

Chapter 54 - Special cases

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Chapter 54 - Special Cases

Scope of this Chapter

- 54001 This Chapter explains how to calculate the amount of ESA where people are
1. a patient (see DMG 54003)
 2. without accommodation (see DMG 54156)
 3. members of religious orders (see DMG 54170)
 4. prisoners (see DMG 54197)
 5. temporarily separated members of a couple or polygamous marriage (see DMG 54541)
 6. absent from GB/UK (see DMG 54547)
 7. from abroad or subject to immigration control (see DMG 54600)
 9. in hardship (see DMG 54612).

54002

Patients

General

54003 A patient means a claimant (other than a prisoner) who is regarded as receiving free in-patient treatment¹. For how entitlement to ESA(Cont) is affected by being a patient see DMG 54106. For how entitlement to ESA(IR) is affected by being a patient see DMG 54091.

1 SS (HIP) Regs, reg 2(4), 2(5) & ESA Regs, reg 69(2)

Free in-patient treatment

Deciding free in-patient treatment

54004 To be receiving free in-patient treatment a person must be

1. maintained free of charge
2. receiving medical or other treatment
3. in a hospital or similar institution
4. an in-patient
5. receiving the treatment
 - 5.1 under prescribed legislation¹ **or**
 - 5.2 in a hospital or similar institution maintained or administered by the Defence Council.

Note: A person who does not meet any one of these conditions is not receiving free in-patient treatment. The DM does not need to consider the other conditions.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

Maintained free of charge

54005 A person is treated as being maintained free of charge¹ in a hospital or similar institution unless

1. accommodation and services are being provided for that person as a private patient² **or**
2. the person is meeting the full cost of their maintenance as a private patient in a private hospital³.

1 SS (HIP) Regs, reg 2(4); 2 NHS Act 77, s 65; NHS (Scot) Act 78, s 58 & Sch 7A, para 14; NHS & CC Act 90, Sch 2, para 14; 3 SS (HIP) Regs, reg 2(4)

54006 In any other circumstances the person is treated as maintained free of charge. For example when

1. a payment is made by the patient for an amenity bed but the treatment is provided under the NHS¹
2. a patient is in paid work outside the hospital during the day and pays an amount to the HA, based on earnings, towards maintenance and incidental costs²
3. a person is a patient in a care home being funded under arrangements made by the HA³.

1 NHS Act 77, s 64; NHS (Scot) Act 78, s 55; 2 NHS Act 77, s 64; NHS (Scot) Act 78, s 56; 3 NHS Act 77; NHS (Scot) Act 78

Burden of proof

- 54007 The burden of proving that a person is not being maintained free of charge rests with that person¹.

1 CS 591/49

54008 - 54014

Medical or other treatment

- 54015 To be treated as receiving free in-patient treatment a person must be receiving
1. medical treatment, for example
 - 1.1 surgical treatments
 - 1.2 administration of drugs and injections **or**
 2. other treatment which includes nursing services by professionally trained staff in the form of
 - 2.1 observations
 - 2.2 therapies
 - 2.3 support appropriate to the person's needs
 - 2.4 advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

- 54016 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment¹.

1 R(S) 26/54

- 54017 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day¹.

1 R(S) 4/84

Hospital or similar institution

Hospital

- 54018 A hospital¹ is
1. an institution for
 - 1.1 the reception and treatment of people suffering from illness

- 1.2 the reception and treatment of people during convalescence
- 1.3 people needing medical rehabilitation
- 2. a maternity home that provides obstetric services
- 3. in Scotland, any institution for dental treatment maintained in connection with a dental school
- 4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 SS (HIP) Regs, reg 2(4); NHS Act 77, s 128; NHS (Scot) Act 78, s 108

54019 Illness includes¹

- 1. mental disorder **or**
- 2. any injury or disability needing
 - 2.1 medical treatment **or**
 - 2.2 dental treatment **or**
 - 2.3 nursing.

1 NHS Act 77, s 128; NHS (Scot) Act 78, s 108

54020 Mental disorder means

- 1. in England and Wales¹
 - 1.1 mental illness **or**
 - 1.2 arrested or incomplete development of the mind **or**
 - 1.3 psychopathic disorder **or**
 - 1.4 any other disorder or disability of the mind
- 2. in Scotland², any form of
 - 2.1 mental illness **or**
 - 2.2 personality disorder **or**
 - 2.3 learning disability.

1 MH Act 83, s 1(2); 2 Mental Health (care & treatment) (Scotland) Act 2003, s 328

Similar institution

54021 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the DM should decide as a question of fact whether it is similar to a hospital taking into account

- 1. the purpose of the institution **and**
- 2. the type of treatment provided **and**
- 3. the level of care offered.

- 54022 A hospital or similar institution also includes those
1. maintained by or on behalf of the¹
 - 1.1 DH
 - 1.2 Welsh Assembly
 - 1.3 Scottish Executive Health Directorates **or**
 2. maintained or administered by the Defence Council, for example an army, navy or air force hospital.

Note: These include special hospitals such as Broadmoor and Rampton and the State Hospital in Scotland.

