

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 5 Amendment 53 – February 2018

1. This letter provides details on Amendment 53; 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>

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Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 53 affects the list of abbreviations, chapters 27, 28 & 29. The changes make amendments to:
 - Chapter 27 incorporating DMG memo 22/17 and amendments at 27013 re – continuing Kinship Care
 - Chapter 28 incorporating DMG memos 12/15, 9/17, 11/17, 20/17 & 23/17
 - Chapter 29 incorporating DMG memos 14/17, 20/17 & 22/17.
4. 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).

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Chapter 29

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Abbreviations

AA	Attendance Allowance paid under s 64 of the SS (CB) Act 92
"AA"	Attendance Allowance as defined in IS (Gen) Regs, reg 2(1) or JSA, reg 1(3)
ADC	Actual Date of Confinement
ADF	Adviser Discretion Fund
ADI	Adult Dependency Increase
AFIP	Armed Forces Independence Payment
AIP	Assessed Income Period
AMG	Appropriate Minimum Guarantee
AP	Additional Pension
APP	Adoption Pay Period
Art	Article
ASE	Actively seeking employment
AT	Appeal Tribunal
AWT	All Work Test
BA	Bereavement Allowance
BACS	Bankers Automated Clearing System
BB	Bereavement Benefits
BL	Board and Lodging
BP	Basic Pension/Bereavement Premium
BPT	Bereavement Payment
BSP	Bereavement support payments
BTEC	Business and Technology Education Council
BWC	Benefit Week Commencing
BWE	Benefit Week Ending
CA	Carer's Allowance
CAA	Constant Attendance Allowance
Cat	Category
CB	Contributory Benefit
CC	Community Charge
CDI	Child Dependency Increase
CEC	Council of European Social Charter
CHB	Child Benefit
CHB(LP)	Child Benefit for Lone Parents
CJEU	Court of Justice of the European Union
CMB	Child Maintenance Bonus
CMP	Child Maintenance Premium
CP	Carer Premium
CPen	Civil Penalty
CSM	Child Support Maintenance

CT	Council Tax
CTA	Common Travel Area
CTB	Council Tax Benefit
CTC	Child Tax Credit
CTF	Community Task Force
CTM	Contribution to Maintenance
CWP	Cold Weather Payment
CwP	Community work Placements
DCP	Disabled Child Premium
DCT	Direct Credit Transfer
DH	Department of Health
Dis G	Disablement Gratuity
Dis P	Disablement Pension
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMG	Decision Makers Guide
DO	District Office
DP	Disability premium
DPTC	Disabled Persons Tax Credit
DWA	Disability Working Allowance
DWP	Department for Work and Pensions
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECsMA	European Convention on Social & Medical Assistance
EctHR	European Court of Human Rights
EDP	Enhanced Disability Premium
EEA	European Economic Area
EFC	Earnings factor credits
EFTA	European Free Trade Association
ELDS	Eligible loan deduction scheme
Emp O	Employment Officer
EO	Employment Option of New Deal for young people
EO(E)	Employed Employment Option
EO(S/E)	Self-Employed Employment Option of the New Deal for young people
EPP	Enhanced Pensioner Premium
ERC	Employment Rehabilitation Centre

ERA	Employment Retention and Advancement
ESA	Employment and Support Allowance
ESA(Cont)	Employment and Support Allowance (contributory allowance)
ESA(IR)	Employment and Support Allowance (income-related allowance)
ESA(Y)	Employment and Support Allowance for those with limited capability for work in youth
ESDA	Exceptionally Severe Disablement Allowance
ET	Employment Training
ETFO	Environment Task Force Option of New Deal for young people
EU	European Union
EWC	Expected Week of Confinement
EZ	Employment Zone
FamC	Family Credit
FAS	Financial Assistance Scheme
FND	Flexible New Deal
FP	Family Premium
FP(LP)	Family Premium (Lone Parent Rate)
FRIY	Flat Rate Introduction Year
FRM	Flat Rate Maintenance
F/T	Full-Time
FTE	Full-Time Education
FTET	Full-Time Education and Training Option
FtT	First-tier Tribunal
GA	Guardian's Allowance
GB	Great Britain
GC	Guarantee Credit
GCE	General Certificate of Education
GCSE	General Certificate of Secondary Education
GMP	Guaranteed Minimum Pension
GNVQ	General National Vocational Qualification
GP	General Practitioner
GPoW	Genuine Prospect of Work
GRB	Graduated Retirement Benefit
GRC	Gender Recognition Certificate
GRP	Gender Recognition Panel
HA	Health Authority
HB	Housing Benefit
HBS	Housing Benefit Supplement
HCP	Health care professional
Hep C	Hepatitis C

HIV	Human Immunodeficiency Virus
HM	Her Majesty
HMF	Her Majesty's Forces
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HPP	Higher Pensioner Premium
HRP	Home Responsibilities Protection
IA	Industrial Accident
IAP	Intensive Activity Period for those aged 25 and over and under 50
IAP for 50+	Intensive Activity Period for those aged 50 or over
IB	Incapacity Benefit
IBLT	Long-term Incapacity Benefit
IBS	Infected Blood Scheme
IBST	Short-term Incapacity Benefit
IBST(H)	Higher rate of short-term Incapacity Benefit
IBST(L)	Lower rate of short-term Incapacity Benefit
IB(Y)	Incapacity Benefit for those incapacitated in youth
IC	Intermittent Custody
IDB	Industrial Death Benefit
IFM	Immediate Family Member
IfW	Incapacity for Work
II	Industrial Injury(ies)
IIDB	Industrial Injuries Disablement Benefit
Incs	Increments (of Retirement Pension)
IND	Immigration and Nationality Department
IPC	International Pension Centre
IPPIW	Immediate Past Period of Incapacity for Work
IS	Income Support
IT	Industrial Tribunal (now Employment Tribunal)
IVA	Invalidity Allowance
IVB	Invalidity Benefit
IVP	Invalidity Pension
IVS	Invalid Vehicle Scheme
JSA	Jobseeker's Allowance
JSA 18-21 Pilot Scheme	Jobseeker's Allowance 18-21 Work Skills Pilot Scheme
JSA(Cont)	Contribution based JSA
JSAg	Jobseeker's Agreement
JSA(IB)	Income based JSA
JSD	Jobseeker's Direction
JSP	Jobseeking Period

LA	Local Authority
LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liabile Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidity Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number
NMW	National Minimum Wage

NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHS	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income
QP	Qualifying Period
QRW	Qualifying remunerative work
QW	Qualifying Week

QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIBSS	Scottish Infected Blood Support Scheme
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions
SPC	State Pension Credit
SpTA	Special Transitional Addition

SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSI	Scottish Statutory Instrument
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TT	Thalidomide Trust
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme
WC (Supp)	Workmen's Compensation (supplementation) scheme
WCA	Work capability assessment

WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfi	Work-focused Interview
WHP	Work and Health Programme
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WSI	Welsh Statutory Instrument
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

1. still employed as a S/E earner i.e. still trading
 - 1.1 if the answer is no then they will not be in employment and earnings from past employment can be disregarded² **or**
 - 1.2 if the answer is yes the DM considers question 2
2. carrying out activities connected to the self-employment or in a period of non-activity which is a normal incident of the cycle of work
 - 2.1 if the answer is no the DM considers question 4
 - 2.2 if the answer is yes the DM considers question 3
3. in remunerative work³ i.e. is the work 16 hours (24 hours in respect of a partner) or more a week
 - 3.1 if the answer is yes the claimant is not entitled to JSA or IS
 - 3.2 if the answer is no the DM considers question 4
4. in receipt of earnings that are to be taken into account⁴ and in respect of what period are the earnings to be taken into account⁵.

Note 1: See DMG 27020 for guidance on whether the claimant is still trading.

Note 2: A claimant could be in remunerative work if they are carrying out activities or it is a period of non-activity which is a normal incident in the cycle of work so they are treated as engaged in work. See DMG Chapter 20 for guidance on remunerative work.

Note 3: To calculate the assessment period in order to determine the weekly earnings of a S/E earner, see the guidance at DMG 27051 et seq.

1 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R (JSA) 1/09; 2 JSA Regs, Sch 6, para 4; IS (Gen) Regs, Sch 8, para 3; 3 JSA Regs, reg 51(1); IS (Gen) Regs, reg 5(1) & (1A); 4 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1); 5 JSA Regs, reg 95(1)(a) & (b); IS (Gen) Regs, reg 30(1)(a) & (b)

- 27009 If the S/E earner has ceased self-employment the DM should consider if
1. there are any capital assets from the business **and**
 2. any capital assets from the business should be disregarded (see DMG 27031 - 27033 and DMG 29366 et seq).

Directors of limited companies

- 27010 A limited company is a legal person¹ and is different from a sole trader or partnership because
1. the company belongs to its shareholders, who share in any distributed profits according to the size of their individual holding **and**
 2. the liability of each shareholder is limited to the number of shares taken, or the amount that the shareholder has stood as personal guarantor for. The shareholder is not liable for any amount above the amount unpaid on shares (if any) or the amount guaranteed **and**

3. if 2. does not apply, liability for debts is limited to the company's capital.

1 R(SB) 57/83

Note: see DMG Chapter 29 when considering the effect of a director's capital

- 27011 A limited company, of whatever size, is separate from its employees, officers 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 company² and is an employed earner (see DMG 26048).

1 R(SB) 57/83; 2 McMillan v Guest 1942, AC 561

Earnings of self-employed earners

- 27012 In S/E cases, earnings are the gross receipts (see DMG 27125) of the employment¹.

1 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1)

- 27013 S/E earnings do not include¹

1. charges paid to the S/E earner in return for providing BL accommodation (see DMG 27014) **or**
2. any of the payments in DMG 28377 and 28384 (fostering allowances and payments for people temporarily in the claimant's care, including in Scotland, Continuing Care and Kinship Care Payments)
3. any sports award² (see DMG 20480).

1 IS (Gen) Regs, reg 37(2); JSA Regs, reg 100(2); 2 IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); National Lottery etc. Act 1993, s 23(2)

Board and lodging accommodation

- 27014 BL accommodation is accommodation¹

1. where the charge for the accommodation includes some cooked or prepared meals that are both
 - 1.1 cooked or prepared by someone who is not
 - 1.1.a the person provided with accommodation **or**
 - 1.1.b a member of the family of the person provided with accommodation **and**
 - 1.2 eaten in that accommodation or associated premises **or**
2. provided to a person in a
 - 2.1 hotel **or**
 - 2.2 guest house **or**
 - 2.3 lodging house (see DMG 27015) **or**
 - 2.4 similar establishment **or**
3. that is
 - 3.1 not provided by a close relative (see DMG 27016 - 27017) of

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Income disregarded in part

Income that has £10 a week disregarded

Types of income that have £10 a week disregarded

28150 The following types of income have the first £10 a week disregarded. Any remainder is taken fully into account, after any income tax has been disregarded

1. Pensions paid to victims of National Socialist persecution
2. WDisP
3. WWP, WMA and WPA
4. Certain payments from the Armed Forces and Reserve Forces Compensation Scheme.

Note: WWP includes a pension paid to a surviving civil partner.

Weekly limit to £5, £10 and £20 disregards

28151 The overall weekly disregard should be limited to £20¹ for the family when more than one of the following types of income are taken into account in the same benefit week

1. more than one payment listed in DMG 28150 **or**
2. covenant income **or**
3. a student loan.

Covenant income has the first £5 disregarded. Student loans have the first £10 disregarded.

Note: This rule does not apply where two payments of the same kind are taken into account in the same benefit week². In these cases each payment has its own disregard.

*1 JSA Regs, Sch 7 para 38; IS (Gen) Regs, Sch 9, para 36;
2 JSA Regs, Sch 7, para 39; IS (Gen) Regs, Sch 9, para 37*

28152

Pensions paid to victims of National Socialist persecution

28153 These pensions should have a £10 disregard¹. They are made under special provision of the laws of the relevant country to victims of Hitler's government.

1 JSA Regs, Sch 7, para 17(c); IS (Gen) Regs, Sch 9, para 16(f)

War disablement pensions

28154 WDisP means¹ any

1. retired pay **or**
2. pension **or**
3. allowance

payable to former members of the armed forces or forces nursing services because of medical unfitness prior to 6.4.05 caused or aggravated by service but not necessarily the result of combat. See Appendix 1 to this Chapter for details of the law under which WDisP is paid.

Note: For those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05 the War Pension Scheme is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 28158.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

28155 WDisP may be made up of¹

1. wounds pension **and**
2. disablement pension **and**
3. retired pay for a disabled officer.

1 R(IS) 3/99

28156 The following payments should have a £10 disregard¹

1. WDisP **and**
2. a payment to compensate for non payment of WDisP **and**
3. a similar payment made by a foreign government.

1 JSA Regs, Sch 7, para 17(a) & (b); IS (Gen) Regs, Sch 9, para 16(a) & (b)

Other payments for housing costs

Types of payment disregarded

28250 Payments of income

1. intended by the claimant, or person making the payment as a contribution towards certain housing and accommodation costs **and**
2. used as a contribution

towards any of the costs in DMG 28253 should be disregarded¹. This disregard does not apply to payments under an insurance policy to which DMG 28107 applies.

1 JSA Regs, Sch 7, para 31(1); IS (Gen) Regs, Sch 9, para 30(1)

28251 If the payment is from a mortgage protection policy the DM should consider the disregards explained in DMG 28240 - 28242 before considering this disregard.

28252 If a payment is made from an insurance policy the DM should decide if the policy was taken out to meet housing costs¹. If the policy was taken out to meet housing costs the DM should consider the disregards at DMG 28240 et seq before any other disregards.

1 R(IS) 13/01

28253 Payments for the following housing and accommodation costs should be disregarded

1. any payment on a loan secured on the claimant's home which is not a qualifying housing cost. (If only part of the loan is not a qualifying housing cost this disregard only applies to the amount of the payment for that part¹)
2. interest payments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount²
3. capital repayments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount³
4. insurance policy premiums for
 - 4.1 mortgage protection policies if the other payments disregarded under this paragraph come from it⁴ **and**
 - 4.2 building insurance policies for the claimant's home⁵
5. other housing costs
 - 5.1 any payment towards
 - 5.1.a service charges **and**
 - 5.1.b ground rent or rent charge **and**

- 5.2** any payment for
 - 5.2.a** a co-ownership scheme **and**
 - 5.2.b** a Crown tenancy **and**
 - 5.2.c** a tent

to the extent that they are not met in the applicable amount⁶

- 6.** rent on the home that is not met by HB⁷
- 7.** accommodation charges⁸ but only to the extent that the actual charge exceeds the amount payable by LAs under certain legislation.

Note 1: The disregards at **2 and 3** only apply to that part of the loan that is a qualifying housing cost.

Note 2: A service charge is a qualifying housing cost if it is payable as a condition of the claimant occupying a property. See DMG Chapter 23 for guidance when a service charge can be met as a housing cost.

1 JSA Regs, Sch 7, para 31(1)(a); IS (Gen) Regs, Sch 9, para 30(1)(a); 2 JSA Regs, Sch 7, para 31(1)(b); IS (Gen) Regs, Sch 9, para 30(1)(b); 3 JSA Regs, Sch 7, para 31(1)(c); IS (Gen) Regs, Sch 9, para 30(1)(c); 4 JSA Regs, Sch 7, para 31(1)(d)(i); IS (Gen) Regs, Sch 9, para 30(1)(d)(i); 5 JSA Regs, Sch 7, para 31(1)(d)(ii); IS (Gen) Regs, Sch 9, para 30(1)(d)(ii); 6 JSA Regs, Sch 7, para 31(1)(b); IS (Gen) Regs, Sch 9, para 30(1)(b); 7 JSA Regs, Sch 7, para 31(1)(e); IS (Gen) Regs, Sch 9, para 30(1)(e); 8 NA Act 48, Part III, Care Act 2014 (care and support) Part 1; Social Services and Well-being (Wales) Act 2014, s 50 or 52

28254 The disregards in DMG 28253 do not apply if the DM decides the payment is an LRP¹.

1 JSA Regs, reg 89; IS (Gen) Regs, reg 25

28255 If a payment for a housing cost or part of a housing cost has already been disregarded under DMG 28240 - 28242 the payment for the same cost should not be disregarded again under DMG 28253.

