

## LOANS FOR MORTGAGE INTEREST

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## INTRODUCTION

- 1 This memo gives guidance on amendments to the regulations relating to owner occupier housing costs across all income related benefits. The amendments are made by The Loans for Mortgage Interest Regulations 2017 (SI 2017/725)(the LMI Regulations) which come into force on 27.7.17, except for regulations 18 to 21 which come into force on 6.4.18. and The Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations 2018 (SI 2018/307) which come into force on 6.4.18, except for regulations 1 and 2(18) which come into force on 5.4.18.

## BACKGROUND

- 2 Help with owner occupier payments is currently included in a claimant's award of an income related benefit (also referred to as support for mortgage interest (SMI)). In the summer budget 2015, the Chancellor announced that SMI would be changed from a benefit to a loan secured by a second charge on a claimant's property. The LMI Regulations introduce this policy and the provisions are explained below. This guidance should be read in conjunction with the Support for Mortgage Interest Loan instructions.

## CHANGES

- 3 From 6.4.18 the regulations which provide for entitlement to owner occupier payments<sup>1</sup> within UC, IS, JSA(IB), ESA(IR) and SPC are repealed<sup>2</sup>. As a result owner-occupier payments will no longer be met through those benefits. However transitional arrangements are in place for existing claimants whose housing costs can continue for a prescribed/limited period (covered from paragraph 16).

*1 UC Regs, reg 25(2)(b) & 26(3)(b)(i); IS Gen Regs, reg 17(e) & 18(1)(f); JSA Regs, reg 83(f) & 84(1)(g) & 86A; ESA Regs, reg 67(1)(c) & 68(1)(d); SPC Regs, Sch II, Para 1(1)(b) & 1(2)(c) & 8, 9, 11, 12; 2 LMI Regs, reg 18;*

## OFFER OF LOAN PAYMENTS

- 4 Having served a qualifying period (see paragraph 73) loan payments shall be offered to a claimant in respect of any owner-occupier payments the claimant is liable, or treated as being liable, to make (principally a mortgage, loan or alternative finance payment) in respect of the accommodation they are occupying, or treated as occupying, as their home<sup>1</sup>. (see paragraph 91 and 94 for the type of owner occupier payments captured here)

**Note:** where liability is shared with a person not in the benefit unit (see paragraph 81) the claimant's liability will be determined by reference to the appropriate proportion of the payments<sup>2</sup>.

*1 LMI Regs, reg 3(1); 2 reg 3(3)*

## ACCEPTANCE OF THE OFFER

- 5 The claimant and the claimant's partner (if any) accepts the offer of loan payments by signing and returning<sup>1</sup> the loan agreement to the DM along with the executed charge or standard security (see paragraph 11) and written consent by any person in the benefit unit in occupation of the relevant accommodation who is not a legal owner<sup>2</sup> acknowledging the creation of

1. the charge **or**
2. in Scotland, the standard security.

*1 LMI Regs, reg 4; 2 reg 5(3)*

## Claimant

Single claimant

- 6 For the purpose of the regulations a claimant refers to both a single claimant and joint claimant. This includes an individual (or individuals in the case of joint claimants) who
1. for a single person, has made a claim for and is entitled to IS, JSA(IB), ESA(IR), SPC or UC **or**
  2. has made a claim for and is not entitled to IS, JSA(IB), ESA(IR) or SPC by reason only that they have income equal to or exceeding the applicable amount

but less than the sum of the applicable amount and loan payment that they will be able to get **or**

Joint claimants

3. for joint claimants, has made a claim and is entitled to JSA(IB) **or**
4. are members of a joint claim couple who are not entitled to JSA(IB) by reason only that they have income equal to or exceeding the applicable amount but less than the sum of the applicable amount and loan payment that they will be able to get **or**
5. are members of a joint claim couple who have jointly claimed and are entitled to UC<sup>1</sup>.

any references in these regulations to entitlement are to be read as references to a claimant who satisfies **1. 3. or 5.** whereas a person who satisfies **2. or 4.** includes a person who is treated as entitled to a qualifying benefit<sup>2</sup>.

**Note:** The provision at **2.** and **4.** is to enable those who would be entitled to a qualifying benefit but for Support for Mortgage interest ceasing to be part of that benefit.

*1 LMI Regs, reg 2(1); 2 reg 2(2)(aa)*

## **Liability**

- 7 The circumstances in which a claimant is, or is to be treated as, liable to make owner-occupier payments are described at paragraphs 130 to 136

## **Occupation as their home**

- 8 The circumstances in which a claimant is, or is to be treated as, occupying accommodation as their home are described at paragraphs 150 to 203

## **Earned income**

- 9 For UC, a loan payment will not be offered (as in paragraph 4) where
  1. the claimant has any earned income<sup>1</sup> **or**
  2. in the case of a couple, either member of the couple has any earned income<sup>2</sup>.

*1 UC Regs, part 6; 2 LMI Regs, reg 3(4)*

10 spare

## CONDITIONS FOR LOAN PAYMENTS

11 The loan payments can only be made in respect of the claimant if certain conditions are met. These are

1. the claimant has accepted the loan offer (see paragraph 5) **and**
2. for a claimant in England and Wales
  - 2.1 where all the legal owners are within the benefit unit (see paragraph 81) they each have executed a charge by way of legal mortgage in favour of the Secretary of State in respect of the relevant accommodation
  - 2.2 where there are also legal owners not within the benefit unit (for example, another member of the family or friend) the legal owner within the benefit unit has executed an equitable charge in respect of their beneficial interest in the relevant accommodation
3. in Scotland each legal owner within the benefit unit has executed a standard security in respect of their interest in the relevant accommodation
4. the DM has received the consent, described at paragraph 5, approving the creation of the charge or, in Scotland, the standard security **and**
5. the information condition (paragraph 12) is met<sup>1</sup> within the period of 6 months ending with the day the loan payments offer is accepted

*1 LMI Regs, reg 5*

### Information condition

12 The information condition is met where the claimant and the claimant's partner (if any) or each joint claimant have been provided with information about loan payments that includes

1. a summary of the terms and conditions included within the loan agreement
2. where 11.2.1 or 11.3 applies, an explanation that the Secretary of State will seek to obtain a charge or, in Scotland, a standard security in respect of the relevant accommodation



3. an explanation of the consent the Secretary of State must receive from those that are not legal owners
4. information as to where further guidance and independent legal and financial advice regarding loan payments can be obtained<sup>1</sup>.

Note: The SoS will provide this information by telephone.

*1 LMI Regs, reg 6(2)*

## **PAYMENT INTERVALS**

- 13 Loan payments shall be made
  1. For UC, at monthly intervals in arrears
  2. For IS, JSA(IB), ESA(IR) or SPC, at 4 weekly intervals in arrears<sup>1</sup>.

*1 LMI Regs, reg 7*

## **TIMING**

- 14 Where the loan payment offer has been accepted by the claimant (as described at paragraph 5) the period in respect of which loan payments shall be made will begin on the later of
  1. 6 April 2018
  2. where a qualifying period (see paragraph 73) is appropriate, the day after the day on which the qualifying period ends
  3. for SPC claimants, the first day of entitlement to SPC<sup>1</sup>
  4. the transitional end day (see paragraph 16)<sup>2</sup>
  5. a date requested by the claimant<sup>3</sup>.

*ISS C&P Regs, reg 4F & 19(2); 2 LMI Regs, reg 8; 3 reg 8(1)(e)*

- 15 Where the day described in paragraph 14.1 or .2 or .3 is not the first day of the claimants benefit week or, in the case of UC, the first day of their assessment period, the day when loan payments will begin is the first day of the first benefit week or first assessment period that begins after that date<sup>1</sup>.

*1 LMI Regs, reg 8(2)*

## Example

William is in receipt of IS that will include owner-occupier payments from 25 July 18 when the QP ends, his benefit week ends each Wednesday. He had sent in the loan agreement and appropriate forms on 28 March 18. The loan payment will begin on the later of 6 April or three other specified dates. One of those dates is the day after the day the QP ends, the date requested by the claimant and another date is the transitional end day. In this case the date requested by the claimant is 6 April the QP date is 25 July whereas the transitional end day is the last day of a 4 week period after the loan agreement was received, which is 24 April. Therefore William is entitled to loan payments from 26 July (first day of first benefit week after 25 July).

## TRANSITIONAL END DAY

### Loan offer made before 6 April 2018

16 Where the loan offer is made before 6 April 2018 the transitional end day will be the earlier of

1. the day described at paragraph 17 below **or**
2. the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>

**Note:** the following paragraphs contain detailed options. DMs should be vigilant when establishing the transitional end day.

*1 LMI Regs, reg 19(1)*

17 For the purposes of paragraph 16.1 the day referred to is the later of

1. for claimants of IS, JSA(IB), ESA(IR) or SPC, where 6 April is not the first day of the claimants benefit week, the first day of the first benefit week that begins after 6 April 2018 **or**
2. for claimants of UC, where 6 April is not the first day of the claimant's assessment period, the first day of the first assessment period that begins after 6 April **or**
3. the day immediately following the day which is the earliest <sup>1</sup> to occur of the following
  - 3.1 the day the DM receives notification that the claimant does not wish to accept the offer of loan payments **or**

### 3.2 where the DM

**3.2.a** receives the fully completed loan agreement and appropriate documents (see paragraph 11) within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 18 below **or**

**3.2.b** has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

**Note:** The loan payments offer date is the day on which the loan agreement is sent to the claimant<sup>3</sup>.

*1 LMI Regs, reg 19(2); 2 reg 19(3); 3 reg 2(1)*

#### **Example:**

George is in receipt of IS that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6 April 2018). From this date George is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

- 18 For the purposes of paragraph 17.3.2.a the day referred to is the last day of a 4 week period where that period begins on the day after the fully completed loan agreement and associated documents are received<sup>1</sup>.

*1 LMI Regs, reg 19(3)(b)*

#### **Example**

Stan is in receipt of JSA that includes an amount in respect of the interest on his mortgage, his benefit week ends each Wednesday. He had sent in the loan agreement and appropriate forms on 28 March 18 (which was within 6 weeks of the loan offer date). The loan payment will begin on the later of 6 April, the date requested by the claimant or the transitional end day. In this case the transitional end day is the later of the day immediately following the end of the first benefit week that ends on or after 6 April 2018 (which is 12 April), the day requested by the claimant is 28 March and the last day of a 4 week period after the day after the loan agreement was received, is 25 April. Therefore William is entitled to loan payments from 26 April.

## Loan offer made on or after 6 April 2018

19 Where the loan offer does not occur before 6 April 2018 the transitional end day will be the earlier of

1. the day described at paragraph 20 below **or**
2. the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>
3. the day immediately following the day the DM receives notification that the claimant does not wish to receive loan payments<sup>1</sup>.

*1 LMI Regs, reg 19A(1)*

20 For the purposes of paragraph 19.1 the day referred to is

1. 7 May 2018<sup>1</sup> **or**
2. where the loan payments offer date is before 7 May **and**
  - 2.1 the DM receives the fully completed loan agreement and appropriate documents (see paragraph 11) within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**
  - 2.2 the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

**Note:** Where the day described in paragraph 2.1 or 2.2 above is not the first day of the claimant's benefit week or, in the case of UC, the first day of their assessment period, the day referred to here is the first day of the first benefit week or first assessment period that begins after that date<sup>2</sup>

*1 LMI Regs, reg 19A(2)(a); 2 reg 19A (2)(b)*

21 For claimants

1. of IS, JSA(IB), ESA(IR) or SPC, where 7 May 2018 or the day described at paragraph 19.3 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day **or**

2. of UC, where 7 May 2018 or the day described at 19.3 is not the first day of the claimant's assessment period, the first day of the first assessment period that begins after that day<sup>1</sup>

**Note:** The loan payments offer date is the day on which the loan agreement is sent to the claimant.

*1 LMI Regs, reg 19A(3)*

22 Where

1. before 19 March 2018 the DM has asked the claimant to provide information needed to
  - 1.1 establish whether the claimant wishes to receive an offer of a loan payment  
**or**
  - 1.2 be able to send the loan agreement and associated documents **and**
2. the claimant has not provided that information

then the preceding paragraphs 19 to 21 do not apply and the support for mortgage interest regulations are removed from, subject to paragraph 24, 6 April 2018<sup>1</sup>.