1 NHS Act 77, s 4; NHS (Scot) Act 78, s 102

Examples of hospitals or similar institutions

- 54023 A hostel or care home providing accommodation and social care to former alcoholics or drug addicts is not similar to a hospital.
- 54024 An institution caring for former alcoholics, drug addicts or psychiatric patients which provides a degree of medical treatment or rehabilitation may be a similar institution to a hospital.
- 54025 A care home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the care home. But if the provision of nursing care is minimal, for example rarely expected, the care home may not be a hospital.

54026 - 54027

In-patient

- 54028 In-patient is not defined and should be given its ordinary meaning of a patient who occupies a bed in a
1. hospital **or**
 2. similar institution

rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to¹.

Note: The question of whether a person is an in-patient should be judged on the facts of each case.

1 R(I) 27/59; R(S) 8/51

54029 Examples of when a person would be included as an in-patient are where the person is

1. a patient and spends part of each day away from the hospital
2. provided with meals by close relatives.

54030 Examples of when a person would not be included as an in-patient are where the person is receiving treatment at home during the period a rehabilitation centre is closed for a holiday¹.

1 R(I) 14/56

Prescribed legislation

54031 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation¹. Whether a person is to be treated as an in-patient, depends on the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

1. the DH **or**
2. the Scottish Executive Health Directorates **or**
3. a Health Board in Scotland **or**
4. a local Health Board in Wales **or**
5. a NHS Trust.

Hospitals have a variety of functions under NHS legislation and not all of them mean that a person is receiving free in-patient treatment.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

England and Wales

54032 HAs acting on behalf of the Secretary of State in England or Welsh Ministers can

1. arrange for long term health care in a care home for a person whom they assess as needing that care¹ (in this case the service must be provided free of charge and the HA is responsible for the full cost) **or**
2. contribute to the cost of care through payments to a LA, voluntary organization or housing association² for
 - 2.1 social care **or**
 - 2.2 accommodation **or**
 - 2.3 housing costsfor a person who does not need in-patient care from the NHS **or**

3. make grants to voluntary organizations³ towards the cost of care for a person who does not need in-patient care from the NHS.

Note: If 1. applies the person is receiving free in-patient treatment under prescribed legislation.

1 NHS Act 77, s 23; 2 s 28A; 3 HS & PH Act 68, s 64

Scotland

54033 Health Boards acting on behalf of Scottish Ministers can

1. provide accommodation and services needed to meet all reasonable requirements¹
2. make the necessary arrangements to meet all reasonable requirements².

If services are provided under 2. the Health Board is responsible for the full cost.

1 NHS (Scot) Act 78, s 36; 2 s 37

Services provided under NHS legislation

54034 Examples of services under NHS legislation are¹

1. hospital accommodation
2. other accommodation for the purpose of any service the Secretary of State has the power to provide
3. medical services
4. nursing services
5. facilities which the Secretary of State considers appropriate as part of the health service for the
 - 5.1 prevention of illness **or**
 - 5.2 care of people suffering from illness **or**
 - 5.3 after care of people who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

1 NHS Act 77, s 3(1); NHS (Scot) Act 78, s 36 & 37

Imprisonment

54035 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment because these wings are administered by

1. the Ministry of Justice **or**
2. in Scotland, the Scottish Executive Justice Department.

- 54036 A prisoner¹ is a person detained in custody
1. following sentence to a term of imprisonment by a criminal or civil court, and includes a person
 - 1.1 temporarily removed from prison to hospital unless DMG 54037 3. applies **or**
 - 1.2 living outside the prison under a pre-release employment scheme² **or**
 - 1.3 on temporary release which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
 2. on remand awaiting trial unless DMG 54037 3. applies **or**
 3. awaiting sentence upon conviction unless DMG 54037 3. applies **or**
 4. released early under the End of Custody Licence arrangements.

1 ESA Regs, reg 69(2); 2 R(I) 9/75

- 54037 The definition of prisoner does not include a person
1. under suspended sentence
 2. sentenced to community service
 3. transferred from court or prison to hospital who is detained under prescribed mental health legislation¹
 4. released on licence
 5. released on parole.

Note: 3. applies whether or not the person is subject to an order restricting discharge.

1 MH Act 1983; MH (C & T) (Scot) Act 03; Criminal Procedure (Scotland) Act 1995

54038 - 54040

Community care arrangements

Arrangements by Health Authorities and Health

Boards

54041 As part of a community care programme, a HA or Health Boards may make a variety of arrangements with care homes or hostels for

1. the continuing care of a patient in one of these homes **or**
2. a person in the community to be admitted directly to one of these homes.

The DM should consider DMG 54004 to decide whether the person is receiving free in-patient treatment in the home or hostel (if the LA is involved in the arrangements see DMG 54063).

54042 Examples of arrangements made by HAs and Health Boards under community care programmes are

1. setting up their own homes or hostels
2. by NHS trusts contracting with private and voluntary sector homes for the provision of accommodation and services
3. contracting with a voluntary agency to find suitable placements for patients
4. any combination of 1. to 3..

54043 - 54047

Points to consider

54048 The DM should consider the guidance in DMG 54049 - 54054 when deciding whether the person is receiving free in-patient treatment in the new accommodation.

54049 When deciding whether the new accommodation is a hospital or similar institution the DM should consider the definition in DMG 54018 et seq. The DM should not compare the new accommodation with the person's previous hospital accommodation.

