

DMG Chapter 78: Additional amounts and special groups

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Introduction

78001 This Chapter contains guidance on SPC and the

1. additional amounts that may be awarded for

1.1 the severely disabled (see DMG 78030)

1.2 carers (see DMG 78100)

1.3 former claimants of IS/JSA(IB) (see DMG 78120)

1.4 housing costs (see DMG 78170)

1.5 those responsible for a child or qualifying young person (see DMG 78549)

2. special rules that apply to

2.1 members of polygamous marriages (see DMG 78600)

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2.3 members of religious orders (see DMG 78680)

2.4 people in hospital (see DMG 78700)

2.5 people who are absent from GB (see DMG 78920 and DMG Chapter 07).

78002 For guidance on

1. the conditions of entitlement for SPC - see DMG 77031 et seq

2. how to establish membership of the household - see DMG 77100 et seq

3. how to calculate the normal amount payable - see DMG 77140 et seq

4. payment questions, including how to calculate the amount payable for a part week - see DMG Chapter 79

5. transitional provisions - see DMG Chapter 80

6. the assessed income period - see DMG Chapter 83

7. the treatment of capital and deemed weekly income from capital - see DMG Chapter 84

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78005 The following paragraphs explain the meaning of terms used throughout this Chapter.

“AA”

78006 [see [DMG memo 02/25](#)] Attendance allowance (“AA”) means¹ any of the following

1. “AA”² **or**

2. CAA which is paid with a disablement pension because disablement has been assessed at 100%³ **or**

3. ESDA which is paid because industrial disablement has been assessed at 100%⁴ **or**

4. any

4.1 payments for attendance under the Civilians Personal Injury Scheme⁵ **or**

4.2 similar payments to **4.1** **or**

5. any payment for attendance which is part of WDisP (including severe disablement occupational allowance paid with CAA) **or**

6. any payment for attendance paid as

6.1 any retired pay, pension or allowance in respect of disablement **or**

6.2 any pension or allowance paid to

6.2.a a widow **or**

6.2.b a widower **or**

6.2.c a surviving civil partner

in respect of a death due to military service or war injury under certain legislation⁶

Note: Payments in **4.** are made to people who receive a disability pension because of war injuries suffered as civilians or civil defence volunteers.

1 SPC Regs, reg 1(2); 2 SS CB Act 92, s 64; 3 s 104 & 105; 4 s 104 & 105;

5 Personal Injuries (Civilians) Scheme 83, Art 14-16, 43 & 44;

6 SPC Regs, reg 15(5)(ac): Income Tax (Earnings and Pensions) Act 2003, s 639(2)

78007

Treated as blind or severely sight impaired

78008 A person should be treated as blind or severely sight impaired¹ for a period of 28 weeks from the date they regained their eyesight and were no longer certified as blind or severely sight impaired.

1 SPC Regs, Sch I, para 1(3); Sch II, para 14(6)(a)

Full-time student

78009 A F/T student is¹ a person who is not a qualifying young person² or a child and who is

- 1.** aged less than 19 and is attending or undertaking a F/T course of advanced education **or**
- 2.** aged 19 or over but under pensionable age and is attending or undertaking a F/T course of study at an educational establishment **or**
- 3.** on a sandwich course.

1 SPC Regs, reg 1(2); IS (Gen) Regs, reg 61(1); 2 SPC Regs, reg 4A

78010 For further information on F/T students and qualifying young persons, see the guidance on students for IS purposes in DMG Chapter 30.

Voluntary organisation

78011 A voluntary organisation is a non-profit making organisation that is not a public authority or LA¹.

1 SPC Regs, reg 1(2)

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Categories

78025 There are five types of additional amount¹ that may be applicable when considering the amount of the AMG. These are for

- 1.** the severely disabled
- 2.** carers
- 3.** former claimants of IS/JSA(IB)
- 4.** housing costs.
- 5.** those responsible for a child or qualifying young person.

1 SPC Act 02, s 2; SPC Regs, reg 6; Sch I, II & IIA

Rates of additional amounts

78026 DMs should note that the additional amount for

- 1.** the severely disabled is payable at two rates. The rate depends on whether the claimant or any partner satisfies the qualifying conditions
- 2.** carers is paid at one rate. But there may be more than one such additional amount payable (see DMG 78101)
- 3.** former claimants of IS/JSA(IB) is variable depending on the circumstances of each individual case
- 4.** housing costs is variable depending on the circumstances of each individual case.
- 5.** a child or qualifying young person depends on their date of birth, and an additional amount may be payable if the child or qualifying young person is entitled to any amount of DLA/PIP,

Qualifying conditions

78027 Each additional amount has its own qualifying conditions and to be entitled to an additional amount the qualifying conditions may apply to

1. the claimant **or**

2. any partner of the claimant.

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General

78030 _ [See [DMG memo 12/23](#)] [[See Memo DMG 06/25](#)] When considering the amount of the AMG, an additional amount is applicable if the claimant is treated as being severely disabled¹.

1 [SPC Act 02, s 2\(3\)\(b\), 2\(7\) & 17\(2\)\(b\); SPC Regs, reg 6\(4\) & Sch 1, para 1](#)

Note: Where a claimant claims that either they or the DP is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to DMA Leeds, for consideration of whether the benefit falls within Art. 5 of Regulation (EC) NO 883/2004

78031 An additional amount for the severely disabled is not payable¹ in the case of

1. prisoners **and**

2. members of religious orders who are fully maintained by their order.

1 [SPC Regs, reg 6\(2\), \(3\) & \(4\)](#)

78032 If the claimant is a member of a polygamous marriage, see DMG 78610 for guidance on the rules

that apply.

78033 The additional amount for the severely disabled is payable at a lower or higher rate¹. See Appendix 2 to DMG Chapter 77 for details of those rates.

1 [SPC Regs, reg 6\(5\)](#)

Lower rate

Claimants who have no partner

78034 [see [DMG memo 02/25](#)] Claimants with no partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if¹

1. they are in receipt of

1.1 “AA” or

1.2 the care component of DLA at the highest or middle rate or

1.3 the daily living component of PIP at the standard or enhanced rate or

1.4 the daily living component of ADP at the standard or enhanced rate or

1.5 AFIP and

2. there are no persons aged 18 or over

2.1 normally residing with the claimant or

2.2 who the claimant normally resides with (see DMG 78065 et seq) and

3. no one is entitled to and in receipt of CA, or UC that includes the carers element, in respect of caring for them.

1 [SPC Regs, reg 6\(5\)\(a\); Sch I, para 1\(1\)\(a\)](#)

Transitional protection

78035 [see [DMG memo 02/25](#)] Carers who were aged 65 and over before 28.10.02 can continue to be entitled to CA even though they are no longer providing care¹, for example after the disabled person has died.

1 [The Regulatory Reform \(Carer’s Allowance\) Order 2002](#), S.I. 2002/1457

78036 [see [DMG memo 02/25](#)] A claimant will not be disqualified under 78034 **3.**, from the extra

amount for the severely disabled where the person in receipt of CA is not providing care but retains payment of the CA as a result of transitional protection.

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Claimants who have a partner

78045 [see [DMG memo 02/25](#)] Claimants who have a partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if¹

1. both partners are in receipt of

1.1 “AA” or

1.2 the care component of DLA at the highest or middle rate or

1.3 the daily living component of PIP at the standard or enhanced rate or

1.4 the daily living component of ADP at the standard or enhanced rate or

1.5 AFIP and

2. there are no persons aged 18 or over

2.1 normally residing with the partners or

2.2 who the partners normally reside with (see DMG 78065 et seq) and

3. someone is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for only one of the partners.

1 [SPC Regs, reg 6\(5\)\(a\); Sch I, para 1\(1\)\(b\)](#)

78046 [see [DMG memo 02/25](#)] Claimants who have a partner may not satisfy the conditions in DMG 78045. In such a case the lower rate can still be awarded if¹

1. one of the partners is in receipt of

1.1 “AA” or

1.2 the care component of DLA at the highest or middle rate or

1.3 the daily living component of PIP at the standard or enhanced rate or

1.4 the daily living component of ADP at the standard or enhanced rate or

1.5 AFIP and

2. the other partner is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired **and**

3. there are no persons aged 18 or over

3.1 normally residing with the partners **or**

3.2 who the partners normally reside with (see DMG 78065 et seq) **and**

4. no-one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for the partner who is receiving “AA” or DLA as in **1.**

[1 SPC Regs, Sch I, para 1\(1\)\(c\)](#)

78047 [see [DMG memo 02/25](#)] The lower rate of additional amount for the severely disabled can also be awarded to claimants who have a partner if¹

1. one of the partners is in receipt of

1.1 “AA” **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 the daily living component of ADP at the standard or enhanced rate **or**

1.5 AFIP **and**

2. the other partner would be in receipt of

2.1 “AA” **or**

2.2 the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of ADP at the standard or enhanced rate **or**

2.4 the daily living component of PIP at the standard or enhanced rate

but for being a patient for over 28 days **and**

3. there are no persons aged 18 or over

3.1 normally residing with the partners **or**

3.2 who the partners normally reside with (see DMG 78065 et seq) **and**

4. no-one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for the partner who is receiving “AA” or DLA as in **1.**

1 [SPC Regs, reg 6\(5\)\(a\); Sch I, para 1\(1\)\(b\) & \(2\)\(b\)](#)

Higher rate

78048 [see [DMG memo 02/25](#)] DMs should note that the higher rate of additional amount for the severely disabled does not apply to claimants who have no partner.

78049 Claimants who have a partner are treated as being severely disabled and are entitled to the higher rate if¹

1. both partners are in receipt of

1.1 “AA” or

1.2 the care component of DLA at the highest or middle rate or

1.3 the daily living component of PIP at the standard or enhanced rate or

1.4 the daily living component of ADP at the standard or enhanced rate or

1.5 AFIP and

2. there are no persons aged 18 or over

2.1 normally residing with the partners or

2.2 who the partners normally reside with (see DMG 78065 et seq) and

3. no one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for either partner.

1 [SPC Regs, reg 6\(5\)\(b\); Sch I, para 1\(1\)\(b\)](#)

78050 [see [DMG memo 02/25](#)] DMs should note that DMG 78049 **1.** is **not** satisfied if either partner is treated as being in receipt of “AA” or DLA, PIP, ADP or AFIP as in DMG 78060 **2.**¹. In such a case the lower rate of additional amount should be considered.

1 [SPC Regs, reg 6\(5\)\(b\)](#)

78051 - 78054

In receipt of “AA”, DLA, PIP, ADP, CA and UC that includes the carer element

78055 [see [DMG memo 02/25](#)] Before awarding an additional amount for the severely disabled, the DM needs to know if

- 1.** the claimant or partner is in receipt of “AA”, DLA, PIP, ADP or AFIP **and**
- 2.** anyone is in receipt of CA, or UC that includes the carer element, in respect of caring for the claimant or partner.

Note: Special rules apply to the treatment of “AA”, DLA, PIP, ADP, AFIP and CA/UC that includes the carer element, when a person is admitted to hospital. See DMG 78805 et seq for guidance.

Example

Heather was in receipt of “AA” and had an award of SPC which included an amount for severe disability. On 10.06.2017 she was admitted to a care home. It wasn’t until the 22.11.2017 that her “AA” ceased, due to some confusion around appointing someone to act. The additional amount for severe disability was correctly in payment while ever Heather was **in receipt of “AA”**,

“AA”, DLA, PIP, ADP and AFIP

78056 [see [DMG memo 02/25](#)] DMs should note that a person is in receipt of “AA” or DLA or PIP or AFIP only if it is paid because of that person’s own incapacity or disability.

Example 1

Alistair is aged 65 and lives alone. He claims SPC and states that he is in receipt of “AA” due to his poor physical condition. No one gets CA/UC that includes the carer element, in respect of looking after him. Alistair is in receipt of “AA” and the DM considers an additional amount for the severely disabled.

Example 2

Ruby lives with her grandson Ben who is aged 14. Ben is disabled and is awarded the care component of DLA at the highest rate. But the DLA is paid to Ruby. Ruby is not in receipt of DLA. The DLA is paid because of Ben’s disability and is only paid to Ruby because of Ben’s age. An additional amount for the severely disabled is not applicable.

CA/UC carer element

78057 [see [DMG memo 02/25](#)] An additional amount for the severely disabled may not be applicable if someone is receiving CA or UC that includes the carer element in respect of caring for the claimant or partner¹. But CA/UC that includes the carer element has to actually be in payment before it affects entitlement to this additional amount.

78058 [see [DMG memo 02/25](#)] DMs should normally treat an award of CA/UC that includes the carer element as a proper award until the CA/UC that includes the carer element decision is revised, superseded or otherwise changed on appeal. If the claimant says that

- 1.** they are not being cared for by the person getting CA/UC that includes the carer element **or**
- 2.** the award of CA/UC that includes the carer element is in error **or**
- 3.** they know nothing about the CA/UC that includes the carer element award **or**
- 4.** the CA/UC that includes the carer element claim is fraudulent

the DM should ask the CA unit or the office responsible for the UC award to investigate whether the CA or the UC that includes the carer element award is correctly made.

78059 [see [DMG memo 02/25](#)] Where the disabled person makes an allegation about the carer's integrity, as described in DMG 78058, the SPC DM can make a decision on the claim or application before the CA/UC that includes the carer element DM has decided whether the award of CA/UC that includes the carer element should be revised or superseded. However, the SPC decision should include a determination which

- 1.** makes an assumption that the carer is properly in receipt of CA/UC that includes the carer element **and**
- 2.** refuses to award the extra amount for severe disability.

