

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 9

Amendment 26 – Feb 2018

1. This letter provides details on Amendment 26; 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/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the Internet at:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

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

3. Amendment 26 affects abbreviations Chapters 49, 50, 51 & 52. The changes make amendments to
 - Chapter 49 removed reference to DMG Memo 11/16.
 - Chapter 50 minor amendment and incorporated DMG Memo 22/17
 - Chapter 51 minor amendment 51163; 51200; 51202; 51254; 51257; 51259; 51312; 51604: minor legal refs incorporated DMG Memo 20/17 (Infected Blood) 51210, 51299, 51341-61, 51362-63, 51384, 51418, 51598, 51607 □ 51254-59 incorporated DMG Memo's 22/17 (Continuing & Kinship Care Regs) 51805, 07, 11, 28, 55, 66-67, 69, 75 (header) and 76 Incorporated DMG memo 21/17 (QYP) 51535 – 51556 incorporated memos 23/17 & 12/15 (Pension Flexibilities/ Notional Income) and renumbered.
 - Chapter 52 incorporates DMG memos 14/17, 20/17 & 22/17
4. The last two packages for Volume 9 were
 - Amendment 25 [Oct 2017]
 - Amendment 24 [June 2017]

If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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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

49636 Fixed term employees on a determinate fixed term contract have the end date of their contract notified to them at the start of their contract, and those on project work have the same right to legislative notice as other employees.

Contractual entitlement

49637 The period of notice due under a contract is usually stated in the contract. But that period may be extended by agreement between the employer and employee, for example by a redundancy agreement. The period of notice agreed then becomes the period due under the contract.

49638 If there is evidence that this may have happened, for example, if the employer pays more PILON than was due under the written contract, ask to see a copy of the agreement. If there is no written agreement, ask to see any other evidence of the change.

49639 Contractual entitlement is affected if the agreement gives the employee a legal right to a longer period. In such a case, the employee is contractually entitled to the longer period. If the agreement simply provides for more compensation than would otherwise be due, contractual entitlement is not affected.

49640 The period of notice due may not be stated in writing. If so, ask the employer and employee whether it was agreed verbally. If it was and they agree on the period due, that period will be the period due by contract.

49641 There may be no written or verbal contract. Under common law a reasonable period of notice is an implied term of a contract of employment¹. The DM should consider what is reasonable taking account of all the circumstances and the custom in the type of employment.

1 R(U) 37/53; R(U) 4/56; R(U) 10/58; R(U) 10/64; R(U) 5/74

49642 - 49645

49646 The DM should note that

1. employees may be paid PILON at the same rate as their earnings. The period might then be considered to be the period implied under their contracts
2. the higher an employee's rate of pay and status, the longer the period of notice should be
3. an employee's length of service and status can be compared with other employees whose contractual entitlement is known.

Example

Ross has been continuously employed for 15½ years by Arnolds Ltd up to him being made redundant. Under his contract of employment he is entitled to two weeks notice. He did not work any period of notice on being made redundant or receive PILON.

The DM determines that the specified period is twelve weeks because

1. by statute Ross was entitled to twelve weeks notice as he had been continuously employed by Arnolds Ltd for 15½ years and this is longer than the period of notice he was due to under his contract of employment
2. Ross has not worked any period of notice or received PILON.

Note: The DM now has to consider the period using the set formula to determine if the specified period is shorter than the period using the set formula.

Payments for period before employment ended

49647 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. How it affects a claim for ESA(IR) depends on whether the work that has ended was remunerative or P/T.

Remunerative work

49648 If the work was remunerative, earnings due for the period of that employment should normally be disregarded¹. This includes any payments held in hand by the employer when the employment ends. It does not include any

1. retainers² including
 - 1.1 statutory guarantee payments **and**
 - 1.2 payments made where the claimant has been suspended on medical or maternity grounds **or**
2. awards made under employment protection or trade union law (including “out of court” settlements).

These payments should not be disregarded.

1 ESA Regs, Sch 7, para 1(1)(a); 2 Sch 7, para 1 & 2

Partner's earnings on retirement

49649 Any earnings paid or due to be paid to the claimant's partner should be disregarded where¹

1. the partner was engaged in remunerative work as an employed earner (or would have been if the employment had been in GB) **and**

6. where does the person work? Working from home may point towards self-employment.
7. is the person who engages the person for work obliged to provide work? If there is no obligation then this may point towards self-employment.
8. does the person have discretion to the hours of work? The greater the discretion, the more likely that the work is self-employment.

Claims that include self-employed earners

50012 Where the DM is considering whether the claimant and/or partner is a S/E earner then it is important to keep that determination separate from the issue of remunerative work (see DMG Chapter 41).

50013 In order to deal with claims where the question of self-employment arises, DMs should apply the following four questions in this order¹. Is the claimant

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
 - 3.1 if the answer is yes the claimant is not entitled to ESA(IR)
 - 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 50023 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 41 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 50051 et seq.

1 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R(JSA) 1/09; 2 ESA Regs, Sch 7, para 4; 3 regs 41(1) & 42(1); 4 reg 97(1); 5 reg 92(1)(a) & (b);

- 50014 If the S/E earner has ceased self-employment the DM should with respect to ESA(IR) consider if
1. there are any capital assets from the business **and**
 2. any capital assets from the business should be disregarded (see DMG 50032 and DMG Chapter 52).

Directors of limited companies

- 50015 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.

Note: see DMG Chapter 52 when considering the effect of a director's capital

1 R(SB) 57/83

- 50016 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 Chapter 49).

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

Earnings of self-employed earners

- 50017 In S/E cases, earnings are the gross receipts (see DMG 50125) of the employment¹.
- 50018 S/E earnings do not include¹
1. charges paid to the S/E earner in return for providing BL accommodation (see DMG 50019) **or**
 2. any of the payments in DMG 51255 et seq (fostering allowances and payments for people temporarily in the claimant's care, including continuing care & kinship care in Scotland)
 3. any sports award² (see DMG 41499).

1 ESA Regs, reg 97(2);

2 reg 2(1), National Lottery etc. Act 1993, s 23(2)

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Other payments for housing costs

Types of payment disregarded

51160 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 51163 should be disregarded¹. This disregard does not apply to payments under an insurance policy to which DMG 51218 applies.

1 ESA Regs, Sch 8, para 32(1)

51161 If the payment is from a mortgage protection policy the DM should consider the disregards explained in DMG 51150 - 51152 before considering this disregard.

51162 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 51150 et seq before any other disregards.

1 R(IS) 13/01

51163 Disregard

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 part)¹
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 rentcharge **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 44 for guidance when a service charge can be met as a housing cost.

1 ESA Regs, Sch 8, para 32(1)(a); 2 Sch 8, para 32(1)(b); 3 Sch 8, para 32(1)(c); 4 Sch 8, para 32(1)(d)(i); 5 Sch 8, para 32(1)(d)(ii); 6 Sch 8, para 32(1)(b); 7 Sch 8, para 32(1)(e); 8 NA Act 48, Part III; The Care Act 2014, Part 1; the Social Services Well-being (Wales) Act 2014, Part 4 (excluding any Direct Payments in s 50 or 52)

- 51164 The disregards in DMG 51163 do not apply if the DM decides the payment is an LRP¹.

1 ESA Regs, reg 85

- 51165 If a payment for a housing cost or part of a housing cost has already been disregarded under DMG 51150 - 51152 the payment for the same cost should not be disregarded again under DMG 51163.

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

- 51166 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.

51167 - 51169

Supersessions and payments for housing costs

- 51170 Special rules on the supersession of disregards of payments for housing costs apply in ESA¹. The special rules apply to
1. mortgage protection policies **and**
 2. other payments for housing costs.

1 SS CS (D&A) Regs, regs 6(2) & 7(17E)

- 51171 Some disregards on payments for housing costs are based on the interest payable on a loan. If the interest payable alters, the disregard has to be revised or superseded.

Payments for care home, Abbeyfield Home or independent hospital charges

Introduction

51190 DMG 51191 - 51202 gives guidance on the treatment of payments of income towards accommodation charges for

1. a care home **or**
2. an Abbeyfield Home **or**
3. an independent hospital.

51191 The treatment of the income depends on

1. the type of payment
2. whether the LA has sponsored the claimant in their accommodation.

Care homes and independent hospitals

51192 In England and Wales a care home means¹ a home, other than a hospital, an independent clinic or children's home, which provides accommodation along with nursing or personal care for persons who

1. are or have been ill including mental illness **or**
2. are disabled or infirm **or**
3. are or have been dependent on alcohol and drugs.