How should the DM treat payments for housing costs that also attract other disregards

28256 The DM should include any other disregard that applies to a payment made for housing costs. This includes any

- 1.** income tax deducted from the payment **and**
- 2.** disregard that applies to charitable and voluntary payments.

28257 - 28259

actual charge	£300.00
less	£77.95
The disregard is	£222.05

Other payments towards accommodation costs.

28305 Disregard the amount of the payment intended and used for charges not met by the LA¹ under certain legislation².

Note: This would only happen if the charge was greater than the amount allowed by the LA but not if the claimant chose a more expensive home than the LA would allow.

*1 JSA Regs, Sch 7, para 31(1)(e); IS (Gen) Regs, Sch 9, para 30(1)(e);
2 NA Act 48, s 26; the Care Act 2014 (care and support), part 1; Social Services and Well-being (Wales) Act 2014,
part 4 (excluding Direct Payments any under s 50 or 52)*

28306 - 28349

Income fully disregarded

Types of income fully disregarded

[See DMG Memo IS/JSA 64]

- 28350 The following incomes should be fully disregarded when calculating income for IS and JSA(IB)
1. any payment from and/or some payments from money that originally came from
 - 1.1 the Macfarlane Trust
 - 1.2 the Macfarlane (Special Payments) Trust
 - 1.3 the Macfarlane (Special Payments) (No. 2) Trust
 - 1.4 the Independent Living Fund (2006) – see **Note 1** at 28351.
 - 1.5 the Fund
 - 1.6 the Eileen Trust
 - 1.7 the Skipton Fund
 - 1.8 MFET Limited
 - 1.9 the Caxton Foundation
 - 1.10 the Scottish Infected Blood Support Scheme (SIBSS)
 - 1.11 the London Emergencies Trust (LET)
 - 1.12 the We Love Manchester Emergency Fund (WLMEF)
 - 1.13 Infected Blood Schemes (IBS) – see **Note 2** at 28351
 - 1.14 Thalidomide Trust (TT)
 2. any payment for a reduction of CT
 3. AAs
 4. AFIP
 5. the Bereavement Support Payment (see DMG 28354)
 6. certain payments due to be paid before the date of claim
 7. child maintenance
 8. Christmas Bonus
 9. compensation for loss of HB
 10. concessionary payments
 11. cost of conversion of foreign money
 12. CTB
 13. dependant's or non dependant's contributions to accommodation and living costs

14. DLA
15. discretionary housing payments (DHPs)
16. Education maintenance allowance and the 16 - 19 Bursary Fund
17. Employment Retention and Advancement (ERA) Scheme payments
18. EZ, self-employed route
19. GA
20. gallantry awards
21. HB
22. income frozen abroad
23. income in kind
24. income tax refunds
25. income treated as capital
26. increases in SS benefits for absent dependants
27. jurors' or witnesses' court attendance allowance
28. local welfare provision
29. Mobility supplement
30. ND IAP, expenses and top-up payments
31. payments for foster children
32. payment for a person temporarily in the care of the claimant
33. payments from an LA in lieu of Community Care Services
34. payment by an employer of employee's expenses
35. payment of expenses to voluntary workers
36. payment of expenses to service users
37. payments to help disabled people get or keep employment
38. payments from the SF under SS legislation
39. payments from the Supporting People programme
40. certain payments made under employment and training law
41. payments made under the Return to Work Credit Scheme
42. payments made under the Repayment of Teacher's Student loans Scheme
43. PIP
44. resettlement benefit
45. special educational needs payments and budgets

46. special guardianship payments
47. training premium and expenses
48. travel or any other expenses in respect of the MWA Scheme or a prescribed scheme for assisting persons to obtain employment
49. vouchers including child care cheques
50. war widows/widowers, surviving civil partners supplementary pensions
51. welfare foods, NHS supplies, travelling expenses and assisted prison visits.

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

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

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

Note 1: The Independent Living Fund (2006) closed on 30.6.15. Payments made under any of the replacement schemes (ILF Scotland (including NI), Welsh Independent Living Grant & Local Authorities in England) are not covered by this legislation and will be taken fully into account.

Note 2: From 2.10.17 approved IBS for England, Wales and Northern Ireland replaced the five existing UK payment schemes (The Eileen Trust, The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation) which provided financial support to people infected with HIV and/or hepatitis C as a result of contaminated NHS blood or blood products (see DMG 28450).

Payments for children and people living temporarily with the claimant

Foster children

28377 The DM should fully disregard payments¹ made by or on behalf of

1. a LA under its duty to provide

1.1 accommodation **and**

1.2 maintenance

for a child it is looking after² **or**

2. a voluntary organization under certain legislation³ **or**

3. a LA⁴

for children who are living with claimants under fostering arrangements.

Note: These allowances should not be treated as earnings.

1 JSA Regs, Sch 7, para 27; IS (Gen) Regs, Sch 9, para 26;

2 Children Act 1989, s 22C(2); Children (Scotland) Act 1995, s 26 or 26A;

Social Services and Well-being (Wales) Act 2014, s 81(2);

3 Children Act 1989, s 59(1)(a); 4 Looked After Children (Scotland) Regulations 2009, regs 33 or 51

Kinship care

28378 In Scotland an LA may place a child who is at risk of going into care or who has previously been looked after by the LA with another person. This is known as Kinship care¹. Any payments made by the LA to the person with care are intended to cover any additional costs normally incurred by a child living at home but do not cover the costs of accommodation and maintenance of the child¹. Any payment made by the LA to the person providing care should be fully disregarded².

1 Looked After Children (Scotland) Regulations 2009, reg 10; Children and Young People (Scotland) Act 2014,

s 73(1)(b); 2 JSA Regs, Sch 7, para 27; IS (Gen) Regs, Sch 9, para 26 & 27A

Payments for the welfare of children and those formerly looked after by the LA

28379 Certain legislation¹ concerning the welfare of children applies in England, Wales and Scotland². This applies to certain children who were being looked after by a LA.

1 CLC Act 2000; Children (Leaving Care) SS Benefit Regs, reg 1(1);

2 Children (Leaving Care) SS Benefits (Scotland) Regs, reg 1

28380 The DM should fully disregard payments made by LAs under child-care law¹

1. to promote the welfare of children **and**

2. to prevent people being taken into care

unless the claimant or a member of the family is involved in a TD².

1 Children (Leaving Care) Act 2000 (Comm No. 2 & Cons Prov) Order, Sch 1, para (c) & Sch 4, para (c); Children Act 1989, s 17, 23B, 23C or 24A; SW (Scot) Act 68, s 12; Children (Scotland) Act 1995, s 22, 26A, 29 or 30; Social Services and Well-being (Wales) Act 2014, s 37 or 38 (excluding any direct payment under s 51) or s 109, 110, 114 & 115; 2 JSA Regs, Sch 7, para 29(1); IS (Gen) Regs, Sch 9, para 28(1)

28381 Where

1. a former child (aged over 18 but under 26) who was in the claimant's care still lives with the claimant **and**
2. the LA makes payments under certain child care law¹ to the former child in care **and**
3. the former child in care passes the payments on to the claimant

those payments received by the claimant are disregarded unless the claimant or a member of the family is involved in a TD².

Note: In Scotland this is known as 'Continuing Care'

*1 Children Act 89, s 23C; Children (Scotland) Act 95, s 22, 26A or 29;
2 JSA Regs, Sch 7, para 29(2) & (5); IS (Gen) Regs, Sch 9, para 28(2) & (5)*

28382 The DM should take into account the income in full in DMG 28380 or DMG 28381 if

1. the claimant **or**
2. a member of the family

is involved in a TD¹.

Note: These payments may be made to people who were in LA care.

*1 JSA Regs, Sch 7, para 29(4); IS (Gen) Regs, Sch 9, para 28(4); JS Act 95, s 14;
SS CB Act 92, s 124(1), 126 & 127*

Payments for people temporarily in the claimant's care

28383 The DM should fully disregard payments to a claimant or partner for a person who

1. is not normally a member of the claimant's household **and**
2. is temporarily in the claimant's care¹

when payments are made by a LA, HA, a voluntary organization, a clinical commissioning group, the NHS Commissioning Board, a Local Health Board or the person concerned under specified legislation².

Note 1: This could include payments to a claimant under the Adult Placement or Shared Lives Scheme from a LA's own resources.

Note 2: Payments made by a LA does not include payments of HB made in respect of the person concerned.

*1 JSA Regs, Sch 7, para 28; IS (Gen) Regs, Sch 9, para 27;
2 NA Act 48, s 26(3A)*

28384 This type of payment is often made to people providing “respite care”. This is short-term care provided to give a disabled person's usual carer a break from their caring responsibilities. People providing respite care should not be treated as

1. engaged in remunerative work **or**
2. receiving earnings from S/E¹.

1 JSA Regs, reg 100(2)(b); IS (Gen) Regs, reg 37(2)(b)

Income frozen abroad

28417 The DM should fully disregard income which is

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

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

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

Income in kind

28418 The DM should fully disregard any income in kind except

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

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

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

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

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

Example 1

The claimant recently separated from her partner and claimed JSA.

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

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

Example 2

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

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

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

- 28419 The exceptions at DMG 28418 do not apply¹ when the income in kind comes from
1. the Macfarlane Trust
 2. the Macfarlane (Special Payments) Trust
 3. the Macfarlane (Special Payments) (No. 2) Trust
 4. the Fund
 5. the Eileen Trust
 6. the Independent Living Fund (2006) see note at DMG 28351
 7. the Skipton Fund
 8. the Caxton Foundation
 9. MFET Limited
 10. the Scottish Infected Blood Support Scheme
 11. the London Emergencies Trust (LET)
 12. the We Love Manchester Emergency Fund (WLMEF)
 13. Infected Blood Schemes (IBS) **or**
 14. the partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

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

Income tax refunds

When should tax refunds be treated as capital

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

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

When should tax refunds be treated as income

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

(See DMG Chapter 32 for guidance on TDs).

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

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

Income treated as capital

28422 The DM should fully disregard as income any income that is treated as capital¹.

1 JSA Regs, Sch 7, para 34; IS (Gen) Regs, Sch 9, para 32

Jurors or witnesses court attendance allowance

28423 The DM should fully disregard any payment to a

1. juror **or**
2. witness

for attending court. But payments for loss of earnings or benefits¹ should not be disregarded.

1 JSA Regs, Sch 7, para 43; IS (Gen) Regs, Sch 9, para 43

Payments in lieu of community care services and payments in lieu of health care

28424 The DM should disregard any payments which are made

1. under relevant legislation¹ **and**
2. in lieu of²
 - 2.2 community care services **or**
 - 2.2 health care.

Note: These types of payments are sometimes known as “Direct Payments for Health Care” or “Direct Payments for Community Care”.

1 SW (Scot) Act 68, s 12B; Health and Social Care Act 2001, s 57; National Health Service Act 2006, s 12A - 12D; Care Act 2014 (direct payments), s 31-33; Social Services and Well-being (Wales) Act 2014 (direct payments), s 50 or 52; 2 JSA Regs, Sch 7, para 56; IS (Gen) Regs, Sch 9, para 58

Example

Agnes is in receipt of IS. She receives money from her LA so that she can pay someone to be her home help. The DM

1. finds out that the money received from the LA is paid under the correct legislation **and**
2. decides that the money received from the LA should be disregarded.

Payments made under employment and training law

28425 DMs should disregard¹ any payment made under employment and training law² except any payment³

1. made as a substitute for
 - 1.1 IS or
 - 1.2 JSA or
 - 1.3 IB or
 - 1.4 SDA or
 - 1.5 ESA
2. of a bridging allowance paid under specific legislation⁴
3. intended to meet the cost of living expenses while a person is participating in
 - 3.1 an education or
 - 3.2 training or
 - 3.3 other

scheme to enhance employment prospects unless the payment is a Career Development Loan paid under employment and training law and the period of education, training or the scheme, which is supported by the loan, has been completed.
4. made in respect of the cost of living away from home to the extent that the payment relates to rent for which HB is payable in respect of accommodation which is not normally occupied as the home.

1 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13;

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

3 JSA Regs, Sch 7, para 14(1); IS (Gen) Regs, Sch 9, para 13(1);

4 E & T Act 73, s 2(3); Enterprise and New Towns (Scotland) Act 1990, s 2(5)

28426 Payments made under employment and training law¹ include

1. training allowances paid to young people in non-waged work based training (see DMG Chapter 26)
2. bridging allowance (see DMG Chapter 30)
3. ND allowances (see Jobcentre Plus operational guidance)
4. allowances for people on WBLA (Training For Work in Scotland) (see Jobcentre Plus operational guidance)
5. Career Development Loans (see DMG 28542 - 28549)
6. ERA payments (see DMG 28410)
7. return to work credit scheme (see DMG 28429).

This list is not exhaustive and DMs should obtain evidence that a payment is made under employment and training law.

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

Infected Blood Schemes, the Fund and other specific Trusts

Payments from Infected Blood Schemes, the Fund and other specific Trusts

Infected Blood Schemes

28450 Infected Blood Schemes (IBS), approved for such purposes by the Secretary of State, replaced the five existing payment schemes (The Eileen Trust, The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation – see DMG 28469-73) for England, Northern Ireland and Wales from 2.10.17. These schemes provide financial support to people infected with HIV and/or hepatitis C as a result of contaminated NHS blood or blood products.

Income from Infected Blood Schemes

28451 Fully disregard¹

1. any income from approved Infected Blood Schemes **and**
2. any income from capital that was received from approved Infected Blood Schemes.

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

What is the Fund

28452 The Fund is a scheme run by DH. It makes payments to people who are not haemophiliacs but who contracted HIV when receiving NHS

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

Income from the Fund

28453 Fully disregard¹

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

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

The Scottish Infected Blood Support Scheme

28454 The Scottish Infected Blood Support Scheme (SIBSS)¹ became operational from 1.4.17. It is administered by NHS National Services Scotland (NSS), legally known

as the Common Services Agency. NSS is an NHS Board accountable to Scottish Ministers. SIBSS combined the five existing blood support schemes (The Eileen Trust, The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation – see DMG 28469-73) into one scheme in Scotland.

1 JSA Regs, reg 1(3), IS (Gen) Regs, reg 2(1)

Income from the Scottish Infected Blood Support Scheme

28455 Fully disregard¹

1. any income from the Scottish Infected Blood Support Scheme **and**
2. any income from capital that was received from the Scottish Infected Blood Support Scheme.

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

Previous Infected Blood Schemes

28456 Prior to the introduction of the Infected Blood Schemes at DMG 28450 and the Scottish Infected Blood Support Scheme at DMG 28454, five separate schemes provided financial support to people affected by contaminated NHS blood or blood products:

28457 The Eileen Trust was a charitable trust set up on 29.3.93 to give further help to people who are not haemophiliacs but who contracted HIV when receiving NHS

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

28458 The Macfarlane Trusts were set up to provide compensation to haemophiliacs who contracted HIV when receiving NHS

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

28459 The Macfarlane Trusts are

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

28460 MFET Limited¹ is an organisation funded by DH. The purpose of MFET Limited is to make payments to people who have acquired HIV as a result of treatment by the NHS with blood or blood products.