*1 LMI Regs, reg 19A(4)*

- 23 Where paragraph 22 applies (and this is not because the claimant lacks capacity) and the 6 April is not the first day of the claimants benefit week or assessment period then the removal of the support for mortgage interest regulations is effective from the first day of the first benefit week or first assessment period that begins after that date<sup>1</sup>.

*1 LMI Regs, reg 19A(5)*

### **Persons who lack capacity – identified before 6 April 2018**

24 Where, before 6 April 2018 the DM

1. is satisfied that the claimant lacks capacity to make some or all the decisions about entering into the loan agreement. **or**
2. suspects that the claimant may lack such capacity

then the claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below<sup>1</sup>.

- 25 The date referred to in paragraph 24 falls on the day that is the earlier of
1. the day described in paragraph 26 or paragraph 28 **or**
  2. the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>.

- 26 For the purposes of paragraph 25.1 that day is the later of
1. 5 Nov 2018 **or**
  2. where, before 6 April 2018, the DM suspects the claimant lacks capacity but prior to 5 November the DM's suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the DM formed that belief<sup>1</sup> **or**
  3. where an application for a decision of a type described in the Note below is made before the later of
    - 3.1 5 Nov 2018 **or**
    - 3.2 the day prescribed in paragraph 26.2the relevant day is the day immediately following<sup>2</sup>
    - 3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision **or**
    - 3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn<sup>3</sup>.

**Note:** In England and Wales the relevant person is the Court of Protection or Public Guardian and the decision they need to determine would concern registering a lasting power of attorney, appointing a deputy or making an order in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement. In Scotland the relevant person is the Sheriff or Court of Session and the decision they need to determine would concern the making of an intervention order, the appointment of a guardian or the appointment of a judicial factor in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement<sup>1</sup>.

*1 LMI Regs, reg 20(7); Adults with Incapacity(Scotland) Act 2000, s 53; Judicial Factors Act 1849; Mental Capacity Act 2005; s16(2);*

**Example 1:**

Bert receives SPC which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5 November 2018, the later of the dates outlined in paragraph 26. Owner occupier payments will continue until that date.

**Example 2:**

Ernest receives SPC which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Financial Deputy. Owner occupier payments continue. Jim advises that he was appointed deputy on 30 Oct18. The transitional end date for Ernest is 6 weeks after his appointment date, which in this particular case is 11 Dec 18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

- 27 Where more than one application for a decision (of the type described in the Note to paragraph 26) is made within the intervening period cited at 26.3 then the periods described in paragraph 26.3 do not start to run until the relevant person has decided the last application or that all the applications are withdrawn<sup>1</sup>. Similarly where there is one application for a decision referred to in the Note but it is made within the intervening period to more than one relevant person then the day will be the later of the days<sup>2</sup>.

*1 LMI Regs, reg 20(5); 2 reg 20(6)*

- 28 Where, before 6 April 2018, the DM suspects the claimant lacks capacity but prior to 5 November the DMs suspicion becomes a belief that the claimant does not in fact lack capacity then the relevant day is the day immediately following the earlier of

1. the day described in paragraph 29 **or**
2. the day on which the DM is notified that the claimant does not wish to receive loan payments<sup>1</sup>

*1 LMI Regs, reg 20(8)*

- 29 For the purposes of paragraph 28.1 the relevant day is the earlier of
1. where the DM receives the fully completed loan agreement and appropriate documents (see paragraph 11) within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**
  2. where the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

**Note:** Where the day described in paragraph 1. or 2. above is not the first day of the claimant's benefit week or, in the case of UC, the first day of their assessment period, the day referred to here is the first day of the first benefit week or first assessment period that begins after that date<sup>2</sup>

*1 LMI Regs, reg 20(9)*

- 30 For claimants
1. of IS, JSA(IB), ESA(IR) or SPC, where 5 Nov 2018 or the day described at paragraph 28.2 or paragraph 29 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day **or**
  2. of UC, where 5 Nov 2018 or the day described at 28.2 or paragraph 29 is not the first day of the claimant's assessment period, the first day of the first assessment period that begins after that day<sup>1</sup>

*1 LMI Regs, reg 20(10)*

## **DURATION, TERMINATION AND RE-INSTATEMENT OF LOAN PAYMENTS**

### **Duration**

- 31 Loan payments shall continue to be made indefinitely, subject to paragraph 34, at the intervals specified in paragraph 13.



- 32 A claimant entitled to IS, JSA(IB) or ESA(IR) who has been receiving loan payments and starts remunerative work will be entitled to loan payments for a limited period, if the following conditions are met
1. the remunerative work is expected to last for not less than five weeks **and**
  2. they were, for a continuous period of 26 weeks immediately before the day on which they started this work, entitled to and in receipt of IS, JSA(IB) or ESA(IR) **and**
  3. they had, on the day before starting this work been receiving loan payments (costs such as ground rent or service charge do not count) **and**
  4. they remain liable to make owner occupier payments on the loan<sup>1</sup>.

**Note:** Whether a person is in remunerative work<sup>2</sup> is prescribed in regulations

*1 LMI Regs, reg 9(5); 2 ESA Regs, reg 41-43; IS Regs, reg 5&6; JSA Regs, reg 51-53;*

- 33 Claimants who satisfy these conditions will receive loan payments directly<sup>1</sup> for a period of four weeks commencing with the day on which they started that remunerative work<sup>2</sup>.

*1 LMI Regs, reg 9(4); 2 reg 9(6);*

## Termination

- 34 Loan payments will terminate immediately<sup>1</sup> (other than when paragraph 32 applies) where
1. the claimant ceases to be
    - 1.1 entitled or
    - 1.2 treated as entitledto a qualifying benefit **or**
  2. the claimant ceases to be liable (or treated as liable) to make owner occupier payments **or**
  3. the claimant ceases to occupy (or treated as occupying) the relevant accommodation **or**
  4. the loan agreement is terminated in accordance with its terms **or**

5. in the case of a UC claim the claimant or their partner (if any), has any earned income<sup>2</sup>

**Note:** a claimant is still entitled to a qualifying benefit where they are not entitled to IS, JSA(IB), ESA(IR) or SPC by reason that they have income equal to or exceeding the applicable amount but less than the sum of the applicable amount and the loan payment.

*1 LMI Regs, reg 9(2); 2 reg 9(3)*

## Re-instatement

- 35 Loan payments can be re-instated without the need to complete a qualifying period where

1. the claimant ceases to be
  - 1.1 entitled to **or**
  - 1.2 treated as entitled to  
IS, JSA(IB) or ESA(IR) **and**

2. they become
  - 2.1 entitled **or**
  - 2.2 treated as entitled

again to the same benefit within 52 weeks of the date the benefit award terminates<sup>1</sup>.

*1 LMI Regs, reg 9(7)*

## THE AMOUNT OF LOAN PAYMENT

### Calculation in respect of qualifying loans

- 36 Subject to any deductions under paragraph 54 and 57 the amount of each loan payment is the aggregate of the amount resulting from the calculations at paragraph 37 to 39<sup>1</sup>.

*1 LMI Regs, reg 10*

37 Subject to paragraph 39 and 40 the amount to be included in each loan payment in respect of owner occupier payments is calculated by<sup>1</sup>

1. finding the amount of capital owed for each loan<sup>2</sup> **then**
2. if there is more than one loan adding together the amounts from 1.<sup>3</sup> **then**
3. identifying the lower of
  - 3.1 the amount found at 1. or, where relevant, 2. **and**
  - 3.2 the appropriate capital limit (see paragraph 45)

if both amounts are the same that is the identified amount<sup>4</sup> **then**

4. applying the formula

$$\frac{(AxSR)}{12} - I \quad \text{for a UC claimant or}$$

$$\frac{A \times SR - I}{52} \quad \text{for an IS, JSA(IB), ESA(IR) or SPC claimant}$$

where

A is the amount resulting from 3.

SR is the standard rate (paragraph 48) that applies at the date of the determination.

I in the case of an IS, JSA(IB), ESA(IR) or SPC claimant it is the amount of any income above their applicable amount or, in the case of a UC claimant, any unearned income above their applicable amount.

The result is the amount to be included for loan interest payments<sup>5</sup>.

*1 LMI Regs, reg 11; 2 step 1; 3 step 2; 4 step 3; step 4*

38 The appropriate capital limit is

1. £200,000
  - 1.1 in the case of a UC claimant **or**
  - 1.2 in the case of an IS, JSA(IB), ESA(IR) or SPC<sup>1</sup> claimant where the individual made their claim for that benefit on or after 5 January 2009
2. £100,000 where 1. does not apply

## Loan taken out for necessary adaptations to the home

- 39 Where a loan, or part of a loan, was taken out to pay for necessary adaptations to the home to meet the needs of a disabled person the loan, or part of a loan, will be disregarded for the purposes of the capital limit<sup>1</sup>.

**Note:** a disabled person<sup>2</sup> is prescribed in regulations however there are no such parameters placed on what is a necessary adaption,

*1 LMI Regs, reg 11(3); 2 IS Gen Regs, Sch 3, para 1(3); JSA Regs, Sch 2, para 1(3); ESA Regs, Sch 6, para 1(3); SPC Regs, Sch II, para 1(2)(a); LMI Regs, Sch 3, para 14(3)*

### Example

Jackie takes out a loan to adapt her home to meet her disability needs. The loan is for £12,000.00 and is secured on her home. She also has a mortgage secured on the property. The capital balance on her mortgage is £227,000. The mortgage is subject to the capital limit so only £200,000 is allowable. The £12,000 loan taken out to adapt her home is not subject to the capital limit. Her total capital allowable is therefore £212,000

## Changes in the amount of capital owed on a loan

- 40 For new claims any change in the amount of capital owed on a loan will not be taken into account after the relevant date until
1. the first anniversary of the relevant date
  2. in respect of any variation after the first anniversary, on the next anniversary which follows the date of the variation<sup>1</sup>.

**Note:** for an existing claimant the amount of capital owing in connection with a qualifying loan shall be recalculated on the anniversary of the date their qualifying benefit first included owner-occupier payments<sup>2</sup>.

*1 LMI Regs, reg 11(4); 2 reg 11(5)*

- 41 Relevant date means the date on which a claimant's liability to make owner occupier payments is first met by a loan payment<sup>1</sup>.

*1 LMI Regs, reg 2(1)*

## Calculation in respect of alternative finance payments

- 42 Paragraph 44 et seq gives guidance on how to calculate the amount to include in each loan payment in respect of owner-occupier payments which are alternative finance payments.
- 43 Alternative finance payments<sup>1</sup> is defined as being a payment made under alternative finance arrangements which were entered into to enable a person to acquire an interest in the relevant accommodation<sup>2</sup>.

*1 Income Tax Act 2007, pt 10; 2 LMI Regs, Sch 1, para 2(1)(b) & 5(3)*

### Example

Ishaq wants to buy his home but his religion forbids him from paying interest on money loaned. A bank arranges a special scheme under which Ishaq and the bank agree jointly to buy the property. Ishaq provides £10,000 of the purchase price and the bank provides the balance of £90,000. Beneficial interest in the property is shared between Ishaq and the bank. Ishaq has the right and duty to acquire the bank's share of the property over 15 years in return for monthly payments. He also pays an extra monthly amount for his use of the bank's share of the property. The agreement between Ishaq and the bank is an arrangement provided specifically to avoid payment of interest and meet Ishaq's religious needs. It is an alternative finance payment and therefore an allowable housing costs payment.

