**
2. a programme provided or arrangements made under specified legislation².

1 ESA Regs, reg 2(1); 2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2

Definitions

Meaning of education

41556 For the purposes of ESA(IR) education is a course of study which is being undertaken at an educational establishment¹.

1 ESA Regs, reg 14(1)

41557 A person is regarded as undertaking a course of study¹, and therefore in education, throughout the period beginning with the day the person starts the course and ending on

1. the last day of the course (see DMG 41631) **or**
2. such earlier date as the person
 - 2.1 abandons the course (see DMG 41633) **or**
 - 2.2 is dismissed from the course (see DMG 41646).

1 ESA Regs, reg 17(1)(b)

41558 Also, a person undertaking a part of a modular course that would be a course of study for the purposes of DMG 41556, is regarded as undertaking a course of study¹, and therefore in education, for the period beginning with the day that part of the course starts and ending on

1. the last day he is registered as attending or undertaking that part as a F/T course of study **or**
2. such earlier date as the student
 - 2.1 abandons the course **or**
 - 2.2 is dismissed from it.

1 ESA Regs, reg 17(1)(a)

41559 The period in DMG 41558 includes any period¹

1. that a person attends or undertakes the course to retake exams or a module where that person has failed
 - 1.1 examinations **or**
 - 1.2 to successfully complete a module relating to a periodwhen attending or undertaking a part of the course as a course of study
2. of vacation falling within the period in 1. or immediately following it except where the vacation immediately follows the last day of the final module of the course.

1 ESA Regs, reg 17(2)

41560 Where DMG 41559 applies, a modular course means a course of study consisting of two or more modules and a person must complete a specified number of modules before they are considered to have completed the course¹.

Note: See DMG 41570 for further guidance on modular courses.

1 ESA Regs, reg 17(3)

41561 - 41565

Meaning of course of study

England and Wales

41566 In England and Wales a course of study¹ is

1. a F/T course not wholly or partly funded by the
 - 1.1 Secretary of State in England **or**
 - 1.2 Chief Executive of Skills Funding **or**
 - 1.3 Welsh Ministers² **or**
2. a course of study wholly or partly funded by the
 - 2.1 Secretary of State in England **or**
 - 2.2 Chief Executive of Skills Funding **or**
 - 2.3 Welsh Ministers

if it involves the person in more than 16 guided learning hours per week, as stated in the person's signed learning agreement in England or, in Wales, a document signed on behalf of the college³ **or**

3. a sandwich course⁴ (see DMG 41583).

Note: If a student attends more than one course the number of guided learning hours should be aggregated.

1 ESA Regs, reg 14(2); 2 reg 14(2)(a); 3 reg 14(2)(c); 4 reg 14(2)(e)

Scotland

41567 In Scotland a course of study¹ is

1. a F/T course not wholly or partly funded by the Scottish Ministers at a college of further education² **or**
2. a F/T course of higher education wholly or partly funded by the Scottish Ministers³ **or**

3. a course of study which is not higher education and is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**
 - 3.1 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff, as stated in a document signed on behalf of the college **or**
 - 3.2 21 hours a week in total, as stated in a document signed on behalf of the college made up of
 - 3.2.a 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**
 - 3.2.b extra hours using structured learning packages, supported by teaching staff⁴ **or**
4. a sandwich course⁵ (see DMG 41583).

Note: If a student attends more than one course the number of hours should be aggregated.

1 ESA Regs, reg 14(2); 2 reg 14(2)(a)(iii); 3 reg 14(2)b); 4 reg 14(2)(d); 5 reg 14(2)(e)

Meaning of course

- 41568 A course is an arrangement of study, tuition or training. It can be academic, practical, or a combination of both. It is usually done at, or by arrangement with, an education or training establishment.
- 41569 It will often lead to a qualification when it is completed. Some non-advanced study, tuition, or training, may not lead to a qualification. This does not mean that it is not a course.

Modular courses

- 41570 Modular courses are arranged individually to meet students' needs. Each module leads to a credit. When all the modules are successfully completed, a qualification is obtained. The course in such a case is the sequence of modules chosen.

41571 - 41575

Meaning of guided learning hours

- 41576 Some establishments may be wholly or partly funded by the
- 1.1 Secretary of State in England **or**
 - 1.2 Chief Executive of Skills Funding **or**

1.3 Welsh Ministers.

They agree with each student the number of guided learning hours that will be provided each week. That is normally the number needed to achieve the chosen qualification.