1 JSA Regs, reg 1(3), IS (Gen) Regs, reg 2(1)

28461 The Caxton Foundation was established on 28.3.11. It administers funds provided by DH for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments¹.

1 JSA Regs, reg 1(3), IS (Gen) Regs, reg 2(1)

Income from the Eileen Trust, Macfarlane Trusts, MFET and the Caxton Foundation

28462 Fully disregard¹

1. any income **and**
2. any income from capital that was received from schemes in DMG 28469-73.

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

The Skipton Fund

28463 The Skipton Fund administers an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C. It includes people infected as a result of NHS blood products and other people eligible for payment in accordance with the scheme's provisions¹.

Note: Payments from the Skipton Fund will be payments of capital (see DMG Chapter 29).

1 JSA Regs, reg 1(3), IS (Gen) Regs, reg 2(1)

The London Emergencies Trust

28464 The London Emergencies Trust (LET)¹ was set up to alleviate hardship for those who have been bereaved or injured as a result of the terror attacks in London on 22.3.17 and 3.6.17. Beneficiaries of the LET may receive lump sum and/or regular payments.

1 JSA Regs, reg 1(3), IS (Gen) Regs, reg 2(1)

Income from the London Emergencies Trust

28465 Fully disregard¹

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

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

The We Love Manchester Emergency Fund

28466 The We Love Manchester Emergency Fund (WLMEF)¹ was set up to alleviate hardship for those have been bereaved or injured as a result of the terror attack in

Manchester on 22.5.17. Beneficiaries of the WLMEF may receive lump sum and/or regular payments.

1 JSA Regs, reg 1(3), IS (Gen) Regs, reg 2(1)

Income from the We Love Manchester Emergency Fund

28467 Fully disregard¹

1. any income from the We Love Manchester Emergency Fund **and**
2. any income from capital that was received from the We Love Manchester Emergency Fund.

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

The London Bombings Relief Charitable Fund

28468 The London Bombings Relief Charitable Fund¹ was set up to relieve the needs of victims, including families or dependants of victims, of the terrorist attacks in London on 7.7.05. Interim payments were made to relieve the immediate needs of victims followed by further lump sum payments. Recipients may receive more than one lump sum payment.

Note: Payments made from the London Bombings Relief Charitable Fund will be payments of capital (See DMG Chapter 29).

1 JSA Regs, reg 1(3); IS (Gen) Regs, Reg 2(1)

The Independent Living Fund (2006)

28469 The original Independent Living Fund ran from 1988 to 1993. It was replaced by the Independent Living (1993) Fund and the Independent Living (Extension) Fund. With effect from 1.10.07 these funds were replaced by the Independent Living Fund (2006). The fund closed permanently on 30.6.15. Any payments made under any of the replacement schemes (see note at DMG 28351) are not covered by this legislation and will therefore be taken fully into account.

Income from the Independent Living Fund (2006)

28470 Fully disregard¹ any income from the Independent Living Fund (2006).

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

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

28471

Payments from money which came from the Trusts

Meaning of the Trusts

- 28472 “The Trusts”¹ is the term that describes
1. the Macfarlane Trusts **and**
 2. the Fund **and**
 3. the Eileen Trust **and**
 4. the Skipton Fund **and**
 5. the London Bombings Relief Charitable Fund **and**
 6. MFET Limited **and**
 7. the Caxton Foundation **and**
 8. the Scottish Infected Blood Support Scheme **and**
 9. the London Emergencies Trust **and**
 - 10 the We Love Manchester Emergency Fund **and**
 11. Infected Blood Schemes.

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

What payments should be disregarded

- 28473 Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 28474 - 28487. In these cases, the person receiving the income is not the person who qualified for the Trust payment. In any other circumstances, payments of income from a Trust payment should be treated under normal rules.

Person with HIV

- 28474 In this guidance the term "person with HIV" is used to describe
1. people with haemophilia **or**
 2. other people
- who qualify for Trust payments.

Qualifying person

- 28475 In this guidance a qualifying person means¹ a person in respect of whom a payment has been made from
1. the Fund **or**
 2. the Eileen Trust **or**

3. the Skipton Fund **or**
4. the London Bombings Relief Charitable Fund **or**
5. MFET Limited **or**
6. the Caxton Foundation **or**
7. the Scottish Infected Blood Support Scheme **or**
8. the London Emergencies Trust **or**
9. the We Love Manchester Emergency Fund **or**
10. Infected Blood Schemes.

Note: A person in respect of whom a payment has been made from the Macfarlane Trust is not included above but is included in the definition at DMG 28474.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Payments by a qualifying person or person with HIV to partners, children and young people

28476 Disregard any payment made by or on behalf of a qualifying person or person with HIV from money from a Trust payment made to or for the benefit of

1. their partner or their former partner if they are **not**
 - 1.1 estranged **or**
 - 1.2 divorced **or**
 - 1.3 former civil partners **or**
 - 1.4 estranged, divorced or had their civil partnership dissolved at the date of death if the qualifying person or person with HIV has died¹ **or**
2. any child or young person who
 - 2.1 is a member of the family of the qualifying person or person with HIV **or**
 - 2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family².

Note: DMG 28483 - 28484 explains for how long the payment is disregarded.

*1 JSA Regs, Sch 7, para 41(2)(a); IS (Gen) Regs, Sch 9, para 39(2)(a);
2 JSA Regs, Sch 7, para 41(2)(b); IS (Gen) Regs, Sch 9, para 39(2)(b) & (c)*

Payments by the partner or former partner of the qualifying person or person with HIV

28477 Fully disregard any payment from a Trust payment made by or on behalf of a partner or former partner of a qualifying person or person with HIV, providing the qualifying person or person with HIV and partner or former partner are **not**

1. estranged **or**
2. divorced **or**
3. former civil partners **or**

4. estranged, divorced or had their civil partnership dissolved at the date of death of either

4.1 the qualifying person or person with HIV **or**

4.2 the partner or former partner.

28478 This disregard applies if the payment is made to or for the benefit of

1. the qualifying person or person with HIV¹ **or**

2. any child or young person² who

2.1 is a member of the family of the qualifying person or person with HIV **or**

2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family.

Note: DMG 28483 - 28484 explains for how long the payment is disregarded.

1 JSA Regs, Sch 7, para 41(3)(a); IS (Gen) Regs, Sch 9, para 39(3)(a);

2 JSA Regs, Sch 7, para 41(3)(b); IS (Gen) Regs, Sch 9, para 39(3)(b)

Payments by a qualifying person or person with HIV to parents, step parents or guardians

28479 Fully disregard any payment from a Trust payment by a qualifying person or person with HIV to their

1. parent **or**

2. step parent¹ **or**

3. guardian² if the qualifying person or person with HIV has no parent or step parent and is a

3.1 child **or**

3.2 young person **or**

3.3 student in FTE.

1 JSA Regs, Sch 7, para 41(4)(b)(i); IS (Gen) Regs, Sch 9, para 39(4)(b)(i);

2 JSA Regs, Sch 7, para 41(4)(b)(ii); IS (Gen) Regs, Sch 9, para 39(4)(b)(ii)

28480 This disregard applies if the qualifying person or person with HIV

1. has no partner or former partner from whom that person is **not**

1.1 estranged **or**

1.2 divorced **or**

1.3 former civil partners **and**

2. has no child or young person in the family **and**

3. has never had a child or young person in their family¹.

Note: DMG 28485 explains for how long the payment is disregarded.

1 JSA Regs, Sch 7, para 41(4)(a); IS (Gen) Regs, Sch 9, para 39(4)(a)

Payments from the estate of a qualifying person or person with HIV to a parent, step parent or guardian

28481 Fully disregard any payment from the estate of a qualifying person or person with HIV to

1. a parent **or**
2. a step parent¹ **or**
3. a guardian² if at the date of death/the qualifying person or person with HIV had no parent or step parent and was a
 - 3.1 child **or**
 - 3.2 young person **or**
 - 3.3 student in FTE.

1 JSA Regs, Sch 7, para 41(5)(b)(i); IS (Gen) Regs, Sch 9, para 39(5)(b)(i);

2 JSA Regs, Sch 7, para 41(5)(b)(ii); IS (Gen) Regs, Sch 9, para 39(5)(b)(ii)

28482 This disregard applies if at the date of death the qualifying person or person with HIV had

1. no partner or former partner from whom that person is **not**
 - 1.1 estranged **or**
 - 1.2 divorced **or**
 - 1.3 former civil partners **or**
2. no child or young person in the family **and**
3. at no time had a child or young person in the family¹.

Note: DMG 28486 explains for how long the payment is disregarded.

1 JSA Regs, Sch 7, para 41(5)(a); IS (Gen) Regs, Sch 9, para 39(5)(a)

For how long should the payment be disregarded

Payments to a qualifying person or person with HIV and partners

28483 Disregard payments made to or for the benefit of

1. a qualifying person or person with HIV¹ **or**
2. the partner or former partner of a qualifying person or person with HIV²

for the lifetime of the person who received the payment. Breaks in entitlement to IS or JSA(IB) do not alter this disregard.

1 JSA Regs, Sch 7, 41(3)(a); IS (Gen) Regs, Sch 9, para 39(3)(a)

2 JSA Regs, Sch 7, para 41(2)(a); IS (Gen) Regs, Sch 9, para 39(2)(a)

Payments to children and young people

28484 Disregard payments made to or for the benefit of a child or young person as long as they remain

1. a child or young person **and**
2. in (or they were in) the family of¹
 - 2.1 the qualifying person or person with HIV **or**
 - 2.2 the partner or former partner of the qualifying person or person with HIV **and**
3. a member of the IS or JSA(IB) claimant's family.

1 JSA Regs, Sch 7, para 41(2)(b) and 41(3)(b); IS (Gen) Regs, Sch 9, para 39(2)(b) & (c) & 39(3)(b) & (c)

Payments to parents and guardians from a qualifying person or person with HIV

28485 Disregard payments to a

1. parent **or**
2. step parent **or**
3. guardian

from the date the payment is made until the end of two years after the qualifying person or person with HIV dies¹.

Note: In some cases this disregard may last for the length of the JSA(IB)/IS claim, because the person with HIV may not die whilst the claimant is on JSA(IB)/IS.

1 JSA Regs, Sch 7, para 41(4); IS (Gen) Regs, Sch 9, para 39(4)

Payments to parents and guardians from the estate of a qualifying person or person with HIV

28486 Disregard¹ payments to a

1. parent **or**
2. step parent **or**
3. guardian

for a period of two years from the date the qualifying person or person with HIV died.

Note: This disregard applies from the date of death not the date the estate makes a payment.

1 JSA Regs, Sch 7, para 41(5); IS (Gen) Regs, Sch 9, para 39(5)

Deciding if a disregard applies

28487 Once the claimant has declared any payments made from one of the Trusts the DM should decide

1. if the payment qualifies for a disregard **and**
2. the length of any disregard.

28488 Seek further evidence if there is doubt about the

1. source of the payment **or**
2. relationship of the person receiving the payment with the qualifying person or person with HIV **or**
3. extent that money from the Trust has been kept separately.

Trust payments invested with other money

28489 If a Trust payment is invested with other money to produce an income, disregard only the proportion that came from the trust payment¹.

1 JSA Regs, Sch 7, para 41(6); IS (Gen) Regs, Sch 9, para 39(6)

Example

Michael bought an annuity for £5,000. £4,000 came from the Eileen Trust. The balance came from his own savings.

The annuity produces an income of £50 a month.

The DM decides to disregard £40 a month. £10 a month is taken into account as income.

Qualifying person or person with HIV's relationship with former partners

28490 The DM should be satisfied that a former partner or civil partner is not estranged or divorced or had the civil partnership dissolved. Accept the claimant's statement unless it is considered to be improbable or self-contradictory.

Example

Joanne receives a payment of money from the Macfarlane Trust. She is divorced from her former partner Harold, who is a person with HIV.

The DM decides that the payment should not be disregarded.

Social fund funeral payments

28491 Trust payments will become part of a person's estate upon death. Any assets of a dead person including

1. payments of income from the Trusts including Variant Creutzfeldt-Jakob disease payments **and**
2. payments of income from money that originally came from the Trusts or from Variant Creutzfeldt-Jakob disease payments

are not taken into account as assets of the estate if a claim for a SFFP is made (see DMG Chapter 39).

When is a payment due to be made

28512 A payment is due to be paid where there is a promise or agreement to make a payment.

Disregard for relevant payments

28513 Fully disregard¹ any relevant payment unless one of the exceptions at DMG 28514 - 28515 apply.

1 JSA Regs, Sch 7, para 15(1); IS (Gen) Regs, Sch 9, para 15(1)

Relevant payments that should be taken fully into account

28514 The disregard in DMG 28513 does not apply to

1. a person affected by a TD¹ **or**
2. LRPs² **or**
3. maintenance, that is not an LRP for
 - 3.1 a member of the family **or**
 - 3.2 a former partner **or**
 - 3.3 the childrenof the person making the payment³ **or**
4. a student's covenant or grant income⁴ **or**
5. in JSA cases only, any payment made to a member of the family because another member of the family is involved in a TD⁵ **or**
6. in IS cases only, to a person entitled to IS during
 - 6.1 a TD **or**
 - 6.2 the first 15 days after returning to work after a TD⁶.

Note: JSA can not be paid to claimants involved in a TD. Special rules apply if a member of the family of a JSA claimant is involved in a TD.

1 JSA Regs, Sch 7, para 15(3)(b)(i); IS (Gen) Regs, Sch 9, para 15(3)(b); 2 JSA Regs, reg 89 & 90; IS (Gen) Regs, reg 25 & 25A; 3 JSA Regs, Sch 7, para 15(3)(a); IS (Gen) Regs, Sch 9, para 15(3)(a); 4 JSA Regs, reg 134; IS (Gen) Regs, reg 65; 5 JSA Regs, Sch 7, para 15(3)(b)(ii); 6 IS (Gen) Regs, Sch 9, para 15(3)(b)

Relevant payments paid in kind

28515 Fully disregard relevant payments that are paid in kind¹ unless one of the exceptions at DMG 28418 applies. The exceptions at DMG 28418 do not apply when the income in kind comes from

1. the Macfarlane Trust
2. the Macfarlane (Special Payments) Trust

3. the Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. the Eileen Trust
6. the Independent Living Fund (2006) but see DMG 28351
7. MFET Limited
8. the Caxton Foundation **or**
9. the Skipton Fund
10. the Scottish Infected Blood Support Scheme
11. the London Emergencies Trust
12. the We Love Manchester Emergency Fund
13. Infected Blood Schemes

as explained at DMG 28419.

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

28516 - 28529

Personal and occupational pensions

General

28617 There are rules for calculating income that is

1. available on application from a personal or occupational pension **or**
2. is treated as being available from a personal or occupational pension.

28618 These rules apply to people who have reached the qualifying age for SPC. The DM should ignore potential income from

1. personal pension schemes **or**
2. occupational pension schemes **or**
3. the Board of the Pension Protection Fund

for people under the qualifying age for SPC¹. The weekly amount of any notional income to be taken into account should be calculated as if it is actual income².

1 JSA Regs, reg 105(2)(g); IS (Gen) Regs, reg 42(2)(g); 2 JSA Regs, reg 105(14); IS (Gen) Regs, reg 42(7)

What is a personal pension

28619 Personal pension scheme means¹

1. a personal pension scheme as stated in pensions law²
2. an annuity contract or trust scheme approved under tax law³ **and**
3. a personal pension scheme approved under tax law⁴.