Treated as being or not being in receipt of "AA", DLA, PIP, ADP, CA and UC that includes the carer element

78060 [see [DMG memo 02/25](#)] A person shall be treated

- 1.** as being in receipt of "AA", or the care component of DLA at the highest or middle rate, or the daily living component of PIP at the standard or enhanced rate, or the daily living component of ADP at the standard or enhanced rate, or AFIP for any period¹
 - 1.1** before an award is made but in respect of which the allowance is awarded **or**
 - 1.2** not covered by an award but in respect of which a payment is made in lieu of an award
- 2.** in the case of a claimant who has a partner, as being in receipt of
 - 2.1** "AA" **or**
 - 2.2** the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of PIP at the standard or enhanced rate

2.4 the daily living component of ADP at the standard or enhanced rate

if they would be in receipt but for being a patient for over 28 days²

3. as not being in receipt of CA, or UC that includes the carer element, for any period before the date on which the award is first paid³.

1 [SPC Regs, Sch I, para 1\(2\)\(a\)](#); 2 [Sch I, para 1\(2\)\(b\)](#); 3 [Sch I, para 1\(2\)\(c\)](#)

78061 - 78064

People residing with the claimant

78065 An additional amount for the severely disabled may not be applicable if¹ there are people aged 18 or over who

- 1.** normally reside with the claimant and any partner **or**
- 2.** the claimant and any partner normally reside with.

That is, share the accommodation (see DMG 78068). But the presence of certain people can be ignored². See DMG 78077 and 78078 for full details.

1 [SPC Regs, Sch I, para 1\(1\)](#); 2 [Sch I, para 2](#)

Meaning of normally resides

78066 A person normally resides where they usually live. Periods of residence or absence that are of an exceptional nature should be disregarded. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

Example 1

Jack normally lives in his sister's house and is not entitled to an additional amount for the disabled. He goes into respite care for one week every other month. While he is in respite care Jack still normally resides in his sister's house. He does not qualify for an additional amount for the severely disabled.

Example 2

Mary normally lives alone in her own flat. She is entitled to an additional amount for the severely disabled. Her brother Steven comes to stay with her for a week at a time every three months. He does not normally live with Mary. She keeps her entitlement to the additional amount whilst Steven is staying with her.

78067 When considering where a person normally resides the DM should have regard to

1. the total amount of time spent in a place
2. how often time is spent in a place
3. how permanent the stay is thought to be
4. the person's intentions
5. individual circumstances
6. what degree the accommodation is shared
7. the services provided
8. whether the person owns or rents any other accommodation
9. whether the person has any liabilities for services/utilities/tv licence.

Example

Agnes has been awarded the care component of DLA at the middle rate and no one gets CA (or UC that includes the carer element) for caring for her. She owns her own home but for the past two years has slept every night at her son's house. She keeps her clothes and some of her things at her son's house. She goes home for the day two or three days a week, to clean up and do the garden. But she always returns to her son's to sleep. Agnes is responsible for the bills for her home and she and her son still regard Agnes's house as her home. Agnes' house has never been put up for sale.

Agnes normally lives at her son's house because

1. she sleeps at her son's house every night
2. her clothes and some of her things are kept at her son's
3. she only goes back to her own house occasionally and in daylight hours
4. she spends the majority of her time at her son's house.

Agnes is not entitled to an additional amount for the severely disabled. The DM considers whether the value of Agnes' house should be taken into account.

Sharing the accommodation

78068 People should not be regarded as sharing the accommodation if¹

1. the only shared area is a

1.1 bathroom or

1.2 lavatory or

1.3 communal area or

2. they are separately liable to make payments to the landlord for that accommodation.

Note: A person should still be regarded as sharing the kitchen even if they do not enter or use it where items for the persons use are stored there or their meals are prepared there.

1 [SPC Regs, Sch I, para 3\(1\)](#); R(IS) 12/96

78069 A communal area is¹ an area of common access (not a room) including

1. halls

2. passageways

3. stairways

4. rooms of common use in sheltered accommodation.

1 [SPC Regs, Sch I, para 3\(2\)](#)

Example

Katja gets “AA” and no one gets CA (or UC that includes the carer element) for caring for her. She lives in a self-contained granny flat attached to her daughter’s house. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter’s house and the front door of the property is shared. Everything else is separate.

The hall is the only shared area and is a communal area. Katja does not share the accommodation and does not normally reside with her daughter.

Note: A person should still be regarded as sharing the kitchen even if they do not enter or use it if items for the person’s use are stored there or their meals are prepared there. A kitchen is not shared if a person needs to pass through it to access to their self-contained flat.

Students

78070 In a case where a student lives at a university address during term time and lives at their parents’ home for some weekends and during the holidays, the DM should have regard to the considerations at DMG 78067 before deciding which address is where they normally reside. Whichever address is chosen will remain the student’s normal residence even when they spend time at the other address.

Example

A student still retains a bedroom, furniture and some clothing at their parents' home, they still get some mail there, are registered with the local dentist and are actually resident for 18 full weeks and most weekends. On this evidence the DM decides that the student normally resides at their parents' home and are only temporarily absent from it whilst at university.

Alternatively the DM may decide that because the student has a tenancy agreement for a university address, they have some furniture and clothes there, they live there for 32 weeks of the year and are liable for gas, electricity and a tv licence that they normally reside at the university address and are only temporarily absent from it whilst back living with their parents.

78071

Meaning of liable to make payments

78072 "Liable to make payments" refers to legal liability. When considering the question of liability, the DM must consider whether

1. the claimant has the contractual capacity to enter into an enforceable contract **and**
2. there was an intention to create legal relations.

78073 If the conditions in DMG 78072 are met, the DM must then establish that¹

1. there is an obligation to make payments derived from a recognised source of law (for example contract law) **and**
2. the obligation to make the payments is for the occupation of the premises and not, for example, for food or clothing **and**
3. the power to bring the licence or lease to an end is referable to a breach of the condition to make the payment under the contractual licence or lease and not to some other matter.

1 R(IS) 11/98

78074 Whether a person has separate liability to a landlord should be determined by reference to the arrangements within the group. But DMs should note that the liability has to be to the same landlord. Reference to some other liability of the person to a third party is not relevant.

Example

Tom gets "AA" and no one gets CA (or UC that includes the carer element) for caring for him. He lives in a privately rented house, which he shares with three other people. They all have their own bedroom but share the kitchen and bathroom. Each are liable to pay the landlord rent for their room.

The DM decides that Tom does not normally reside with the other residents of the house. They are all separately liable to make payments to the landlord for their accommodation. Tom is awarded an additional amount for the disabled.

Contractual capacity

78075 In England and Wales, only a minor, or a person of unsound mind, may not have the capacity to incur legal liability. DMs should accept that a claimant has sufficient capacity unless there is very strong evidence to the contrary.

Carer stays overnight

78076 A carer may stay overnight with the person they are looking after. In such a case the DM should consider whether the carer normally resides with that person and should find out

- 1.** whether the carer has a separate address **and**
- 2.** if the carer has a separate address, whether they use it and if so, how often **and**
- 3.** what address the carer uses as a postal address **and**
- 4.** what address the carer is registered at for CT purposes.

People whose presence is ignored

78077 [see [DMG memo 02/25](#)] The DM can ignore the presence of¹

- 1.** any person aged under 18² **or**
- 2.** a person who is in receipt of³
 - 2.1** “AA” **or**
 - 2.2** the care component of DLA at the highest or middle rate **or**
 - 2.3** the daily living component of PIP at the standard or enhanced rate **or**
 - 2.4** the daily living component of ADP at the standard or enhanced rate **or**
 - 2.5** AFIP **or**
- 3.** a person who is
 - 3.1** certified as blind or severely sight impaired by a consultant ophthalmologist⁴ **or**
 - 3.2** treated as blind or severely sight impaired⁵ (see DMG 78008) **or**

4. a person who⁶

4.1 lives with the claimant in order to care for the claimant or partner **and**

4.2 is engaged by a charitable or voluntary organisation (see DMG 78011) which makes a charge to the claimant or partner for that person's services **or**

5. the partner of a person to whom **4.** applies⁷ **or**

6. a person who is a qualifying young person⁸ or a child for CHB purposes⁹.

1 [SPC Regs, Sch I, para 2\(1\)](#); 2 [Sch I, para 1\(1\)\(a\)\(ii\), \(b\)\(ii\) & \(c\)\(iii\)](#); 3 [Sch I, para 2\(2\)\(a\)](#);
4 [Sch I, para 2\(2\)\(b\)](#); 5 [Sch I, para 2\(2\)\(c\)](#); 6 [Sch I, para 2\(2\)\(d\)](#); 7 [Sch I, para 2\(2\)\(e\)](#);
8 [reg 4A](#); 9 [Sch I, para 2\(2\)\(f\)](#), s 40 2012 Act

78078 The DM can also ignore the presence of a person who

1. joins the claimant's household for the first time¹

1.1 to care for the claimant or partner **and**

1.2 if, immediately before joining, the claimant or partner satisfied the conditions for an additional amount for the severely disabled **or**

2. is not a close relative (see DMG 77011) of the claimant or partner and who²

2.1 is liable to make payments on a commercial basis to the claimant or partner for their occupation of the dwelling **or**

2.2 the claimant or partner is liable to make payments to on a commercial basis for their occupation of that person's dwelling **or**

2.3 is a member of the household of a person in **2.1** or **2.2** **or**

3. is not a close relative (except where **5.** applies) who jointly occupies the claimant's dwelling and who is³

3.1 a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners) **or**

3.2 jointly liable with the claimant or the claimant's partner to make payments to the same landlord for their occupation of the dwelling **or**

4. is the partner of a person to whom **3.** applies⁴ **or**

5. is a close relative who satisfies **3.** or **4.**, if⁵ the claimant or partner's co-ownership or joint liability arose

5.1 before 11.4.88 or

5.2 if later, on or before the date on which the claimant or partner first occupied the dwelling in question.

Note: 1. only applies for the first twelve weeks following the date on which the person first joins the claimant's household⁶.

Note 2: When considering **5** (above) and the date the claimant or partner first occupied the dwelling, we consider the date they had the right to occupy the dwelling. If there is a delay in moving in, that would not change the date of occupation for the purposes of this paragraph.

1 [SPC Regs, Sch I, para 2\(3\)](#); 2 [Sch I, para 2\(5\)](#); 3 [Sch I, para 2\(6\)](#);
4 [Sch I, para 2\(7\)](#); 5 [Sch I, para 3\(3\)](#); 6 [Sch I, para 2\(4\)](#)

Commercial basis

78079 For a liability to be on a commercial basis¹ (see DMG 78078 **2.**)

1. there should be a legal liability to make the payment **and**

2. the payment should be broadly in line with what a lodger might pay for similar accommodation and facilities.

1 R(IS) 11/98

Shared lives scheme

78080 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PIP/ADP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will be ignored as non-dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the EASD.

Note: The claimant will not be entitled to the EASD if there are people other than the carer, members of the carer's household, other shared lives residents or anyone liable to make payments for accommodation to the carer on a commercial basis in the dwelling who cannot be ignored.¹

1. [SPC Regs, Sch 1, para 2\(5\)&3](#)

Example

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of their

family having her own bedroom and sharing all the other

household facilities. Shirley is disabled and receives DLA. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get HB. The DM decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the EASD.

78081 - 78083

Temporary residence in a care home

Claimants who have no partner

78084 An additional amount for the severely disabled may not be applicable if a claimant who has no partner does not normally live alone¹. Such a claimant will not satisfy the conditions for this additional amount while they are temporarily in a care home (see DMG 77007). This is because their stay is temporary and they continue to normally reside at home.

[1 SPC Regs, Sch I, para 1\(1\)](#)

Example

Nasreen has no partner and lives with her son. The conditions for the award of an additional amount for the disabled are not satisfied. Nasreen goes into a care home temporarily. An additional amount for the severely disabled is not applicable because she continues to normally reside at home with her son.

Claimants who have a partner

78085 When a member of a couple is temporarily in a care home the separation from the partner is also temporary. In such a case the

- 1.** couple remain members of the same household¹ **and**
- 2.** absent partner is treated as still normally residing at home **and**
- 3.** amount of SPC payable to them is unaffected.

[1 SPC Regs, reg 5\(2\)](#)

78086 The SPC and the additional amount for severe disability will have to be reviewed where the person is in temporary residential care beyond 28 days and the payability of DLA ceases.

Example

Malcolm and Wendy are married and live together in the same household. Both Malcolm and Wendy get

DLA and CA, or UC that includes the carer element is not in payment. There are no non-dependants. Higher rate EASD is in payment. Malcolm goes into temporary residential care for 6 weeks.

They are assessed as a couple and the higher rate EASD continues in payment however after 4 weeks Malcolm's DLA payments cease and the EASD is withdrawn

Note: The lower rate EASD is not appropriate as there is no facility to treat DLA as in payment for these periods of respite care.

Permanent residence in a care home

78087 Claimants who are permanently in a care home are normally resident in that care home. Other residents of the home do not normally reside with the claimant, as they are separately liable to make payments to a landlord.

Claimants who have no partner (including self- funders)

78088 An additional amount for the severely disabled is applicable to a person who is permanently in a care home if all the conditions are satisfied¹.

Note: This will normally be self funding claimants, but DMs should be aware that it will also include residents where the payment of "AA" or DLA/PIP continues for the first four weeks after admission.

1 [SPC Regs, reg 5\(1\)\(b\) & Sch I, para 1\(1\)\(a\)](#)

Example

Shafaq has no partner and lives at home with his sisters. He is in receipt of the care component of DLA at the middle rate and no one receives CA, or UC that includes the carer element for caring for him. The conditions for the award of an additional amount for the disabled are not satisfied. Shafaq goes into a care home on a permanent basis. The DM decides that Shafaq is entitled to an additional amount for the disabled at the lower rate from the date that he moves into the care home. This is because

- 1.** he is in receipt of the care component of DLA at the middle rate **and**
- 2.** the other residents of the home do not normally reside with him **and**
- 3.** no one is in receipt of CA, or UC that includes the carer element, for caring for him.

