

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 14 Amendment 45 – February 2018

1. This letter provides details on Amendment 45; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

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

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

3. Amendment 45 affects the abbreviations, chapters 83, 84, 85 & 86. The changes:
 - Chapter 83 - incorporate DMG memo 12/15.
 - Chapter 84 - incorporate DMG Memos 14/17 & 20/17.
 - Chapter 85 - add to the list of exclusions at 85095; incorporate DMG Memos 12/15, 20/17, 22/17 and 23/17 including a re-drafting of paragraphs.
 - Chapter 86 - make minor legal reference amendments to 86210 & 86211; include a note regarding 'holiday lets' at 86591.
4. 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

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Chapter 85

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Chapter 86

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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
CECSC	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
Wfl	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

New Claims from 6.4.16

83039 New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year PCR set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen. AIPs can not be set in these awards.

83040

Retirement provision is likely to change within twelve months

83041 If the DM considers that the claimant's retirement provision is likely to change within the period of twelve months beginning on the day the relevant decision takes effect then

1. the DM does not have to set an AIP¹ **or**
2. if the DM does set an AIP, it has to be for any suitable period shorter than five years (beginning on the date the relevant decision takes effect)²

1 SPC Act 02, s 9(2)(a); 2 s 9(2)(b)

Note: this only applies to relevant decisions made before 6.4.16.

Example 1

The DM calculated Mrs Clarke's retirement provision and decided to award SPC from 15.12.08. However, in the claim form, Mrs Clarke stated that she had recently put her house up for sale. The DM decided not to set an AIP.

Example 2

Mr Jones claimed SPC from 9.1.06 and said he may claim his RP from 17.4.06. He has deferred his RP since 11.4.05. He currently has capital of £9,500.

The DM decides that Mr Jones' retirement provision is unstable because he may get a lump sum which, because of the way it is disregarded, could affect his deemed income from capital. An AIP cannot be set.

Note: The lump sum disregard is applied to the gross amount rather than the net amount actually paid after tax. This means that the disregard can impact on the claimant's other capital by reducing any existing deemed weekly income.

Example 3

On 10.2.06 Mr Jones (in example 2 above) decides to claim his RP immediately. He will no longer have the option to take a lump sum payment, as he deferred his RP for less than a year.

The DM decides Mr Jones' retirement provision is now stable and an AIP is set from 10.2.06

83042 In deciding whether the current retirement provision is going to be typical throughout the following twelve months the DM should take account¹ of the fact that, if an AIP were set, the retirement provision would be subject to the deemed variations described in DMG 83100 - 83102

1 SPC Act 02, s 9(3)

Note: New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year PCR set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen. AIPs can not be set in these awards.

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

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

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

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

84457 - 84460

Second World War compensation payments

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

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

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

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

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

The Independent Living Fund (2006)

The law

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

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

Meaning of the Independent Living Fund (2006)

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

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

1 SPC Regs, reg 1(2)

84464 - 84466

Payment included with other capital

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

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

84469 - 84474

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

The law

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

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

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

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

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

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

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

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

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

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

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

is disregarded indefinitely¹.

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

The Trusts

84479 The Trusts means

1. the Macfarlane Trust
2. the Macfarlane (Special Payments) Trust
3. the Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. the Eileen Trust
6. MFET Limited
7. Skipton Fund
8. Caxton Foundation
9. SIBSS
10. an approved blood scheme
11. the London Emergencies Trust
12. the We Love Manchester Emergency Fund **and**
13. the London Bombings Relief Charitable Fund¹.

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

The Macfarlane Trust

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

1 SPC Regs, reg 1(2)

The Macfarlane (Special Payments) Trust

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

1 SPC Regs, reg 1(2)

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

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

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

because of contact with haemophiliacs.