1 JS Act 95, s 35(1); IS (Gen) Regs, reg 2(1); 2 PS Act 93, s 1;

3 Income and Corporation Taxes Act 1988, s 620, s 621 & s 622(3); Finance Act 2004, Sch 36;

4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV; Finance Act 2004, Sch 36

What is an occupational pension

28620 An occupational pension¹ is any pension or other periodical payment under an occupational pension scheme, but does not include any discretionary payment out of a fund established for relieving hardship in particular cases.

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

Pension Protection Fund

28621 The Pension Protection Fund Board was set up to compensate members of defined benefit (final salary) occupational pension schemes where the employer goes out of business and the scheme is left with insufficient funds. Compensation may be made as regular payments of income and lump sum payments (just as the former pension scheme would have paid). Payments from the Pension Protection Fund are treated in the same way as payments from occupational pensions schemes.

What is a pension fund holder

28622 Where reference is made to a pension fund holder, this means the

1. trustee **or**
2. manager **or**
3. administrator

of a personal or occupational pension scheme¹.

1 JSA Regs, reg 105(16); IS (Gen) Regs, reg 2(1)

Who is a person who derives entitlement

28623 The term “person who derives entitlement” is used to describe people who may be paid a pension at the discretion of the pension fund holder. When the original pensioner dies the pension fund holder has discretion to decide what to do with the fund.

People, such as widows, widowers or surviving civil partners of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

Lump sums on retirement

28624 At the point that

1. an annuity is bought **or**
2. an income is taken

from the personal pension fund a lump sum of up to 25% of the fund may be taken. Treat this payment as capital. Do not take it into account as notional capital available on application¹.

1 JSA Regs, reg 113(2)(d); IS (Gen) Regs, reg 51(2)(d)

Pension Flexibilities

28625 Since April 2015 people have had greater flexibility in how they access their pension savings, generally known as “pension flexibilities”. These flexibilities allow an individual to be able to choose what they want to do with their defined contribution fund or money purchase benefits scheme (sometimes referred to as a “pension pot”). If they want to, they could

1. draw out all of the funds in the pension pot
2. purchase an annuity (see DMG 28101)
3. opt for a drawdown arrangement (where lump sums or regular amounts can be drawn down from the pension pot) without any restriction either in the form of a cap or a minimum income amount

4. do nothing and leave the fund untouched.

Income and Capital Drawdowns

28626 Whilst a claimant's pension pot is held by the pension provider then that sum falls to be disregarded as capital. If the claimant has withdrawn money from their pension pot (known as a "drawdown") then a determination has to be made as to how this is to be treated. Where a claimant chooses to withdraw amounts on a regular basis then those amounts fall to be treated as income and taken into account as such.

28627 Where a claimant chooses to

1. take ad-hoc withdrawals **or**
2. take the whole sum

then the amount withdrawn falls to be treated as capital (see DMG Chapter 29).

28628 For the purposes of notional income for claimants, or their partners as appropriate, who have reached the qualifying age for SPC (see DMG 28631), the claimant's pension pot is required to be re-valued

1. after every drawdown of capital
2. after every drawdown of income which exceeds the applicable notional income amount (see DMG 28632) **or**
3. upon the claimant's request.

Example

John is in receipt of SPC. He has a pension pot of £40,000 which he doesn't wish to access at the moment but might do at a later stage. The DM calculates that as an annuity income, this would produce £2,000 per annum or £38.46 per week. This is based on 100% of the rate of annuity that the fund would generate (see DMG 28631). The figure of £38.46 is taken into account as notional income. John then decides to draw down £8,000 as capital, leaving £32,000 in his pension pot. The decision maker reassesses the notional income figure based on 100% of the rate of annuity that the remaining amount in the fund would generate.

Information and evidence

28629 Pension fund holders must provide the DM with information about

1. the rate of annuity available from the pension fund **and**
2. the amount of income that would be available if the funds were held in a scheme that produces an income.

This information is usually provided by the provider on form PPR1 and is based on tables prepared by the Government Actuary's Department (GAD)¹. The rate of annuity is 100% of the rate of the annuity that could be generated by the fund. DMs must consider evidence from pension fund holders when deciding the amount of

notional income². Do not make a decision until the pension fund holder has been given sufficient time to provide evidence.

1 SS (C&P) Regs, reg 7(6); 2 JSA Regs, reg 105(4) & 105(5); IS (Gen) Regs, regs 42(2B) & 42(2C)

- 28630 DMs must consider the evidence of the pension fund holder but are not bound to accept it. Consider all the evidence on the amount of notional income before making a decision. The decision should be based on the most convincing evidence available.

Notional income - schemes where income withdrawal is allowed

When should a person be treated as having notional income

- 28631 Treat a claimant who has reached the qualifying age for SPC as having¹
1. any income from an occupational pension scheme, a personal pension scheme, or the Board of the Pension Protection Fund which
 - 1.1 has not been claimed **and**
 - 1.2 he might expect to be entitled to if a claim for it was made
 2. income from an occupational pension scheme which the claimant has elected to defer.

1 JSA Regs, reg 105(2B); IS (Gen) Regs, reg 42(2ZA)

Amount of notional income

- 28632 The amount of the notional income is
1. where no income is drawn, 100% of the rate of annuity that may be withdrawn from the fund **or**
 2. where some income is drawn, the difference between the rate of annuity and the income actually withdrawn.

Example

Jason and Sarah are a couple in receipt of SPC. Jason has a pension pot of £50,000 which he doesn't wish to access at the moment but might do at a later stage. The DM determines that as an annuity income, this would produce £2,500 per annum or £48.07 per week. This is based on 100% of the rate of annuity that the fund would generate. This amount is taken into account as a notional income and is deducted from the award of SPC. Jason and Sarah then later decide to put the £50,000 into a flexi draw down fund and take an actual income of £50 per week. The DM now decides that the amount of income to take into account each week is £50. There is no notional amount to take into account.

From what date should the DM take notional income into account

28633 Take notional income into account from the date that the person could expect to get the income if an application was made¹. To calculate this date

1. assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take the pension fund holder to process an application for 100% of the rate of annuity that the fund would generate.

1 JSA Regs, reg 105(2B); IS (Gen) Regs, reg 42(2ZA)

Example

Bernard receives JSA(IB). He is 61.

On 1 November the DM receives evidence that Bernard is entitled to a personal pension but has not bought an annuity or drawn an income.

The pension fund holder states that Bernard's scheme can provide an income. In Bernard's case 100% of the rate of annuity that the fund would generate, based on the Government tables, is £23 a week.

Once an application is made it would take the pension fund holder six weeks to arrange for the maximum income to be paid.

The DM decides that Bernard should be treated as having a notional income of £23 a week from 13 December.

Notional income - schemes where income withdrawal is not allowed

When should a person be treated as having notional income

28634 Treat a claimant who has reached the qualifying age for SPC as having income when¹ entitled to money purchase benefits under an occupational or personal pension scheme and he fails to purchase an annuity with the funds available in that scheme where

1. he defers, in whole or part, the payment of any income which would have been payable to him by his pension fund holder **or**
2. he fails to take any necessary action to secure the whole of the income which would be payable to him by his pension fund holder, if he applied for it **or**
3. income withdrawal is not available to him under that scheme.

Note: Money purchase benefits has the same meaning as in specific pensions law². This type of scheme does not pay benefits related to a person's final salary. Contributions paid in are invested and the benefits paid depend on how well the investments perform.

1 JSA Regs, reg 105(3); IS (Gen) Regs, reg 42(2A); 2 PS Act 1993

Amount of notional income

28635 The amount of notional income is the amount that a person could have received, without buying an annuity, if the pension funds were held in a scheme that did allow income withdrawal¹.

1 JSA Regs, reg 105(5); IS (Gen) Regs, reg 42(2C)

From what date should the DM take notional income into account

28636 Take notional income into account from the date that the person could expect to get the income if an application was possible¹. To calculate this date

1. assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for 100% of the rate of annuity that the fund would generate.

1 JSA Regs, reg 105(3); IS (Gen) Regs, reg 42(2A)

Example

Mark is an IS claimant. His partner Fiona is 61. On 1 November the DM receives evidence that Fiona has a personal pension scheme which does not provide an income.

The pension fund holder provides evidence, based on the Government tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The DM estimates that it would take six weeks for a typical pension fund holder to arrange for the maximum income to be paid from a fund.

The DM decides that Fiona should be treated as having a notional income of £30 a week from 13 December.

Actual income

28637 Take into account in full in the normal way any income that is

1. paid under an annuity bought with funds from a personal or occupational pension **or**
2. withdrawn from a personal or occupational pension scheme.

28638 - 28639

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

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

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

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

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

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

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

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

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

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

28670 Disregard the payment to the third party¹

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

- 1.7 the Caxton Foundation **or**
 - 1.8 the Scottish Infected Blood Support Scheme **or**
 - 1.9 the London Emergencies Trust **or**
 - 1.10 the We Love Manchester Emergency Fund **or**
 - 1.11 Infected Blood Schemes
2. if it is for the purchase and supply of concessionary coal under specified legislation². The Department of Energy and Climate Change is now responsible for the purchase and supply of concessionary coal. Coal is purchased through contracts and supplied to ex-coal workers and their families. The payment from the Department of Energy and Climate Change to the contractor is a payment to a third party and is disregarded.

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

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

Meaning of ordinary clothing or footwear

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

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

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

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

Example

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

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

28673 - 28675

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

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

- 1. care home **or**
- 2. Abbeyfield Home **or**

3. independent hospital

as the income of the claimant¹.

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

28677 This rule applies when the

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

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

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

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

28678 A payment is disregarded¹ if it is

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

1 IS (Gen) Regs, Sch 9, para 66; JSA Regs, Sch 7, para 64; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25; 3 NA Act 48, Part III; SW (Scot) Act 68; the Care Act 2014 (care and support), Part 1; Social Services and Well-being (Wales) Act 2014, Part 4; 4 IS (Gen) Regs, reg 42(4A)

28679 Payments that satisfy DMG 28678 include payments or reimbursements by a LA for

1. persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**
2. expectant and nursing mothers¹.

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

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

28680 **[See DMG Memo IS/JSA 64]** Take into account in full any income paid to a member of the family for a third party who is not a member of the family if

1. the income is kept by **or**
2. is not paid over to the third party by

the person who received it. Ignore any income that is paid over to the third party¹.

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

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

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

1. the Macfarlane Trusts
2. the Eileen Trust
3. MFET Limited
4. the Fund
5. the Independent Living Fund (2006) but see DMG 28351
6. the Skipton Fund
7. the Caxton Foundation
8. the Scottish Infected Blood Support Scheme (SIBBS)
9. the London Emergencies Trust (LET)
10. the We Love Manchester Emergency Fund (WLMEF)
11. Infected Blood Schemes

regardless of who keeps it or how it is used.

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

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

income has been kept by a member of the family.

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

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

28684 The DM should consider

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2. how often the income is paid **and**

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Can capital be disregarded

The law

29351 The law allows for all capital to be included unless it can be disregarded¹.

1 JSA Regs, reg 108 & Sch 8; IS (Gen) Regs, reg 46 & Sch 10

Onus of proof

29352 The claimant has to show that the capital can be disregarded. If there is no evidence to show capital can be disregarded, it is included when working out the amount of capital a claimant has.

What the DM decides

29353 The DM decides if capital can be disregarded

1. at the date of claim or revision **and**
2. before it is valued.

The DM does not have to know the value of capital to decide if it can be disregarded.

29354 The DM decides all of the disregards which apply to each item of capital. This is because income from capital is taken into account as income and not capital if certain disregards apply. DMs should note that this also applies if the capital is worth nothing.

29355 For certain disregards the DM has to decide if it is reasonable to disregard capital for a longer period. Capital is disregarded

1. indefinitely **or**
2. up to two years **or**
3. 52 weeks **or**
4. 26 weeks or more if it is reasonable **or**
5. 26 weeks
6. for a prescribed period.

29356 - 29357

Capital disregarded indefinitely

Adoption allowance

29358 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

1. long-term foster parent wishes to adopt but cannot afford to lose their boarding out allowance **or**
2. child's prospects of adoption are lowered because of disability.

Each LA has its own scheme. There is usually a rule that ends the allowance when the adopted child or young person stops living with the adopter.

29359 Payments of adoption allowances made under specific legislation¹ are disregarded indefinitely².

1 Adoption and Children Act 2002, s 2(6)(b) 3 or 4; 2 JSA Regs, Sch 8, para 61; IS (Gen) Regs, Sch 10, para 68

Special guardianship payments

29360 Special guardianship payments are made in England and Wales to provide more security for a child than long-term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Any special guardianship payment made to the claimant under specific legislation¹ is fully disregarded indefinitely². In order to find out if the payments are made under the specified legislation, the DM can make enquiries of the paying body.

1 Children Act 1989, s 14F; 2 JSA Regs, Sch 8, para 61A; IS (Gen) Regs, Sch 10, para 68A

Annuities

29361 An annuity is a fixed sum payable at specified intervals in return for a premium paid either by instalments or in a single payment. An annuity is normally taken out to provide an income in retirement. Both the right to receive income from an annuity and the surrender value of the annuity are disregarded indefinitely¹. Payments made under an annuity are capital which is treated as income.

1 JSA Regs, Sch 8, para 16; IS (Gen) Regs, Sch 10, para 11

Business assets

The law

29362 The assets of a business are disregarded indefinitely if

1. the person owns all or some of the assets and works in the business as a S/E earner¹ **or**
2. the assets have been acquired by a person receiving assistance under the S/E Employment Option of the ND (see DMG 14132) for the purpose of establishing or carrying out the commercial activity for which the assistance is being received².

1 JSA Regs, Sch 8, para 11(1); IS (Gen) Regs, Sch 10, para 6(1);

2 JSA Regs, Sch 8, para 11(3); IS (Gen) Regs, Sch 10, para 6(3)

29363 The assets of a business are disregarded for a reasonable period to allow them to be sold if the person

1. owns all or some of the business assets and has stopped working in the business as a S/E earner¹ **or**
2. was receiving assistance under the S/E Employment Option of the ND (see DMG 14132) and has ceased carrying on the commercial activity in respect of which such assistance was being received².

Example

John owns an amusement arcade in Bournemouth. He stopped working in the arcade as a S/E earner on 31 October and claimed JSA on 3 November. The assets of the business are a lease on the building, gaming machines and tools used to repair the machines. John states the value of these assets is £45,000. John also states that he is not going to sell the assets because he needs them when he opens the arcade again in the following April. The DM decides that the assets of the business cannot be disregarded.

Note: A different disregard applies if persons are not able to work in the business because they are ill or physically or mentally disabled and are going to start or return to work in the business (see DMG 29520 - 29523).

1 JSA Regs, Sch 8, para 11(1); IS (Gen) Regs, Sch 10, para 6(1);

2 JSA Regs, Sch 8, para 11(4); IS (Gen) Regs Sch 10, para 6(4)

Meaning of business assets

29364 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.

29365 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 i.e. the approach that would be taken by an accountant or the HMRC to such a receipt or holding.

Meaning of “reasonable period”

29366 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 (e.g. in a partnership situation, the provisions of the partnership deed and the Partnership Act 1890. These provisions 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

29367 S/E earner means a person

1. who is gainfully employed in GB (see DMG 070702) **and**
2. whose employment is not the same as that of an employed earner¹.

1 SS CB Act 92, s 2(1)(b);

29368 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, with general earnings¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(a)

When people are working in the business

29369 People are working in the business if they do some work for the business 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

29370 A partner in a business managed and worked exclusively by others is not working in the business. Even if that person receives a share of the profits of the business he is not a S/E earner¹.