Entitlement to the additional amount continues as long as all of the above are satisfied.

Claimants who have a partner

78089 A member of a couple who is permanently in a care home is no longer a member of the same household as their partner. In such a case each person may claim SPC as a claimant who has no partner.

78090 - 78099

Additional amount for carers 78100 - 78119

[General](#) 78100 - 78104

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General

78100 [See [DMG memo 12/23](#)] When considering the amount of the AMG, an additional amount for carers may be applicable¹. But the additional amount is not payable² in the case of

1. prisoners **and**

2. members of religious orders who are fully maintained by their order.

1 SPC Act 02, s 2(3)(b) & (8); SPC Regs, reg 6(6)(a) & Sch I, para 4(1); 2 reg 6(2), (3) & (6)

78101 The additional amount for carers is paid at one rate, and in the case of partners, that amount is applicable for each partner who satisfies the qualifying conditions¹. See Appendix 2 to DMG Chapter 77 for details of the rate.

1 SPC Regs, reg 6(8)

78102 - 78104

Qualifying conditions

78105 [See [DMG memo 12/23](#)] An additional amount for carers may be awarded for each claimant¹ or, in the case of partners, each partner² who is

1. entitled to CA³ **or**

2. treated as still satisfying the qualifying conditions for the award of the additional amount⁴ (see DMG 78107).

Note 1: A person may be entitled to CA even if it is not payable (for example because of the overlapping benefit provisions).

Note 2: Where a claimant claims that either they or the DP is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to DMA Leeds, for consideration of whether the benefit falls within Art. 5. of Regulation (EC) NO 883/2004

1 SPC Act 02, s 2(8)(a); SPC Regs, reg 6(8); 2 SPC Act 02, s 2(8)(b); SPC Regs, reg 6(8);
3 Sch I, para 4(2); 4 Sch I, para 4(3)

Example

Maurice lives with his wife Louise and they are both entitled to CA. They each satisfy the conditions for the award of an additional amount for carers. The couple do not qualify for any other additional amounts. At the time of Maurice's claim the SMG is £160.95 and the rate of the additional amount for carers is £25.55. Their AMG is £212.05 (£160.95 + £25.55 + £25.55).

Treated as being entitled to CA

78106 A person shall be treated as being entitled to CA for any period¹

1. covered by an award
2. in respect of which a payment is made in lieu of an award.

1 SPC Regs, Sch I, para 5

Treated as satisfying the qualifying conditions – run on

78107 Where an additional amount for carers has been awarded but the person in respect of

1. whose care the CA has been awarded dies **or**
2. whom the additional amount was awarded ceases to be entitled or treated as entitled to CA

the qualifying conditions shall be satisfied or treated as satisfied for a period of eight weeks¹ from the relevant date.

1 SPC Regs, Sch I, para 4(3)

78108 At the end of the eight week period, the normal change of circumstances rules apply to determine the date the additional amount is withdrawn from.

Note: In certain specified cases CA can continue indefinitely after the person in respect of whose care the CA has been awarded dies. See Chapter 04 for detailed guidance on those rules.

The relevant date

78109 The relevant date is, where

1. the person in respect of whose care the CA has been awarded dies¹,

1.1 the Sunday following the death of the person **or**

1.2 the date of death, if the death occurred on a Sunday

2. head **1.** does not apply, the date on which the person who has been entitled to CA ceases to be entitled to it².

1 SPC Regs, Sch I, para 4(4)(a); 2 Sch I, para 4(4)(b)

Example

Padraig is entitled to CA and his AMG includes an additional amount for carers. The person he is caring for dies on Friday 21.11.03. The relevant date is 23.11.03. The qualifying conditions are satisfied for the period 23.11.03 to 17.1.04. The normal change of circumstances rules then apply and the additional amount for carers is withdrawn.

New claims

78110 Where a new claim for SPC is made and entitlement to CA had ended within 8 weeks or less before the date of the SPC claim, in these circumstances there is no entitlement to the extra amount for carers. The run on can only apply if this element was already included in the award.

Transitional protection

78111 Carers who were aged 65 and over before 28.10.02 can continue to be entitled to CA even though they are no longer providing care¹, for example after the disabled person has died. Where this protection applies and CA is retained the carer can continue to receive the additional amount for carers.

1 The Regulatory Reform (Carer's Allowance) Order 2002, S.I. 2002/1457, art 4

Example 1

Ralph, aged 72, is entitled to SPC for himself and his partner Kath. Kath is aged 69 and has been entitled to CA in respect of the care she provides her mother since May 1994. Ralph's SPC includes an additional amount for carers. Kath's mother dies on 22.8.04 but Kath retains her entitlement to CA (beyond the eight week run on period). Ralph continues to be entitled to the additional amount for carers in the calculation of his SPC.

Additional amount for former claimants of IS, JSA(IB) and ESA(IR) 78120 - 78169

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General

78120 In certain cases an additional amount may be included in the AMG if a claimant transfers from IS, JSA(IB) or ESA(IR) to SPC¹. This additional amount is known as the transitional amount and it

1. protects the level of a claimant's benefit income
2. is worked out on an individual basis
3. varies depending on the circumstances of each individual case.

1 SPC Act 02, s 2(3)(b); SPC Regs, reg 6(6)(b) & Sch I, para 6

78121 DMs should note that a transitional amount is not payable¹ in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

1 SPC Regs, reg 6(2), (3)(b)

78122 - 78125

Qualifying conditions

78126 A claimant is entitled to a transitional amount if¹

1. the claimant was entitled to IS, JSA(IB) or ESA(IR) in respect of the day before the relevant day **and**
2. on the relevant day, the relevant amount exceeds the provisional amount.

1 SPC Regs, reg 6(6)(b); Sch I, para 6(1) & (2)

The relevant day

78127 The relevant day is the day in respect of which the claimant is first entitled to SPC¹. That is their first day of entitlement to SPC.

1 SPC Regs, Sch I, para 6(3)

The relevant amount

78128 The relevant amount¹ is the amount which, on the day before the relevant day, was the claimant's applicable amount for IS, JSA(IB) or ESA(IR), **less** any

1. personal allowances for dependants (see DMG 23039)²
2. Res A³
3. FP (see DMG 23076)⁴
4. DCP (see DMG 23242)⁵
5. EDP for dependants (see DMG 23181)⁶.

Note: See DMG 78129 if a transitional addition was in payment on the IS/JSA(IB) claim.

1 SPC Regs, Sch I, para 6(5)(a) & (b); 2 IS (Gen) Regs, Sch 2, para 2; JSA Regs, Sch 1, para 2; SPC Regs, Sch I, para 6(5)(i); 3 IS (Gen) Regs, Sch 2, para 2A; JSA Regs, Sch 1, para 3; SPC Regs, Sch I, para 6(5)(ii); 4 IS (Gen) Regs, Sch 2, para 3; JSA Regs, Sch 1, para 4; SPC Regs, Sch I, para 6(5)(iii); 5 IS (Gen) Regs, Sch 2, para 14; JSA Regs, Sch 1, para 16; SPC Regs, Sch I, para 6(5)(iv); 6 IS (Gen) Regs, Sch 2, para 13A; JSA Regs, Sch 1, para 15A; SPC Regs, Sch I, para 6(5)(v)

Example

Sian lives with her twelve year old dependant grandson Tim. She has an IS applicable amount of £108.90 on the day before her first day of entitlement to SPC (the relevant day). That is £54.65 personal

allowance for herself, £38.50 dependants allowance for Tim and £15.75 FP.

The relevant amount for Sian is £54.65. That is her IS applicable amount of £108.90 less £38.50 dependants allowance and £15.75 FP.

Transitional addition in payment

78129 There may be transitional additions in payment on the IS or JSA(IB) claim (see DMG Chapter 36). When working out the relevant amount in such a case, the deductions in DMG 78128 still apply, but the applicable amount should be increased to **include** any transitional additions in payment¹.

1 IS (Transitional) Regs 1987, Part II; JSA Regs, reg 87(1); SPC Regs, Sch I, para 6(6)

People in hospital

78130 A claimant or partner may be in hospital at or around the point of transfer from IS or JSA(IB) to SPC. In such a case, the relevant amount should be calculated in the normal way **unless** the

1. applicable amount of IS or JSA(IB) is reduced¹ (see DMG 24301 et seq) on the day before the relevant day **and**

2. amount of the SMG does not fall to be reduced² (see DMG 78700 et seq) on the relevant day.

In such a case calculate the relevant amount **as if** the applicable amount of IS or JSA(IB) had not been reduced³.

1 IS (Gen) Regs, Sch 7, para 1; JSA Regs, Sch 5, para 5; 2 SPC Regs, Sch III, para 2(2); 3 Sch I, para 6(7)

78131 - 78133

The provisional amount

78134 The provisional amount is the amount of the AMG (see DMG 77151) applicable to the claimant on the relevant day, without any transitional amount¹.

1 SPC Regs, Sch I, para 6(4)

78135

Amount payable

78136 Where a transitional amount is applicable, the amount payable is the amount by which the relevant amount exceeds the provisional amount¹.

1 SPC Regs, Sch I, para 6(1)

Example 1

Victor, who lives alone, transfers from IS to SPC. He has an IS applicable amount of £170.90 on the day before the relevant day. That is £54.65 personal allowance, £23.30 DP, £42.95 SDP and £50 housing costs. Victor also has a transitional addition of £13.80. The relevant amount for Victor is £184.70.

The SMG for Victor is £102.10 and an additional amount of £42.95 is applicable because Victor is treated as severely disabled. An additional amount of £50 is also applicable for housing costs. Victor's AMG is £195.05 [£102.10 + £42.95 + £50]. The provisional amount for Victor is £195.05.

A transitional amount is not applicable. This is because the relevant amount [£184.70] does not exceed the provisional amount [£195.05].

Example 2

Dermot transfers from JSA(IB) to SPC. He has an applicable amount of £142.10 on the day before the relevant day. That is £54.65 personal allowance, £47.45 PP and £40 housing costs. Dermot also has a transitional addition, awarded on a previous conversion so that his total benefit income did not reduce, which amounts to £8.15. The relevant amount for Dermot is £150.25.

The SMG for Dermot is £102.10 and an additional amount of £40 is also applicable for housing costs. Dermot's AMG is £142.10 [£102.10 + £40]. The provisional amount for Dermot is £142.10.

A transitional amount of £8.15 is applicable. This is because the relevant amount [£150.25] exceeds the provisional amount [£142.10] by £8.15.

78137 - 78138

Recalculation of the transitional amount

78139 The transitional amount may have to be recalculated when the rates of SPC are updated, or there is a change of circumstances.

Reduction of the transitional amount

78140 Unless DMG 78153 applies, the transitional amount should be reduced by the amount of any increase in the AMG¹

Example

Dermot is entitled to GC with an SMG of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving him an AMG of	£150.25 (a)
Dermot has no other income so the amount of GC payable is	£150.25
On uprating his SMG becomes	£105.45
the additional amount for housing costs remains at	£40
and without any reduction to the transitional amount of	£8.15
the AMG would be	£153.60 (b)
Dermot's transitional amount is reduced by £3.35 (b - a) to	£4.80
his AMG is then made up of an SMG of	£105.45
an additional amount for housing costs of	£40
and a transitional amount of	£4.80
leaving the total AMG at	£150.25

Anniversary date

78141 The first SPC anniversary date (which was the date that had applied to the IS/JSA(IB) claim and which has been carried forward to SPC) is a change of circumstances where a transitional amount, or increased transitional amount, may be needed.

78142 In such a case, the transitional amount should be calculated or, as the case may be, recalculated, on the basis that the provisional amount on the relevant day

1. included an additional amount for housing costs calculated under the SPC rules that apply from the relevant anniversary date **and**

2. did not include the amount that was allowed for housing costs in the IS/JSA(IB) claim¹.

1 SPC Regs, Sch 1, para 6(11)

78143 DMs should note that the transitional amount calculated

1. should be applied from the relevant anniversary date¹ **and**

2. is the amount which would have applied had the provisional amount included the housing costs which applied from the anniversary date rather than those which actually applied in the first SPC week **and**

3. takes into account any erosion that may have taken place between the first week of SPC and the relevant anniversary date (for example as a result of uprating).

1 SPC Regs, Sch 1, para 6(12)

Withdrawal of the transitional amount

78144 The transitional amount should be withdrawn from the day on which the

1. transitional amount is reduced to nil¹ following a change of circumstances or uprating **or**

2. claimant or partner ceases to be entitled to SPC².

1 SPC Regs, Sch I, para 6(8)(b)(i); 2 Sch I, para 6(8)(b)(ii)

78145 DMs should note that

1. when a transitional amount has been reduced to nil, it cannot be re-applied

2. in some cases the transitional amount may be reinstated on a repeat claim (see DMG 78150 et seq)

3. there is no entitlement to a transitional amount if the claimant becomes¹

3.1 a prisoner **or**

3.2 a member of a religious order fully maintained by their order.

1 SPC Regs, reg 6(2), (3)(b) & (6)

Example 1

Bina is entitled to GC with an SMG of

£102.10

an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving her an AMG of	£150.25 (a)
On uprating, Bina's SMG increases to	£105.45
the additional amount for housing costs also increases following a change	£45.00
and without any recalculation to the transitional amount of	£8.15
the AMG would be	£158.60 (b)
The AMG has increased by (b) - (a)	£8.35

This is greater than the transitional amount, which is reduced to nil and permanently withdrawn.