1 ESA Regs, reg 2(1); Care Standards Act 2000, s 3

51193 In Scotland a care home means¹ a home care service which provides accommodation along with nursing, personal care or personal support but does not include

1. hospitals
2. schools
3. independent health care services.

1 ESA Regs, reg 2(1); Public Services Reform (Scotland) Act 2010, Sch 12, para 2

51194 An independent hospital means¹ in

1. England, a hospital that is not a health service hospital as defined in legislation² **or**
2. Wales, a hospital which is not a health service hospital as defined in legislation³ **or**
3. Scotland, an independent healthcare service as defined in legislation⁴.

*1 ESA Regs, reg 2(1); 2 National Health Service Act 2006, s 275; 3 Care Standards Act 2000, s 2;
4 NHS (Scot) Act 78, s 10F(1)(a) & (b)*

Types of payment

- 51195 The payments for accommodation may be
1. charitable or voluntary (see DMG 51390 et seq) **or**
 2. other payments.

The DM should decide what type of payment is being made.

51196 - 51199

Payments to claimants not in Local Authority sponsored accommodation

- 51200 This disregard applies where a claimant is residing in
1. a care home, Abbeyfield Home, or independent hospital **and**
 2. accommodation that has not been provided by an LA under certain legislation¹.

Note: This disregard does not apply to charitable or voluntary payments which are fully disregarded - see DMG 51416.

1 NA Act 48, s 26; SW (Scot) Act 68, s 59; The Care Act 2014, s 18 or 19; The Social Services and Well-being (Wales) Act 2014, s 35 or 36

- 51201 The DM should disregard from any payment intended and used for accommodation charges the difference between the
1. claimant's applicable amount **and**
 2. actual charge made by the home or hospital¹.

1 ESA Regs, Sch 8, para 34

Example

Andrew receives ESA(IR). He lives in an independent hospital which provides treatment for drug and alcohol dependency. The LA are not sponsoring Andrew under National Assistance legislation. The weekly charge for the hospital is £300. Andrew receives a payment of £250 a week from a Trust Fund towards his accommodation charges.

The DM calculated Andrew's applicable amount as follows

personal allowance	£54.65
--------------------	--------

The difference between £54.65 and the charge by the hospital is the amount of the disregard.

actual charge	£300.00
---------------	---------

less	£54.65
------	--------

The disregard is	£245.35
------------------	---------

Other payments towards accommodation costs

51202 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 ESA Regs, Sch 8, para 32(1)(e); 2 NA Act 48, s 26; The Care Act 2014, Part 1; The Social Services Well-being (Wales) Act 2014, Part 4 (excluding any Direct Payments in s 50 or 52)

51203 - 51209

Income fully disregarded

Types of income fully disregarded

- 51210 When calculating income for ESA(IR) disregard fully
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) - but see **note 2**
 - 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
 - 1.11 the London Emergencies Trust (LET)
 - 1.12 the We Love Manchester Emergency Fund (WLMEF)
 - 1.13 Infected Blood Schemes
 2. any payment for a reduction of CT
 3. AAs
 4. AFIP
 5. The Bereavement Support Payment (see DMG 51232)
 6. certain payments due to be paid before the date of claim
 7. CHB
 8. child maintenance
 9. Christmas Bonus
 10. compensation for loss of HB
 11. concessionary payments
 12. cost of conversion of foreign money
 13. CTB
 14. CTC
 15. dependant's or non dependant's contributions to accommodation and living costs
 16. DLA

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

- 50. travelling expenses for training schemes
- 51. vouchers including child care cheques
- 52. war widows/widowers, surviving civil partners supplementary pensions
- 53. welfare foods, NHS supplies, travelling expenses and assisted prison visits
- 54. WRA expenses.

Note 1: See DMG 51341 et seq for further guidance on payments listed at 1.1 - 1.10.

Note 2: the Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's 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 a claimant receives funding from any of these replacement schemes.

51211

Adoption allowance

- 51212 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.

Adoption allowance paid for members of the family

- 51213 Any adoption allowance paid for a child or young person who is a member of the family is fully disregarded¹.

1 ESA Regs, Sch 8, para 26(1)(a)

Adoption allowances paid other than for a child who is a member of the family

- 51214 Disregard any payment¹ made under specific legislation² in respect of
- 1. a child who is not a member of the family **or**
 - 2. the claimant or partner.

See DMG 51215 for adoption allowances in Scotland and Wales.

1 ESA Regs, Sch 8, para 26 (2); 2 Adoption and Children Act 2002, s 2(6)(b), 3 & 4

Adoption allowances paid in Scotland or Wales for children who are not members of the family

51215 If an adoption allowance is paid in Scotland or Wales for a child or young person who is not treated as a member of the family, for example a child in youth custody, the DM should

1. disregard in full any amount which is spent on the child or young person **and**
2. take into account any amount used by the claimant or partner¹.

1 ESA Regs, reg 107(4)

Residence orders

Northern Ireland Children Order

51216 Payments made by an authority¹ under specified legislation² are fully disregarded³.

1 Children (NI) Order 1995, art 2; 2 art 15 and Sch 1, para 17; 3 ESA Regs, Sch 8, para 26(1)(c)

Local authority payments for children subject to a residence order

51217 Payments made by a LA under specified legislation¹ are fully disregarded².

1 Children Act 1975, s 34(6) & 50; Children Act 1989, s 15 & Sch 1, para 15;

2 ESA Regs, Sch 8, para 26(1)(b)

Credit insurance policies

51218 Claimants may receive payments from credit insurance policies. These are policies designed to cover repayments for debts for

1. credit cards
2. catalogue companies
3. personal loans
4. other types of credit arrangements.

Disregard for credit insurance policies

51219 A disregard applies to payments received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on¹

1. a regulated agreement as defined in legislation **or**
2. a hire purchase agreement as defined in legislation **or**
3. a conditional sale agreement as defined in legislation².

Note: The disregard does not apply to insurance policies for qualifying housing costs³. The disregard for these policies is explained at DMG 51150 - 51152.

1 ESA Regs, Sch 8; 2 Sch 8; 3 Sch 8, para 33

51220 If an agreement is a regulated agreement under legislation, the creditor is required by law to state this in the agreement¹. The DM may conclude that

Payments for children and people living temporarily with the claimant

Foster children

51254 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 maintenancefor 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 ESA Regs, Sch 8, para 28; 2 Children Act 89, s 22C(2); The Social Services and Well-being (Wales) Act 2014, 81(2); Children (Scotland) Act 95, s 26 or 26A; 3 Children Act 89, s 59(1)(a); 4 Looked After Children (Scotland) Regulations 2009, regs 33 or 51

Kinship care

51255 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 child. Any payment made by the LA to the person providing care should be fully disregarded².

1 Looked After Children (Scotland) Regulations 2009, reg 10; 2 ESA Regs, Sch 8, para 28

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

51256 Certain legislation¹ concerning the welfare of children applies in England, Wales¹ and Scotland². This applies to certain children who are 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

51257 The DM should fully disregard¹ payments made by LAs under child-care law²

1. to promote the welfare of children **and**
2. to prevent people being taken into care.

1 ESA Regs, Sch 8, para 30(1); 2 CLC 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 95, s 22, 26A, 29 or 30; The Social Services Well-being (Wales) Act 2014, s 37 or 38 (but excluding any Direct Payment in s 51, or s 109, 110, 114 or 115)

51258 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 fully disregarded².

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

1 Children Act 1989, s 23C; Children (Scotland) Act 95, s 22, 26A or 29; 2 ESA Regs, Sch 8, para 30(2) & (3)

Payments for people temporarily in the claimant's care

51259 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 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 LAs own resources.

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

1 ESA Regs, Sch 8, para 29; 2 NA Act 48, s 26(3A); NHS Act 1977, s 16BA; Health Service (Wales) Act, s 11; The Social Services Well-being (Wales) Act 2014, s 35 or 36

51260 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 ESA Regs, reg 97(2)

51261

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 ESA Regs, Sch 8, para 24

Income in kind

51298 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 income¹ **and**
3. 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 50) are not income in kind. Credits should be taken into account in the appropriate way.

Note 2: See DMG 51397 for the treatment of concessionary coal.

1 ESA Regs, Sch 8, para 22(1); 2 Sch 8, para 22(4)

Example 1

Karen is entitled to ESA(IR). Her mother works in a shop and the shop owner gives the mother £10 of groceries each week for Karen.

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 Karen's mother £10 a week to buy groceries for Karen.

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

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.

51299 The exceptions at DMG 51298 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** below
7. MFET Limited
8. the Skipton Fund
9. the Caxton Foundation
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 **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 ESA Regs, Sch 8, para 22(2) & (3)

Note: the Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's 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 a claimant receives funding from any of these replacement schemes.