1 R(IS) 14/98

Capital administered by the court

29371 Certain capital is disregarded indefinitely if it is administered on behalf of a person by

1. in England and Wales, under certain rules the High Court, County Court or the Court¹ of Protection (see DMG 29277) and any such sum can only be disposed of by order or direction
 - 1.1 of any such court **or**
 - 1.2 where the person concerned is under age 18, prior to that person reaching age 18 **or**
2. in Scotland, the Court of Session or Sheriff Court under certain rules².

1 Civil Procedure Rules 1998, rule 21.11(1); 2 Children (Scotland) Act 1995, s 13

29372 The disregard in DMG 29373 applies to capital derived from

1. an award of damages for personal injury to the person whose capital is being administered by the court¹ **or**
2. compensation for the death of one or both parents where the person concerned is under the age of 18².

Note: The disregard in DMG 29372 2. ceases to apply when the person concerned reaches the age of 18.

*1 JSA Regs, Sch 8 para 42(a) & 43(a); IS (Gen) Regs, Sch 10, para 44(1)(a) & 45(a);
2 JSA Regs, Sch 8 para 42(b) & 43(b); IS (Gen) Regs, Sch 10, para 44(b) & 45(b)*

Capital paid by instalments

29373 The value of the right to receive any outstanding instalments is disregarded indefinitely if capital is due to be paid by instalments¹.

Note: Depending on the circumstances payments of instalments can be taken into account as capital or income (see DMG 29380 - 29381).

1 JSA Regs, Sch 8, para 21; IS (Gen) Regs, Sch 10, para 16

Capital which is not sterling

29374 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 JSA Regs, Sch 8, para 26; IS (Gen) Regs, Sch 10, para 21

Payments from a Thalidomide trust

- 29375 Payments made from a trust approved by the Secretary of State that has been set up to give relief and assistance to disabled people whose disabilities were caused by the fact that during pregnancy their mother had taken the drug known as Thalidomide, are disregarded indefinitely¹.

1 JSA Regs, Sch 8, para 66; IS (Gen) Regs, Sch 10, para 73

Kinship care payments

- 29376 An LA in Scotland may place a child who is at risk of going into care or who has previously been looked after by the LA with another person. This is known as kinship care. Any payments made by the LA to the person with care are intended to cover any additional costs normally incurred by a child living at home but do not cover the costs of accommodation and maintenance of the child. Any such payments are disregarded indefinitely¹.

1 JSA Regs, Sch 8, para 67; IS (Gen) Regs, Sch 10, para 74

Capital which is treated as income

[See DMG Memo JSA/IS 64]

The law

- 29377 Capital treated as income¹ is disregarded as capital indefinitely².

1 JSA Regs, reg 104, 106(1) & 136; IS (Gen) Regs, reg 41, 44(1) & 66A; 2 JSA Regs, Sch 8, para 25; IS (Gen) Regs, Sch 10, para 20

Capital paid by instalments - claimant and partner

- 29378 For claimants and partners capital which is paid by instalments is treated as income if

1. for JSA on the
 - 1.1 first day JSA(IB) is payable **or**
 - 1.2 date of supersession **or**
2. for IS on the date of
 - 2.1 the first day in respect of which IS is payable or date of decision, whichever is earlier **or**
 - 2.2 in the case of a supersession, the date of that supersession

the total of the amount of the instalments outstanding and the amount of a person's other capital is more than £16,000¹.

1 JSA Regs, reg 104(1); IS (Gen) Regs, reg 41(1)

Capital paid by instalments - child or young person

[See DMG Memo JSA/IS 64]

29379 For a child or young person, capital that is paid by instalments, is treated as income when

1. for JSA on the
 - 1.1 first day JSA(IB) is payable **or**
 - 1.2 date of supersession **or**
2. for IS on the date of
 - 2.1 the first day in respect of which IS is payable or date of decision, whichever is earlier **or**
 - 2.2 in the case of a supersession, the date of that supersession

the total of the amount of the instalments outstanding and the amount of the child's or young person's other capital is more than £3,000¹.

1 JSA Regs, reg 106(1); IS (Gen) Regs, reg 44(1)

Payment made under an annuity contract

29380 Payments made under an annuity contract¹ are treated as income.

1 JSA Regs, reg 104(2); IS (Gen) Regs, reg 41(2)

Payment made by local authority

29381 Payments of capital made by the LA under child care law¹ are treated as income if

1. for JSA it is paid to a member of the claimant's family who is involved in a TD²
or
2. for IS it is paid
 - 2.1 to a claimant or partner who is involved in a TD **or**
 - 2.2 during the first 15 days to a claimant or partner who has returned to work after being involved in a TD³.

1 Children Act 1989, s 17, 23B, 23C & 24A; Children Leaving Care Act 2000; Social Work (Scotland) Act 1968, s 12; Children (Scotland) Act 1995, s 29 & 30; 2 JSA Regs, reg 104(3); 3 IS (Gen) Regs, reg 41(3)

Earnings

29382 Earnings which are not income are treated as income¹.

1 JSA Regs, reg 104(4); IS (Gen) Regs, reg 41(5)

Career development loan

29383 A Career Development loan paid under certain legislation¹ is treated as income².

1 E&T Act 73, s 2; 2 JSA Regs, reg 104(5); IS (Gen) Regs, reg 41(6)

Personal injury payments

29384 Any periodical payments (but not any payments treated as capital) received by the claimant as a result of an agreement or court order are treated as income if the payments are a consequence of any personal injury sustained by the claimant¹. The meaning of made as a consequence of a personal injury can include where the claimant's solicitor fails to secure the personal injury payment and the claimant sues their solicitor for professional negligence and receives a compensation payment to the value of what they should have received. However if any damages are also paid for any additional loss created by the professional negligence then this would not be disregarded².

1 JSA Regs, reg 104(6); IS (Gen) Regs, reg 41(7); 2 KQ v SSWP (IS) [2011] UKUT 102 (AAC); [2011] AACR 43

Tax refunds

29385 For IS a refund of tax under tax law¹ which is deducted from earnings under the PAYE scheme is treated as income if paid during the first 15 days to a claimant or partner who has returned to work after being involved in a TD².

*1 Income and Corporation Taxes Act 1988, s 203; Income Tax (Earnings and Pensions) Act 2003, s 684;
2 IS (Gen) Regs, reg 41(4)*

Student loans

29386 A student loan paid under education law¹ is treated as income².

*1 Education (Student Loans) Act 1990, s 1; Teaching and Higher Education Act 1998, s 22;
Education (Student Loans) (Northern Ireland) Order 1990, art 3; 2 JSA Regs, reg 136; IS (Gen) Regs, reg 66A*

Dwelling occupied as the home

The law

29387 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 29397 et seq).

1 JSA Regs, Sch 8, para 1; IS (Gen) Regs, Sch 10, para 1; 2 Secretary of State v. Miah; R(JSA) 9/03

Meaning of dwelling

29388 For IS, dwelling means a place where a person lives. The place can be

1. all or part of a building **and**
2. separate and self-contained or not separate and not self-contained¹.

1 SS CB Act 92, s 137(1)

Meaning of dwelling occupied as the home

29389 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

for example in Scotland any croft land on which the place lived in stands¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Onus of proof

29390 The person owning the property has to show what part of the property is occupied as the home.

29391 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 JSA(IB). 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

29392 The DM may need expert advice, for example from a surveyor, to show the part can be sold separately. Separate guidance sets out those cases where DMs may require such expert advice (see DMG 29646).

29393 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

29394 A dwelling which

- 1. has been bought **and**

2. has not been lived in as the home by the claimant or any member of the claimant's family cannot be disregarded¹ as the dwelling occupied as the home.

1 R(SB) 27/84

Dwelling not occupied as the home for a time

29395 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.

For example, if a person goes into residential care on a temporary basis and intends to return to the house which the person usually occupies as the home, the house is disregarded.

Small-holdings

29396 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

29397 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.

29398 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 members of the claimant's family (see DMG Chapter 22) **or**

- 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

29399 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 houses Keith and Elma own. Elma and the five youngest children continue to live in the original house and the other children go to live in the newly purchased house. Keith lives, sleeps, eats, bathes, relaxes and enjoys with his family the original house four days a week and the newly purchased house three days a week. Keith is made redundant and claims JSA. The DM decides that Keith normally occupies both houses. The DM also decides that both houses are disregarded as the dwelling occupied as the home.

Example 2

Carys lives in Cambridge and is in receipt of IS. She inherits a cottage in Wales. Carys has relatives who live in Wales. She therefore decides to keep the cottage for her use when she visits her relatives. The DM decides that the cottage in Wales is not disregarded as the dwelling occupied as the home.

Example 3

Bruce owns a house in London. He gets a job in Manchester and buys a flat there to live in during the week. He spends the weekends at his house in London. Bruce loses his job and returns to London to claim JSA. He states he will live in London but will visit his flat once a month in order to maintain it and possibly look for work in Manchester. The DM decides that Bruce does not normally occupy the flat in Manchester. The DM also decides that the flat in Manchester is not disregarded as the dwelling occupied as the home.

Example 4

Adam is single. He lives at 25 Station Road which is a semi-detached house. The house adjoining his, 27 Station Road, comes on the market after being uninhabited for two years. It is in a derelict condition. Adam buys it cheaply. He sometimes sleeps and eats at 27 Station Road while he undertakes the necessary repairs in order to let or sell it but he spends most of his time at 25 Station Road. Adam then suffers an injury at work and claims IS. The DM decides that as Adam purchased 27 Station Road as an investment it is not disregarded as the dwelling occupied as the home.

Example 5

Wasim and his wife Ruksana live in a four bedroomed house. They have twelve children. To avoid statutory overcrowding, Wasim and Ruksana buy another house in the street where they live. Their four eldest children, all of whom are aged over 21 live in this other house and Wasim, Ruksana and their other children do not spend any time there. Wasim is made redundant and makes a claim for JSA. The DM decides that only the house where Wasim and Ruksana live can be disregarded as the dwelling occupied as the home.

Future interests in capital

29400 A future interest in capital is disregarded indefinitely. This does not apply to an interest in real or heritable property (see DMG 29020 4.) on which a person has given another person a continuing

1. lease or sub-lease **or**
2. tenancy or sub-tenancy¹.

1 JSA Regs, Sch 8, para 10; IS (Gen) Regs, Sch 10, para 5

29401 For example

1. a person's contingent or reversionary interest in a trust is disregarded up to the time the person gets the interest because a contingent or reversionary interest is a future interest

2. capital which is due now and which has not been paid is not disregarded because a person has current rights to that capital and so it is not a future interest
3. a house which a person owns and has leased to another person is not disregarded because the disregard does not apply to real or heritable property that is let.

29402 For IS, DMG 29400 only applies from 2.10.95. Before 2.10.95 the law said any reversionary interest is disregarded. On 20.5.93 a tribunal of Commissioners decided that a reversionary interest included real property on which a tenancy had been given¹. The decision was upheld by the Court of Appeal. Before the tribunal of Commissioners gave its decision such property was dealt with in the same way as in DMG 29400 and was not disregarded.

1 R(IS) 26/95

Health in pregnancy grant

29403 The health in pregnancy grant will be payable to every woman from the 25th week of pregnancy after they have had the appropriate health advice from a health professional. It is a non-taxable payment and should be disregarded when calculating the capital of the claimant¹.

1 JSA Regs, Sch 8, para 37A; IS (Gen) Regs, Sch 10, para 39A

Income payable in a country outside of the United Kingdom

29404 The value of the right to receive earnings from employment or income is disregarded indefinitely if they are

1. payable in a country outside of the UK (see DMG 070880) **and**
2. disregarded when working out the amount of earnings or income because they cannot be transferred to the UK from that country due to a ban¹.

1 JSA Regs, Sch 8, para 19; IS (Gen) Regs, Sch 10, para 14

Life insurance policies

The law

29405 The surrender value of a life insurance policy still in force is disregarded indefinitely¹.

1 JSA Regs, Sch 8, para 20; IS (Gen) Regs, Sch 10, para 15

Meaning of life insurance policy

29406 Life insurance policy means a written document which says a payment of money is made

1. on death (but not one which says payment is made only if the death is accidental) **or**
2. if death happens
 - 2.1 in certain circumstances **or**
 - 2.2 during the period a person has agreed to pay premiums¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Investments which include life insurance

29407 Investments which include some life insurance are disregarded indefinitely if the agreement states how payment on death is worked out. It does not matter whether the amount paid on death is

1. more than **or**
2. equal to **or**
3. less than

the amount the person would get if the investment is surrendered the day before the date of death¹.

1 R(IS) 7/98

Life interest or life rent

29408 The value of the right to receive income

1. under a life interest **or**
2. from a life rent

is disregarded indefinitely¹.

Note: Payments of income under a life interest or from a life rent are taken into account as income.

1 JSA Regs, Sch 8, para 18; IS (Gen) Regs, Sch 10, para 13

Money deposited with a housing association

29409 Money deposited with a housing association is disregarded indefinitely if

1. the money has to be deposited as a condition of living in the home **and**
2. the housing association comes under housing association law¹.

Note: A different disregard applies if the money deposited is to be used to buy another home (see DMG 29532 - 29534).

1 Housing Associations Act 1985, s 1(1); JSA Regs, Sch 8, para 14(a); IS (Gen) Regs, Sch 10, para 9(a)

Occupational pensions

The law

29410 The value of the right to receive an occupational pension is disregarded indefinitely¹.

1 JSA Regs, Sch 8, para 28; IS (Gen) Regs, Sch 10, para 23

Meaning of occupational pension

29411 Occupational pension means a

1. pension **or**
2. periodical payment

under an occupational pension scheme. But it does not include discretionary payments made from a fund which is for the relief of hardship in certain circumstances¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Payment for attending court

29412 A payment made to a juror or witness for attending court is disregarded indefinitely but not if the payment is compensation for

1. loss of earnings **or**
2. benefit payable under social security law¹.

1 JSA Regs, Sch 8, para 34; IS (Gen) Regs, Sch 10, para 34; JS Act 95; SS CB Act 92

Payment for loss of housing benefit

29413 A payment made by the DM to compensate for the loss of all or some of the HB a person can get is disregarded indefinitely¹.

1 JSA Regs, Sch 8, para 33; IS (Gen) Regs, Sch 10, para 31

Payment for personal injury

The law

29414 The value of

1. a payment made because of a personal injury if held on trust **and**

2. the right to receive payment from the trust

are disregarded indefinitely where the payment is made as a result of an injury to either the claimant or partner¹. For example, the value of a payment made by the Criminal Injuries Compensation Authority is disregarded if held on trust and so is the value of the right to receive payment from the trust. A trust exists if there is a separation of legal ownership and beneficial ownership of the payment. The disregard can apply even if there is no written trust document.

Note 1: Payments of income from the trust are income from capital and are taken into account as income and not capital. (See DMG Chapter 28 for how to treat such payments).

Note 2: This disregard does not apply if the injury was to a claimant's deceased partner².

Note 3: A payment made in relation to the costs of care associated with an unwanted child in a "wrongful birth" case is a payment made because of a personal injury, for instance in the case of a failed sterilisation or vasectomy.

1 JSA Regs, Sch 8, para 17; IS (Gen) Regs, Sch 10, para 12; 2 R(IS) 3/03

29415 Payments can only come within this disregard where the claimant or partner for whom the payment was made themselves suffered a physical and/or psychological injury. If there is any doubt as to what the payment was awarded for, then the DM should request sight of the papers awarding the amount. These should specify on what basis the award was made.