- 44 Calculate the amount for alternative finance payments by
1. finding the purchase price (see paragraph 46) of the home to which the alternative finance payments relate<sup>1</sup>
  2. identifying which is the lower of
    - 2.1 the amount from 1. and
    - 2.2 the appropriate capital limit (see paragraph 45)
- if both are the same that is the identified amount<sup>2</sup>
3. applying the formula

$$\frac{(AxSR)}{12} - I \quad \text{for a UC claimant}$$

$$\frac{A \times SR}{52} - I \quad \text{for an SPC claimant}$$

where

- A is the amount resulting from **2**.
- SR is the standard interest that applies at the date of the determination (paragraph 48)
- I is the amount of any income, in the case of an SPC claimant, or unearned income in the case of a UC claimant, above the claimant's applicable amount

The result is the amount to be included for each loan payment in respect of owner occupier payments which are alternative finance payments<sup>3</sup>.

*1 LMI Regs, reg 12 Step 1; 2 Step 2; 3 Step 3*

- 45 The appropriate capital limit is
1. £200,000 in the case of an SPC claimant where the modified rules still apply or a UC claimant **or**
  2. £100,000 where **1.** does not apply
- 46 Purchase price for the purpose of paragraph 44 is the amount paid by a party to the alternative finance arrangements other than the owner-occupier to acquire the interest in the property less
1. the amount of any initial payment made by the owner-occupier in connection with the acquisition of that interest<sup>1</sup> **and**
  2. the amount of any subsequent payments made by the owner-occupier before the relevant date
    - 2.1 to another party to the alternative finance arrangements (this would normally be the lender) **and**
    - 2.2 which reduce the amount owed by the owner occupier under the alternative financial arrangements.

*1 LMI Regs, reg 12(3)*

### **Example**

Abhiram is a party to an alternative finance arrangement with his bank. The purchase price of his property was £125,000. He paid an initial payment (by way of a deposit) of £39,000. His lender paid £86,000. The purchase price of the property therefore is £86,000.

### **Changes in the amount of capital owed on alternative finance**

47 For new claims any change in the amount of capital owed on an alternative finance arrangement will not be taken into account after the relevant date until

1. the first anniversary of the relevant date **or**
2. if the change in capital occurs after the first anniversary, the next anniversary after the change<sup>1</sup>.

**Note:** for an existing claimant the amount of capital owing in connection with alternative finance arrangements shall be recalculated on the anniversary of the date their qualifying benefit included an amount in respect of the alternative finance arrangement<sup>2</sup>.

*1 LMI Regs, reg 12(4); 2 reg 12(5)*

## STANDARD RATE

48 The standard rate is based on the average mortgage rate (paragraph 52) published by the Bank of England which has effect on 5 April 2018<sup>1</sup>.

*1 LMI Regs, reg 13(1)*

49 The standard rate will be changed when, on any reference day (paragraph 52), the Bank of England publishes an average mortgage rate that differs by 0.5 percentage points or more from the standard rate on that reference day<sup>1</sup>.

*1 LMI Regs, reg 13(3)*

50 The average mortgage rate published on the reference day becomes the new standard rate<sup>1</sup> and will come into effect at the end of the period of 6 weeks beginning on the day referred to in paragraph 49.

*1 LMI Regs, Reg 13(5)*

### Example

Kevin's loan payments are calculated using the average mortgage rate published by the Bank of England in August 2018, that rate is 3.63%. The Bank of England figure published in October is 4.08%; this is only a difference of 0.45% over the rate used as the SR so no change is required. The figure published on 20 November is 4.30%; the difference compared with the SR is greater than 0.5% at 0.67%. The DM determines that the change should become effective on 31 December (6 weeks after the reference day), and so after that date Kevin's loan payment is calculated using a rate of 4.30%.

- 51 At least 7 days before a variation of the standard rate comes into effect for the purposes of paragraph 50 the Secretary of State must publish<sup>1</sup>
1. the new standard rate **and**
  2. the date that standard rate comes into effect for the purposes of calculating the loan payment
- on a publicly accessible website.

*1 LMI Regs, Reg 13(6)*

- 52 Average mortgage rate means the effective interest rate (non-seasonally adjusted) of UK resident banks and building societies which is
1. for loans to households secured on dwellings **and**
  2. published by the Bank of England in respect of the most recent period specified for that rate at the date of publication.

*1 LMI Regs, Reg 13(7)*

- 53 Reference day means any day falling on or after 6 April 2018<sup>1</sup>.

*1 LMI Regs, Reg 13(7)*

## **NON-DEPENDANT DEDUCTIONS**

- 54 Where non-dependants live with the IS, JSA(IB), ESA(IR) or SPC claimant, a deduction from the loan payment may be appropriate<sup>1</sup>. A deduction should be considered for each non-dependant or group of non-dependants. The proportion of the non-dependant deduction applicable to the loan payment is calculated using the formula –  $A \times (B / C)$

Where

A is the total amount of the appropriate<sup>2</sup> non-dependant deduction

B is the amount of loan payment calculated under paragraph 37

C is the sum of the loan payment and any housing costs awarded under IS, JSA(IB), ESA(IR) or SPC regulations<sup>3</sup>

*1 LMI Regs, Reg 14(1); 2 JSA Regs, Sch 2, para 17; IS (Gen) Regs, Sch 3, para 18; ESA Regs, Sch 6, para 19; SPC Regs, SchII, para 14; 3 JSA Regs, Sch 2, para 16; IS (Gen) Regs, Sch 3, para 17; ESA Regs, Sch 6, para 18; SPC Regs, SchII, para 13;*



## Definition of a non-dependant

55 For IS, JSA(IB) and ESA(IR), with the exception of those people mentioned in paragraph 56, non-dependants<sup>1</sup> are people aged 18 or over who

1. normally reside with the claimant **or**
2. the claimant normally resides with.

however, for SPC, non-dependants<sup>2</sup> are people aged 18 or over who normally reside with the claimant.

*1 LMI Regs, reg 2(1); JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1); ESA Regs, reg 71; 2 SPC Regs, Sch II, para 1(4);*

## People who are not non-dependants

56 The following people who normally reside with the claimant, or who the claimant normally resides with (for IS, JSA(IB) and ESA(IR) are not non-dependants

1. any person aged under 18<sup>1</sup>
2. any member of the claimant's family<sup>2</sup>
3. any child or young person who is not treated as a member of the claimant's household<sup>3</sup>
4. a person or their partner who
  - 4.1 lives in, to care for the claimant or partner **and**
  - 4.2 is engaged by a
    - 4.2.a charitable **or**
    - 4.2.b voluntary organization

which makes a charge to the claimant or partner for the person's services. A voluntary organization is a non-profit making organization that is not a public authority or LA<sup>4</sup>

5. any person who is not a close relative of the claimant or partner, who
  - 5.1 is liable to make payments on a commercial basis to the claimant or partner for occupation of the dwelling<sup>5</sup> **or**

- 5.2 the claimant or partner is liable to make payments to, on a commercial basis, for the occupation of the dwelling<sup>6</sup>
6. any person who is not a close relative, who is a member of the household of a person to whom 5. applies<sup>7</sup>
7. a person, or their partner (not a close relative except where 8. applies), who jointly occupies the claimant's dwelling and who is
- 7.1 a co-owner of the dwelling with the claimant or partner **or**
- 7.2 jointly liable with the claimant or partner to make payments to a landlord for the occupation of the dwelling<sup>8</sup>
8. a close relative who satisfies 7. and the claimant's or partner's co-ownership or joint liability arose
- 8.1 before 11.4.88 **or**
- 8.2 if later than 11.4.88, before the date on which the claimant or partner first occupied the dwelling<sup>9</sup>.

**Note:** When considering 7.1 it does not matter if there are other co-owners.

*1 JSA Regs, Sch 2, para 17(1) & (2); IS (Gen) Regs, Sch 3, para 18(1) & (2); 2 JSA Regs, reg 2(2)(a); IS (Gen) Regs, reg 3(2)(a); 3 JSA Regs, reg 2(2)(b); IS (Gen) Regs, reg 3(2)(b); 4 JSA Regs, reg 2(2)(c) & (d); IS (Gen) Regs, reg 3(2)(c) & (d); 5 JSA Regs, reg 2(3)(a); IS (Gen) Regs, reg 3(2A)(a); 6 JSA Regs, reg 2(3)(b); IS (Gen) Regs, reg 3(2A)(b); 7 JSA Regs, reg 2(3)(c); IS (Gen) Regs, reg 3(2A)(c); 8 JSA Regs, reg 2(4); IS (Gen) Regs, reg 2(2B); 9 JSA Regs, reg 2(5); IS (Gen) Regs, reg 3(2C)*

## INSURANCE PAYMENT DEDUCTION

- 57 For IS/JSA/SPC or UC, a deduction from the loan payment<sup>1</sup> shall be made where a payment is received under a policy of insurance taken out to insure against the risk of being unable to maintain owner-occupier payments. The deduction shall be equal to the amount of that insurance payment.<sup>2</sup>

**Note:** where the insurance amount is equal to or more than the loan payment, the amount of the loan payment shall be zero.

*1. LMI reg 10 2. reg 14A*

## INTEREST

58 Relevant interest (see paragraph 61) will accrue on the sum of the loan payments from the first day a loan payment is made until the

1. outstanding amount is repaid in full<sup>1</sup>.
2. death of
  - 2.1 the claimant, where single **or**
  - 2.2 the last member of the benefit unit, where the claimant had a partner<sup>2</sup>
3. subject to paragraph 60, the day on which the SoS sends a completion statement<sup>3</sup>

*1 LMI Regs, reg 15(1)(a); 2 reg 15(1)(b); 3 reg 15(1)(c)*

59 Notwithstanding the circumstances of paragraph 58 have not yet arisen, the claimant may request that he be allowed to repay all of the outstanding amount.

60 Where the claimant has requested a completion statement to repay the loan in full, interest will not be charged after the date on which the completion statement was sent, providing that outstanding amount is repaid within 30 days<sup>1</sup>.

**Note:** a completion statement is a written statement setting out the outstanding amount owed by the claimant.

*1 LMI Regs, reg 15(1A)*

61 The relevant interest rate is the weighted average interest rate on conventional gilts as specified in the most recent OBR report<sup>1</sup> published before

1. 1 January or
2. 1 July<sup>2</sup>

in any year

*1 Budget Responsibility and National Audit Act 2011, s4(3); 2 LMI Regs, reg 15(5)& (6)*

## REPAYMENT OF THE LOAN PAYMENTS

### Circumstances of repayment

62 The sum of the loan payments and accrued interest (the outstanding amount) shall become immediately due and payable<sup>1</sup> from the proceeds of the sale, transfer, assignment or disposition, subject to paragraph 63, where

1. the relevant accommodation is sold **or**
2. legal or beneficial title in, or in Scotland, heritable or registered title to, the relevant accommodation is
  - 2.1 transferred **or**
  - 2.2 assigned **or**
  - 2.3 otherwise disposed of<sup>2</sup>

*1 LMI Regs, reg 16(1); 2 reg 16(1)(a) & (b)*

63 Repayment of the outstanding amount is postponed where legal or beneficial title is transferred to

1. the claimant's partner, following the death of the claimant, where the partner is in occupation of dwelling **or**
2. the claimant, following the death of the claimant's partner, where the claimant is in occupation of the dwelling **or**
3. the claimant, from a former spouse or civil partner, under a court order or an agreement for maintenance where the claimant is in occupation of the dwelling<sup>1</sup>

*1 LMI Regs, reg 16(3)*

## **Death of a person**

64 In the event of any of the circumstances described below the sum of the outstanding amount shall become a debt and be immediately due and payable

1. the claimant's death where the claimant is
  - 1.1 the sole legal owner **or**
  - 1.2 the joint legal owner with someone other than a partner
2. the partner's death where the claimant's partner is
  - 2.1 the sole legal owner **or**

2.2 the joint legal owner with someone other than the claimant

3. the death of the last member of the couple where the claimant and partner are joint legal owners<sup>1</sup>

Note: the debt is limited to the amount of equity at the date of death<sup>2</sup>

*1 LMI Regs, reg 16(1)(c); 2 reg 16(1)*

65 spare

## Market value

- 66 Where paragraph 62 applies and the relevant accommodation is sold, transferred, assigned or disposed of for less than the market value then, for the purposes of repayment, where that repayment is related/limited to the amount of equity then the disposal shall be treated as if it occurred at market value<sup>1</sup>.

