

# Chapter 16 - Dependency increases

## Increases for children and qualifying young persons

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# Chapter 16 - Dependency increases

## Increases for children and qualifying young persons

### Abolition of certain child dependency increases

#### Introduction

16000 Certain CDIs have been abolished<sup>1</sup>. DMG 16003 -16013 provides guidance on this and on the transitional and savings arrangements<sup>2</sup>. The guidance on CDIs in DMG 16015 et seq is retained for transitional cases and benefits not affected (see DMG 16002).

*1 TC Act 02, s 1(3)(e); 2 TC Comm No. 3 Order, art. 3*

#### Benefits affected

16001 The benefits affected are

1. IBST at the higher rate or where the claimant is over pensionable age<sup>1</sup>
2. IBLT<sup>2</sup>
3. RP (Cat A, Cat B and Cat C)<sup>3</sup>
4. WMA<sup>4</sup>
5. WPA<sup>5</sup>
6. CA<sup>6</sup>
7. SDA<sup>7</sup>.

**Note:** See DMG Chapter 75 for guidance on pensionable age

*1 SS CB Act 92, s 80; 2 s 80; 3 s 80; 4 s 80; 5 s 80; 6 s 90; 7 Welfare Reform and Pensions Act 1999 (Commencement No. 9 and Transitional and Savings Provisions) Order 2000, art. 4*

#### Benefits not affected

16002 CDIs payable with

1. US
2. IIDB
3. WC
4. IDB

are **not** affected and consequently the guidance given in DMG 16003 - 16013 does not apply to them.

## **New claims for child dependency increases received on or after 6.4.03**

16003 Where a claim for a CDI is made

1. on or after 6.4.03 **and**
2. in respect of a period that starts before 6.4.03 **and**
3. that period includes 5.4.03 **and**
4. that period continues after 5.4.03

the DM should allow<sup>1</sup> the claim subject to the normal conditions of entitlement to the CDI being satisfied.

*1 TC Comm No. 3 Order, art. 3(1) & 3(2)(b)*

16004 Where a claim for a CDI is made

1. on or after 6.4.03 **but**
2. in respect of a period wholly prior to 6.4.03

the DM should deal with the claim as if it had been made before 6.4.03.

16005 - 16009

## **Existing awards of child dependency increase from 6.4.03**

16010 Where a claimant is entitled to and being paid a CDI on 5.4.03, the CDI entitlement and payability will continue<sup>1</sup> (subject to the normal conditions for entitlement and payability being satisfied).

*1 TC Comm No. 3 Order, art. 3(1) & (2)(a)*

16011 Once entitlement to a CDI to a relevant benefit ceases, that person can no longer claim a CDI for a period after 6.4.03, unless DMG 16002 applies<sup>1</sup>.

*1 TC Comm No. 3 Order, art. 3(3)(b)*

16012 Where a parent benefit has been terminated by means of a revision, supersession or appeal, any CDI payable with that parent benefit will also be terminated. Where the parent benefit is subsequently re-awarded following a revision, supersession or appeal, the CDI can be reclaimed. The CDI must be reclaimed within 3 months of the date the parent benefit is re-awarded. The CDI would be payable from either

1. the date of termination of the original award<sup>1</sup> **or**
2. the first date in respect of which the parent benefit is re-awarded whichever is the later<sup>2</sup>.

*1 TC Comm No. 3 Order, art. 3(3)(c); 2 SS (C&P) Regs, reg 6 (19-23)*

16013 Where there is entitlement to a CDI on 6.4.03 and that CDI ceases to be payable, it can be reinstated provided the period of non-payability is 57 days or less. If there is no payability for 58 days or more, entitlement to the CDI terminates<sup>1</sup>.

*1 TC Comm No.3 Order, art 3(3)(a)*

16014



# Child dependency increases - transitional cases & benefits not affected

## Introduction

16015 The guidance at DMG 16021 - 16095 is retained for cases where CDIs are retained under transitional protection and for CDIs to the benefits listed in DMG 16002.

