

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 14 Amendment 43 – June 2017

1. This letter provides details on Amendment 43; 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 43 affects chapters 84, 85 & 86. The changes
 - Chapter 84 incorporates material from DMG memos 11/16, 9/17 & 11/17
 - Chapter 85 incorporated DMG memos 3/17, 9/17 and 11/17 para. 85067 added BSP to list and renumbered
 - paras. 85091, 85102 & 85116 removed DMG memo ref (11/17)
 - paras. 85200 & 85216-18 incorporated DMG memo 3/17
 - para. 85294 removed DMG memo ref (11/17)
 - para. 85295 added BSP para
 - paras. 85295 – 85304 renumbered due to addition of above BSP para.
 - para. 85370 incorporated DMG memo 9/17 and added SIBSS
 - Chapter 86 para. 86018 removed a sentence for clarity
 - para. 86064 added x-ref to Ch.84 (capital) and updated appendices
4. The last two amendment packages amending Volume 14 were

Amendment 42 [February 2017]
Amendment 41 [October 2016]
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).

Remove	Insert
Chapter 84	Chapter 84
Conts 84307 – 84776 (3 pages)	Conts 84307 – 84776 (3 pages)
84374 – 84397 (3 page)	84374 – 84397 (3 page)
84443 – 84520 (5 pages)	84443 – 84520 (5 pages)
84561 – 84600 (2 pages)	84561 – 84600 (2 pages)
84747 – 84775 (3 pages)	84747 – 84775 (3 pages)
Chapter 85	Chapter 85
Conts 85237 – conts 85430 (1 page)	Conts 85237 – conts 85430 (1 page)
85063 – 85090 (2 pages)	85063 – 85090 (2 pages)
85213 – 85219 (1 page)	85213 – 85219 (1 page)
85294 – 85330 (2 pages)	85294 – 85330 (2 pages)
85371 – 85399 (2 pages)	85371 – 85399 (1 page)
Chapter 86	Chapter 86
86011 – 86018 (1 page)	86011 – 86018 (1 page)
86058 – 86068 (1 page)	86058 – 86068 (1 page)
Appndx 1 (1 page)	Appndx 1 (1 page)
Appndx 2 (2 pages)	Appndx 2 (3 pages)

Resulting trust	84307
Right to buy scheme	84308
When a person is not the beneficial owner of capital	
Bankruptcy	84331
Court Orders	84334
Liability to repay capital.....	84339
Can the capital be disregarded	
The law.....	84361
Onus of proof	84364
What the DM decides.....	84365
Period of disregard.....	84366
Capital disregarded indefinitely	
Annuities.....	84367
Age-related payments	84368
Arrears of payments to certain war widows or surviving civil partners	84369
Business assets	
The law.....	84371
Meaning of business assets.....	84374
Meaning of “reasonable period”	84376
Meaning of self-employed earner	84377
When people are working in the business	84379
Capital which is not sterling.....	84381
Deferral of retirement pension entitlement.....	84382
Deferral of state pension	84384
Dwelling occupied as the home	
The law.....	84386
Meaning of dwelling occupied as the home.....	84387
Onus of proof	84388
Dwelling which has not been occupied as the home.....	84392
Dwelling not occupied as the home for a time	84393
Small-holdings.....	84394
More than one property owned.....	84395

Funeral plan contract	
The law.....	84398
Meaning of funeral plan contract.....	84399
Future interests in capital.....	84401
Health in pregnancy grant.....	84403
Payments in lieu of community care services or health care.....	84404
Life insurance policies	
The law.....	84406
Meaning of life insurance policy.....	84407
Investments which include life insurance.....	84408
Life interest or life rent.....	84409
Payment for personal injury	84410
Payment to persons imprisoned or interned by the Japanese during the	
Second World War.....	84421
Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners	
The law.....	84426
Meaning of diagnosed person.....	84431
Meaning of the relevant trust	84432
Meaning of trust payment	84433
Pensions	
The law.....	84436
Meaning of occupational pension scheme.....	84437
Meaning of personal pension scheme	84438
Personal possessions	84441
Premises lived in by a partner or relative	
The law.....	84442
Meaning of close relative	84443
Is the person incapacitated.....	84444
What the DM decides if only part of the premises are occupied as the	
home	84445
Provision of continuing care: looked after children	84446
Rent.....	84456
Second World War compensation payments.....	84461

The Independent Living Fund (2006)	
The law.....	84462
Meaning of the Independent Living Fund (2006).....	84463
Payment included with other capital	84467
The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund	
The law.....	84475
The Trusts	84479
The Macfarlane Trust.....	84480
The Macfarlane (Special Payments) Trust	84481
The Macfarlane (Special Payments) (No. 2) Trust	84482
The Fund.....	84483
Eileen Trust.....	84484
MFET Limited.....	84485
The Skipton Fund.....	84486
The Caxton Foundation	84487
Scottish Infected Blood Support Scheme	85588
The London Bombings Relief Charitable Fund.....	84489
Qualifying person	84490
Evidence	84491
Payment included with other capital	84493
Other payments which are disregarded.....	84495
Trusts	84496
Local welfare provision.....	84497
Capital disregarded for up to two years	
Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners	
The law.....	84521
Meanings.....	84525
The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund	
The law.....	84531

Meaning of child	84534
Meaning of qualifying young person	84535
Meaning of student.....	84539
Other meanings.....	84544
Payment included with other capital	84545
Capital disregarded for a year or longer	
Period of disregard	84561
Arrears of benefit and compensation	
The law.....	84566
Meaning of benefit.....	84567
The Supporting People Programme	84568
Money paid for loss of or damage to the home or personal possessions ...	84576
Money which a person gets to buy, repair or alter a home	
The law.....	84577
Essential repairs or alterations.....	84578
Bereavement Support Payment.....	84579
Capital disregarded for 26 weeks or longer	
Dwelling left because of estrangement, divorce or dissolution of civil partnership	
The law.....	84601
Meaning of dwelling	84602
Meaning of lone parent	84603
Meaning of child.....	84604
Premises a person does not possess or occupy	
The law.....	84621
The premises	84622
Acquiring premises	84623
Possession of premises	84624
Moving into the premises	84629
Premises which a person is taking steps to get possession of	
The law.....	84636
The premises	84637

The date a person first asked for legal advice or started legal proceedings	84638
When legal proceedings usually start	84640
Period of disregard.....	84642
Premises which are to be repaired or altered	
The law.....	84646
The premises	84647
Essential repairs or alterations.....	84648
The steps	84649
The date a person first takes steps to get the premises repaired or altered.....	84650
Period of disregard.....	84652
Premises which are to be disposed of	
The law.....	84656
The premises	84657
Who can dispose of premises.....	84658
Reasonable steps	84659
The date a person first takes reasonable steps.....	84661
Period of disregard.....	84663
Capital disregarded for the remainder of an award of SPC	
Arrears and concessionary payments of £5,000 or more	
When the disregard applies	84671
Period of the disregard.....	84672
Meaning of award of SPC	84673
What is the value of the capital	
General.....	84691
The law	
Capital in the UK other than National Savings Certificates	84692
Capital outside of the UK	84694
Capital which is jointly held	84695
Joint-tenant or joint owner.....	84697
Tenant in common or common owner	84699

Further guidance on valuation

Value

General	84701
Current market value	84705
Current surrender value	84707
Price	84709
Capital with more than one value.....	84711
Costs of sale.....	84712
Incumbrances secured on capital	84717
Value of a deemed or actual share in a capital asset outside the UK	84720

Valuation in particular cases

Bank and building society accounts.....	84731
---	-------

Business assets

The assets.....	84736
Value of business assets	84737
Encumbrances secured on business assets	84738
Funds held by the Court of Protection	84740
Personal equity plans.....	84746
Individual savings account	84748
Lifetime individual savings account.....	84751
Right to receive income.....	84752
Shares in a private company.....	84756

Stocks and shares quoted on the London Stock Exchange

Value of stocks and shares.....	84759
Incumbrances secured on stocks and shares	84764
Government securities	84768

Unit trusts

Value of unit trusts	84771
Costs of sale	84772

Notional capital

The law	84776
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Meaning of business assets

- 84374 Business assets include standard items such as machinery, vehicles, fixtures and cash held in the bank (including money held following the sale of assets). They may also include items such as customer lists and contacts, current and future contracts and goodwill.
- 84375 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as “work in hand” may result in an income receipt and so would be appropriate for inclusion in the profit and loss account. Where doubt exists as to whether a particular asset would represent a capital or income receipt upon its sale, the principles of commercial accounting must be applied. That is, the approach that would be taken by an accountant or Her Majesty’s Revenue and Customs to such a receipt or holding.