1 SPC Regs, reg 1(2)

The Fund

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

1 SPC Regs, reg 1(2)

Eileen Trust

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

1 SPC Regs, reg 1(2)

MFET Limited

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

1 SPC Regs, reg 1(2)

The Skipton Fund

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

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

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

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

1 SPC Regs, reg 1(2)

The Caxton Foundation

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

1 SPC Regs, reg 1(2)

Scottish Infected Blood Support Scheme

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

Approved blood scheme

84489 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 SPC Regs, reg 1(2)

The London Bombings Relief Charitable Fund

84490 The London Bombings Relief Charitable Fund was established on 11 July 2005 following the terrorist attacks carried out in London on 7 July 2005¹. People who were bereaved, or who suffered injury, may receive lump sum payments from the London Bombings Relief Charitable Fund.

1 SPC Regs, reg 1(2)

The London Emergencies Trust

84491 The London Emergencies Trust was established on 28.3.17 following the terrorist attacks carried out in London on 22.3.17 and 3.6.17¹. 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 beneficiaries.

1 SPC Regs, reg 1(2)

The We Love Manchester Emergency Fund

84492 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 beneficiaries.

1 SPC Regs, reg 1(2)

Qualifying person

84493 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund¹.

1 SPC Regs, reg 1(2)

Evidence

84494 The Secretary of State has agreed the payments from the

1. Macfarlane Trust
2. Macfarlane (Special Payments) Trust
3. Macfarlane (Special Payments) (No. 2) Trust
4. Fund
5. Eileen Trust
6. Skipton Fund

7. MFET Limited
8. Caxton Foundation
9. London Bombings Relief Charitable Fund

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

84495 The Benefit Delivery Specialist Operations Team will get information about payments from those trusts or fund if it is needed. The trustees and DH should not be contacted for information about payments.

Payment included with other capital

84496 The disregard does not apply to the other capital if the payment is included with other capital.

84497 Accept any money withdrawn is from the other capital and not the payment if money is withdrawn from an account which includes the payment and other capital. Accept any money withdrawn is from the payment if there is evidence of this.

Other payments which are disregarded

84498 Payments to or for the benefit of some other person are disregarded (see DMG 84531).

Trusts

84499 Property held on trust is disregarded indefinitely if

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

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

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

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

Local welfare provision

84500 Local welfare provision means¹ occasional financial or other assistance made by an LA, the Welsh Ministers, the Scottish Ministers or an authorised person for the purpose of

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

1 SPC Regs, reg 1(2)

84501 Any payment paid

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

is disregarded indefinitely when calculating the capital of the claimant.

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

84502 - 84520

Capital disregarded for up to two years

Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners

The law

84521 Any trust payment made to a claimant, or the claimant's partner, is disregarded for two years after the date the trust payment is made if one of the partners

1. is a parent of a diagnosed person **or**
2. a person acting in place of the diagnosed person's parent **or**
3. a person who was acting in place of the diagnosed person's parent at the date of the diagnosed person's death¹.

1 SPC Regs, Sch V, Part I, para 13(1)(c) & 13(2)(b)

84522 Any payment made to a claimant, or the claimant's partner, is disregarded for two years after the date the payment is made if

1. one of the partners
 - 1.1 is a parent of a diagnosed person **or**
 - 1.2 a person acting in place of the diagnosed person's parent **or**
 - 1.3 a person who was acting in place of the diagnosed person's parent at the date of the diagnosed person's death¹ **and**
2. the payment is made
 - 2.1 by a person **or**
 - 2.2 from the estate of a person to whom a trust payment has been made¹.

1 SPC Regs, Sch V, Part I, para 13(3)(c) & 13(4)(b);

84523 For the purposes of DMG 84521 - 84522, acting in place of the diagnosed person's parents at the date of the diagnosed person's death includes a person who would have been acting in place of the diagnosed person's parents at the date of the diagnosed person's death but for the diagnosed person residing in a care home or an independent hospital¹. See DMG 77005 et seq for the meaning of care home or an independent hospital.

1 SPC Regs, Sch V, Part I, para 13(5)(b)

84524 See DMG 84426 - 84427 for guidance on other payments which are disregarded.

Meanings

84525 For the meaning of

1. diagnosed person **and**
2. trust payment

see DMG 84430 - 84432.