41577 Guided learning hours are hours when a member of staff is present to guide learning on a programme including lectures, tutorials and supervised study. Libraries, open learning centres and learning workshops are examples of where this may take place. Time spent by staff assessing students' achievements, for example in the assessment of competence for GNVQs, are also included. However, it does not include time spent in private study.

41578 DMs should always ask for specific written evidence of the number of guided learning hours involved. Only a document signed on behalf of the establishment concerned should be accepted. That is where the course is funded by

1. the Secretary of State in England or the Chief Executive of Skills Funding¹ - the person's learning agreement, signed on behalf of the establishment which is funded to deliver the course **or**
2. the Welsh Ministers² - a document signed on behalf of the establishment which is funded to deliver the course.

1 ESA Regs, reg 14(2)(c)(i); 2 reg 14(2)(c)(ii)

Meaning of terms used in Scotland

College of further education

41579 College of further education means¹ an educational establishment providing further education.

1 ESA Regs, reg 2(1); F & HE (Scot) Act 92, s 36(1)

Further education

41580 Further education¹ is for people in Scotland who are over school age. The programmes of learning provided

1. prepare a person for
 - 1.1 a vocational qualification **or**
 - 1.2 a Scottish Qualification Authority qualification **or**
 - 1.3 a GCE qualification of England, Wales or Northern Ireland **or**
 - 1.4 access to higher education **or**
2. are designed to help people whose first language is not English to achieve competence in it **or**

3. provide instruction for people on a programme mentioned in 1. or 2. who have a learning difficulty **or**
4. are designed mainly to prepare a person to take part in any programme mentioned in 1. to 3.

1 F & HE (Scot) Act 92, s 1(3) & 6

Higher education

41581 Higher education¹ is education provided by means of a

1. course at higher level in preparation for a higher diploma or certificate
2. first degree course
3. course for the education and training of teachers
4. course of post graduate studies, including a higher degree course
5. course at a higher level in preparation for a qualification from a professional body
6. course at a higher level not within 1. to 5.

1 ESA Regs, reg 14(3); F & HE (Scot) Act 92, Part 2

41582 A course is of a higher level¹, if its standard is higher than courses in preparation for examinations for the

1. GCE of England and Wales or Northern Ireland at advanced level
2. national certificate of the Scottish Qualifications Authority.

1 F & HE (Scot) Act 92, s 38(3)

Meaning of sandwich course

41583 A sandwich course¹ is a course, other than a course of initial teacher training, made up of alternative periods of F/T study in the educational establishment and work experience. The F/T study must be for an average of at least

1. in England and Wales - 18 weeks a year²
2. in Scotland and Northern Ireland - 19 weeks a year³.

The average is worked out by dividing the total number of weeks attendance by the number of years in the course. For this purpose the course starts with the first period of F/T study and ends with the last period of F/T study.

1 ESA Reg, reg 14(2)(e); 2 Support Regs, reg 2(9); 3 SL (Scot) Regs, reg 4(2); Education (Student Support) Regulations (Northern Ireland) 2007, reg 2(8)

Work-related activity and education

41584 The guidance on course of study at DMG 41566 – 41583 does not apply where the claimant is required to attend a course of study as part of a requirement to undertake WRA². For example, a claimant who is required to attend a training course of more than 16 hours a week funded by the Skills Funding Agency (or in Wales, the Welsh Ministers and in Scotland, the Scottish Ministers) as part of their WRA is not treated as being in full-time education. [See DMG 53031 et seq](#) for guidance on WRA.

1 WR Act 07, Sch 1 para 6(1)(g); 2 ESA Regs, reg 14(2A)

41585 – 41590

Meaning of full-time

General

41591 The DM has to consider the meaning of F/T when deciding whether a person is in education.

41592 For courses funded by the

- 1.1 Scottish Ministers, except where it is a course of higher education (see DMG 41581) **or**
- 1.2 Secretary of State in England **or**
- 1.3 Chief Executive of Skills Funding **or**
- 1.4 Welsh Ministers

the term F/T is defined by reference to the number and type of hours involved (see DMG 41614 et seq). However, for non funded courses there is no definition.

41593 In courses not funded as in DMG 41592 and in courses of higher education funded by the Scottish Ministers, the term F/T applies to the course itself and not to a person's attendance on it¹. It is the time spent by a notional reasonable student that is considered. A person who attends a F/T course on a P/T basis is still in education.