Bina's AMG is then made up of an SMG of	£105.45
with an additional amount for housing costs of	£45.00
and the total amount of GC is	£150.45

Example 2

Ernest is entitled to GC with an SMG of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving him an AMG of	£150.25 (a)
Following a change of circumstances the additional amount for housing costs increases to	£50
and without any recalculation to the transitional amount of	£8.15
the AMG would be	£160.25 (b)

The AMG has increased by (b) - (a)	£10
This is more than the transitional amount of	£8.15
so Ernest's transitional amount is permanently withdrawn.	
His AMG is then made up of an SMG of	£102.10
and an additional amount for housing costs of	£50
giving a total AMG of	£152.10

78146 - 78149

Breaks in entitlement

78150 A claimant may again be entitled¹ to a transitional amount following a break in entitlement to SPC, where the

- 1.** claimant was entitled to a transitional amount at the end of the previous claim **and**
- 2.** break in entitlement was eight weeks or less.

1 SPC Regs, Sch I, para 6(9)(a)

78151 If the break in entitlement to SPC is more than eight weeks, a transitional amount will not be applicable.

78152 Where the conditions in DMG 78150 are satisfied, the DM should

- 1.** calculate the transitional amount **as if** there had been no break in entitlement **and**
- 2.** recalculate the amount of the transitional amount if the AMG has increased since the end of the previous claim.

Example

Fred's SPC claim ends on 17 March and on 7 April the rates of SPC are up-rated. On 21 April, Fred reclaims SPC and is entitled to GC on his new claim. The break in his entitlement was for less than 8 weeks so the DM calculates the transitional amount as if there was no break.

At the end of his previous claim Fred was entitled to GC with

SMG of	£102.10
an additional amount for housing costs of	£40

and a transitional amount of	£6
giving him an AMG of	£148.10 (a)
On uprating the SMG for Fred increased to	£105.45
the additional amount for housing costs stayed at	£40
and without any recalculation to the transitional amount of	£6
the AMG would be	£151.45 (b)
Fred's transitional amount is reduced by £3.35 (b - a) to	£2.65
His AMG is then made up of an SMG of	£105.45
an additional amount for housing costs of	£40
and a transitional amount of	£2.65
leaving the AMG at	£148.10

People discharged from hospital

78153 Do not reduce the transitional amount where an increase in the AMG is due solely to a person being discharged from hospital¹.

1 SPC Regs, Sch I, para 6(9)(b)

Death of a partner

78154 There are no special rules when the partner of a claimant receiving SPC dies. In the majority of cases the transitional amount will be unchanged. But the DM should consider whether the guidance at DMG 78139 et seq is relevant.

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Additional amount for housing costs 78170 - 78548

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Introduction

78170 [[See Memo ADM 08/18](#)] When considering the amount of the AMG, an additional amount for housing costs may be applicable¹. For the definition of housing costs, and the changes introduced from 6.4.18, see DMG 78195. But this additional amount is not normally payable² in the case of

1. prisoners and

2. members of religious orders who are fully maintained by their order.

1 SPC Act 02, s 2(3)(b); SPC Regs, reg 6(6)(c) & Sch II; 2 reg 6(2), (3) & (6)

78171 The exception to this general rule is where a person is a remand prisoner. In such a case an additional amount for housing costs may continue for up to 52 weeks. For further information on remand prisoners see the guidance at DMG 78650 et seq.

78172 DMs should note that the additional amount for housing costs is variable depending on the circumstances of each individual case.

Basic qualifying conditions

78173 Claimants are entitled to an additional amount for housing costs if¹

1. the claimant or partner is

1.1 liable for those costs (see DMG 78215) and

1.2 responsible for those costs (see DMG 78313) and

1.3 treated as living in the home that those costs are for (see DMG 78220 et seq) and

2. those costs are allowable (see DMG 78270 et seq).

1 SPC Regs, Sch II, para 1(1)

Claimants without housing costs

78174 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is no

1. liability or responsibility for housing costs **and**
2. entitlement to an additional amount for housing costs.

Rounding of fractions

78175 Where any calculation relating to housing costs results in a fraction of a penny, it should be rounded up to the next whole penny¹.

1 SPC Regs, Sch II, para 15

Former claimants of IS/JSA(IB)

78176 The rules on housing costs in IS and JSA(IB) were changed in 1995. Savings provisions protected existing claimants so that their benefit income did not reduce because of the new rules (see DMG 23684 et seq).

78177 But in SPC the level of a claimant's benefit income can only be protected if the claimant is entitled to a transitional amount (see DMG 78120).

78178 Where a claimant

1. transfers from IS or JSA(IB) to SPC **and**
2. has transitional protection for housing costs in their IS or JSA(IB) claim

the additional amount for housing costs should be calculated under the rules that apply in SPC.

78179 If the claimant is

1. entitled to a transitional amount, any difference in the amount awarded for housing costs will be taken into account in the calculation of the transitional amount (see DMG 78120)
2. not entitled to a transitional amount, the claimant will lose the transitional protection previously received on the IS or JSA(IB) claim.

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Definitions 78185 - 78209

[Dwelling occupied as the home](#) 78186 - 78194

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78185 The following paragraphs explain the meaning of terms used throughout this guidance on housing costs.

Dwelling occupied as the home

78186 Dwelling occupied as the home means¹

1. the dwelling and any

1.1 garage **and**

1.2 garden **and**

1.3 outbuildings

normally occupied by the claimant as the home **and**

2. any buildings or land not occupied as the home which it is impracticable or unreasonable to sell separately **and**

3. in Scotland, any croft land on which the dwelling is situated.

Note: This means only the dwelling currently occupied as the home. It does not include any dwelling that is no longer occupied as the home².

1 SPC Regs, reg 1(2); 2 R(IS) 5/96

Example

Shimon and Rachel live on a plot of land on which there is a caravan, some outbuildings and an old cottage in need of repair. The LA allow them to use the caravan as a temporary residence while the cottage is being repaired. They sleep in the caravan but have things stored in the outbuildings and cottage. The caravan has a fixed mains water supply and is linked directly to the electricity mains. There

3. payments by way of rent charge
4. payments under co-ownership schemes
5. payments for tenancies or licences of Crown tenants
6. payments for tents and their sites.

1 SPC Regs, Sch II, para 1(1), 1(2)(b), & 13

78197 Only those payments in DMG 78196 should be allowed as housing costs. For example, the following should not be allowed as housing costs

1. rent required by a person who
 - 1.1 owns jointly with the claimant the property occupied by the claimant **and**
 - 1.2 does not live in that property
2. water charges paid via a landlord (for example, paid at the same time as service charges).

This list is not exhaustive.

1 R(IS) 19/93

Water charges

78198 Water charges means¹ any

1. water charges **and**
2. sewerage charges

in respect of the dwelling which a person occupies as their home.

¹ SPC Regs, reg 1(2); Water Industry Act 1991, Part V, Ch 1; Local Government Finance Act 1992, Sch 11

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Steps to follow when deciding housing costs 78210 - 78214

Steps to follow when deciding housing costs

78210 When deciding whether an additional amount for housing costs is applicable and if so, what that amount should be, the DM should determine

- 1.** if the claimant or partner is liable for the housing costs (see DMG 78215)
- 2.** if the amount spent is on the dwelling occupied as the home (see DMG 78188 and 78220)
- 3.** if the housing costs cannot be met (see DMG 78270)
- 4.** how to apportion the housing costs if the dwelling is used for domestic and business use (see DMG 78310)
- 5.** if there are any eligible housing costs that can be allowed (see DMG 78438 et seq)
- 6.** if a deduction for a non-dependant is necessary (see DMG 78500).

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the higher rate of additional amount for the severely disabled if¹

1. both partners and each additional spouse (whether of the claimant's or of a spouse of the claimant's) are in receipt of

1.1 "AA" or

1.2 the care component of DLA at the highest or middle rate or

1.3 the daily living component of PIP at the standard or enhanced rate or

1.4 AFIP and

2. there are no other persons aged 18 or over

2.1 normally residing with the partners and any additional spouse or

2.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) and

3. no one is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for any member of the polygamous marriage.

1 SPC Regs, reg 6(5)(b); Sch I, para 1(1)(b); Sch III, para 1(9)

78615 DMs should note that DMG 78614 **1.** is **not** satisfied if either partner or any additional spouse is treated as being in receipt of "AA" or DLA or PIP or AFIP as in DMG 78059 **2.**¹. In such a case the lower rate of additional amount should be considered.

1 SPC Regs, reg 6(5)(b)

78616 - 78619

Additional amount for carers

78620 [See [DMG memo 12/23](#)] The additional amount for carers is paid at one rate. In polygamous marriage cases, that amount is applicable for each partner or additional spouse who satisfies the qualifying conditions in DMG 78105¹. See Appendix 2 to DMG Chapter 77 for details of the rate.

1 SPC Regs, reg 6(8); Sch III, para 1(8)

Additional amount for former claimants of IS/JSA(IB)

78621 A transitional amount may need to be considered if a claimant who is a member of a polygamous marriage transfers from IS or JSA(IB) to SPC. In such a case the DM should

1. follow the guidance in DMG 78120 et seq **and**

2. note that when calculating the relevant amount (see DMG 78128), an additional spouse is the equivalent of a partner¹**not** a dependant.

1 SPC Regs, Sch III, para 1(8)

Additional amount for housing costs

78622 When considering the amount of the AMG, an additional amount for housing costs may be applicable. In polygamous marriage cases, DMs should note that any references to a partner in the guidance at DMG 78170 et seq, also includes a reference to any additional spouse¹.

1 SPC Regs, Sch III, para 1(8)

Savings credit

78623 (**link is external**) In polygamous marriage cases, an SPC claimant can get a SC if¹

1. at least one member of the polygamous marriage

1.1 has obtained pensionable age before 6.4.16 and

1.2 has reached the age of 65 before, on or after that date; and

1.3 at least one of those members had not ² (but see DMG 77035 and 77167)

2. the claimant had

2.1 been entitled to SC immediately before 6.4.16 and

2.2 remained entitled to a SC at all times since that date. ³

3. the claimant had

3.1 qualifying income (QI) that is more than the savings credit threshold (SCT) and

3.2 an income which, after the calculation at DMG 77170 et seq, allows amount A to be greater than amount B. ⁴

1 SPC Act 02, s 3(1) & 12(3); SPC Regs, Sch III, para 1(2); 2 Pensions Act 07, s 13(3), SPC Regs Sch III para 1(7A)(1); 3 SPC Regs Sch III para 1(7A)(2); 4 SPC Act 02, s 3(1)

78624 DMs should note that in polygamous marriage cases the SCT and the maximum savings credit (MSC) are set at the same rates as for a couple¹. See Appendix 2 to Chapter 77 for details of the rates.

1 SPC Act 02, s 3; SPC Regs, reg 7; Sch III, para 1(6) & (7)

78625 - 78649

Prisoners 78650 - 78679

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Introduction

78650 The amount of SPC payable to a claimant is affected if

- 1.** the claimant **or**
- 2.** the claimant's partner **or**
- 3.** any additional spouse (in a polygamous marriage case)

is, or becomes, a prisoner¹.

¹ [SPC Act 02, s 2\(3\), 2\(9\) & 3\(8\); SPC Regs, regs 6\(2\)\(a\), 6\(3\) & 7\(3\)](#)

Meaning of prisoner

78651 A prisoner¹ is a person who is detained in custody

- 1.** following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person

1.1 temporarily removed from prison to hospital, unless DMG 78652 **3.** applies **or**

1.2 living outside the prison under a pre-release employment scheme² **or**

1.3 released on temporary licence³, which may be allowed for a variety of reasons including

1.3.a home leave **or**

1.3.b attendance at rehabilitation courses **or**

1.3.c work during the daytime (see DMG 78657) **or**

2. on remand awaiting

2.1 trial **or**

2.2 sentence upon conviction.

1 [SPC Regs, reg 1\(2\)](#); 2 R(I) 9/75; 3 [Prison Act 1952](#); [Prisons \(Scotland\) Act 1995](#)

78652 The definition of prisoner does not include a person

1. under suspended sentence **or**

2. sentenced to community service **or**

3. transferred from court or prison to hospital who is detained under Mental Health legislation¹ **or**

4. released on licence (see DMG 78658) **or**

5. who is on a

5.1 home detention curfew (see DMG 78659) **or**

5.2 court ordered curfew **or**

5.3 restriction of liberty order **or**

5.4 mandatory probation service programme.

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

1 [MH Act 1983, MH \(C & T\) \(Scot\) Act 03](#)

Meaning of detained in custody

78653 The word “detains” describes the physical confinement of a person¹. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

1. in a prison
2. in a remand centre
3. in a police station when used as a remand overflow
4. abroad.

1 R(S) 10/56

78654 Detention in custody might be after the

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

1 R(IS) 1/94

78655 Detention in custody does not include a period before proceedings begin where the person is released on bail.

78656

Pre-release schemes

78657 Shortly before release, prisoners may be allowed short periods of release on temporary licence to help them get used to life outside prison again. They may find work outside prison to support themselves and spend short periods at home. Such people

1. are still serving a sentence of imprisonment **and**
2. continue to be prisoners until the time of their release¹.

1 R(I) 9/75

Release on licence

78658 Release on licence means release on parole after completion of a specified part of the original sentence. A person released on licence¹ is no longer detained in legal custody and is no longer a prisoner.

1 [Criminal Justice Act 1991, s 32 to 37A](#)

Curfews

78659 Some prisoners sentenced to less than four years can be released on a curfew licence up to 60 days before their automatic release date. Under the curfew licence they have to wear an electronic tag and remain at home during agreed periods of the day¹. These conditions apply from the date of early

release to the day they would have been eligible for release under licence.

1 [Criminal Justice Act 1991, s 34A & 37A](#)

78660 Although subject to a curfew condition, the person is released on licence and is no longer a prisoner¹.

1 [Criminal Justice Act 1991, s 32 to 37A](#)

Period of detention in custody

78661 When working out the period for which a person is detained in custody

1. count the day on which the detention starts **and**

2. do not count the day of release from detention

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

78662 A period of detention in custody therefore

1. starts on the day on which the person is detained **and**

2. ends on the day before the person is released from detention.