84526 - 84530

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, 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

84531 A payment from money which a person gets from the Trusts is disregarded from the date of payment to 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 who is or has been a member of the person's household **and**
2. to the
 - 2.1 person's parent or step-parent **or**
 - 2.2 person standing in place of the parent if there is no parent or step-parent and at the date of the payment the person is a
 - 2.2.a child **or**
 - 2.2.b student who has not finished FTE¹.

1 SPC Regs, Sch V, Part I, para 15(4)

84532 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

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Income taken fully into account

Types of income taken fully into account

85091 When calculating income other than earnings the DM has to take

1. Annuity income (except those annuities listed at DMG 85171)
2. Armed forces death in service awards
3. BA
4. CA
5. ESA(Cont)
6. IB
7. IIDB
8. Certain types of income from capital
9. Inherited royalties/copyright payments
10. JSA(Cont)
11. MA
12. Maintenance payments for the claimant or partner
13. PB and MDB scheme
14. Retirement pension income (including increases for adult dependants) (see DMG 85130 et seq)
15. SDA
16. State Pension
17. War orphan's pension
18. WP
19. WTC
20. Workmen's Compensation (Supplementation)

fully into account. Detailed guidance is given in DMG 85100 et seq.

Foreign social security benefits

85092 All foreign SS benefits similar to those included at DMG 85091 should be taken into account in full¹ including any foreign state retirement pension.

1 SPC Regs, reg 15(2)

Meaning of foreign social security benefit

85093 Foreign SS benefit means¹ any benefit, allowance or other payment which is paid under the law of a country outside the UK and is in the nature of SS.

1 SPC Act 02, s 17(1)

Meaning of foreign state retirement pension

85094 A foreign state retirement pension is¹

1. any retirement pension paid under the law of a country outside the UK **and**
2. in the nature of social security (like a RP paid under UK law).

1 SPC Regs, reg 1(2)

Deductions from benefits

85095 Where the payment of a SS benefit included at DMG 85091 has any deduction other than an adjustment as a result of

1. an overlapping benefit **or**
2. hospital down-rating **or**
3. a reduction in IB in respect of pensions and councillor's allowances **or**
4. a reduction in ESA(Cont) in respect of pensions, Pension Protection Fund periodic payments and councillor's allowances **or**
5. a reduction as a result of a pension sharing order¹

the DM should take the amount of benefit before the deduction into account².

Note: DMG 85021 gives guidance about deductions which are allowed for tax and SS contributions.

Example

Andrea is in receipt of SP at the rate of £159.55 a week. Andrea is also repaying an overpayment at the rate of £15.00 a week, meaning that she actually receives SP of £144.55 a week. For SPC purposes, Andrea's weekly SP amount is £159.55 – the amount of SP before the deduction was made.

1 The Pensions Act 2014, s 14 & SS CB Act 92, s 45B or 55B; 2 SPC Regs, reg 15(3) & 15(4)

85096 - 85099

Income from boarders

85231 Where claimants provide board and lodging accommodation within their home the DM should

1. add together all the payments made for board and lodge for the week **and**
2. deduct £20 **and**
3. deduct 50% of any excess over £20

for each person for whom board and lodge is provided¹.

Note: In this paragraph “home” means the dwelling occupied as the home.

1 SPC Regs, reg 15(5)(e), Sch IV, para 8

Example

Anita, who claims SPC, had two boarders during the week.

1. Boarder 1 paid £55 for a 4 night stay
2. Boarder 2 paid £12 a night for a five night stay

The DM calculated the income to be taken into account as follows

Boarder 1

Payments for the week	£55
Deduct £20	£20
	£35
Deduct 50% of remainder	£17.50
Income from boarder 1	£17.50

Boarder 2

Payments for the week	£60
Deduct £20	£20
	£40
Deduct 50% of remainder	£20
Income from boarder 1	£20

Total Income

From boarder 1 and boarder 2	£37.50 to be taken into account.
------------------------------	----------------------------------

What is board and lodging accommodation

85232 Board and lodging accommodation means¹ accommodation provided for a charge that includes

1. providing the accommodation **and**
2. some cooked or prepared meals.

Note: But not accommodation provided by a close relative or other than on a commercial basis.