54050 If the arrangements with the HA or Health Board and the home or hostel are under any of the provisions of the prescribed legislation¹, DMG 54004 is satisfied.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54051 If a HA or Health Board helps a voluntary sector home by awarding a grant or loan under other legislation¹, DMG 54004 is not satisfied. But if the HA or Health Board have a contractual agreement to pay a grant for future financial years, this may be evidence that the agreement has been made under prescribed legislation², and the person may be receiving free in-patient treatment.

1 HS & PH Act 68, s 64; NHS (Scot) Act 78, s 16B;

2 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54052 A HA or Health Board may agree to provide help to a home on the assumption that the person will not be treated as receiving free in-patient treatment for ESA purposes. For example they may agree to pay the difference between

1. ordinary applicable amounts of ESA(IR) **and**
2. the amount charged for the home.

Note: If the agreement is made under prescribed legislation¹, the HA or Health Board is responsible for the full cost of the accommodation and services no matter what the agreement states.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54053 A HA or Health Board can provide financial assistance or services, for example they may provide trained nursing staff. If the home reimburses

1. the **full** cost of the services to the HA or Health Board, DMG 54004 is not satisfied and the person is not receiving free in-patient treatment **or**
2. part of the cost of the services, the arrangement may be under prescribed legislation¹.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54054 The arrangement between the HA or Health Board must include continuing help. If a placement is found without any continuing commitment from the HA or Health Board to fund the care, DMG 54004 is not satisfied. For example a hospital social worker may help a patient who is about to be discharged to find a suitable care home.

54055 - 54060

Existing cases - revision or supersession

54061 The DM may decide that a person who is already living in a home or hostel under arrangements made by a HA or Health Board is receiving free in-patient treatment. The provision of DMG guidance is not grounds to revise or supersede an existing decision, and the existing decision continues to apply.

54062 Enquiries should be made to decide whether all the conditions in DMG 54004 are satisfied if

1. a person is receiving the applicable amount for a person living in a care home **and**
2. the HA or Health Board reports that the person is receiving free in-patient treatment.

If all the conditions in DMG 54004 are satisfied the person is receiving free in-patient treatment.

Local authority placements

54063 LAs have responsibilities for placing people in care homes¹. LAs

1. contract with the home owners **and**
2. are responsible for the full cost of the placement **and**
3. may be helped with funding from a HA or Health Board².

If a LA has made the placement, the conditions in DMG 54004 are not satisfied because the placement has not been arranged under prescribed legislation³. Any funding from the HA or Health Board does not affect the placement.

1 NA Act 48; SW (Scot) Act 68; 2 NHS Act 77, s 28A; NHS (Scot) Act 78;

3 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

54064 - 54071

Periods of free in-patient treatment

54072 A person is receiving free in-patient treatment for any period that the conditions in DMG 54004 are satisfied. When working out such periods, DMs **should not count**

1. the day of admission to hospital **or**
2. the day of return to hospital following a period of temporary absence (for example home leave)

as days of free in-patient treatment¹.

1 SS (HIP) Regs, reg 2(5)

54073 DMs **should count**

1. the day of discharge from hospital **or**
2. the day of leaving hospital on temporary absence (for example home leave) as days of free in-patient treatment.

54074 A period of free in-patient treatment therefore

1. begins on the day after the person is admitted to hospital **and**
2. ends on the day the person is discharged from hospital.

54075 If a patient is transferred from one hospital to another, the day of transfer is treated as a day in hospital¹.

1 R(S) 4/84

Example

A person is admitted to hospital on 7 March and is discharged on 15 March.

The period of free in-patient treatment is eight days.

54076 - 54090

Patients - applicable amounts

Effect of hospital admission on premiums

54091 See DMG Chapter 44 for guidance on the effect of hospital admission on premiums.

Housing costs

54092 If the claimant is treated as continuing to occupy a dwelling as the home, the DM should consider housing costs (see DMG Chapter 44).

54093 - 54096

Membership of the family

54097 The DM should consider the guidance in DMG Chapter 43 to decide whether a patient is still a member of a family if the patient is a

1. member of a couple **or**
2. member of a polygamous marriage.

If an ESA(IR) claimant is no longer a member of a family, the DM should revise or supersede benefit on the basis of the new circumstances.

Example

Rocco and Candy are married. Rocco is in receipt of ESA(IR) at the couple rate. Candy is knocked down by a car and is admitted to hospital. She is still in hospital after 52 weeks and there is no sign of recovery. The DM decides that Candy is likely to be substantially absent from Rocco for more than 52 weeks and consequently supersedes the award of ESA(IR) with the effect that Rocco receives the single claimant rate of ESA(IR).

54098 - 54105

ESA(Cont) cases – 52 week cases

54106 The personal rate of an ESA(Cont) claimant is not affected if the claimant is in hospital. However, no component is payable¹ after the claimant has been a patient for a continuous period of more than 52 weeks.

1 ESA Regs, reg 67(2) & (3) & 69 & Sch 5 para 13

ESA(IR) cases - detention under prescribed mental health legislation

- 54107 The DM should establish the legislation used to admit a claimant to hospital. A person admitted
1. under prescribed mental health legislation¹ is a special case and a patient for ESA purposes that has an applicable amount of nil **or**
 2. under prescribed mental health legislation² other than that in **1.** above is a patient for ESA purposes and has entitlement to their full applicable amount.