Meaning of “reasonable period”

- 84376 When determining what represents a reasonable period for the sale or disposal of an asset, the DM should have regard to
1. the date that the duty to dispose of the asset arose
 2. the nature of the asset and the period within which that particular type of asset would normally be expected to be sold or disposed
 3. any legal obligations and restrictions existing that could affect both the sale **and** disposal of any assets. For example, in a partnership situation, the provisions of the partnership deed and the Partnership Act 1890 could place restrictions and subsequent delays on both the sale of assets, and the disposal of any cash assets resulting from the sale.

Meaning of self-employed earner

- 84377 S/E earner means a person
1. who is in gainful employment in GB (see DMG 070702) **and**
 2. whose employment is not the same as that of an employed earner.

A S/E earner includes people employed outside of GB in employment which would be classed as employment as a S/E earner if the employment was in GB. It also includes people undertaking employment as a S/E earner and that employment is disregarded when working out SS contributions¹.

1 SPC Regs, reg 17B; SS Ben (C of E) Regs, reg 2(1)

- 84378 People can be S/E earners even if they have another job as an employed earner. An employed earner is a person who is gainfully employed in GB
1. under a contract of service **or**

2. in an office, including an elective office, and the fee or salary the person gets is taxed under the PAYE scheme¹.

1 SPC Regs, reg 17A(5)

When people are working in the business

84379 People are working in the business if they do some work in a practical sense. There is no set definition of the type and amount of work that has to be done for the person to be classed as a S/E earner and the DM must decide each case on its merits¹.

1 R(IS) 14/98

84380 A partner in a business managed and worked exclusively by others is not working in the business. Such partners are not S/E earners even if they receive a share of the profits of the business¹.

1 R(IS) 14/98

Capital which is not sterling

84381 Bank charges and commission which are payable when changing capital which is not sterling into sterling are disregarded indefinitely¹. For example, if people get capital of 3,000 Canadian dollars they will have to pay commission when the dollars are changed into British money, so the commission is disregarded.

1 SPC Regs, Sch V, Part I, para 21

Deferral of retirement pension entitlement

84382 Pensioners can choose between increments and a lump sum where they have deferred their entitlement to RP, shared additional pension or graduated retirement benefit. Where someone dies while still deferring their pension, the surviving spouse or civil partner will have the same choice in relation to the “inheritable” increments or lump sum. Deferral has to have been for at least twelve months for a lump sum to be available.

Note: The lump sum option only applies in respect of a deferral from April 2005, so the first lump sum payment would only have been made on or after April 2006.

84383 Where

1. a person elects to be entitled to a lump sum under specified legislation¹ **or**
2. a person is treated as having made such an election **and**
3. a payment has been made following that election, disregard an amount equal to
 - 3.1 except where 3.2 below applies, the amount of any payment or payments made on account of the lump sum
 - 3.2 the amount of the lump sum

but only for so long as the person does not change their election in favour of an increase in their pension or benefit².

Note: The amount of the lump sum to be disregarded is the gross amount before tax. The disregard will apply to both the personal and “inheritable” lump sums for the person’s lifetime and to each member of a couple where both have deferred and taken a lump sum or have inherited a lump sum as in DMG 84382. The disregard will not continue if the person changes their mind from a lump sum to increments and repays the lump sum. The disregard is not inheritable. See DMG 83060 et seq for the effect on the AIP of removing the disregard if a lump sum is repaid.

1 SS CB Act 1992, Sch 5 & 5A; GRB Regs, Sch 1; 2 SPC Regs, Sch 5, para 23A

Deferral of state pension

84384 Where

1. a person elects to be entitled to a lump sum of SP under specified legislation¹
or
2. fails to make an election **and**
3. a lump sum payment has been made, disregard an amount equal to
 - 3.1 except where 3.2 applies, the amount of any payment or payments made on account of the lump sum **or**
 - 3.2 the amount of the lump sumbut only for as long as the person does not change their election in favour of an increase in their pension².

1 Pensions Act 14, s 8(2) & 10; 2 SPC Regs, Sch 5, para 23AA

84385

Dwelling occupied as the home

The law

84386 The dwelling occupied as the home is disregarded indefinitely. Only one dwelling can be disregarded¹. However, in some circumstances, more than one property can be the dwelling occupied as the home² (see DMG 84395 et seq).

Note: See DMG 85230 et seq for treatment of income from people living in the claimant’s home.

1 Sch V, Part I, para 1A; 2 Secretary of State v. Miah; R(JSA) 9/03

Meaning of dwelling occupied as the home

84387 Dwelling occupied as the home means

1. the place lived in as the home and any
 - 1.1 garage
 - 1.2 garden
 - 1.3 outbuildings **and**
2. any part not lived in as the home which
 - 2.1 cannot be sold separately **or**
 - 2.2 would not be reasonable to sell separately

such as, in Scotland, any croft land on which the place lived in stands¹.

1 SPC Regs, reg 1(2)

Onus of proof

84388 The person owning the property has to show what part of the property is occupied as the home.

84389 The DM has to show

1. what part of the property can be sold separately **and**
2. if it is reasonable for it to be sold separately¹.

Example

Jack makes a claim for SPC. He lives with his civil partner, Kevin, in a house with a garden and paddock. The paddock can be sold separately but Jack says it is not reasonable for it to be sold separately. He provides medical evidence that Kevin suffers from depression and walking in the paddock is a therapeutic benefit for him. The DM therefore decides that the paddock is part of the dwelling occupied as the home because it is not reasonable for it to be sold separately.

1 R(SB) 27/84

84390 The DM may need expert advice, for example from a surveyor, to show the part can be sold separately.

84391 The DM does not need to get expert advice if

1. there is evidence which shows the part cannot be sold separately even if it has a separate value, for example if the deeds of the property say it has to be sold as one unit the part would be the dwelling occupied as the home **or**
2. the DM decides it is not reasonable for the part to be sold separately.

Dwelling which has not been occupied as the home

84392 A dwelling which

1. has been bought **and**
2. has not been lived in as the home by the claimant or partner cannot be disregarded¹ as the dwelling occupied as the home.

1 R(SB) 27/84

Dwelling not occupied as the home for a time

84393 A dwelling which is usually occupied as the home is disregarded if

1. it is not occupied for a time **and**
2. the intention is to return to live in the dwelling as the home.

Example

Betty goes into a care home on a temporary basis and she intends to return to the house which she usually occupies as the home. The DM decides that the value of Betty's house is disregarded.

Small-holdings

84394 A small-holding is disregarded as the dwelling occupied as the home if it is like croft land in Scotland¹. A small-holding is like croft land if

1. it is no bigger than 30.375 hectares **and**
2. there is a perpetual tenancy agreement which says the agreement ends
 - 2.1 if the small-holder gives one year's notice and the holders are paid for any improvements they have made to the house or outbuildings, otherwise
 - 2.2 only if the tenant has broken the terms of the tenancy **and**
3. the tenant cannot sub-let all or part of the small-holding to anyone else.

1 R(SB) 13/84

More than one property owned

84395 If a claimant owns more than one property, the DM will have to decide whether each property can be disregarded as the dwelling occupied as the home. Where a claimant has only one home that is spread over two physical buildings the DM should decide that each is the dwelling occupied as the home if each is normally occupied by the claimant.

84396 Factors the DM should consider when deciding whether the claimant has only one home are

1. the proximity of the properties, the closer properties are to each other the more likely they are to be one home
2. who lives in each property, for example whether
 - 2.1 each property is occupied by
 - 2.1.a the claimant **or**
 - 2.1.b the claimant's partner **or**
 - 2.1.c children (see DMG 84534)
 - 2.2 one of the properties is occupied solely by non-dependants
3. the reason for the purchase of more than one property, for example whether it was
 - 3.1 to avoid statutory overcrowding¹ **or**
 - 3.2 an investment opportunity **or**
 - 3.3 to have a
 - 3.3.a weekend retreat **or**
 - 3.3.b country cottage.