1 SPC Regs, reg 1(2); Black and Morgan v Wilkinson [2013] EWCA Civ 820

85233 Any meals provided

1. should not be cooked or prepared by the boarder or member of the boarder's family **and**
2. should be eaten in the accommodation or associated premises¹.

1 SPC Regs, reg 1(2); Black and Morgan v Wilkinson [2013] EWCA Civ 820

Adult Placement/Shared Lives schemes

85234 Adult Placement/Shared Lives schemes allow adults with certain needs to live in the community. The adult is placed with a volunteer carer. In return for providing accommodation and care, the volunteer carer receives payment. This is sometimes referred to as "adult fostering". The schemes are run by LAs or charities.

85235 The payments received for providing care and support do not fall within the meaning of board and lodging accommodation. This is because the payments are primarily for providing care and are not a commercial board and lodging charge. If a person is temporarily in the claimant's care then the payments are also not self-employed earnings¹ (see DMG 86211 4.).

1 SPC Regs, reg 17B(4)(b)

85236 Payments received by the claimant in respect of providing care in an Adult Placement/Shared Lives scheme do not fall to be taken into account as income.

Continuing Care & Kinship Care (Scotland)

85237 These provisions¹ place a duty on Local Authorities to 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 or provide on-going care and assistance to eligible young people who cease to be 'looked after' under relevant legislation. Typically, these young people will be in

foster or residential care. These provisions apply to young people aged 16 and 17 though once in receipt of continuing care they can continue up to the age of 25. These are not prescribed incomes for the purposes of SPC.

*1 The Children (Scotland) Act 1995, s 26, s 26A or 29,
The Children and Young People (Scotland) Act 2014, s 73(1)(b)*

85238 Where the young person

1. was formerly in the claimant's care **and**
2. is aged 16 or over **and**
3. continues to live with the claimant

Any payments received by the claimant in respect of continuing care will be disregarded¹. These payments also do not fall within the meaning of board and lodging accommodation. This is because the payments are primarily for providing care and are not a commercial board and lodging charge. If a person is temporarily in the claimant's care then the payments are also not self-employed earnings¹ (see DMG 86211 4.).

1 SPC Regs, reg 17B(4)(da)

Income from subletting

85239 Income from sub-letting includes¹ any payment made to the claimant who

1. owns the freehold or leasehold interest in any property or is a tenant of any property **and**
2. occupies part of that property **and**
3. has an agreement with another person allowing that person to occupy that property on payment of rent.

1 SPC Regs, reg 15(5)(i)

85240 Where a claimant sublets part of a property the DM should

1. add together all the payments made for the week **and**
2. deduct £20

for each subtenant who is liable under a contract to pay rent to the claimant¹.

1 SPC Regs, Sch IV, para 9

Example 1

Sally has a subtenant in her home who is liable under a contract to pay her rent. The weekly rent is £50. The subtenant pays £30 on Tuesday and £20 on Saturday. The DM

1. adds together the payments in the week £30 + £20 = £50
2. and deducts £20 = £30 income with £20 disregarded.

Example 2

Robin has two subtenants in his property. Both subtenants pay £65 a week. The DM

1. adds together the payments in the week $\text{£}65 + \text{£}65 = \text{£}130$
2. and deducts £20 for each subtenant $\text{£}40 = \text{£}90$ income with £40 disregarded.

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

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

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

85371 - 85399

Retirement pension income available on application

General

- 85440 There are special rules for treating retirement pension income
1. that would be paid to the claimant if he applied for it **and**
 2. that has not been applied for
- as notional income¹.

1 SPC Regs, reg 18(1)-(5)

Retirement pension - notional income

- 85441 A claimant who has reached qualifying age (see DMG 77032), but who does not claim RP, has to be treated as possessing the amount of RP which he could expect to receive if he had applied for it¹, but only from the date it could be expected to be acquired if a claim was made.

1 SPC Regs, reg 18(1)

Example

On 1 November John who, has reached the qualifying age, made a claim for SPC and confirmed he was not receiving any RP.

On 6 November the Pension Service advised that John would be entitled to £80 a week RP if he made a claim for it.

The DM estimated the time it would take for a typical claim for RP to be dealt with and put into payment.