*1 LMI Regs, reg 16(7)*

## Example

Stan has a mortgage of £69,500 on his property that is valued at £100,000. He sells this property to a relative for £70,000. At this sale price Stan will only receive a small amount of equity, £500, which is not sufficient to fully repay the £2,000 loan and interest payments he has accrued. However, for the purposes of repayment, Stan is treated as having £30,500 equity.

## Limited repayment

### Insufficient equity

- 67 In England and Wales where
1. the Secretary of State has a charge by way of legal mortgage over the relevant accommodation **and**
  2. there is insufficient equity to discharge the sum of the loan payments and accrued interest<sup>1</sup>.

the repayment of the outstanding amount shall be limited to the amount of available equity, after any prior ranking charges by way of legal mortgage have been repaid.

*1 LMI Regs, reg 16(4)*

68 In Scotland where

1. the Secretary of State has a standard security over the whole or part of the relevant accommodation **and**
2. there is insufficient equity in the whole or part of the relevant accommodation over which the standard security is held<sup>1</sup>.

repayment of the outstanding amount shall be limited to the amount of available equity in the whole or part of the relevant accommodation after any prior ranking charges by way of legal mortgage have been repaid

*LMI Regs, reg 16(6)*

### **Multiple owners**

- 69 In England and Wales where the Secretary of State has a charge over multiple legal owners interest in the relevant accommodation the repayment shall be limited to the sum of the equitable interests of all the legal owners within the benefit unit<sup>1</sup>.

**Note:** where the charge is over one legal owner the repayment shall be limited to the amount of that legal owner's equitable interest in the relevant accommodation<sup>2</sup>.

*1 LMI Regs, reg 16(5)(b); 2 reg 16(5)(a)*

### **Early repayment**

- 70 A claimant is permitted to repay some or all of the outstanding amount at any time before the trigger event described at paragraph 62 provided that the amount of each repayment is £100 or more<sup>1</sup>.

*1 LMI Regs, reg 16(8)*

- 71 Where the outstanding amount is less than £100 the claimant is permitted to repay that sum in full in one repayment<sup>1</sup>.

*1 LMI Regs, reg 16(9)*

## **DIRECT PAYMENTS**

- 72 Loan payments shall be made, in accordance with paragraphs 220 to 225, by the Secretary of State direct to the claimant's lender where

1. the claimant has a loan for which owner-occupier payments are payable to a qualifying lender **and**
2. those owner-occupier payments trigger the calculation of a loan payment<sup>1</sup>

*1 LMI Regs, reg 17(2)*

## QUALIFYING PERIOD

### General

73 A claimant has to serve a qualifying period before a loan payment can be made. That qualifying period is

1. 9 consecutive assessment periods in which a claimant has been entitled to UC
2. 39 consecutive weeks in which the claimant has been entitled or treated<sup>1</sup> as entitled to JSA(IB), ESA(IR) or IS.

*1 IS Regs, Sch 3, para 14; JSA Regs, Sch 2, para 13; ESA Regs, Sch 6, para 15*

### **JSA(IB), ESA(IR) or IS claimant transitioning to UC on or after 6.4.18 where the award includes an amount for housing costs**

74 The requirement to serve a qualifying period before a loan payment can be made does not apply for certain existing claimants transitioning to UC where the following conditions are met

1. an award of UC is made to a claimant who was
  - 1.1 entitled or was treated as entitled to JSA(IB), ESA(IR) or IS at any time during the period of one month ending on the day the UC claim was made or treated as made or would have been so entitled or treated as entitled had the award not been terminated **or**
  - 1.2 the partner of a person entitled or treated as entitled to JSA(IB), ESA(IR) or IS at any time during the period of one month ending on the day the UC claim was made or treated as made but the UC award is not a joint award to the claimant and that person<sup>1</sup> **and**
2. on the relevant date (see paragraph 75) the claimant's JSA(IB), ESA(IR) or IS included housing costs<sup>2</sup> or the claimant was entitled to loan payments **and**
3. owner-occupier payments are no longer payable<sup>3</sup>.

*1 LMI Regs, reg 21(1)(a); WR Act 12, s150(3) ;*

*2 LMI Regs, reg 21(1)(b); JSA Regs 96, Sch 2, para 14 – 16; ESA Regs 08, Sch 6, para 16 – 18;*

*IS (Gen) Regs, Sch 3, para 15 – 17; 3 LMI Regs, reg 21(4)*

### **Meaning of relevant date**

75 For the purpose of paragraph 74 2. the relevant date<sup>1</sup> is

1. where

1.1 paragraph 74 1.1 applies **and**

1.2 the claimant was not entitled or treated as entitled to JSA(IB), ESA(IR) or IS on the day the claim for UC was made or treated as made

the day entitlement to JSA(IB), ESA(IR) or IS terminated **or**

2. where

2.1 paragraph 74 1.1 applies **and**

2.2 the claimant is not a new claimant partner (see paragraph 80) and was entitled to JSA(IB), ESA(IR) or IS on that day

the day the UC claim was made **or**

3. where

3.1 paragraph 74 1.1 applies **and**

3.2 the claimant is a new claimant partner and was entitled or treated as entitled to JSA(IB), ESA(IR) or IS on that day

the day the UC claim was treated as made **or**

4. where

4.1 paragraph 74 1.2 applies **and**

4.2 the claimant ceased to be the partner of a person entitled or treated as entitled to JSA(IB), ESA(IR) or IS or if earlier, the day the award of JSA(IB), ESA(IR) or IS terminated

that date.

*1 LMI Regs, reg 21(2)*

**JSA(IB), ESA(IR) or IS claimant transitioning to UC on or after  
6.4.18 where the award does not yet include an amount for  
housing costs**

76 Where<sup>1</sup>



1. an award of UC is made to a claimant who was
  - 1.1 entitled to JSA(IB), ESA(IR) or IS at any time during the period of one month ending on the day the UC claim was made or treated as made or would have been so entitled had the award not been terminated<sup>2</sup> **or**
  - 1.2 the partner of a person entitled to JSA(IB), ESA(IR) or IS at any time during the period of one month ending on the day the UC claim was made or treated as made but the UC award is not a joint award to the claimant and that person **and**
2. the award of JSA(IB), ESA(IR) or IS did not include housing costs, or the claimant was not entitled to loan payments, because the qualifying period had not ended<sup>3</sup>

the qualifying period during which the loan payments cannot be paid is 273 days.

*1 LMI Regs, reg 21(4); 2 WR Act 1, s 150(3); 3LMI Regs, reg 21(4); JSA Regs 96, Sch 2, para (7)(1)(b); ESA Regs 08, Sch 6, para 9(1)(b); IS (Gen) Regs, Sch 3, para 8(1)(b);*

- 77 The modified qualifying period, described in paragraph 76, starts with the first day the claimant or their partner was entitled to JSA(IB), ESA(IR) or IS (including linked periods)<sup>2</sup> provided the award of UC is
1. continuous **and**
  2. the claimant would, but for the qualifying period, qualify for a loan payment

throughout the UC award.

*1 LMI Regs, reg 21(5)(b); 2 JSA Regs 96, Sch 2, para 13; ESA Regs 08, Sch 6, para 15; IS (Gen) Regs, Sch 3, para 14;*

### **UC claimant previously entitled to JSA(IB), ESA(IR) or IS**

- 78 Where
1. the claimant has an award of UC (but was entitled to JSA(IB), ESA(IR) or IS at any time during the period of one month ending on the day the UC claim was made or treated as made<sup>1</sup>) at the time the housing cost element regulations, for UC, are revoked<sup>2</sup> **and**
  2. the award already included a housing costs element

the requirement to serve a qualifying period before a loan payment can be included in the UC calculation does not apply<sup>3</sup>

*1 Transitional provisions Regulations, reg 29; 2 LMI Regs, reg 21(6)(a); 3 reg 21(7)(a)*

79 Where

1. the claimant has an award of UC (but was entitled to JSA(IB), ESA(IR) or IS at any time during the period of one month ending on the day the UC claim was made or treated as made<sup>1</sup>) at the time the housing cost element regulations, for UC, are repealed<sup>2</sup> **and**
2. the award did not include a housing costs element because they were still in a qualifying period

the requirement to serve a qualifying period before the loan payments can be paid is 273 days<sup>3</sup>, starting with the first day the claimant or their partner was entitled to JSA(IB), ESA(IR) or IS (including linked periods)<sup>2</sup> provided the award of UC is

3. continuous **and**
4. the claimant would, but for the qualifying period, qualify for the loan payment

throughout the UC award.

### **Example**

Maureen has been entitled to UC since 22.6.17. She moves in with her partner Calvin on 14.11.17. Calvin is entitled to JSA(IB), including housing costs for a loan used to buy his home. Calvin's award of JSA(IB) terminates on 21.10.17, and he and Maureen are entitled to UC as joint claimants from 22.10.17. Their UC award includes the owner-occupier housing costs element from 22.10.17. On 21.4.18 the UC owner-occupier payments are no longer payable and Calvin becomes entitled to a loan payment from 22.4.18 (the loan payment qualifying period is ignored as he has already met it).

*1 Transitional provisions Regulations, reg 29; 2 LMI Regs, reg 21(6)(b); 3 reg 21 (7)(b)*

### **Meaning of new claimant partner**

80 Where

1. a person is entitled to UC **and**
2. the award terminates when they become a member of a couple **and**

3. the other member of the couple was not entitled to UC immediately before the formation of the couple **and**
4. the couple is treated as having made a claim for UC<sup>1</sup> **and**
5. the DM is satisfied that the claimants meet the UC basic conditions of entitlement (other than the acceptance of a claimant commitment)<sup>2</sup>

the other member of the couple is known as a new claimant partner<sup>3</sup>.

**Note:** See ADM Chapter A2 (Claims) for detailed guidance on claims.

*1 UC, PIP, JSA & ESA (C&P) Regs, reg 9(8); 2 WR Act 12, s 4(1)(a) – (d); 3 UC (TP) Regs, reg 2(1) & 7(1)*

## OTHER DEFINITIONS

### Benefit unit

- 81 Benefit unit means a single claimant and his or her partner (if any) or joint claimants<sup>1</sup>.

*1 LMI Regs, reg 2(1)*

### Child

- 82 Child means a person under the age of 16.

### Close Relative

- 83 Close relative means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or, if any of the preceding persons is one member of a couple, the other member of that couple.

### Loan payments offer date

- 84 Loan payments offer date is the day on which the Secretary of State sends the loan agreement to the claimant.

### Partner

- 85 Partner means where a claimant is a member of a couple (married/civil/living together), the other member of that couple.

### Qualifying benefit

- 86 Qualifying benefit means ESA(IR), IS, JSA(IB), SPC or UC

## Qualifying lender

- 87 Qualifying lender has the meaning prescribed in legislation<sup>1</sup>.

*1 Welfare Reform and Work Act 2016, s 19(7)*

## Qualifying young person

- 88 Qualifying young person is prescribed in regulations<sup>1</sup>.

