

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 9

Amendment 27 – June 2018

1. This letter provides details on Amendment 27; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

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

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

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

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

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

3. Amendment 27 affects chapters 49, 50, 51 & 54. The changes:
 - Chapter 49 - amends rates at appendix 2 & 3; adds a note and cross-reference to chapter 50 at paragraph 49028 regarding Scottish Income Tax.
 - Chapter 50 - adds a note regarding Scottish rate of Income Tax at paragraph 50081 and updates appendices.
 - Chapter 51 - incorporates guidance at paragraphs 51765 to 51859 concerning 'deductions from ESA(Cont) for pension payments' that was previously in chapter 44; renumbers student paragraphs and cross-references at 51318 and 51860 to 51999 due to chapter 44 additions; adds a reference to Scottish Income Tax at 51108; incorporates ADM memo 8/18; amends the definition of Care Homes in Wales at 51192 and amends references to 'the fund' and renumbers at 51210, 51299, 51341 to 51351, 51354, 51362, 51365, 51418, 51598 and 51607.
 - Chapter 54 - adds a reference at paragraph 54214 to chapter 42 (42581).
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove

Chapter 49

49026 – 49038 (1 page)

Appendix 2 – Appendix 3 (2 pages)

Appendix 6 para 166 – 170 (1 page)

Chapter 50

50078 – 50099 (1 page)

Appendix 1 – Appendix 2 (4 pages)

Chapter 51

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Conts 51292 – Appendix 1 (6 pages)

51000 – 51019 (2 pages)

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51341 – 51389 (5 pages)

51413 – 51424 (1 page)

51598 – 51610 (2 pages)

51761 – 51999 (23 pages)

Chapter 54

54213 – 54224 (1 page)

Insert

Chapter 49

49026 – 49038 (1 page)

Appendix 2 – Appendix 3 (2 pages)

Appendix 6 para 166 – 170 (1 page)

Chapter 50

50078 – 50099 (1 page)

Appendix 1 – Appendix 2 (4 pages)

Chapter 51

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Conts 51292 – Appendix 1 (7 pages)

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Chapter 54

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Calculation of net earnings

Deductions from gross earnings

49026 The earnings of an employed earner which fall to be taken into account are the claimant's net earnings¹.

1 ESA Regs, reg 96(1)

49027 Net earnings are gross earnings less¹

1. income tax **and**
2. Class 1 NI contributions **and**
3. half of any sum paid by the employee, towards an occupational or personal pension scheme.

1 ESA Regs, reg 96(3)

Income tax

49028 Deduct from gross earnings any income tax deducted by the employer.

Note: From 2016, Scotland has been able to set its own rate of Income Tax. Please see appendix 1 to DMG Chapter 50 for more information.

NI contributions

49029 NI contributions are often called SS Contributions or NI Conts. Reduce gross earnings by any Class 1 contribution deducted by the employer.

Occupational pension scheme deductions or personal pension scheme payments

49030 Deduct from the employee's gross earnings for a normal pay period one half of any amount which

1. a person pays into an occupational pension scheme for that period **or**
2. is deducted by the employer from a payment of earnings as a contribution to an occupational pension scheme for that period **or**
3. a person contributes towards a personal pension scheme for that period.

Example

Patricia earns £50 a week and is paid weekly. She pays £26 a month into a personal pension scheme. Her normal pay period is a week. Her pension contribution is changed into a weekly figure ($£26 \times 12 \div 52 = £6$ pw) and half of this weekly figure ($£6 \div 2 = £3$) is deducted from her gross weekly earnings ($£50 - £3 = £47$).

49031 Occupational pension schemes¹ are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are

1. normally in the form of a pension, all or part of which may be taken as a lump sum
2. payable on death or retirement.

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

49032 - 49033

49034 Personal pension schemes¹ are

1. a scheme under certain pension and taxation legislation² or
2. an annuity contract or trust scheme under certain taxation legislation³.

They provide benefits independently of any employer (although an employer may still make contributions to such a scheme). Benefits are payable as annuities which may provide lump sum and pension payments payable on death or retirement.

1 ESA Regs, reg 2(1); 2 PS Act 93, s 1; Income and Corporation Taxes Act 1988, Chapter 4 of Part 14 & Finance Act 2004, Sch 36, para 1(1)(g); 3 Income and Corporations Taxes Act 1988, s 620 or s 621; Finance Act 2004, Sch 36, para 1(1)(f) & Income & Corporation Taxes Act 1988, s 622(3)

49035 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period¹.

1 R(FC) 1/90

Expenses not reimbursed by employer

49036 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred¹.

1 R(IS) 16/93

49037 Examples of expenses for which deductions may be made under DMG 49036 are

1. equipment, tools and stationery
2. overalls and specialist clothing
3. telephone calls made entirely for work purposes
4. travelling costs between different work places and any accommodation costs involved.

49038 The expense must be incurred in direct connection with the employer's trade or business¹. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed (see DMG Chapter 50). Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed².

1 Davies v. Gwaun Cae Gurwen Colliery (1924) 2 K8 651; Borley v. Ockended (1925) 2 K8 325; 2 R(IS) 16/93

Appendix 2

Maximum weekly amount

Payable under section 227 of the Employment Rights Act 1996.

	£
From 1.10.09	380
From 1.2.11	400
From 1.2.12	430
From 1.2.13	450
From 6.4.14	464
From 6.4.15	475
From 6.4.16	479
From 6.4.17	489
From 6.4.18	508

Appendix 3

Statutory guarantee payments

Amount payable to employees under section 31 of the Employment Rights Act 1996.

£

From 1.2.10	21.20 per day
From 1.2.11	22.20 per day
From 1.2.12	23.50 per day
From 1.2.13	24.20 per day
From 6.4.14	25.00 per day
From 6.4.15	26.00 per day
From 6.4.16	26.00 per day
From 6.4.17	27.00 per day
From 6.4.18	28.00 per day

Note: See DMG 20117 - 20119 for guidance on deciding whether or not a person is regularly and substantially caring for another person.

*1 IS (Gen) Regs, reg 6(4)(c) & Sch 1B, para 4; 2 SS CB Act 92, s 72(3); 3 s 65(6)(a); SS (C&P) Regs, reg 13A;
4 SS CB Act 92, s 70*

166 Where paragraph 165 1.2 applies people are treated as not in remunerative work until the earlier of¹

1. the date the claim for "AA" or DLA is decided or
2. 26 weeks from the date of claim for "AA" or DLA.

1 IS (Gen) Regs, Sch 1B, para 4(a)(ii) & (iii)

People living in a care home, Abbeyfield Home or an independent hospital

167 People who

1. are in employment and
2. live in certain types of accommodation

are treated as not being in remunerative work¹.

1 IS (Gen) Regs, reg 6(4)(d)

168 Paragraph 167 applies only to a person who

1. lives in (whether permanently or temporarily) or is temporarily absent from
 - 1.1 a care home or
 - 1.2 an Abbeyfield Home or
 - 1.3 an independent hospital and
2. requires personal care because of
 - 2.1 old age or
 - 2.2 disablement or
 - 2.3 past or present dependence on alcohol or drugs or
 - 2.4 past or present mental disorder or
 - 2.5 a terminal illness.

Note: See DMG 51194 for the meaning of independent hospital.

Mortgage interest run-on

169 People may be entitled to IS in respect of mortgage or loan interest MIRO after they start remunerative work if the

1. remunerative work is expected to last for not less than five weeks and

2. people were, for a continuous period of 26 weeks immediately before the day on which they started this work, entitled to and in receipt of JSA(IB) or IS **and**
3. people had, on the day before starting this work, included in the applicable amount, an amount in respect of mortgage or loan interest **and**
4. people remain liable to make payments on the loan¹.

People who satisfy these conditions are treated as not being in remunerative work for the first four weeks of that work².

1 IS (Gen) Regs, reg 6(5); 2 reg 6(6)(a)

- 170 When determining the length of time benefit has been in payment, any periods of MIRO will not be treated as part of the 26 week qualifying period¹.

1 IS (Gen) Regs, reg 6(7)

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- 2.2 one week at £29.40 (which is the balance of the second payment yet to be taken into account) but £20.00 is disregarded - ESA of £65.70 (£75.10 - £9.40 (£29.40 - £20.00)) is payable on 19.1.09.

50078 - 50079

Expenses deducted from royalty, copyright payment or Public Lending Right payment

50080 The S/E earner may have to pay expenses on receipt of the royalty, copyright payment or Public Lending Right payment. These expenses are deductible if they are

1. wholly and exclusively for the purpose of that employment **and**
2. paid out in the attribution period of the payment¹.

1 ESA Regs, reg 92(3); reg 98(1)(a); reg 98(3)(a)

Example 1

Truman writes a book between June and December 2008 and it is on sale from 1.1.09. The first copyright payment is received on 3.6.09. There are no expenses paid out in the attribution period of the payment. The DM decides that no expenses should be deducted from the payment.

Example 2

Harper writes a book. She agrees with her accountant that she will pay her accountancy fees when she receives her first payment. Harper's book is published in March 2009 and the first copyright is received on 1.5.09.

Harper pays her accountant using the money from the copyright payment. The DM decides to deduct the accountant's bill as an expense because

1. the accountant's bill is an expense that is wholly and exclusively for the purpose of Harper's employment **and**
2. it is defrayed in the attribution period of the copyright payment.

Income tax, NI contributions and qualifying premium payments deducted from a royalty, copyright payment or Public Lending Right payment

50081 The DM should consider deductions for

1. income tax (see DMG 50270 et seq) **and**
2. NI contributions (see DMG 50297 et seq) **and**

3. half of any premiums for personal pensions (see DMG 50326)

from the royalty, copyright payment or Public Lending Right payment¹.

Note 1: The DM should take care not to duplicate any deduction for a personal pension. A deduction for such a premium may already be deducted from another assessment period.

Note 2: Since 2016 Scotland has been able to set its own rate of Income Tax, please see Appendix 1 for more information.

1 ESAREgs, reg 92(3), 98(1)(a) & 98(3)(b) & (c)

50082 - 50099

Appendix 1

Notional deductions for income tax

Main income tax allowances

1. The main income tax allowances are as follows

		11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
		£	£	£	£	£	£	£	£
Additional personal		-	-	-	-	-	-	-	-
Personal	under 65	7,475	8,105	9,440	10,000	10,600	11,000	11,500	11,850
Personal	65 - 74	9,940	10,500	10,500	10,500	10,600	11,000	11,500	11,850
Personal	75 & over	10,090	10,660	10,660	10,660	10,660	11,000	11,500	11,850
Married couple	under 65	-	-	-	-	-	-	-	-
Married couple	65 - 74	-	-	-	-	-	-	-	-
Married couple	75 & over	7,295	7,705	7,915	8,165	8,355	8,355	8,445	8,685

Basic rates of tax

2. Income tax is payable on taxable income

Note there are different rates for Scotland from 18/19 – see 3. below.

	£	
10/11	1 – 37,400	at basic rate of 20%
11/12	1 – 35,000	at basic rate of 20%
12/13	1 – 34,370	at basic rate of 20%
13/14	1 – 32,010	at basic rate of 20%
14/15	1 – 31,865	at basic rate of 20%
15/16	1 – 31,785	at basic rate of 20%
16/17	1 – 32,000	at basic rate of 20%
17/18	1 – 33,500	at basic rate of 20%
18/19	1 – 34,500	at basic rate of 20%

3. Scottish Income Tax Rates

18/19	11,850 – 13,850	at starter tax rate of 19%
	13,851 – 24,000	at basic rate of 20%
	24,001 – 43,430	at intermediate rate of 21%

Appendix 2

Notional deductions for National Insurance contributions

Class 1 contributions

1. The Class 1 NI contribution for any week or month is based on the percentage rate appropriate to the band in which the estimated gross earnings fall.

2.	Earnings Bands 11/12		Earnings Limits 11/12
	Earnings	Percentage rates	LEL
	1. up to LEL	NIL	Weekly £102
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £442
			UEL
			Weekly £817
			Monthly £3,540

Primary threshold

No contributions are payable on weekly earnings of £139 or less or monthly earnings of £602 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £139.01 and £817 per week and at 2% for earnings above £817 per week.

3.	Earnings Bands 12/13	Earnings Limits 12/13
	Earnings	Percentage rates
	LEL	
	1. up to LEL	NIL
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL
		UEL
		Weekly £107
		Monthly £464
		Weekly £817
		Monthly £3,540

Primary threshold

No contributions are payable on weekly earnings of £146 or less or monthly earnings of £634 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £146.01 and £817 per week and at 2% for earnings above £817 per week.

4.	Earnings Bands 13/14	Earnings Limits 13/14
	Earnings	Percentage rates
	LEL	
	1. up to LEL	NIL
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL
		UEL
		Weekly £109
		Monthly £472
		Weekly £797
		Monthly £3,453

Primary threshold

No contributions are payable on weekly earnings of £149 or less or monthly earnings of £645 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £149.01 and £797 per week and at 2% for earnings above £797 per week.

5. Earnings Bands		Earnings Limits
14/15		14/15
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £111
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £481
		UEL
		Weekly £805
		Monthly £3,488

Primary threshold

No contributions are payable on weekly earnings of £153 or less or monthly earnings of £663 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £153.01 and £805 per week and at 2% for earnings above £805 per week.

6. Earnings Bands		Earnings Limits
15/16		15/16
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £112
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £486
		UEL
		Weekly £815
		Monthly £3,532

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £815 per week and at 2% for earnings above £815 per week.

7.	Earnings Bands 16/17		Earnings Limits 16/17
	Earnings	Percentage rates	LEL
	1. up to LEL	NIL	Weekly £112
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £486
			UEL
			Weekly £827
			Monthly £3584

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £827 per week and at 2% for earnings above £827 per week.

8.	Earnings Bands 17/18		Earnings Limits 17/18
	Earnings	Percentage rates	LEL
	1. up to LEL	NIL	Weekly £113
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £490
			UEL
			Weekly £866
			Monthly £3753

Primary threshold

No contributions are payable on weekly earnings of £157 or less or monthly earnings of £681 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £157.01 and £866 per week and at 2% for earnings above £866 per week.

9.	Earnings Bands		Earnings Limits
	18/19		18/19
	Earnings	Percentage rates	LEL
	1. up to LEL	NIL	Weekly £116
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £503
			UEL
			Weekly £892
			Monthly £3863

Primary threshold

No contributions are payable on weekly earnings of £162 or less or monthly earnings of £702 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £162.01 and £892 per week and at 2% for earnings above £892 per week.

Class 2 contributions

10. The weekly rate of Class 2 contributions are as follows

	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£
Ordinary Class 2 rate	2.70	2.75	2.80	2.80	2.85	2.95
Share fisherman rate	3.35	3.40	3.40	3.45	3.50	3.60

Small earnings exception/small profits threshold

11. The rates of the small earnings exception are as follows.

	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£
Earnings limit	5,725	5,885	5,965	5,965	6,025	6,205

Class 4 contributions

12. The weekly rates of Class 4 contributions are as follows.

	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£
Lower level	7,755	7,956	8,060	8,060	8,164	8,424
Higher level	41,450	41,865	42,358	43,000	45,000	46,350
Percent age rate	9% of £7,755 to £41,450 per year, 2% above £41,450	9% of 7,956 to 41,865 per year, 2% above 41,865	9% of 8,060 to 42,358 per year, 2% above 42,358	9% of £8,060 to £43,000 per year, 2% above £43,000	9% of £8,164 to £45,000 per year, 2% above £45,000	9% of £8,424 to £46,350 per year, 2% above £46,350

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Chapter 51 - Income other than earnings

General

Introduction

Scope of this chapter

- 51000 This Chapter deals with the calculation of income other than earnings for ESA(IR) & (Cont) as well as student's income. With the exception of payments made to a person carrying out public or local functions, pension protection fund periodic payments, occupational and personal pension payments¹, income other than earnings does not affect the calculation of ESA(Cont).

1 WR Act 07, s 3

Meaning of claimant

- 51001 Claimant means¹ a person who has claimed ESA.

1 WR Act 07, s 24(1)

What is income

- 51002 Income is not defined in law. It can normally be separated from capital because a payment of income
1. forms part of a series of payments, whether or not they are made regularly or
 2. is made for a period of time or
 3. satisfies both the conditions in 1. and 2..

Note: Where capital¹ is being paid by instalments each payment will be capital unless DMG 51425 et seq applies.

*1 Lillystone v. Supplementary Benefits Commission (1982) FLR;
Morrell v. Secretary of State for Work and Pensions [2003] EWCA Civ 526*

How much income should be taken into account

- 51003 The DM should take into account the gross amount of any income¹. References in this Chapter to income means income other than earnings. When calculating gross income disregard the sums in DMG 51006 - 51008 and DMG 51080 et seq. No disregards should be made for any other expenses or deductions.

1 ESA Regs, reg 104(1)

Deductions from benefits

- 51004 Where a payment of SS benefit has a deduction for benefit recovery, the DM should take into account the gross amount of benefit¹.