1 R(SB) 40/83; R(SB) 41/83

41594 Each case must be decided on its facts¹. The DM must look at the sequence of studies and activities that make up the course itself. The nature of the course is not affected by²

1. a person's reasons for attending it **or**
2. a person's readiness to abandon it **or**

3. what a particular person happens to be doing.

1 R(SB) 40/83; R(SB) 41/83; 2 R(SB) 2/91

41595 In modular courses a sequence of studies is established once a person has decided which modules to take. This sequence can be distinguished from the work that the person is putting in at any given time.

41596 When deciding whether a course is F/T, DMs should note that all of the studies and activities involved in it should be taken into account. This includes both supervised and unsupervised study and activity, whether done on or off college premises. In the case of courses funded by the

1.1 Secretary of State in England **or**

1.2 Chief Executive of Skills Funding **or**

1.3 Welsh Ministers **or**

1.4 Scottish Ministers

take no account of private study (see DMG 41611 et seq).

41597 DMs should not compare the total hours involved with what may be regarded as a full working week. One approach is to look at the total time the course might require of an average student. It may take up a substantial part of a week, after allowing for reasonable rest and recreation. The course might then be regarded as F/T.

Evidence from educational establishment

41598 The way educational establishments are funded may mean that they no longer classify courses as

1. F/T **or**

2. P/T.

41599 Educational establishments may still classify courses or may be able to give an opinion on their nature. DMs should accept evidence from the educational establishment as conclusive unless there is strong relevant evidence to the contrary¹.

1 R(SB) 40/83; R(SB) 41/83

41600 If educational establishments are unable to classify courses or give an opinion on their nature, unless a course is funded as in DMG 41614 et seq, DMs will need to consider other evidence (see DMG 41601 et seq).

Other evidence

- 41601 If
1. educational establishments are unable or unwilling to say whether a course is F/T or P/T **or**
 2. a classification is provided which is considered to be implausible or unreliable
- DMs will then have to decide whether the course is F/T.

- 41602 The DM should then consider other evidence, including
1. the type of qualification aimed for
 2. the number of hours a week normally required for successful completion of the course, including
 - 2.1 supervised study
 - 2.2 unsupervised study
 - 2.3 homework
 - 2.4 other work carried out on or off the college premises
 3. the claimant's own hours of attendance and recommended hours of private study
 4. the length of time normally required for successful completion of the course (for example three years)
 5. how long the claimant will take to complete the course
 6. how the course is funded
 7. the course classification for other purposes, for example, grant or student loan awards
 8. how the same course has been classified by the college in the past.

Note: When considering 7. the DM is not bound to investigate this point where the views of other authorities are not already known.

- 41603 If the claimant is taking longer than normal to complete the course, it is an indication that the course is P/T¹.

1 R(SB) 41/83

- 41604 A course may be designed for people to attend as and when they can. With such a course the DM should consider what is actually happening. If the course is F/T it is of no consequence that the person could have attended it P/T.

- 41605 The course being taken may be new, or the nature of it may have changed. It may then be helpful to compare a similar course, that is F/T, with the claimant's

1. length of study **and**
2. eventual qualification.

41606 DMs should not give weight to the classification of the other course unless it is very similar to the claimant's course. Also, a classification given by the claimant's own college should normally be preferred to that given on similar courses by different colleges.

41607 A list of the more common courses and their qualifications is included at Appendix 4 to this Chapter. DMs should not rely on it as evidence of the nature of a particular course. It is provided for information only.

41608 - 41610

Number of hours involved

41611 The DM must have regard to the hours involved. This includes both time spent

1. receiving instruction or being supervised **and**
2. in private study (unless the course is funded by the Secretary of State in England, the Chief Executive of Skills Funding, the Welsh Ministers or the Scottish Ministers).

41612 The level of a course may affect the number of hours of attendance in supervised instruction or study. For example, a F/T advanced course may involve less attendance than a F/T non advanced course.

41613 In non advanced courses, hours of supervised instruction or study usually form a larger part of the course. F/T advanced courses may involve only a few such hours. Do not consider that in isolation. Students may also have to put in many hours of private study.

Funded courses

41614 Courses of study may be wholly or partly funded by the

1. Secretary of State in England **or**
2. Chief Executive of Skills Funding **or**
3. Welsh Ministers in Wales **or**
4. Scottish Ministers in Scotland.