*1 SS C& B Act 92, s142; SPC Regs, reg 4A; UC Regs, reg 5*

## Relevant accommodation

- 89 Relevant accommodation is the accommodation the claimant occupies, or is treated as occupying as their home.

- 90 spare

## MEANING OF OWNER-OCCUPIER PAYMENTS

### UC claimants

- 91 For UC claimants, owner-occupier payments means<sup>1</sup>

1. payments of interest on a qualifying loan (see paragraph 92 below) **and**
2. alternative finance payments (see paragraph 93 below).

*1 LMI Regs, Sch 1, Part 2, para 5(1)*

- 92 For the purposes of paragraph 91 **1.** above, a loan qualifies if it is secured on the relevant accommodation<sup>1</sup>(see paragraph 89 for meaning of relevant accommodation).

*1 LMI Regs, Sch 1, Part 2, para 5(2)*

- 93 For the purposes of paragraph 91 **2.** above, alternative finance payments means payments that are made under alternative finance arrangements<sup>1</sup> which were entered into to enable a person to acquire an interest in the relevant accommodation<sup>2</sup>.

*1 Income Tax Act 2007, Part 10A; LMI Regs, Sch 1, Part 2, para 5(4); 2 Sch 1, Part 2, para 5(3)*

## JSA(IB), IS, ESA(IR) and SPC claimants

- 94 Unless paragraph 99 et seq applies, owner-occupier payments means<sup>1</sup>
1. for JSA(IB), IS, ESA(IR) and SPC claimants, payments of interest on a qualifying loan (see paragraphs 95 and 96 below) **and**
  2. for SPC claimants only, alternative finance payments in accordance with paragraph 93 above .

*1 LMI Regs, Sch 1, Part 1, para 2(1)*

- 95 For the purposes of paragraph 94 **1.** above a loan qualifies if it is taken out (or part of it is taken out) to<sup>1</sup>
1. acquire an interest in the relevant accommodation **or**
  2. pay off another loan to the extent that the other loan would have come within **1.** if it had not been paid off.

A loan includes money borrowed under a hire purchase agreement for these purposes<sup>2</sup>.

*1 LMI Regs, Sch 1, Part 1, para 2(2); 2 Sch 1, Part 1, para 2(3)*

- 96 For the purposes of paragraph 94 **1.** a loan will also qualify if it is taken out and used (or part of it is used) within six months of the date of receipt, or such further period as is reasonable in the circumstances, to pay
1. for repairs or improvements to the home **or**
  2. service charges for repairs and improvements to the home **or**
  3. off a loan to the amount which would have been allowable under **1.** or **2.**

provided that the repairs and improvements are allowable<sup>1</sup>.

**Note 1:** The loan will only qualify after the work has been paid for or completed.

**Note 2:** Each of the 3 measures listed above can be treated as having the same purpose<sup>2</sup>.

*1 LMI Regs, Sch 1, Part 1, para 2(4); 2 R(IS) 5/06*

### **Meaning of repairs and improvements**

- 97 Repairs and improvements are any of a list of measures done to maintain the fitness of the home for human habitation, or where the home is part of a building, the fitness of any part of that building<sup>1</sup>. Those measures are

1. provision of a bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including hot water not connected to a central heating system
2. repairs to existing heating systems
3. damp proof measures
4. provision of ventilation and natural lighting
5. provision of drainage facilities
6. provision of facilities for preparing and cooking food, but not for storing it<sup>2</sup>
7. provision of insulation of the dwelling occupied as the home
8. provision of electric lighting and sockets
9. provision of storage facilities for fuel or refuse
10. the repair of unsafe structural defects
11. the adaptation of the home for the special needs of a disabled person
12. provision of separate sleeping accommodation for two or more children who are
  - 12.1 members of the claimant's family **and**
  - 12.2 each aged ten or over when the loan is taken out, or who will be that age within a year **and**
  - 12.3 of different sexes.

*1 LMI Regs, Sch 1, Part 1, para 2(5); 2 R(IS) 16/98*

### **Part of a loan**

- 98 Where only part of a loan has been used for a purpose as in paragraph 95 or 96 above, only that portion of the loan that is applied for that purpose can qualify<sup>1</sup>.

*1 LMI Regs, Sch 1, Part 1, para 2(6)*

### **Loans taken out in a relevant period**

- 99 Apart from certain allowable loans (see paragraph 102) and certain loans for repairs and improvements (see paragraph 105 et seq), a loan

1. taken out in a relevant period **and**

2. used to acquire an interest in the home

will not qualify<sup>1</sup>. This means that support to meet that borrowing will not be available in a relevant period.

*1 LMI Regs, Sch 1, Part 1, para 3(1)*

## Meaning of relevant period

100 A relevant period is any period during which the person to whom the loan was made

1. is entitled to JSA(IB), ESA(IR), IS or SPC **or**
2. is living as a member of a family, one of whom is entitled to JSA(IB), ESA(IR), IS or SPC

together with any period not exceeding 26 weeks that falls between two periods as in

1. or, 2.<sup>1</sup>.

*1 LMI Regs, Sch 1, Part 1, para 3(2)*

101 For the purposes of paragraph 100 above, a person shall be treated as entitled to JSA(IB), ESA(IR), IS or SPC<sup>1</sup> during any period where they, their partner, or in the case of a joint-claim couple, the other member of that couple was not entitled because they were

1. taking part in an employment programme<sup>2</sup> **and**
2. engaged in remunerative work and had income equal to or in excess of the applicable amount.

*1 LMI Regs, Sch 1, Part 1, para 3(3); 2 JSA Regs, reg 75(1)(a)*

## Loans that may qualify

102 Loans will not usually qualify if they are taken out in a relevant period (see paragraph 99 above). The exceptions are where

1. the loan is a new loan used to repay an earlier qualifying loan or to buy a new home<sup>1</sup> (see paragraph 105) **or**
2. the claimant, or partner, was previously renting accommodation before the purchase of the home<sup>2</sup> (see paragraph 106) **or**
3. the loan is used to buy accommodation more suited to the needs of a disabled person<sup>3</sup> (see paragraph 108) **or**

4. the change of dwelling is to provide separate sleeping accommodation for children of different sexes<sup>4</sup> (see paragraph 110).

*1 LMI Regs, Sch 1, Part 1, para 3(4); 2 Sch 1, Part 1, para 3(6); 3 Sch 1, Part 1, para 3(7); 4 Sch 1, Part 1, para 3(8)*

103 When considering which loans to allow under the exceptions in paragraph 102 **2.** to **4.**, DMs should note that

1. each exception may be subject to its own additional limitations **and**
2. if more than one of the exceptions in paragraph 102 **2.** to **4.** are relevant, the DM should apply the exception that is most favourable to the claimant or as the case may be to the joint-claim couple of which he is a member<sup>1</sup>.

*1 LMI Regs, Sch 1, Part 1, para 3(5)*

104 If a loan taken out in a relevant period is a qualifying loan the DM should decide the date that the owner-occupier payments are payable from. Weeks when the claimant has been continuously entitled to JSA(IB), ESA(IR), IS or SPC will count towards any QP (see paragraphs 73 to 79).

### **New loan to repay earlier allowable loan or buy a new home**

105 If a claimant, or a member of their family takes out a secured or unsecured qualifying loan in a relevant period<sup>1</sup> and uses it to

1. repay an earlier loan used to acquire an interest in the home, which qualifies during the relevant period **or**
2. buy the home, and another earlier qualifying loan used
  - 2.1 to acquire an interest in **or**
  - 2.2 for repairs and improvements to

the previous property, is paid off (in whole or in part) with the money received from the sale of that property, part of the new loan equal to the amount of the earlier loan will qualify<sup>2</sup>.

*1 LMI Regs, Sch 1, Part 1, para 3(2); 2 Sch 1, Part 1, para 3(4)*

#### **Example 1**

Christopher takes out a loan of £95,000 in 2011 to buy his home. In October 2018 only £50,000 remains on his mortgage. The interest on the mortgage is allowable as an owner-occupier payment because the mortgage is a qualifying loan. In November 2018 Christopher moves house. He has a new mortgage of £57,000, and he pays off



his first loan in the process. The qualifying part of the later loan is £50,000.

Christopher will be able to get loan payments in respect of the interest on this part of the loan.

### **Example 2**

Angus re-mortgages his home for £50,470. Of that amount, £49,000 was used for the house purchase loan, the rest was an acceptance fee he had to pay the lender to obtain the mortgage. Because £1,470 represented monies applied for the purpose of paying off the lender it is a qualifying loan payment. However because this was obtained in a relevant period the loan payment is restricted to the amount of the previous loan of £49,000.

## **Previously renting accommodation before purchase of new dwelling**

106 Interest on qualifying loans will be met as owner-occupier payments if a claimant or a family member

1. acquires, during the relevant period, an interest in the relevant accommodation<sup>1</sup>  
**and**
2. was entitled to HB in the week before the purchase<sup>2</sup>.

But the amount of each loan payment which qualifies cannot initially exceed the amount of HB and any other amount relating to housing costs that the claimant was entitled to immediately before the purchase<sup>3</sup>.

*1 LMI Regs, Sch 1, Part 1, para 3(6)(a); 2 Sch 1, Part 1, para 3(6)(b); 3 Sch 1, Part 1, para 3(7)*

107 The owner-occupier payments awarded under paragraph 106 above can only be increased in line with increases in the standard rate<sup>1</sup>.

*1 LMI Regs, reg 13 & Sch 1, Part 1, para 3(7)*

## **Accommodation more suited to needs of a disabled person**

108 Any increase in a qualifying loan should be allowed if a claimant or a member of the family, during a relevant period

1. takes out a new loan **or**
2. increases an existing loan

to buy alternative accommodation more suited to the special needs of a disabled person than the accommodation previously occupied by the claimant<sup>1</sup>.

Note : a disabled person<sup>2</sup> is prescribed in regulations

*1 LMI Regs, Sch 1, Part 1, para 3(7); 2 IS Gen Regs, Sch 3, para 1(3); JSA Regs, Sch 2, Para 1(3); ESA Regs, Sch 6, Para 1(3); SPC Regs, Sch II, Para 1(2)(a); LMI Regs, Sch 3, Para 14(3)*

109 When determining whether an increase in a qualifying loan may be allowed the DM should note that

1. the new accommodation being more suited to the special needs of the disabled person need only be one of the reasons for buying it. It does not have to be the only or main reason
2. the new accommodation only has to be more suited. There is no test of whether or not it was reasonable to acquire the new accommodation
3. the special needs of the disabled person must be needs stemming from the person's disability. Only needs stemming from
  - 3.1 a specific disease **or**
  - 3.2 a specific bodily or mental disablement **or**
  - 3.3 the effects of ageing for the over 75scan be special needs of the disabled person
4. the relevant features of the new accommodation could possibly include its running costs. But the price paid for it or the size of the loan taken out are not relevant
5. the person must be a disabled person at the date the loan is taken out and not from any later date
6. there is no requirement of immediacy linking the time of acquisition, the time the loan is taken out, and the time the claimant moves but there does have to be a link between them<sup>1</sup>
7. each case must be decided individually on its own facts.

## **Separate sleeping accommodation for children of different sexes**

110 Any increases in a qualifying loan should be allowed where, during a relevant period

1. a claimant or a member of the family increases a current loan commitment by

1.1 taking out a new loan **or**

1.2 increasing a current loan

to buy an alternative home, having sold the previous home **and**

2. the increase in the loan commitment was solely to provide sufficient sleeping accommodation so that two or more people who are

2.1 members of the claimant's family **and**

2.2 each aged ten or over but under the age of 20 when the loan is taken out or who will be that age within a year **and**

2.3 of different sexes

do not have to share sleeping accommodation<sup>1</sup>.