**Note:** CDIs include increases for qualifying young persons<sup>1</sup>.

*1 WR Act 09, s 37(1)*

## Civil Partnerships

16016 From 5.12.05 a civil partnership is a relationship between two people of the same sex which is formed when they register as civil partners<sup>1</sup> (see DMG Chapter 10 for further guidance).

*1 CP Act 04*

16017 As CDIs now only continue in a small number of benefits and in transitionally protected cases, it seems unlikely that many cases will be affected by the registration of a civil partnership. DMs who encounter problems in relation to the effect of a civil partnership on a CDI should submit queries to DMA Leeds.

16018 - 16020

## Unemployability supplement

16021 US was abolished on 6.4.87. But where

1. the claimant was in receipt of US immediately before 6.4.87 **or**
2. the claimant claimed US before 6.4.87 but the award was not made until after that date **or**
3. an award was made for a period starting before 6.4.87 but benefit was not received until after that date<sup>1</sup>

entitlement to US will continue<sup>2</sup> providing the other conditions are satisfied.

*1 SS CB Act 92, s 103(7) & (8); Sch 3, para 4; 2 s 103(7)(8); Sch 3, para 4*

16022 Where the savings provisions in DMG 16021 are satisfied entitlement to an increase of IIDB with US for a child or qualifying young person continues<sup>1</sup>. Where dependency arises on or after 6.4.87, for example by the birth of a child, entitlement to the increase can be established providing the conditions in DMG 16021 are satisfied.

*1 SS A Act 92, s 155*

## Example

A married man receives IIDB with US before 6.4.87 and remains continuously in receipt of the benefit. On 4.12.98 his wife gives birth to a child and he claims an increase for the child. The conditions for entitlement to the increase are satisfied. As he satisfies the savings provisions, he is entitled to the increase. Benefit is paid from 9.12.98.

## Claim and duration

- 16023 A claim for an increase of benefit should be made in the prescribed manner and within the time limit<sup>1</sup> (see DMG Chapter 02). When making a claim an increase is regarded as a separate benefit<sup>2</sup>.

*1 SS A Act 92, s 1; 2 SS (C&P) Regs, reg 2(3)*

- 16024 There can be no entitlement to an increase of benefit unless there is entitlement to personal benefit. In RP and WB the personal benefit must also contain a BP<sup>1</sup>. Where the personal benefit is not **payable** because of the overlapping benefits provisions, the increase can still be payable (see DMG Chapter 17).

*1 SS CB Act 92, s 61*

- 16025 The overlapping benefit provisions affect only the rate or amount of benefit **payable** to a person. They do not affect entitlement to the benefit<sup>1</sup>. Where the personal benefit is not **payable** because of earnings the increase can still be paid (see DMG Chapter 15).

*1 SS (OB) Regs, reg 16*

- 16026 An increase is payable from and including the first day of entitlement to the last date of entitlement. Where the benefit is payable on a weekly basis the increase is payable from the first pay day on which all the conditions of entitlement and payability are satisfied<sup>1</sup>.

*1 SS (C&P) Regs, reg 16*

- 16027 If the claimant is no longer entitled to CHB because the qualifying young person is in receipt of IB(Y)<sup>1</sup> or ESA(Y)<sup>2</sup>, entitlement to an increase of benefit stops from and including the Monday of the week in which IB(Y) or ESA(Y) is awarded. Entitlement to an increase of a weekly paid benefit stops from that same Monday where that is the payday, otherwise entitlement will stop from the next pay-day following that Monday.

*1 CHB (Gen) Regs, reg 8(2)(c); 2 reg 8(2)(e)*

## Rate of benefit

- 16028 An increase for a child or qualifying young person is not affected by an incomplete contribution record. If there is entitlement to the personal benefit, there is entitlement to an increase for a child or qualifying young person at the full rate<sup>1</sup>.

*1 SS CB Act 92, s 60(4)-(6)*

## Entitlement and payability

16029 DMs should note the difference between entitlement<sup>1</sup> and payability. Although benefit may not be payable, entitlement may remain<sup>2</sup>.