51300 - 51309

Income treated as capital

- 51310 The DM should fully disregard as income any income that is treated as capital¹.

1 ESA Regs, Sch 8, para 36

Jurors or witnesses court attendance allowance

- 51311 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 ESA Regs, Sch 8, para 43

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

- 51312 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; The Care Act 2014, s 31-33; The Social Services Well-being (Wales) Act 2014, s 50 or 52;

2 ESA Regs, Sch 8, para 53

Infected Blood Schemes, the Fund and other specific Trusts

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

Infected Blood Schemes

51341 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 51347-53) 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

51342 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 ESA Regs, Sch 8, para 41(1)

What is the Fund

51343 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

51344 Fully disregard¹

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

1 ESA Regs, Sch 8, para 41(1)

The Scottish Infected Blood Support Scheme

51345 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 51347-53) into one scheme in Scotland.

1 ESA Regs, reg 2(1)

Income from the Scottish Infected Blood Support Scheme

51346 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 ESA Regs, Sch 8, para 41(1)

Previous Infected Blood Schemes

51347 Prior to the introduction of the Infected Blood Schemes at DMG 51341 and the Scottish Infected Blood Support Scheme at DMG 51345, five separate schemes provided financial support to people affected by contaminated NHS blood or blood products:

51348 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.

51349 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.

51350 The Macfarlane Trusts are

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

51351 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 ESA Regs, reg 2(1)

- 51352 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 ESA Regs, reg 2(1)

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

- 51353 Fully disregard¹
1. any income **and**
 2. any income from capital that was received from schemes in DMG 51347-52.

1 ESA Regs, Sch 8, para 41(1)

The Skipton Fund

- 51354 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 52).

1 ESA Regs, reg 2(1)

The London Emergencies Trust

- 51355 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 ESA Regs, reg 2(1)

Income from the London Emergencies Trust

- 51356 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 ESA Regs, Sch 8, para 41(1) & 41(7)

The We Love Manchester Emergency Fund

- 51357 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 ESA Regs, reg 2(1)

Income from the We Love Manchester Emergency Fund

51358 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 ESA Regs, Sch 8, para 41(1) & 41(7)

The Independent Living Fund (2006)

51359 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 are not covered by this legislation and will therefore be taken fully into account.

Income from the Independent Living Fund (2006)

51360 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 ESA Regs, Sch 8, para 41(1)

The London Bombings Relief Charitable Fund

51361 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 ESA Regs, reg 2(1)

Payments from money which came from the Trusts

Meaning of the Trusts

51362 "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 ESA Regs, Sch 8, para 41(7)

What payments should be disregarded

51363 Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 51364 - 51385. 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

51364 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

51365 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 51364.

1 ESA Regs, reg 2(1)

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

51366 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 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(2)(a); 2 Sch 8, para 41(2)(b) & (c)

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

51367 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.

51368 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 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(3)(a); 2 Sch 8, para 41(3)(b) & (c)

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

51369 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 ESA Regs, Sch 8, para 41(4)(b)(i); 2 Sch 8, para 41(4)(b)(ii)

51370 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 51379 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(4)(a)

51371 - 51374

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

51375 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 ESA Regs, Sch 8, para 41(5)(b)(i); 2 Sch 8, para 41(5)(b)(ii)

51376 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 51380 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(5)(a)

For how long should the payment be disregarded

Payments to a qualifying person or person with HIV and partners

51377 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 ESA(IR) do not alter this disregard.

1 ESA Regs, Sch 8, para 41(3)(a); 2 Sch 8, para 41(2)(a)

Payments to children and young people

51378 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 ESA(IR) claimant's family.

1 ESA Regs, Sch 8, para 41(2)(b) & (c) & 41(3)(b) & (c)

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

51379 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 ESA claim, because the person with HIV may not die whilst the claimant is on ESA(IR).

1 ESA Regs, Sch 8, para 41(4)

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

51380 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 ESA Regs, Sch 8, para 41(5)

Deciding if a disregard applies

51381 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.

51382 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

51383 If a Trust payment is invested with other money to produce an income, disregard only the proportion that came from the trust payment¹.

1 ESA Regs, Sch 8, para 41(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

51384 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

51385 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.

Note: See DMG Chapter 39.

51386 - 51389

Regular charitable or voluntary payments

What are regular payments

51413 Regular charitable or voluntary payments are those that are

1. made regularly **or**
2. due to be made regularly, even if they are not actually made.

Note: Voluntary payments should not be confused with payments to volunteers. Guidance on payments to volunteers is given at DMG 49209 - 49211.

51414 Regular payments include those paid or due to be paid at recurring intervals such as

1. weekly
2. monthly
3. annually (for example every Christmas)
4. any other pattern.

When is a payment due to be made

51415 A payment is due to be paid where there is a promise or agreement to make a payment.

Disregard for relevant payments

51416 Fully disregard¹ any relevant payment unless one of the exceptions at DMG 51417 - 51418 apply.

1 ESA Regs, Sch 8, para 16(1)

Relevant payments that should be taken fully into account

51417 The disregard in DMG 51416 does not apply to

1. LRPs¹ **or**
2. maintenance, that is not an LRP for
 - 2.1 a member of the family **or**
 - 2.2 a former partner **or**
 - 2.3 the childrenof the person making the payment² **or**
3. a student's covenant or grant income³.

1 ESA Regs, reg 85; 2 Sch 8, para 16(3)(a); 3 reg 135

Relevant payments paid in kind

51418 Fully disregard relevant payments that are paid in kind¹ unless one of the exceptions at DMG 51298 applies. The exceptions at DMG 51298 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 **note**
7. MFET Limited
8. the Skipton Fund **or**
9. the Caxton Foundation **or**
10. the Scottish Infected Blood Support Scheme **or**
11. the London Emergencies Trust **or**
12. the We Love Manchester Emergency Fund **or**
13. Infected Blood Schemes.

as explained at DMG 51299.

1 ESA Regs, Sch 8, para 22

Note: the Independent Living Fund closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds if a claimant receives funding from any of these replacement schemes.

51419 - 51424

Personal and occupational pensions

General

51535 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.

51536 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 ESA Regs, reg 106(2)g; 2 reg 109(1)

What is a personal pension

51537 A personal pension is a pension scheme that¹ is not an occupational pension scheme **and** is established by a person within specified finance legislation².

1 ESA Regs, reg 2(1); PS Act 93, s 1; 2 Finance Act 2004, s 154(1)

What is an occupational pension

51538 An occupational pension 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 cases¹.

1 ESA Regs, reg 2(1)

Pension Protection Fund

51539 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

51540 Where reference is made to a pension fund holder, this means the

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

of a personal pension scheme¹.

1 ESA Regs, reg 2(1)

Who is a person who derives entitlement

51541 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

51542 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 ESA Regs, reg 115(2)(d)

Pension Flexibilities

51543 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 51060)
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

51544 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.

51545 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 52).

51546 For the purposes of notional income for claimants, or their partners as appropriate, who have reached the qualifying age for SPC (see DMG 77032), 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 51550) **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 DM 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

51547 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 Department¹. 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 ESA Regs, regs 106, reg 6 & 7

51548 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.

51549 - 51550

Notional income - schemes where income withdrawal is allowed

When should a person be treated as having notional income

51551 Treat a claimant, who has reached the qualifying age for SPC or over 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 ESA Regs, reg 106(3)

Amount of notional income

51552 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

Adam is over the qualifying age for SPC and his wife Delores is in receipt of ESA(IR). Adam 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 ESA. Adam and Delores 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

51553 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 the 100% of the rate of annuity that the fund would generate.

1 ESA Regs, reg 106(3)

Example

Bernard receives ESA(IR). 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 the maximum amount of income, based on the GAD 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

51554 Treat a claimant who has at least 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 ESA Regs, reg 106(4); 2 PS Act 93

Amount of notional income

51555 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 ESA Regs, reg 106(7)

From what date should the DM take notional income into account

51556 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 ESA Regs, reg 106(5)

Example

Mark receives ESA(IR). His partner Fiona is 61. On 1 November the DM receives evidence that Fiona is entitled to money purchase benefits under an occupational pension scheme.

The pension fund holder provides evidence, based on the GAD 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 100% of the rate of annuity that the fund would generate.

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

Actual income

51557 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.

51558 - 51562

2. ordinary clothing or footwear
3. fuel, for the household that the claimant normally occupies
4. accommodation costs covered by ESA(IR)
5. rent for which HB is payable
6. water charges for which the claimant or partner is liable
7. CT for which the claimant or partner is liable.