Example 1

Peter's wife was killed in a road traffic accident and he was awarded £36,000 which covered loss of earnings. As the award was not due to Peter suffering any injury to himself, then this amount would be taken in account when calculating his capital.

Example 2

Fiona received £100,000 as the result of an assault on her partner which resulted in his death. The award was for the psychological injury to Fiona arising from her witnessing the attack. As the amount was awarded for the injury to Fiona, the amount is disregarded in calculating her capital.

The Children's Memorial Trust

29416 The Children's Memorial Trust was set up as a result of Court action taken by parents of deceased children whose organs were retained by Alder Hey hospital without agreement. Payments are made from the Children's Memorial Trust to the parents in respect of each child. Where people can show that they have received a payment from the Children's Memorial Trust under the "Heads of Agreement" in

relation to the Court action, the payment will be made in consequence of a personal injury to **them**. The value of a payment made by the Children's Memorial Trust is disregarded indefinitely if held on trust. The value of the right to receive payment from the Children's Memorial Trust is also disregarded indefinitely.

Payment in kind

29417 A payment in kind is disregarded indefinitely if made by

1. a charity
2. the Macfarlane (Special Payments) Trust (see DMG 29452)
3. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 29453)
4. the Fund (see DMG 29454)
5. the Skipton Fund (see DMG 29457)
6. the Caxton Foundation (see DMG 29458)
7. SIBSS (see DMG 29459)
8. an approved blood scheme (DMG 29460)
9. the Independent Living Fund (2006) (see DMG 29441) **and**
for JSA only
10. the Macfarlane Trust (see DMG 29451)
11. the Eileen Trust (see DMG 29455)¹.

1 JSA Regs, Sch 8, para 31; IS (Gen) Regs, Sch 10, para 29

Payment made by local authority under child care law

29418 A payment of capital made by the LA under child care law¹ is disregarded indefinitely where DMG 29420 below applies². This does not apply if

1. for JSA it is paid to a member of the claimant's family who is involved in a TD
or
2. for IS it is paid
 - 2.1 to a claimant or partner who is involved in a TD **or**
 - 2.2 during the first 15 days to a claimant or partner who has returned to work after being involved in a TD³.

Note: The capital is treated as income if **1.** or **2.** applies (see DMG 29383).

1 Children Act 1989, s 17, 23B, 23C & 24A; Children (Leaving Care) Act 2000; Social Work (Scotland) Act 1968, s 12; Children (Scotland) Act 1995, s 29 & 30; 2 JSA Regs, Sch 8, para 22; 3 IS (Gen) Regs, Sch 10, para 17

29419 Where

1. a former child (aged 18+) who was in the claimant's care still lives with the claimant **and**
2. the LA make a lump sum payment under certain child care law to the former child in care **and**
3. the former child in care passes the payment on to the claimant

that sum received by the claimant is disregarded indefinitely¹ when calculating the claimant's capital.

1 JSA Regs, Sch 8, para 22; IS (Gen) Regs, Sch 10, para 17

Payment made to disabled persons to get or keep employment

The law

29420 A payment made by the Secretary of State or some other person under the law governing the employment of disabled people¹ to help disabled people get or keep employment despite their disability is disregarded indefinitely².

Note: See DMG 29503 for guidance on payments made to disabled people under employment and training law.

1 Disabled Persons (Employment) Act 1944; 2 JSA Regs, Sch 8, para 40; IS (Gen) Regs, Sch 10, para 42

Schemes which help disabled people get or keep employment

29421 There are three special schemes which help disabled people get or keep employment. These are the

- business on own account scheme that helps a disabled person set up in business if they cannot get any other type of work
- personal reader service scheme that helps a blind person employ a reader
- fares to work scheme that helps certain disabled people who cannot use public transport to get to work.

Payment made to holders of the Victoria Cross or George Cross

29422 Any payment made to people because they hold the

1. Victoria Cross **or**
2. George Cross

is disregarded indefinitely¹. For IS, this applies only from 8.4.96.

1 JSA Regs, Sch 8, para 44; IS (Gen) Regs, Sch 10, para 46

Payment made to homeworkers under the Blind Homeworkers Scheme

29423 A payment made by the LA under disabled persons' law¹ to homeworkers who are helped under the Blind Homeworker's Scheme is disregarded indefinitely².

1 Disabled Persons (Employment) Act 1958, s 3; 2 JSA Regs, Sch 8, para 41; IS (Gen) Regs, Sch 10, para 43

Payments from a local authority in lieu of community care services or health care

29424 Payments received from a LA which are in lieu of

1. community care services¹ **or**
2. health care²

are disregarded indefinitely³.

1 Community Care (Direct Payments) Act 1996; Health and Social Care Act 2001, s 57; Social Work (Scotland) Act 1968, s 12B; 2 National Health Service Act 2006, s 12A - 12D; 3 JSA Regs, Sch 8, para 60; IS (Gen) Regs, Sch 10, para 67

Payments under the Supporting People programme

29425 Payments under the Supporting People programme are disregarded indefinitely¹.

The disregard applies

1. in respect of any payment made by
 - 1.1 a LA **or**
 - 1.2 the National Assembly for Wales
2. to or on behalf of the claimant or partner relating to a service which is
 - 2.1 provided to develop **or**
 - 2.2 to sustain the capacity of

the claimant or partner to live independently in his accommodation.

1 JSA Regs, Sch 8, para 59; IS (Gen) Regs, Sch 10, para 66

Personal pensions

The law

29426 The value of

1. the right to receive a personal pension **and**
2. any funds held under a personal pension scheme or retirement annuity contract

is disregarded indefinitely¹.

1 JSA Regs, Sch 8, para 28 & Sch 8, para 29; IS (Gen) Regs, Sch 10, para 23 & Sch 10, para 23A

Meaning of personal pension scheme

29427 “Personal pension scheme” means¹

1. a personal pension scheme as stated in pensions law²
2. an annuity contract or trust scheme approved under tax law³ **and**
3. a personal pension scheme approved under tax law⁴.

*1 JSA Act 95, s 35(1); IS (Gen) Regs, reg 2(1); 2 Pension Schemes Act 1993, s 1;
3 Income and Corporation Taxes Act 1988, Part XIV, Chapter III; Finance Act 2004, Sch 36;
4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV; Finance Act 2004, Sch 36*

Personal possessions

29428 Personal possessions such as clothing, jewellery, and cars are disregarded indefinitely¹.

1 JSA Regs, Sch 8, para 15; IS (Gen) Regs, Sch 10, para 10

29429 For JSA personal possessions are not disregarded if people buy them to reduce the amount of capital so they can get JSA or IS or more JSA or IS¹. For IS personal possessions are not disregarded if people buy them to reduce the amount of capital so they can get IS or more IS² (see DMG 29807).

1 JSA Regs, Sch 8, para 15; 2 IS (Gen) Regs, Sch 10, para 10

Premises lived in by a partner or relative

The law

29430 Premises such as a house are disregarded indefinitely if they are occupied as the home in whole or in part by a

1. partner or relative of a single claimant or any member of the family **and** the partner or relative
 - 1.1 has reached the qualifying age for SPC **or**
 - 1.2 is incapacitated **or**
2. former partner of the claimant **and** the claimant and former partner are not estranged, divorced or former civil partners whose partnership has been dissolved¹.

1 IS (Gen) Regs, Sch 10, para 4; JSA Regs, Sch 8, para 4

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

Example

Tony is in receipt of IS. He goes into residential care 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.

Meaning of relative

29431 Relative means a

1. parent including an adoptive parent¹
2. parent-in-law
3. son
4. son-in-law
5. daughter
6. daughter-in-law
7. step-parent
8. step-son
9. step-daughter
10. brother
11. sister
12. grand-parent
13. grand-child
14. uncle
15. aunt
16. nephew
17. niece
18. the wife, husband or civil partner of any of the persons at **1.** to **11.** who lives in the same household as that person
19. a person who lives together with any of the persons listed at **1.** to **11.** as their wife, husband or civil partner².

1 R(SB) 22/87; 2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

29432 A person included under DMG 29434 **18.** and **19.** ceases to be a relative if the wife, husband or civil partner they live with together dies.

Meaning of single claimant

29433 Single claimant means claimants who do not have a

1. partner **or**
2. child or young person living in their household for whom they are responsible¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Is the person incapacitated

29434 The law does not say what incapacitated means. The DM has to decide if partners or relatives are incapacitated and may decide they are where they

1. are receiving
 - 1.1 AA
 - 1.2 CAA
 - 1.3 DLA
 - 1.4 disability element of WTC
 - 1.5 IB
 - 1.6 SDA
 - 1.7 SSP
 - 1.8 a benefit similar to the ones at 1. to 7. **or**
2. 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

29435 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 relative only lives in part of the premises as the home. For example, when a relative lives in the farmhouse as the home and the premises are the farmhouse and farm land.

Rent

29436 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.

Note: For IS the law applies from 2.10.95. Before 2.10.95 the law said the right to receive any rent is disregarded. This includes the right to receive rent from property when a person has a reversionary interest in the property.

1 JSA Regs, Sch 8, para 30; IS (Gen) Regs, Sch 10, para 24

29437 For 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.

Social fund payments

29438 A SF payment made under social security law¹ is disregarded indefinitely². This does not apply to a payment made from the European Social Fund.

1 SS CB Act 92, Part VIII; 2 JSA Regs, Sch 8, para 23; IS (Gen) Regs, Sch 10, para 18

Special educational needs

29439 The parents of children and young persons with special educational needs have an option of a personal budget so that they can control how some of the provision in their Education, Health and Care plans can be delivered¹. Any payment of capital made under these provisions is fully disregarded².

1 The Children and Families Act 2014, s 49; 2 IS (Gen) Regs, Sch 10, para 71; JSA Regs, Sch 8, para 64

Tax refunds

29440 A refund of tax which is deducted under tax law¹ from the interest on a loan is disregarded indefinitely if the loan is used to

1. buy the dwelling which is lived in as the home **or**
2. pay for repairs and improvements to such a home².

1 Income and Corporation Taxes Act 1988, s 369; 2 JSA Regs, Sch 8, para 24; IS (Gen) Regs, Sch 10, para 19

The Independent Living Fund (2006)

The law

- 29441 One-off payments made from the Independent Living Fund (2006) are disregarded indefinitely¹.

Note: If the payments are made regularly they are income and the DM should decide if they can be disregarded before working out the amount of income.

1 JSA Regs, Sch 8, para 27(1); IS (Gen) Regs, Sch 10, para 22(1)

Meaning of the Independent Living Fund (2006)

- 29442 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 JSA Regs, reg 1(2); IS (Gen) Regs, reg 2(1)

Payment included with other capital

- 29443 If the payment is included with other capital the disregard does not apply to the other capital.
- 29444 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Payments in kind

- 29445 If payment is made in kind see DMG 29419.

The Macfarlane Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund

The law

29446 One-off payments made from the Trusts (see DMG 29450) are disregarded indefinitely¹.

Note: If the payments are made regularly they are income and the DM should decide if they can be disregarded before working out the amount of income.

1 JSA Regs, Sch 8, para 27(1); IS (Gen) Regs, Sch 10, para 22(1)

29447 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
 - 2.1 a partner or former partner of the person who got the money from the Trusts and they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died **or**
 - 2.2 a child or young person who
 - 2.2.a is a member of the family of the person who got the money from the Trusts **or**
 - 2.2.b was a member of that person's family and is a member of the claimant's family¹.

The disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

1 JSA Regs, Sch 8, para 27(2); IS (Gen) Regs, Sch 10, para 22(2)

29448 A payment from money which a partner or former partner gets from the Trusts is disregarded indefinitely if the payment is made

1. by or on behalf of a partner or former partner of a person who
 - 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 they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died **and**

2. to or for the benefit of

2.1 a person who has haemophilia or is a qualifying person **or**

2.2 a child or young person who

2.2.a is a member of the person's at **2.1** family **or**

2.2.b was a member of that person's family and is a member of the claimant's family¹.

This disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

1 JSA Regs, Sch 8, para 27(3); IS (Gen) Regs, Sch 10, para 22(3)

29449 Any capital the person gets from the income or capital of the payment

1. from the Trusts **or**

2. at DMG 29446

is disregarded indefinitely¹.

Example

Virginia is in receipt of IS. On 5 March she gets a one-off payment of £15,000 from the Fund. She opens a building society account with the money. She has no other capital. The DM decides that the money in the building society account is disregarded. On 1 April Virginia withdraws all the money and the interest it has made and buys some shares. The DM decides that the value of the shares is disregarded indefinitely.

1 JSA Regs, Sch 8, para 27(6); IS (Gen) Regs, Sch 10, para 22(6)

The Trusts

29450 The Trusts means

- 1.** Macfarlane Trust
- 2.** Macfarlane (Special Payments) Trust
- 3.** Macfarlane (Special Payments) (No. 2) Trust
- 4.** the Fund
- 5.** Eileen Trust
- 6.** MFET Limited
- 7.** Skipton Fund
- 8.** Caxton Foundation

9. SIBSS
10. an approved blood scheme
11. London Emergencies Trust
12. We Love Manchester Emergency Fund **and**
13. London Bombings Relief Charitable Fund¹.

1 JSA Regs, Sch 8, para 27(1); IS (Gen) Regs, Sch 10, para 22(1) & para 22(7)

The Macfarlane Trust

- 29451 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1) & Sch 10, para 22(1)

The Macfarlane (Special Payments) Trust

- 29452 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

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

- 29453 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

The Fund

- 29454 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 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

The Eileen Trust

29455 The 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

MFET Limited

29456 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

The Skipton Fund

29457 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

The Caxton Foundation

29458 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Scottish Infected Blood Support Scheme

29459 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 Ministers¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1).

Approved blood scheme

29460 An approved blood scheme is a scheme established or approved by the Secretary of State¹ for the purpose of providing compensation to those in England, Wales and Northern Ireland who have been infected from contaminated blood products. It replaces the Eileen Trust, the Macfarlane Trust, MFET Ltd, the Skipton Fund and the Caxton Foundation from 2.10.17 and payments from this new scheme will be made from 23.10.17.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

The London Bombings Relief Charitable Fund

29461 The London Bombings Relief Charitable Fund was established on 11.7.05 following the terrorist attacks carried out in London on 7.7.05. People who were bereaved, or who suffered injury, may receive lump sum payments from the London Bombings Relief Charitable Fund ranging between £3,000 and £25,000. Further lump sum payments of a similar amount may also be made to the same beneficiaries¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

The London Emergencies Trust

29462 The London Emergencies Trust was established on 28.3.17 following the terrorist attacks carried out in London on 22.3.17 and 3.6.17. People who were bereaved or who suffered injury, may receive lump sum payments from the London Emergencies Trust ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

The We Love Manchester Emergency Fund

29463 The We Love Manchester Emergency Fund was established on 30.5.17 following the terrorist attack carried out in Manchester on 22.5.17. People who were bereaved or who suffered injury, may receive lump sum payments from the We Love Manchester Emergency Fund ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Qualifying person

29464 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, the Skipton Fund, the Caxton Foundation, the London Bombings Relief Charitable Fund, the London Emergencies Trust, SIBSS, an approved blood scheme and the We Love Manchester Emergency Fund¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

29465

Evidence

29466 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. Caxton Foundation
8. 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 of this.

29467 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.

Payment included with other capital

29468 If the payment is included with other capital the disregard does not apply to the other capital.

29469 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Other payments which are disregarded

29470 Other payments are disregarded. If the payment is made

1. in kind, see DMG 29418 **or**
2. to or for the benefit of some other person, see DMG 29485 - 29489.