The DM decided that John should be treated as having a notional income of £80 a week from 13 November.

- 85442 For SPC purposes RP includes¹
1. contributory (Category A or B) RP **or**
 2. non-contributory (Category C or D) RP **and**
 3. a shared additional pension payable as a result of divorce
 4. graduated retirement benefit earned between 1961 and 1975 under the graduated pension scheme **or**
 5. any age additions.

Note: Increases in RP for adult dependants are taken into account as income but they are not included as notional income where state pension has not been claimed. This is because they are not treated as retirement pension income.

1 SPC Act 02, s 16(1)(a)-(e), SPC Regs, reg 18(1)(a)

State Pension – notional income

85443 A claimant who has reached the qualifying age for SPC but who does not claim SP, has to be treated as possessing the amount of SP which they could expect to receive if they had claimed it¹. However, this is only from the date it could be expected to be acquired if a claim was made.

1 SPC Regs, reg 18(1)

85444 SP does not consist of individual elements like RP (BP, AP & GRB etc.) and will generally be based only on the claimant's NI record. For SPC purposes, SP is either

1. contributory (Cat A or B) **or**
2. non-contributory (Cat C) in limited circumstances only.

Exceptions to this will be where:

1. the claimant is widowed and inherits a deceased spouse or civil partner's AP, deferred RP or deferred GRB, **and**
2. the claimant receives a transitional rate of SP (for women who paid reduced rate NI) **and**
3. the claimant is awarded a Shared Additional Pension (SAP) upon divorce.
4. Increments (of SP) for deferred retirement.

Example

On 9 May Kara, who has reached the qualifying age, makes a claim to SPC. She confirms she is not receiving SP.

On 13 May, the Pension Centre advises that Kara would be entitled to a weekly SP of £155.65 if she claimed it.

The DM estimates the time that it would take for a typical claim to SP to be processed and put into payment.

The DM decides that Kara should be treated as having a notional income of £155.65 a week from 23 May.

Deferring retirement pension

85445 The rules on deferring RP allow people who have deferred claiming their pension for at least twelve months from April 2005 to have the choice between taking extra RP or a lump sum payment for the additional RP accrued.

85446 Where a claimant to whom DMG 85441 applies

1. has deferred their RP for at least twelve months **and**
2. would have been entitled to make an election under specific RP legislation¹

he shall be treated as having the amount of RP income² which he might expect to be entitled to if he had elected to receive a lump sum.

1 SS CB Act 92, Sch 5 or 5A; Graduated Retirement Benefit Regs, Sch 1; 2 SPC Regs, reg 18(1B)

Example

Alice has claimed SPC. She has confirmed that she is currently deferring her entitlement to RP.

Alice has deferred her RP for 18 months.

The DM received evidence that Alice would be entitled to £100 RP a week if she opted to take a lump sum payment for the deferral period, instead of additional RP that she would be entitled to.

The DM decided to treat Alice as having a notional income of £100 a week.

Deferring retirement pension whilst an overlapping benefit is in payment

85447 Where a claimant to whom DMG 85441 applies is in receipt of an overlapping benefit or allowance - the amount of RP income he shall be treated as having¹ is the RP he is entitled to minus the amount of the benefit or allowance in payment.

1 SPC Regs, reg 18(1CA)

85448 Where a claimant to whom DMG 85441 applies is in receipt of an overlapping benefit or allowance - which would result in an adjustment to be made to the amount of RP payable - he shall be treated as having¹ the RP income minus the adjustment which would be made to it.

1 SPC Regs, reg 18(1CB)

Example

Jack is an SPC claimant. He has been deferring his RP for two years.

Jack receives £46.95 a week CA that is taken fully into account.

The DM receives evidence that Jack would be entitled to £80 a week RP if he claimed it and opted to take a lump sum payment for the period he has deferred.

The DM decided to treat Jack as having notional RP income of £33.05 a week (£80 RP less £46.95 CA).

85449 - 85452

Occupational pension schemes - notional income

85453 A claimant who has reached qualifying age for SPC (see DMG 77032) and has entitlement to an occupational pension but who has elected to defer payment should be treated as possessing the amount of occupational pension he could expect to receive if he applied for it¹, but only from the date it could be expected to be acquired if a claim was made.