1 ESA Regs, reg 104(3)

Reduction due to a failure to attend a work focused interview or work-related activity

- 51005 Where IB, SDA or ESA(Cont) paid to a claimant's partner has been reduced because the partner has failed to attend a WfI, or undertake WRA, the amount of IB, SDA or ESA(Cont) to be taken into account as income is the full amount that would have been payable before the reduction¹ (see DMG 05380).

1 SS (JPI) Regs 02, reg 12(11) & ESA Regs, reg 63(5)

Overpayment recovery from other income

- 51006 Except where DMG 51004 applies, when income paid to a claimant is reduced because the paying authority is enforcing recovery of an overpayment, the DM should take into account the net amount. This is the amount actually received by the claimant, unless the circumstances in DMG 51007 apply.

Example

Ted is in receipt of ESA(IR). His partner, Libby, works and is in receipt of WTC. HMRC has awarded WTC at a rate of £50 per week. However, due to the recovery of an overpayment which occurred on a previous award of WTC, the amount Libby actually receives is £28 per week. When determining the amount of WTC to take into account on Ted's award of ESA(IR), the DM takes into account Libby's WTC of £28 per week.

- 51007 If the claimant volunteers to repay an overpayment by offering to have deductions made from his income, the DM should consider whether the claimant has deprived himself of that income (see DMG 51469 et seq).

Deduction of income tax

- 51008 Any tax actually paid, or due to be paid¹, should be deducted when calculating any income that is to be

1. taken fully into account or
2. disregarded in part².

Note 1: Where the amount of tax due to be paid has been assessed under the HMRC Tax Self Assessment process then DMs should consider revision action if it is shown that there is a tax liability or the actual tax liability differs from the forecast provided by the claimant. DMG Chapter 03 provides guidance on revision.

Note 2: From 2016 Scotland has been able to set its own Income Tax rates. Please see Appendix 1 of DMG Chapter 50 for more information.

1 R(IS) 4/05; 2 ESA Regs, Sch 8, para 1

Example

Jack makes a claim for ESA on 5 June and becomes entitled to ESA(IR). His partner has been receiving RP of £106.50 a week since April. Jack provides a forecast tax liability which estimates that his partner will be liable for £79.00 tax under the HMRC Tax Self Assessment process on this year's RP paid to her.

The DM calculates the amount of RP to be taken into account as:

£106.50 a week RP being paid less £1.52 a week tax [$£79 \div 52$] = £104.98. The DM takes £104.98 RP a week into account.

Questions on the treatment of income

51009 The DM should direct further enquiries if there is any doubt whether income fits into any of the definitions in this Chapter. Enquiries will usually be to the paying authority and should be made before any decision is given.

51010 After deciding whether any disregards apply, the DM should calculate

1. the period over which the income should be taken into account **and**
2. the weekly rate at which the income should be taken into account.

51011 - 51019

Pension payments taken fully into account

Occupational pensions

Treatment of occupational pensions in ESA(IR)

51050 Payments of income from occupational pensions should be taken fully into account subject to the normal rules for calculating the amount of income to be assessed. Occupational pension schemes are set up by employers to provide pensions for employees and their dependants. Payments under the

1. British Coal Voluntary Employment Redundancy Scheme or
2. British Coal Industrial Death and Retirement Scheme or
3. British Coal RMPS

are included. Occupational pension payments do not include discretionary payments from a fund set up to relieve hardship¹. This type of payment is a charitable or voluntary payment.

1 ESA Regs, reg 2(1)

Treatment of occupational pensions in ESA(Cont)

51051 See DMG 51778 for guidance on the treatment of occupational pensions in ESA(Cont).

Personal pensions

Treatment of personal pensions in ESA(IR)

51052 Income from personal pension schemes should be taken fully into account. Personal pension schemes provide pensions on retirement for

1. S/E people or
2. employees who are not members of occupational pension schemes.

Personal pension schemes may also make payments to dependants following the death of the scheme member.

Treatment of personal pensions in ESA(Cont)

51053 See DMG 51772 for the guidance on the treatment of personal pensions in ESA(Cont).

51054 - 51059

Payments for housing costs and mortgage protection payments

Introduction

51140 The following paragraphs explain disregards on payments for housing costs. The type of disregard depends upon the way a payment is made. DMs should make sure that there is sufficient evidence available to decide how to apply the disregards.

Meanings of terms used

51141 In the following paragraphs references to

1. “home” means “dwelling occupied as the home” which includes
 - 1.1 the dwelling and any
 - 1.1.a garage
 - 1.1.b garden or
 - 1.1.c outbuildingsnormally occupied by the claimant as the home **and**
 - 1.2 any buildings or land not occupied as the home which it is not practicable or reasonable to sell separately **and**
 - 1.3 in Scotland, any croft land on which the dwelling is situated
2. “qualifying housing cost” means
 - 2.1 a loan which which qualifies under the Loans for Mortgage Interest Regulations¹ (LMI), see ADM [Memo 8/18](#) or
 - 2.2 any other housing costs (for example service charges) which satisfies the conditions of DMG, Chapter 44

1 The Loans for Mortgage Interest Regulations 2017 ([SI 2017/725](#))

Note: From 6.4.18 the regulations which provide for entitlement to owner occupier payments within UC, IS, JSA(IB), ESA(IR) and SPC are repealed but payment towards certain other housing costs will continue. Support for owner occupier payments will be met by stand-alone loans under new legislation. However transitional arrangements are in place for existing claimants whose housing costs can continue for a prescribed/limited period – see [ADM Memo 8/18](#) for full details.

3. “mortgage protection policy” means an insurance policy taken out to insure against the risk of not being able to maintain repayments on a loan or mortgage
4. “third party” means a person or organization to whom the claimant is liable to make payments for housing or accommodation. This could include a

- 4.1. landlord
- 4.2. building society
- 4.3. insurance company
- 4.4. care home, an Abbeyfield Home or independent hospital (see DMG 51192 - 51194 for the meaning of care home and independent hospital)
- 5. "capital repayments" include repayments of capital on a "repayment" mortgage or loan as well as payments into
 - 5.1. endowment policies
 - 5.2. individual savings accounts (ISAs)
 - 5.3. personal pension plans
 - 5.4. other investment plans
 that have been taken out to repay a mortgage or loan.

Note: Rooms that are sub let should be treated as part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

Payments made direct to a third party when the claimant could not receive the income direct

51142 Where a claimant receives housing costs within their award as in DMG 51141 2.2 then the DM should take these payments into account but only up to the level of the housing costs included in the applicable amount. Any excess should be ignored¹. This disregard applies

- 1. to a payment if the claimant could not successfully apply to receive the income direct **and**
- 2. for any period before the claimant could expect to get a payment in a case where the claimant could successfully apply to receive the income direct.

Note: The disregards in DMG 51150 et seq do not apply to these payments².

1 ESA Regs, reg 106(3)(c); 2 Sch 8, para 31 & 32(2)

Example

Asif is entitled to ESA(IR). He has an income protection policy that pays £50 a week.

Under the terms of the policy payments must be made direct to his landlord. The money is used to meet Asif's service charges.

Asif's applicable amount includes £25 a week for service charges.

The DM treats Asif as having income of £25 a week. The balance of £25 is ignored.

Payments made direct to a third party when the claimant could receive the income direct

51143 Where a claimant receives housing costs within their award as in DMG 51141 2.2 the DM should treat any payments made direct to a third party as the claimant's income from the date the claimant could expect to get the income¹

1. if an application was made **and**
2. if the claimant could successfully apply to receive the income direct.

This notional income should be treated as if it is actually received by the claimant².

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

How should the DM decide when the claimant could expect to get the income

51144 The DM should calculate the date the claimant could expect to receive the income by

1. assuming that an application was made on the date the DM first becomes aware of the possible income **and**
2. adding the estimated time it would take for an application to be processed.

Payments made direct to the claimant

51145 If the claimant

1. receives payments **or**
2. is treated as receiving payments

for housing costs direct the DM should decide if the income comes from a mortgage protection policy.

51146 Where a payment is made from a mortgage protection policy the DM should always apply any disregard for a mortgage protection policy payment before considering any other disregards¹.

Note: The DM will not automatically obtain a statement from a claimant's lender about housing costs. The DM should normally accept the claimant's own evidence. Corroboration of the claimant's evidence should only be sought if there are grounds to doubt it.

1 ESA Regs, Sch 8, para 31.

51147 - 51149

Mortgage protection policy payments

How much mortgage protection policy payment should be disregarded

51150 The DM should disregard any payments that are **used** to pay the amount of any loan which

1. qualifies under the Loans for Mortgage Interest Regulations¹ (see DMG 51141) or
2. would qualify for such a loan if an application was made.

Note: The claimant only has to have a loan which qualifies for an LMI loan, they do not have to be in receipt of an amount of LMI loan for this disregard to apply.

1 ESA Regs, Sch 8, para 31

Example 1

Arsene receives ESA(IR) and applies for a loan under the new LMI scheme. He also has a mortgage protection policy. Arsene is assessed as requiring a loan of £50/week under LMI but he does not receive a payment as his mortgage protection policy is equal to the amount of that - £50/week. As his loan is a qualifying loan and he uses his mortgage protection policy to meet his mortgage repayments, they are disregarded in the weekly calculation of his ESA(IR) award.

Example 2

Thierry receives ESA(IR) and applies for a loan under the new LMI scheme. He also has a mortgage protection policy of £50/week. Thierry is assessed as requiring a loan of £75/week under LMI, taking into account the mortgage protection policy of £50/week. As his loan is a qualifying loan and he uses his mortgage protection policy to meet his mortgage repayments, they are disregarded in the weekly calculation of his ESA(IR) award.

What if the payment from the mortgage protection policy is more than the claimant's housing costs

51151 If the amount payable from the mortgage protection policy is more than the total the claimant has to pay to the third party, the balance will be ignored. This is because the mortgage protection policy is already taken into account in the calculation of payments under the LMI scheme. See [ADM 8/18](#) for full details.

Example

Meghan receives JSA and applies for a loan under the new LMI scheme. She also has a mortgage protection policy. Meghan is assessed as requiring a loan of £100/week under LMI. She does not receive this loan as her mortgage protection

policy is £150/week. As her loan is a qualifying loan and she uses the mortgage protection policy to pay her mortgage repayments, the payment from the mortgage protection policy is completely disregarded for JSA purposes.

51152 - 51159

Other payments for housing costs

Types of payment disregarded

51160 Payments of income

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

towards any of the costs in DMG 51163 should be disregarded¹. This disregard does not apply to payments under an insurance policy to which DMG 51218 applies.

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

51161 If the payment is from a mortgage protection policy the DM should consider the disregards explained in DMG 51150 - 51151 before considering this disregard.

51162 If a payment is made from an insurance policy the DM should decide if the policy was taken out to meet housing costs¹. If the policy was taken out to meet housing costs the DM should consider the disregards at DMG 51150 et seq before any other disregards.

1 R(IS) 13/01

51163 Disregard

1. any payment on a loan secured on the claimant's home which is not a qualifying housing cost (if only part of the loan is not a qualifying housing cost this disregard only applies to the amount of the payment for that part)¹
2. interest payments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount or by a loan payment under the new LMI scheme²
3. capital repayments for a loan which is a qualifying housing cost where those payments are not met by a loan payment under the new LMI scheme³
4. insurance policy premiums for
 - 4.1 mortgage protection policies if the other payments disregarded under this paragraph come from it⁴ **and**
 - 4.2 building insurance policies for the claimant's home⁵
5. other housing costs
 - 5.1 any payment towards
 - 5.1.a service charges **and**
 - 5.1.b ground rent or rentcharge **and**
 - 5.2 any payment for
 - 5.2.a a co-ownership scheme **and**
 - 5.2.b a Crown tenancy **and**
 - 5.2.c a tent

to the extent that they are not met in the applicable amount or by a loan payment under the new LMI scheme⁶

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

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

Note 2: A service charge is a qualifying housing cost if it is payable as a condition of the claimant occupying a property. See DMG Chapter 44 for guidance when a service charge can be met as a housing cost.

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

Example 1

George receives ESA(IR) and has a loan secured on his home which does not qualify under the new LMI scheme. George's father meets the loan repayments in full. The payments from George's father are completely disregarded for the purposes of calculating George's ESA(IR) award.

Example 2

Charlotte receives ESA(IR) and has a loan which is a qualifying loan under the new LMI scheme but she chooses not to take up the loan offer. This is because Charlotte's parents are meeting the loan repayments in full for her. These payments are completely disregarded for the purposes of calculating Charlotte's ESA(IR) award.

Example 3

William receives ESA(IR) and receives a payment for his mortgage under the new LMI scheme. However, William's loan payments are less than the amount he has to pay because the lender's interest rate is higher than the standard interest rate used to calculate the LMI payments. William's brother makes a contribution to him for the shortfall and he uses this to meet his mortgage repayments in full. The amount given to William by his brother is completely disregarded for the purposes of calculating his ESA(IR) award.

Example 4

Kate receives ESA(IR) and a payment for her mortgage under the new LMI scheme. Kate's sister also gives her the money needed to meet her mortgage repayments each month. The money given to Kate by her sister is taken fully into account for the purposes of calculating her award of ESA(IR) as it does not fall to be disregarded under the provisions described in DMG 51163.

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

1 ESA Regs, reg 85

- 51165 If a payment for a housing cost or part of a housing cost has already been disregarded under DMG 51150 - 51151 the payment for the same cost should not be disregarded again under DMG 51163.

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

- 51166 The DM should include any other disregard that applies to a payment made for housing costs. This includes any

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

51167 - 51169

Supersessions and payments for housing costs

- 51170 Special rules on the supersession of disregards of payments for housing costs apply in ESA¹. The special rules apply to

1. mortgage protection policies **and**
2. other payments for housing costs.

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

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

- 51172 A supersession caused by a change in interest payable on

1. a loan that is a qualifying housing cost **or**
 2. a loan that is not a qualifying housing cost but is secured on the home
- will not be effective until the next appropriate date is reached¹.

1 SS CS (D&A) Regs, reg 7(17F)

- 51173 The appropriate date in DMG 51172 is the later of

1. the date when¹
 - 1.1 new or existing housing costs are awarded in full because the claimant or partner is aged at least 60 **or**
 - 1.2 existing housing costs are awarded at 100% after the claimant has been in continuous receipt of ESA(IR) for 26 weeks **or**
 - 1.3 new housing costs are awarded at 100% after the claimant has been in continuous receipt of ESA(IR) for 39 weeks **or**

2. the date of the next change in standard interest rate².

1 SS CS (D&A) Regs, reg 7(17F)(a); 2 reg 7(17F)(b)

Example

Frank becomes entitled to ESA(IR) on 1 April. He has a mortgage on his home which was taken out before 2.10.95. Frank has a mortgage protection policy which pays the interest and capital repayments on his mortgage.

The DM calculates the amount of the disregard for Frank's mortgage protection policy payments and decides that no income should be taken into account.

On 1 May the interest payable on Frank's mortgage increases. The DM supersedes the disregard of Frank's mortgage protection policy payments but the supersession is not effective until 1 October when his existing housing costs have been awarded at 100%.

- 51174 The special supersession rules only apply to changes in interest payments caused by interest rate changes. Normal supersession rules apply to all other changes of circumstances including

1. changes in capital repayments on a loan **and**
2. changes in premiums for
 - 2.1 mortgage protection policies **and**
 - 2.2 policies designed to repay the loan **and**
 - 2.3 buildings insurance policies.

Note: The amount of premiums for some mortgage protection policies depends on the amount of interest actually payable. Normal supersession rules apply where a change in interest payable causes mortgage protection policy premiums to change.

51175 - 51179

- 51180 When

1. a change of interest payable is not effective until the next appropriate date is reached **and**
2. a later change occurs that
 - 2.1 affects the amount of interest disregarded **and**
 - 2.2 the special supersession rules do not apply

the amount of interest disregarded because of the second change should be based on the actual interest payable.

Example

Liam has a mortgage protection policy. The interest payable on his loan is £15 a week. He receives £10 a week interest in his applicable amount.

On 1 January the DM disregards £5 a week.

On 1 February the interest payable increases to £16 a week. The DM supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5.

On 1 March the standard interest rate changes. The interest in Liam's applicable amount increases to £12. The actual interest payable remains at £16.

The DM supersedes the amount of the disregard. The disregard is reduced to £4 (£16 - £12).

51181 When

1. a change in interest payable is not effective until the next appropriate date is reached **and**
2. a later change occurs that
 - 2.1 affects disregarded items other than loan interest **and**
 - 2.2 special supersession rules do not apply

there will be no grounds to supersede the disregard of interest. The supersession should be restricted to the items directly affected by the change¹.

1 R(IS) 15/93

Example

Christina receives payments from a mortgage protection policy. The interest payable on her loan is £15 a week. She gets £10 a week in her applicable amount.

From 1 January the DM disregards £5 from the mortgage protection policy payment.

On 1 February the interest on the loan increases to £16 a week. The DM supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5 a week.

On 1 March mortgage protection policy premiums increase. The DM increases the amount of the disregard relating to mortgage protection policy premiums only. The amount of the disregard relating to loan interest is not superseded until the next appropriate date is reached.