41615 A course funded as in DMG 41614 **1. - 3.** is F/T if it involves more than 16 guided learning hours per week (see DMG 41576).

41616 In Scotland, the term guided learning hours is not used. Classroom or workshop based programmed learning under the direct guidance of teaching staff is used instead. A course funded by the Scottish Ministers is F/T if, amongst other things, it involves more than 16 such hours.

41617 A funded course in Scotland is also F/T if it involves more than 21 hours a week in total made up of

1. 16 or less such hours **and**
2. extra hours using structured learning packages, supported by teaching staff.

Higher education

41618 In higher education the number of hours of attendance in supervised instruction or study may be low (see DMG 41611), but that should not be considered in isolation. Such courses usually involve many hours of private study. The classification used in an award of grant or student loan can be a useful factor.

41619 The DM should be satisfied that there is evidence of

1. a learning agreement for funded courses in England as in DMG 41614 **1.** or **2.** or
2. a document for courses funded by
 - 2.1 the Welsh Ministers **or**
 - 2.2 the Scottish Ministers.

41620 The learning agreement or document which must be signed on behalf of the college should also be signed by the claimant and identify the

1. college
2. student
3. average number of guided learning hours
4. course being undertaken
5. qualification to be achieved, if appropriate.

Non funded courses

41621 When considering the question of whether a course is F/T the DM should note the relevant definitions. But for non funded courses the DM may be unable to make a decision based solely on those definitions.

2.1 the Friday before the last Monday in May - where age 16 is reached between 1 March and 30 September inclusive **or**

2.2 the end of the Christmas term - where age 16 is reached between 1 October and the last day in February of the next year inclusive.

1 Education (School Leaving Dates) Order 97; 2 Education (Scotland) Act 80

Person between 16 and 18

41703 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.

Person under 16

41704 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.

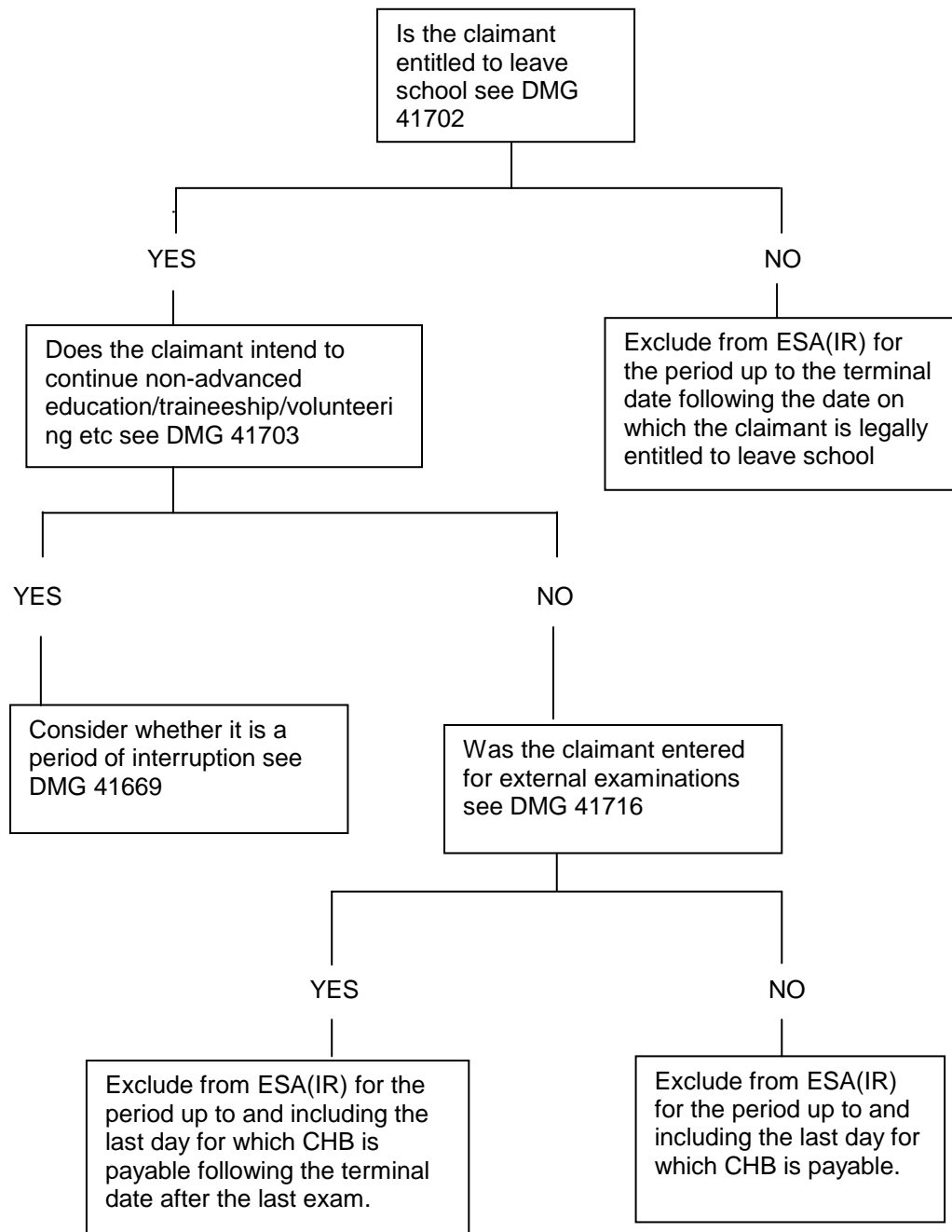
will not be entitled to ESA(IR) until the 16th birthday¹ and then only if the conditions in DMG 41012 and 41091 are satisfied.