Note: See DMG 85459 et seq. where a claimant fails to secure money purchase benefits under an occupational pension scheme.

1 SPC Regs, reg 18(1D)

Example

Asif belongs to an occupational pension scheme. The retirement age for the scheme is 60. However, it is possible to defer drawing the pension for four years after this age in return for receiving a larger income. It is also possible to apply for the occupational pension from the age of 55 but payments would be made at a reduced rate.

Asif decides to take his payments at the age of 60. The DM decides that Asif has not deferred payment of his occupational pension because he has taken the pension at the retirement age for the scheme.

Personal pensions

General

85454 A personal pension is a fund that provides an income on retirement for employees¹ or the S/E². This may be done by

1. buying an annuity **or**
2. taking an income from the pension fund.

Taking an income from the pension fund allows the purchase of an annuity to be delayed up to the age of 75. The amount of income paid from the fund is recalculated every three years. At the age of 75 an annuity must be purchased.

1 PS Act 93, s 1; 2 Income and Corporation Taxes Act 1988, Part XIV, chapter IV

Pension Flexibilities

85455 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 85143)
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

85456 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.

85457 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 84).

85458 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 85460) **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 85456). 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.

Personal pensions/occupational pensions where income withdrawal is allowed - notional income

- 85459 Treat a person who has reached qualifying age for SPC (see DMG 77032) who
1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that allows income withdrawal **and**
 2. has not bought an annuity **and**
 - 2.1 has deferred taking all or part of the income from the fund **or**
 - 2.2 has failed to do everything necessary to get all the income from the fund that would be payable if he applied for it
- as having a notional income¹.

1 SPC Regs, reg 18(2)(a)(i) & (ii)

Amount of notional income

- 85460 The amount of the notional income is
1. where no income is drawn, 100% of the rate of the annuity that could be generated by the fund¹ (see DMG 85469 et seq) **or**
 2. where some income is drawn, the difference between the rate of annuity and the income actually withdrawn.

1 SPC Regs, reg 18(3)

Example

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

From what date should the DM take notional income into account

- 85461 Take notional income into account from the date that the person could expect to get the income if an application was made¹. To calculate this date
1. assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
 2. add the estimated time it would take the pension fund holder to process an application for 100% of the rate of annuity that the fund would generate.

1 SPC Regs, reg 18(2)

Example

Bernard receives SPC.

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.

Personal pensions/occupational pensions where income withdrawal is not allowed - notional income

85462 Treat a person who has reached qualifying age for SPC (see DMG 77032) who

1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that does not allow income withdrawal **or**
2. has a retirement annuity contract

and has not bought an annuity, as having a notional income¹.

1 SPC Regs, reg 18(2)(a)(iii) & (b)

Amount of notional income

85463 The amount of notional income is the amount that a person could have received without buying an annuity, if the pension funds or retirement annuity contract were held in a scheme that did allow income withdrawal¹ (see DMG 85459 et seq).

1 SPC Regs, reg 18(4)

From what date should the DM take notional income into account

85464 Take notional income into account from the date that a 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 SPC Regs, reg 18(2)

Example

Fiona is an SPC claimant. On 1 November the DM receives evidence that Fiona has a retirement annuity contract.

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 the maximum income to be paid from a fund.

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

Note: where the notional income rules have been applied and the claimant subsequently takes steps to obtain that income, the guidance at DMG 85464 will no longer apply. The DM should establish the date the claimant begins to take steps to obtain that income and remove the notional income from that date.

Meaning of money purchase benefits

85465 The term money purchase benefits means¹ where pension benefits are determined by the amount of the payment or payments made by or on behalf of the member of the pension scheme rather than average salary benefits.

1 SPC Regs, reg 18(5), PS Act 93, s 181(1)

What is a pension fund holder

85466 A pension fund holder, with respect to an occupational pension scheme, personal pension scheme or retirement annuity contract means¹

1. trustees **or**
2. managers **or**
3. administrators

of the scheme or contract concerned.

1 SPC Regs, reg 1(2)

Who is a person who derives entitlement

85467 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.