If **2.2**, **3.2** or **3.3** apply, the DM should decide that the claimant **does not** have only one home and therefore only one property would be disregarded as the dwelling occupied as the home.

1 Housing Act 1985, s 325 & 326; Secretary of State v. Miah; R(JSA) 9/03

84397 When considering whether the claimant normally occupies more than one property as his home, the DM should decide that the claimant's home is the place where he

1. lives
2. eats
3. sleeps
4. bathes
5. relaxes
6. enjoys with his family.

Example 1

Keith and Elma have eleven children, eight of whom are at school and three of whom are in work. They all lived in a three bedroomed house. When Keith and Elma are advised of the rules of statutory overcrowding they purchase another three bedroomed house in the same street. There are two other properties between the

1.6 nephew **or**

1.7 niece

of the claimant or partner where that person has reached the qualifying age for SPC or is incapacitated¹.

- 2.** former partner of the claimant **and** the claimant and former partner are not estranged, divorced or former civil partners whose partnership has been dissolved².

Note: A claimant and former partner who are separated are not necessarily estranged.

Example

Tony is in receipt of SPC. He goes into a care home and his wife Julie remains in their marital home. Julie visits Tony on a regular basis. The DM decides that Tony and Julie are not estranged.

1 SPC Regs, Sch V, Part I, para 4(a); 2 Sch V, Part 1, para 4(b)

Meaning of close relative

84443 See DMG 77010 et seq for the meaning of close relative.

Is the person incapacitated

84444 Incapacitated has no specific legal meaning. So when deciding if a partner or close relative is incapacitated for the purposes of DMG 84442 **1.**, the DM may decide they are incapacitated if

- 1.** they are receiving
 - 1.1** "AA"
 - 1.2** CAA
 - 1.3** DLA
 - 1.4** ESA
 - 1.5** IB
 - 1.6** SDA
 - 1.7** SSP
 - 1.8** a benefit similar to the ones at **1.1** to **1.7** **or**
- 2.** they are not receiving any of the benefits at **1.** but they qualify for any one of them because of the illness or disability they have.

What the DM decides if only part of the premises are occupied as the home

84445 The DM has to decide if

1. any part of the premises can be sold separately **and**
2. it is reasonable for it to be sold separately

if the partner or close relative only lives in part of the premises as the home. For example, when a close relative lives in the farmhouse as the home and the premises are the farmhouse and farm land.

Provision of continuing care: looked after children

84446 Any payment made by a local authority in Scotland for the purposes of providing continuing care¹ and made to

1. the claimant **or**
2. person "A" who passes it onto the claimant but only where person "A"
 - 2.1 was formerly in the claimant's care
 - 2.2 is aged 16 or over **and**
 - 2.3 continues to live with the claimant².

1 Children (Scotland) Act 95, s 26A; 2 SPC Regs, Sch V, Part I, para 23D

84447 - 84455

Rent

84456 The value of the right to receive rent is disregarded indefinitely but not when a person has a reversionary interest in the property for which the rent is due¹.

Example

Under the terms of Ernest's will

1. Charlotte is left for the duration of her life the right to the rents from a cottage which is leased **and**
2. Percy is left the
 - 2.1 cottage subject to the lease **and**
 - 2.2 right to the rents from the cottage subject to Charlotte's right to those rents for the duration of her life. Charlotte has a life interest in the cottage because of her right to the rents for the duration of her life. Percy has a reversionary interest in the cottage because it is leased.

The value of Charlotte's right to the rents is disregarded until she dies because her interest in the cottage is not reversionary. When Charlotte dies the value of Percy's right to the rents is not disregarded because his interest in the cottage is reversionary.

Note: This disregard applies only for the purposes of determining deemed weekly income.

1 SPC Regs, Sch. V, Part II, para 5

84457 - 84460

Second World War compensation payments

84461 Any payment to compensate for the fact that the claimant, **or** the claimant's partner, **or** the claimant's deceased spouse or deceased civil partner, **or** the claimant's partner's deceased spouse or deceased civil partner

1. was a slave labourer **or**
2. was a forced labourer **or**
3. had suffered property loss **or**
4. had suffered personal injury **or**
5. was a parent of a child who had died

during the Second World War is disregarded indefinitely. The disregard does not apply to a payment of WDisP **or** WWP¹.

Note: Lump sum gratuities paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 do not fall within the definition of a war pension. Such payments would be disregarded indefinitely.

1 SPC Regs, Sch V, Part I, para 14

The Independent Living Fund (2006)

The law

84462 One-off payments made from the Independent Living Fund (2006) are disregarded indefinitely¹.

1 SPC Regs, Sch V, Part I, para 15(1)

Meaning of the Independent Living Fund (2006)

84463 The Independent Living Fund (2006) was set up on 10.4.06 between the Secretary of State on the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin on the other part¹.

Note: The Independent Living Fund (2006) closed on 30.6.15 with funding responsibilities transferring to Local Authorities in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if the claimant receives funding from any of these schemes.

1 SPC Regs, reg 1(2)

84464 - 84466

Payment included with other capital

84467 The disregard does not apply to the other capital if the payment is included with other capital.

84468 Accept any money withdrawn is from the other capital and not the payment if money is withdrawn from an account which includes the payment and other capital. Accept any money withdrawn is from the payment if there is evidence of this.

84469 - 84474

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation, SIBSS or the London Bombings Relief Charitable Fund

The law

84475 One-off payments made from the Trusts are disregarded indefinitely¹.

1 SPC Regs, Sch V, Part I, para 15(1)

84476 A payment from money which a person gets from the Trusts is disregarded indefinitely if the payment is made

1. by or on behalf of the person who got the money from the Trusts and that person
 - 1.1 has haemophilia or is a qualifying person **or**
 - 1.2 had haemophilia or was a qualifying person if the person has died **and**
2. to or for the benefit of a partner or former partner of the person who got the money from the Trusts and they
 - 2.1 are not estranged, divorced or part of a dissolved civil partnership **or**
 - 2.2 were not estranged, divorced or part of a dissolved civil partnership if the person who got the money has died¹.

1 SPC Regs, Sch V, Part I, para 15(2)

84477 A payment from money which a partner or former partner gets from the Trusts is disregarded indefinitely if the payment is made by or on behalf of a partner or former partner of a person who

1. has haemophilia or is a qualifying person **or**
2. had haemophilia or was a qualifying person if the person has died

and they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died¹.

1 SPC Regs, Sch V, Part I, para 15(3)

84478 Any capital the person gets from the income or capital of the payment

1. from the Trusts **or**
2. at DMG 84476 - 84477

is disregarded indefinitely¹.

1 SPC Regs, Sch V, Part I, para 15(6)

The Trusts

84479 The Trusts means the

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. MFET Limited
7. Skipton Fund
8. Caxton Foundation
9. SIBSS **and**
10. the London Bombings Relief Charitable Fund¹.

1 SPC Regs, Sch V, Part I, para 15(1) & 15(7)

The Macfarlane Trust

84480 The Macfarlane Trust is the name of a charitable trust set up with part of the money being given by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia¹.

1 SPC Regs, reg 1(2)

The Macfarlane (Special Payments) Trust

84481 The Macfarlane (Special Payments) Trust is the name of a discretionary trust set up on 29.1.90 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia¹.

1 SPC Regs, reg 1(2)

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

84482 The Macfarlane (Special Payments) (No. 2) Trust is the name of a discretionary trust set up on 3.5.91 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia and other people¹. The other people are people who

1. have become infected with HIV **or**
2. were at risk of infection

because of contact with haemophiliacs.

1 SPC Regs, reg 1(2)

The Fund

84483 The Fund is money made available from time to time by the Secretary of State for the benefit of people who satisfy the terms of the scheme which was set up in Scotland on 10.4.92 and elsewhere on 24.4.92¹. It benefits non-haemophiliacs who were infected with HIV whilst undergoing treatment by NHS blood or tissue transfer or blood products. It makes one-off payments.