51182 - 51189

Payments for care home, Abbeyfield Home or independent hospital charges

Introduction

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

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

51191 The treatment of the income depends on

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

Care homes and independent hospitals

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

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

*1 ESA Regs, reg 2(1); Care Standards Act 2000, s 3;
Regulation and Inspection of Social Care (Wales) Act 2016, part 1*

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

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

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

51194 An independent hospital means¹ in

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

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

Types of payment

51195 The payments for accommodation may be

1. charitable or voluntary (see DMG 51390 et seq) or
2. other payments.

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

51196 - 51199

Payments to claimants not in Local Authority sponsored accommodation

51200 This disregard applies where a claimant is residing in

1. a care home, Abbeyfield Home, or independent hospital **and**
2. accommodation that has not been provided by an LA under certain legislation¹.

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

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

51201 The DM should disregard from any payment intended and used for accommodation charges the difference between the

1. claimant's applicable amount **and**
2. actual charge made by the home or hospital¹.

1 ESA Regs, Sch 8, para 34

Example

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

The DM calculated Andrew's applicable amount as follows

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

actual charge	£300.00
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less	£54.65
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The disregard is	£245.35
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Income fully disregarded

Types of income fully disregarded

- 51210 When calculating income for ESA(IR) disregard fully
1. any payment from and/or some payments from money that originally came from
 - 1.1 the Macfarlane Trust
 - 1.2 the Macfarlane (Special Payments) Trust
 - 1.3 the Macfarlane (Special Payments) (No. 2) Trust
 - 1.4 the Independent Living Fund (2006) - but see **note 2**
 - 1.5 the Eileen Trust ('the Fund')
 - 1.6 the Skipton Fund
 - 1.7 MFET Limited
 - 1.8 the Caxton Foundation
 - 1.9 the Scottish Infected Blood Support Scheme
 - 1.10 the London Emergencies Trust (LET)
 - 1.11 the We Love Manchester Emergency Fund (WLMEF)
 - 1.12 Infected Blood Schemes
 2. any payment for a reduction of CT
 3. AAs
 4. AFIP
 5. The Bereavement Support Payment (see DMG 51232)
 6. certain payments due to be paid before the date of claim
 7. CHB
 8. child maintenance
 9. Christmas Bonus
 10. compensation for loss of HB
 11. concessionary payments
 12. cost of conversion of foreign money
 13. CTB
 14. CTC
 15. dependant's or non dependant's contributions to accommodation and living costs
 16. DLA

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

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

Note 1: See DMG 51341 et seq for further guidance on payments listed at 1.1 - 1.12.

Note 2: The Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if a claimant receives funding from any of these replacement schemes.

51211

Adoption allowance

51212 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

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

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

Adoption allowance paid for members of the family

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

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

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

51214 Disregard any payment¹ made under specific legislation² in respect of

- 1. a child who is not a member of the family or
- 2. the claimant or partner.

See DMG 51215 for adoption allowances in Scotland and Wales.

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

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

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

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

1 ESA Regs, reg 107(4)

Residence orders

Northern Ireland Children Order

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

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

Local authority payments for children subject to a residence order

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

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

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

Credit insurance policies

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

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

Disregard for credit insurance policies

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

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

Note: The disregard does not apply to insurance policies for qualifying housing costs³. The disregard for these policies is explained at DMG 51150 - 51151.

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

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

2. cannot be transferred to the UK

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

1 ESA Regs, Sch 8, para 24

Income in kind

51298 The DM should fully disregard any income in kind except

1. support provided to a claimant under specific immigration and asylum law **and**
2. notional income¹ **and**
3. payments made to a third party in respect of the claimant which are used by the third party to provide benefits in kind to the claimant².

Note 1: Credits received from participating in a LETS scheme (see DMG Chapter 50) are not income in kind. Credits should be taken into account in the appropriate way.

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

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

Example 1

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

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

Example 2

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

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

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

51299 The exceptions at DMG 51298 do not apply¹ when the income in kind comes from

1. the Macfarlane Trust
2. the Macfarlane (Special Payments) Trust
3. the Macfarlane (Special Payments) (No. 2) Trust
4. the Eileen Trust ('the Fund')
5. the Independent Living Fund (2006) – see **note** below
6. MFET Limited
7. the Skipton Fund
8. the Caxton Foundation
9. The Scottish Infected Blood Support Scheme

10. the London Emergencies Trust (LET)
11. the We Love Manchester Emergency Fund (WLMEF)
12. Infected Blood Schemes or
13. the partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

1 ESA Regs, Sch 8, para 22(2) & (3)

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

51300 - 51309

Income treated as capital

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

1 ESA Regs, Sch 8, para 36

Jurors or witnesses court attendance allowance

- 51311 The DM should fully disregard any payment to a

1. juror or
2. witness

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

1 ESA Regs, Sch 8, para 43

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

- 51312 The DM should disregard any payments which are made

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

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

1 SW (Scot) Act 68, s 12B; Health and Social Care Act 2001, s 57; National Health Service Act 2006, s 12A - 12D; The Care Act 2014, s 31-33; The Social Services Well-being (Wales) Act 2014, s 50 or 52;

2 ESA Regs, Sch 8, para 53

Discretionary payments for special needs

51318 A payment should be disregarded¹ if it is

1. discretionary **and**
2. made
 - 2.1 under employment and training law² **and**
 - 2.2 to meet, or help meet, the special needs of a person who is undertaking a qualifying course.

Note: Travelling expenses incurred as a result of the claimant's attendance on the course should not be disregarded under this paragraph if the same expenses have already been disregarded under DMG 51947 (student income).

1 ESA Regs, Sch 8, para 15; 2 E & T Act 73, s 2

51319 - 51324

Special educational needs payments and budgets

51325 The parents of children with special educational needs and young people with special educational needs have an option of a personal budget. This is so they control how some of the provision in their Education, Health and Care plans can be delivered¹. The DM should fully disregard any of these payments².

1 Children and Families Act 2014, s 49; 2 ESA Regs, Sch 8, para 67

51326 - 51329

Vouchers (including child care cheques)

51330 The DM should fully disregard, in accordance with DMG 51298, any vouchers received by the claimant as income in kind. But DMs should consider whether

1. claimants should be treated as having notional income **or**
2. there has been deprivation of income

before applying the disregard¹ (See DMG 49129 for vouchers treated as earnings).

1 ESA Regs, Sch 8, para 22

51331 The types of vouchers that claimants might receive are

1. education vouchers for four-year-old children
2. luncheon vouchers
3. child care vouchers
4. child care cheques
5. gift vouchers from shops.

Welfare foods, NHS supplies, travelling expenses and assisted prison visits

51332 The DM should fully disregard

1. payments made under specific legislation for healthy start vouchers, free milk and vitamins¹ **and**
2. refunds for
 - 2.1 NHS glasses **and**
 - 2.2 dental treatment **and**
 - 2.3 patients' travelling expenses made under specific legislation or any similar payments made by the Secretary of State for Health² **and**
3. payments made by the Secretary of State for Justice or the Scottish Ministers for travel, accommodation and BL costs for assisted prison visits³.

1 ESA Regs, Sch 8, para 46; 2 Sch 8, para 45; 3 Sch 8, para 47

Work-related activity

51333 Any payment made to the claimant in respect of any travel or other expenses

1. incurred **or**
2. to be incurred

due to a requirement to take part in WRA is fully disregarded¹.

1 ESA Regs, Sch 8, para 15A

The child maintenance disregard

51334 Any income payment of child maintenance paid by or derived from an LR - but not by the claimant or claimant's partner - falls to be fully disregarded as income¹. The payment has to be in respect of a child or young person who is a member of the claimant's family. LRPs which do not also fall within the meaning of child maintenance should be taken into account as LRPs². DMG 51617 et seq provides guidance on LRPs.

1 ESA Regs, Sch 8, para 60; 2 reg 119

Meaning of child maintenance

51335 A payment of child maintenance is¹ any payment

1. towards the maintenance of
 - 1.1 a child **or**
 - 1.2 a young person **and**

Infected Blood Schemes and other specific Trusts

Payments from Infected Blood Schemes and other specific Trusts

Infected Blood Schemes

- 51341 Infected Blood Schemes (IBS), approved for such purposes by the Secretary of State, replaced the five existing payment schemes (The Eileen Trust ('the Fund'), The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation – see DMG 51346 - 51352) for England, Northern Ireland and Wales from 2.10.17. These schemes provide financial support to people infected with HIV and/or hepatitis C as a result of contaminated NHS blood or blood products.

Income from Infected Blood Schemes

- 51342 Fully disregard¹
1. any income from approved Infected Blood Schemes **and**
 2. any income from capital that was received from approved Infected Blood Schemes.

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

The Scottish Infected Blood Support Scheme

- 51343 The Scottish Infected Blood Support Scheme (SIBSS)¹ became operational from 1.4.17. It is administered by NHS National Services Scotland (NSS), legally known as the Common Services Agency. NSS is an NHS Board accountable to Scottish Ministers. SIBSS combined the five existing blood support schemes (The Eileen Trust ('the Fund'), The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation – see DMG 51346 - 51352) into one scheme in Scotland.

1 ESA Regs, reg 2(1)

Income from the Scottish Infected Blood Support Scheme

- 51344 Fully disregard¹
1. any income from the Scottish Infected Blood Support Scheme **and**
 2. any income from capital that was received from the Scottish Infected Blood Support Scheme.

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

Previous Infected Blood Schemes

- 51345 Prior to the introduction of the Infected Blood Schemes at DMG 51341 and the Scottish Infected Blood Support Scheme at DMG 51343, five separate schemes provided financial support to people affected by contaminated NHS blood or blood products.

The Eileen Trust ('the Fund')

51346 The Eileen Trust ('the Fund') was a charitable trust set up on 29.3.93 to give further help to people who are not haemophiliacs but who contracted HIV when receiving NHS

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

The Macfarlane Trusts

51347 The Macfarlane Trusts were set up to provide compensation to haemophiliacs who contracted HIV when receiving NHS

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

51348 The Macfarlane Trusts are

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

MFET Limited

51349 MFET Limited¹ is an organisation funded by DH. The purpose of MFET Limited is to make payments to people who have acquired HIV as a result of treatment by the NHS with blood or blood products.

1 ESA Regs, reg 2(1)

The Caxton Foundation

51350 The Caxton Foundation was established on 28.3.11. It administers funds provided by DH for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments¹.

1 ESA Regs, reg 2(1)

Income from the Eileen Trust ('the Fund'), Macfarlane Trusts, and the Caxton Foundation

51351 Fully disregard¹

1. any income and
2. any income from capital that was received from schemes in DMG 51346 - 51352.

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

The Skipton Fund

- 51352 The Skipton Fund administers an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C. It includes people infected as a result of NHS blood products and other people eligible for payment in accordance with the scheme's provisions¹.

Note: Payments from the Skipton Fund will be payments of capital (see DMG Chapter 52).

1 ESA Regs, reg 2(1)

The London Emergencies Trust

- 51353 The London Emergencies Trust (LET)¹ was set up to alleviate hardship for those who have been bereaved or injured as a result of the terror attacks in London on 22.3.17 and 3.6.17. Beneficiaries of the LET may receive lump sum and/or regular payments.

1 ESA Regs, reg 2(1)

Income from the London Emergencies Trust

- 51354 Fully disregard¹

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

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

The We Love Manchester Emergency Fund

- 51355 The We Love Manchester Emergency Fund (WLMEF)¹ was set up to alleviate hardship for those have been bereaved or injured as a result of the terror attack in Manchester on 22.5.17. Beneficiaries of the WLMEF may receive lump sum and/or regular payments.

1 ESA Regs, reg 2(1)

Income from the We Love Manchester Emergency Fund

- 51356 Fully disregard¹

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

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

The Independent Living Fund (2006)

- 51357 The original Independent Living Fund ran from 1988 to 1993. It was replaced by the Independent Living (1993) Fund and the Independent Living (Extension) Fund. With effect from 1.10.07 these funds were replaced by the Independent Living Fund (2006). The fund closed permanently on 30.6.15. Any payments made under any of the replacement schemes are not covered by this legislation and will therefore be taken fully into account.

Income from the Independent Living Fund (2006)

- 51358 Fully disregard¹ any income from the Independent Living Fund (2006).

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

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

The London Bombings Relief Charitable Fund

- 51359 The London Bombings Relief Charitable Fund¹ was set up to relieve the needs of victims, including families or dependants of victims, of the terrorist attacks in London on 7.7.05. Interim payments were made to relieve the immediate needs of victims followed by further lump sum payments. Recipients may receive more than one lump sum payment.

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

1 ESA Regs, reg 2(1)

Payments from money which came from the Trusts

Meaning of the Trusts

- 51360 "The Trusts"¹ is the term that describes
1. the Macfarlane Trusts **and**
 2. the Eileen Trust ('the Fund') **and**
 3. the Skipton Fund **and**
 4. the London Bombings Relief Charitable Fund **and**
 5. MFET Limited **and**
 6. the Caxton Foundation **and**
 7. the Scottish Infected Blood Support Scheme **and**
 8. the London Emergencies Trust **and**
 9. the We Love Manchester Emergency Fund **and**
 10. Infected Blood Schemes.

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

What payments should be disregarded

- 51361 Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 51364 - 51385. In these cases, the person receiving the income is not the person who qualified for the Trust payment. In any other circumstances, payments of income from a Trust payment should be treated under normal rules.

Person with HIV

- 51362 In this guidance the term “person with HIV” is used to describe
1. people with haemophilia or
 2. other people
- who qualify for Trust payments.

Qualifying person

- 51363 In this guidance a qualifying person means¹ a person in respect of whom a payment has been made from
1. the Eileen Trust ('the Fund') or
 2. the Skipton Fund or
 3. the London Bombings Relief Charitable Fund or
 4. MFET Limited or
 5. the Caxton Foundation or
 6. the Scottish Infected Blood Support Scheme or
 7. the London Emergencies Trust or
 8. the We Love Manchester Emergency Fund or
 9. Infected Blood Schemes.

Note: A person in respect of whom a payment has been made from the Macfarlane Trust is not included above but is included in the definition at DMG 51362.

1 ESA Regs, reg 2(1)

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

- 51364 Disregard any payment made by or on behalf of a qualifying person or person with HIV from money from a Trust payment made to or for the benefit of
1. their partner or their former partner if they are **not**
 - 1.1 estranged or
 - 1.2 divorced or

- 1.3 former civil partners or
- 1.4 estranged, divorced or had their civil partnership dissolved at the date of death if the qualifying person or person with HIV has died¹ or
- 2. any child or young person who
 - 2.1 is a member of the family of the qualifying person or person with HIV or
 - 2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family².

Note: DMG 51377 - 51378 explains for how long the payment is disregarded.

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

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

51365 Fully disregard any payment from a Trust payment made by or on behalf of a partner or former partner of a qualifying person or person with HIV, providing the qualifying person or person with HIV and partner or former partner are **not**

- 1. estranged or
- 2. divorced or
- 3. former civil partners or
- 4. estranged, divorced or had their civil partnership dissolved at the date of death of either
 - 4.1 the qualifying person or person with HIV or
 - 4.2 the partner or former partner.

51366 This disregard applies if the payment is made to or for the benefit of

- 1. the qualifying person or person with HIV¹ or
- 2. any child or young person² who
 - 2.1 is a member of the family of the qualifying person or person with HIV or
 - 2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family.

Note: DMG 51377 - 51378 explains for how long the payment is disregarded.

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

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

51367 Fully disregard any payment from a Trust payment by a qualifying person or person with HIV to their

- 1. parent or

2. step parent¹ or
3. guardian² if the qualifying person or person with HIV has no parent or step parent and is a
 - 3.1 child or
 - 3.2 young person or
 - 3.3 student in FTE.

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

51368 This disregard applies if the qualifying person or person with HIV

1. has no partner or former partner from whom that person is **not**
 - 1.1 estranged or
 - 1.2 divorced or
 - 1.3 former civil partners **and**
2. has no child or young person in the family **and**
3. has never had a child or young person in their family¹.

Note: DMG 51379 explains for how long the payment is disregarded.

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

51369 - 51374

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

51375 Fully disregard any payment from the estate of a qualifying person or person with HIV to

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

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

51376 This disregard applies if at the date of death the qualifying person or person with HIV had

1. no partner or former partner from whom that person is **not**
 - 1.1 estranged or
 - 1.2 divorced or

- 1.3 former civil partners or
2. no child or young person in the family and
3. at no time had a child or young person in the family¹.

Note: DMG 51380 explains for how long the payment is disregarded.

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

For how long should the payment be disregarded

Payments to a qualifying person or person with HIV and partners

51377 Disregard payments made to or for the benefit of

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

for the lifetime of the person who received the payment. Breaks in entitlement to ESA(IR) do not alter this disregard.