Prisoner admitted to hospital

78663 The DM should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation¹ is not a patient for SPC purposes and has an applicable amount of nil **or**

2. under prescribed mental health legislation² other than that in **1.** above is a patient for SPC purposes and has entitlement to their full applicable amount

1 [SPC Regs, reg 1\(2\), Sch III, para 2, MH Act 83 s 47, s 45A; MH \(C & T\) \(Scot\) Act 03 s 136, s 130; Criminal Procedure \(Scotland\) Act 1995; 2 MH Act 83](#)

Claimant is a Technical Lifer - England and Wales only

78664 The status of technical lifer¹ 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.

78665 A technical lifer should be treated, for the purposes of entitlement to SPC, as though they had been given a hospital order¹ with no term of imprisonment. This means that a person with technical lifer status is eligible for SPC as an ordinary hospital in-patient.

Note: The practice of treating prisoners as technical lifers was abandoned in 2005.

1 [MH Act 83, s 37](#)

Guarantee credit for prisoners

78666 GC is not normally payable to prisoners. This is because the rate of both the

1. SMG and

2. additional amount applicable

for prisoners is nil¹. The exception to this rule is where a person is a remand prisoner.

1 [SPC Act 02, s 2\(3\) & \(9\); SPC Regs, reg 6\(2\)\(a\) & \(3\)](#)

Guarantee credit for remand prisoners

Meaning of remand prisoner

78667 A remand prisoner¹ is a person who, for a period of not more than 52 weeks, has been

1. detained in custody

1.1 on remand awaiting trial or

1.2 awaiting sentence upon conviction or

2. as a condition of bail, required to live in an approved hostel².

1 [SPC Regs, reg 6\(10\)](#); 2 Probation Service Act 1993, s 27(1); Criminal Justice & Court Services Act 2000, s 9(2)

Remand prisoners detained in custody

78668 In the case of remand prisoners detained in custody as in DMG 78667 **1**.

1. the amount of the SMG is nil¹ but

2. an additional amount for housing costs may be applicable (see DMG 78170 et seq) for a period of up to

52 weeks².

1 [SPC Act 02, s 2\(3\)\(a\) & \(9\)](#); [SPC Regs, reg 6\(2\)\(a\) & \(3\)\(a\)](#); 2 [SPC Act 02, s 2\(3\)\(b\)](#);
[SPC Regs, reg 6\(2\)\(a\), \(3\)\(b\) & \(6\)\(c\)](#)

78669 DMs should note that

1. additional amounts for

1.1 the severely disabled

1.2 carers **and**

1.3 former claimants of IS or JSA(IB)

are not applicable in the case of remand prisoners detained in custody¹ **and**

2. the additional amount for housing costs is no longer applicable once the person has been detained in custody for more than 52 weeks².

1 [SPC Regs, reg 6\(2\)\(a\), \(3\)\(b\), \(4\), \(6\) & \(9\)](#); 2 [reg 6\(7\)](#)

People in bail hostels

78670 Some people are required to stay in a bail hostel as a condition of their bail (see DMG 78667 **2.**). In such a case

1. the amount of the SMG should be calculated as normal¹ **and**

2. an additional amount for

2.1 the severely disabled may be applicable if the qualifying conditions are satisfied² (see DMG 78030 et seq) **and**

2.2 housing costs may be applicable (see DMG 78170 et seq) for a period of up to 52 weeks³.

1 [SPC Act 02, s 2\(3\)\(a\), \(4\), & \(5\)](#); [SPC Regs, reg 6\(1\)](#); 2 [SPC Act 02, s 2\(3\)\(b\) & \(7\)](#); [SPC Regs, reg 6\(5\)\(a\)](#);
[Sch I, para 1\(1\)\(a\)](#); 3 [SPC Act 02, s 2\(3\)\(b\)](#); [SPC Regs, reg 6\(6\)\(c\), \(9\) & \(10\)](#)

78671 DMs should note that

1. additional amounts for

1.1 carers **and**

1.2 former claimants of IS or JSA(IB)

2.2 consider whether a change of claimant is needed **and**

2.3 if the claimant's partner claims SPC, consider their claim under the normal rules.

Life Sentences

78677 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.

78678 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.

78679 A prisoner who remains in prison beyond their tariff date does not become eligible for DWP benefits - they are still prisoners. 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 reached¹. Such a patient would only become eligible for benefit upon release.

[1 SPC Regs, reg 8; Sch III, para. 2](#)

People in hospital 78700 - 78919

Subpages

- People in hospital 78700 - 78719
- Free in-patient treatment 78720 - 78754
- Community care arrangements 78755 - 78769
- Periods of free in-patient treatment 78770 - 78804
- Guarantee credit for people in hospital 78805 - 78839
- Savings credit for people in hospital 78840 - 78919

Appendix 1 - Housing costs - amount of non-dependant deductions

[Rates from 6.4.18](#)

[Rates from 8.4.19](#)

[Rates from 6.4.20](#)

[Rates from 12.4.21](#)

[Rates from 11.4.22](#)

[Rates from 10.4.23](#)

[Rates from 8.4.23](#)

[[See DMG Memo 5/25](#)] This appendix provides details of the rates of the non-dependant deductions¹
(see DMG 78500 et seq)

[1 SPC Regs, Sch II, para 14\(1\) & \(2\)](#)

Rates from 6.4.18

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £98.30
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £139.00 £15.25
 - 2.2 £139.00 to £203.99 £35.00
 - 2.3 £204.00 to £264.99 £48.05
 - 2.4 £265.00 to £353.99 £78.65
 - 2.5 £354.00 to £438.99 £89.55
 - 2.6 £439.00 or more £98.30
3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.25.

Rates from 8.4.19

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £100.65
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £143.00 £15.60
 - 2.2 £143.00 to £208.99 £35.85
 - 2.3 £209.00 to £271.99 £49.20
 - 2.4 £272.00 to £362.99 £80.55
 - 2.5 £363.00 to £450.99 £91.70
 - 2.6 £451.00 or more £100.65
3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.60.

Rates from 6.4.20

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £102.35
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £149.00 £15.85
 - 2.2 £149.00 to £216.99 £36.45
 - 2.3 £217.00 to £282.99 £50.05
 - 2.4 £283.00 to £376.99 £81.90

2.5 £377.00 to £468.99 £93.25

2.6 £469.00 or more £102.35

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.85.

Rates from 12.4.21

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £102.35

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £149.00 £15.95

2.2 £149.00 to £216.99 £36.65

2.3 £217.00 to £282.99 £50.30

2.4 £283.00 to £376.99 £82.30

2.5 £377.00 to £468.99 £93.70

2.6 £469.00 or more £102.85

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.95.

Rates from 11.4.22

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £106.05

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £154.00 £16.45

2.2 £154.00 to £223.99 £37.80

2.3 £224.00 to £291.99 £51.85

2.4 £292.00 to £388.99 £84.85

2.5 £389.00 to £483.99 £96.60

2.6 £484.00 or more £106.05

3. any other non-dependant aged 18 or over for whom deductions are relevant - £16.45.

Rates from 10.4.23

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £116.75

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £162.00 £18.10

2.2 £162.00 to £235.99 £41.60

2.3 £236.00 to £307.99 £57.10

2.4 £308.00 to £409.99 £93.40

2.5 £410.00 to £510.99 £106.35

2.6 £511.00 or more £116.75

3. any other non-dependant aged 18 or over for whom deductions are relevant - £18.10.

Rates from 8.4.24

8 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £124.55
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Gross Deduction
weekly income

2.2 less than £176.00 £19.30

2.3 £176.00 to £255.99 £44.40

2.4 £256.00 to £333.99 £60.95

2.5 £334.00 to £444.99 £99.65

2.6 £445.00 to £553.99 £113.50

2.7 £554.00 or more £124.55

3. any other non-dependant aged 18 or over for whom deductions are relevant - £19.30.

Appendix 2 - Housing costs - the remunerative work rule for non-dependant housing cost deductions

Subpages

- Introduction
- Work done for payment or in expectation of payment
- Establishing hours of work
- People treated as in remunerative work
- People treated as not in remunerative work

Introduction

Does the person have employment

Treated as in or not in remunerative work

1. This guidance sets out the remunerative work rule as it applies for non-dependant deductions when calculating the amount of housing costs in SPC¹.

1 SPC Regs, Sch II, para 2

2. Remunerative work is¹ work for which payment is made, or which is done in expectation of payment and in which the person is engaged for not less than

1. 16 hours a week **or**

2. 16 hours a week on average where the hours of work fluctuate.

1 SPC Regs, Sch II, para 2(1)

Does the person have employment

3 DMs should decide that a person is not in remunerative work if they do not have any employment and are between jobs. DMs will need to decide whether employment has ended if someone has been engaged in remunerative work.

4 DMs should decide that a person is still in employment and not between jobs if

1. the contract of employment (which can be written or verbal) is still current **or**

2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because

2.1 there is an express agreement (written or verbal) **or**

2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

Off-shore oil workers

5 Off-shore oil workers may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

6 It is a question of fact for the DM whether the work is continuing or not. The DM will need to consider,

amongst other things, whether there is a continuing relationship

between the person and the employer. Frequent resumption of work with the same employer may be an indication that work is continuing (see paragraph 3 **2.2**).

Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognizable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. The DMG has to decide whether Dennis is in remunerative work at a time when he is not working. On looking at the facts of Dennis' past work for the company, the DM is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The DM decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

Treated as in or not in remunerative work

7 A person engaged in remunerative work may be **treated as not** being in remunerative work (see paragraph 140 et seq)¹. Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated as engaged in remunerative work**² (see paragraphs 126 et seq).

1 SPC Regs, Sch II, para 2(6), (7) & (8); 2 para 2(5)

Work done for payment or in expectation of payment

[Payment in kind](#)

[Expectation of payment](#)

[Self-employed earners](#)

[Sale of goods](#)

[Business start up](#)

[Company directors](#)

8 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The DM should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it **or**
2. it is done in expectation of payment¹.

Remunerative does not mean profitable (see para 11).

1 SPC Regs, Sch II, para 2(1); R(IS) 1/93

Payment in kind

9 “Payment” includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

Example 1

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work.

Example 2

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

Expectation of payment

10 Work “done in expectation of payment” means more than a mere hope that payment will be made at a future date¹. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

Self-employed earners

11 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the time. The DM need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why¹.

1 CA, CAO v Ellis (R(IS) 22/95)

Sale of goods

12 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

Note: Also that payment may be derived from takings.

Business start up

13 An allowance payable under certain schemes to assist people to become S/E is not payment for work¹.

Note: That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

1 CA, CAO v. Smith

14 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

Example

Annie and her husband run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

Company directors

15 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director¹. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a S/E earner. In such cases DMG 20234 applies.

1 R(IS) 5/95

Establishing hours of work

[Introduction](#)

[Counting the hours](#)

[Calculating average hours](#)

[Identifying a recognizable cycle](#)

[Recognizable cycle established](#)

[Periods when a person does not work](#)

[Calculating the number of hours for which a person is engaged in work](#)

[Calculating the average hours](#)

[Yearly cycle with school holidays or similar vacations](#)

[No recognizable pattern established](#)

[Changes to the normal hours](#)

Introduction

21 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count. See paragraph 42 for guidance on teachers.

Counting the hours

Flexible working schemes

22 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

Overtime

23 Overtime for which payment is made or expected counts towards the weekly total.

Night duty

24 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if

1. payment made or expected is less than for normal daytime duties
2. the time on the night duty is spent sleeping.

Example

Edward makes a claim for SPC. His non-dependant daughter, Michelle, works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than for her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The DM decides that Michelle is in remunerative work.

Evidence of hours

25 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment

note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

26 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a S/E earner follow the guidance at paragraph 28 to establish any additional hours worked.

Musicians

27 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

Example 1

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

Example 2

A musician is engaged to perform music. The performances last for twelve hours a week. She practices the performances for ten hours a week. She is engaged in remunerative work.

Self-employed

28 Include all the hours necessary to run the business, for example, time spent in

- 1.** trips to wholesalers and retailers
- 2.** visits to potential customers
- 3.** advertising or canvassing
- 4.** cleaning the business premises
- 5.** cleaning and maintaining items used in the business, for example a taxi or driving school car
- 6.** providing estimates
- 7.** book-keeping
- 8.** research work, for example where the person is a writer.

29 Where a S/E person is running a business which is

- 1.** building up **or**
- 2.** winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

30 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

Example

Peter, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of ten customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the DM concluded that he worked six hours a day, five days a week, a total of 30 hours a week.

31 If a S/E person has been doing undisclosed work or working more hours than is claimed, the DM must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.

Teachers

42 The conditions of employment of most LA schoolteachers, except headteachers, are laid down in an Order¹ or Agreement². They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables
2. assessing and reporting on pupils
3. helping to administer and organize the school
4. advising pupils and ensuring their discipline, health and safety
5. discussing pupils' progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the DM is unsure whether a teacher is obliged to do a particular activity, consult the Order or Agreement.

1 Education (School Teachers Pay and Conditions of Service) Order; 2 Scottish Joint Negotiating Committee for Teaching Staff in School Education Conditions of Service Agreement

43 Before either the Order or Agreement came into force, teachers were generally required by their contracts to carry out the duties now laid down¹. Members of the teaching profession not covered by the Order or Agreement (for example higher

education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work **or**
2. any such work is included in the hours of work laid down in the contract.

1 Sim v Rotherham Metropolitan Borough Council [1986] 3WLR 851; R(U) 5/88

44 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person's own evidence if it seems reasonable. If a person states that the time spent on non-teaching duties is anything up to one third of the time spent teaching, accept this without question.

45 It may be reasonable to accept a larger proportion than a third depending on the

1. teacher's experience
2. subjects being taught

3. method of teaching

4. amount of homework to be marked

5. number of pupils.