1 ESA Regs, Sch 5, para 12; MH Act 83; s 47, s 45A; MH (C & T) (Scot) Act 03; s 136, s 130; Criminal Procedure (Scotland) Act 1995; 2 MH Act 83

ESA(IR) cases - 52 weeks cases

- 54108 Where a single claimant has been a patient for a continuous period of more than 52 weeks then the applicable amount should include only the normal personal allowance for the claimant plus, if appropriate, any TA¹ plus any housing costs. No premiums or components will be payable².

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 2: 2 ESA Regs, reg 69(1) & Sch 5, para 13

- 54109 Where both members of a couple have been a patient for a continuous period of 52 weeks then the applicable amount should include only the normal couple allowance plus any housing costs. No premiums or components will be payable¹.

1 ESA Regs, reg 69(1) & Sch 5, para 13

54110 - 54155

Others

People without accommodation - ESA(IR)

Applicable amount for people without accommodation

54156 Where a DM decides that a claimant has no accommodation the applicable amount will comprise of the normal personal allowance for the claimant¹ plus where relevant, the amount of the support component or WRAC² (the DM **cannot** for example include housing costs or premiums).

Note: ESA(Cont) is not affected by this guidance.

1 ESA Regs, Sch 5, para 1; 2 WR Act 2007 s 4(2)(b)

54157 DMG 54156 applies only to people **without** accommodation. The fact that a person may have no fixed address is not relevant to the decision.

Meaning of accommodation

54158 The word “accommodation” is not defined in the SS legislation, but in this context it means an effective shelter from the elements

1. which is capable of being heated **and**
2. in which the occupants can sit, lie down, cook and eat **and**
3. which is reasonably suited for continuous occupation.

54159 The site of the accommodation may alter from day to day, but it is still accommodation if the structure is habitable. Material which gives only a small amount of protection from the elements, for example

1. cardboard boxes
2. sleeping bags
3. bus shelters
4. park benches

do not fall within the description of accommodation.

Motor Cars

54160 Motor cars are designed as a means of transport. They are not intended for use as a dwelling house or living premises and are not suited for continuous occupation. A person who is living in a car cannot be regarded as having accommodation¹.

1 R(IS) 23/98

Mobile motor homes

54161 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and are suited for continuous occupation should be regarded as accommodation.

Absence from home

54162 Claimants should be regarded as having accommodation if they are

1. temporarily absent from the dwelling occupied as the home **and**
2. for the period of their absence, living a lifestyle as though they have no accommodation.

In these circumstances housing costs may be allowed (see DMG Chapter 44).

54163 - 54169

Members of religious orders - ESA(IR)

Meaning of religious order

54170 A religious order is

1. a group of people who
 - 1.1 are bound by vows living under the same religious, moral and social regulations observing a discipline according to a particular rule **and**
 - 1.2 offer their services free for the benefit of the order **and**
2. committed to providing all that its members need for their maintenance.

Note: Monks and nuns (of the Roman Catholic, Buddhist or any other religion) are the most common examples, but there may be others.

54171

Applicable amount for members of religious orders

Member fully maintained

54172 The applicable amount is nil¹ if the claimant is

1. a member of a religious order **and**
2. fully maintained by the order (that is, it provides full BL, clothing and other needs).

Note: ESA(Cont) is not affected by this guidance.

1 ESA Regs, Sch 5, para 2

Example

Ted is a missionary for a group of priests that refers to itself as a congregation. Its members give up their personal possessions on joining the congregation and are bound by religious vows. They are not allowed to do any paid work outside and are provided with all their needs.

Ted enters a home that caters for priests of the congregation and becomes ill. He claims ESA.

The DM decides that Ted is a member of a religious order.

The order continues to provide all that the claimant needs in the care home, but says that it is becoming increasingly difficult to do so.

The DM decides that what matters is whether the order is fully maintaining Ted, not whether it finds it difficult to do so. The DM decides that Ted is being fully maintained by the order.

- 54173 The commitment to a religious order is often for life. For example, the applicable amount continues to be nil if a person retires but remains with the order and continues to be fully maintained by it.

Note: ESA(IR) should be calculated in the normal way if a person leaves the order, ceases to be maintained by it and goes to live in separate accommodation.

Member not fully maintained

- 54174 ESA(IR) may be awarded if a member of a religious order

1. leaves the order's premises, for example to nurse a sick relative **and**
2. is not fully maintained by the order during the absence.

The fact that the member has been fully maintained by the order in the past does not affect the decision on the change of circumstances.

- 54175 Claims may be received from monks or nuns

1. in very poor physical or mental health **and**
2. for whom proper care can no longer be provided by the monastery or convent **and**
3. whose order can no longer afford to maintain them.

They may be living in a nursing home or private hospital being run by a religious order. Entitlement should be considered in the normal way if they are not being fully maintained by their order.

Example

Sarah is a 59 year old nun who has been a member of and fully maintained by a religious order for 39 years. She is suffering from Alzheimer's Disease and her order is no longer able to care for her properly.

The LA find her a place in a nursing home run by another order. She is expected to contribute to the fees. She claims ESA.

Her order continues to provide suitable clothing for her but cannot afford to maintain her in the nursing home. The order makes no financial contribution to the claimant's needs.