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 ESA Regs, reg 107(3)(c)

51598 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) **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 ESA Regs, reg 107(5)(a); 2 The Coal Industry Act 94, s 19(1)(a); ESA Regs, reg 107(5)(b)

Note: the Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's 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 a claimant receives funding from any of these replacement schemes.

Meaning of ordinary clothing or footwear

51599 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 ESA Regs, reg 2(1)

51600 The DM should consider the wide needs of all claimants when applying the test of “for normal daily use”.

Example 1

Geeta receives ESA(IR). She receives a payment from a local charity to buy wellington boots for herself.

The DM decides that as it would be unreasonable for Geeta to wear wellington boots in all weather conditions they are not for normal daily use.

Example 2

Emma receives ESA(IR). She receives a payment for orthopaedic shoes.

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

Example 3

Rosalind receives ESA(IR). She receives a payment for an ordinary pair of shoes. The DM decides that the shoes are for normal daily use.

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

51601 Treat payments made by a third party, who is not the claimant or a member of the claimant’s family, towards the cost of charges for a

1. care home **or**
2. Abbeyfield Home **or**
3. independent hospital

for the claimant or partner as the income of the claimant or partner¹.

1 ESA Regs, reg 107(6)

51602 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 ESA Regs, reg 109

51603

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

51604 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 51601⁴.

1 ESA Regs, Sch 8, para 56; 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, part 1; The Social Services Well-being (Wales) Act 2014, Part 4; 4 ESA Regs, reg 107(6)

51605 Payments that satisfy DMG 51604 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 & CC Act 90, s 42; NA Act 48, s 21(4)

Income paid to the claimant or partner for a third party

51606 Take into account in full any income paid to the claimant or claimant's partner 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.

1 ESA Regs, reg 107(4)

51607 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 **note**
6. the Skipton Fund

7. the Caxton Foundation
8. the Scottish Infected Blood Support Scheme
9. the London Emergencies Trust
10. the We Love Manchester Emergency Fund
11. Infected Blood Schemes

regardless of who keeps it or how it is used.

Note: the Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's 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 a claimant receives funding from any of these replacement schemes.

51608 The DM should decide using, available evidence

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

income has been kept by the claimant or partner.

51609 Treat income as having been kept when

1. there is no intention of
 - 1.1 paying it over to **or**
 - 1.2 using it for the third party **or**
2. if after having the income for a reasonable period of time the claimant or partner 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.

51610 The DM should consider

1. the type of income **and**
2. how often the income is paid **and**
3. why the income is paid

when deciding if a reasonable period of time has passed.

Example 1

Rodney receives ESA(IR)

Rodney receives income for his cousin Roland who is a long-term patient in a local hospital.

Definitions and meaning of terms

51800 Claimant means¹ a person who has claimed ESA.

Partner means², where the claimant is

1. a member of a couple, the other member of that couple **or**
2. married polygamously, the other members of the marriage.

1 WR Act 07, s 24(1); 2 ESA Regs, reg 2(1)

ESA(IR) - income and capital

51801 A reference to a student is a reference to that person alone. It does not include the student's partner. If the student is the claimant's partner, the student's income is treated as the claimant's¹. This happens once the weekly amount to be taken into account has been worked out.

1 WR Act 07, Sch 1, Part 2 para 6(2)

51802 A student or a member of their family may have income which is not subject to the special student rules. When considering this income a reference to the claimant may be taken to be a reference to a partner¹. There may also be a question about capital. Do not treat the capital of a child or young person as the claimant's².

1 ESA Regs, reg 83(1); 2 reg 83(2)

Meaning of course and modular course

51803 See DMG Chapter 41 for the definition of course and modular course.

Course of advanced education

51804 Course of advanced education means¹

1. a course leading to a
 - 1.1 postgraduate degree or comparable qualification
 - 1.2 first degree or comparable qualification
 - 1.3 diploma of higher education
 - 1.4 higher national diploma **or**
2. any other course of a standard above that of
 - 2.1 advanced GNVQ or equivalent
 - 2.2 GCE advanced level (A levels)
 - 2.3 a Scottish national qualification (higher or advanced higher).

1 ESA Regs, reg 131

Full-time course of advanced education

England and Wales

- 51805 F/T course of advanced education means¹ a course of advanced education that is
1. a F/T course of study that is not wholly or partly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **or**
 2. a course of study which
 - 2.1 is partly or wholly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **and**
 - 2.2 involves the student in more than 16 guided learning hours per week (seven days) as stated in
 - 2.2.a England in the student's learning agreement **or**
 - 2.2.b Wales in a document signed on behalf of the college.

1 ESA Regs, reg 131

Scotland

- 51806 In Scotland, F/T course of advanced education means¹ a course of advanced education which is
1. a F/T course of
 - 1.1 study, not wholly or partly funded by the Scottish Ministers at a college of further education **or**
 - 1.2 higher education (see DMG Chapter 41), wholly or partly funded by the Scottish Ministers **or**
 2. a course of study other than higher education, which is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**
 - 2.1 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff as stated in a document signed on behalf of the college **or**
 - 2.2 21 hours a week in total as stated in a document signed on behalf of the college made up of
 - 2.2.a 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**
 - 2.2.b extra hours using structured learning packages, supported by teaching staff.

1 ESA Regs, reg 131

Course of study

51807 A course of study¹ means any course of study including a sandwich course. It does not matter whether a grant is made for attending or undertaking the course.

A person who has started a course of study should be treated as attending or undertaking it until

1. the last day of the course (see DMG Chapter 41) **or**
2. such earlier date as they
 - 2.1 abandon the course (see DMG Chapter 41) **or**
 - 2.2 are dismissed from it (see DMG Chapter 41).

1 ESA Regs, reg 14(1)

51808 - 51810

Full-time course of study

England and Wales

51811 F/T course of study means¹ a F/T course that is

1. not wholly or partly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **or**
2. wholly or partly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers, if it involves the person in more than 16 guided learning hours per week, as stated in the student's signed learning agreement in England or, in Wales a document signed on behalf of the college.

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

1 ESA Regs, reg 131

Scotland

51812 In Scotland F/T course of study means¹ a F/T course of study that is

1. not wholly or partly funded by the Scottish Ministers, at a college of further education **or**
2. higher education (see DMG Chapter 41), wholly or partly funded by the Scottish Ministers **or**
3. not higher education and is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**

- 3.1** 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff, as stated in a document signed on behalf of the college **or**
- 3.2** 21 hours a week in total, as stated in a document signed on behalf of the college made up of
 - 3.2.a** 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**
 - 3.2.b** extra hours using structured learning packages, supported by teaching staff.

1 ESA Regs, reg 131

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

Sandwich course

51813 See DMG Chapter 41 for the definition of sandwich course.

Periods of experience and work experience

51814 Periods of experience means periods of work experience which form part of a sandwich course¹.

1 ESA Regs, reg 131

51815 Periods of work experience are associated with the F/T study but are done outside an educational establishment. The experience has to be

1. industrial **or**
2. professional **or**
3. commercial¹.

1 Support Regs, reg 2(1)

51816 If the course includes¹

1. the study of one or more modern languages for at least half the time spent studying **and**
 2. periods of residence in a country whose language is a part of the course
- periods of work experience means any periods of overseas residence when the student is in gainful employment.

1 Support Regs, reg 2(1)

Student unable to find placement

51817 A student may not be able to find a placement in the period of work experience. This does not automatically mean that they have stopped being a student. The DM should consider whether the student has abandoned or been dismissed from the course (see DMG Chapter 41).

51818 - 51820

Meaning of educational establishment

51821 The term educational establishment is not defined and so must be given its ordinary everyday meaning. Schools, colleges and universities are clearly such places. But other less obvious places may also be included. For example, the training division of a large organisation specially set up for that purpose.

A person is attending an educational establishment if they are receiving

1. training
2. instruction **or**
3. schooling

in an organisation, or at an establishment, set up for any of those purposes.

Note: For Open University students see DMG 51854.

Academic year

51822 Academic year means¹ a period of twelve months starting on

1. 1 January for courses starting in winter
2. 1 April for courses starting in spring
3. 1 July for courses starting in summer
4. 1 September for courses starting in autumn.

Note: If a student begins a course in August or September and continues to attend throughout autumn, the beginning of the academic year will be the autumn rather than the summer.

1 ESA Regs, reg 131

Terms used in Scotland

51823 See DMG Chapter 41 for the definitions of a college of further education, further education and higher education in Scotland.