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

Payments to children and young people

51378 Disregard payments made to or for the benefit of a child or young person as long as they remain

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

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

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

51379 Disregard payments to a

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

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

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

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

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

51380 Disregard¹ payments to a

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

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

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

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

Deciding if a disregard applies

51381 Once the claimant has declared any payments made from one of the Trusts the DM should decide

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

51382 Seek further evidence if there is doubt about the

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

Trust payments invested with other money

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

1 ESA Regs, Sch 8, para 41(6)

Example

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

The annuity produces an income of £50 a month.

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

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

- 51384 The DM should be satisfied that a former partner or civil partner is not estranged or divorced or had the civil partnership dissolved. Accept the claimant's statement unless it is considered to be improbable or self-contradictory.

Example

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

The DM decides that the payment should not be disregarded.

Social fund funeral payments

- 51385 Trust payments will become part of a person's estate upon death. Any assets of a dead person including

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

are not taken into account as assets of the estate if a claim for a SFFP is made.

Note: See DMG Chapter 39.

51386 - 51389

Regular charitable or voluntary payments

What are regular payments

51413 Regular charitable or voluntary payments are those that are

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

Note: Voluntary payments should not be confused with payments to volunteers.

Guidance on payments to volunteers is given at DMG 49209 - 49211.

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

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

When is a payment due to be made

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

Disregard for relevant payments

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

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

Relevant payments that should be taken fully into account

51417 The disregard in DMG 51416 does not apply to

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

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

Relevant payments paid in kind

51418 Fully disregard relevant payments that are paid in kind¹ unless one of the exceptions at DMG 51298 applies. The exceptions at DMG 51298 do not apply when the income in kind comes from

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

as explained at DMG 51299.

1 ESA Regs, Sch 8, para 22

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

51419 - 51424

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

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

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

1 ESA Regs, reg 107(3)(c)

51598 Disregard the payment to the third party¹

1. whatever it is used for, if it is made from
 - 1.1 the Macfarlane Trusts **or**
 - 1.2 the Eileen Trust ('the Fund') **or**
 - 1.3 MFET Limited **or**
 - 1.4 the Independent Living Fund (2006) **or**
 - 1.5 the Skipton Fund **or**
 - 1.6 the Caxton Foundation **or**
 - 1.7 the Scottish Infected Blood Support Scheme **or**
 - 1.8 the London Emergencies Trust **or**
 - 1.9 the We Love Manchester Emergency Fund **or**
 - 1.10 Infected Blood Schemes
2. if it is for the purchase and supply of concessionary coal under specified legislation². The Department of Energy and Climate Change is now responsible for the purchase and supply of concessionary coal. Coal is purchased through contracts and supplied to ex-coal workers and their families. The payment from the Department of Energy and Climate Change to the contractor is a payment to a third party and is disregarded.

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

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

Meaning of ordinary clothing or footwear

51599 The expression “ordinary clothing or footwear” means¹ clothing or footwear for normal daily use. It does not include

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

1 ESA Regs, reg 2(1)

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

Example 1

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

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

Example 2

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

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

Example 3

Rosalind receives ESA(IR). She receives a payment for an ordinary pair of shoes.

The DM decides that the shoes are for normal daily use.

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

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

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

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

1 ESA Regs, reg 107(6)

51602 This rule applies when the

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

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

1 ESA Regs, reg 109

51603

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

51604 A payment is disregarded¹ if it is

1. made for
 - 1.1 after-care under specified legislation² or
 - 1.2 accommodation or welfare services referred to in specified legislation³
and
2. treated as possessed under the notional income rule at DMG 51601⁴.

1 ESA Regs, Sch 8, para 56; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25; 3 NA Act 48, Part III; SW (Scot) Act 68; The Care Act 2014, part 1; The Social Services Well-being (Wales) Act 2014, Part 4; 4 ESA Regs, reg 107(6)

51605 Payments that satisfy DMG 51604 include payments or reimbursements by a LA for

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

1 NHS & CC Act 90, s 42; NA Act 48, s 21(4)

Income paid to the claimant or partner for a third party

51606 Take into account in full any income paid to the claimant or claimant's partner for a third party who is not a member of the family if

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

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

1 ESA Regs, reg 107(4)

51607 Fully disregard any payment from

1. the Macfarlane Trusts
2. the Eileen Trust ('the Fund')
3. MFET Limited
4. the Independent Living Fund (2006) but see **note**
5. the Skipton Fund

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

regardless of who keeps it or how it is used.

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

51608 The DM should decide using, available evidence

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

income has been kept by the claimant or partner.

51609 Treat income as having been kept when

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

51610 The DM should consider

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

when deciding if a reasonable period of time has passed.

Example 1

Rodney receives ESA(IR)

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

Non-periodical payment made during the course of an award of ESA(IR)

51761 If a non-periodical payment is made during the period of an award it should be treated as paid on the first day of

1. the benefit week in which it was paid or
2. a subsequent benefit week if it is not practicable to take the payment into account straight away¹.

Consider the method of payment of ESA when deciding if it is not practicable to take a payment into account straight away. See DMG 51729 for examples.

These rules do not apply if the payment is made during a period in which a previous non-periodical payment is being taken into account.

1 ESA Regs, reg 125(2)(a) & (b)

Non-periodical payment made during a period where a previous non-periodical payment is already being taken into account

51762 If a non-periodical payment is made during the period in which a previous non-periodical payment is being taken into account treat it as paid on the first day following that period¹.

1 ESA Regs, reg 125(3)

51763 - 51764

ESA(Cont) and pension payments

General

51765 The guidance in DMG 51766 to 51859 refers only to deductions from ESA(Cont).

51766 Pension payments and PPF periodic payments that are

1. made to a claimant for any week **and**
2. more than £85 each week

are deducted from the claimant's personal rate, when calculating the amount of ESA(Cont) payable to the claimant for each benefit week or part-week. The amount deducted is half the excess over £85¹.

1 WR Act 07, s 2(1)(c) & s 3; ESA Regs, reg 74(1)

Example

Kim receives pension payments totalling £90 each week. The pension payments exceed the £85 maximum by £5. This means that £2.50 is deducted in each benefit week from the amount of ESA(Cont) that she is entitled to because this is half of the £5 excess.

51767 The law provides for

1. when pension payments and PPF periodic payments are to be taken into account¹ (see DMG 51802 et seq) **and**
2. certain payments to be disregarded² (see DMG 51804) **and**
3. the calculation of a weekly amount where pensions are paid for periods other than a week³ (see DMG 51814 et seq).

1 ESA Regs, reg 77; 2 reg 75; 3 reg 79

Meaning of pension payments and pension protection fund payments

Pension payments

51768 Pension payments are¹ periodical payments (see DMG 51770 et seq) paid to or for a person

1. under a personal pension scheme (see DMG 51772 et seq) or
2. in connection with the ending of the person's employment as an earner (see DMG 51790) under
 - 2.1 an occupational pension scheme (see DMG 51778) or
 - 2.2 a public service pension scheme (see DMG 51779 et seq)
3. under an insurance policy² providing benefits in connection with physical or mental illness or disability (see DMG 51798).

1 WR Act 07, s 3(3); 2 ESA Regs, reg 72

51769 Payments as in DMG 51768 2. may be, but are not confined to, pensions that the employer has contributed to. These include

1. payments made under a scheme arranged by the employer where the money is provided exclusively by the claimant
2. payments made by the UK or other governments where provision is made for them in law, for example pensions to former Crown employees
3. pensions from employment overseas (see DMG 51817)
4. the compensation element of a retired local government officer's pension¹
5. payments under the Civil Service Compensation Scheme (see DMG 51783 et seq)
6. payments under the Civil Service Pension Scheme.

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Periodical payments and lump sums

51770 Periodical payments are those that are paid at regular intervals.

51771 A lump sum payment is not a periodical payment. This applies even where the claimant has chosen to receive a lump sum instead of a periodical payment¹. But where

1. a person is entitled to a lump sum payment **and**
2. the rules of the scheme allow the lump sum to be paid in instalments **and**

3. the person chooses to receive it in this way
- the instalments are periodical payments.

1 R(U) 5/85

Personal pension scheme

51772 Personal pension schemes are

1. for earners¹, either employed or self-employed (see DMG 51773) **or**
2. under a contract or trust scheme² (see DMG 51774).

1 PS Act 93, s 1; 2 Finance Act 2004, Sch 36, para 1(1)(f);

Note: This includes self-invested personal pensions (see DMG 51777).

51773 A personal pension scheme for employed or self-employed earners is¹ any scheme or arrangement

1. where the earner has arranged with the scheme's trustees or managers to become a member of the scheme **and**
2. that
 - 2.1 provides **or**
 - 2.2 is capable of providingbenefits in the form of pensions or otherwise **and**
3. where benefits are payable on
 - 3.1 death **or**
 - 3.2 retirement to or for earners.

1 WR Act 07, s 3(4); PS Act 93, s 1

51774 Personal pension schemes under DMG 51772 2. are contracts or trust schemes established before 4.1.88 that provide for a life annuity later in life¹.

1 Finance Act 2004, Sch 36, para 1(1)(f) & WR Act 07, s 3(4)

51775 If the member of the scheme used the personal pension to contract-out of the state earnings related pension scheme (SERPS), the part of the pension that

1. comes from DWP rebates **and**
 2. is used to replace the state earnings related pension scheme
- can only be drawn from age 60.

51776 The DM should refer the case to DMA Leeds, if

1. they are unable to decide whether a pension is paid under a personal pension scheme **and**
2. the pension payment does not satisfy any other part of DMG 51768

Self-invested personal pensions

- 51777 Self-invested personal pensions are subject to the normal rules for registered pension schemes¹. With self-invested personal pensions people can purchase an annuity or can receive an income by drawdown or an unsecured pension. Payments from self-invested personal pensions are payments under a personal pension scheme².

1 Finance Act 2004, s 154(1); 2 SS CB Act 92, s 30DD(6), PS Act 93, s 1

Occupational pension scheme

- 51778 An occupational pension scheme is¹ any scheme or arrangement that
1. is comprised in one or more instruments (for example trust deeds) or agreements (for example informal arrangements) **and**
 2. has, or is capable of having, effect on one or more types of employment **and**
 3. provides benefits, for example pensions, payable on
 - 3.1 termination of service **or**
 - 3.2 death **or**
 - 3.3 retirementfor earners with qualifying service.

1 WR Act 07, s 3(4); PS Act 93, s 1; R(JSA) 1/01; R(JSA) 6/02

Public service pension scheme

- 51779 A public service pension scheme is¹ an occupational pension scheme that is
1. established under legislation, by royal prerogative or under a royal charter **and**
 - 1.1 all its particulars are set out in the legislation, royal warrant or charter **or**
 - 1.2 it cannot come into force or be amended without the government's approval **or**
 2. established with the government's approval **or**
 3. prescribed by legislation².

1 WR Act 07, s 3(4); PS Act 93, s 1;

2 Occupational Pension Schemes (Public Service Pension Schemes) Regs 1978

51780 Pension schemes that are also public service pension schemes include pension schemes for

1. civil servants or
2. local government employees or
3. teachers or
4. the Armed Forces or
5. police officers.

51781 If DMs have difficulty in determining whether a pension scheme is a public service pension scheme they should arrange to get

1. the claimant's consent to contact the manager of the scheme **and**
2. a statement from the manager of the scheme as to whether the pension scheme is a public service pension scheme within the meaning of the relevant law¹.

Note: If a pension scheme is not a public service pension scheme it may still fall within the definition of an occupational pension scheme (see DMG 51778).

1 PS Act 93, s 1

51782 Most public service schemes include provision for injury or contracting a disease (for example Police and Fire Service schemes). Such pensions may be paid on a minimum income guarantee basis. This means that the pension tops up existing income to a certain level. The pension rate may therefore be affected by the amount of ESA(Cont) entitlement. In such cases the DM should take into account the gross amount of pension i.e. before any adjustment has been made for ESA(Cont). This ensures that the gross amount of the pension is offset against any ESA(Cont), and the pension provider takes the subsequent balance of any ESA(Cont) payable into account. There is no disadvantage to the claimant, and means that in cases where the amount of pension paid to the claimant is equal to the level of guarantee, the claimant's total income remains unchanged. The pension provider needs to be informed of the correct amount of ESA(Cont) payable.

Example

The amount of pension is £120.00 per week, and the amount of guarantee is £120.00 per week. ESA(Cont) entitlement is £100.15 which is reduced by £17.50 (half the excess over £85) to £82.65. The pension is then paid at £37.35 to bring the guaranteed income back to £120.00.

Civil Service Compensation Scheme

51783 Civil servants may be entitled to annual payments as compensation¹ if their employment ends because of

1. compulsory redundancy or
 2. voluntary early retirement or severance
- in a redundancy situation.

1 R(JSA) 1/01; R(JSA) 2/01

- 51784 Until 1995, payments made to civil servants taking early retirement or redundancy were made as part of the Principal Civil Service Pension Scheme. The Principal Civil Service Pension Scheme also provided benefits to those who retired at the normal retirement age. But on 1.1.95, a separate scheme, called the Civil Service Compensation Scheme was introduced.
- 51785 The Civil Service Compensation Scheme provides benefits to civil servants whose employment ends before the normal retirement age. The Principal Civil Service Pension Scheme continues to provide benefits to those who retire at the normal retirement age.
- 51786 Under the Civil Service Compensation Scheme, annual compensation payments may be made to civil servants. The Civil Service Compensation Scheme also allows civil servants to change the mix of their
1. lump sum and
 2. annual compensation payments and
 3. preserved pension.
- 51787 The Civil Service Compensation Scheme is a public service pension scheme¹ and annual compensation payments from it are payments from a public service pension scheme. This means that half of the excess of the £85 weekly limit (see DMG 51766) are taken into account in ESA(Cont).

1 R(JSA) 2/01

Local government premature retirement scheme

- 51788 Some pensionable local government employees who
1. are made redundant or
 2. volunteer for redundancy or
 3. cease work in the interests of the efficient exercise of the employers' functions
- receive payments under the local government premature retirement scheme¹.

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regs 2006

51789 The scheme entitles employees¹ to annual payments as compensation for their employment ending as in DMG 51788. These are calculated on the same basis as their annual retirement pension under the superannuation legislation². The compensation payment is a payment from a public service pension scheme.

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regs 2006; 2 Local Government Pension Scheme Regulations 1995

In connection with the coming to an end of the employment

51790 A pension must be paid in connection with the end of employment of the person who it is paid for, to fall within DMG 51768 2.. Occupational or public service pensions that are paid where the employment has not ended do not fall within DMG 51768 2.. For example, war pensions paid

1. because of disablement **and**
2. regardless of whether the employment is continuing.

51791 In this context “employment” includes any trade, business, profession, office or vocation¹. Employment in the Armed Services falls within this definition.

1 ESA Regs, reg 2(1)

51792 Retired officers who are entitled to a war pension receive it as a disablement addition to their service pension. This disablement addition is

1. awarded by the Service Personnel and Veterans Agency **and**
2. paid by the Paymaster General in the same cheque as the person's service pension.

51793 If the claimant is a retired officer with a service pension, the DM should

1. find out the amount of any disablement addition **and**
2. deduct it from the total payment received.

51794 Gallantry awards are sometimes paid to former members of the Forces in addition to their service pensions. Payment is

1. made from the date of the award **and**
2. a reward for conduct rather than a period of service.

These awards are not paid in connection with the coming to an end of an employment and are **not** pension payments.

51795 Pension payments may be payable to the claimant from the former employer of a deceased partner or other relative. Such payments should be disregarded (see DMG 51805).

- 51796 The amount of a service pension may be increased if the claimant has been invalidated out of the Forces. The full amount should be taken into account.
- 51797 Police officers who retire because of permanent disability may be entitled to an ill health award¹ in addition to a pension under a public service pension scheme. If they are permanently disabled through an injury received while carrying out their duties, they are also entitled to an injury pension. It is a condition for the receipt of both payments that the officer ceases to be a member of a police force. The payments are therefore made in connection with the coming to an end of a police officer's employment and are payments as in DMG 51768 2.2.

1 Police Pension Regs 1987

Insurance policy providing benefits in connection with physical or mental illness or disability

- 51798 A payment under a permanent health insurance policy is a pension payment for the purposes of ESA(Cont)¹. It means² any periodical payment
1. made to a former employee **and**
 2. which was arranged by an employer under an insurance policy **and**
 3. which provides benefits to the former employee in connection with physical or mental illness or disability **and**
 4. is payable on the termination of employment.

1 ESA Regs, reg 72(1); 2 reg 72(2)

Pension protection fund periodic payments

- 51799 PPF periodic payments are defined as¹
1. any periodic compensation payments made in relation to a person, payable under the pension compensation provisions set out in specified legislation²
 2. any periodic payments made in relation to a person, payable under specific legislation³
- other than payments made to the claimant as a beneficiary on the death of a person entitled to such payments⁴.

1 WR Act 07, s 3(3); 2 Pensions Act 04, s 162(2); Pensions (Northern Ireland Order) 05, art 146(2); 3 Pensions Act 04, s 166; Pensions (Northern Ireland) Order 05, art 150; 4 ESA Regs, reg 75(b)

Armed Forces redundancy arrangements

- 51800 Pensions payable to service personnel who retire from the Armed Forces are paid under a public service pension scheme.