Payments to persons imprisoned or interned by the Japanese during the Second World War

29471 An ex-gratia payment of £10,000 made by the Secretary of State on or after 1.2.01 in consequence of the imprisonment or internment of

1. the claimant **or**
2. the claimant's partner **or**
3. the claimant's deceased spouse or civil partner **or**
4. the claimant's partner's deceased spouse or civil partner

by the Japanese during the Second World War is disregarded indefinitely¹.

Example

Jim is receiving JSA. His civil partner Albert, has capital of £2,300. Albert receives a payment of £10,000 because he was interned by the Japanese during the Second World War. The DM decides that the payment of £10,000 received by Albert is disregarded indefinitely.

1 JSA Regs, Sch 8, para 56; IS (Gen) Regs, Sch 10, para 61

Payments made to sufferers of variant Creutzfeldt-Jakob disease and their partners

Meaning of “the relevant trust”

29472 The relevant trust means the trust established out of funds provided by the Secretary of State in respect of persons who have suffered or are suffering from variant Creutzfeldt - Jakob disease and their families. Trustees have discretion to pay compensation from the fund to those eligible¹.

1 JSA Regs, Sch 8, para 57(6); IS (Gen) Regs, Sch 10, para 64(6)

Meaning of “diagnosed person”

29473 Diagnosed person means a person who has been diagnosed as suffering from or who after his death, has been diagnosed as having suffered from variant Creutzfeldt-Jakob disease¹.

1 JSA Regs, Sch 8, para 57(6); IS (Gen) Regs, Sch 10, para 64(6)

29474 Any payments made from the relevant trust to

1. the diagnosed person **or**
2. the partner of the diagnosed person **or**
3. the person who was the diagnosed person’s partner at the date of the diagnosed person’s death

is disregarded from the date on which the payment is made until the date on which that person dies¹.

Example

Thomas died of variant Creutzfeldt-Jakob disease on 25.11.06. His widow, Helga, makes a claim for IS. On 5.5.07 she receives a payment of £25,000 from the relevant trust. The DM decides that this payment is disregarded for Helga's lifetime.

Note: The reference to the surviving partner of the diagnosed person includes someone who would have been the partner but for the diagnosed person being in a care home on the date they died².

1 JSA Regs, Sch 8, para 57; IS (Gen) Regs, Sch 10, para 64; 2 JSA Regs, Sch 8, para 57(5); IS (Gen) Regs, Sch 10, para 64(5)

29475 Where a payment is made

1. by a person to whom a payment from the relevant trust has been made or from the estate of such a person **or**
2. to
 - 2.1 the partner of the diagnosed person **or**
 - 2.2 the person who was the diagnosed person's partner on the date the diagnosed person died

the payment is disregarded indefinitely¹.

Example

Melanie is diagnosed as suffering from variant Creutzfeldt-Jakob disease and on 29.8.05 she receives a payment of £30,000 from the relevant trust. Melanie dies on 6.7.06 and her husband, David, inherits the payment which has been invested. On 2.2.07 David claims JSA(IB). He declares that he has capital of £31,210 which is the original payment of £30,000 plus £1,210 interest from investing that money. The DM decides that the £30,000 trust payment is disregarded for David's lifetime but the interest obtained for investing that payment cannot be disregarded.

Note: The disregard only applies to the extent that the total payments made do not exceed the total of any payments made from the relevant trust.

1 JSA Regs, Sch 8, para 57(3); IS (Gen) Regs, Sch 10, para 64(3)

29476 Trust payments may be made to other relatives of a person diagnosed with variant Creutzfeldt-Jakob disease. See

1. DMG 29490 if the payment is made to a parent of the diagnosed person
2. DMG 29492 if the payment is made to a dependant child or young person who is a member of the diagnosed person's family.

Second World War compensation payments

29477 The amount of a payment, other than a war pension, to compensate for the fact that during the Second World War the person

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

is disregarded indefinitely.

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

29478 The disregard in DMG 29478 applies where the payment is made in respect of the

1. claimant **or**
2. claimant's partner **or**
3. claimant's deceased spouse or civil partner **or**
4. claimant's partner's deceased spouse or civil partner¹.

1 JSA Regs, Sch 8, para 58; IS (Gen) Regs; Sch 10, para 65

Age related payments

29479 One-off age-related payments are payments of capital. DMs should not take them into account for IS purposes¹.

1 Age-Related Payments Act 2004, s 6(b)

Education maintenance allowance payments

29480 Any education maintenance allowance payable under prescribed legislation as

1. education maintenance allowance¹ **or**
2. the same as education maintenance allowance² is disregarded indefinitely².

1 Education Act 1996, s 518; Education (Scotland) Act 1980, s 49 & 73(f); Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & 21; 2 Education Act 2002, s 14 & 181; JSA Regs, Sch 8, para 52(1); IS (Gen) Regs, Sch 10, para 63(1)

16-19 Bursary Fund

29481 A new bursary scheme called the 16-19 Bursary Fund was introduced in September 2011. In England, this will replace EMA, however there will be some transitional protection for existing recipients. Any payment from this bursary fund is disregarded indefinitely¹.

1 Education Act 2002, s 14; JSA Regs, Sch 8, para 52(1); IS (Gen) Regs, Sch 10, para 63(1)

29482 In addition to the disregard at DMG 29481 and DMG 29482 any payment made under prescribed legislation¹ in respect of a course of study attended by a

1. child or young person **or**
2. person who is receiving an education maintenance allowance or other payment as in DMG 29481 or DMG 29482 above

is also disregarded indefinitely².

1 Education Act 1996, s 518; Education (Scotland) Act 1980 s 49; Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & 21; 2 JSA Regs, Sch 8, para 52(2); IS (Gen) Regs, Sch 10, para 63(2)

29483

Local welfare provision

29484 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.

Such payments are disregarded indefinitely.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Capital disregarded for up to two years

The Macfarlane Trusts, the Fund, the Eileen Trust, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund

The law

29485 A payment from money which a person gets from the Trusts is disregarded from the date of payment until two years after the date of death of the person who gets the money from the Trust 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 **and**
 - 1.2 has no
 - 1.2.a partner or former partner from whom the person is not estranged, divorced or part of a dissolved civil partnership **or**
 - 1.2.b child or young person who is or has been a member of the person's family **and**
2. to the person's
 - 2.1 parent or step-parent **or**
 - 2.2 guardian if the person does not have a parent or step-parent and at the date of the payment the person is a
 - 2.2.a child **or**
 - 2.2.b young person **or** in FTE¹.

1 JSA Regs, Sch 8, para 27(4); IS (Gen) Regs, Sch 10, para 22(4)

29486 A payment from money which a person who has died got from the Trusts is disregarded for two years from the date of death if the payment is made

1. out of the estate of a person who
 - 1.1 had haemophilia or was a qualifying person **and**
 - 1.2 at the date of death the person had no
 - 1.2.a partner or former partner from whom the person was not estranged, divorced or part of a dissolved civil partnership **or**
 - 1.2.b child or young person who was or had been a member of the person's family **and**
2. to the person's

- 2.1 parent or step-parent **or**
- 2.2 guardian if the person did not have a parent or step-parent and at the date of death the person was a
 - 2.2.a child **or**
 - 2.2.b young person **or**
 - 2.2.c student who had not finished FTE¹.

1 JSA Regs, Sch 8, para 27(5); IS (Gen) Regs, Sch 10, para 22(5)

Note: Step-parent includes relationships arising through civil partnerships¹.

1 Civil Partnership Act 2004, s 246

29487 Any capital which a person gets from the income or capital of the payment at DMG 29485 - 29486 is also disregarded¹.

Example

Edward has haemophilia. His former partner was pregnant when they separated and on 21.10.06 she has a son. On 28.10.06 Edward gives his father, Leonard, £5,000 from the money he gets from the Macfarlane (Special Payments)(No. 2) Trust. Leonard puts the money in a building society account which had £2,000 in it. On 15.01.07 Leonard makes a claim for IS. The DM decides that the £5,000 given to Leonard by Edward is disregarded whilst Edward is alive and for two years after Edward dies. On 30.4.07 Leonard uses the money he received from Edward to buy National Savings Bonds. The DM decides that the value of the Bonds is disregarded whilst Edward is alive and for two years after Edward dies.

1 JSA Regs, Sch 8, para 27(6); IS (Gen) Regs, Sch 10, para 22(6)

Payment included with other capital

- 29488 If the payment is included with other capital the disregard does not apply to the other capital.
- 29489 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Payments to certain relatives of a person suffering from variant Creutzfeldt-Jakob disease

Payments to a parent

- 29490 Any payments made from the relevant trust (see DMG 29472) to
 - 1. a parent of a person diagnosed as suffering from variant Creutzfeldt-Jakob disease **or**

Total amount of capital

How to work out the total amount of actual capital

29720 For each person add together the value of each item of capital the person has. The total for each person is the total amount of actual capital the person has.

29721 - 29724

Income which is treated as capital

29725 Certain types of income are treated as capital¹. The DM has to decide the amount of income which

1. each person has **and**
2. is treated as capital.

The total amount of income which is treated as capital for each person is added to the total amount of actual capital that person has.

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

Advance of earnings or loan from employer

29726 An advance of earnings or a loan from an employer is income which is treated as capital if the person is an employed earner¹, but not if the person

1. for JSA is a member of the claimant's family who is involved in a TD **or**
2. for IS is the claimant or partner and that person
 - 2.1 is involved in a TD **or**
 - 2.2 has returned to work after being involved in a TD and the advance or loan is made during the first 15 days after returning to work².

1 JSA Regs, reg 110(5); IS (Gen) Regs, reg 48(5); 2 JSA Regs, reg 110(6); IS (Gen) Regs, reg 48(6)

29727 An employed earner is a person who is gainfully employed in GB (see DMG 070702)

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.

Example

Nigel is in receipt of IS. On 19 January his wife, Anne, starts P/T work. She receives her first wage on 30 January. Anne's wage is £50 a week but her first wage slip shows a deduction of £20 for an advance of pay and £10 repayment of a loan. Nigel says that Anne received an advance of her wage on 23 January and a loan of £300 from her employer on 26 January and that Anne has to repay the loan at £10 a

week. The DM decides that the £20 advance of Anne's wage and the £300 loan are treated as capital and are taken into account as capital on the day they are received.

1 SS CB Act 92, s 2(1)(a)

Bounty payments

29728 A bounty payment from certain work is income which is treated as capital if it is paid yearly or at intervals of longer than a year¹. This applies to work as

1. a P/T member of a fire brigade which is kept under fire services law² **or**
2. an auxiliary coast guard and the work is coast rescue **or**
3. a P/T member of a lifeboat crew and the work is manning or launching the lifeboat **or**
4. a member of a reserve force which comes under SS law³.

*1 JSA Regs, reg 110(1); IS (Gen) Regs, reg 48(1); 2 Fire Services Acts 1947 to 1959;
3 Social Security (Contributions) Regulations 1979, Part I, Sch 3*

Charitable or voluntary payments

29729 **[See DMG Memo JSA/IS 64]** A charitable or voluntary payment which is not made or due to be made regularly is income which is treated as capital¹ but not if

1. it is paid
 - 1.1 for JSA to a member of the claimant's family who is involved in a TD² **or**
 - 1.2 for IS to the claimant or partner and that person
 - 1.2.a is involved in a TD **or**
 - 1.2.b has returned to work after being involved in a TD and the charitable or voluntary payment is made during the first 15 days after returning to work³ **or**
 - 1.3 for IS to a member of a claimant's or partner's family and 1.2 applies to the claimant or partner³ **or**
2. it is a payment made to an educational establishment for the maintenance of a child or young person and the child or young person is
 - 2.1 living at the establishment **and**
 - 2.2 receiving relevant education at that establishment⁴ **or**
3. it is a payment from
 - 3.1 Macfarlane Trust (see DMG 29451) **or**
 - 3.2 Macfarlane (Special Payments) Trust (see DMG 29452) **or**
 - 3.3 Macfarlane (Special Payments) (No. 2) Trust (see DMG 29453) **or**
 - 3.4 Fund (see DMG 29454) **or**

- 3.5** Eileen Trust (see DMG 29455) **or**
- 3.6** MFET Limited (see DMG 29456)
- 3.7** Skipton Fund (see DMG 29457) **or**
- 3.8** Caxton Foundation (see DMG 29458) **or**
- 3.9** SIBSS (see DMG 29459) **or**
- 3.10** an approved blood scheme (see DMG 29460) **or**
- 3.11** London Emergencies Trust (see DMG 29462) **or**
- 3.12** We Love Manchester Emergency Fund (see DMG 29463) **or**
- 3.13** Independent Living Fund 2006 (see DMG 29441)⁵.

1 JSA Regs, reg 110(9); IS (Gen) Regs, reg 48(9); 2 JSA Regs, reg 110(10)(a); 3 IS (Gen) Regs, reg 48(10)(a);

4 JSA Regs, reg 110(10)(b); IS (Gen) Regs, reg 48(10)(b);

5 JSA Regs, reg 110(10)(c); IS (Gen) Regs, reg 48(10)(c)

29730 - 29731

Discharge grant paid to prisoners

- 29732 A discharge grant paid to prisoners under prison law¹ is income treated as capital².

1 Prison Act 1952, s 30; for JSA Prisons (Scotland) Act 1989, s 17; for IS Prisons (Scotland) Act 1952, s 17;

2 JSA Regs, reg 110(7); IS (Gen) Regs, reg 48(7)

Holiday pay

- 29733 Holiday pay which is payable more than four weeks after a person has left a job or has stopped work because of an interruption is income which is treated as capital but not if it is payable

1. for JSA, a member of the claimant's family who is involved in a TD **or**
2. for IS, a claimant or a partner and that person
 - 2.1** is involved in a TD **or**
 - 2.2** has returned to work after being involved in a TD and the holiday pay is payable during the first 15 days after returning to work¹.

1 JSA Regs, reg 110(3); IS (Gen) Regs, reg 48(3)

- 29734 Holiday pay is normally payable on the last working day and would not be income which is treated as capital. So if holiday pay is paid more than four weeks later the DM should check that it is payable on the date paid. Holiday pay may be payable more than four weeks later if the

1. person has left the job without giving notice **and**
2. employer will not pay the holiday pay until the date it is payable.

Example

On 29 December Alfred makes a claim for JSA(IB). He says he last worked on 31 October but did not receive his two weeks holiday pay until 19 December. The DM checks with Alfred's former employer. The former employer confirms that Alfred last worked on 31 October but as he left without giving notice, the holiday pay was not paid until it was due to be paid on 19 December when the firm closed down for Christmas. The DM decides that the holiday pay is treated as capital.

Income from capital

29735 Income from capital is income which is treated as capital but not if the capital is disregarded because it is

1. the dwelling occupied as the home¹ **or**
2. premises acquired for occupation by the claimant as his home² **or**
3. premises which are occupied by
 - 3.1 a partner **or**
 - 3.2 a relative of the claimant or of any member of the family who is aged 60 or over or is incapacitated³ **or**
 - 3.3 the former partner of the claimant as his home, unless the former partner is estranged or divorced from, or a former civil partner of, the claimant
4. the dwelling which a person has left because of estrangement, divorce or dissolved civil partnership, from the former partner⁴ **or**
5. premises which the person is taking steps to dispose of⁵ **or**
6. premises which the person is taking legal action or legal proceedings to get possession of⁶ **or**
7. premises which need essential repairs or improvements⁷ **or**
8. business assets and the person
 - 8.1 works in the business as a S/E earner **or**
 - 8.2 has stopped trading **or**
 - 8.3 has stopped working or not started work in the business because the person is
 - 8.3.a ill or physically or mentally disabled **and**
 - 8.3.b is going to work in the business as a S/E earner when fit or able⁸ **or**
9. the funds of a trust and the funds are a payment of compensation for a personal injury to the claimant or partner⁹.