Meaning of guided learning hours

51824 See DMG Chapter 41 for the definition of guided learning hours.

Student loan

51825 A student loan¹ is a loan made for a student's maintenance under specific law². The Student Loan Company administers student loans.

1 ESA Regs, reg 131; 2 T & HE Act 98, s 22; Ed (Scot) Act 80, s 73(f), 73B & 74; Support (NI) Order, Article 3

Grant

51826 Grant means¹ any kind of educational grant or award and includes any

1. scholarship
2. studentship
3. exhibition
4. allowance
5. bursary.

DMs should note that it does not include any payment derived from access funds or any payment of education maintenance allowance.

1 ESA Regs, reg 131

Access funds

51827 Access funds are grants, loans or other payments made under specific law¹ that are paid on a discretionary basis to assist students in financial difficulties².

1 F & HE Act 92, s 68; Ed (Scot) Act 80, s 73(a), (c) & s 74(1); Education and Libraries (Northern Ireland) Order 1993, Art 30; Further Education (Northern Ireland) Order 1997, Art 5; 2 ESA Regs, reg 131

51828 Access funds also include

1. in England - 'Learner Support Funds' which may be made available to students under specific law¹. For those in further education they are paid out of funds provided by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England²
2. in Wales - 'Financial Contingency Funds' made available by the Welsh Ministers².

1 F & HE Act 92, s 7; L & S Act 2000, s 5, 6 & 9; 2 ESA Regs, reg 131

Note: Access funds do not include Assembly Learning Grants. Financial Contingency Funds are made available to prevent the financial hardship of students who are not eligible for an Assembly Learning Grant.

51829 - 51830

Open University students

- 51854 A claimant who is on an Open University course will fall within the definition of a student¹. Such courses are not F/T and are normally followed at times that would fit in with employment. Most of the course material is done in the person's home and not at an educational establishment however they are still undertaking a course of study². Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

1 ESA Regs, reg 131; 2 R(IS) 1/96

Community Orders

- 51855 Offenders on specified activity may be undertaking basic skills education which will generally be funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding in England and the appropriate funding body in Wales. DMs must check the number of guided learning hours and consider if the offender is a F/T student. There is no such equivalent in Scotland. In Scotland, courts have access to a number of community penalties, principally probation orders, community service orders, drug treatment and testing orders and restriction of liberty orders. Conditions can be attached to these orders including the requirement to undertake unpaid work. The activities which can be imposed as part of the orders are funded by the Scottish Ministers¹.

1 SW (Scot) Act 68, s 27A

General

- 51856 A student is a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance is not a student¹.

1 ESA Regs, reg 131

Full-time student

- 51857 A F/T student is a person who is not a qualifying young person or child under specified legislation¹ and is
1. aged less than 19 who is attending or undertaking a F/T course of advanced education **or**
 2. aged 19 or over, but under pension age, who is attending or undertaking a F/T course of study at an educational establishment **or**
 3. on a sandwich course².

1 SS CB Act, s 142; 2 ESA Regs, reg 131(2)(a)

51858 A F/T student is treated as attending or undertaking a F/T course of study from the first day of the course until

1. the last day of the course **or**
2. such earlier date as the student
 - 2.1 abandons the course **or**
 - 2.2 is dismissed from it¹.

1 ESA Regs, reg 131

Treatment of modular courses

51859 A student attending or undertaking part of a modular course on a F/T basis is treated as a F/T student from the day that part of the course begins until

1. the last day he is registered as attending or undertaking that part as a F/T course of study **or**
2. such earlier date as the student
 - 2.1 abandons the course **or**
 - 2.2 is dismissed from it¹.

1 ESA Regs, reg 131(2)(a)(ii)

51860 The period described in DMG 51859 above includes any period

1. that the student attends or undertakes the course to retake exams or a module. The student must have been undertaking the original part of the course or modules as a F/T course of study.
2. of vacation falling within the period or immediately following it. This does not include a vacation immediately following the last day of the course¹.

1 ESA Regs, reg 131(3)(b)

Modular course

51861 In these circumstances a modular course means a course of study consisting of two or more modules. The student must complete a specified number of modules before they are considered to have completed the course¹.

1 ESA Regs, reg 131(4)

51862 - 51865

Meaning of full-time

General

51866 The DM has to consider whether a person is a full time student (a F/T student). For courses funded by the Scottish Ministers, except where it is a course of higher education (see DMG Chapter 41), and for those funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England or by Welsh Ministers, the term F/T is defined by reference to the number and type of hours involved (see DMG Chapter 41). But for non funded courses there is no definition.

51867 In courses not funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, Welsh Ministers or the Scottish Ministers and in courses of higher education funded by the Scottish Ministers, the term F/T applies to the course itself and not to a person's attendance on it¹. It is the time spent by a notional reasonable student that is considered. A person who attends a F/T course on a P/T basis is still a student.

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

51868 Each case must be decided on its facts¹. The DM must look at the sequence of studies and activities that make up the course itself. The nature of the course is not affected by²

1. a person's reasons for attending it **or**
2. a person's readiness to abandon it, for example, to accept an offer of employment **or**
3. what a particular person happens to be doing.

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

51869 In modular courses a sequence of studies is established once a person has decided which modules to take. This sequence can be distinguished from the work that the person is putting in at any given time. When deciding whether a course is F/T, all of the studies and activities involved in it should be taken into account. This includes both supervised and unsupervised study and activity, whether done on or off college premises. In the case of courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, the Welsh Ministers or the Scottish Ministers, take no account of private study (see DMG Chapter 41).

51870 Do not compare the total hours involved with what may be regarded as a full working week. One approach is to look at the total time the course might require of an average student. It may take up a substantial part of a week, after allowing for reasonable rest and recreation. The course might then be regarded as F/T.

51871 The DM should determine whether the course is modular or non-modular. Whether a modular course counts as a F/T course is a question of fact. If the educational establishment's description is not conclusive, other relevant evidence may include

1. the education establishment's regulations
2. the educational establishments registration procedures
3. the course regulations
4. the course handbook
5. other relevant information given to the student about his status.

51872

Evidence from educational establishment

51873 See DMG Chapter 41 regarding evidence from educational establishments.

Other evidence

51874 See DMG Chapter 41 regarding obtaining other evidence.

Number of hours involved

51875 See DMG Chapter 41 regarding the number of hours involved.

Courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England, Welsh Ministers or the Scottish Ministers

51876 DMG Chapter 41 contains guidance on

1. courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, the Welsh Ministers or the Scottish Ministers
2. higher education
3. non funded courses **and**
4. further education and other courses.

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Flowchart.....**Appendix 1**

How to work out tariff income.....**Appendix 2**

Can capital be disregarded

The law

52351 The law allows for all capital to be included in the claimant's resources unless it can be disregarded¹.

1 ESA Regs, reg 111 & Sch 9

Onus of proof

52352 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

52353 The DM decides if capital can be disregarded

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

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

52354 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.

52355 For certain disregards the DM has to decide if it is reasonable to disregard capital for a longer period. Capital is disregarded¹

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 **or**
6. for a prescribed period.

1 reg 111 & Sch 9

52356 The length of the disregard¹ depends on

1. the type of capital **and**
2. the circumstances of the claimant.

1 Sch 9

52357 - 52359

Capital disregarded indefinitely

Adoption allowance

52360 As 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.

52361 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 ESA Regs, Sch 9, para 57

Special guardianship payments

52362 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 ESA Regs, Sch 9, para 58

Annuities

52363 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 income².

1 Sch 9, para 15; 2 reg 105(2)

Business assets

The law

52364 The assets of a business are disregarded indefinitely if

1. the person owns all or some of the business assets and is engaged in the business as a S/E earner¹**or**

2. the business 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 on the commercial activity for which the assistance is being received².

1 ESA Regs, Sch 9, para 10(1); 2 Sch 9, para 10(3)

52365 The assets of a business are disregarded for a reasonable period to allow them to be sold or otherwise disposed of 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.

1 Sch 9, para 10(1); 2 Sch 9, para 10(4)

Example

John owns an amusement arcade in Bournemouth. He stopped working in the arcade as a S/E earner on 31 October and claimed ESA 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 52520 - 52523).

Meaning of business assets

52366 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.

52367 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 HMRC to such a receipt or holding.

Meaning of “reasonable period”

52368 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

52369 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 ESA Regs, reg 2(1), SS CB Act 92, s 2(1)(b)

52370 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 ESA Regs, reg 2(1); SS CB Act 92, s 2(1)(a)

When people are working in the business as a self-employed earner

52371 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

52372 A partner in a business managed and worked exclusively by others is not working in the business as a self-employed earner. 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

52373 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 52277) 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

52374 The disregard in DMG 52375 applies to capital which is being administered by a court or can only be disposed of with a court's permission (including in relation to a child under 18) 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 52376 2. ceases to apply when the person concerned reaches the age of 18.