The DM decides that Sarah is no longer being fully maintained by the order, and awards ESA.

54176 A member of a religious order may have no apparent income or capital of their own. But the DM should consider whether the rules of the order allow

1. a member to ask for financial support **or**
2. the return of money given to the order on admission.

This information can be obtained from the trust deed of the order, but enquiries should not be made into the order's financial affairs. The DM should submit cases of doubt to DMA Leeds.

54177 A member of a religious order may still be fully maintained by the order even though they may have some funds of their own, out of which they may be contributing to the order¹.

1 [2011] EWCA Civ 103

54178 - 54196

Prisoners ESA(IR)

Meaning of prisoner

[See DMG Memo 07/20]

54197 A prisoner¹ is a person detained in custody

1. following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person
 - 1.1 temporarily removed from prison to hospital unless DMG 54198 **3.** applies **or**
 - 1.2 living outside the prison under a pre-release employment scheme² **or**
 - 1.3 released on temporary licence which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
2. on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital unless DMG 54198 **3.** applies **or**
3. released early under the End of Custody Licence arrangements.

1 ESA Regs, reg 69(2); 2 R(I) 9/75

54198 The definition of prisoner does not include a person

1. under suspended sentence **or**
2. sentenced to community service **or**
3. transferred from court or prison to hospital who is detained under mental health legislation¹ (see DMG 54212)
4. released on licence **or**
5. who is on a
 - 5.1 home detention curfew **or**
 - 5.2 court ordered curfew **or**
 - 5.3 restriction of Liberty Order **or**
 - 5.4 mandatory probation service programme.

Note: release on licence means release on parole after completion of a specified part of the original sentence.

1 MH Act 83; MH (C & T) (Scot) Act 03

Meaning of detained in custody

54199 The word “detains” describes the physical confinement of a person¹. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

1. in a prison
2. in a remand centre
3. in a police station when used as a remand overflow
4. of a child or young person under the direction of the Secretary of State
5. in a young offender’s institution
6. abroad.

1 R(S) 10/56

54200 Detention in custody might be

1. after the start of the proceedings, for example remand in custody¹ **or**
2. after the proceedings have ended, for example sentence to prison.

1 R(IS) 1/94

54201 Detention in custody does not include a period before proceedings begin where the person is released on bail.

54202 - 54209

Period of detention in custody

54210 When working out the period for which a person is detained in custody

1. **count** the day on which the detention starts
2. **do not count** the day of release from detention

as a day on which the person is detained in custody.

54211 A period of detention in custody therefore

1. begins on the day on which the person is detained **and**
2. ends on the day before the person is released from detention.

Prisoner admitted to hospital

54212 The DM should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation¹ is a special case patient for ESA purposes and has an applicable amount of nil **or**
2. under prescribed mental health legislation² other than that in **1.** above is a patient for ESA purposes and has entitlement to their full applicable amount.

1 ESA Regs, Sch 5, para 12; MH Act 83; s 47, s 45A; MH (C & T) (Scot) Act 03; s 136, s 130; Criminal Procedure (Scotland) Act 1995; 2 MH Act 83

Applicable amount - ESA(IR)

Claimant is a prisoner

54213 The applicable amount for a claimant who is a prisoner under DMG 54197 1. is nil¹.

1 ESA Regs, Sch 5, para 3(a)

Note: See DMG chapter 12 for guidance on how imprisonment affects ESA(Cont).

Claimant is a prisoner on remand awaiting trial or sentence

54214 A person who is held on remand awaiting trial or sentence upon conviction (see DMG 54197 2.) may be entitled to ESA¹. The applicable amount is

1. any allowable housing costs **or**
2. nil, if there are no allowable housing costs.

1 ESA Regs, Sch 5, para 3(b)

Example

Jackie is entitled to ESA(IR) while she is on remand awaiting sentencing, with her applicable amount being the amount of her housing costs. On 21.4.10 she is sentenced to a term of imprisonment. The DM supersedes the award of ESA(IR) and decides that Jackie has no entitlement to it from 21.4.10 because her applicable amount is nil. There is also a determination that Jackie is treated as not having LCW from 22.4.10.

54215 If the claimant is entitled to ESA(Cont) and ESA(IR) the DM should consider both.

Example

Christian is entitled to ESA(Cont) and ESA(IR) which includes an amount for housing costs. On 12.4.10 he is detained in legal custody. The DM suspends payment of ESA(Cont). The DM also supersedes the award of ESA(IR) and decides that Christian's applicable amount for ESA(IR) is the amount of his housing costs. On 6.9.10 Christian is sentenced to a term of imprisonment. The DM decides that Christian should be disqualified for receiving ESA(Cont) from 12.4.10 because he has been sentenced to a period of imprisonment for a period exceeding six weeks. There is also a determination that Christian is treated as not having LCW for ESA(Cont) purposes from 12.4.10. In addition, the DM supersedes the award of ESA(IR) and decides that Christian has no entitlement to it from 6.9.10 because his applicable amount is nil. There is also a determination that Christian is treated as not having LCW for ESA(IR) purposes from 7.9.10.

54216 - 54217

Claimant is a Technical Lifer - England and Wales only

54218 The status of technical lifer is an administrative classification which was given to certain prisoners with a life sentence. It was given when the Secretary of State for Justice accepted that the criminal court that heard the individual's case would have given an order for hospital treatment rather than impose a sentence of imprisonment.