*1 [1984] 1 WLR 1353; 2 SS CB Act 92, s 122(1)*

### Entitlement

16030 The basic conditions for **entitlement** to an increase are that the claimant

1. must be entitled **or** treated as entitled to CHB **and**
2. should not be treated under DMG 16064 as not entitled.

This is known as the “child benefit test” (see DMG 16050).

16031 Where a person is **not** entitled to CHB but there is a doubt whether they can be treated as entitled, the DM should consider whether the claimant

1. is living with their spouse **or**
2. is living with
  - 2.1 a parent of the child or qualifying young person **and**
  - 2.2 the child or qualifying young person.

16032 Where a claimant is living with

1. a parent of the child or qualifying young person **and**
2. the child or qualifying young person

but is **not** the child’s or qualifying young person’s parent, the DM should consider whether the claimant is or has been wholly or mainly maintaining the child or qualifying young person (see DMG 16550 et seq).

### Payability

16033 An increase of benefit is **payable** only if

1. the child or qualifying young person is treated as living with the claimant<sup>1</sup> (see DMG 16341) **or**
2. the claimant and their spouse or civil partner, jointly if they are living together, are maintaining the child or qualifying young person at a weekly rate equal to or more than the amount of the dependant’s increase.

**Note:** Where **2.** applies, if CHB is payable to the claimant, or the spouse if they live together, an amount equal to the amount of CHB must also be included in the maintenance. This is known as the “contributing test”<sup>2</sup>.

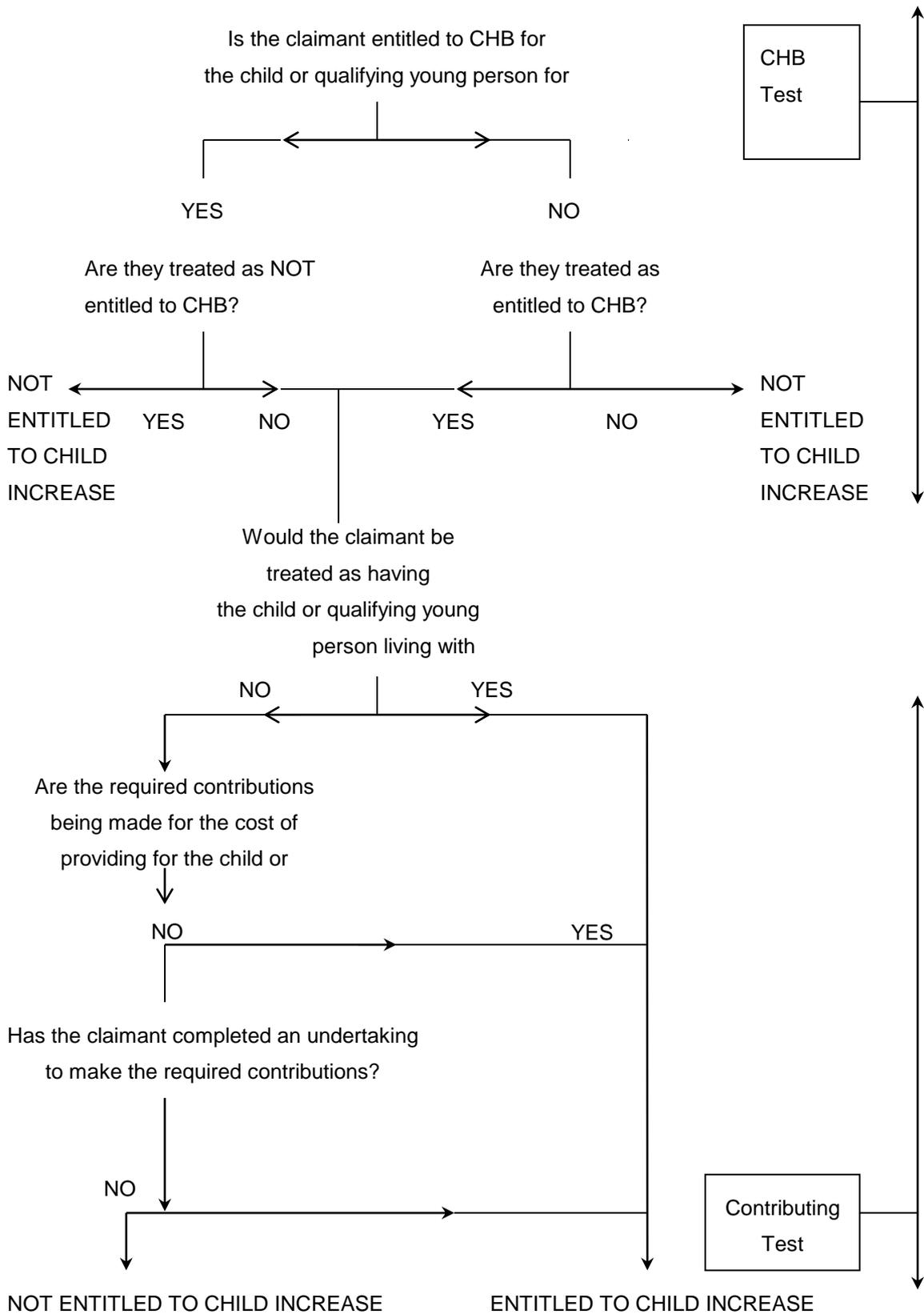
*1 SS CB Act 92, s 143(2)-(4); 2 s 81(1) & (2)*