85468 People such as widows or widowers of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

Information and evidence

85469 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.

85470 This information is usually provided by the provider on form PPR1 and is based on tables prepared by the Government Actuary's Department (GAD)¹. The rate of annuity is 100% of the rate of annuity that could be generated by the fund. DMs should consider evidence from pension fund holders when deciding the amount of notional income. 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)

85471 DMs should 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.

Lump sums on retirement

85472 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.

85473 - 85475

Actual income

85476 Take into account in full in the normal way, any income that is

1. paid under an annuity bought with funds from
 - 1.1 a personal or occupational pension scheme **or**
 - 1.2 a retirement annuity contract **or**
2. withdrawn from a personal or occupational pension scheme.

Provision under a retirement annuity contract

85477 Before 1.7.88 people could buy retirement annuity contracts. People with these pensions are entitled to buy an annuity at any time between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

Note: DMG 85144 explains what a retirement annuity contract is.

Retirement annuity contract - notional income

85478 If a claimant who has reached qualifying age for SPC (see DMG 77032) fails to purchase an annuity with the funds available under his retirement annuity contract notional income should be taken into account¹. DMG 85463 explains how much income should be taken into account.

1 SPC Regs, reg 18(2)(b)

85479 - 85499

Earnings of self-employed earners

86210 In the case of S/E earners, earnings mean the gross receipts (see DMG 86300) from the employment¹.

1 SPC Regs, reg 17B(4)(a); SS Ben (C of E) Regs, reg 12(1)

86211 S/E earnings do not include¹

1. charges paid to the claimant in return for providing board and lodging accommodation in their own home **or**
2. any payments made by an LA to a claimant for providing children with foster care, Continuing Care or Kinship Care (see DMG Chapter 85)² **or**
3. payments made by a voluntary organisation under child care law to prevent children being taken into care³ **or**
4. payments made by an LA, HA, a voluntary organization, a clinical commissioning group, the NHS Commissioning Board, a Local Health Board or the person concerned under specified legislation to a claimant for a person who
 - 4.1 is not normally a member of the claimant's household **and**
 - 4.2 who is temporarily in the claimant's care⁴
5. any sports award⁵.

Note: A sports award is made by one of the Sports Councils named in the National Lottery legislation out of sums allocated to it for distribution under that legislation.

1 SPC Regs, reg 17B(4)(b); SS Ben (C of E) Regs, reg 12; 2 Children Act 1989, s 22C(2); Social Services and Well-being (Wales) Act 2014, s 81(2); Children (Scotland) Act 1995, s 26 & s26A or 29; Looked After Children (Scotland) Regulations 2009, regs 33 & 51; 3 Children Act 1989, s 59(1)(a); 4 NA Act 48, s 26(3A); National Health Service Act 2006, s 14D; NHS Act 77, s 16BA; National Health Service (Wales) Act 2006, s 11; Care Act 2014, s 18 or 19; Social Services Well-being (Wales) Act 2014, s 35 or 36; 5 National Lottery etc. Act 1993, s 23(2)

Board and lodging accommodation

86212 Board and lodging accommodation¹ is accommodation

1. where the charge for the accommodation includes some cooked or prepared meals that are both
 - 1.1 cooked or prepared by someone who is not
 - 1.1.a the person provided with accommodation **or**
 - 1.1.b a member of the family of the person provided with accommodation **and**
2. eaten in that accommodation or associated premises.

1 SPC Regs, reg 1(2)

86213 - 86215

Deciding if a person is still a self-employed earner

86216 A S/E earner is someone who is gainfully employed. If a S/E earner is not working, this does not mean that the S/E earner has ceased to be gainfully employed.