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

41705

School leavers aged 16-18

Education received before leaving school exceeds 12 hours a week of supervised study



Work or training beneficiaries	44551
New deal options, employment zone and prescribed government schemes	44557
Not entitled on revision, supersession or appeal.....	44560
Participation in new deal and employment zone schemes.....	44561
JSA(Cont).....	44563
Change of claimant	44564
Capital exceeds £16,000/income exceeds applicable amount	44570
Lone parents and carers	44572
Treated as in receipt of and entitled to ESA(IR) on another person's claim	
Claimant previously a member of a couple or polygamous marriage	44574
Claimant becomes a member of a couple or polygamous marriage	44575
Change of claimant	44576
Change of family	44577
Previous entitlement to other income-based benefits	44578
Non-dependant deductions	
Introduction.....	44586
Definition of a non-dependant	44587
Meaning of normally resides	44588
Sharing the accommodation	44590
People who are not non-dependants.....	44596
Amount of deduction	44597
Non-dependants who have partners	44598
Calculation of income.....	44600
Non-dependant of more than one joint occupier	44601
Non-dependant deduction not appropriate.....	44606
Participation in new deal for young people.....	44607
Calculation of a non-dependant's gross weekly income	44611
Questions that cannot be decided immediately.....	44621

Entitlement to the components

ESA(IR) and ESA(Cont)

General.....	44631
The support component	44634
The work-related activity component.....	44635
Entitlement to a component before the end of the assessment phase	44636
Treated as having LCWRA	44644
IB reassessment: termination of transitional addition.....	44645
Backdating of entitlement to the components	44647
The appropriate component	44649
The date to which entitlement to a component is backdated	44650

ESA(Cont) and pension payments

Deductions from ESA(Cont) for pension payments

Introduction.....	44651
General.....	44652

Meaning of pension payments and pension protection fund payments

Pension payments.....	44661
Periodical payments and lump sums.....	44663
Personal pension scheme	44665
Self-invested personal pensions	44667
Occupational pension scheme	44674
Public service pension scheme	44675
Civil Service compensation scheme	44679
Local government premature retirement scheme	44687
In connection with the coming to an end of the employment	44689
Insurance policy providing benefits in connection with physical or mental illness or disability	44700
Pension protection fund periodic payments	44701
Armed Forces redundancy arrangements.....	44702

When to take pension payments into account

Payment of a pension.....	44711
---------------------------	-------

When the pension is uprated.....	44712
Disregarded payments.....	44716
Pension payments.....	44717
Pension protection fund periodic payments	44719
Shortfalls in pension schemes.....	44720
War pensions	44721
Guaranteed Income payments.....	44722
Permanent health insurance	44723
Payment in arrears	44731
Calculating the amount of the pension	
General.....	44739
Attachment orders, earmarking orders and pension sharing orders.....	44746
Calculating the weekly pension rate	44757
Disregard of fractions	44760
More than one pension.....	44761
ESA(Cont) and councillor's allowances	
Deductions from ESA(Cont) for councillor's allowances	
Introduction.....	44771
Definitions	
Councillor	44773
Councillor's allowances	44775
The amount of the deduction from ESA(Cont)	
The weekly limit.....	44781
The amount of the deduction	44782
The net weekly amount of a councillor's allowance	44783
Basic allowance.....	44785
Special responsibilities allowance	44786
Childcare and dependent carer's allowance	44787
Expenses.....	44791
Deductions for Income Tax and NI Contributions	44805