51801 Pensions paid to service personnel who have been made redundant

1. are calculated on the length of qualifying service completed, plus an additional number of years **and**
2. fall within the definition of public service pension schemes.

When to take pension payments into account

Payment of a pension

51802 Where

1. a claimant is entitled to a pension payment **and**
2. the payment is **paid** to the claimant

the pension payment should be taken into account from the first day of the benefit week in which the payment is made¹.

1 ESA Regs, reg 77

Example

Donald claims ESA and is entitled to ESA(Cont) from Thursday 7 November. His benefit week ends on a Thursday. He receives a pension payment of £100 a week, starting on Monday 11 November. Only half of the excess of the amount above £85 can be deducted from ESA(Cont). In the benefit week 8 November to 14 November £7.50 is deducted from his ESA(Cont).

When the pension is uprated

51803 A claimant's rate of pension may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the new rate is paid¹.

1 ESA Regs, reg 78

Example

Amrit claims ESA, her benefit week ends on a Thursday and she is entitled to ESA(Cont). She receives a pension payment of £90 a week. Her ESA(Cont) is reduced by £2.50 each benefit week. She receives an increase of £5 a week in her pension starting on Monday 11 November. The increase in the pension payment is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

1. 1 November to 7 November, £2.50 is deducted from her ESA(Cont)
2. 8 November to 14 November, £5 is deducted from her ESA(Cont).

Disregarded payments

- 51804 Certain payments may be received by the claimant but do not fall to be deducted from ESA(Cont)¹.

1 WR Act 07, s 3(2)(a), ESA Regs, reg 75

Pension payments

- 51805 Payments may be payable to the claimant under

1. a personal pension scheme or
2. an occupational pension scheme or
3. a public service pension scheme and

because a person who was a member of the scheme has died.

- 51806 Any payments in DMG 51805 are known as survivors' benefits and should be disregarded in full¹.

1 ESA Regs, reg 75(a)

Example

Guy's wife Jane is a member of an occupational pension scheme. Following Jane's death a reduced pension payment is paid by the scheme to Guy. This pension is not taken into account when working out the amount of ESA(Cont) payable to Guy.

Pension protection fund periodic payments

- 51807 Any PPF periodic payment made to the claimant as a beneficiary on the death of a person who was entitled to this type of payment is disregarded¹.

1 ESA Regs, reg 75(b)

Shortfalls in pension schemes

- 51808 Where a full pension cannot be paid to a claimant because of a deficit or because of insufficient resources in the pension scheme then the shortfall is not taken into account¹.

1 ESA Regs, reg 75(c)

War pensions

- 51809 Any pension payment under a pensions scheme in respect of death due to military or war service is not to be deducted from ESA(Cont)¹.

1 ESA Regs, reg 75(d); Income Tax (Earnings and Pensions) Act 2003, s 639(2)

Guaranteed income payments

- 51810 Any guaranteed income payment¹ under the Armed Forces Compensation Scheme is not to be deducted from ESA(Cont)².

1 ESA Regs, reg 2(1); 2 reg 75(e)

Permanent health insurance

- 51811 Where the claimant
1. receives a payment under a permanent health insurance scheme **and**
 2. had contributed over 50% of the premium
- then the payment is not deducted from ESA(Cont)¹.

1 ESA Regs, reg 75(f)

Payment in arrears

- 51812 Pension payments are often made in arrears, and can be
1. weekly **or**
 2. monthly **or**
 3. quarterly **or**
 4. any other period.

Subject to DMG 51802 – 51806 any pension payments deducted from ESA(Cont) should start from the **first** day of the benefit week in which the payment is made to the claimant¹.

1 ESA Regs, reg 77 & 78

- 51813 A pension payment **must actually be made** before the DM deducts an amount from ESA(Cont).

Example

William claims ESA and is entitled to ESA(Cont) from Thursday 8 November. His benefit week ends on a Thursday. He is entitled to a pension payment of £95 a week from Monday 5 November of which he receives his first payment (£380) on Monday 26 November. Only half of the excess of the weekly pension amount above £85 can be deducted from ESA(Cont). ESA(Cont) is awarded at the full rate from 8 November but from the benefit week 23 November to 28 November and thereafter £5 $[(£95 - £85) \div 2]$ is deducted from his ESA(Cont).

Calculating the amount of the pension

General

- 51814 Except for DMG 51816, the amount of the pension payment is the gross amount payable. Where income tax is deducted at source, the amount to be taken into account is the amount before tax is deducted¹.

1 R(U) 8/83

- 51815 Some claimants

1. have to make or
2. choose to make

certain payments from their pensions. The payments may be to the employer or a third party. With the exception of compulsory payments to buy or repay an element of their current pension, any payments deducted before the pension is paid should be ignored. The amount of pension to be taken into account is the amount before deductions are made. The claimant's liability to make the payments is separate from the liability to pay the pension. The deductions at source are simply a convenient method of ensuring that the claimant's obligations or wishes are met. Examples of these payments include

- repaying a debt to a former employer
- payments to someone because of a court order
- subscriptions to a trade union or other association
- payments into a further pension scheme.

- 51816 Where the rules of the claimant's pension scheme provide for compulsory deductions, for example to buy or repay an element of their current pension, the amount deducted should be disregarded in calculating the amount of pension. This is because "payments" refers to the amount the claimant is actually entitled to receive. So a payment made under a binding obligation, for example to acquire additional pension rights, should be disregarded in calculating the amount of the pension.

Example

Jim is employed by an electricity company for 29 years and two months. He retires voluntarily. For superannuation purposes he is treated as having completed 30 years service. Under the rules of the superannuation scheme, a monthly deduction of £35.00 is made from his gross occupational pension of £450.50 for the purchase of the ten additional months. He is also paying £20.00 a month to a debt collecting agency under a court order.

Jim cannot avoid the reduction to his pension payments. While he must buy additional pension rights under the rules of the scheme, he would normally repay his other debts from any net income he receives. The payments made under the court order are not to be disregarded. The DM takes into account a pension payment of £415.50 a month¹.

1 R(U) 4/83

51817 Sometimes pension payments are received by the claimant in a currency other than sterling. To work out the sterling equivalent, DMs should use the selling rate that applies

1. on the date on which payment is due **and**
2. not the date on which it is actually converted.

No allowance should be made for commission or other expenses incurred in converting currency¹.

1 R(SB) 28/85

51818 Because exchange rates fluctuate, the DM will need to give a fresh decision each time a pension payment is made, for the period it covers (subject to DMG 51802 – 51806). For the purposes of working out a sterling equivalent only, it does not matter that the pension is not available in sterling until some time after the pension is due.

Attachment orders, earmarking orders and pension sharing orders

51819 An attachment order¹ or an earmarking order² is where a court orders the trustees or managers of a pension scheme to make payments of pension (including lump sum payments) when they become payable direct to the former spouse or former civil partner of a member of the scheme as part of the financial settlement on divorce/nullity or dissolution of a civil partnership³.

1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 CP Act 04, Sch 5

51820 A pension sharing order¹ is where a court orders that a percentage of the value of a member's shareable rights in a pension scheme (that is the cash equivalent transfer value) can be shared between the spouses or civil partners at the time of divorce/nullity or dissolution of civil partnership².

1 Mat Causes Act 73, s 24BB & 25B; 2 CP Act 04, Sch 5

51821 Where there is an attachment order¹ or an earmarking order² and a court directs the claimant's pension provider to pay an amount to a former spouse or former civil partner³, when the claimant's pension becomes payable, the claimant continues to have underlying beneficial entitlement to the whole of the pension. However, the amount paid directly to the former spouse or former civil partner by the pension

provider is not “a pension payment payable to him” within the meaning of the legislation⁴. This is because he does not receive, and is not entitled to receive the amount directed to be paid to the former spouse or former civil partner. In these cases, the amount paid by way of the court order should not be included when determining the weekly rate of pension payable to the claimant. Copies of the financial order and the attachment order made by the court at the time of the divorce or dissolution of a civil partnership will need to be obtained from the claimant in order to determine whether the attachment order or earmarking order was made under the relevant legislation.

Note: Attachment orders and earmarking orders may only be made against private pension schemes but not against the state second pension or RP.

*1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 CP Act 04 Sch 5;
4 SS CB Act 92, s 30DD(1)*

51822 Where the claimant is a former spouse or civil partner who receives a payment under an attachment order¹ or an earmarking order², that payment is **not** a pension payment if it derives from

1. an occupational pension scheme or
2. a public service pension scheme.

This is because it is not a payment in connection with the ending of the claimant's employment³. Cases where a claimant receives a payment under an attachment order or an earmarking order which derives from a personal pension scheme should be sent to DMA Leeds for advice.

1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 SS CB Act 92, s 30DD(5)(a)

Calculating the weekly pension rate

51823 Where payments are paid to the claimant weekly then it is the weekly rate that should be deducted from ESA(Cont) as per DMG 51765¹.

1 ESA Regs, reg 74(1)

51824 If payments are not paid weekly, they should be converted into a weekly amount¹. To do this

1. monthly payments should be multiplied by twelve and the result divided by 52² (a month means a calendar month³)
2. quarterly payments (three monthly) should be multiplied by 4 and then divided by 52⁴
3. annual payments should be divided by 52⁵

4. payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment⁶.

*1 ESA Regs, reg 79(1); 2 reg 94(1)(b)(i); 3 CG 66/49 (KL);
4 ESA Regs, reg 94(1)(b)(ii); 5 reg 94(1)(b)(iii); 6 reg 94(1)(b)(iv)*

51825 The weekly amount of a payment may be averaged¹ if the payment varies. The DM should average over

1. a complete cycle if there is a recognizable cycle of work (this is unlikely to apply to ESA(cont) recipients in receipt of a pension) or
2. five weeks or
3. another period if this means a more accurate weekly amount can be calculated.

1 ESA Regs, reg 79(1) & reg 94(6)

Disregard of fractions

51826 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage¹.

1 ESA Regs, reg 3(a)

More than one pension

51827 Where a claimant is receiving more than one pension the DM should

1. calculate the weekly rate of each pension separately and
2. add the weekly rates together

before working out the excess over the maximum sum¹.

1 ESA Regs, reg 79(2)

ESA(Cont) and councillor's allowances

Deductions from ESA(Cont) for councillor's allowances

Introduction

- 51828 The guidance in DMG 51829 to 51856 refers only to deductions from ESA(Cont). For treatment of ESA(IR) and Councillor's allowances see DMG Chapter 41 & 49.
- 51829 A person who is in work is treated as not entitled to ESA. This does not apply where that work is as a councillor¹. However, any allowances received for performing the duties of a councillor may affect the amount of ESA(Cont) payable².

1 ESA Regs, reg 40(2)(a); 2 WR Act 07, s 3(1)(c)

Definitions

Councillor

- 51830 Councillors are¹
1. in England and Wales, members of
 - 1.1 a London borough council or
 - 1.2 a county council or
 - 1.3 a district council or
 - 1.4 a parish or community council or
 - 1.5 the Common Council of the City of London or
 - 1.6 the Council of the Isles of Scilly
 - 1.7 a county borough council
 2. in Scotland, a member of a council for a local government area².

1 ESA Regs, reg 2(1); 2 Local Government etc (Scotland) Act 1994, s 2

- 51831 The official duties and responsibilities of a councillor¹ will vary from council to council. Each LA must draw up a scheme² for payment of allowances to councillors. This will give information on the official duties of its councillors and the allowances paid for those duties. The official duties may include attendance at
1. a meeting of the authority **and**
 2. a sub-committee of the authority **and**
 3. a meeting for any other body to which the authority makes appointments **and**
 4. other meetings authorized by the authority.

1 R(IS) 6/92; 2 Local Authorities (Members' Allowances) Regs 91, Part II, reg 6

Councillor's allowance

51832 A councillor's allowance¹ is a payment

1. in England of an allowance made under certain legislation²
2. in Wales of an allowance made under certain legislation²
3. in Scotland of an allowance or remuneration under certain legislation³.

1 ESA Regs, reg 2(1); 2 Local Government Act 1972, s 173 or 177 but not s 173(4);

3 Local Government and Housing Act 1989, s 18 or Local Governance (Scotland) Act 2004, s 11

The amount of the deduction from ESA(Cont)

The weekly limit

51833 The net weekly limit of a councillor's allowance before it can affect ESA(Cont) is calculated by¹

1. multiplying the rate of the NMW² by 16³ and
2. rounding the amount calculated in 1. which includes an amount of less than
 - 2.1 50p up to the nearest 50p⁴ or
 - 2.2 £1 but more than 50p up to the nearest £1⁵.

A net weekly payment of a councillor's allowance below this limit will not reduce the amount of ESA(Cont) payable. It is only when the net amount of the councillor's allowance exceeds this limit that a reduction is made from ESA(Cont).

*1 ESA Regs, reg 76(1); 2 reg 2(1); National Minimum Wage Regulations 1999, reg 11;
3 ESA Regs, reg 76(1); 4 reg 76(3)(i); 5 reg 76(3)(ii)*

The amount of the deduction

51834 The amount to be deducted from the claimant's award of ESA(Cont) is the excess over the net weekly limit¹.

1 ESA Regs, reg 76(1)

Example

Ruth is entitled to ESA(Cont). She is also a councillor and receives a net weekly councillor's allowance of £104.50. The amount of the reduction in her ESA(Cont) is

£7.00 (£104.50 - £97.50)

The DM makes a weekly deduction of £7.00 from Ruth's ESA(Cont).

The net weekly amount of a councillor's allowance

51835 It is the net weekly amount of a councillor's allowance that may affect the amount of ESA(Cont) payable. The net amount means the amount after reductions for any payment by way of expenses

1. wholly and
2. exclusively and
3. necessarily

incurred in the performance of duties as a councillor (see DMG 51840 et seq).
When calculating the net weekly amount, DMs should add all the allowances paid to the councillor in the week¹.

1 ESA Regs, reg 76(2)

51836 The allowances paid for official duties may include
basic allowance

2. special responsibilities allowance
3. childcare and dependent carers' allowance
4. travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see DMG 51840 et seq).

Basic allowance

51837 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

1. for the time they devote to their work **and**
2. to cover costs for which no other payment is made, for example, the use of a councillor's home and telephone. The amount actually used for expenses will vary in each case.

Special responsibilities allowance

51838 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly.

Childcare and dependent carers' allowance

51839 LAs may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor.

Expenses

51840 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties¹, for example travel and subsistence allowances². If the LA

cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

1 ESA Regs, reg 76(2); 2 R(IS) 6/92

- 51841 After expenses in DMG 51840 have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the LA. The councillor must justify the amount of each expense, and the amount of expense incurred should be no more than necessary to satisfy the minimum acceptable standard from someone in the councillor's position.

Example

Sophie attends three school summer fairs, in her capacity as a LA councillor. At each one she donates a small gift for a raffle. She provides evidence of her allowance for the month of July, and claims the amount she spent on the gifts as an expense. The DM decides that such an expense is no more than the necessary minimum from a person in the claimant's position, and decides that the expense was wholly, exclusively and necessarily incurred in the performance of her duties as a councillor.

- 51842 The DM should

1. add together all of the allowances that are paid **and**
2. deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's **official duties**¹.

1 ESA Regs, reg 76(2); R(IS) 16/93

- 51843 For the purposes of DMG 51842, if the expenses are wholly, necessarily and exclusively incurred in the performance of **constituency work**, those expenses should only be deducted from the basic allowance. This is because this allowance is paid to every councillor and not for any specific duties.

- 51844 Postage and stationery expenses that arise from the role of being a councillor rather than official duties should only be deducted from the basic allowance.

- 51845 Secretarial expenses should only be deducted from the basic allowance.

- 51846 Dependants' care costs cannot be deducted as an expense. This is because they are expenses incurred in order to enable councillors to perform their duties rather than necessary for the performance of them.

- 51847 Clothing and footwear expenses wholly, exclusively and necessarily incurred in the performance of a councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by

reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use.

DMs may need to apply averages and estimates over a period to calculate a weekly deduction.

- 51848 Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see DMG 51840). This is different to the normal treatment of travelling expenses. When councillors travel from home to the council office or any other work place, for example surgeries, and governor's meetings it is not just travelling to work it is part of the work itself.
- 51849 Subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance.
- 51850 Additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance (see DMG 51840). The DM should establish what proportion of the total household bill can be regarded as arising from the councillor's work. Unless the DM is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence.

Deductions for Income Tax and NI Contributions

- 51851 Income Tax and NI Contributions do not count as expenses incurred in the performance of duties as a councillor. DMs should not make a reduction from the gross amount paid in councillor's allowances in respect of any deductions for Income Tax and NI Contributions¹.

1 R(IB) 3/01

Example

Derek receives an allowance in respect of his work as a councillor. The amount he is paid is £104.50 a week after £20 is deducted in respect of Income Tax and NI Contributions. The DM decides that the net amount of allowance for the purposes of deciding the amount of ESA(Cont) is £124.50. This means that the amount of reduction in Derek's ESA(Cont) is

$$£27.00 (£124.50 - £97.50)$$

The DM makes a weekly deduction of £27.00 from Derek's ESA(Cont).