54219 A technical lifer should be treated, for the purposes of entitlement to ESA, as though they had been given a hospital order with no term of imprisonment¹. This means that a person with technical lifer status is eligible for ESA(IR) as an ordinary hospital in-patient.

1 Regina (EM and others) v SoS for Work and Pensions [2009] EWHC 454 (Admin)

Note: The practice of assigning technical lifer status to prisoners was abandoned in 2005.

Life Sentences

54220 Life sentences (or indeterminate sentences) fall into two categories-

1. mandatory life sentences. Where a person is convicted of murder this is the only sentence which can be imposed;
2. discretionary life sentences where the judge holds it to be appropriate in the circumstances of the case or where it is held to be necessary, e.g. for public protection.

54221 In both cases the trial judge sets a tariff period which is effectively the "punishment" part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the public. Otherwise they will remain in prison. A trial judge can decline to set a tariff period. In the case of mandatory lifers this is called a 'whole life order'. It means that a prisoner can never become eligible for a Parole Board review or for release.

54222 A prisoner who remains in prison beyond their tariff date does not become eligible for DWP benefits - they are still prisoners¹. Similarly a life sentence prisoner who is transferred to psychiatric hospital for treatment does not become eligible for DWP benefits when the tariff date has been reached. Such a patient would only become eligible for benefit upon release.

1 ESA Regs, reg 69(3)-(5) & 160(3)-(4A) & Sch 5, para 12

54223 - 54224

Membership of the family - partner or member of a polygamous marriage

54225 Members of a couple or polygamous marriage are not treated as members of the household¹ and are not members of the family if one, both or all of them are detained in custody

1. following sentence to a term of imprisonment by a criminal or civil court, including a person
 - 1.1 temporarily removed from prison to hospital **or**
 - 1.2 living outside the prison under a pre-release employment scheme **or**
 - 1.3 released on temporary licence² which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
2. on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital **or**
3. released early under the End of Custody Licence arrangements.

Where the partner or member of a polygamous marriage is not treated as a member of the family then the claimant should be treated as a single claimant.

1 ESA Regs, reg 156 (4)(b); 2 Prison Act 1952; Prisons (Scotland) Act 1989

Partner of a prisoner claims ESA

54226 The partner of a prisoner may claim ESA. The partner claiming ESA should be treated as a single claimant.

54227 - 54540

Temporarily separated members of a couple or polygamous marriage - ESA(IR)

Temporary absence - couples

54541 A couple who are temporarily separated continue to be treated as members of the same household, for example, where one member of the couple goes into temporary residential care (respite care). But see DMG Chapter 43 for some exceptions¹. But a different applicable amount applies where

1. one member is
 - 1.1 in a care home, an Abbeyfield Home or an independent hospital other than as a patient **or**
 - 1.2 in a rehabilitation centre for alcoholics or drug addicts **or**
 - 1.3 in Ilford Park Polish home² **or**
 - 1.4 living away from home to
 - 1.4.a take part in training **or**
 - 1.4.b attend a course as part of an employment rehabilitation programme³ **or**
 - 1.5 in a probation or bail hostel **and**
2. the other member is
 - 2.1 in the couple's normal home **or**
 - 2.2 a patient **or**
 - 2.3 in a care home, an Abbeyfield Home or an independent hospital.

1 ESA Regs, reg 156; 2 Polish Resettlement Act 47, s 3, part II; 3 E & T Act 73, s 2; Enterprise & New Town (Scotland) Act 90

54542 If DMG 54541 applies, the applicable amount is the greater of¹

1. the normal applicable amount for the couple **or**
2. the total of the applicable amounts for the claimant and partner assessed **as if** they are both
 - 2.1 single claimants **and**
 - 2.2 living in their present accommodation (see DMG Chapter 44).

Note: The couple's income and capital should continue to be taken into account in the normal way. This is so even though the applicable amounts may be assessed as if they are both single.

1 ESA Regs, Sch 5, para 4

Example

A claimant and his wife live together in the same household. The claimant receives DLA and his wife receives CA for caring for him. The claimant goes into a care home for three weeks to give his wife a rest.

Assessment 1 - assess as a couple

The claimant is entitled to

1. the normal applicable amount for a couple
2. a CP.

The claimant is not entitled to SDP because only one of the couple receives DLA.

Assessment 2 - assess as single

The **claimant** is entitled to

1. the normal applicable amount for himself.

The claimant is not entitled to SDP because someone is receiving CA for caring for him **and the claimant's wife** is entitled to

1. the normal applicable amount for herself
2. a CP because she is receiving CA.

The DM compares the amount in the first assessment with the total of the two amounts in the second assessment and awards the higher amount.

Temporary absence - polygamous marriages

54543 Members of a polygamous marriage who are temporarily separated continue to be treated as members of the same household. But see DMG Chapter 43 for some exceptions. A different applicable amount is needed where a member of a polygamous marriage is absent from the home in the following circumstances

1. in a care home, an Abbeyfield Home or an independent hospital other than as a patient **or**
2. in a rehabilitation centre for alcoholics or drug addicts **or**
3. living away from home to attend a course of training or instruction **or**
4. in a probation or bail hostel.