1 SPC Regs, reg 1(2)

Eileen Trust

84484 Eileen Trust is the name of a charitable trust set up on 29.3.93 with money given by the Secretary of State for the benefit of persons who satisfy the terms of the trust¹. It further benefits non-haemophiliacs who benefit under the Fund. It makes payment for occasional or continuing need.

1 SPC Regs, reg 1(2)

MFET Limited

84485 The Department of Health funds an organisation called MFET Limited¹ to provide financial help to people who have been infected with HIV as a result of treatment with NHS blood or blood products.

1 SPC Regs, reg 1(2)

The Skipton Fund

84486 The Skipton Fund is the Skipton Fund Limited which was incorporated on 25.3.04 to administer an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C and other people eligible for payment in accordance with the scheme's provisions¹. The ex-gratia payments will be a

1. lump sum payment of £20,000 to people infected with Hepatitis C **and**
2. further payment of £25,000 to people who develop advanced liver disease.

Note 1: No payments will be made in respect of people who died before 29.8.03 or recover from Hepatitis C naturally.

Note 2: Where a person who is entitled to an ex-gratia payment dies on or after 29.8.03 but before a payment can be made, the payment will be made to that person's dependants.

1 SPC Regs, reg 1(2)

The Caxton Foundation

84487 The Caxton Foundation was established on 28.3.11. It administers funds provided by the Secretary of State for Health for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments¹.

1 SPC Regs, reg 1(2)

Scottish Infected Blood Support Scheme

84488 Following a review of the existing infected blood support schemes, the Scottish Government has decided that these services will be combined and administered by a new single scheme administrator for Scotland. SIBSS will be operational from 1.4.17 and will be administered by NHS National Services Scotland (NSS), legally known as the Common Services Agency. NSS is an NHS Board accountable to Scottish Ministers.

The London Bombings Relief Charitable Fund

84489 The London Bombings Relief Charitable Fund was established on 11 July 2005 following the terrorist attacks carried out in London on 7 July 2005. People who were bereaved, or who suffered injury, may receive lump sum payments from the London Bombings Relief Charitable Fund.

Qualifying person

84490 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, SIBSS or the London Bombings Relief Charitable Fund¹.

1 SPC Regs, reg 1(2)

Evidence

84491 The Secretary of State has agreed the payments from the

1. Macfarlane Trust
2. Macfarlane (Special Payments) Trust
3. Macfarlane (Special Payments) (No. 2) Trust
4. Fund
5. Eileen Trust
6. Skipton Fund
7. MFET Limited
8. Caxton Foundation
9. London Bombings Relief Charitable Fund

do not have to be declared if they are kept separate from any other capital the person has. The person getting the payment is told this.

84492 The Benefit Delivery Specialist Operations Team will get information about payments from those trusts or fund if it is needed. The trustees and DH should not be contacted for information about payments.

Payment included with other capital

84493 The disregard does not apply to the other capital if the payment is included with other capital.

84494 Accept any money withdrawn is from the other capital and not the payment if money is withdrawn from an account which includes the payment and other capital. Accept any money withdrawn is from the payment if there is evidence of this.

Other payments which are disregarded

84495 Payments to or for the benefit of some other person are disregarded (see DMG 84531).

Trusts

84496 Property held on trust is disregarded indefinitely if

1. payments can be made **or**
2. the trustees have discretion to make payments

from the trust to or for the benefit of the claimant, **or** the claimant's partner, **or** both¹. This does not apply to any property held under a charitable trust set up under certain legislation². Nor does it apply to any payment made as a result of a personal injury which is placed in trust³.

Note: This disregard applies only for the purposes of determining deemed weekly income.

*1 SPC Regs, Sch V, Part II, para 28; 2 Sch V, Part II, para 28(a) & Charities Act 1993;
3 SPC Regs, Sch V, Part II, para 28(b)*

Local welfare provision

84497 Local welfare provision means¹ occasional financial or other assistance made by an LA, the Welsh Ministers, the Scottish Ministers or an authorised person for the purpose of

1. meeting or helping to meet, an immediate short term need
 - 1.1 arising out of an exceptional event or exceptional circumstances **and**
 - 1.2 that requires to be met to avoid a risk to the well-being of an individual **or**
2. enabling individuals to establish or maintain a settled home where those individuals have been or without assistance might otherwise be
 - 2.1 in prison, hospital, a residential care establishment or other institution **or**
 - 2.2 homeless or living an unsettled way of life.

1 SPC Regs, reg 1(2)

84498 Any payment paid

1. by way of a local welfare provision¹ **or**
2. as a result of a reduction of liability to council tax²

is disregarded indefinitely when calculating the capital of the claimant.

1 SPC Regs, Sch V, para 20(1)(e); 2 Sch V, para 20(1)(f)

84499 - 84520

Capital disregarded for a year or longer

Period of disregard

84561 The period of disregard in this part of the guidance is

1. either
 - 1.1 to the end of the AIP if there is an AIP **or**
 - 1.2 one year from the date of the paymentwhichever is the longer period **or**
2. for one year from the date of receipt of the payment if **1.** does not apply¹.

1 SPC Regs, Sch V, Part I, para 17

84562 - 84565

Arrears of benefit and compensation

The law

84566 A payment

1. of arrears of benefit **or**
2. of compensation for the late payment of benefit **or**
3. in lieu of the payment of benefit
4. by a LA out of money
 - 4.1 in England and Wales provided for by the Supporting People Scheme under certain legislation¹ **or**
 - 4.2 in Scotland under certain housing support legislation²

is disregarded for the period in DMG 84561³.

1 Local Government Act 2000, s 93; 2 Housing (Scotland) Act 2001, s 91; 3 SPC Regs, Sch V, para 20(1)

Meaning of benefit

84567 Benefit means

1. AA¹
2. AFIP²
3. BSP
4. CAA³
5. CHB

6. CTC under tax credit law⁴
7. CT benefit
8. DLA
9. ESA(IR)
10. ESDA⁵
11. HB
12. IS
13. JSA(IB)
14. PIP⁶
15. SPC
16. SF payments
17. UC
18. any payment made with WDisP or WWP for:
 - 18.1 exceptionally severe disablement **or**
 - 18.2 constant attendance⁷.

1 SS CB Act 92, s 64; 2 SPC Regs, Sch 5, para 20(2)(bb); 3 s 104; 4 Tax Credit Act 2002; 5 SS CB Act 92, s 105; 6 SPC Regs, Sch 5, para 20(2)(ba); 7 SPC Regs, Sch V, Part I, para 20

The Supporting People Programme

84568 On 1.4.03 responsibility for meeting costs for

1. certain counselling **and**
2. other support services

for people in supported accommodation transferred to LAs under the Supporting People programme.

84569 DMs should disregard indefinitely any payment made

1. by
 - 1.1 a local authority **or**
 - 1.2 Welsh Ministers
2. to or on behalf of the claimant or partner relating to a service which is
 - 2.1 provided to develop **or**
 - 2.2 sustain the capacity of

the claimant or partner to live independently in his accommodation¹.

1 SPC Regs, Sch V, Part I, para 20(1)(1)(d)

84570 - 84575

Money paid for loss of or damage to the home or personal possessions

84576 A payment under an insurance policy for the loss of or damage to

1. the property occupied as the home **or**
2. personal possessions

is disregarded for the period in DMG 84561.

1 Sch V, Part I, para 18

Money which a person gets to buy, repair or alter a home

The law

84577 Money which a person gets, or which is deposited in a person's name, is disregarded for the period in DMG 84561 if it is for the sole purpose of

1. buying premises which the person intends to occupy as the home **or**
2. paying for essential repairs or alterations to the premises

2.1 occupied as the home **or**

2.2 intended to be occupied as the home¹.

1 Sch V, Part I, para 19

Essential repairs or alterations

84578 Essential repairs or alterations are those which are needed to make the home fit to live in by the claimant, or the claimant's partner. For example, it is essential to repair the roof to make the home fit to live in if the roof is letting in water.

Bereavement Support Payment

84579 Where a claimant in receipt of SPC

1. makes a claim for BSP 12 months or less after their spouse or civil partner died **and**
2. receives the additional payment of BSP for the first month of their BSP period at either the higher (£3,500) or standard (£2,500) rate¹

that first additional payment is disregarded when calculating that person's capital but only for a period of 52 weeks from the date of receipt².