When to take councillor's allowances into account

Payment of a councillor's allowance

51852 Where

1. a claimant is entitled to a councillor's allowance **and**
2. the payment is **paid** to the claimant

the allowance should be taken into account from the first day of the benefit week in which the payment is made¹.

1 ESA Regs, reg 77

Example

Bill claims ESA and is entitled to ESA(Cont) from Thursday 3 November. His benefit week ends on a Thursday. He receives a net councillor's allowance of £102.50 a week, starting on Monday 7 November. Only excess of the amount above £97.50 can be deducted from ESA(Cont). In the benefit week 4 November to 10 November £5.00 is deducted from Bill's ESA(Cont).

When the councillor's allowance is uprated

51853 A claimant's rate of councillor's allowance may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the increase or decrease is paid¹.

1 ESA Regs, reg 78

Example

Hillary claims ESA, her benefit week ends on a Thursday and she is entitled to ESA(Cont). She receives a councillor's allowance of £96.50 a week. Her ESA(Cont) is reduced by £1.50 each benefit week. She receives an increase of £5 a week in her allowance starting on Monday 11 November. The increase in the allowance is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

1. 1 November to 7 November, £1.50 is deducted from her ESA(Cont)
2. 8 November to 14 November, £6.50 is deducted from her ESA(Cont).

Calculating the weekly rate

51854 Where a Councillor's allowance is paid to the claimant weekly then it is the weekly rate that should be deducted from ESA(Cont) as per DMG 51834¹.

1 ESA Regs, reg 76(1)

51855 If the councillor's allowance is not paid weekly, then it should be converted into a weekly amount as follows¹

1. monthly payments should be multiplied by twelve and the result divided by 52². A month means a calendar month³
2. quarterly payments (three monthly) should be multiplied by 4 and then divided by 52⁴
3. annual payments should be divided by 52⁵
4. payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment⁶.

*1 ESA Regs, reg 79(1); 2 reg 94(1)(b)(i); 3 CG 66/49 (KL);
4 ESA Regs, reg 94(1)(b)(ii); 5 reg 94(1)(b)(iii); 6 reg 94(1)(b)(iv)*

51856 The weekly amount of a councillor's allowance may be averaged¹ if the income varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognizable cycle of work or
2. five weeks or
3. another period if this means a more accurate weekly amount can be calculated.

1 ESA Regs, reg 79(1) & reg 94(6)

51857 - 51859

Students

Students - general

51860 This section deals with the calculation and treatment of certain income that is usually paid only to students. For ESA(IR) the income of a claimant, or a partner, may be taken into account¹. Any income paid because a claimant or partner is a student may affect the amount payable.

1 ESA Regs, reg 83(1)

Definitions and meaning of terms

51861 Claimant means¹ a person who has claimed ESA.

Partner means², where the claimant is

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

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

ESA(IR) - income and capital

51862 A reference to a student is a reference to that person alone. It does not include the student's partner. If the student is the claimant's partner, the student's income is treated as the claimant's¹. This happens once the weekly amount to be taken into account has been worked out.

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

51863 A student or a member of their family may have income which is not subject to the special student rules. When considering this income a reference to the claimant may be taken to be a reference to a partner¹. There may also be a question about capital. Do not treat the capital of a child or young person as the claimant's².

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

Meaning of course and modular course

51864 See DMG Chapter 41 for the definition of course and modular course.

Course of advanced education

51865 Course of advanced education means¹

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

1 ESA Regs, reg 131

Full-time course of advanced education

England and Wales

- 51866 F/T course of advanced education means¹ a course of advanced education that is
1. a F/T course of study that is not wholly or partly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **or**
 2. a course of study which
 - 2.1 is partly or wholly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **and**
 - 2.2 involves the student in more than 16 guided learning hours per week (seven days) as stated in
 - 2.2.a England in the student's learning agreement **or**
 - 2.2.b Wales in a document signed on behalf of the college.

1 ESA Regs, reg 131

Scotland

- 51867 In Scotland, F/T course of advanced education means¹ a course of advanced education which is
1. a F/T course of
 - 1.1 study, not wholly or partly funded by the Scottish Ministers at a college of further education **or**
 - 1.2 higher education (see DMG Chapter 41), wholly or partly funded by the Scottish Ministers **or**
 2. a course of study other than higher education, which is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**
 - 2.1 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff as stated in a document signed on behalf of the college **or**
 - 2.2 21 hours a week in total as stated in a document signed on behalf of the college made up of
 - 2.2.a 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**
 - 2.2.b extra hours using structured learning packages, supported by teaching staff.

1 ESA Regs, reg 131

Course of study

51868 A course of study¹ means any course of study including a sandwich course. It does not matter whether a grant is made for attending or undertaking the course.

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

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

1 ESA Regs, reg 14(1)

Full-time course of study

England and Wales

51869 F/T course of study means¹ a F/T course that is

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

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

1 ESA Regs, reg 131

Scotland

51870 In Scotland F/T course of study means¹ a F/T course of study that is

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

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

1 ESA Regs, reg 131

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

Sandwich course

51871 See DMG Chapter 41 for the definition of sandwich course.

Periods of experience and work experience

51872 Periods of experience means periods of work experience which form part of a sandwich course¹.

1 ESA Regs, reg 131

51873 Periods of work experience are associated with the F/T study but are done outside an educational establishment. The experience has to be

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

1 Support Regs, reg 2(1)

51874 If the course includes¹

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

1 Support Regs, reg 2(1)

Student unable to find placement

- 51875 A student may not be able to find a placement in the period of work experience. This does not automatically mean that they have stopped being a student. The DM should consider whether the student has abandoned or been dismissed from the course (see DMG Chapter 41).

Meaning of educational establishment

- 51876 The term educational establishment is not defined and so must be given its ordinary everyday meaning. Schools, colleges and universities are clearly such places. But other less obvious places may also be included. For example, the training division of a large organisation specially set up for that purpose.

A person is attending an educational establishment if they are receiving

1. training
2. instruction or
3. schooling

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

Note: For Open University students see DMG 51899.

Academic year

- 51877 Academic year means¹ a period of twelve months starting on

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

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

1 ESA Regs, reg 131

Terms used in Scotland

- 51878 See DMG Chapter 41 for the definitions of a college of further education, further education and higher education in Scotland.

Meaning of guided learning hours

51879 See DMG Chapter 41 for the definition of guided learning hours.

Student loan

51880 A student loan¹ is a loan made for a student's maintenance under specific law². The Student Loan Company administers student loans.

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

Grant

51881 Grant means¹ any kind of educational grant or award and includes any

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

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

1 ESA Regs, reg 131

Access funds

51882 Access funds are grants, loans or other payments made under specific law¹ that are paid on a discretionary basis to assist students in financial difficulties².

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

51883 Access funds also include

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

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

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

Education maintenance allowance

- 51884 Education maintenance allowance consists of means-tested payments paid under specific law¹ to support young people who remain in non-advanced education after the age of 16. Payments can be made for up to 2 years to support young people between the ages of 16 and 19, but in some cases an allowance may continue to be paid for up to 3 years between the ages of 16 and 20.

1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 & 73(f); F & H E (Scot) Act 92, s 12(2)(c) & 21; Education Act 2002, s 14 & 181

Grant income

- 51885 Grant income means¹ any income by way of a grant and normally includes any assessed contribution whether paid or not. However where the student is either

1. a lone parent or
2. a person to whom specified legislation² applies

there is an exception and only the grant and any contribution actually paid is included as grant income.

Note: Any such contribution paid by way of a covenant is also included as grant income.

1 ESA Regs, reg 131; 2 regs 14–18

Standard maintenance grant and allowances

- 51886 In England and Wales, the standard maintenance grant is the amount set in law¹. In Scotland it is the amount given as the 'allowance' by the Student Awards Agency for Scotland. For bursaries paid under specific law² and provided by a college of further education or a LEA, it is the amount given in the nearest equivalent to the guide.

1 Education (Mandatory Awards) Regs 2003, Sch 2(2) & (3); ESA Regs, reg 131;

2 Ed (Scot) Act 80, s 73(f), 73B & 74; ESA Regs, reg 131

Contribution

- 51887 The contribution¹ is the income of the student or any other person that the Secretary of State, an education authority or the Scottish Ministers, takes into account when considering the amount of grant or loan payable².

1 ESA Regs, reg 131; 2 Awards Regs, reg 18; Support Regs, reg 92

- 51888 In Scotland only, the contribution¹ is also the amount that the Scottish Ministers or an education authority, consider that the student, their spouse, civil partner or parents or parent's partner could reasonably be expected to make towards the student's expenses when considering the amount of allowance or bursary payable.

The amount of support awarded to a student is reduced by the amount of assessed contribution.

1 Ed (Scot) Act 80; ESA Regs, reg 131

Education authority

51889 An education authority is¹

1. a government department **or**
2. in England and Wales, an LEA, which means² a
 - 2.1 joint education board
 - 2.2 county council
 - 2.3 metropolitan district council **or**
3. in Scotland, an education authority as defined under specified legislation³
4. in Northern Ireland, an education and library board **or**
5. any body which is defined as a research council in certain law⁴ **or**
6. any similar government department, authority, board or body of
 - 6.1 the Channel Islands **or**
 - 6.2 the Isle of Man **or**
 - 6.3 any other country outside GB.

1 ESA Regs, reg 131; 2 Education Act 2002, s 212; 3 Local Government (Scotland) Act 1973, s 123;

4 Science and Technology Act 65

Meaning of student and full-time student

General

- 51890 The DM must decide whether a person is a student. That broadly means a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance (see DMG Chapter 41) is not a student¹. A person who has reached pension age is not a student.

1 ESA Regs, reg 131

NHS funded students

Healthcare professionals

- 51891 NHS students may be undertaking a variety of healthcare professional courses e.g. nursing, midwifery, physiotherapy etc. To be eligible for an NHS bursary the student must be accepted for an NHS funded place. An NHS student undertaking a
1. diploma course may receive a non-means tested bursary. Such a student is not entitled to a student loan.
 2. degree-level course may be entitled to a means tested bursary and is eligible to apply for a student loan.

Return to practice courses

- 51892 Those taking part in refresher training known as 'return to practice' are students if they are undergoing a course of study at an educational establishment. Any allowances paid to such students over the duration of the course should be treated as grant income and taken into account as such.

New entrepreneur scholarships

- 51893 These scholarships have been developed to address the issue of entrepreneurs from deprived areas being given the chance to gain business management skills. Participants receive no funding for their business through the scholarships. Any payment made in respect of travel costs or books and equipment should be disregarded by DMs in the normal way (see DMG 51858).

General Social Care Council bursaries

- 51894 The General Social Care Council award two types of bursary which are
1. non-income assessed bursary known as social work bursary
 2. additional graduate bursary.

Social work bursary

- 51895 This is a non-income assessed grant which is paid as an incentive to train. It consists of three elements, grant, tuition fees and a practice learning opportunity. The grant element is payable over 52 weeks at three rates depending on where the student lives. It is offered to both full and part-time students with part-time students receiving 50% of the grant. DMs should take the grant into account over 52 weeks¹ (see DMG 51956 et seq) disregarding² the items listed at DMG 51947 and DMG 51953³ as appropriate. Tuition fees are either paid in full or the balance that has not been met by the LA is paid all direct to the University. DMs should disregard any amount paid for tuition fees² (see DMG 51947 1.). Any amount payable to a student intended for travelling expenses should be disregarded³.

1 ESA Regs, reg 132(4)(b); 2 reg 132(2); 3 reg 132(3)

Additional graduate bursary

- 51896 This is paid to graduates on post-graduate courses who are in receipt of the social work bursary. It is an income assessed grant available to full-time students only. This bursary is paid for 30 weeks to cover the period of the course. There is also an additional days grant which is calculated weekly for courses that extend beyond 30 weeks. However where courses are for 45 weeks or more the bursary is automatically awarded for 52 weeks. Extra allowances may also be payable with the additional graduate bursary eg Adult Dependents Allowance and Parents Learning Allowance. These allowances are usually payable over 52 weeks.
- 51897 Where the income from the additional graduate bursary is payable for the period of study, the DM should take that income into account over the period of study¹. Where the income is payable for a different period (the automatic 52 weeks) it should be taken into account for that period². Income from the extra allowances as mentioned in DMG 51904 should be taken into account for the period for which they are payable. The DM should disregard³ any amount for items listed at DMG 51947.

1 ESA Regs, reg 132(4)(a); 2 reg 132(4)(b); 3 reg 132(2)

Teacher training

- 51898 A person undertaking or attending teacher training is a student where a course of study is being undertaken at an educational establishment. Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

Open University students

- 51899 A claimant who is on an Open University course will fall within the definition of a student¹. Such courses are not F/T and are normally followed at times that would fit in with employment. Most of the course material is done in the person's home and not at an educational establishment however they are still undertaking a course of study². Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

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

Community Orders

- 51900 Offenders on specified activity may be undertaking basic skills education which will generally be funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding in England and the appropriate funding body in Wales. DMs must check the number of guided learning hours and consider if the offender is a F/T student. There is no such equivalent in Scotland. In Scotland, courts have access to a number of community penalties, principally probation orders, community service orders, drug treatment and testing orders and restriction of liberty orders. Conditions can be attached to these orders including the requirement to undertake unpaid work. The activities which can be imposed as part of the orders are funded by the Scottish Ministers¹.

1 SW (Scot) Act 68, s 27A

General

- 51901 A student is a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance is not a student¹.

1 ESA Regs, reg 131

Full-time student

- 51902 A F/T student is a person who is not a qualifying young person or child under specified legislation¹ and is
1. aged less than 19 who is attending or undertaking a F/T course of advanced education or
 2. aged 19 or over, but under pension age, who is attending or undertaking a F/T course of study at an educational establishment or
 3. on a sandwich course².

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

51903 A F/T student is treated as attending or undertaking a F/T course of study from the first day of the course until

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

1 ESA Regs, reg 131

Treatment of modular courses

51904 A student attending or undertaking part of a modular course on a F/T basis is treated as a F/T student from the day that part of the course begins until

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

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

51905 The period described in DMG 51904 above includes any period

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

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

Modular course

51906 In these circumstances a modular course means a course of study consisting of two or more modules. The student must complete a specified number of modules before they are considered to have completed the course¹.

1 ESA Regs, reg 131(4)

Meaning of full-time

General

51907 The DM has to consider whether a person is a full time student (a F/T student). For courses funded by the Scottish Ministers, except where it is a course of higher education (see DMG Chapter 41), and for those funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England or by Welsh Ministers, the term F/T is defined by reference to the number and type of hours involved (see DMG Chapter 41). But for non funded courses there is no definition.

51908 In courses not funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, Welsh Ministers or the Scottish Ministers and in courses of higher education funded by the Scottish Ministers, the term F/T applies to the course itself and not to a person's attendance on it¹. It is the time spent by a notional reasonable student that is considered. A person who attends a F/T course on a P/T basis is still a student.

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

51909 Each case must be decided on its facts¹. The DM must look at the sequence of studies and activities that make up the course itself. The nature of the course is not affected by²

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

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

51910 In modular courses a sequence of studies is established once a person has decided which modules to take. This sequence can be distinguished from the work that the person is putting in at any given time. When deciding whether a course is F/T, all of the studies and activities involved in it should be taken into account. This includes both supervised and unsupervised study and activity, whether done on or off college premises. In the case of courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, the Welsh Ministers or the Scottish Ministers, take no account of private study (see DMG Chapter 41).

51911 Do not compare the total hours involved with what may be regarded as a full working week. One approach is to look at the total time the course might require of an average student. It may take up a substantial part of a week, after allowing for reasonable rest and recreation. The course might then be regarded as F/T.

51912 The DM should determine whether the course is modular or non-modular. Whether a modular course counts as a F/T course is a question of fact. If the educational establishment's description is not conclusive, other relevant evidence may include

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

Evidence from educational establishment

51913 See DMG Chapter 41 regarding evidence from educational establishments.

Other evidence

51914 See DMG Chapter 41 regarding obtaining other evidence.

Number of hours involved

51915 See DMG Chapter 41 regarding the number of hours involved.

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

51916 DMG Chapter 41 contains guidance on

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

Eligibility

General

51917 Being in education affects entitlement to ESA(IR)¹. However, a claimant who is

1. in education **and**

2. entitled to DLA

may have entitlement to ESA(IR)².

See DMG Chapter 41 for how education affects entitlement to ESA.

1 WR Act 07, Sch 1, Part 2, para 6(1)(g); 2 ESA Regs, reg 18

Partner only is a full-time student

51918 If the claimant is not a student but their partner is, the claimant may be eligible for ESA. This is subject to the normal conditions of entitlement.

ESA(Cont)

51919 Only a claimant's own earnings (if they exceed the exempt work limits) and pension payments can affect the amount of ESA(Cont) payable¹. A partner's loan or grant income can have no effect.

1 ESA Regs, reg 74

ESA(IR)

51920 Income of a claimant or their partner can affect the amount of ESA(IR)¹ payable. Any loan or grant income paid to the partner should be taken into account.