1 ESA Regs, Sch 9, para 43(1)(a), 43(1)(b), 43(2)(a) & 44(a); 2 Sch 9, para 43(1)(c), 43(2)(b) & 44(b)

Capital paid by instalments

52375 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 52380).

1 Sch 9, para 21

Capital which is not sterling

52376 Bank charges and commission which are payable when changing capital which is not paid as 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 Sch 9, para 26

Payments from a Thalidomide trust

- 52377 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 ESA Regs, Sch 9, para 61

Kinship care payments

- 52378 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 ESA Regs, Sch 9, para 61

Capital which is treated as income

The law

- 52379 Capital which is treated as income under ESA legislation¹ is disregarded as capital indefinitely².

1 ESA Regs, reg 105 & 137; 2 Sch 9, para 25

Capital paid by instalments - claimant and partner

- 52380 For claimants and partners capital which is payable by instalments is treated as income if on the date of

1. the first day in respect of which ESA(IR) is payable or date that the claim is determined, whichever is earlier **or**
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 £16,000 as calculated in accordance with the guidance in this chapter¹.

1 ESA Reg, reg 105(1)

52381

Payment made under an annuity contract

52382 Payments received under an annuity contract¹ are treated as income.

1 ESA Reg, reg 105(2)

Earnings

52383 Any earnings which are not income are treated as income¹.

1 ESA Reg, reg 105(3)

Career Development Loan

52384 A Career Development Loan paid under certain legislation¹ is treated as income².

1 E & T Act 73, s 2; 2 ESA Regs, reg 105(4)

Example

Roger is in receipt of ESA(IR). His wife, who is unemployed, receives a Career Development Loan of £8,000 to fund a 2 year course of vocational learning. The loan is arranged through the Learning Skills Council and with a high street bank. The payment is treated as income but is subject to a disregard (see DMG Chapter 51).

Personal injury payments

52385 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 ESA Regs, reg 105(5); 2 KQ v SSWP (IS) [2011] UKUT 102 (AAC); [2011] AACR 43

Example

Lucinda was injured in a car accident and can no longer work. She is in receipt of ESA(IR). The court ordered that regular payments of £3,000 should be paid to Lucinda as a result of her injuries. The DM treats these payments as income but the payments are subject to a disregard (see DMG Chapter 51).

Student loans

52386 A student loan paid under education law¹ is treated as income².

1 Teaching and Higher Education Act 1998, s 22; Education (Scotland) Act 1980, s 73(3), 73B & 74; Education (Student Support) (Northern Ireland) Order 1998, art 3; Students' Allowances (Scotland) Regs, reg 4(1)(c); 2 ESA Regs, reg 137(1)

Dwelling occupied as the home

The law

52387 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 52397 et seq).

1 ESA Reg, Sch 9, para 1; 2 Secretary of State v. Miah; R(JSA) 9/03

Meaning of dwelling

52388 Dwelling means any residential accommodation. This can be

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

1 ESA Regs, reg 2(1)

Meaning of dwelling occupied as the home

52389 Dwelling occupied as the home means

1. the place normally lived in by the claimant as their 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 practicable or reasonable to sell separately

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

1 ESA Regs, reg 2(1)

Onus of proof

52390 The person owning the property has to show what part of the property is occupied as the home.

52391 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.

1 R(SB) 27/84

Example

Jack makes a claim for ESA. 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 has 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.

52392 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 52647).

52393 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 part of 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

52394 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

52395 A dwelling which is usually occupied as the home is disregarded if

1. it is not occupied for a period of 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

52396 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

52397 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.

52398 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 43) **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; Housing (Scotland) Act 1987, s 136 & 137; Secretary of State v. Miah; R(JSA) 9/03

52399 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 family life.

Example 1

Iain and Sharon 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 Iain and Sharon 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 Iain and Sharon own. Sharon and the five youngest children continue to live in the original house and the other children go to live in the newly purchased house. Iain 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. Iain becomes ill and claims ESA. The DM decides that Iain 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 ESA(IR). 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 falls ill and returns to London to claim ESA. 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 ESA. 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 makes a claim for ESA. 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

52400 A future interest in property of any kind is disregarded indefinitely. This does not apply to an interest in real or heritable property (see DMG 52020 4.) on which a person has given another person a continuing

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

1 ESA Regs Sch 9, para 9

52401 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.

52402

Income payable in a country outside of the United Kingdom

52403 The value of the right to receive earnings from employment or other 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 for the time during which they cannot be transferred to the UK from that country due to a ban¹.

1 ESA Regs, Sch 9, para 19

Life insurance policies

The law

- 52404 The surrender value of any policy of life insurance still in force is disregarded indefinitely¹.

1 ESA Reg, Sch 9, para 20

Meaning of a policy of life insurance

- 52405 A policy of life insurance means a written document which says a payment of money will be 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 ESA Reg, reg 2(1)

Investments which include life insurance

- 52406 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

- 52407 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 ESA Regs, Sch 9, para 18

Money deposited with a housing association

52408 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 52532 - 52534).

1 Housing Associations Act 1985, s 1(1); ESA Regs, Sch 9, para 13(a)

Occupational pensions

The law

52409 The value of the right to receive an occupational pension is disregarded indefinitely¹.

1 ESA Reg, Sch 9, para 28

Meaning of occupational pension

52410 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 particular cases¹.

1 ESA Regs, reg 2(1)

Health in pregnancy grant

52411 The grant is payable to every woman from the 25th week of pregnancy after they have had appropriate health advice from a health professional. It is a one off non-taxable payment and should be disregarded when calculating the capital of the claimant¹.

1 ESA Reg, Sch 9, para 38A

Payment for attending court

52412 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 ESA Reg, Sch 9, para 34

Payment for loss of housing benefit

52413 Any 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 ESA Reg, Sch 9, para 33

52414

Payment for personal injury

The law

52415 The value of

1. a trust if the funds of which it consists come from a payment made because of a personal injury **and**
2. the right to receive payment from that 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 51 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 ESA Regs, Sch 9, para 16; 2 R(IS) 3/03

52416 For payments not held on trust see DMG 52503.

The Children's Memorial Trust

52417 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

- 52418 A payment in kind is disregarded indefinitely if made by
1. a charity
 2. the Macfarlane Trust (see DMG 52452)
 3. the Macfarlane (Special Payments) Trust (see DMG 52453)
 4. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52454)
 5. the Fund (see DMG 52455)
 6. the Eileen Trust (see DMG 52456)
 7. MFET Limited (see DMG 52457)
 8. Skipton Fund (see DMG 52458)
 9. Caxton Foundation (see DMG 52459)
 10. SIBSS (see DMG 52460)
 11. an approved blood scheme (see DMG 52461)
 12. the London Bombings Relief Charitable Fund (see DMG 52462)
 13. the Independent Living Fund (2006) (see DMG 52442)¹.

1 ESA Reg, Sch 9, para 31

Payment made by local authority under child care law

- 52419 Any payment of capital made by the LA under specific child care legislation¹ is disregarded indefinitely².

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 ESA Regs, Sch 9, para 22(1)

- 52420 Where

1. a former child (aged 18+) who was in the claimant's care still lives with the claimant **and**
2. the LA makes a lump sum payment under certain child care law¹ 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 indefinitely², when calculating the claimant's capital.

1 Children Act 1989, s 23C; Children (Scotland Act) 1995, s 29; 2 ESA Regs, Sch 9, para 22(2) & (3)

Payment made to disabled persons to obtain or retain employment

The law

52421 Any payment (other than a training allowance) made by the Secretary of State or some other person under the law governing the employment of disabled people¹ to help disabled people obtain or retain employment despite their disability is disregarded indefinitely².

Note: See DMG 52505 for guidance on payments made to disabled people under employment and training law.

1 Disabled Persons (Employment) Act 1944; 2 ESA Regs, Sch 9, para 41

Schemes which help disabled people obtain or retain employment

52422 There are three special schemes which help disabled people obtain or retain 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

52423 Any payment made to people because they hold the

1. Victoria Cross or
2. George Cross

is disregarded indefinitely¹.

1 ESA Regs, Sch 9, para 45

Payment made to homeworkers under the Blind Homeworkers Scheme

52424 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 ESA Regs, Sch 9, para 42

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

52425 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 ESA Regs, Sch 9, para 56*

Payments under the Supporting People programme

52426 Payments under the Supporting People programme are disregarded indefinitely¹.

The disregard applies

1. in respect of any payment made by
 - 1.1 a LA (including a county council) **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 ofthe claimant or partner to live independently in their accommodation.