1 BSP Regs, reg 3(2) & (5); 2 SPC Regs, Sch 5, para 23E)

84580 - 84600

1. 18 or over **and**
2. liable to pay UK (see DMG 070880) tax.

The value of a Personal Equity Plan is what people would get if they withdrew their investment on the date of claim or supersession. Any income which is paid out of a Personal Equity Plan is income from capital.

84747 A Personal Equity Plan mortgage is not a mortgage. It is a Personal Equity Plan and should be valued as such even if people say they are going to use their investment to pay off their mortgage. Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. The mortgage is not likely to be an incumbrance secured on the Personal Equity Plan.

Note: A Personal Equity Plan was replaced by an Individual Savings Account in April 1999. From that date people could no longer invest in their Personal Equity Plan or open a new one.

Individual savings account

84748 An Individual Savings Account is an investment. People can invest up to a certain amount of money in an Individual Savings Account in each tax year if they are

1. 16 or over **and**
2. resident or ordinarily resident in the UK for tax purposes.

The value of an Individual Savings Account is what people would get if they withdrew their investment on the date of claim or supersession. Any income, which is paid out of an Individual Savings Account, is income from capital.

84749 Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. If someone says they are using an Individual Savings Account to pay off their mortgage this will not be an incumbrance secured on the Individual Savings Account. The Individual Savings Account should be valued as such.

84750 It is a requirement of the Individual Savings Account regulations that the Individual Savings Account remain in the beneficial ownership of the investor¹.

1 The Individual Savings Account Regulations 1998 para 4(6)

Note: If there is evidence that the Individual Savings Account or Personal Equity Plan was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the Individual Savings Account or Personal Equity Plan then it may constitute an equitable charge and they should be valued taking that into account.

Lifetime individual savings account

84751 The Lifetime individual savings account is available for people who are aged 18 to 40 when it is opened. It is similar in many ways to a normal individual savings account with the addition of a government bonus of 25% paid on the contributions made by the saver of up to a limit of £4000 annually. This Lifetime individual savings account should be treated as capital from the outset with a value of

1. 75% of the surrender value where the person is under age 60 **or**
2. 100% of the surrender value where the person is over age 60

taken into account.

Right to receive income

84752 An expert valuation is needed of the value of the right to receive an income if the income can be signed over to another person.

84753 Income which cannot be signed over to another person is

1. periodical maintenance payments
2. public service pensions, such as a civil service pension
3. SS benefits and allowances, such as RP.

84754 - 84755

Shares in a private company

84756 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

84757 The value of the shares is not worked out by dividing the value of all the shares in the company by the number of shares a person has¹. The expert valuation cannot be more than the figure the company's auditors says is a fair value if the company's auditors say what a fair value is. The value is more likely to be less than what the company's auditors says is a fair value².

1 R(SB) 18/83; 2 R(IS) 2/90

84758 The expert valuation should take into account

1. anything in the articles of association which restricts the sale of the shares, such as the shares can only be sold
 - 1.1 to the other shareholders and the shareholders will not buy them **or**
 - 1.2 if the directors agree and they do not agree **and**
2. whether the person's shares in the company are a minority, equal or controlling interest.

Stocks and shares quoted on the London Stock Exchange

Value of stocks and shares

- 84759 The value of stocks and shares can be obtained from the financial pages in a newspaper which is dated the same date as the date of claim or supersession. A newspaper gives the price for most of the stocks and shares quoted on the London Stock Exchange. A valuation using the price given in a newspaper is not an exact valuation.
- 84760 To decide if an exact valuation is needed, first work out the value of the stocks and shares using the price given in a newspaper. An exact valuation is always needed if the price of a stock or share is not given in a newspaper.
- 84761 To work out the value of stocks and shares from the price given in a newspaper
1. find the price of the stock or share in a newspaper which is dated the same date as the date of claim or supersession **and**
 2. multiply the figure at 1. by the number of that stock or share the person has.
- 84762 An exact valuation may be needed if DMG 84911 applies. To work out the exact value of stocks and shares¹
1. use the free internet tool Google Finance to find the highest and lowest price for the day before the date of claim or supersession
 2. deduct the lowest price from the highest price
 3. divide the figure at 2. by four
 4. add the figure at 3. to the lowest price **and**
 5. multiply the figure at 4. by the number of that stock or share the person has.

1 R(IS) 18/95

- 84763 Once the value has been calculated as in DMG 84762 deduct 10% for expense of sale as in DMG 84692. Round down in the claimant's favour at the last stage of the calculation.

Example

Roy has 250 Marks and Spencer shares. The highest and lowest share prices for the day before the date of claim is £4.1750 and £4.1250 respectively.

Deduct the lowest from the highest price (£4.1750 - £4.1250) = £0.05

Divide £0.05 by 4 = £0.0125

Add £0.0125 to the lowest share price (£0.0125 + £4.1250) = £4.1375

Multiply £4.1375 by the number of shares (250) = £1034.3750

Deduct 10% expense of sale = £930.93

Incumbrances secured on stocks and shares

84764 Stockbrokers have an incumbrance secured on stocks or shares if the person they have bought the stocks or shares for has not paid

1. the broker for them **or**
2. the broker's commission¹.

The incumbrance is secured only on the stocks and shares which have not been paid for or on which commission has not been paid. The incumbrance is not secured on any other stocks and shares which the stockbroker buys for the person.

1 R(IS) 18/95

84765 - 84766

84767 The amount of the incumbrance is the amount owed to the stockbroker.

Government securities

84768 Government Securities are stocks issued by the British Government. They are sold in £100 units but re-investments can be for different amounts. Government Securities include

1. consolidated stock
2. conversion loan
3. exchequer stock
4. funding stock
5. Treasury stock
6. 3½% War Loan

84769 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 84759 et seq).

84770 The free internet tool Google Finance will provide DMs with a value provided the stock has not reached the date when the capital invested is repayable. If that date has been reached, the claimant should be advised to write to the Historic Price Service, London Stock Exchange, Old Broad Street, London EC2N 1HP. Any costs for this service should be met by the claimant. The information can be obtained from the London Stock Exchange website, although this only holds data from 1999 onwards.

Unit trusts

Value of unit trusts

84771 To work out the value of a unit in a unit trust

1. find the bid price for a unit in the trust in a newspaper which is dated the same date as the date of claim or supersession **and**
2. multiply the figure at **1.** by the number of units a person has.

Note: the value of a unit trust can also be found at:

<http://markets.ft.com/research/Markets/Data-Archive>

Costs of sale

84772 People apply to the manager of the trust to withdraw their money so there are no costs of sale. This applies even if persons use an agent, such as a stockbroker.

84773 - 84775

Continuing Care (Scotland).....	85237
Income from subletting.....	85239
Other types of income partially disregarded	
Civilian war injury pensions.....	85241
Royalty payments.....	85242
Discretionary trusts	
What is a discretionary trust.....	85245
Disregard.....	85246
Weekly limit to £10 and £20 disregards.....	85250
Income fully disregarded	
Types of income fully disregarded	85280
Types of income ignored for state pension credit purposes	85283
Attendance allowances and Disability living allowance	
Attendance allowances	85285
What constitutes attendance allowance.....	85286
Disability living allowance	85290
Personal independence payment	85291
Armed forces independence payment	85292
Benefits fully disregarded	
Bereavement payment	85294
Bereavement support payment.....	85295
Child benefit	85296
Child dependency increases.....	85297
Child's special allowance	85298
Christmas bonus	85299
Council tax benefit.....	85300
Guardian's allowance.....	85301
Housing benefit	85302
Mobility supplement	85303
Payments from the Social Fund under social security	
legislation	85304
Statutory adoption pay	85320

Statutory maternity pay	85321
Statutory paternity pay	85322
Statutory sick pay	85323
Statutory shared parental pay	85324
War widow's/widower's supplementary pensions	85331
Other types of income fully disregarded	
Cost of conversion of foreign money	85335
Income frozen abroad	85340
Discretionary trust payments.....	85345
Personal injury payments and structured settlements.....	85350
Income from capital.....	85370
Notional income	
General	
What is notional income	85400
Types of notional income	85401
Actual and notional income	85402
Treatment of notional income.....	85403
Deprivation of income	85408
Deferral of retirement pension entitlement.....	85409
Deferral of state pension entitlement.....	85411
Deprivation	85413
Meaning of deprive.....	85414
Questions for consideration	85418
Was it the claimant's income.....	85419
Has a deprivation of income happened	85421
Was the purpose of the deprivation to get or increase	
the amount of SPC.....	85423
Timing of the disposal	85427
Trivial commutation of small pensions	85428
Service users.....	85430

Treatment of arrears of income/benefits

Arrears of other income

85063 Where the claimant receives payments of arrears of income (but not arrears of benefits - see DMG 85066), then the DM should decide how much SPC has been paid to the claimant which would not have been paid if the arrears had been paid on time¹. This figure will be the amount of SPC overpaid and may be recovered from the claimant.