1 ESA Regs, reg 83

Financial support available to students - loans and grants

- 51921 In the case of students and their partners, some of the normal rules on income are modified¹. This means that their income may be treated differently.

1 ESA Regs, reg 87

Loans - eligibility

- 51922 Loans are generally available to students on courses of higher education.

Designated courses

- 51923 Courses must¹

1. last for at least one academic year or at least six weeks in the case of flexible postgraduate courses for teaching training **and**
2. be designated **and**
3. be at institutions receiving support from public funds.

1 Support Regs, reg 5(1); SL (Scot) Regs, reg 4(1)

- 51924 A course is designated¹ if it is a

1. first degree course
2. course for the Diploma of Higher Education
3. course for the Certificate of Higher Education
4. course for the further training of youth and community workers
5. course for the Higher National Diploma or Higher National Certificate of BTEC or Scottish Qualifications Authority
6. course leading to an initial teacher qualification
7. course for which entry does not normally require a first degree (or equivalent) that
 - 7.1 is in preparation for a professional examination of a standard higher than
 - 7.1.a GCE A levels
 - 7.1.b Scottish highers
 - 7.1.c BTEC and Scottish Qualifications Authority National Awards (as distinct from Higher National Certificate and Higher National Diploma) or
 - 7.2 provides education of a standard higher than courses in 7.1, but not higher than a first degree course.

1 Support Regs, Sch 2 & SL (Scot) Regs, Sch 2

51925 Institutions receiving support from public funds means¹ that the monies are provided by Parliament. **Except** where the funds have been provided by a local council. A course is provided by an institution² if it supplies the teaching and supervision that makes up the course.

1 Support Regs, reg 2; 2 reg 5(5)(a)

51926 Loans are generally available for sandwich courses. They are available for the whole of the course. They are not reduced because of the student's periods of experience.

Personal eligibility

51927 A student must be personally eligible as well as attending or undertaking a qualifying course. A student is eligible for a loan if

1. they meet the residence conditions¹ (see DMG 51928) **and**
2. they have not received an award under certain NHS regulations² **and**
3. they are not eligible to receive an allowance under certain regulations³ **and**
4. they are not in breach of any obligation contained in a loan agreement⁴ **and**
5. after reaching age 18 they confirmed any loan agreement that was made while under that age⁵ **and**
6. they are not, in the opinion of the Secretary of State for Children, Schools and Families, unfit to receive support⁶.

Note: A student is only eligible for a loan on a single designated course, whether F/T or P/T, in any one academic year⁷.

1 Support Regs, reg 4(2); 2 reg 4(3)(c); 3 Education (Student Loans) Act 1990; Education (Student Loans) (NI) Order 1990; 4 Support Regs, reg 4(3)(d); 5 reg 4(3)(e); 6 reg 4(3)(f); 7 reg 4(6)

Residence conditions

51928 To satisfy the residence conditions a student must¹

1. be ordinarily resident in England, Wales or Scotland on the first day of their course **and**
2. throughout the three years before the first day of the course have been ordinarily resident in the

- 2.1 UK if
 - 2.1.a the student is settled in the UK or
 - 2.1.b the student, their spouse, civil partner or their parent have been granted leave to remain by the HO
- 2.2 EEA if the student, their spouse, or their partner have established migrant worker status **and** their stay is not wholly or mainly to receive FTE.

1 Support Regs, Sch 1, Part 2; SA (Scot) Regs, Sch 1

European Economic Area Nationals

51929 A student, who is an EEA national or the child of an EEA national, may be eligible for a student loan if¹

- 1. the conditions at DMG 51928 2. are satisfied **and**
- 2. the course in
 - 2.1 England and Wales, is provided wholly or partly by an institution in England or Wales **or**
 - 2.2 Scotland, is at a Scottish establishment.

1 Support Regs, Sch 1, SA (Scot) Regs, Sch 1

Refugees

51930 A student may be eligible for a student loan if¹

- 1. they, their spouse, civil partner or parent are granted refugee status **and**
- 2. from the time they are recognised as a refugee they are ordinarily resident in the UK **and**
- 3. they satisfy the conditions at DMG 51928 1..

1 SA (Scot) Regs, Sch 1

Student loans treated as income

51931 Student loans are treated as income¹. Students are treated as possessing a student loan for an academic year where

- 1. a student loan has been paid to them for that year² **or**
- 2. they could acquire a loan in respect of that year by taking reasonable steps to get one³.

Note: If there is a condition of entitlement to a student loan that could not be met by taking reasonable steps the DM should not treat the student as having a student loan. If, exceptionally, the DM needs advice on whether or not a student has taken reasonable steps to acquire a loan, refer the case to DMA Leeds.

1 ESA Regs, reg 137; 2 reg 137(4)(a); 3 reg 137(4)(b)

Amount of loan

51932 The maximum amount that can be advanced to a student depends on

1. where the student is studying **and**
2. whether the student has reached the final year of the course **and**
3. whether the student lives in the parental home.

Where in any academic year a student loan is made to a student, the DM should take into account as income

1. the maximum amount of student loan the student could get by taking all reasonable steps¹ to do so (even if the student applies for less than the maximum loan) **and**
2. unless an exception at DMG 51938 applies², the amount of any contribution whether or not it is paid to the student³.

1 ESA Regs, reg 137(5)(a); 2 reg 137(5)(a)(ii); 3 reg 137(5)(a)(i)

51933 Where a student loan has not been made for an academic year, the DM should take into account as income the maximum loan that the student could get if

1. the student took all reasonable steps to obtain the maximum amount¹ **and**
2. no deduction was made from the loan because of a means test².

1 ESA Regs, reg 137(5)(b)(i); 2 reg 137(5)(b)(ii)

Postgraduate Master's Degree Loan

51934 A new postgraduate master's degree loan became available for eligible full-time or part-time courses starting in September 2016. Eligible students can apply for a loan of up to £10,000. The loan is only paid in the first and second academic years of a course, regardless of the total course length. For courses lasting two or more academic years (including part-time courses), the maximum amount paid will be up to £5,000 in the first year and the remainder in the second year. The loan is not specifically paid for tuition fees and/or maintenance costs, it will be paid directly to the student and it will be at the student's discretion what they use it for.

51935 The DM should take into account 30% of the maximum postgraduate master's degree loan¹ as the costs taken into account in the calculation² of ESA(IR). This figure reflects the amount which will typically be available to spend on maintenance costs, taking account of typical master's course tuition fees. If a claimant is eligible for a new postgraduate loan but has failed to take all reasonable steps to acquire it they will usually be treated as if they are in receipt of the maximum postgraduate

master's loan to which they would be entitled³. The purposes of these regulations, the maximum amount will be

1. £10,000 for courses lasting one academic year and
2. £5,000 in each of the first two years for courses lasting two or more academic years.

1 SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016;

2 ESA Regs, reg 137(5A); 3 reg 137(4)(b) and (4A)

Example 1

Julia is in receipt of ESA(IR) and also receives PIP. On 5.9.16 Julia begins a full-time postgraduate master's degree in Health and Social Care. The course will last for one year and she successfully applies for a new loan of £10,000. Julia remains entitled to ESA(IR) when she begins her full-time course of study. The amount of student income for ESA(IR) purposes is calculated as follows:

Step 1: calculate the annual amount of the loan - £10,000 - £7,000 = £3,000 (30% of the new loan)

Step 2: deduct a fixed amount per academic year for travel costs and the cost of books and equipment (see DMG 51936) - £3000 - £303 - £390 = £2307

Step 3: divide the figure in step 2 equally between the weeks in the period beginning with the first benefit week that begins on or after the start of the academic year, and ending with last benefit week that ends on or before the last day of the course (see DMG 51939). In this example this will be 52 weeks - £2307 ÷ 52 = £44.36

Step 4: deduct the general weekly disregard (see DMG 51944) - £44.36 - £10 = £34.36

This means that for ESA(IR) purposes, Julia will have a weekly student income of £36.36.

Example 2 (part-time course)

Rick is undertaking a postgraduate Sociology course. The course is part-time and will last for three academic years. He has successfully obtained a postgraduate master's degree loan of £9,000. He will receive £5,000 in the first academic year and £4,000 in the second. The amount of student income for each of these two years will be calculated as follows:

Step 1: calculate the amount of the loan: £5,000 - £3,500 = £1500 (30% of the maximum loan available).

Step 2: deduct fixed amount per academic year for travel costs and the cost of books and equipment: £1500 - £303 - £390 = £807

Step 3: divide the figure in step 2 equally between the weeks in the period beginning with the first benefit week that begins on or after the start of the academic year, and ending with last benefit week that ends on or before the last day of the course in the academic year. In this example this will be 40 weeks: £807 ÷ 40 = £20.17

Step 4: deduct the general weekly disregard: £20.17 - £10 = £10.17.

Rick will have a weekly student income of £10.17 for the first and second academic years. Rick will have no student income for the third and final academic year of the course for the purpose of calculating his award of benefit.

Disregards

51936 The amount of student loan to be taken into account under DMG 51931 to DMG 51935 should be reduced by¹ a fixed amount for

1. travel costs and
2. the cost of books and equipment

whether or not the student has to meet the cost of those items.

The disregard is £303 for travel costs and £390 for books and equipment.

1 ESA Regs, reg 137(6)

Example

Leslie is undertaking a P/T course of study for which she receives a loan of £500. After taking into account the disregards for travelling costs and books and equipment the DM fully disregards the loan.

Disregard for fee loans

51937 Changes to the student support system¹ mean that loans for course fees will be paid directly to the university or college. DMs should disregard² a loan for fees, known as a fee loan or a fee contribution loan paid under specified legislation³.

*1 Support Regs, regs 17-21 & 31-32; 2 ESA Regs, reg 139;
3 Education (Student Support) (NI Ireland) Order 1998, Art 3; T & HE Act 98, s 22;
Ed (Scot) Act 80, s 73(f)*

Assessed contribution

51938 The education authority may decide that the student, their spouse, civil partner, parents or parent's partner should contribute to the loan. The contribution is assessed according to the income of the student, their spouse, civil partner, parent or parent's partner. The amount of loan awarded is then cut by the assessed contribution¹.

The amount of contribution assessed by the education authority may not be paid to the student in part or in full. But the full amount of the contribution should still be treated as possessed by the student unless² the student is entitled to DLA.

1 ESA Regs, reg 131(1); 2 reg 137(5)(a)(ii)

Calculation of weekly income

Course duration is for one academic year or less

51939 Where a student loan is made in respect of any academic year and the course is for one academic year or less, the student loan should be divided equally between the weeks in the period beginning with

1. the first benefit week that begins on or after the start of the academic year or
2. if the student starts attending the course in August or the course is for less than an academic years duration, the first benefit week that begins on or after the start of the course

and ending with the last benefit week that ends on or before the last day of the course¹.

1 ESA Regs, reg 137(3)(a)

Course duration more than one academic year, any year except final academic year

51940 Where a student loan is made in respect of an academic year that begins other than on 1 September the DM should divide the student loan equally between the period which

1. starts at the beginning of the first benefit week starting on or after the first day of the academic year and
2. ends on the last day of the last benefit week which ends on or before the last day of the academic year and

excludes any complete benefit weeks which fall entirely within the quarter where, in the opinion of the Secretary of State, the longest holiday period is taken¹.

Note: Quarter means² one of the periods in the academic year from

1. 1 January to 31 March or
2. 1 April to 30 June or
3. 1 July to 31 August or
4. 1 September to 31 December.

1 ESA Regs, reg 137(3)(b); 2 Support Regs, reg 2

51941 Where a student loan is made in respect of an academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the earlier of the first day of the first benefit week

1. in September or
2. that begins on or after the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of June¹.

1 ESA Regs, reg 137(3)(e)

Final academic year, other than a course of one academic year or less

51942 Where a student loan is made in respect of a final academic year of a course of more than one year that begins other than on 1 September the DM should divide the student loan equally between the period beginning with

1. the first benefit week that begins on or after the start of the academic year and
2. ending with the last benefit week that ends on or before the last day of the course¹.

1 ESA Regs, reg 137(3)(d)(i)

51943 Where a student loan is made in respect of a final academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the first benefit week that begins on or after the earlier of

1. 1 September or
2. the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of the course¹.

1 ESA Regs, reg 137(3)(d)(ii)

Disregard

51944 When the weekly amount has been calculated the DM should disregard up to £10 a week. This is subject to the overall limit on the disregarded income of students (see DMG 51969).

Example 1

Dilip is attending a course which lasts for less than a year. The course starts on 8.12.08 and ends on 18.4.09. He is a Tuesday BWE. He has a student loan which, after deducting the appropriate disregards, is taken into account from 10.12.08 until 14.4.09.

Example 2

Martha starts the final year of her course on 7.10.09 and ends it on 6.6.10. She is a Thursday BWE. The DM takes her student loan into account from 4.9.09 until 3.6.10 after deducting the appropriate disregards.

Example 3

Ellis is in his second year of a course. The autumn term begins on 14.10.09. Ellis is a Monday BWE. The DM takes his student loan into account, after deducting the appropriate disregards, from 1.9.09 until 28.6.10.

Example 4

Nasser's university course starts on 13.1.09. The main holiday period is between 30.6.09 and 12.10.09. He is a Wednesday BWE. After deducting the appropriate disregards the DM calculates the weekly income by dividing the loan equally between the periods 8.1.09 to 1.7.09 and 27.8.09 and 30.12.09. The DM takes the weekly amount into account from 15.1.09 because Nasser does not become a student until 12.1.09.

Note: A student loan should not be taken into account until the student commences their course of study because prior to this day they are not a student. As the weekly amount is calculated by apportioning the loan to full benefit weeks it should similarly be attributed to full benefit weeks.

Student from Northern Ireland

- 51945 A student from Northern Ireland may be eligible for a student loan under Northern Ireland law¹. The qualifying conditions are the same as in the rest of the UK. Treat any loan for which the student is eligible in the same way.

1 Education (Student Loans) (NI) Order 1990, art 3

Grants

- 51946 A student may receive a grant from a number of different sources. Grants, bursaries or allowances etc may be paid in respect of various types of study such as Nursing and Teacher training. Students who are paid under specific law¹ may be entitled to supplementary grants, as current or old system students

1. for extra costs incurred because they are disabled students²
2. for travel costs³
3. for childcare⁴
4. for living costs⁵
5. for adult dependants⁶
6. for Parents' Learning Allowance⁷.

Note: This list is not exhaustive.

1 Student Support Regs, regs 35-36; 2 reg 39; 3 reg 47; 4 reg 43; 5 reg 37; 6 reg 42; 7 reg 44

Amount of grant income

Initial disregard

- 51947 The DM should disregard from the student's grant income any payment

1. intended to meet tuition or examination fees¹

2. intended to meet additional expense a disabled student has for attending a course²
3. intended to meet additional expenses connected with term time residential study away from the student's educational establishment³
4. on account of the student maintaining a home at a place other than where they live during the course⁴
5. on account of any other person if⁵ that person lives outside the UK and there is no applicable amount for them
6. intended to meet the cost of books and equipment⁶
7. intended to meet travel expenses caused by the student's attendance on the course⁷
8. intended for the maintenance of a child dependant⁸
9. intended for the child care costs of a child dependant⁹.
10. of higher education bursary for care leavers made under specified legislation¹⁰.

Note: 4. applies only to the extent that the student's rent is not met by HB.

1 ESA Regs, reg 132(2)(a); 2 reg 132(2)(b); 3 reg 132(2)(c); 4 reg 132(2)(d); 5 reg 132(2)(e); 6 reg 132(2)(f); 7 reg 132(2)(g); 8 reg 132(2)(h); 9 reg 132(2)(i); 10 reg 132(2)(j)

51948 Disregard amounts under DMG 51947 only if the grant is specifically intended to be used for one of those purposes.

Higher education grant

51949 In England and Wales the Higher Education Grant¹ was introduced in September 2004. A student qualified for this grant if he began the designated course on or after 1.9.04. The grant is to defray the cost of books, equipment, travel or childcare for the purpose of attending that course. DMs should disregard² the amount of Higher Education Grant paid to an existing student. In Scotland these are not specific grants but cover other expenses incurred in taking advantage of educational facilities³.

1 Education (Student Support) Regs, 2006, reg 52; 2 ESA Regs, reg 132(2); 3 Student's Allowances (Scotland) Regs, 2007, reg 4(1)

Special support grant

51950 In England and Wales the Special Support Grant¹ was introduced from 1.9.06. The grant is to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course. DMs should disregard² the amount of Special Support Grant paid to students from 1.9.06.

1 Education (Student Support) Regs, 2006, reg 50; 2 ESA Regs, reg 132(2)

51951 Where a student is in receipt of the maximum Special Support Grant and the Higher Education Establishment charges the full £3,145 tuition fees, then the Higher Education Establishment must pay the student a bursary to at least make up the

difference between the Special Support Grant and the £3,145 fee. As this bursary is for tuition fees it should be disregarded¹ in full whatever its value. In addition, a Higher Education Establishment may award other grants and bursaries and these may be disregarded if they fall within the disregards listed at DMG 51947.