1 Sch 9, para 55

Personal pensions

The law

52427 [\[See memo DMG 12/15\]](#) The value of

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

is disregarded indefinitely¹.

1 ESA Regs, Sch 9, para 28 & para 29

Meaning of personal pension scheme

52428 Personal pension scheme¹ means a

1. personal pension scheme as stated in pensions law²

2. an annuity contract or trust scheme approved under tax law³
3. personal pension scheme approved under tax law⁴.

1 ESA Regs, reg 2(1); 2 Pension Schemes Act 1993, s 1; 3 Income and Corporation Taxes Act 1988, Part XIV, Chapter III; 4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV

52429

Personal possessions

52430 Personal possessions such as clothing, jewellery, and cars are disregarded indefinitely (but see DMG 52432)¹.

1 ESA Regs, Sch 9, para 14

52431 Personal possessions are not disregarded if people buy them to reduce the amount of capital they have so that they can get

1. ESA, JSA or IS **or**
2. more ESA, JSA or IS¹.

1 Sch 9, para 14

Premises lived in by a partner or relative

The law

52432 Premises such as a house or flat are disregarded indefinitely if they are occupied in whole or in part as the home by a

1. partner or relative of a single claimant or any member of the family **and** the partner or relative is
 - 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.

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

1 ESA Regs, Sch 9, para 4

Example

Max is in receipt of ESA(IR). He goes into residential care and his wife Sheila remains in their marital home. Sheila visits Max on a regular basis. The DM decides that Max and Sheila are not estranged.

Meaning of relative

52433 Relative¹ means a

1. parent including an adoptive parent²
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 if they were their wife, husband or civil partner².

1 ESA Regs, reg 2(1); 2 R(SB) 22/87

52434 A person included under DMG 52434 **18.** and **19.** ceases to be a relative if the wife, husband or civil partner they live with together dies.

Is the person incapacitated

52435 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 ESA
- 1.7 SDA
- 1.8 SSP
- 1.9 a benefit similar to the ones at 1. to 8. **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

52436 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

52437 The value of the right to receive rent is disregarded indefinitely as capital but not when a person has a reversionary interest in the property for which the rent is due¹.

1 ESA Regs, Sch 9, para 30

52438 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

52439 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 ESA Regs, Sch 9, para 23

Special educational needs

52440 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 ESA Regs, Sch 9, para 59

Tax refunds

52441 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 or acquire any interest in 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 ESA Regs, Sch 9, para 24

The Independent Living Fund (2006)

The law

52442 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 ESA Regs, Sch 9, para 27(1)

Meaning of the Independent Living Fund (2006)

52443 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 ESA Regs, reg 2(1)

Payment included with other capital

- 52444 If the payment is included with other capital the disregard does not apply to the other capital.
- 52445 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

- 52446 If payment is made in kind see DMG 52418.

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

- 52447 One-off payments made from the Trusts (see DMG 52451) 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 ESA Regs, Sch 9, para 27(1)

- 52448 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 if the person has died, were not estranged, divorced, or part of a dissolved civil partnership at the time of death **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 ESA Regs, Sch 9, para 27(2)

- 52449 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 ESA Regs, Sch 9, para 27(3)

- 52450 Any capital the person gets from the income or capital of the payment
1. from the Trusts **or**
 2. at DMG 52450
- is disregarded indefinitely¹.

1 ESA Regs, Sch 9, para 27(6)

Example

Georgia is in receipt of ESA(IR). 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 Georgia 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.

The Trusts

52451 The Trusts means the

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. the Independent Living Fund (2006)
8. Skipton Fund
9. Caxton Foundation
10. SIBSS
11. an approved blood scheme
12. London Emergencies Trust
13. We Love Manchester Emergency Fund **and**
14. London Bombings Relief Charitable Fund¹.

1 ESA Regs, Sch 9, para 27(1) & para 27(7)

The Macfarlane Trust

52452 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 ESA Regs, reg 2(1) & Sch 9, para 27(1)

The Macfarlane (Special Payments) Trust

52453 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 ESA Regs, reg 2(1)

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

52454 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 ESA Regs, reg 2(1)

The Fund

52455 The Fund is money made available from time to time by the Secretary of State for the benefit of people who satisfy the terms of the scheme which was set up in Scotland on 10.4.92 and elsewhere on 24.4.92¹. It benefits non-haemophiliacs who were infected with HIV whilst undergoing treatment by NHS blood or tissue transfer or blood products. It makes one-off payments.

1 ESA Regs, reg 2(1)

The Eileen Trust

52456 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 ESA Regs, reg 2(1)

MFET Limited

52457 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 ESA Regs, reg 2(1)

The Skipton Fund

52458 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 ESA Regs, reg 2(1)

The Caxton Foundation

52459 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 ESA Regs, reg 2(1)

Scottish Infected Blood Support Scheme

52460 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 ESA Regs, reg 2(1)

Approved blood scheme

52461 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 ESA Regs, reg 2(1)

The London Bombings Relief Charitable Fund

52462 The London Bombings Relief Charitable Fund¹ 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, received lump sum payments from the London Bombings Relief Charitable Fund ranging between £3,000 and £25,000.

1 ESA Regs, reg 2(1)

The London Emergencies Trust

52463 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 LET ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries¹.

1 ESA Regs, reg 2(1)

The We Love Manchester Emergency Fund

52464 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 WLMEF ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries¹.

1 ESA Regs, reg 2(1)

Qualifying person

52465 Qualifying person means a person for whom a payment has been made from 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 or the London Bombings Relief Charitable Fund¹.

1 ESA Regs, reg 2(1)

Evidence

52466 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. SIBSS
9. London Bombings Relief Charitable Fund

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

52467 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

52468 If the payment is included with other capital the disregard does not apply to the other capital.

52469 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

52470 Other payments are disregarded. If the payment is made

1. in kind, see DMG 52418 or
2. to or for the benefit of some other person, see DMG 52485 - 52489.

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

52471 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.

1 ESA Regs, Sch 9, para 50

Example

Jim is receiving ESA(IR). 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.

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

Meaning of “the relevant trust”

52472 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 ESA Regs, Sch 9, para 53(6)

Meaning of “diagnosed person”

52473 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 ESA Regs, Sch 9, para 53(6)

52474 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.

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 ESA Regs, Sch 9, para 53; 2 Sch 9, para 53(5)

Example

Thomas died of variant Creutzfeldt-Jakob disease on 25.11.07. His widow, Helga, makes a claim for ESA. On 5.11.08 she receives a payment of £25,000 from the relevant trust. The DM decides that this payment is disregarded for Helga's lifetime.

52475 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.

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 ESA Regs, Sch 9, para 53(3)

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 11.11.08 David claims ESA. 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.

52476 Trust payments may be made to other relatives of a person diagnosed with variant Creutzfeldt-Jakob disease. See

- DMG 52490 if the payment is made to a parent of the diagnosed person
- DMG 52492 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

52477 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.

52478 The disregard in DMG 52477 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 ESA Regs; Sch 9, para 54

Age related payments

52479 One-off age-related payments are payments of capital. DMs should not take them into account for ESA(IR) purposes¹.

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

Education maintenance allowance payments

52480 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; Ed (Scot) Act 80, s 49 and 73(f); Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & Ed (Scot) Act 80, s 73ZA;

2 Education Act 2002, s 14 and 181; ESA Regs, Sch 9, para 52(1)

16-19 Bursary Fund

52481 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; ESA Regs, Sch 9, para 52

52482 In addition to the disregard at DMG 52481 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 as in DMG 52481 above

is also disregarded indefinitely².

1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49; Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & Ed (Scot) Act 80, s 73ZA; 2 ESA Regs, Sch 9, para 52(2)

Local welfare provision

52483 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 ESA 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

52484 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 ESA Regs, Sch 9, para 27(4)

52485 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 ESA Regs, Sch 9, para 27(5)

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

1 Civil Partnership Act 2004, s 246

52486 Any capital which a person gets from the income or capital of the payment at DMG 52484 - 52485 is also disregarded¹.

1 ESA Regs, Sch 9, para 27(6)

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 15.11.08 Leonard makes a claim for ESA. 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 30.01.09 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.

Payment included with other capital

- 52487 If the payment is included with other capital the disregard does not apply to the other capital.
- 52488 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.

Total amount of capital

How to work out the total amount of actual capital

52720 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.

52721 - 52724

Income which is treated as capital

52725 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 ESA Regs, reg 112

Advance of earnings or loan from employer

52726 An advance of earnings or a loan from an employer is income which is treated as capital if the person is an employed earner¹.