In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

46 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

Paid breaks

47 Paid breaks do not count when establishing the hours of remunerative work.

48 - 57

Calculating average hours

58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours¹.

1 SPC Regs, Sch II, para 2(2)

Identifying a recognizable cycle

59 See if there is any pattern of work over a period of time. This is known as a recognizable cycle¹. A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

Example 1

week 1 X hours

week 2 Y hours

week 3 X hours

week 4 X hours

week 5 Y hours

week 6 X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

Example 2

month 1 A hours

month 2 B hours

month 3 A hours

month 4 B hours

There is a recognizable cycle of two months.

Example 3

week 1 X hours

week 2 X hours

week 3 Y hours

week 4 W hours

week 5 V hours

There is no recognizable cycle.

Note: A cycle may include weeks in which no work is done².

1 SPC Regs, Sch II, para 2(2)(a); 2 Sch II, para 2(2)(a)

Permanent or indefinite contract

60 A recognizable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

Example

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. The DM decides that Julia's contract establishes a cycle from its outset.

Fixed term contracts and casual workers

61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)¹. DMs should decide each case on its

facts. The DM will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. DMs should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

Example

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He does not work for the Christmas holiday but says that he has been asked to return to work after the holidays. Bill tells the DM that he expects to return to work as he did the previous January. The DM decides that Bill has established a recognizable cycle of work and that it has not been broken. Bill is in remunerative work because on average he works 16 hours or more a week.

Extra work

62 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle¹.

1 R(JSA) 5/02

Example

Celeste is employed as a shop assistant by a students union. The terms of her employment contract are "Monday to Friday, 8.15 am to 1.15 pm term time only". Celeste agrees to do extra work stocktaking during the first week of the summer holidays. The DM is asked to decide whether she is in remunerative work on the day after she finishes the extra work. The DM decides that Celeste's contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

Probation

63 A recognizable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

Example

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a six month probationary period, specifies that he is expected to work during term times and not

during school holidays. The DM decides that he is in a recognizable cycle from the outset of the contract and, on average, works 16 hours or more a week. He is in remunerative work.

Recognizable cycle established

70 Where there is a recognizable cycle calculate the average hours over one complete cycle¹. Include, where the cycle involves periods when the person does no work, those periods, but disregard any other absences.

1 SPC Regs, Sch II, para 2(2)(a)

Periods when a person does not work

71 Periods when a person does not work can fall into the following categories:

1. periods of absence because of sickness, maternity leave, paternity leave, shared parental leave or adoption leave
2. periods of unauthorised absence “without good cause”
3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer
4. periods during which someone can be properly regarded as on holiday.

Note: For periods during which someone is not working because they are between jobs they are not in remunerative work, see paragraphs 2 - 5.

Sickness, maternity leave, paternity leave, shared parental leave, adoption leave and periods of unauthorised absence

72 When someone is absent from work due to sickness, maternity leave, paternity leave, shared parental leave, parental bereavement leave or adoption leave (see paragraph 141) the DM should decide that they are not in remunerative work during such absences¹. When someone has a period of absence without good cause the DM should treat such an absence in the same way as proper holidays² (see paragraph 79).

1 SPC Regs, Sch II, para 2(7); 2 para 2(5)

Holidays or periods of no work

73 The DM should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid¹. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

1. spread over a year in equal instalments **and**

2. enhanced to take account of a lack of holiday entitlement

should not be taken into account when deciding whether someone has paid holidays.

1 R(JSA) 5/03

74 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99¹.

1 Working Time Regulations 1998 No. 1833

Calculating the number of hours for which a person is engaged in work

75 If the DM has decided that a person is still in employment (see paragraphs 2 - 5) (and they are not absent from work due to sickness, maternity leave, paternity leave or adoptive leave) they will need to calculate the number of hours for which the person is engaged in work.

76 If the person works the same number of hours each week when not on holiday, that is the number of hours worked in each week.

77 If the person's hours of work fluctuate, the DM should take an average

1. as per paragraph 90 if there is no cycle of work **or**

2. as per paragraph 79 if there is a cycle of work.

78

Calculating the average hours

79 Legislation¹ requires that in cycle cases where the hours of work fluctuate the average should be calculated by taking into account periods in which the person does not work but disregarding other absences. DMs should only deduct periods of holiday, absences without good cause, sickness, maternity leave, paternity leave and adoption leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle. Periods of no work should not be deducted. Put another way, it is only periods of holiday absences without good cause, sickness, maternity leave, paternity leave and adoption leave which are "other absences to be disregarded".

1 SPC Regs, Sch II, para 2(2)(a)

80

Yearly cycle with school holidays or similar vacations

81 Where a person has a contract of employment (written, verbal or implied) which continues throughout

the year, whether or not payment is made for any part of the holidays, there is a recognizable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, exclude from the calculation of average hours any periods

1. of school holidays or similar vacations when that person does no work **and**

2. not part of school holidays or similar vacations, when the person is not required to work¹.

1 SPC Regs, Sch II, para 2(3); R(IS) 15/01

Example

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2003 for 15.5 hours of work a week during academic terms. There is no entitlement to paid holiday, but the contract states “your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday pay” The academic terms cover 38 weeks, but Megan receives her pay over the calendar year in twelve equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 2002/2003 academic year she has four other such contracts:

1. seven and a half hours a week for twelve weeks in the autumn term

2. eight and half hours a week for ten weeks in the spring term

3. seven and half hours a week for four weeks in the summer term

4. five hours a week for six weeks in the summer term.

In June 2004 Megan starts her summer vacation, and the DM is asked to decide whether or not she is in remunerative work.

Megan is not entitled to holiday pay. The fact that she receives her pay spread over the year in equal instalments does not affect this, nor does the fact that she receives an enhanced rate of pay.

The periods of school holiday are excluded from the calculation of average hours.

Total number of hours is 824. Divided by 38 equals 21.7 (i.e. over 16). Megan is in remunerative work.

Ancillary school workers

82 Ancillary school workers are members of the non-teaching staff of schools and other educational

establishments. Where such workers have a yearly cycle of work during term-time only follow the guidance at paragraph 81. Examples of ancillary school workers include

- 1.** school meals services employees
- 2.** domestic staff
- 3.** clerical staff (such as secretaries and clerks)
- 4.** laboratory workers
- 5.** nursing assistants
- 6.** school bus drivers.

83 - 87

No recognizable cycle established

Estimating future hours

88 Where

- 1.** a person has just started work or is about to start work **or**
- 2.** the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work **or**
- 3.** because of absences from work a recognizable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week¹.

1 SPC Regs, Sch II, para 2(4)

89 Average the estimated hours over a period long enough to cover the expected pattern of work¹. Consider the case where there is sufficient evidence to average the actual hours worked.

1 R(IS) 8/95

Averaging past hours

90 Where the person has been in work before the date of claim and a recognizable cycle has not been established calculate average weekly hours over

- 1.** the five weeks immediately before the date of claim¹ **or**
- 2.** a longer or shorter period immediately before the date of claim if the five week period in **1.** does not

give a fair average.

“Immediately before” in this context means the end of the last complete week before the date of claim.

1 SPC Regs, Sch II, para 2(2)(b)

91 Include in the calculation at paragraph 90 any periods of non-working within the normal pattern of employment (rest periods)¹.

1 R(IS) 12/95

92 Examples of circumstances in which it may not be appropriate to use the five week period in paragraph 90 **1.** are where the

- 1.** five weeks contain a period of absence which distorts the average **or**
- 2.** five weeks do not show the person’s normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**
- 3.** person is paid at intervals of longer than a week.

In either of the circumstances in **1.** or **2.** a period of less than five weeks as in paragraph 90 **2.** might give a fairer result. Extending the period beyond the last five weeks would still include the distortions so in these circumstances estimate future hours as in paragraph 88.

93 If the DM bases a weekly average of hours over a period of more or less than five weeks, as in paragraph 90 **2.**, the alternative period must still be a period immediately before the date of claim.

It should be either

- 1.** more than the five week period in paragraph 90 **1.**, in which case it will include those five weeks **or**
- 2.** less than the five week period in paragraph 90 **1.**, in which case it will be a part of those five weeks immediately before the date of claim.

94 The approaches outlined in paragraph 88 and paragraph 90 are alternatives. There is no provision for the DM to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

Short-time workers

95 Employers experiencing a fall in business may put their employees on short-time working. This can be

- 1.** a reduction in hours worked each day **or**
- 2.** no work on certain days of the week **or**

3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in paragraphs 88 - 89 and estimate future hours¹ at the start of short-time working until average hours over a past period can be calculated². Periods of no work should be included in the average.

1 SPC Regs, Sch II, para 2(4); R(IS) 8/95; 2 SPC Regs, Sch II, para 2(2)(a) & (b)

96 - 106

Changes to the normal hours

107 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**

2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**

3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather and the DM decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over

3.1 the cycle of work if there is now a recognizable cycle¹ **or**

3.2 the five week period or other more suitable period immediately before the date of application for supersession².

1 SPC Regs, Sch II, para 2(2)(a); 2 Sch II, para 2(2)(b)

Seasonal workers

108 The normal remunerative work rules apply to S/E seasonal workers except where the business ceases to operate during the off-season. If it does, the person is no longer S/E and cannot be in remunerative work. Accept that a business has ceased to operate where no activities in connection with the business are undertaken during the off-season (see DMG Chapter 27).

Business ceases during off-season

109 A person is not in remunerative work once the business has ceased to operate.

Business continues during the off-season

110 Where the business continues during the off-season a person will be treated as engaged in remunerative work throughout the year if the hours, or average hours, are 16 or more a week¹ for the person.

1 SPC Regs, Sch II, para 2(1); R(JSA) 1/03

Averaging the hours

111 Calculate average hours over

1. if there is a recognizable cycle - one complete cycle of work (this will usually be one year where a business continues to operate throughout the year). Include periods in which the person does no work, but exclude other absences such as holidays or sickness¹ **or**

2. if there is no recognizable cycle - over the five week period, or other more suitable period, immediately before the date of claim, the date of decision or the date of application for supersession².

Include in the calculation time spent on all activities connected with the business.

1 SPC Regs, Sch II, para 2(2)(a); 2 Sch II, para 2(2)(b)

Agency and casual workers

112 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

113 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

114 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

See DMG Chapter 26 for guidance on when employment ends. If the question of non dependants arises after employment is terminated, the person will not be in remunerative work.

115 - 125

People treated as in remunerative work

[Introduction](#)

[Absent without good cause](#)

[Recognised, customary or other holiday](#)

Introduction

126 People can be treated as in remunerative work even though they are absent from remunerative work¹. However see paragraph 141 for details of when this rule does not apply².

1 SPC Regs, Sch II, para 2(5); 2 Sch II, para 2(7)

127 Treat people as in remunerative work for any period during which they are¹

1. absent without good cause **or**

2. absent by reason of a recognized, customary or other holiday.

1 SPC Regs, Sch II, para 2(5)

Absent without good cause

128 “Good cause” is for the DM to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorized the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause. Examples of good cause include where the absence is due to

1. bereavement or sudden serious illness in the family **or**

2. a disaster at home **or**

3. suspension from work, whether or not on full pay **or**

4. a requirement to attend court.

Recognised, customary or other holiday

129 A person should be treated as in remunerative work for any period of absence because of a recognized, customary or other holiday¹. This is the case even if there is no permanent contract of

employment. But this will not apply where the

- 1.** absence is not a holiday (see paragraph 73) **or**
- 2.** work is not remunerative as in paragraph 1 et seq **or**
- 3.** person goes on holiday after employment ends.

See DMG Chapter 20 for guidance on what is a recognized, customary or other holiday.

1 SPC Regs, Sch II, para 2(5)

130 - 139

People treated as not in remunerative work

[IS and JSA\(IB\)](#)

[Leave or absence from work](#)

[Sports awards](#)

IS and JSA(IB)

140 A person on

1. IS for more than three days in any IS benefit week¹ **or**

2. JSA(IB) for more than three days in any JSA benefit week²

shall be treated as not being in remunerative work in that week³.

1 IS (Gen) Regs, reg 2(1); 2 JSA Regs, reg 1(3); 3 SPC Regs, Sch II, para 2(6)

Leave or absence from work

141 A person shall be treated as not being in remunerative work¹ on any day on which they are

1. on maternity leave **or**

2. on paternity leave **or**

3. on adoption leave **or**

4. shared parental leave **or**

5. on parental bereavement leave **or**

6. absent from work because of illness.

1 SPC Regs, Sch II, para 2(7)

Meaning of paternity leave

142 Paternity leave means¹ a period of absence from work on leave in accordance with legislation².

1 SPC Regs, reg 1(2); 2 ER Act 96, s 80A or 80B

Meaning of adoption leave

143 Adoption leave means¹ a period of absence from work on ordinary or additional adoption leave in accordance with legislation².

1 SPC Regs, reg 1(2); 2 ER Act 96, s 75A or 75B

Sports awards

144 People engaged in an activity for which a sports award has been made, or is to be made, to them should be treated as not engaged in remunerative work if no other payment is made or expected to be made to them in respect of the activity¹.

1 SPC Regs, Sch II, para 2(8)

145 A sports award means¹ an award made by one of the Sports Councils named in the National Lottery legislation² out of sums allocated under that legislation.

1 SPC Regs, Sch II, para 2(8); 2 National Lottery etc. Act 1993, s 23(2)

Appendix 3 - Examples of calculations for special groups

[Example 1 - No additional amounts](#)

[Example 2 - Additional amount for the severely disabled](#)

[Example 3 - Additional amount for carers](#)

[Example 4 - Single remand prisoner](#)

[Example 5 - Partner becomes a prisoner](#)

[Example 6 - Claimant not fully maintained by the religious order](#)

This Appendix contains examples of how the amount of SPC payable is worked out where people are

- members of polygamous marriages (see DMG 78600)
- prisoners (see DMG 78650)
- members of religious orders (see DMG 78680).