1 ESA Regs, reg 132(2)(a)

Special Support Loan (England only)

- 51952 Special Support Grants are intended to meet the cost of books, equipment, travel expenses and childcare, and so can be fully disregarded under existing legislation - DMG 51951 refers. From the beginning of the 2016/17 academic year, Special Support Loans replaced Special Support Grants¹ for new students. Regulations (2-5) amend existing legislation² to provide that the Special Support Loan can also be disregarded.

1 Support Regs 2011, reg 68; 2 ESA Regs, reg 64B

Disregards for students with child care responsibilities

- 51953 In England and Wales, a Department for Children, Schools and Families Parents Learning Allowance is available to F/T students with child care responsibilities. DMs should disregard this allowance in full¹.

1 ESA Regs, reg 132(2)

Extra disregards

- 51954 Where a student does not have a student loan and is not treated as having a student loan, the DM should disregard from the grant a fixed amount for

1. travelling expenses (£303) and
2. books and equipment (£390)¹.

1 ESA Regs, reg 132(3)

Example 1

Georgia is a student nurse attending a diploma course. She is not entitled to a student loan. She receives a NHS bursary which includes £200 for travelling expenses but no additional amount for books and equipment. The DM disregards a total, of £893 from Georgia's allowance. This is made up of an amount awarded specifically to meet travelling expenses - £200; extra disregard for travelling costs - £303; extra disregard for books and equipment - £390.

Example 2

Isobella is a student teacher completing her last year of teacher training in a school. She receives a training bursary which does not specifically include any amount for travelling costs or books and equipment. She is not entitled to a student loan. The DM disregards a total of £693 from Isobella's income. This is made up of extra

disregard for travelling costs - £303 plus the extra disregard for books and equipment - £390.

51955

Period over which grant income taken into account

51956 The amount of grant income to be taken into account should be spread equally over the relevant period. The length of that period depends on

1. what elements of grant are involved **and**
2. whether the grant is paid for the period of study.

Dependant and lone parent grants

51957 The DM should take these grants into account

1. for the same period as the loan **or**
2. for the period a loan would have been taken into account had the student taken reasonable steps to get one¹.

1 ESA Regs, reg 132(6)

Example

Gregg is a student with two children who started his course in November 2008. He receives a loan for living expenses. He is also entitled to an extra amount for the children and because he is a lone parent, this is a non-repayable grant. The DM takes the extra grant income into account for the same period as the loan.

NHS dependant grants

51958 A grant or bursary paid for dependants, under relevant law¹, to an NHS student should be taken into account equally over

1. 52 weeks **or**
2. 53 weeks, if there are 53 benefit weeks (including part-weeks) in the year².

Note: These grants are apportioned over the number of benefit weeks in the year rather than over the period of study.

1 HS & PH Act 68, s 63(6); 2 ESA Regs, reg 132(5)

Other grant income

51959 Other grant income should be taken into account equally between the weeks in the period

1. of study, where it is paid for the period of study **or**
2. for which it is payable.

Period of study for grant income purposes

- 51960 Period of study has two different meanings. One for grant income purposes¹ and one for eligibility² (see DMG Chapter 41). DMs should not confuse the two definitions.

1 ESA Regs, reg 131; 2 reg 2(1)

- 51961 For grant income purposes¹, each year of a course has a separate period of study. That period

1. starts with
 - 1.1 the first day of the course, in the first or only year **or**
 - 1.2 the first day of that years course, in any later year **and**
2. ends with
 - 2.1 the last day of the course, in the last or only year **or**
 - 2.2 the day before the summer holiday, where the grant is not for study throughout the whole year **or**
 - 2.3 the day before the start date of the next years course where
 - 2.3.a the grant is for study throughout the year **or**
 - 2.3.b if the student does not have a grant, where a loan would have been assessed as payable throughout the year.

1 ESA Regs, reg 131(1)

Example

Jenny is on a standard three year degree course commencing in the Autumn. Her grant is not for study throughout the whole year. She has three periods of study. These are

1. the first year - the first day of the course to the day before the summer holiday separating the first and second years
2. the second year - the first day of that years course to the day before the summer holiday separating the second and third years
3. the third (final) year - the first day of that years course to the last day of the course.

Grant payable for period of study

- 51962 Grant income may be payable for the period of study. If so the DM should take the income into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period of study and ending with the last benefit week which ends on or before the last day of the period of study¹.

1 ESA Regs, reg 132(4)(a)

Sandwich course

- 51963 Where a student is on a sandwich course, any periods of experience should be excluded from the period of study. Grant income is then spread equally between the weeks in the period beginning with the benefit week that begins on or after the last day of the period of experience and ends with the last benefit week which ends on or before the last day of the period of study¹.

1 ESA Regs, reg 132(7)

Grant not payable for period of study

- 51964 Grant income may be awarded for a specific period. In these cases the grant income should be taken into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period for which the grant is payable and ending with the last benefit week which ends on or before the last day of the period for which the grant is payable¹.

1 ESA Regs, reg 132(4)(b)

Access funds

- 51965 Students who are in financial difficulties may receive payments from access funds¹ (see DMG 51882). Treatment of these payments depends upon

1. when the payment is made
2. what the payment is intended for **and**
3. whether the payment is a
 - 3.1 regular payment **or**
 - 3.2 single lump sum.

1 ESA Regs, reg 131

- 51966 The DM should fully disregard an access fund payment where it is made¹
1. before the first day of the course in anticipation of the person becoming a student **or**
 2. on or after the earlier of
 - 2.1 1 September **or**
 - 2.2 the first day of the course **and**
 - 2.3 the student loan has not been received **and**
 - 2.4 the payment is intended to help them manage financially until they receive their loan.

1 ESA Regs, reg 138(4)

Regular payments

51967 Any access fund payment should be fully disregarded unless it is intended and used for

1. food
2. ordinary clothing or footwear
3. household fuel
4. rent for which HB is payable
5. housing costs met in the applicable amount
6. council tax
7. water charges.

Note: The DM should disregard £20 from any payments that are intended and used for the above items. This is subject to the overall limit on disregarded income¹ (see DMG 51969 et seq).

1 ESA Regs, reg 138(3)

Lump sum payments

51968 Any lump sum payment from an access fund should be treated as capital¹. Where a lump sum payment is intended and used for items other than those listed at DMG 51967 the DM should disregard the capital for 52 weeks from the date of payment².

1 ESA Regs, reg 142(2); 2 reg 142(3)

Overall limit to income disregard

51969 A student may have income other than grant income, covenant income or a student loan. The amount of any disregard will depend on

1. what type of income is paid **and**
2. whether it is paid for a specific purpose.

Do not disregard any part of a student's grant income or covenant income as a charitable or voluntary payment¹.

1 ESA Regs, reg 135

Income for necessary course expenses

51970 The income may be specifically intended (in whole or in part) to meet the cost of any item

1. set out in DMG 51947 **and**
2. necessary as a result of attendance on the course.

51971 In such a case disregard¹

1. the total amount specifically intended for the purposes at 1. and 2. above **less**
2. the total amount of any grant and covenant income already disregarded for the particular item.

1 ESA Regs, reg 136(1)

51972 Where the income does not include an amount specifically intended for books and equipment, a disregard cannot be made for those items.

51973 If after the disregard in DMG 51971 there is a balance to take into account the normal rules on attribution of income apply (see DMG Chapter 48).

Disregard of partner's contribution

51974 The student's loan or grant income may include an assessed contribution from their partner. The DM should disregard this amount when considering the income of the partner¹.

Note: The student may complain because their partner does not have an income on which the assessment was based. The DM should advise such a student to contact the authority responsible for the grant. The authority may then reassess the amount of their grant.

1 ESA Regs, reg 140

Disregard of student's contribution

- 51975 Where the student's own income is taken into account when assessing the loan or grant the DM should disregard this amount when calculating the student's income¹. The amount to be disregarded under DMG 51972 and this paragraph should be spread equally between the period that the loan or grant income has been taken into account. It should be applied to the income of the spouse or the partner respectively. It cannot all be applied to the student's own income.

1 ESA Regs, reg 141

Covenant income and other income and capital

- 51976 Where a student has other income, the normal rules apply. This is subject to the overall limit on disregarded income (see DMG 51969). Where a student has capital other than a student loan (see DMG 51922 et seq), normal rules apply.

Covenant income

- 51977 Covenant income is¹ income payable to a student under a deed of covenant by a person whose income is

1. taken into account or
2. likely to be taken into account

in assessing the student's grant or award.

1 ESA Regs, reg 131(1)

- 51978 There are special rules which cover the assessment and attribution of covenant income. If a student declares that they are in receipt of covenant income the DM should forward the case urgently to DMA Leeds, Room GS36, Quarry House, Leeds. DMs are, however, unlikely to see this type of case as the Income Tax advantages associated with Deeds of Covenant were abolished some years ago.

Student's tax refund

- 51979 Treat any refund of tax taken from a student's income as capital¹. This is not restricted to tax taken from grant income. It applies to any income related tax refund.

1 ESA Regs, reg 142

Other types of loan

- 51980 Students may have loans that are not made under the relevant law¹. The treatment of these loans depends on whether they are capital or income. For guidance on Career Development Loans see DMG 51440 et seq.

1 T & HE Act 98, s 22; Ed (Scot) Act 80, s 73(f), 73B & 74; Support (NI) Order, Article 3; Students' Allowances (Scot) Regs 2007, reg 4(1)(c)

Income of former students

51981 A person stops being a student for ESA from the day after the

1. last day of the course or
2. date they abandon or are dismissed from the course¹.

1 ESA Regs, reg 131(2)

51982 From the date that the person stops being a student the treatment of income depends on whether the course has been completed.

Course completed

51983 When a student has completed a course the DM should disregard from the day after the last day of the course¹ any

1. grant or covenant income
2. loan
3. income assessed contribution.

1 ESA regs, Sch 8, para 54

Course not completed - treatment of grant income

51984 A person has not completed the course if they have abandoned or were dismissed from it. Special rules¹ apply to income that

1. is grant income (that is not taken into account in DMG 51985 et seq) **and**
2. was paid to a person who ceased to be a student before the end of the period for which the income was payable **and**
3. has to be repaid because the person ceased to be a student before the end of the period for which the income was payable.

1 ESA Regs, reg 91(4), reg 94(7) & reg 104(7)

Period income is taken into account

51985 Other than where DMG 51984 applies, grant income is taken into account over a period that

1. begins on the date that the income was treated as paid **and**
2. ends on the earlier of
 - 2.1 the date when the repayable grant income is repaid or
 - 2.2 the last day of the term or holiday in which the person ceased to be a F/T student or

- 2.3 where the grant is paid in instalments, on the day before the next instalment would have been paid had the person remained a F/T student¹.

1 ESA Regs, reg 91(4)

- 51986 Students who have not completed the course, and have to repay grant income who
1. are already receiving ESA(IR), will continue to have the same weekly grant income deducted from the day they stopped being a student (see DMG 51995)
 2. make a new claim to ESA, will have the net weekly grant income attributed from the date that the last payment of grant income was treated as paid until the date established at DMG 51985 2.
- 51987 When considering the date income is treated as paid the guidance at DMG Chapter 48 applies. The DM will first need to establish the due date of the last grant payment which will usually be the last instalment.
- 51988 A decision on the due date of a grant instalment must be based on evidence from the paying authority. The DM can get this
1. directly from the authority or
 2. from documents produced by them.
- 51989 If the paying authority gives a due date this should generally be followed. Notices of award or authorities' general literature may say that payments are to be made available on a set date. This date should usually be accepted as the due date.
- 51990 It may not be possible to get specific evidence of the due date from the paying authority. The due date should then be accepted as the date of the actual payment.
- 51991 In Scotland the Student Awards Agency sends payments on a monthly basis by bank transfer for the maintenance element of mandatory awards to the college or university. Take such a payment as being due on the first day of the relevant term.
- 51992 In England and Wales the arrangements for payment of student grants vary between LAs.

Calculation of weekly income

- 51993 The weekly grant income of a former student to be taken into account for the period in DMG 51985 is equal to the amount which would have applied if the person was still a student¹. This means that the
1. appropriate deductions and disregards apply (see DMG 51947 et seq)
 2. weekly amount is calculated in the same way (see DMG 51956 et seq).

The amount of income to be taken into account for each benefit week is calculated on the basis that the person is still a student and none of the income has been repaid². The weekly amount is not reduced by repayments of the grant.

1 ESA Regs, reg 94(7) & reg 132; 2 reg 104(7)

Course not completed, treatment of loan and dependant grant income

Relevant payment

- 51994 A relevant payment is either a student loan or an amount for the maintenance of dependants, or both¹, paid to a student.

1 ESA Regs, reg 104(6)

Calculation of weekly income

- 51995 If a claimant abandons or is dismissed from the course of study before the final instalment of a relevant payment has been paid, the DM should calculate the weekly amount to take into account using the formula¹.

$$\frac{A - (B \times C)}{D}$$

Where

1. **A** is the total amount of relevant payment which the claimant would have received, less the appropriate deduction for travel costs, books and equipment, had he remained a student until the last day of the term in which he abandoned or was dismissed from the course
2. **B** is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course
3. **C** is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been taken into account had the claimant been entitled to ESA(IR))
4. **D** is the number of benefit weeks in the assessment period. This is the number of weeks in the period²
 - 4.1 beginning with the benefit week that includes the day on which the course was abandoned, or the claimant was dismissed and

- 4.2 ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable.

Note: A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December³.

1 ESA Regs, reg 104(5); 2 reg 104(6); 3 Support Regs, reg 6

- 51996 The weekly amount calculated as in DMG 51995 should be taken into account for the period in DMG 51995 4.¹.

1 ESA Regs, reg 104(5)

Example

Erin abandons her course of study on 25.2.10 in her second year after £2,020 of her students loan allocation has been paid. Had she remained a student for the full year she would have been entitled to a loan of £3,020 which is paid in three instalments; £1,020 in October, £1,000 in January and £1,000 in April. She is a Tuesday BWE.

The DM calculates a weekly amount of £NIL to take into account from 23.2.10 to 6.4.10;

$$A = £1,345 (£2,020 - £295 - £380)$$

$$B = 25 \text{ (number of weeks between 2.9.09 and 23.2.10)}$$

$$C = £55.84 (£3,020 - £295 - £380 = £2,345/42 = £55.84 \text{ per week which would have been taken into account (before a £10 disregard) had she remained a student})$$

$$D = 6 \text{ (number of weeks between 24.2.10 and 6.4.10)}$$

$$\frac{£1,345 - (25 \times £55.84)}{6} = £NIL$$

- 51997 A student who has prematurely stopped being a student may voluntarily repay some or all of their student loan. In such a case there are no grounds to revise or supersede the award. This is because the repayment of a student loan is not a relevant change of circumstances¹.

1 SS CS (D&A) Regs, reg 6(6)(a)

- 51998 Where the former student repays the loan because the loan company has requested repayment, the claimant is under a certain and immediate liability to repay. Under such circumstances the DM should not treat the loan as income from the date that such a liability arises.

Calculation of weekly income when loan is paid by two or more instalments

51999 When a student loan is paid by two or more instalments and a student abandons or is dismissed from the course, the DM should calculate the weekly amount to take into account by using the formula¹

$$\frac{A - (B \times C)}{D}$$

Where

1. **A** is the total amount of the relevant payments which the person received or would have received from the first day of the academic year to the day the person abandoned or was dismissed from the course, less the appropriate deduction for travel costs, books and equipment.
2. **B** is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course.
3. **C** is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been taken into account had the student been entitled to ESA).
4. **D** is the number of weeks in the assessment period. This is the number of weeks in the period²
 - 4.1 beginning with the benefit week which includes the day on which the claimant abandoned or was dismissed from the course **and**
 - 4.2 ending on the earlier of the benefit week which includes
 - 4.2.a the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued **or**
 - 4.2.b the last day of the last quarter for which an instalment of the relevant payment was payable.

Note: A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December³.

1 ESA Regs, reg 104(5A); 2 reg 104(6); 3 Support Regs, reg 6

Example

Alan abandons his course of study on 9.2.09 in his second year after receiving £2,000 of his student loan allocation. He was entitled to a student loan of £3,570 and this was being paid in monthly instalments of £400 on the 1st of each month from 1st October to 1st May with a final payment of £370 due on 1st June. He is a Wednesday BWE.

The DM calculates that there is nothing to be taken into account from the student loan:

$$A = £1,325 \quad (£2,000 - £295 - £380)$$

$$B = 22 \quad (\text{number of weeks from 4.9.08 to 4.2.09})$$

$$C = £68.92 \quad (£3,570 - £295 - £380 = £2,895 / 42 \text{ weeks (4.9.08 to 24.6.08)} = £68.92 \text{ per week which would have been taken into account had he remained a student})$$

$$D = 4 \quad (\text{number of weeks between 5.2.09 and 4.3.09})$$

$$\frac{£1325 - (22 \times £68.92)}{4} = \text{Nil}$$

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 (see DMG 42581).

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.(see DMG 42581)

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