1 SS A Act 92, s 74(1)

85064 The DM also has to establish if the current rate of income has changed. If it has, the DM must supersede the award of SPC. The superseding decision must take effect on the first day of the benefit week in which the claimant receives the new amount of income (or if that is not practicable on the first day of the next following benefit week)¹.

1 SS CS (D&A) Regs, Sch 3B, para 2; PS v SSWP (SPC) [2016] UKUT 0021 (AAC)

85065 The weekly amount of the arrears for the purposes of determining the overpayment should be calculated by reference to the period that the arrears covers¹. This means, for example, that if the arrears period is one month then the weekly amount of the payment should be determined in accordance with DMG 85033. If the arrears period is a period of more than one week but DMG 85033 – 85035 does not apply then the payment should be calculated in accordance with DMG 85036 and so on.

1 SPC Regs, reg 17(1)

Example 1

Spiro receives £100 a month income from an occupational pension.

The DM decided not to set an AIP because other elements of the claimant's retirement provision are unpredictable.

In July Spiro tells the DM that his pension has increased to £110 a month from April. He received a payment in July of £140, which included £30 arrears (for April - June). This prompts the DM to undertake a supersession and to take £110 a month into account from July.

The £30 arrears relating to the period April - June is a late payment of income and the DM calculates the overpayment and the amount to recover by looking at the amount of SPC which would not have been paid if the arrears had been paid on time.

Example 2

Alison is entitled to payments under a personal pension scheme and there is no AIP in place.

The first payment of Alison's pension is made on 31 August. This includes a payment which was due on 31 July. This payment would have been payable at an amount of £180 for the period 18 July to 31 July.

The DM calculates an overpayment of SPC based on the £180 which was a late payment of income in respect of 14 days (see DMG 85036).

Arrears of benefit

85066 Any payment of

1. arrears of benefit (but not those benefits to which DMG 85040 applies) **or**
2. compensation for the late payment of benefit **or**
3. in lieu of the payment of benefit **or**
4. by a LA out of money
 - 4.1 in England and Wales provided for by the Supporting People Scheme under certain legislation **or**
 - 4.2 in Scotland under certain housing support legislation

is capital that is disregarded¹. Further guidance is at DMG 84566.

1 SPC Regs, Sch V, para 20(1)

Meaning of benefit

85067 In DMG 85066 benefit means¹

1. AA
2. BSP
3. CAA and ESDA payable because the claimant is entitled to WC
4. CHB
5. CTC
6. CTB
7. DLA
8. ESA(IR)
9. HB
10. IS
11. JSA(IB)
12. SPC
13. SF Payments.

14. any amount included for the claimant's exceptionally severe disablement in a WDisP or WWP.

1 SPC Regs, Sch V, para 20(2)

85068 - 85090

85213 A guaranteed income payment means¹ a payment made under specified Armed Forces Legislation².

1 SPC Regs, reg 1(2); 2 Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, art 14(1)(b) or 21(1)(a)

Guaranteed income payments

85214 The following payments should have a £10 disregard

1. a guaranteed income payment¹
2. a payment to compensate for the non payment of a guaranteed income payment² **and**
3. a similar payment made by a foreign government, which is analogous to a guaranteed income payment³.

Note: Certain other payments from the Armed Forces and Reserve Forces Compensation Scheme are taken fully into account (see DMG 85172 - 85173).

1 SPC Regs, reg 15(5)(aa); Sch, IV, para 1(cc); 2 Sch IV, para 1(d); 3 Sch IV, para 1(e)

85215 Where

1. a claimant is in receipt of a guaranteed income payment **and**
2. that payment has been reduced to less than £10 a week by abatement
 - 2.1 due to a pension from the Armed Forces Pension Scheme **or**
 - 2.2 a payment under the Armed Forces Early Departure Scheme

the claimant can still have a full £10 disregard on the guaranteed income payment and the pension¹.

Note: The Armed Forces Pension Scheme means either the Armed Forces Pension Scheme of 1975 or of 2005.

1 SPC Regs, Sch IV, para 1(cc)

Example

Sheila is in receipt of SPC. She also receives a guaranteed income payment of £2.50 per week. This is because the payment has been abated by a pension Sheila receives under the Armed Forces Pension Scheme. The DM disregards the guaranteed income payment of £2.50 and also £7.50 from the pension. This gives a total disregard of £10.

Pensions paid to victims of National Socialist persecution

85216 These pensions should have a £10 disregard¹. They are made by special provision under the law of the relevant country to victims of National Socialist persecution.

Note: When considering whether a payment qualifies for this disregard could DMs please contact DMA Leeds with full details of the case.

1 SPC Regs, reg 15(5)(b), Sch IV, para 1(f)

Widowed parents allowance

85217 A £10 disregard applies to WPA¹. It replaced WMA for people whose spouse died on or after 9 April 2001. It is paid to bereaved men and women who care for children.

1 SPC Regs, Sch IV, para 7

Widowed mothers allowance

85218 A £10 disregard applies to WMA¹. It was payable to women with responsibility for a child who were widowed prior to 9 April 2001. Payments can continue as long as the entitlement conditions are satisfied.

1 SPC Regs, Sch IV, para 7A

85219

Benefits fully disregarded

Bereavement payment

- 85294 Bereavement payment is a lump sum payment that can be claimed if the spouse or civil partner is under pensionable age and the deceased spouse or civil partner satisfied the requisite contribution condition. It is fully disregarded¹ in the calculation of SPC.

1 SPC Regs, reg 15(1)(n)

Bereavement support payment

- 85295 The BSP replaces BB for people whose spouse or civil partner dies on or after 6.4.17¹. There are two rates of BSP; the higher rate and the standard rate. The regular monthly BSP payment is treated as income other than earnings² and is disregarded for the period in respect of which it is paid. Any unspent BSP remaining at the end of this month will become capital (with no disregard applied). The regular monthly payment does not include any arrears or the higher or standard rate of BSP that may be payable for the first month of the BSP period³.

Note: See DMG chapter 84 for how BSP affects capital and DMG chapter 59 for more information on BSP.

*1 Pensions Act 14 (Commencement No. 10) Order, art 2(1)(b); BSP Regs, reg 1(2);
2 SPC Regs, reg 15(1)(n); 3 BSP Regs, reg 3(2) & (5)*

Child benefit

- 85296 CHB should be fully disregarded¹ in the calculation of SPC. It is payable to people in GB who are responsible for a child.

1 SPC Regs, reg 15(1)(j)

Child dependency increases

- 85297 Any increase for a dependant, other than the claimant's partner, paid in accordance with specified legislation¹ is disregarded in full².

Note: To be gradually abolished under tax credits.

*1 Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, Part 2 or 3;
2 SPC Regs, reg 15(1)(h), Sch IV para 12*

Child's special allowance

- 85298 Child's special allowance should be fully disregarded¹. It is payable to a divorced woman on the death of her former husband if she has

1. a child whom her former husband was helping to support or was liable to support **and**
2. not remarried.

Note: Child's special allowance was abolished from 6.4.87. Where it was in payment before that date claimants could continue to receive it².

1 SPC Regs, reg 15(1)(f); 2 SS CB Act 92 s 56(6)

Christmas bonus

85299 Christmas bonus should be disregarded in full¹. It is paid in the week starting with the first Monday in December to people getting the following benefits²

1. RP & SP
2. IB
3. WMA, WPA or WP
4. SDA
5. CA
6. IDB
7. AA/DLA
8. US
9. WDisP
10. WWP
11. SPC
12. ESA(Cont).

1 SPC Regs, reg 15(1)(k); 2 SS CB Act 92, s 148

Council tax benefit

850300 The DM should fully disregard any payment of CTB¹. CTB usually reduces the bill sent by LAs but some claimants may receive cash payments.