54544 Where DMG 54543 applies the claimant's applicable amount should be the greater of¹

1. the normal applicable amount for the family **or**
2. the total of the applicable amount
 - 2.1 for the members left at home **and**
 - 2.2 for each absent member assessed as if they are each
 - 2.2.a a single claimant **and**
 - 2.2.b living in their present accommodation.

Note: The provision in **2.** does not apply when all the members of the marriage are temporarily absent from the home.

1 ESA Regs, Sch 5 & reg 68

54545 - 54546

Absence from Great Britain/United Kingdom - members of a couple or polygamous marriage

Introduction

54547 It is a condition of entitlement to ESA that a person is in GB¹. But entitlement can sometimes continue during an absence from GB². Guidance on entitlement to ESA when a person is absent from GB is given in DMG 071140 et seq.

1 WR Act 07, s 1(3)(d); 2 ESA Regs, reg 151

Claimant absent from Great Britain

54548 A claimant who is absent from GB may be a member of a couple or polygamous marriage. Such a claimant can claim ESA for themselves or a partner so long as entitlement continues (see DMG 071140). The DM should calculate the applicable amount according to the circumstances of the family in GB¹. The family's income and capital should continue to be treated in the normal way.

1 ESA Regs, Sch 5, para 6, 7, 8 & 9

Example

Gerhard is in receipt of ESA(IR) for himself and his wife. On 2 March he goes abroad temporarily to visit his mother. He continues to satisfy the other conditions of entitlement while he is abroad. Gerhard's entitlement to ESA can continue for the first four weeks of his absence (3 March to 30 March) (see DMG 071140).

Partner in Great Britain claims - couples

54549 Where the claimant is absent from GB, a claim for ESA may be received from the partner in GB. This may be made at any time, even where the relevant period of entitlement in DMG 071140 has not run out. But the new claimant must at all times satisfy the normal conditions of entitlement.

Note: The partner will not be entitled if their claim is made during the relevant period or before the absent claimant has agreed to terminate their award. This is because members of a family cannot have entitlements for the same period.

1 ESA Regs, reg 69

54550 The absent partner should be treated as a member of the family for up to 52 weeks, provided that the absence is temporary (see DMG Chapter 43). Where the absent partner is

1. still in the UK, calculate the applicable amount in the normal way **or**

2. absent from the UK, calculate the applicable amount¹ as if
 - 2.1 the absent partner was still at home, if the period abroad has lasted for the relevant period in DMG 071140 et seq or less **or**
 - 2.2 the partner in GB was a single claimant or lone parent, for any period over that of the relevant period in DMG 071140.

Note: The UK (see DMG 070880) is GB (defined in DMG 070702) together with Northern Ireland.

1 ESA Regs, Sch 5, para 6 & 7

Example

Damon is in receipt of ESA for himself and his wife Melanie. On 16 March, Damon goes abroad temporarily and Melanie claims ESA as she becomes ill. Melanie satisfies the normal conditions of entitlement and Damon is treated as a member of the family while he is temporarily absent from the UK.

For the first four weeks of Damon's absence, Melanie's applicable amount is calculated as if he was still at home. This means that Melanie is awarded a personal allowance at the couple rate for the period 17 March to 13 April.

From 14 April onwards Melanie's applicable amount is calculated on the basis that she is a single person.

54551 - 54554

Partner in Great Britain claims - polygamous marriages

54555 Where the claimant in a polygamous marriage is absent from GB, a claim for ESA may be received from a partner in GB. The new claimant must then satisfy the normal conditions of entitlement.

54556 Treat the partner in GB as a single claimant¹. Any payments made to the claimant by the partner while absent from GB should be treated as LRPs.

1 ESA Regs, reg 156(4)(c)

Partner absent from United Kingdom

54557 The partner of a claimant may be absent from the UK. The absent partner continues to be a member of the claimant's family for up to 52 weeks if the absence remains temporary¹ (see DMG Chapter 43). The normal conditions of entitlement continue to apply during this period as if the absent partner were still at home.

1 ESA Regs, reg 156(3)(b)

- 54558 The normal rules for calculating the applicable amount change when the partner's absence from the UK stops being temporary.

Amount payable

- 54559 Where DMG 54558 applies, calculate the applicable amount as if the partner absent from the UK was no longer a member of the household¹. This means that the claimants should be treated as if they are either a single claimant or lone parent when awarding a personal allowance.

1 ESA Regs, Sch 5, para 6, 7, 8 & 9

- 54560 The income and capital of the partner is taken into account in the normal way for up to 52 weeks of any temporary absence. This is so even though the claimant is being paid at the single person rate¹.

1 ESA Regs, reg 156(3)(b), reg 83

- 54561 After 52 weeks, or when the absence stops being temporary, the absent partner is no longer treated as a member of the household. Any payments from the absent partner should then be treated as liable relative payments¹.

1 ESA Regs, reg 156(3)(b)

- 54562 The applicable amount for the first four weeks when one member of the couple is abroad is the normal applicable amount for the couple. After four weeks the applicable amount is determined as if the claimant was single or a lone parent¹. This is extended to 26 weeks if the couple or a member of the couple takes a child or young person abroad for treatment².