When to take councillor's allowances into account

Payment of a councillor's allowance.....	44811
When the councillor's allowance is updated	44812
Calculating the weekly rate.....	44813

Statutory Payments

Statutory Payments

Statutory Sick Pay	44900
Statutory Maternity Pay and ESA(Cont)	44902
Statutory Adoption Pay and ESA(Cont).....	44904
Statutory Paternity Pay and ESA(Cont).....	44906
Shared Parental Pay and ESA(Cont)	44909
ESA(IR) Applicable amounts: personal allowances	Appendix 1
The remunerative work rule for non-dependant housing cost deductions.....	Appendix 2
Housing costs - loans that are not eligible from 2.10.95 but are saved by a saving provision.....	Appendix 3
Housing costs - changes in the standard interest rate	Appendix 4
Housing costs - amount of non-dependant deductions.....	Appendix 5
Types of mortgage and loan arrangements	Appendix 6
Housing costs - unsafe structural defects	Appendix 7
Housing costs - loans for repairs and improvements - previous rules and guidance	Appendix 8
Housing costs - leasehold major works.....	Appendix 9

Enhanced disability premium

General

44101 EDP is payable if

1. the support component is included in the claimant's applicable amount¹ **or**
2. DLA at highest rate care component is payable in respect of
 - 2.1 the claimant² **or**
 - 2.2 the claimant's partner **where that** partner is aged less than the qualifying age for SPC³ **or**would be payable to the claimant or claimant's partner if they were not a hospital in-patient.
3. the daily living component of PIP at the enhanced rate is payable in respect of
 - 3.1 the claimant **or**
 - 3.2 the claimant's partner where that partner is aged less than the qualifying age for SPC **or**would be payable to the claimant or claimant's partner if they were not a hospital in-patient⁴.
4. AFIP is payable in respect of
 - 4.1 the claimant **or**
 - 4.2 the claimant's partner where that partner is aged less than the qualifying age for SPC⁵ **or**

1 ESA Regs, Sch 4, para 7(1)(a); *2* Sch 4, para 7(1)(b)(i); *3* Sch 4, para 7(1)(b)(ii);
4 Sch 4, para 7(1)(c); *5* Sch 4, para 7(1)(d)

Example

Rory's award of IB of £116.35 is converted to ESA(Cont) including a TA of £16.20 when he is placed in the WRAG. Rory is not entitled to IS, and has no other income. On appeal, the FtT decides that he should have been placed in the SG. In implementing the decision, the DM recalculates the TA and awards a TA of £9.85. Rory is also entitled to ESA(IR) of £5.30 (£71.70 + £34.80 + £15.15 EDP – £116.35). His overall ESA entitlement from the effective date of the conversion decision is £121.65.

44102 The EDP is not payable where the claimant

1. is a single person¹ **and**
2. is a patient² and has been for more than 52 weeks³ **or**

3. in the case of a couple or a polygamous marriage where each member is a patient and have been for more than 52 weeks⁴.

1 ESA Regs, Sch 4, para 7(2)(a)(i); 2 reg 69(2); 3 Sch 4, para 7(2)(a)(ii); 4 Sch 4, para 7(2)(b)

Admission to care home or independent hospital

- 44103 DLA highest rate care component may continue to be payable when a person is admitted to a care home or independent hospital. In such a case EDP will continue to be payable until the DLA higher rate care component ceases¹.

1 ESA Regs, Sch 4, para 7(1)

44104 - 44110

Meaning of pension payments and pension protection fund payments

Pension Payments

44661 Pension payments are¹ periodical payments (see DMG 44663 et seq) paid to or for a person

1. under a personal pension scheme (see DMG 44665 et seq) **or**
2. in connection with the ending of the person's employment as an earner (see DMG 44689) under
 - 2.1 an occupational pension scheme (see DMG 44674) **or**
 - 2.2 a public service pension scheme (see DMG 44675 et seq)
3. under an insurance policy² providing benefits in connection with physical or mental illness or disability (see DMG 44700).