1 SPC Regs, reg 15(1)(m)

Guardian's allowance

85301 GA should be fully disregarded¹. It is payable to a person who is entitled to CHB for a child

1. whose natural parents are dead **or**
2. where one of the natural parents is dead and the other cannot be traced or is serving a long prison sentence.

1 SPC Regs, reg 15(1)(g)

Housing benefit

85302 The DM should fully disregard any payments of HB¹. HB may be

1. paid direct to the claimant **or**
2. paid direct to the landlord **or**
3. deducted from the rent payable.

HB is paid by LAs to help people on low incomes pay their rent.

Note: See DMG 85230 et seq where the claimant is a landlord and receives HB for people living in his home.

1 SPC Regs, reg 15(1)(l)

Mobility supplement

85303 The DM should fully disregard¹

1. any mobility supplement paid under relevant legislation²
2. any payment to compensate for the non-payment of the supplement in **1.**

1 SPC Regs, Sch IV, para 3;

*2 Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, art 20 or
Personal Injuries (Civilians) Scheme 1983, art 25A*

Payments from the Social Fund under social security legislation

85304 The DM should fully disregard any payment from the SF¹.

1 SPC Regs, reg 15(1)(i)

85305 - 85319

Statutory adoption pay

85320 Employees who adopt a child under the age of 18 have the right to 26 weeks adoption leave. Statutory adoption pay will be payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the LEL. The DM should take any payment of statutory adoption pay¹ into account as earnings (see DMG 86033).

1 SPC Regs, reg 15(1)(r); reg 17A(2)(j)

Statutory maternity pay

- 85321 SMP is payable by employers to female employees as part of or instead of normal earnings when they have given up work to have a baby. The DM should take any payment of SMP¹ into account as earnings (see DMG 86033).

1 SPC Regs, reg 15(1)(p); reg 17A(2)(h)

Statutory paternity pay

- 85322 Statutory paternity pay is payable to male employees during their paternity leave when they have average weekly earnings of at least the LEL. The DM should take any payment of statutory paternity pay¹ into account as earnings (see DMG 86033).

1 SPC Regs, reg 15(1)(q); reg 17A(2)(i)

Statutory sick pay

- 85323 SSP is payable by employers to employees as part of or instead of normal wages for up to 28 weeks in any period of sickness. The DM should take any payment of SSP¹ into account as earnings (see DMG 86033).

1 SPC Regs, reg 15(1)(o); reg 17A(2)(h)

Statutory shared parental pay

- 85324 Employees and workers may be entitled to shared parental leave and shared parental pay in respect of babies born or adopted on or after 5.4.15. The DM should take any payment of statutory shared parental pay¹ into account as earnings (see DMG 86033).

1 SPC Regs, reg 15(1)(qb); reg 17A(2)(ib)

85325 - 85330

4. personal possessions
5. assets of any business owned in whole or in part by the claimant for the purposes of which he is engaged as a S/E earner or, if he has ceased to be engaged, for a reasonable period to allow for disposal of those assets
6. assets of any business owned in whole or in part by the claimant if he is not engaged as a S/E earner by reason of some disease or disablement but he intends to return to work as a S/E earner as soon as he recovers
7. surrender value of any life insurance policy
8. value of any funeral plan contract
9. amount of any ex-gratia payment made in consequence of imprisonment or internment by the Japanese during the second World War
10. amount of any trust payment made to a claimant or claimant's partner due to suffering from variant Creutzfeld-Jakob disease (see DMG Chapter 84)
11. amount of any compensation payment due to being a slave labourer, suffering property loss or personal injury or the loss of a child during second World War
12. any payment made from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust, MFET Limited or the Independent Living Fund (2006) (- but see note below), the Skipton Fund, the London Bombings Relief Charitable Fund (see DMG Chapter 84) or the Scottish Infected Blood Support Scheme
13. the amount of any payment made in consequence of personal injury to the claimant or partner
14. amounts paid under an insurance policy in respect of loss or damage to the property occupied as the home or personal possessions
15. amounts paid or deposited in the claimant's name for the purpose of purchasing a home or making repairs to the property occupied as the home
16. any amount paid by way of arrears of benefit, by way of compensation for late payment of benefit, in lieu of payment of benefit or by a LA out of money provided by the Supporting People scheme under certain legislation
17. any banking charge or commission payable in converting capital into sterling
18. value of the right to receive income from an occupational or personal pension scheme
19. value of the right to receive income under a retirement annuity contract.

1 SPC Regs, reg 17(8)(a), Sch V, Part 1; 2 Sch V, Part 1, para 1A

Note: the Independent Living Fund (2006) closed on 30.6.15 with funding responsibilities transferring to Local Authorities in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if the claimant receives funding from any of these schemes.

85371 - 85399

1. the first day of the benefit week in which the earnings become payable or the amount of the earnings changes, if it is practicable to do so **or**
2. the first day of the benefit week following the payment of the new earnings or new amount of earnings if it is not practicable for them to be taken into account from the day described in 1..

1 SS CS (D&A) Regs, Sch 3B, para 2

Calculating the weekly amount of earnings

86011 Where the period for which a payment of earnings is made is a week or less, the weekly amount will be the amount of the payment¹.

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

86012 Where the payment of earnings is for a month the weekly amount should be worked out by

1. multiplying the amount of the payment by twelve **and**
2. dividing the result by 52¹.

1 SPC Regs, reg 17(1)(b)(i)

86013 Where the payment of earnings is for a period of three months the weekly amount should be worked out by

1. multiplying the amount of the payment by four **and**
2. dividing the result by 52¹.

1 SPC Regs, reg 17(1)(b)(ii)

86014 Where the payment of earnings is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 SPC Regs, reg 17(1)(b)(iii)

86015 Where the payment of earnings is for more than a week, and DMG 86011 - 86014 do not apply, the weekly amount should be worked out by

1. multiplying the amount of the payment by seven **and**
2. dividing the result by the number of days in the period for which the payment is made¹.

1 SPC Regs, reg 17(1)(b)(iv)

Averaging of amounts

86016 If the claimant's earnings fluctuate and have changed more than once, or the regular pattern of work means that the claimant does not work the same hours every week, the weekly amount of a claimant's earnings should be averaged¹. The DM should work out the average weekly earnings over

1. where the claimant does not work the same hours every week and there is a recognized cycle of work, over the period of the complete cycle, (including

any periods where the claimant does no work, but not including any other absences) **or**

2. where **1.** does not apply

2.1 the last two payments if those payments are one month or more apart
or

2.2 the last four payments if the last two payments are less than one month apart **or**

2.3 such other payments as may enable a more accurate average weekly amount to be calculated.

1 SPC Regs, reg 17(2)

86017 The last payments for the purposes of DMG 86016 **2.1** and **2.2** are the last payments made to the claimant¹

1. before the date the claim was made or treated as made **or**

2. before a supersession.

Note: for the purpose of calculating an accurate weekly average, the payments in **2.3** are not restricted to any particular period. Any payments that enable a more accurate average weekly amount to be calculated may be used. These could be from before or after the date the claim was made or treated as made, or the last supersession decision, up to the date of the current decision under consideration.

1 SPC Regs, reg 17(3)

86018 A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.. Include, where the cycle involves periods where the person does no work, those periods, but disregard any other absences¹. See [DMG Chapter 20](#) for full guidance on identifying a recognisable cycle but note that SPC does not have the same attribution rules, specifically the “treat as paid” rule, that exist in working age legislation.

A recognizable cycle could include one of the following scenarios (not exhaustive):

Scenario 1

week 1 X hours

week 2 Y hours

week 3 X hours

week 4 X hours

week 5 Y hours

week 6 X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

he was engaged by a theatre company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as an employed earner, employed under a contract of service, and paid class 1 contributions

The DM decides that Craig's employment with the theatre company was under a contract of service for the 26 weeks when he was engaged by them, and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

Advance of earnings or loans

86058 Any advance of earnings or other loan made by the employer is capital for SPC purposes.

Example

Jeffrey earns £50 a week which is due to be paid every fourth Friday. He was last paid £200 on 7 November. On 17 November, he gets an advance of £100 from his employer. The £100 is a payment of capital. The full £200 paid on 5 December is then taken into account (5 December to 1 January = 4 weeks x £50).