*1 LMI Regs, Sch 1, Part 1, para 3(9); R(IS) 5/01*

### **Example**

Hans is in receipt of IS and lives in his own two bedroomed house with his son Bruno aged ten, and daughter Hilda aged four. There is no outstanding mortgage on the property. Hans decides that the children should have separate bedrooms. He sells their house and takes out a £20,000 mortgage to buy a three bedroomed house. The loan was taken out in a relevant period to provide separate bedrooms for the children. But they will not both be aged ten within a year of when the loan was taken out. Interest on the new mortgage cannot be allowed.

111 – 129 spare

## **LIABLE AND TREATED AS LIABLE TO MAKE OWNER-OCCUPIER PAYMENTS**

### **UC claimants**

- 130 UC claimants shall be liable to make owner-occupier payments where<sup>1</sup> they or their partner (if any) have a liability to make the payments.

Note: This does not apply to a member of a polygamous marriage who is paid as a single person<sup>2</sup>.

*1 LMI Regs, Sch 2, part 2, Para 5(1)(a); 2 Para 5(3).*

- 131 UC claimants shall be treated as liable to make owner-occupier payments where

1. the person who is liable to make the payments is a child or qualifying young person for whom the claimant is responsible<sup>1</sup> **or**
2. the person who is liable to make the payments is not doing so **and**
  - 2.1 the claimant has to make payments in order to continue to live in the accommodation **and**
  - 2.2 the claimant's circumstances are such that it would be unreasonable to expect them to make other arrangements **and**
  - 2.3 it is reasonable to treat the claimant as liable to make the payments<sup>2</sup> **or**
3. the liability to make the payments is waived
  - 3.1 by the person to whom the liability is owed **and**
  - 3.2 by way of reasonable compensation for reasonable repair or re-decoration works carried out by the claimant which the person to whom the liability is owed would have carried out or been required to carry out<sup>3</sup>.

**Note:** See paragraph 130 for the meaning of liability, paragraph 91 for the meaning of owner-occupier payments, paragraph 82 for the meaning of child and paragraph 88 for the meaning of qualifying young person.

*1 LMI Regs, Sch 2, Part 2, para 5(2)(a); 2 para 5(2)(b); 3 Para 5(2)(c)*

### **Example**

Harry lives with his mother who has a mortgage on their home. Harry's mother dies and her estate becomes liable to meet the mortgage payments. But she did not leave a will and her estate is not making any payments. The building society cannot transfer the mortgage to Harry until his mother's estate is settled. But they agree that if Harry pays the mortgage he can carry on living in the home. It is reasonable to treat Harry as liable for the payment of owner-occupier payments.

## JSA(IB), IS, ESA(IR) and SPC claimants

132 JSA(IB), IS, ESA(IR) and SPC claimants are liable to make owner-occupier payments where they or their partner has a liability to make the payments<sup>1</sup>

*1 LMI Regs, Sch 2, Part 1, para 2(1)(a); R(IS) 4/00;*

133 A claimant is treated as liable to make owner-occupier payments where

1. the person liable to make the payments is not doing so **and**
  - 1.1 the claimant has to make the payments in order to keep living in the relevant accommodation **and**
  - 1.2 it is reasonable in all the circumstances to treat the claimant as liable to make the payments<sup>1</sup> **or**
2. they share responsibility for the payments with other members of the household who are not close relatives of the claimant or their partner **and**
  - 2.1 at least one of those members is liable to meet those payments **and**
  - 2.2 it is reasonable in the circumstances to treat that member as sharing responsibility<sup>2</sup>.

*1 LMI Regs, Sch 2, Part 1, para 2(2)(a); R(IS) 12/94; R(IS) 8/01; 2 LMI Regs, Sch 2, Part 1, para 2(2)(b);*

## Trade disputes

134 Where a member of a family is affected by a TD, the owner-occupier payments should be treated as the responsibility of those members of the family who are not affected by the TD<sup>1</sup> (see DMG Chapter 32). Trade dispute has the meaning prescribed in legislation<sup>2</sup>.

*1 LMI Regs, Sch 2, Part 1, para 2(3); 2 Trade Union and Labour Relations (Consolidation) Act 92, s244*

## TREATED AS NOT LIABLE TO MAKE OWNER-OCCUPIER PAYMENTS

### UC claimants

135 UC claimants are to be treated as not liable to make owner-occupier payments<sup>1</sup>

1. where the liability to make the payments is owed to a person who is a member of their household **or**

2. in respect of any amount which is an increase in the sum that would be otherwise payable and is the result of
  - 2.1 outstanding arrears of any payment or charge in respect of the relevant accommodation **or**
  - 2.2 outstanding arrears of any payment or charge in respect of other accommodation previously occupied by the claimant **or**
  - 2.3 any other unpaid liability to make a payment or charge **or**
3. where the DM is satisfied that the liability to make the owner-occupier payments was contrived in order to
  - 3.1 secure the offer of loan payments **or**
  - 3.2 increase the amount of each loan payment made.

*1 LMI Regs, Sch 2, Part 2, para 6*

### **JSA(IB), IS, ESA(IR) and SPC claimants**

- 136 A claimant is to be treated as not liable to make owner-occupier payments<sup>1</sup> where the liability to make the payments is owed to a person who is a member of their household<sup>1</sup>

*1 LMI Regs, Sch 2, part 1, para 3*

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### **TREATED AS OCCUPYING OR NOT OCCUPYING ACCOMMODATION**

#### **Definitions**

- 150 The following definitions apply only to this guidance on treating a person as occupying or not occupying accommodation.

#### **Abbeyfield Home**

- 151 Abbeyfield Home means an establishment run by the Abbeyfield Society, including all bodies affiliated to that Society<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 1, para 1*

## Care home

152 Care home means

1. in England and Wales, an establishment which provides accommodation, together with nursing or personal care, for people who
  - 1.1 are or have been ill or
  - 1.2 have or have had a mental disorder or
  - 1.3 are disabled or infirm or
  - 1.4 are or have been dependent on alcohol or drugs<sup>1</sup>
2. in Scotland, an establishment which is accommodation in which a care home service is provided<sup>2</sup>. That is, a service that provides accommodation, together with nursing, personal care, or personal support for people by reason of their vulnerability or need.

*1 LMI Regs, Sch 3, Part 1, para 1; Care Standards Act 2000, s 3;*

*2 LMI Regs, Sch 3, Part 1, para 1; Public Services Reform (Scotland) Act 2010, Sch 12, para 2*

153 An establishment is not a care home if

1. in England and Wales it is
  - 1.1 a hospital **or**
  - 1.2 an independent clinic<sup>1</sup>
2. in Scotland it is
  - 2.1 a hospital **or**
  - 2.2 a public, independent or grant-aided school **or**
  - 2.3 an independent hospital **or**
  - 2.4 a private psychiatric hospital **or**
  - 2.5 an independent clinic **or**
  - 2.6 an independent medical agency<sup>2</sup>.

*1 Care Standards Act 2000, s 3(3); Public Services Reform (Scotland) Act 2010, Sch 12, para 2*

## Croft

154 Croft means a croft within the meaning of specified legislation<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 1, para 1; Crofters (Scotland) Act 1993, s 3(1)*

## Full-time student

155 F/T student means<sup>1</sup>

1. for IS and SPC claimants, a person who is not a qualifying young person or child under specified legislation<sup>2</sup> and is
  - 1.1 aged less than 19 who is attending or undertaking a F/T course of advanced education or
  - 1.2 aged 19 or over, but under pension age, who is attending or undertaking a F/T course of study at an educational establishment or
  - 1.3 on a sandwich course<sup>3</sup>
2. for JSA claimants, a person who is a F/T student under specified legislation<sup>4</sup> which depends on
  - 2.1 the person's age **and**
  - 2.2 the type of course they are doing **and**
  - 2.3 whether they are in England, Wales, or Scotland<sup>5</sup>
3. For ESA claimants, a person who is not a qualifying young person or child under specified legislation<sup>6</sup> and is
  - 3.1 aged less than 19 who is attending or undertaking a F/T course of advanced education **or**
  - 3.2 aged 19 or over, but under pension age, who is attending or undertaking a F/T course of study at an educational establishment or
  - 3.3 on a sandwich course<sup>7</sup>.

**Note:** See DMG Chapter 30 (IS and JSA), DMG Chapter 51 (ESA) and DMG Chapter 78 (SPC) for full guidance on F/T students.

*1 LMI Regs, Sch 3, Part 1, para 1; 2 SS CB Act 92, s 142; 3 IS (Gen) Regs, reg 2(1) & 61(1); 4 SS CB Act 92, s 142; 5 JSA Regs, reg 1(3); 6 SS CB Act 92, s 142; 7 ESA Regs, reg 131(1) & (2)*



## Independent hospital

156 Independent hospital means a hospital<sup>1</sup> which is not a health service hospital.

*1 LMI Regs, Sch 3, Part 1, para 1; National Health Service Act 2006, s 275;  
Care Standards Act 2000, s 2; National Health Service (Scotland) Act 1978, s 10F(1)(a)*

## Medically approved

157 Medically approved means certified by a medical practitioner<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 1, para 1*

## Patient

158 Patient means a person undergoing

1. medical **or**
2. other treatment

as an in-patient in a hospital or similar institution<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 1, para 1*

## Period of study

159 The period of study<sup>1</sup> is

1. for IS, ESA and SPC claimants, the period which begins on the date that the student starts attending or undertaking the course and ends on
  - 1.1 the last day of the course **or**
  - 1.2 such earlier date as the student
    - 1.2.a abandons the course **or**
    - 1.2.b is dismissed from the course<sup>2</sup>
2. for JSA claimants<sup>3</sup> the period that starts with
  - 2.1 the first day of the course, in the first or only year **or**
  - 2.2 the first day of that years course, in any later year **and**  
ends with
  - 2.3 the last day of the course, in the last or only year **or**

2.4 the day before the summer holiday, where the grant is not for study throughout the whole year **or**

2.5 the day before the start date of the next years course where

2.5.a the grant is for study throughout the year **or**

2.5.b if the student does not have a grant, where a loan would have been assessed as payable throughout the year

**Note:** See DMG Chapter 30 (IS and JSA), DMG Chapter 41 (ESA) and DMG 78 (SPC) for full guidance on period of study.

*1 LMI Regs, Sch 3, Part 1, para 1; 2 IS (Gen) Regs, reg 2(1); ESA Regs, reg 2(1)3 JSA Regs, reg 1(3);*

## Residential accommodation

160 Residential accommodation means accommodation which is a care home, Abbeyfield Home or independent hospital<sup>1</sup>.

*1 LMI Regs, Sch3, Part 1, para 1*

## Training course

161 Training course means a course of training or instruction provided wholly or partly by, or on behalf of, or by arrangement with, or approved by or on behalf of<sup>1</sup>

1. Skills Development Scotland **or**
2. Scottish Enterprise **or**
3. Highlands and Islands Enterprise **or**
4. a government department **or**
5. the Secretary of State.

*1 LMI Regs, Sch 3, Part 1, para 1*

## UC claimants

### Treated as occupying accommodation: general rule

162 Unless paragraph 168 et seq apply, UC claimants are to be treated as occupying as their home the accommodation they normally occupy as their home<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 12(1)*

163 The dwelling normally occupied as the home is the accommodation where the claimant normally lives. In this context “normally” means “usually”.

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165 Where paragraph 168 et seq does not apply, the DM must have regard to all the circumstances to determine which accommodation the claimant normally occupies as their home, including (but not limited to) any persons with whom the claimant occupies each dwelling<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 12(2)*

166 In the following paragraphs accommodation the claimant normally occupies as their home will be referred to as their home unless otherwise stated.