1 ESA Regs, Sch 5, para 6; 2 Sch 5, para 7

Example

Paul is in receipt of ESA(IR) for himself and his wife Lynda. Lynda receives a pension payment of £40 per week. On 7 June, Lynda goes abroad temporarily and Paul carries on claiming ESA. Lynda is treated as a member of the couple while she is temporarily absent from the UK.

For the first four weeks of Lynda's absence, Paul's applicable amount is calculated as if she was still at home. This means that Paul is awarded ESA at the couple rate for the period 8 June to 5 July.

From 6 July onwards Paul's applicable amount is calculated as if he was a single claimant. The pension payment made to Lynda continues to be taken into account in the normal way. This is because Lynda continues to be treated as a member of Paul's family during her temporary absence.

54563 - 54599

Persons from abroad and persons subject to immigration control

General

Persons from abroad

54600 A PFA is defined as a claimant who has failed the habitual residence test¹. See DMG Chapter 07 for guidance on the habitual residence test.

1 ESA Regs, reg 70

54601 The applicable amount of a PFA is nil¹.

1 ESA Regs, Sch 5, para 11

Persons subject to immigration control

54602 A PSIC means a person who is **not** an EU national and who¹

1. requires leave to enter or remain in the UK but does not have it
2. has leave subject to the condition “no recourse to public funds”
3. is a sponsored immigrant (see DMG Chapter 07) **or**
4. has had limited leave extended only because he has appealed a decision to vary or refuse to vary that leave.

1 I & A Act 99 s 115

54603 A PSIC is excluded from ESA(IR)¹ unless they fall within one of the categories in DMG 54604.

1 I & A Act 99, s 115

PSIC entitled to normal ESA(IR)

54604 A PSIC can be considered for ESA(IR) under the normal rules¹ if they are

1. a sponsored immigrant who has been in the UK for 5 years **or**
2. a national of a country which has **ratified**
 - 2.1 the European Convention on Social and Medical Assistance (ECSMA)
or
 - 2.2 the Council of Europe Social Charter (CESC) (see DMG Chapter 07)
and is lawfully present in the UK.

Note: Persons who have come to the UK in order to seek asylum are not “lawfully present”.

1 SS (I&A) Cql Amdts Regs, reg 2(1), 2(4)(a), 2(5) & 12(3)

PSIC entitled to urgent case payments

54605 A PSIC can be considered for UCPs under the normal rules if they are¹

1. a person with limited leave whose funds from abroad have been temporarily interrupted
2. a sponsored immigrant whose sponsor has died
3. an asylum seeker with transitional protection.

Note: See DMG 54700 et seq for guidance on UCPs.

1 I & A Act 99, s 115; SS (I&A) Cql Amdts Regs, reg 2 & 12; Sch, para 1 & 2

Couples

54606 If the claimant is a member of a couple and is not a PSIC, or falls within one of the categories in DMG 54604, but the partner is a PSIC, the applicable amount will be¹

1. the claimant's personal allowance (but not the partner) **and**
2. any appropriate premium for the claimant **and**
3. either the work related activity component or the support component **and**
4. housing costs.

Note: There is no modification of the premiums where the claimant's partner is a PSIC therefore if the claimant qualifies for a premium it could be paid at the couple rate.

1 ESA Regs, Sch 5, para 10(a)

54607 - 54609

Polygamous marriages

Claimant is not a PSIC and one or more of the partners is a PSIC

54610 If the claimant is a member of a polygamous marriage and is not a PSIC, or falls within one of the categories in DMG 54604, but one or more of the partners is a PSIC, the applicable amount will be¹

1. the personal allowance for the claimant and one partner who is not a PSIC (including special cases) **and**
2. an amount for any other partner who is not a PSIC **and**
3. any appropriate premium for the claimant and the partner in **1. and**
4. either the work related activity component or the support component **and**
5. housing costs.

1 ESA Regs, Sch 5, para 10(b)

Income and capital of a partner who is a PSIC

54611 If a claimant is married polygamously to two or more members of the household, the income and capital of each partner should be calculated in the same way as for the claimant¹. The income or capital should then be treated as belonging to the claimant.

Note: In certain circumstances special rules apply² to the income of a member of a polygamous marriage who is a partner aged less than 18 (see DMG Chapter 51).

1 ESA Regs, reg 83(3); 2 reg 83(5)

Example

Hussain is a member of a polygamous marriage and has three wives, Fatima, Parveen and Yasmin. Yasmin has limited leave to enter the UK and her passport is not endorsed that she is prohibited from working. Yasmin works twelve hours per week and earns £60. Hussain claims ESA.

The DM decides that

1. Hussain, Fatima, Parveen and Yasmin are members of a polygamous marriage **and**
2. Yasmin is a PSIC who is not entitled to a UCP **and**
3. Hussain is entitled to a personal allowance for himself and Fatima and a separate personal allowance for Parveen, no benefit is payable for Yasmin **and**
4. Yasmin's wages should be taken into account on Hussain's ESA claim.

Person in Hardship

54612 Hardship payments are payments of reduced rate ESA(IR) made to ESA claimants. DMG 53140 et seq outlines how to determine if a claimant is a person in hardship.. The amount of ESA payable in hardship cases is reduced by 20% of the claimant's applicable amount¹.

1 ESA Regs, Sch 5 para 14

54613 - 54999