DMs should note that these examples are

- for illustrative purposes only **and**
- based on the rates and percentages applicable as from 6.04.04.

See Appendix 4 to DMG Chapter 77 for examples of how the amount of SPC payable is worked out in normal circumstances.

Polygamous marriages

Example 1 No additional amounts

Example 2 Additional amount for the severely disabled

Example 3 Additional amount for carers

Prisoners

Example 4 Single remand prisoner

Example 5 Partner becomes a prisoner

Members of religious orders

Example 6 Claimant not fully maintained by the religious order

Example 1 - No additional amounts

Sanjay, who is aged 65, is a member of a polygamous marriage and is married to Gita and Bina. Sanjay is entitled to RP of £127.25 a week and has no other income. Sanjay does not qualify for any additional amounts.

Calculation of GC:

SMG for Sanjay and his eldest wife Gita	£160.95
SMG for additional spouse Bina	£55.50
Additional amounts	nil
AMG	£216.45
Less income	£127.25
Amount of GC	£89.20

Calculation of SC:

SCT	£127.25
QI	£127.25
Amount of SC	Nil

Total SPC payable £89.20

Calculation of total weekly income:

RP	£127.25
SPC	£89.20

Total weekly income is £216.45

Example 2 - Additional amount for the severely disabled

Nisha is aged 66 and a member of a polygamous marriage. Her husband Ishaq has another wife Sunetra and all three live together as members of the same household. Nisha is entitled to RP of £79.60 a week and her husband Ishaq gets RP of £127.25 a week. All three receive “AA” and no one else lives in the household. But someone gets CA in respect of caring for Sunetra. Nisha qualifies for an additional amount of £44.15 a week because she is treated as being severely disabled (see DMG 78611).

Calculation of GC:

SMG for Nisha and her husband Ishaq £160.95

SMG for additional spouse Sunetra £55.50

Additional amounts £44.15

AMG £260.60

Less income (£79.60 + £127.25) £206.85

Amount of GC £53.75

Calculation of SC:

SCT £127.25

QI £206.85

QI exceeds SCT by £79.60

60% x £79.60 £47.76

MSC £20.22

Amount A £47.76

Amount B (income does not exceed AMG) Nil

Amount of SC (the MSC) £20.22

Total SPC payable £73.97

Calculation of total weekly income:

Total RP	£206.85
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SPC	£73.97
-----	--------

Total weekly income is £280.82

Example 3 - Additional amount for carers

Sanjay, who is aged 65, is a member of a polygamous marriage and is married to Gita and Bina. Sanjay is entitled to RP of £127.25 a week and Bina gets RP of £79.60 a week. Both Gita and Bina are entitled to CA and each satisfy the conditions for the award of an additional amount for carers.

Calculation of GC:

SMG for Sanjay and his eldest wife Gita	£160.95
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SMG for additional spouse Bina	£55.50
--------------------------------	--------

Additional amounts (£25.55 x 2)	£51.10
---------------------------------	--------

AMG	£267.55
-----	---------

Less income (£79.60 + £127.25)	£206.85
--------------------------------	---------

Amount of GC	£60.70
---------------------	---------------

Calculation of SC:

SCT	£127.25
-----	---------

QI	£206.85
----	---------

QI exceeds SCT by	£79.60
-------------------	--------

60% x £79.60	£47.76
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MSC	£20.22
-----	--------

Amount A	£47.76
----------	--------

Amount B (income does not exceed AMG) Nil

Amount of SC (the MSC) £20.22

Total SPC payable £80.92

Calculation of total weekly income:

Total RP £206.85

SPC £80.92

Total weekly income is £287.77

Example 4 - Single remand prisoner

Fred, who is aged 69, lives alone in a flat on which he has eligible housing costs of £60 a week. He is arrested and charged with a serious criminal offence. Fred is then held on remand (see DMG 78668) while he is awaiting trial and because he is in prison is disqualified from receiving any RP. He has no other income and claims SPC.

Calculation of GC:

SMG Nil

Additional amount for housing costs

(for a period of up to 52 weeks) £60

AMG £60

Less income Nil

Amount of GC £60

Calculation of SC:

MSC Nil

Amount of SC Nil

Total SPC payable £60

Total SPC payable £13.01

Calculation of total weekly income:

RP £79.60

Occupational pension £32

SPC £13.01

Total weekly income is £124.61

Example 6 - Claimant not fully maintained by the religious order

Marie is a 65 year-old nun who has been a member of, and fully maintained by, a religious order for many years. Marie leaves the order's premises to nurse her brother while he is recovering from a serious road traffic accident. The order does not maintain Marie while she is at her brother's house and she has no income. She does not qualify for any additional amounts.

Calculation of GC

SMG £105.45

Additional amounts Nil

AMG £105.45

Less income Nil

Amount of GC £105.45

Calculation of SC

SCT £79.60

QI Nil

Amount of SC Nil

Total SPC payable £105.45

Calculation of total weekly income

SPC

£105.45

Total weekly income £105.45.

Appendix 4 - Hospital cases - rates of reduction and examples of calculations

[Examples of calculations for hospital cases](#)

[Example 1: Single - additional amount for the severely disabled](#)

[Example 2: Single - additional amount for carers](#)

[Example 3: Couple - additional amount for the severely disabled](#)

[Example 4: Couple - additional amount for carers](#)

This Appendix contains

1. details of the rates of reduction that apply where a claimant's GC falls to be reduced because of hospital admission (see DMG 78805 et seq) **and**
2. some examples of how the amount of SPC payable is worked out in cases involving people in hospital (see DMG 78700 et seq).

Note: The examples in this Appendix are for illustrative purposes only and are based on the rates applicable as from 6.10.03.

Examples of calculations for hospital cases

Example 1 Single - additional amount for the severely disabled

Example 2 Single - additional amount for carers

Example 3 Couple - additional amount for the severely disabled

Example 4 Couple - additional amount for carers

Example 1: Single - additional amount for the severely disabled

Ulrika is aged 66 and lives alone. She is entitled to RP of £77.45 a week and an occupational pension of £40. Ulrika qualifies for an additional amount of £42.95 because she is severely disabled and the SMG for her is £102.10.

Under the **normal calculation** of SPC, Ulrika is entitled to

AMG [£102.10 + £42.95]		£145.05
DLA [disregarded]		
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		£27.60
SC [£40x60% restricted to MSC]		<u>£14.79</u>
Total SPC payable		£42.39

After **four weeks** in hospital, payment of DLA is withdrawn and the additional amount for the severely disabled is also withdrawn (see DMG 78806). Ulrika is then entitled to SC only, calculated as follows;

AMG [£102.10]		£102.10
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		nil
SC [£14.79 MSC] – £6.14 [£15.35 x 40%]		<u>£8.65</u>
Total SPC payable		£8.65

Example 2: Single - additional amount for carers

Tony is aged 67 and lives alone. He is entitled to RP of £77.45 a week and an occupational pension of £40. Tony has underlying entitlement to CA, which overlaps with his RP. He satisfies the conditions for the award of an additional amount for carers of £25.10 and the SMG for him is £102.10.

Under the **normal calculation** of SPC, Tony is entitled to

AMG [£102.10 + £25.10]		£127.20
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		£9.75

SC [£40x60% restricted to MSC]	<u>£14.79</u>
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Total SPC payable	£24.54
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The disabled person who Tony looks after is admitted to hospital and their AA is withdrawn after four weeks. But Tony's underlying entitlement to CA continues for a further eight weeks (see DMG 78107 et seq). After the person Tony looks after has been in hospital for **twelve weeks**, underlying entitlement to CA ends and the additional amount for carers is withdrawn. Tony is then entitled to SC only, calculated as follows;

AMG [£102.10 SMG]	£102.10
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RP	£77.45
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Occupational pension	<u>£40</u>	<u>£117.45</u>
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GC	nil
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SC [£14.79 MSC] – £6.14 [£15.35 x 40%]	<u>£8.65</u>
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Total SPC payable	£8.65
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SPC remains payable at this rate without any further adjustment. This is because it is the disabled person who Tony looked after that is in hospital and **not** Tony.

Example 3: Couple - additional amount for the severely disabled

Ishaq, who is aged 68, lives with his wife Fatima. Ishaq is entitled to RP of £123.80 a week and an occupational pension of £40. Both Ishaq and Fatima are in receipt of AA, no one else lives with them and no one gets CA in respect of caring for either of them. The conditions for the award of an additional amount for the severely disabled at the higher rate of £85.90 are satisfied (see DMG 78049) and the SMG for the couple is £155.80.

Under the **normal calculation** of SPC, Ishaq is entitled to

AMG [£155.80 + £85.90]	£241.70
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AA [disregarded]	[£76.60]
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RP	£123.80
----	---------

Occupational pension	<u>£40</u>	<u>£163.80</u>
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GC	£77.90
SC [£40x60% restricted to MSC]	<u>£19.20</u>
Total SPC payable	£97.10

Ishaq is admitted to hospital and after he has been in hospital for **four weeks**, his AA is withdrawn. The couple retain entitlement to the additional amount for the severely disabled, but at the lower rate (see DMG 78047). Ishaq is then entitled to SPC calculated as follows;

AMG [£155.80 + £42.95]	£198.75
AA [disregarded]	[£38.80]
RP	£123.80
Occupational pension	<u>£40</u> <u>£163.80</u>
GC	£34.95
SC [£40x60% restricted to MSC]	<u>£19.20</u>
Total SPC payable	£54.15

When Ishaq has been in hospital for **52 weeks**, he stops being a member of the same household as Fatima. Fatima is invited to make a claim and Ishaq's claim is revised to that of a single person.

Example 4: Couple - additional amount for carers

Charlie, who is aged 65, lives with his partner Hazel. Charlie is entitled to RP of £77.45 a week and an occupational pension of £40. Hazel is entitled to CA and she satisfies the conditions for the award of an additional amount for carers of £25.10. The couple do not qualify for any other additional amounts and the SMG for them is £155.80.

Under the **normal calculation** of SPC, Charlie is entitled to

AMG [£155.80 + £25.10]	£180.90
CA	£43.15
RP	£77.45

Occupational pension	<u>£40</u>	<u>£160.60</u>
GC		£20.30
SC [£36.80 x 60% restricted to MSC]		<u>£19.20</u>
Total SPC payable		£39.50

The disabled person who Hazel looks after is admitted to hospital and their AA is withdrawn after four weeks. But Hazel's entitlement to CA continues for a further eight weeks (see DMG 78107 et seq). After the person that Hazel looks after has been in hospital for **twelve weeks**, Hazel's entitlement to CA ends and the additional amount for carers is withdrawn. Entitlement to SC is then extinguished and Charlie becomes entitled to GC only, calculated as follows

AMG [£155.80 + nil]		£155.80
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		£38.35
SC [QI no longer exceeds SCT]		<u>nil</u>
Total SPC payable		£38.35

SPC remains payable at this rate without any further adjustment. This is because it is the disabled person who Hazel looked after that is in hospital and **not** Charlie or Hazel.

Appendix 5: Housing Costs - leasehold major works

Housing costs - leasehold major works

Introduction

1 The following guidance explains about the amount of benefit allowed as a housing cost for leasehold residents where their accommodation is modernised under the Decent Homes initiative.

Background

2 The Decent Homes initiative was extended by the Public Service Agreement in response to a challenge from the government to increase the number of households in the private sector living in decent homes. This includes homes of former LA tenants who have purchased their property under the right to buy scheme.

3 In order to be decent a home should meet the current statutory minimum standard for housing, be in a reasonable state of repair and have reasonably modern facilities and services.

4 The building components that should be in a reasonable state of repair include external walls, roof structure and coverings, windows and doors, heating systems, plumbing and electrics. Modern facilities are indicated by kitchens less than 20 years old and bathrooms less than 30 years old and, for blocks of flats, there should be adequate size and layout of common areas.

5 Landlords are achieving the Decent Homes standard by a programme of regeneration and refurbishment with building works carried out on their leasehold housing stock.

Costs

6 The cost of the structural work and refurbishments will be charged to leaseholders through service charges. A service charge is, as decided in R(IS) 4/91, a charge which the claimant is obliged to pay in terms of their occupancy agreement for services rendered in terms of that agreement.

7 Some residents may choose to meet their service charge costs by obtaining a home improvement loan. From 6.4.18, these loans can no longer be considered as housing costs (see ADM Memo 8/18).

Service charge

8 To determine what part of the service charge is eligible to be met as a housing cost the claimant will provide the annual service charge account which should include an itemised

however these are unlikely to arise under the Decent Homes improvements.

1 HB Regs 06, Sch 1, para 1

13 “Repairs and improvements”, mentioned in paragraph 10 **3.** above, means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling

1. Provision of a fixed bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
2. Repairs to existing heating systems;
3. Damp proof measures;
4. Provision of ventilation and natural lighting;
5. Provision of drainage facilities;
6. Provision of facilities for preparing and cooking food;
7. Provision of insulation of the dwelling occupied as a home;
8. Provision of electric lighting and sockets;
9. Provision of storage facilities for fuel or refuse;
10. Repairs of unsafe structural defects;
11. Adapting a dwelling for the special needs of a disabled person; **or**
12. Provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 20 who is part of the same family as the claimant.

14 Commissioners have addressed some of the issues encountered when determining the eligible and ineligible aspects of the service charge. The Commissioners have decided that

1. The upkeep/maintenance of communal pathways, gardens¹, repair of a lift and repointing of brickwork are all connected with the provision of adequate accommodation. The costs of a car park barrier, a car park attendant², the installation of a pergola and the repair of a clock tower are all connected with the provision of adequate accommodation.