The income from capital is treated as capital from the date it is due to be paid¹⁰.

*1 JSA Regs, Sch 8, para 1; IS (Gen) Regs, Sch 10, para 1; 2 JSA Regs, Sch 8, para 2; IS (Gen) Regs, Sch 10, para 2;
3 JSA Regs, Sch 8, para 4; IS (Gen) Regs, Sch 10, para 4; 4 JSA Regs, Sch 8, para 5; IS (Gen) Regs, Sch 10, para 25;
5 JSA Regs, Sch 8, para 6; IS (Gen) Regs, Sch 10, para 26; 6 JSA Regs, Sch 8, para 7; IS (Gen) Regs, Sch 10, para 27;
7 JSA Regs, Sch 8, para 8; IS (Gen) Regs, Sch 10, para 28; 8 JSA Regs, Sch 8, para 11; IS (Gen) Regs, Sch 10, para 6;
9 JSA Regs, Sch 8, para 17 & 17A; IS (Gen) Regs, Sch 10, para 12 & 12A; 10 JSA Regs, reg 110(4);
IS (Gen) Regs, reg 48(4)*

29736 Income from capital includes

1. interest on an investment, such as a building society account
2. dividends on shares **or**
3. rent from real or heritable property (see DMG 29020 4.).

29737 The income from capital is treated as capital for the period it is payable even if the income is spent in that period. The period starts with the date the income is due to be paid. At the end of the period if there is any of the income left it is capital and not income which is treated as capital.

Example 1

On 13 April Paul makes a claim for JSA(IB). Paul lives with his parents but rents out a house which he owns. The value of this house with a sitting tenant is £40,000. Paul has a mortgage which is secured on this house and the amount outstanding is £38,500. The rent is £320 a calendar month and Paul uses this to pay the mortgage and other outgoings on the house. The rent is due to be paid on the first day of the month. The DM decides that the £320 rental income is treated as capital. The DM also decides that this amount will be treated as capital for one month even though Paul uses it to pay his mortgage and other outgoings on his house.

Example 2

Eric is in receipt of IS. He was seriously injured and is awarded £1.5 million damages and this is administered by the Court of Protection. The Court authorizes payment of £5,000 a month to Eric's mother who uses the money to pay for Eric's care. The DM decides that each payment of £5,000 is treated as capital for a month even though it is used for Eric's care.

29738 The DM has to decide if people have deprived themselves of capital if any of the income is spent in the period it is treated as capital.

Local Authority payments for children - IS

29739 **[See DMG Memo JSA/IS 64]** Arrears of payments made by a LA under specified legislation¹ are treated as capital².

1 Children Act 1975, s 34(6) and 50; Children Act 1989, Sch 1, para 15; 2 IS (Gen) Regs, reg 48(8)

Local Authority payments for children - JSA

[See DMG Memo JSA/IS 64]

- 29740 Arrears of payments made by a LA under specified legislation¹ are treated as capital².

1 Children Act 1975, s 50; Children Act 1989, Sch 1, para 15; 2 JSA Regs, reg 110(8)

Payments under the Northern Ireland Children Order - IS and JSA

[See DMG Memo JSA/IS 64]

- 29741 Arrears of payments made by an authority¹ under specified legislation² are treated as capital³.

1 Children (NI) Order 1995, Article 2; 2 Children (NI) Order 1995, Article 15 & Sch 1 para 17; 3 JSA Regs, reg 110(8); IS (Gen) Regs, reg 48(8A)

Tax refunds

- 29742 A refund of tax which has been paid under Schedule D or Schedule E is income which is treated as capital but not a refund of tax if paid to

1. for JSA, a member of the claimant's family who is involved in a TD **or**
2. for IS, a claimant or partner and that person
 - 2.1 is involved in a TD **or**
 - 2.2 has returned to work after being involved in a TD and the refund is paid during the first 15 days after returning to work¹.

For IS a tax refund paid during the first 15 days after returning to work to a claimant or partner who has been involved in a TD is capital which is treated as income².

1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 48(2); 2 IS (Gen) Regs, reg 41(4)

- 29743 A person pays tax under

1. Schedule D if the person is S/E **and**
2. Schedule E if the person pays tax under the PAYE scheme.

Example

Michael is in receipt of JSA(IB). His wife, Hazel, works P/T and her earnings, after deductions for tax and NI are £65 a week. On 5 March Hazel receives a wage of £175 which includes £110 refund of tax paid under the PAYE scheme. The DM decides that the £110 tax refund is treated as capital.

29744

Capital paid to or for a third party

Capital paid to a third party for the claimant or a member of the claimant's family

29860 **[See DMG Memo JSA/IS 64]** The law states that a claimant or a member of a claimant's family is treated as having capital which is paid to a third party if the payment

1. is for that
 - 1.1 claimant **or**
 - 1.2 member of the claimant's family **and**
2. is made under social security law¹ or is a
 - 2.1 WDisP **or**
 - 2.2 WWP **or**
 - 2.3 a pension paid to a forces widow or surviving civil partner under specific provisions² or any other pension for persons who have been disabled or died as members of the armed forces **or**
 - 2.4 War Widower's Pension³
 - 2.5 Surviving Civil Partner's War Pension
3. for JSA would normally have been paid to that
 - 3.1 claimant **or**
 - 3.2 member of the claimant's family⁴.

For IS this does not apply if the payment is made to a third party and it is for a member of the third party's family⁵.

1 WR Act 07; JS Act 95; SS CB Act 92; 2 Armed Forces (Pensions and Compensation) Act 2004; Naval, Military and Airforces etc (Disablement and Death) Service Pensions Order 83 made under the Naval and Marine Pay and Pensions Act 1865 or the Pension and Yeomanry Pay Act 1884; SS (Misc Prov) Act 77; 3 SS (Miscellaneous Amendment) Regs 2002, regs 2 & 3; 4 JSA Regs, reg 113(3)(a)(i); IS (Gen) Regs, reg 51(3)(a)(i); 5 reg 51(3)(a)(i)

29861 **[See memo DMG 23/14]** The law says the claimant or a member of a claimant's family is treated as having a certain amount of capital which is paid to a third party if the payment is

1. not a payment under SS law¹ **and**
2. not a payment of a
 - 2.1 WDisP **or**
 - 2.2 WWP **or**
 - 2.3 War Widower's Pension²
 - 2.4 Surviving Civil Partner's War Pension
3. not a payment³ made under the
 - 3.1 Macfarlane Trust (see DMG 29451) **or**

- 3.2 Macfarlane (Special Payments) Trust (see DMG 29452) **or**
- 3.3 Macfarlane (Special Payments) (No. 2) Trust (see DMG 29453) **or**
- 3.4 Fund (see DMG 29454) **or**
- 3.5 Eileen Trust (see DMG 29455) **or**
- 3.6 MFET Limited (see DMG 29456) **or**
- 3.7 Independent Living Fund (2006) (see DMG 29441) **or**
- 3.8 Skipton Fund (see DMG 29457)
- 3.9 Caxton Foundation (see DMG 29458)
- 3.10 SIBSS (see DMG 29459) **or**
- 3.11 approved blood scheme (see DMG 29460)
- 3.12 London Emergencies Trust (DMG 29462)
- 3.13 We Love Manchester Emergency Fund (DMG 29463) **and**
- 3.14 London Bombings Relief Charitable Fund (DMG 29461)
- 4. not a payment⁴ under relevant legislation⁵ in respect of participation in
 - 4.1 a specified employment programme⁶ **or**
 - 4.2 a specified training scheme⁷ **or**
 - 4.3 the Intensive Activity Period⁸ or Intensive Activity Period for ND 50+ **or**
 - 4.4 Flexible New Deal⁹ **or**
 - 4.5 a specified employment-related course¹⁰ **or**
 - 4.6 the MWA Scheme¹¹ **or**
 - 4.7 SAPOE¹² **and**
- 5. for that
 - 5.1 claimant **or**
 - 5.2 member of the claimant's family **and**
- 6. used to pay for
 - 6.1 food **or**
 - 6.2 ordinary clothing or footwear **or**
 - 6.3 household fuel **or**
 - 6.4 rent for which housing benefit is payable **or**
 - 6.5 housing costs which are included when working out the claimant's applicable amount **or**
 - 6.6 CT or water charges which the claimant or member of the claimant's family has to pay **and**

the amount of capital that claimant or member of the claimant's family is treated as having is the amount paid out under 5.¹³ For IS this does not apply if the payment is made to a third party and it is for a member of the third party's family¹⁴.

Note: "Ordinary clothing or footwear" means clothing or footwear for normal daily use. It does not include school uniforms or clothing or footwear used solely for sporting activities¹⁵.

1 WR Act 07; JS Act 1995; SS CB Act 92; 2 SS (Miscellaneous Amendments) Regs 2002, regs 2 & 3; 3 JSA Regs, reg 113(3A)(a); IS (Gen) Regs, reg 51 (3A) (a); 4 JSA Regs, reg 113(3A)(b); IS (Gen) Regs, reg 51(3A)(b); 5 E&T Act 73, s 2; 6 JSA Regs, reg 75(1)(a)(ii); 7 reg 75(1)(b)(ii); 8 reg 75(1)(a)(iv); 9 reg 75(1)(b)(v); 10 reg 17A(7); 11 reg 113(3A)(bb); 12 reg 113(3A)(bc); 13 reg 113(3)(a)(ii); IS (Gen) Regs, reg 51(3)(a)(ii); 14 reg 51(3)(a); 15 JSA Regs, reg 113(8); IS (Gen) Regs, reg 51(8)

Capital paid to a claimant or a member of the claimant's family for a third party

29862 [\[See memo DMG 23/14\]](#) The law states that a claimant or a member of the claimant's family is treated as having a certain amount of capital if a payment is

1. made
 - 1.1 to that claimant or member of the claimant's family **and**
 - 1.2 for a third party¹ **and**
2. not made² under the
 - 2.1 Macfarlane Trust (see DMG 29451) **or**
 - 2.2 Macfarlane (Special Payments) Trust (see DMG 29452) **or**
 - 2.3 Macfarlane (Special Payments) (No. 2) Trust (see DMG 29453) **or**
 - 2.4 Fund (see DMG 29454) **or**
 - 2.5 Eileen Trust (see DMG 29455) **or**
 - 2.6 MFET Limited (see DMG 29456) **or**
 - 2.7 Independent Living Fund (2006) (see DMG 29441) **or**
 - 2.8 Skipton Fund (see DMG 29457) **or**
 - 2.9 Caxton Foundation (see DMG 29458) **or**
 - 2.10 SIBSS (see DMG 29459) **or**
 - 2.11 approved blood scheme (see DMG 29460) **or**
 - 2.12 London Emergencies Trust (DMG 29462) **or**
 - 2.13 We Love Manchester Emergency Fund (DMG 29463) **or**
 - 2.14 London Bombings Relief Charitable Fund (see DMG 29461)
3. not a payment³ under relevant legislation⁴ in respect of participation in
 - 3.1 a specified employment programme⁵ **or**
 - 3.2 a specified training scheme⁶ **or**

- 3.3** the Intensive Activity Period⁷ or Intensive Activity Period for ND 50+ **or**
- 3.4** Flexible New Deal⁸ **or**
- 3.4** a specified employment-related course⁹ **or**
- 3.5** the MWA Scheme¹⁰ **or**
- 3.6** SAPOE¹¹
- 4.** not a payment of
 - 4.1** an occupational pension¹² **or**
 - 4.2** a pension or any other periodical payment under a personal pension scheme¹³ **or**
 - 4.3** a payment made by the Board of the Pension Protection Fund where DMG 29870 applies¹⁴.

Note: See DMG 23846 - 23849 for the definition of “personal pension scheme” and DMG 23854 - 23855 for the definition of “periodical payment”.

1 JSA Regs, reg 113(3)(b); IS (Gen) Regs, reg 51(3)(b); 2 JSA Regs, reg 113(3A)(a); IS (Gen) Regs, reg 51(3A)(a); 3 JSA Regs, reg 113(3A)(b); IS (Gen) Regs, 51(3A)(b); 4 E&T Act 73, s 2; 5 JSA Regs, reg 75(1)(a)(ii); 6 reg 75(1)(b)(ii); 7 reg 75(1)(a)(iv); 8 reg 75(1)(a)(v); 9 reg 17A(7); 10 reg 113(3A)(bb); 11 reg 113(3A)(bc); 12 reg 1(3); IS (Gen) Regs, reg 2(1); 13 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 14 JSA Regs, reg 113(3A)(c); IS (Gen) Regs, reg 51(3A)(c)

29863 DMG 29862 does not apply to a payment of capital made to

- 1.** claimants which is for a member of their family **or**
- 2.** a member of a claimant’s family which is for
 - 2.1** that claimant **or**
 - 2.2** another member of that family¹.

1 JSA Regs, reg 113(3)(b); IS (Gen) Regs, reg 51(3)(b)

29864 The amount of capital that the claimant or member of the claimant’s family is treated as having is the amount

- 1.** kept by that
 - 1.1** claimant **or**
 - 1.2** member of the claimant’s family **or**
- 2.** used by that
 - 2.1** claimant **or**
 - 2.2** member of the claimant’s family **or**
 - 2.3** claimant for any member of that claimant’s family **or**
 - 2.4** member of the claimant’s family for that claimant or any other member of that family¹.

1 JSA Regs, reg 113(3)(b); IS (Gen) Regs, reg 51(3)(b)

Third party

29865 Third party includes a public body, such as a LA.

Meaning of ordinary clothing or footwear

29866 Ordinary clothing or footwear means clothing or footwear for normal daily use but not

1. school uniforms **or**
2. clothing or footwear used only for sporting activities¹.

1 JSA Regs, reg 113(8); IS (Gen) Regs, reg 51(8)

29867 Ordinary clothing or footwear for normal daily use is what people in general wear on a daily basis. So it does not include clothing or footwear which

1. people in general do not wear, such as orthopaedic shoes which a disabled person might wear **or**
2. is not worn on a daily basis, such as wellington boots.

What the DM decides

29868 The DM decides

1. whether a claimant or a member of the claimant's family should be treated as having capital which has been paid to or for a third party **and**
2. if so the amount of capital that claimant or member of the claimant's family is treated as having **and**
3. DMG 29860 - 29861 does **not** apply when payments are made to a third party rather than the claimant at the claimant's own request.

Occupational and personal pensions

29869 A claimant is treated¹ as possessing payments made to a third party

1. in respect of the
 - 1.1 claimant **or**
 - 1.2 a member of the claimant's family **and**
2. where the payment is
 - 2.1 an occupational pension² **or**
 - 2.2 a pension or any other periodical payment under a personal pension scheme³ **or**
 - 2.3 a payment made by the Board of the Pension Protection Fund.

Note: See DMG 23846 - 23849 for the definition of “personal pension scheme” and DMG 23854 - 23855 for the definition of “periodical payment”.

*1 JSA Regs, reg 113(3)(a)(ia); IS (Gen) Regs, reg 51(3)(a)(ia); 2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1);
3 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

29870 A claimant is not treated as possessing a payment under DMG 29869 if

1. the payment is made
 - 1.1 for a person in respect of whom a bankruptcy order has been made **or**
 - 1.2 where in Scotland, the estate of that person is subject to sequestration or has a judicial factor appointed on it **and**
2. it is paid to a trustee in bankruptcy or any other person acting on behalf of the creditors **and**
3. neither the person in respect of whom the payment has been made nor another member of the family has actual or notional capital apart from that payment¹.

1 JSA Regs, reg 113(3A)(c); IS (Gen) Regs, reg 51(3A)(c)

29871 - 29874