### **Croft land included in accommodation**

167 Where the claimant’s home is situated on or relates to a croft, croft land used for the purpose of their home is to be treated as included in their home<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 12(3)*

### **Move to other accommodation for essential repairs**

168 A claimant who

1. has to move into other accommodation so that essential repairs can be carried out to their home **and**
2. intends to return to their home following the repairs **and**
3. is liable to pay for only one home

shall be treated as normally living in the home which meets all of the conditions **1.** to **3.** above<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 13(1)*

169 Where a claimant has moved into other accommodation in the circumstances set out in paragraph 168 but is liable to pay for both homes the DM must decide which the claimant normally occupies as his home<sup>1</sup>.

*1 UC Regs, Sch 3, para 3(2)*

170 In paragraphs 168 essential means necessary and not a luxury.

### **Adaptations to new home for disabled person**

- 171 A claimant is to be treated as occupying both the new home and their old home if
1. they have moved into a new home and immediately before the move were liable to pay for the new home **and**
  2. there was a delay in moving in that was necessary to enable the new home to be adapted (see paragraph 174) to meet the disablement needs of a person referred to in paragraph 172 **and**
  3. immediately before the move the claimant was entitled an amount for owner-occupier payments in an award of IS, JSA(IB), ESA(IR), SPC or UC in respect of the old home **and**
  4. the delay in moving was reasonable<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 14(1) & (2)*

172 The person referred to in paragraph 171

1. is<sup>1</sup>
  - 1.1 the claimant **or**
  - 1.2 any child or qualifying young person for whom the claimant is responsible **and**
2. they are in receipt of
  - 2.1 the care component of DLA at the middle or highest rate **or**
  - 2.2 "AA" **or**
  - 2.3 the daily living component of a PIP.

*1 LMI Regs, Sch 3 Part 3, para 14(3)*

### **Example 1**

Jane has diabetes and delayed her move to redecorate the house to a style she liked. This was not an adaptation necessary to meet her disability needs and she cannot be treated as occupying both homes.

### **Example 2**

Joseph lost the use of his legs in a car accident. He delayed moving into his new bungalow because it required adaptations to be undertaken to the kitchen and bathroom to enable Joseph to live independently. Once Joseph moves into the new

property he can be treated as occupying both homes for the preceding month whilst the necessary work was being carried out.

- 173 No claimant shall be treated as occupying both homes under paragraph 171 for more than one month<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 14(4)*

- 174 To determine whether the dwelling has been adapted to meet the disablement needs of the person referred to in paragraph 172 consideration has to be given to whether the process which the dwelling had undergone was a change that made it more suitable for the needs of the disabled person. Redecoration and changing the floor coverings are examples of changes which could meet the definition of adapting the dwelling where there is a clear connection between the work undertaken and the person's disability needs<sup>1</sup>.

*1 Mahmoudi, R v London Borough of Lewisham & Anor [2014] EWCA Civ 284*

### **Claimant living in other accommodation due to fear of violence**

- 175 A claimant will be treated as normally occupying both their normal home and other accommodation where<sup>1</sup>

1. they are occupying accommodation other than their normal home **and**
2. they are liable to make payments for both their normal home and the other accommodation **and**
3. it is unreasonable to expect the claimant to return to their normal home because of their reasonable fear of violence
  - 3.1 in the home **or**
  - 3.2 by a former partner against the claimant or any child or qualifying young person for whom the claimant is responsible **and**
4. it is reasonable to make loan payments in respect of both their normal home and the other accommodation **and**
5. the claimant intends to return to their normal home.

*1 LMI Regs, Sch 3, Part 3, para 15(1) & (2)*

- 176 A claimant will be treated as normally occupying the accommodation for which they are liable to make payments where<sup>1</sup>

1. they are occupying accommodation other than their normal home **and**
2. they have a liability to pay for either their normal home or for the other accommodation (but not both) **and**
3. they intend to return to their normal home **and**
4. it is unreasonable to expect the claimant to return to their normal home because of their reasonable fear of violence
  - 4.1 in the home **or**
  - 4.2 by a former partner against the claimant or any child or qualifying young person for whom the claimant is responsible **and**
5. it is reasonable to make lone payments for the accommodation for which there is a liability to make payments.

*1 LMI Regs, Sch 3, Part 3, para 15(3)*

- 177 Where paragraph 175 applies no claimant shall be treated as occupying both their normal home and another accommodation for more than 12 months<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 15(4)*

### **Move delayed by adaptations to meet disablement needs**

- 178 Where a claimant has moved into a property they are treated as occupying that property as their home before they actually moved in where<sup>1</sup>
1. they have moved into the home and immediately beforehand were liable to make payments for the home **and**
  2. there was a delay in moving in to enable the home to be adapted to meet the needs of a disabled person **and**
  3. it was reasonable to delay moving in.

*1 LMI Regs, Sch 3, Part 3, para 16*

- 179 No claimant shall be treated as occupying accommodation under paragraph 178 for more than 1 month<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 16(2)*

### **Moving in following stay in hospital or care home**

180 Where a claimant has moved into a property they are treated as occupying that property as their home before they actually moved in where<sup>1</sup>

1. they have moved into the home and immediately beforehand were liable to make payments for the home **and**
2. the liability arose while the claimant was a patient or accommodated in a care home

**Note:** No claimant shall be treated as occupying accommodation under this paragraph for more than 1 month<sup>2</sup>

*1 LMI Regs, Sch 3, Part 3, para 17(1); 2 Para 17(2)*

### **Periods of temporary absence exceeding 6 months**

181 A claimant will be treated as no longer occupying their home where they are temporarily absent and the absence exceeds, or is expected to exceed, 6 months<sup>1</sup>. However where the claimants circumstances fall under paragraph 175 (fear of violence) the absence not expected to be exceeded is 12 months<sup>2</sup>.

*1 LMI Regs, Sch 3, Part 3, para 18(1); 2 Para 18(2)*

#### **Example 1**

Harry is claiming UC. He is involved in a road accident and is admitted to hospital. He needs prolonged treatment and rehabilitation and is expected to be in hospital about 4 months. Because Harry's absence is not expected to last for more than 6 months the DM treats him as still occupying his home.

#### **Example 2**

Henry is claiming UC. He is involved in a road accident and is admitted to hospital. He needs prolonged treatment and rehabilitation and is expected to be in hospital about 10 months. The DM decides Henry is not occupying his home from the outset of his admission to hospital.

182 In the circumstances set out in paragraph 171 the period in paragraph 181 is 12 months<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 3, para 18(2)*

### **JSA(IB), IS, ESA(IR) and SPC claimants**

## Treated as occupying accommodation: general rule

183 Unless paragraph 186 et seq apply, JSA(IB), IS, ESA(IR) and SPC claimants should be treated as living in the home where

1. they or
2. they and members of their family

normally live<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 2, para 3(1)*

184 The dwelling normally occupied as the home is the home where the claimant and their family normally live. In this context “normally” means “usually”. Periods of residence, or absence, that are of an exceptional nature should be disregarded.

### Example

Julia lives alone in a flat on which she has a mortgage. She goes to stay with her father while he is recovering from an operation and is away from home for two weeks. While at her father’s house Julia is made redundant and claims JSA. The DM decides that Julia normally lives in her own flat. The time she spends at her father’s is exceptional. An amount for owner-occupier payments can be considered for her mortgage.

185 To decide where a claimant normally lives the DM should

1. consider all homes that the claimant has, whether or not the homes are in GB<sup>1</sup>  
**and**
2. not treat the claimant as living in more than one home, unless the circumstances in paragraph 189 et seq apply **and**
3. where the claimant is responsible for owner-occupier payments on more than one property, and paragraph 189 et seq does not apply, treat the claimant as living in the home they normally occupy.

*1 LMI Regs, Sch 3, Part 2, para 3(2)*

### Full-time study

186 Single claimants and lone parents who are F/T students or on a training course, may have different homes in term time and vacations. Such a claimant should be treated as occupying the home for which they are liable to make owner-occupier payments if<sup>1</sup> they are



1. occupying one of the homes because they are
  - 1.1 a F/T student **or**
  - 1.2 on a training course **and**
2. liable to make owner-occupier payments on either, but not both, of the homes they live in when
  - 2.1 attending the course of study or training **or**
  - 2.2 not attending the course of study or training **and**
3. is not absent from the home for which they are liable<sup>2</sup>.

*1 LMI Regs, Sch 3, Part 2, para 4(1); 2 Sch 3, Part 2, para 4(2)*

### **Example 1**

Paul is a lone parent studying in Exeter. He is buying a flat in Exeter and has a mortgage to pay. When not studying he lives with his parents in their home in Liverpool. He has no liability for owner-occupier payments for this accommodation. Paul cannot be treated as living in his flat in Exeter because he is absent from it.

### **Example 2**

Griff, who has no partner, is a mature student studying in Bangor. He is buying a flat in Bangor and has a mortgage to pay. When not studying he lives with his son and daughter in law in their home in Liverpool. He is liable to pay his son for these lodgings during his stay. Griff cannot be treated as living in his flat in Bangor because he has a liability at both homes.

- 187 Students whose main purpose of living in their home is to attend a course of study will not normally be treated as living there for periods of absence outside the period of study. The exception is when the absence is due to admission to hospital for treatment<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 2, para 4(2)*

### **Living in other accommodation during essential repairs**

- 188 A claimant who
1. has to move into temporary accommodation so that essential repairs can be carried out to their home **and**

2. is liable to make owner-occupier payments for either, but not both the home or temporary accommodation

should be treated as living in the dwelling for which they have to make those payments<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 2, para 5*

### **Liable for two homes**

189 A person who is liable to make payments on two dwellings should be treated as living in, and allowed owner-occupier payments, for both dwellings where they

1. have left their former home, and remain absent, because of fear of violence

- 1.1 in that home **or**

- 1.2 by a close relative or former partner

and it is reasonable to meet owner-occupier payments on both homes<sup>1</sup> **or**

2. are members of a couple or polygamous marriage and have a partner who is a F/T student or on a training course and it is

- 2.1 unavoidable that they have two homes **and**

- 2.2 reasonable to meet owner-occupier payments for both home<sup>2</sup>.

**Note:** See paragraph 83 for the definition of close relative.

*1 LMI Regs, Sch 3, Part 2, para 6(a); 2 Sch 3, Part 2, para 6(b)*

190 The question of reasonableness in paragraph 189 should be decided at the date the DM considers the issue and in the light of all the circumstances. These may include

1. the length of the absence
2. whether the claimant could reasonably be expected to take steps to end the liability for the former home
3. whether there is a hope of resuming occupation
4. whether it is practicable to end the liability
5. the claimant's situation and means of support
6. the extent to which the liability was in practice being met other than through JSA(IB), IS, ESA(IR) or SPC.

191 A person can also be treated as living in, and allowed owner-occupier payments for, two homes for up to four weeks if<sup>1</sup>

1. they move to a new home, for a reason other than those in paragraph 188 **and**
2. they are liable for owner-occupier payments on both homes **and**
3. the liability to make payments for both homes is unavoidable.

*1 LMI Regs, Sch 3, Part 2, para 6(c)*

192 The four weeks under paragraph 191 is payable from the first day of the benefit week in which the move occurs<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 2, para 6(c)(i)*

193 A claimant can be allowed owner-occupier payments for two separate properties if he is treated as living in both dwellings as the home. See paragraph 189 for the criteria where more than one property could be the dwelling occupied as the home<sup>1</sup>.