86217 To determine if a person is gainfully still employed the DM should consider

1. if there is a reasonable prospect of work in the near future **and**
2. if the business is a going concern and regarded as such by
 - 2.1 the person **or**
 - 2.2 the business's bankers **or**
 - 2.3 any creditors **or**
 - 2.4 others **and**
3. if the person hopes or intends to restart work in the business when economic conditions improve **and**
4. if the person is undertaking any activities in connection with the self-employment **and**
5. if there is work in the pipeline **and**
6. if the person is regarded as S/E by HMRC **and**
7. if the person claims to be anxious for work in the S/E occupation, trade or business. Is the person making it known that the business can take on work?¹. For example,
 - 7.1 by advertising **or**
 - 7.2 by visiting potential customers **and**
8. if the interruption in question is part of the normal pattern of the
 - 8.1 person's work **or**
 - 8.2 work that the person is seeking.

1 Vandyk v. Minister of Pensions & National Insurance [1955] IQ29

86218 All eight factors in DMG 86217 should be considered in **all** cases where a person who has been working as a S/E earner is now without work. This includes

1. people unable to work because of sickness
2. seasonal workers
3. sub-contractors **and**
4. share fishermen.

86219 Some of the factors in DMG 86217 may point towards the fact that a person is gainfully employed. Others may not. No one factor is decisive. The DM should consider the weight to give each relevant factor.

Salaried partners

86580 A salaried partner may be an employed or S/E earner. A salaried partner may be a person who

1. receives a salary as remuneration and maybe a profit-related bonus. This type of salaried partner is an employed earner¹ **or**
2. may be paid a fixed salary not based on profit. But in addition is included in the partnership deed and is entitled to a share of the profits. This type of salaried partner is a S/E earner.

1 Ross v. Parkins 1871, LR 20 Eq 331

86581 The DM should

1. consider the facts of each case **and**
2. examine the relationship between the person and the other parties

to decide if the salaried partner is a S/E earner.

86582 If a S/E salaried partner receives a salary from the business in addition to a share of the business profit, the salary should not be deducted before arriving at the total net profit to be shared between partners. The DM should

1. calculate the chargeable income **and**
2. deduct tax, SS contributions and any premiums for a personal pension scheme or retirement annuity contract

from the partner's share of the chargeable income.

86583 - 86589

Renting out property as a business

86590 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business¹.

1 R(FC) 2/92

86591 A person who

1. has a single property that is not the home **and**
2. lets the property to tenants **and**
3. collects rents and does any repairs

is not conducting a business. The property is primarily an investment. See DMG Chapter 85 for the treatment of income from capital.

Note: The DM should consider the nature of the tenancy; a property let on an Assured Shorthold Tenancy will come under the guidance at DMG 86591. However a property let solely for holiday purposes under the definition of 'Holiday Letting' in the Housing Act 1988, and for more than 140 days or more per year (70 in Wales),

is likely to be a self catering property and valued for business rates. This could suggest that the claimant is self employed and running a business.

Example

Trevor inherits a house from his sister. Trevor lives elsewhere with his family.

After trying for six months to sell the inherited property without success, he decides to let the house on a nine month contract to four students. Trevor collects the rent once a month and carries out occasional minor repairs.

After the property has been let for six months Trevor claims SPC. The DM determines that Trevor is not operating a business. The DM then goes on to consider how to treat the value of the house and the rental income.

86592 A person who joins with others to buy properties so that they can be let as flats or offices could be said to be conducting a business. The

1. number of properties involved **and**
2. long term intentions of the person

are factors that need to be considered.

86593 If the DM determines that a person is conducting a business from renting out properties, the income, that is the rent, should not be treated as capital. The income has not been obtained from capital, but from the person's business. The property was used as an asset. The rent is a gross receipt of the business.

Example

Michael has a partnership with another person in a business. The business has been set up to buy land and property for sale and let to tenants. Michael and his partner own a garage with two flats above it and two terraced houses on the same street.

The flats and houses are all let to tenants and Michael collects the rent and does the repairs and maintenance. All business activity takes 15 hours per week. Michael claims SPC.

The DM determines that Michael is a S/E earner and that all of the properties are business assets that can be disregarded¹. The DM calculates Michael's earnings, the rental income is regarded as part of the gross receipts.

1 SPC Regs, Sch V, para 9

86594 - 86599

Seasonally self-employed

86600 If a S/E earner is seasonally S/E the DM should:

1. consider the guidance at DMG 86217 - 86220 **and**
2. determine if the S/E earner remains gainfully employed as a S/E earner.