Bonus or commission

86059 Payments of bonus or commission should be treated as earnings. See DMG 86005 et seq for guidance on how earnings are taken into account.

Royalties and copyright fees

86060 Payments as described in DMG 86061 are income other than earnings for SPC purposes (see DMG Chapter 85). These include payment for

1. taking part in radio or television plays, commercials and documentaries
2. repeat showings of plays, commercials and documentaries
3. interviews with press reporters
4. published items.

86061 This paragraph applies to¹

1. royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trademark **or**
2. any payment in respect of any
 - 2.1 book registered under the Public Lending Right Scheme 1982 **or**
 - 2.2 work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982

where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work covered by **2.2** above.

1 SPC Regs, reg 15(5)(f) & (g)

86062 Although the payments described in DMG 86061 are not earnings they shall be treated as though they are earnings for the purposes of SPC, the DM should apply the appropriate earnings disregard¹.

Note: The disregard of these payments only applies to payments in respect of the claimant's or their partner's own work. The disregard does not apply if the royalties have been inherited (see DMG Chapter 85).

1 SPC Regs, reg 17(5) & (9)

Directors of limited companies

86063 A limited company, of whatever size, is separate from its employees and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company, and is an employed earner.

1 R(SB) 57/83

Establishing a director's income

86064 The income of a director can include

1. payments for services as a director or any other employment with the company
2. share dividend
3. debenture interest.

Note: See DMG Chapter 84 when considering the effect of a director's capital

Payments as a director or other employee

86065 Directors have no legal right to receive payment for their services as a director, but can still be voted payment. Or they may be entitled to payments under the company's Articles of Association. Any payments voted to a director or to which they are so entitled should be taken into account as earnings.

86066 A director may also be employed by the company for another reason, for example as a sales manager. Such a person has a contract of employment with the company and is entitled to a salary. Any salary should be taken into account as earnings.

86067 If a director in a small company does no other work in it, the services provided will be limited and the amount of payment expected will be small. If the director also does other work in the company, then more payment will be expected.

86068 Many small companies operate with only two directors, for example the claimant and partner. Such companies normally obtain contracts and pay employees a salary for work done. Any earnings paid to the claimant will usually be for work done as an employee of the company.

Appendix 1

Notional deductions for income tax

Main income tax allowances

1. The main income tax allowances are as follows.

		08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
		£	£	£	£	£	£	£	£	£	£
Additional personal		-	-	-	-	-	-	-	-	-	-
Personal	under 65	6,035	6,475	6,475	7,475	8,105	9,440	10,000	10,600	11,000	11,500
Personal	65-74	9,030	9,490	9,490	9,940	10,500	10,500	10,500	10,600	11,000	11,500
Personal	75 & over	9,180	9,640	9,640	10,090	10,660	10,660	10,660	10,660	11,000	11,500
Married couple	under 65	-	-	-	-	-	-	-	-	-	-
Married couple	65-74	-	-	-	-	-	-	-	-	-	-
Married couple	70-74 and born before 6.4.35	-	-	-	-	-	-	-	-	-	-
Married couple	75 & over	-	-	6,965	7,295	7,705	7,915	8,165	8,355	8,355	8,445

Basic rates of tax

2. Income tax is payable on taxable income

	£	
08/09	1 - 34,800	at basic rate of 20%
09/10	1 - £37,400	at basic rate of 20%
10/11	1 - £37,400	at basic rate of 20%
	over £37,400	higher rate of 40%
	over £150,000	additional rate of 50%
11/12	1 - £35,000	at basic rate of 20%
	over £35,000	higher rate of 40%
	over £150,000	additional rate of 50%
12/13	1 - £34,370	at basic rate of 20%
	over £34,370	higher rate of 40%
	over £150,000	additional rate of 50%
13/14	1 - £32,010	at basic rate of 20%
	over £32,010	higher rate of 40%
	over £150,000	additional rate of 45%
14/15	1 - £31,865	at basic rate of 20%
	over £31,865	higher rate of 40%
15/16	1 - £31,785	at basic rate of 20%
	over £31,785	higher rate of 40%
16/17	1-£32,000	at basic rate of 20%
	over £32,000	higher rate of 40%
17/18	1-£33,500	at basic rate of 20%
	over £33,500	higher rate of 40%

Primary threshold

No contributions are payable on weekly earnings of £139 or less or monthly earnings of £602 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £139.01 and £817 per week and at 2% for earnings above £817 per week.

6. Earnings Bands		Earnings Limits
12/13		12/13
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £107
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £464
		UEL
		Weekly £817
		Monthly £3540

Primary threshold

No contributions are payable on weekly earnings of £146 or less or monthly earnings of £634 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £146.01 and £817 per week and at 2% for earnings above £817 per week.

7. Earnings Bands		Earnings Limits
13/14		13/14
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £109
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £472
		UEL
		Weekly £797
		Monthly £3453

Primary threshold

No contributions are payable on weekly earnings of £149 or less or monthly earnings of £645 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £149.01 and £797 per week and at 2% for earnings above £797 per week.

8. Earnings Bands 14/15		Earnings Limits 14/15
Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £111
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	monthly £481
		UEL
		weekly £805
		monthly £3,488

Primary threshold

No contributions are payable on weekly earnings of £153 or less or monthly earnings of £663 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £153.01 and £805 per week and at 2% for earnings above £645 per week.

9. Earnings Bands 15/16		Earnings Limits 15/16
Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £112
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	monthly £486
		UEL
		weekly £815
		monthly £3,532

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £815 per week and at 2% for earnings above £815 per week.

10.	Earnings Bands 16/17	Earnings Limits 16/17
	Earnings	Percentage rates
	LEL	
	1. up to LEL	NIL
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL
		UEL
		Weekly £112
		Monthly £486
		Weekly £827
		Monthly £3584

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £827 per week and at 2% for earnings above £827 per week.

11.	Earnings Bands 17/18	Earnings Limits 17/18
	Earnings	Percentage rates
	LEL	
	1. up to LEL	NIL
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL
		UEL
		Weekly £113
		Monthly £490
		Weekly £866
		Monthly £3753

Primary threshold

No contributions are payable on weekly earnings of £157 or less or monthly earnings of £681 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £157.01 and £866 per week and at 2% for earnings above £866 per week.

Class 2 contributions

12.											
		08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
		£	£	£	£	£	£	£	£	£	£
Ordinary Class 2 rate		2.30	2.40	2.40	2.50	2.65	2.70	2.75	2.80	2.80	2.85
Share fisherman rate		2.95	3.05	3.05	3.15	3.30	3.35	3.40	3.40	3.45	3.50

Small earnings exception / small profits threshold

13.

	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
	£	£	£	£	£	£	£	£	£	£
Earnings limit	4,825	5,075	5,075	5,315	5,595	5,725	5,885	5,965	5,965	6,025

Class 4 contributions

14.						
	08/09	09/10	10/11	11/12	12/13	13/14
	£	£	£	£	£	£
Lower level	5,435	5,715	5,715	7,225	7,605	7,755
Higher level	40,040	43,875	43,875	42,475	42,475	41,450
Percentage rate	8% of £5,435 to £40,040 per year, 1% above £40,040	8% of £5,715 to £43,875 per year, 1% above £43,875	8% of £5,715 to £43,875 per year, 1% above £43,875	9% of £7,225 to £42,475 per year, 2% above £42,475	9% of £7,605 to £42,475 per year, 2% above £42,475	9% of £7,755 to £41,450 per year, 2% above £41,450

14. cont/d...				
	14/15	15/16	16/17	17/18
	£	£	£	£
Lower level	7,956	8,060	8,060	8,164
Higher level	41,865	42,358	43,000	45,000
Percentage rate	9% of £7,956 to £41,865 per year. 2% above £41,865	9% of £8,060 to £42,358 per year. 2% above £42,358	9% of £8,060 to £43,000 per year 2% above £43,000	9% of £8,164 to £45,000 per year 2% above £45,000

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