1 ESA Regs, reg 112(5)

52727 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.

1 ESA Regs, reg 2(1) & SS CB Act 92, s 2(1)(a)

Example

Barrie is in receipt of ESA(IR). 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. Barrie 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.

Bounty payments

52728 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 ESA Regs, reg 112(1); 2 Fire and Rescue Services Act 2004; Fire (Scotland) Act 2005;
3 Social Security (Contributions) Regulations 2001, Sch 6*

Charitable or voluntary payments

52729 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 it is a payment from

1. the Macfarlane Trust (see DMG 52452) **or**
2. the Macfarlane (Special Payments) Trust (see DMG 52453) **or**
3. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52454) **or**
4. the Fund (see DMG 52455) **or**
5. the Eileen Trust (see DMG 52456) **or**
6. MFET Limited (see DMG 52457) **or**
7. the Skipton Fund (see DMG 52458) **or**
8. the Caxton Foundation (see DMG 52459)
9. SIBSS (see DMG 52460) **or**
10. an approved blood scheme (see DMG 52461) **or**
11. the London Emergencies Trust (see DMG 52463) **or**
12. the We Love Manchester Emergency Fund (see DMG 52464) **or**
13. Independent Living Fund (2006) (see DMG 52442)².

1 ESA Regs, reg 112(7); 2 reg 112(8)

52730 - 52731

Discharge grant paid to prisoners

52732 A discharge grant paid to prisoners under prison law¹ is income treated as capital².

1 Prison Act 1952, s 30; Prisons (Scotland) Act 1989, s 17; 2 ESA Regs, reg 112(6)

Holiday pay

52733 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 capital¹.

1 ESA Regs, reg 112(3)

52734 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 ESA. 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

52735 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 where the funds are a payment of compensation for a personal injury to the claimant or partner⁹

10. an award of damages for a personal injury to the claimant or partner or compensation for the death of one or both parents where the person concerned is aged less than 18 where

10.1 in England and Wales that award or compensation is administered by the High Court, County Court or the Court of Protection and such sum can only be disposed of by order or direction

10.1.a of any such court **or**

10.1.b where the person concerned is under age 18, prior to that person reaching 18¹⁰

10.2 in Scotland, the Court of Session or Sheriff Court under certain rules¹¹.

The income from capital is treated as capital from the date it is due to be paid¹².

*1 ESA Regs, Sch 9, para 1; 2 Sch 9, para 2; 3 Sch 9, para 4; 4 Sch 9, para 5; 5 Sch 9, para 6; 6 Sch 9, para 7
7 Sch 9, para 8; 8 Sch 9, para 10; 9 Sch 9, para 16; 10 Sch 9, para 43; 11 Sch 9, para 44; 12 reg 112(4)*

52736 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 52020 **4.**).

52737 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 ESA. 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 ESA(IR). 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.

52738 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.

52739 - 52741

Tax refunds

52742 A refund of income tax which has been paid in respect of, or deducted from, profits or income under certain income tax legislation¹ is income which is treated as capital².

1 Income Tax (Trading and Other Income) Act 2005, Part 2 & Income Tax (Earnings and Pensions) Act 2003, Part 2; 2 ESA Regs, reg 112(2)

52743 The refund of income tax referred to in DMG 52742 covers

1. Profits or income of the S/E¹ and
2. Employed earners under the PAYE scheme².

*1 Income Tax (Trading and Other Income) Act 2005, Part 2;
2 Income Tax (Earnings and Pensions) Act 2003, Part 2*

Example

Michael is in receipt of ESA(IR). 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.

Arrears of subsistence allowance

52744 Any arrears of subsistence allowance paid to the claimant by an EZ contractor as a lump sum is treated as a payment of capital¹.

1 ESA Regs, reg 112(9)

Capital paid to or for a third party

Capital paid to a third party for the claimant or a claimant's partner

52860 Except for payments listed at DMG 52862, the law¹ states that a claimant or a claimant's partner 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 claimant's partner **and**
2. is made under social security law² **or is a**
 - 2.1 WDisP³ **or**
 - 2.2 WWP, War Widower's Pension or Surviving Civil Partner's War Pension⁴ **or**
 - 2.3 a pension paid to a forces widow or surviving civil partner under specific provisions⁵ **or**
 - 2.4 another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen⁶
3. is a payment
 - 3.1 of an occupational pension **or**
 - 3.2 of a pension or other periodical payment made under a personal pension scheme **or**
 - 3.3 made by the board of the PPF⁷ **or**
4. in any other case⁸, is a payment used by the claimant or a claimant's partner
 - 4.1 for food **or**
 - 4.2 ordinary clothing or footwear **or**
 - 4.3 household fuel **or**
 - 4.4 rent for which housing benefit is payable **or**
 - 4.5 housing costs which are included when working out the claimant's applicable amount **or**
 - 4.6 CT or water charges which the claimant or partner has to pay.

This does not apply if the payment is made to a third party and it is for a member of the third party's family.

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 activities⁹. 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.

*1 ESA Regs, reg 115(3); 2 reg 115(3)(a)(i); JS Act 95; SS CB Act 92; WRA 07, Part 1;
3 ESA Regs, reg 115(3)(a)(iii); 4 reg 115(3)(a)(iii); 5 Armed Forces (Pensions and Compensation) Act 2004;
ESA Regs, reg 115(3)(a)(ii); 6 reg 115(3)(a)(iv); 7 reg 115(3)(b); 8 reg 115(3)(c); 9 reg 2(1)*

Capital paid to a claimant or claimant's partner for a third party

52861 Except for payments listed at DMG 52862, any payment made to the claimant or claimant's partner in respect of a third party has to be treated as being possessed by the claimant or partner to the extent that it is kept or used by the claimant or partner.¹ This does not apply where the third party is a member of the claimant's family other than the claimant's partner.

1 ESA Reg, reg 115(4)

52862 DMG 52860 and DMG 52861 do not apply¹ to payments of capital made from

1. the Macfarlane Trust (see DMG 52452) **or**
2. the Macfarlane (Special Payments) Trust (see DMG 52453) **or**
3. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52454) **or**
4. the Fund (see DMG 52455) **or**
5. the Eileen Trust (see DMG 52456) **or**
6. MFET Limited (see DMG 52457) **or**
7. the Independent Living Fund (2006) (see DMG 52442) **or**
8. the Skipton Fund (see DMG 52458) **or**
9. the Caxton Foundation (see DMG 52459) **or**
10. SIBSS (see DMG 52460) **or**
11. an approved blood scheme (see DMG 52461) **or**
12. the London Emergencies Trust (see DMG 52463) **or**
13. the We Love Manchester Emergency Fund (see DMG 52464) **or**
11. the London Bombings Relief Charitable Fund² (DMG 52462) **or**
12. a payment under relevant legislation³ in respect of participation in
 - 12.1 a specified employment programme⁴ **or**
 - 12.2 a specified training scheme⁵ **or**

- 12.3 the Intensive Activity Period⁶ **or**
- 12.4 a specified employment-related course⁷ **or**
- 12.5 the MWA Scheme⁸ **or**
- 12.6 the ESE Scheme⁹ **or**
- 13. a payment under an
 - 13.1 an occupational pension scheme **or**
 - 13.2 a personal pension scheme **or**
 - 13.3 a payment made by the Pension Protection Fund where the payment is made
 - 13.3.a for a person in respect of whom a bankruptcy order has been made **or** where in Scotland, the estate of that person is subject to sequestration or has a judicial factor appointed on it **and**
 - 13.3.b it is paid to a trustee in bankruptcy or any other person acting on behalf of the creditors **and**
 - 13.3.c neither the person in respect of whom the payment has been made nor that person's partner has actual or notional capital apart from that payment¹⁰.

1 ESA Regs, reg 115(5); 2 reg 115(5)(a); 3 E & T Act 73, s 2; 4 ESA Regs, reg 115(5)(b)(i); 5 reg 115(5)(b)(ii); 6 reg 115(5)(b)(iii); 7 reg 115(5)(b)(iv); 8 reg 107(5)(ca); 9 reg 115(5)(ba); 10 reg 115(5)(c)

52863 - 52864

Third party

52865 Third party includes a public body, such as a LA.

52866 - 52867

What the DM decides

52868 The DM decides

1. whether a claimant or claimant's partner 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 claimant's partner is treated as having **and**
3. DMG 52860 - 52861 does **not** apply when payments are made to a third party rather than the claimant at the claimant's own request.

Note: See DMG 52428 for the definition of "personal pension scheme".

52869 - 52874