2. Works which are to be funded out of the service charge can be for the avoidance of the need for the repair of unsafe structural defects. For example, timely replacement of slackening roofing tiles will prevent the roof timbers becoming rotted to the point of collapse through water penetration³.
3. Where there are windows there is natural light already and no need to provide it³.
4. Provision is something not already in existence or the replacement of something which no longer functions³.
5. Re-pointing is not a damp proof measure, redecoration is not a repair or improvement and so their associated costs are not deducted from the service charge⁴.
6. By preventing the entry of rainwater a roof may prevent damp, damp proofing may not be the predominant purpose of a roof and although a roof repair might have the predominant purpose of preventing damp a roof renewal would not⁵.

1 CIS/1496/95; 2 CIS/2205/00; 3 R(IS) 2/07; 4 CIS/667/02; 5 CIS/2132/98

15 The final weekly amount of the service charge is then attributed to a 52 week period from the date the liability arose¹.

Note: The attribution period for this service charge is independent of any prior service charge that is already in payment so the dates are unlikely to be the same.

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

Example

The leasehold residents of a 2 storey flat complex have had their building modernised under the Decent Homes programme at a cost of £90,400, the work involved the prudent renewal of the communal electrical wiring, windows and doors, the lift, replacing all the roof tiles, external redecoration, the perimeter fencing and the upgrading of the roof space insulation. The costs are levied as a service charge and each of the 8 residents are required to contribute an appropriate share of the costs. In this case each persons share of the costs amounted to £11,300 which comprised of £1,100 for wiring, £2,800 for windows and doors, £2,000 for lift renewal, £3,200 for roof tiles, £500 towards redecoration, £900 for fencing and £800 towards insulation.

Resident 1, Juliet, is liable for the service charge (she does not obtain a loan to meet the

service charge). The DM decides that the £11,300 is a service charge¹ and that this converts to a weekly amount of £217.31 a week (£11,300 divided by 52). From the weekly amount there should be deducted the costs of any works considered to be, not connected with the provision of adequate accommodation or a repair or improvement. The DM considers that, all the works are connected with the provision of adequate accommodation (therefore there is nothing to deduct as described by paragraph 10 **2.** above). The DM considers the roof renewal is not a damp proof measure² and therefore not a repair or improvement, the rewiring is not the provision of electrical lighting or sockets³ and not a repair or improvement, the replacement of windows and doors is not the provision of natural lighting or ventilation⁴, the upgrading of roof space insulation with better rated material is not

the provision of insulation and neither redecoration⁵, the lift replacement, nor fencing are included in the exhaustive list of potential repair or improvements. As there is nothing in the works to indicate that what is contemplated is anything more than the prudent renewal of protective decoration or the replacement of potentially unserviceable items with similar items, then there is nothing that is a repair or improvement (as described by paragraph 10 **3.** above) and therefore nothing to deduct. The cost of the building works is met in full giving a housing cost service charge of £217.31 a week.

1 R(IS) 4/91; 2 CIS/2132/98; 3 CSJSA/160/98; 4 CIS/2901/04; 5 CSJSA/106/98

Typical repairs

16 The following table contains a list of some of the typical building repair and refurbishments carried out on leasehold accommodation under the Decent Homes initiative including corresponding columns highlighting eligibility where the costs are met by a service charge.

Typical repairs		service charge
Roof	a. Major Repair	-No
	b. Renewal	-Yes
	c. Replacement	-Yes

	d. Chimney stack repairs	-Yes
Roof safety	This may include fitting roof safety rails, or roof safety harness's, allowing regular inspection and maintenance	-Yes
Insulation	a. Roof insulation	Yes if not provision
	b. Wall insulation	
Building frame repairs	Cladding to the exterior of the building to prevent damage to the structure, insulates protects building from the elements	-Yes
Concrete repairs	This may include cleaning, painting and protective coating, or repairs (including the concrete frame)	-Yes
External walls	a. Brickwork cleaning	- Yes
	b. Repairs to brickwork, pointing, repairs to rendered surfaces	-Yes
	c. Replace wall ties	-Yes
Balconies walkways	a. Repairs to balcony balustrades and handrails	-Yes
	b. Repairs to common walkways and balconies	-Yes
Windows	a. Replacement	-Yes
	b. Replacement of single glaze with double glaze	-Yes
Communal doors	Repair and replacement of communal doors, ensuring compliance with fire regulations	-Yes
External redecoration	Carry out the redecoration to all external elements of the existing fabric of the building, including use of anti-graffiti paint where appropriate	-Yes
Communal area repairs & decoration	a. Carry out redecoration of all communal internal areas including corridors and stairways, using fire retardant and/or anti-graffiti paint where appropriate	-Yes
	b. Replacement of communal flooring	-Yes
Rainwater goods	Repair/replace guttering and down pipes	-Yes if not

			provision
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Drains	a.	Rod and Jetting wash through all existing drainage and inspection chambers	-	Yes
	b.	Replace communal waste/soil pipes		Yes if not provision
	c.	Major repair or replacement		
Electrical Installations	a.	Replace mains distribution board	-	Yes
	b.	Replace rising and lateral mains cables	-	Yes
	c.	Replace bulk head lighting to communal staircases & balcony soffits		Yes if not provision
	d.	Replace communal corridor lighting		
TV Aerial	a.	Replace analogue aerial with digital, may include replacing cabling serving all units	-	Yes
	b.	Installation of satellite dish to receive additional channels	No	
Ventilation	a.	Maintenance and cleaning of communal shafts & flues	-	Yes
	b.	Replace communal extractor fans		Yes if not provision
Entry Systems and Access	a.	Installation or renewal of entry systems, which may include cabling and handsets in each property	-	Yes
	b.	Works to comply with Disability Discrimination Act	-	Yes
Damp works		All methods of damp proofing, which may include:-	-	-
	a.	Insertion of chemical damp proof course	-	No
	b.	Laying a waterproof membrane on the basement floor	-	No
Refuse/ recycling systems		Replacement or repair of refuse/recycling systems and or hopper heads	-	Yes if not provision

Bin chambers		Repairs to communal bin chambers	-	Yes
Lifts	a.	Replacement of lift car, control panel and components	-	Yes
	b.	Replace lift motor room equipment	-	Yes
	c.	Major overhaul	-	Yes
	d.	Installing lifts and shafts	-	Yes
Dry rot works		May include:-	-	-
	a.	Chemical treatment of problem areas	-	Yes
	b.	Replacement of structural timbers such as joists	-	No

Water pumps		May include:-		
	a.	Installation of pumps due to reduced water mains pressure	-	Yes
	b.	Replacement of an existing pump	-	Yes
Water supply	a.	Replacement of the water main serving the building	-	Yes
	b.	Replacement of communal water tanks	-	Yes
Fire safety	a.	Install, repair or replace communal fire detection systems	-	No
	b.	Installation or renewal of smoke detectors	-	No
	c.	Replacement of dry risers to tower blocks (essential part of fire fighting)	-	Yes
	d.	Install, repair or replace fire escapes	-	Yes
Lightning protection		Installation or replacement of lightning conductor	-	Yes
Asbestos removal		Removal of asbestos under controlled conditions	-	Yes

Communal Heating	a.	Major overhaul or replacement of communal heating systems or individual elements	- No
	b.	Installation of communal heating systems	- Yes
Estate works	a.	Estate lighting	- Yes if not provision
	b.	Controlled access and security	- Yes
	c.	Repairs to estate roads or paths	- Yes
	d.	Provision and refurbishment of recreational areas	- Yes
	e.	Landscaping	- Yes
	f.	Boundary walls and fences	- Yes
Associated costs		Costs essential to the works, which may include:	- -
	a.	Surveys	Yes
	b.	Preliminaries e.g. site set up costs	Yes
	c.	Fees	Yes
	d.	Access equipment e.g. scaffolding	Yes
	e.	Health and safety	Yes

Appendix 6: Transitional End Date

[Introduction](#)

[Loan offer made before 6.4.18](#)

[Loan offer made on or after 6.4.18](#)

[Persons who lack capacity - identified before 6.4.18](#)

Introduction

1. From 6.4.18 the regulations which provide for entitlement to payments in respect of loans and loans for repairs and improvements¹ within the IS, JSA(IB), ESA(IR) and SPC regulations are omitted². As a result these SMI payments will no longer be met through those benefits. Payment towards other housing costs, for example, service charges, will continue. Certain transitional arrangements are in place for existing claimants whose housing costs can continue to be met (beyond 6.4.18) but only until the transitional end day³

1 IS Gen Regs, reg 17(e) & 18(1)(f); JSA Regs, reg 83(f) & 84(1)(g) & 86A; ESA Regs, reg 67(1)(c) & 68(1)(d); SPC Regs, Sch II, Para 1(1)(b) & 1(2)(c) & 8, 9, 11, 12; 2 LMI Regs, reg 18 3. reg 19

Loan offer made before 6.4.18

2. Where the loan offer is made before 6.4.18 the transitional end day will be the earlier of

1 the day described at paragraph 3 below **or**

2 the day immediately following the day on which entitlement to a qualifying benefit ends¹

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

1 LMI Regs, reg 19(1)

3. For the purposes of paragraph 2.1 the day referred to is the later of

1 for claimants of IS, JSA(IB), ESA(IR) or SPC, where 6.4.18 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after 6.4.18 **or**

2 the day immediately following the day which is the earliest¹ to occur of the following

2.1 the day the DM receives notification that the claimant does not wish to accept the offer of loan payments **or**

2.2 where the DM

2.2.a receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 9 below **or**

2.2.b has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends².

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant³.

Example:

William is in receipt of IS that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6.4.18). From this date William is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

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

4. For the purposes of paragraph 3.2.2.a the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received¹.

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

Loan offer made on or after 6.4.18

5. Where the loan offer does not occur before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 6 below **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends¹

3. the day immediately following the day the DM receives notification that the claimant does not wish to receive loan payments¹.

6. For the purposes of paragraph 5.1 the day referred to is

1. 7.5.18¹ **or**

2. where the loan payments offer date is before 7.5.18 **and**

2.1 the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2.2 the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends².

Note: Where the day described in paragraph 2.1 or 2.2 above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date²

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

7. For claimants of IS, JSA(IB), ESA(IR) or SPC, where 7.5.18 or the day described at paragraph 5.3 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day¹

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

1 LMI Regs, reg 19A(3)

8. Where

1 before 19.3.18 the DM has asked the claimant to provide information needed to

1.1 establish whether the claimant wishes to receive an offer of a loan payment or

1.2 be able to send the loan agreement and associated documents and

2 the claimant has not provided that information

then the preceding paragraphs 5 to 7 do not apply and the support for mortgage interest regulations are removed, subject to paragraph 9, from 6.4.18¹.

1 LMI Regs, reg 19A(4)

9. Where paragraph 8 applies (and this is not because the claimant lacks capacity) and the 6.4.18 is not the first day of the claimants benefit week then the removal of the owner occupier payments from benefit entitlement is effective from the first day of the first benefit week that begins after that date¹.

1 LMI Regs, reg 19A(5)

Persons who lack capacity – identified before 6.4.18

10. Where, before 6.4.18 the DM

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

2 suspects that the claimant may lack such capacity

then claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below¹.

1 LMI Regs, reg 20(1)

11. The date referred to in paragraph 10 falls on the day that is the earlier of

1 the day described in paragraph 12 or paragraph 14 **or**

2 the day immediately following the day on which entitlement to a qualifying benefit ends¹.

1 LMI Regs, reg 20(2)

12. For the purposes of paragraph 11.1 that day is the later of

1 5.11.18 **or**

2 where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5.11.18 the DMs suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the DM formed that belief¹**or**

3 where an application for a decision of a type described in the Note below is made before the later of

3.1 5.11.18 **or**

3.2 the day prescribed in paragraph 12.2

the relevant day is the day immediately following²

3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision **or**

3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn³.

1 LMI Regs, reg 20(3)(b); 2 reg 20(3)(c); 3 reg 20(4)

Note: In England and Wales the relevant person is the Court of Protection or Public Guardian and the decision they need to determine would concern registering a lasting power of attorney, appointing a deputy or making an order in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement. In Scotland the relevant person is the Sheriff or Court of Session and the decision they need to determine would concern the making of an intervention order, the appointment of a guardian or the appointment of a judicial factor in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement¹.

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

Example 1

Bert receives SPC which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5.11.18, the later of the dates outlined in paragraph 12.3, which is the earlier of the dates in paragraph 11. Owner occupier payments will continue until that date.

Example 2

Ernest receives SPC which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Financial Deputy. Owner occupier payments continue. On 30.10.18 Jim advises the DM that he has been appointed. The transitional end date for Ernest is 6 weeks after that determination which in this particular case is 11.12.18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

13 Where more than one application for a decision (as described in the Note to paragraph 12) is made within the intervening period cited at 12.3 then the periods described in paragraph 12.3 do not start to run until the relevant person has decided the last application or that all the applications are withdrawn¹. Similarly where there is one application for a decision referred to in the Note but it is made within the intervening period to more than one relevant person then the day will be the later of the days².

14 Where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5 November the DMs suspicion becomes a belief that the claimant does not in fact lack capacity then the relevant day is the day immediately following the earlier of

1 the day described in paragraph 15 **or**

2 the day on which the DM is notified that the claimant does not wish to receive loan payments¹

1 LMI Regs, reg 20(8)

15 For the purposes of paragraph 14.1 the relevant day is the earlier of

1 where the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2 where the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends².

Note: Where the day described in paragraph **1. or 2.** above is not the first day of the claimant’s benefit week, the day referred to here is the first day of the first benefit week that begins after that date²

1 LMI Regs, reg 20(9)

16 For claimants of IS, JSA(IB), ESA(IR) or SPC, where 5.11.18 or the day described at paragraph 14.2 or paragraph 15 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day¹

1 LMI Regs, reg 20(10)