1 WR Act 07, s 3(3); 2 ESA Regs, reg 72

44662 Payments as in DMG 44661 **2.** may be, but are not confined to, pensions that the employer has contributed to. These include

1. payments made under a scheme arranged by the employer where the money is provided exclusively by the claimant
2. payments made by the UK or other governments where provision is made for them in law, for example pensions to former Crown employees
3. pensions from employment overseas (see DMG 44742)
4. the compensation element of a retired local government officer's pension¹
5. payments under the Civil Service Compensation Scheme (see DMG 44679 et seq)
6. payments under the Civil Service Pension Scheme.

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Periodical payments and lump sums

44663 Periodical payments are those that are paid at regular intervals.

44664 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

Personal pension scheme

44665 Personal pension schemes are those

1. for earners¹, either employed or self-employed (see DMG 44666) **or**
2. under a contract or trust scheme² (see DMG 44667).

1 PS Act 93, s 1; 2 Finance Act 2004, Sch 36, para 1(1)(f);

Note: This includes self-invested personal pensions (see DMG 44670).

1 PS Act 93 s 1(1) &(6); 2 Finance Act 2004, s 154

44666 A personal pension scheme for employed or self-employed earners is¹ any scheme or arrangement

1. where the earner has arranged with the scheme's trustees or managers to become a member of the scheme **and**
2. that
 - 2.1 provides **or**
 - 2.2 is capable of providingbenefits in the form of pensions or otherwise **and**
3. where benefits are payable on
 - 3.1 death **or**
 - 3.2 retirement to or for earners.

1 WR Act 07, s 3(4); PS Act 93, s 1

44667 Personal pension schemes under DMG 44665 **2.** are contracts or trust schemes established before 4.1.88 that provide for a life annuity later in life¹.

1 Finance Act 2004, Sch 36, para 1(1)(f) & WR Act 07, s 3(4)

44668 If the member of the scheme used the personal pension to contract-out of the state earnings related pension scheme (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.

44669 The DM should refer the case to DMA Leeds, if

1. they are unable to decide whether a pension is paid under a personal pension scheme **and**

2. the pension payment does not satisfy any other part of DMG 44661.

Self-invested personal pensions

44670 Self-invested personal pensions are subject to the normal rules for registered pension schemes¹. With self-invested personal pensions people can purchase an annuity or 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

44671 - 44673

Occupational pension scheme

- 44674 An occupational pension scheme is¹ any scheme or arrangement that
1. is comprised in one or more instruments (for example trust deeds) or agreements (for example informal arrangements) **and**
 2. has, or is capable of having, effect on one or more types of employment **and**
 3. provides benefits, for example pensions, payable on
 - 3.1 termination of service **or**
 - 3.2 death **or**
 - 3.3 retirement

for earners with qualifying service.

1 WR Act 07, s 3(4); PS Act 93, s 1; R(JSA) 1/01; R(JSA) 6/02

Public service pension scheme

- 44675 A public service pension scheme is¹ an occupational pension scheme that is
1. established under legislation, by royal prerogative or under a royal charter **and**
 - 1.1 all its particulars are set out in the legislation, royal warrant or charter **or**
 - 1.2 it cannot come into force or be amended without the government's approval **or**
 2. established with the government's approval **or**
 3. prescribed by legislation².

1 WR Act 07, s 3(4); PS Act 93, s 1; 2 Occupational Pension Schemes (Public Service Pension Schemes) Regs 1978

44676 Pension schemes that are also public service pension schemes include pension schemes for

1. civil servants **or**
2. local government employees **or**
3. teachers **or**
4. the Armed Forces **or**
5. police officers.

44677 If DMs have difficulty in determining whether a pension scheme is a public service pension scheme they should arrange to get

1. the claimant's consent to contact the manager of the scheme **and**
2. a statement from the manager of the scheme as to whether the pension scheme is a public service pension scheme within the meaning of the relevant law¹.

Note: If a pension scheme is not a public service pension scheme it may still fall within the definition of an occupational pension scheme (see DMG 44674).

1 PS Act 93, s 1

44678 Most public service schemes include provision for injury or contracting a disease (for example Police and Fire Service schemes). Such pensions may be paid on a minimum income guarantee basis. This means that the pension tops up existing income to a certain level. The pension rate may therefore be affected by the amount of ESA(Cont) entitlement. In such cases the DM should take into account the gross amount of pension i.e. before any adjustment has been made for ESA(Cont). This ensures that the gross amount of the pension is offset against any ESA(Cont), and the pension provider takes the subsequent balance of any ESA(Cont) payable into account. There is no disadvantage to the claimant, and means that in cases where the amount of pension paid to the claimant is equal to the level of guarantee, the claimant's total income remains unchanged. The pension provider needs to be informed of the correct amount of ESA(Cont) payable.