*1 R(JSA) 9/03*

194 spare

### **Treated as living in the home before moving in**

195 A claimant may be treated as living in their home for up to four weeks before the date they moved in where<sup>1</sup>

1. they have moved in to the home and were liable to make owner-occupier payments for that home before moving in **and**
2. they had claimed JSA (IB), IS, ESA(IR) or SPC **and**
3. a decision was
  - 3.1 not made on the claim **or**
  - 3.2 made on the claim but no SMI loan payments were included **or**
  - 3.3 made refusing the claim, but another claim was made within four weeks of moving in **and**
4. the delay in moving in was reasonable because
  - 4.1 the home was being adapted to meet the needs of a disabled member of the family **or**

4.2 they were waiting for a decision on a local welfare provision claim, and, for JSA(IB), IS or ESA(IR) claimants only, either

4.2.a a member of the family is aged five or under **or**

4.2.b the claimant's applicable amount includes PP or DP<sup>2</sup> **or**

4.2.c a CTC is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation<sup>3</sup> **or**

4.3 when they became liable to make owner-occupier payments they were

4.3.a a patient or

4.3.b in a residential home.

*1 LMI Regs, Sch 3, Part 2 para 7; 2 JSA Regs, Sch 1; IS (Gen) Regs, Sch 2; ESA Regs, Sch 6; 3 TC Act 02, s 9(6)*

## **Trial periods in residential accommodation**

196 Claimants who enter residential accommodation

1. to see whether the accommodation is suitable for their needs **and**
2. with the intention of returning home if the accommodation is unsuitable **and**
3. whose part of the home normally occupied has not been let or sublet

should be treated as living in their home and have their owner-occupier payments allowed for up to 13 weeks from the day of entry. The number of weeks for which the absence is treated as temporary is subject to an overall maximum of 52 weeks<sup>1</sup> (see paragraph 200).

*1 LMI Regs, Sch 3, Part 2, para 8*

### **Example**

Nigel has been in hospital for 43 weeks. He receives loan payments for his own home throughout that period. Nigel goes into residential accommodation for assessment. Nigel continues to be treated as temporarily absent from his own home and paid loan payments for that home for a further nine weeks or until a decision is made that he will not return to live in his own home, whichever is the sooner.

## **Temporary absences up to 13 weeks**

197 Unless paragraph 200 applies, a person should be treated as living in their home for any period of temporary absence of not more than 13 weeks if <sup>1</sup>

1. they intend to return to live in the home **and**
2. the part of the home they normally live in has not been let or sublet to another person **and**
3. the period of absence is unlikely to exceed 13 weeks.

*1 LMI Regs, Sch 3, Part 2, para 9*

198 The intention to return to live in the home (see paragraph 197 1.) must

1. be unqualified **and**
2. be present from the start of the period of absence **and**
3. not be conditional on a future event.

**Note:** An intention to return to live in the home formed after the start of the period of absence would not be enough.

#### **Example**

Julia goes to stay with her father while he is recovering from an operation. She expects to be away from her home for eight weeks. The DM determines that Julia is temporarily absent from her home. While Julia is away the bank repossesses her home. Julia is prevented by law from returning but she intends to return if the bank withdraws the possession order. Her intention to return is qualified. The DM determines that Julia's absence from her home is permanent. The superseding decision is effective from the date that the property was repossessed.

199 When considering paragraph 197, loan payments may be allowed for up to 13 weeks from the first day of absence. Where the absence is likely to exceed 13 weeks the absence should be treated as permanent from the first day of absence, and loan payments should not be awarded.

#### **Temporary absences up to 52 weeks**

200 A person should be treated as living in their home for a period of temporary absence of not more than 52 weeks if<sup>1</sup>

1. they intend to return to live in the home **and**
2. the part of the home they normally live in has not been let or sublet **and**

3. they are,
  - 3.1 detained in custody on remand pending trial **or**
  - 3.2 required to live as a condition of bail, in either
    - 3.2.a a dwelling, other than the dwelling they occupy as their home **or**
    - 3.2.b a hostel **or**
  - 3.3 patients resident in a hospital or similar institution **or**
  - 3.4 detained pending sentence upon conviction **or**
  - 3.5 or a member of the family is, or for SPC claimants a person under 20 is, undergoing
    - 3.5.a medical treatment **or**
    - 3.5.b medically approved convalescence
- in accommodation that is not residential accommodation **or**
  - 3.6 on a training course **or**
  - 3.7 providing medically approved care for another person **or**
  - 3.8 are caring for a child, or for SPC claimants a person under 20, whose parent or guardian is temporarily absent from the dwelling that they normally occupy because they are receiving medically approved care or treatment **or**
  - 3.9 receiving medically approved care provided in accommodation that is not residential accommodation **or**
  - 3.10 students to whom paragraph 186 or 189.2 do not apply **or**
  - 3.11 receiving care in residential accommodation other than in paragraph 196 **or**
  - 3.12 have left the home because of fear of violence in it, or from a former member of the family, and paragraph 189.1 does not apply **and**
4. the absence is unlikely to
  - 4.1 exceed 52 weeks **or**

- 4.2 substantially exceed 52 weeks in exceptional circumstances (for example, where an IS claimant has gone into hospital or a JSA claimant has to live in a bail hostel as a condition of bail).

*1 LMI Regs, Sch 3, Part 2, para 10*

201 The intention to return to live in the home (see paragraph 200 1.) must

1. be unqualified **and**
2. be present from the start of the period of absence **and**
3. not be conditional on a future event out of the claimant's control.

**Note:** An intention to return to live in the home formed after the start of the period of absence would not be enough.

**Example**

Frances is admitted to hospital and carries on getting owner-occupier payments for her own home. While she is in hospital the bank repossesses her home and Frances is prevented by law from returning there. Frances intends to move back in if she can persuade the bank to withdraw the possession order. Her intention to return is qualified and depends on what the bank decides. She can no longer be treated as living in the home and owner-occupier payments are withdrawn from the date the house was repossessed.

202 If paragraph 200 applies, owner-occupier payments may be allowed for up to 52 weeks from the first day of absence<sup>1</sup>. But a person may have several periods of temporary absence from home. The absences are treated as temporary if the claimant is not absent from home for more than 52 consecutive weeks.

*1 LMI Regs, Sch 3, Part 2, para 10(2)(d)*

203 The absence should be treated as permanent from the day that it is known that the absence

1. will exceed 52 weeks **or**
2. is likely to
  - 2.1 exceed 52 weeks **or**
  - 2.2 substantially exceed 52 weeks in exceptional circumstances<sup>1</sup>.

*1 LMI Regs, Sch 3, Part 2, para 10(1)*

### **Example 1**

Jon is in receipt of JSA(IB). He has to live in a hostel as a condition of bail. He intends to return to live in his own home when he leaves the hostel. His home has not been let or sublet. He has to live in the hostel for eight weeks. The DM determines that Jon is temporarily absent from his home from the date he went to live in the hostel.

### **Example 2**

Christina is in receipt of IS and lives alone in her own home for which she has a mortgage. In February Christina decides to go and care for her mother who lives in the next town. She expects to be away from her home until August. The DM determines that Christina is not temporarily absent from home because the care is not medically approved nor is her mother a member of her family, owner-occupier payments stop from February.

### **Example 3**

Janet is in receipt of IS and lives alone in her own home for which she has a mortgage. In December 2018 Janet is admitted to hospital suffering from an eating disorder. In November 2019 the DM advises Janet that her owner-occupier payments are to be removed in the next few weeks because she will have been temporarily absent from her home for 52 weeks. The hospital social worker responded advising that Janet would be discharged from hospital for 1 night just prior to the end of the 52 week period. Janet returned home for 1 night and was readmitted to hospital the following day. A further 52 week period of temporary absence could be considered from the date of Janet's readmission.

204 – 219 spare

## **DIRECT PAYMENTS TO QUALIFYING LENDERS**

### **Direct payments**

- 220 Each lone payment made to a qualifying lender directly will be the amount calculated<sup>1</sup> as in paragraph 221 and 222

*1 LMI Regs, Sch 4, para 1*

### **Amount paid to qualifying lender: one loan**

- 221 Where one loan or alternative finance arrangement has been made to a claimant by a qualifying lender, the amount to be paid directly to that lender is the amount of the claimant's loan payment<sup>1</sup>.



### **Amount paid to qualifying lender: more than one loan**

- 222 Where more than one loan or alternative finance arrangement has been made to a claimant by a qualifying lender, the amount to be paid directly to that lender is the amount in respect of each loan or alternative finance arrangement added together<sup>1</sup>.

**Note:** See paragraph 87 for the meaning of qualifying lender.

*1 LMI Regs, Sch 4, para 3*

### **Application of direct payments in discharge of borrower's liability**

- 223 Qualifying lenders must apply payments made to them directly towards discharging the claimant's liability to make owner-occupier payments in respect of which the direct payment was made<sup>1</sup>.

*1 LMI Regs, Sch 4, para 4*

### **Application by qualifying lenders of any amount which exceeds liability**

- 224 Unless paragraph 225 applies, the amount paid in excess of the claimant's liability has to be applied<sup>1</sup>

1. **first** to pay off any arrears of owner-occupier payments **and**
2. **second** to repay the principal sum (capital) of that owner-occupier payment or any other liability to the qualifying lender in respect of that owner-occupier payment.

*1 LMI Regs, Sch 4, para 5(1) & (2)*

#### **Example**

Arthur has an ordinary mortgage account and an "overpayment credit reserve account" with the same lender. Arthur is able to make additional payments on his mortgage which are over and above the contractual mortgage sum. These additional payments are held by the lender in the "overpayment credit reserve account". This allows Arthur to either make reduced payments or take a payment holiday. Arthur's outstanding mortgage balance is £4858.84. However the amount held by the lender in the "overpayment credit reserve account" is £5515.61. As there are no arrears outstanding in relation to Arthur's mortgage interest, the lender should repay the

excess payment to the principal sum of Arthur's mortgage and owner-occupier payments should cease.

225 Where the borrower is liable to make owner-occupier payments to the same qualifying lender in respect of two or more loans or alternative finance arrangements, the amount paid in excess of the claimant's liability has to be applied<sup>1</sup>

1. **first** to pay off any arrears of owner-occupier payment in respect of the loan or alternative finance arrangement in respect of which the excess was paid **and**
2. **second** towards
  - 2.1 the principal sum (capital) of that owner-occupier payment and any other sum payable by the claimant to that lender in respect of that owner-occupier payment.
  - 2.2 in respect of other loans or alternative finance arrangements any sum payable where the liability is not already discharged

**Note:** DMs should be aware that it is the qualifying lenders who will apply these priorities and not the DM. It is a matter between the lender and the claimant. There is no provision to allow the lender to repay the excess to the claimant.

*1 LMI Regs, Sch 4, para 5(3)*

## APPEALS

226 For the purpose of decision making and appeals, the guidance in ADM Chapters A1 – A5 on revision, supersession and appeals apply to decisions about loans in the same way as they apply to decisions about claims for and awards of benefits<sup>1</sup>. This is because

1. A loan for mortgage interest<sup>2</sup> is defined as a relevant benefit<sup>3</sup>
2. a reference to
  - 2.1 a claim for a benefit includes an application for a loan<sup>4</sup>
  - 2.2 a claimant includes an applicant or joint applicants for a loan<sup>5</sup>
  - 2.3 an award of a benefit to a person includes a decision that a person is eligible for a loan<sup>6</sup> and
  - 2.4 entitlement to a benefit includes eligibility for a loan<sup>7</sup>.

*1 WR & W Act 16, s 20; 2 s 18; 3 SS Act 98, s 8(3)(bc) & 39(1A)(a); 4 s 39(1A)(b); 5 s 39(1A)(c); 6 s 39(1A)(d); 7 s 39(1A)(e)*

This allows decisions about loans to be subject to revision and supersession<sup>1</sup>. It follows that decisions about loans carry the right of appeal to the First-tier Tribunal<sup>2</sup>.

*1 SS Act 98, s 9 & 10; 2 s 12(1)(a)*

## **ANNOTATIONS**

Please annotate the number of this memo (ADM 8/18) against the following paragraphs: DMG 23400, 44200, 78170 ADM F2044, F4001 ADM A1, A3 and Annex D

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: [May] 2018**

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**