Example

The amount of pension is £120.00 per week, and the amount of guarantee is £120.00 per week. ESA(Cont) entitlement is £100.15 which is reduced by £17.50 (half the excess over £85) to £82.65. The pension is then paid at £37.35 to bring the guaranteed income back to £120.00.

Civil Service Compensation Scheme

44679 Civil servants may be entitled to annual payments as compensation¹ if their employment ends because of

1. compulsory redundancy **or**
2. voluntary early retirement or severance

in a redundancy situation.

1 R(JSA) 1/01; R(JSA) 2/01

44680 - 44682

44683 Until 1995, payments made to civil servants taking early retirement or redundancy were made as part of the Principal Civil Service Pension Scheme. The Principal Civil Service Pension Scheme also provided benefits to those who retired at the normal retirement age. But on 1.1.95, a separate scheme, called the Civil Service Compensation Scheme was introduced.

44684 The Civil Service Compensation Scheme provides benefits to civil servants whose employment ends before the normal retirement age. The Principal Civil Service Pension Scheme continues to provide benefits to those who retire at the normal retirement age.

44685 Under the Civil Service Compensation Scheme, annual compensation payments may be made to civil servants. The Civil Service Compensation Scheme also allows civil servants to change the mix of their

1. lump sum **and**
2. annual compensation payments **and**
3. preserved pension.

44686 The Civil Service Compensation Scheme is a public service pension scheme¹ and annual compensation payments from it are payments from a public service pension scheme. This means that half of the excess of the £85 weekly limit (see DMG 44652) are taken into account in ESA(Cont).

1 R(JSA) 2/01

Local government premature retirement scheme

44687 Some pensionable local government employees who

1. are made redundant **or**
 2. volunteer for redundancy **or**
 3. cease work in the interests of the efficient exercise of the employers' functions
- receive payments under the local government premature retirement scheme¹.

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regs 2006

44688 The scheme entitles employees¹ to annual payments as compensation for their employment ending as in DMG 44687. 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 (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regs 2006; 2 Local Government Pension Scheme Regulations 1995

In connection with the coming to an end of the employment

44689 A pension must be paid in connection with the end of employment of the person who it is paid for, to fall within DMG 44661 **2.** Occupational or public service pensions that are paid where the employment has not ended do not fall within DMG 44661 **2.** For example, war pensions paid

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

44690 In this context “employment” includes any trade, business, profession, office or vocation¹. Employment in the Armed Services falls within this definition.

1 ESA Regs, reg 2(1)

44691 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 the Service Personnel and Veterans Agency **and**
2. paid by the Paymaster General in the same cheque as the person’s service pension.

44692 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.

44693 - 44695

44696 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.

44697 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 44717).

- 44698 The amount of a service pension may be increased if the claimant has been invalidated out of the Forces. The full amount should be taken into account.
- 44699 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 44661 **2.2**.

1 Police Pension Regs 1987

Insurance policy providing benefits in connection with physical or mental illness or disability

- 44700 A payment under a permanent health insurance policy is a pension payment for the purposes of ESA(Cont)¹. It means² any periodical payment
1. made to a former employee **and**
 2. which was arranged by an employer under an insurance policy **and**
 3. which provides benefits to the former employee in connection with physical or mental illness or disability **and**
 4. is payable on the termination of employment.

1 ESA Regs, reg 72(1); 2 reg 72(2)

Pension protection fund periodic payments

- 44701 PPF periodic payments are defined as¹
1. any periodic compensation payments made in relation to a person, payable under the pension compensation provisions set out in specified legislation²
 2. any periodic payments made in relation to a person, payable under specific legislation³

other than payments made to the claimant as a beneficiary on the death of a person entitled to such payments⁴.

1 WR Act 07, s 3(3); 2 Pensions Act 04, s 162(2); Pensions (Northern Ireland Order) 05, art 146(2);

3 Pensions Act 04, s 166; Pensions (Northern Ireland) Order 05, art 150; 4 ESA Regs, reg 75(b)

Armed Forces redundancy arrangements

- 44702 Pensions payable to service personnel who retire from the Armed Forces are paid under a public service pension scheme.

44703 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 schemes.

44704 - 44710