- 16034 The “contributing test” and the “wholly or mainly maintaining test” are completely separate questions. Guidance on the contributing test is at DMG 16510 et seq and the wholly or maintaining test at DMG 16550 et seq.
- 16035 Where the CHB test is satisfied but the contributing test is not, the claimant may be treated as satisfying the contributing test subject to certain conditions (see DMG 16095).
- 16036 The diagram on the following page shows how the CHB and contributing tests work (see DMG 16050 et seq).
- 16037 Payment of an increase for a child or qualifying young person may also be affected
1. by the earnings of the
    - 1.1 spouse **or**
    - 1.2 “other person” **or**
  2. if the child or qualifying young person is receiving free in-patient treatment **or**
  3. if the child or qualifying young person is receiving an overlapping benefit.

**Note:** For IIDB, payment of an increase for a child or qualifying young person may also be affected by the earnings of the civil partner<sup>1</sup>.

*1 SS CB Act 92, Sch 7, para 4*

16038 - 16039





# Definition of child, qualifying young person and parent

## Definition of child

16040 A child is a person who has not reached the age of 16<sup>1</sup>.

*1 SS CB Act 92, s 122(1) & 142(1)*

## Definition of qualifying young person

16041 A qualifying young person is a person who is not a child<sup>1</sup> and who

1. has not reached a prescribed age **and**
2. satisfies other conditions<sup>2</sup>.

**Note:** No-one who reached the age of 19 before 10.4.06 can be a qualifying young person<sup>3</sup>.

*1 WR Act 09, s 37(2); SS CB Act 92, s 122(1) & 142(2); 2 CHB (Gen) Regs, reg 2 – 8; 3 reg 2(5)*

16042 DMG 16127 – 16134 gives guidance on the prescribed age and other conditions for ADI purposes. That guidance also applies for the purpose of DMG 16041.

## Definition of parent

16043 The term parent includes

1. the natural parent of an illegitimate child or qualifying young person
2. a step-parent<sup>1</sup>
3. adoptive parents<sup>2</sup>
4. the parties to a marriage where the child is born in England or Wales as a result of artificial insemination<sup>3</sup>.

*1 SS CB Act 92, s 147(3); SS (IB for D) Regs, reg 1(2); SS Ben (Dep) Regs, reg 1(2);  
2 R(SB) 24/86; 3 FLR Act 87, s 27*

## Step-parents

16044 A step-parent is a person who marries someone who is the parent of a child or qualifying young person. It does not matter whether the child or qualifying young person was the legitimate child of a previous marriage or illegitimate<sup>1</sup>.

*1 R(S) 9/83*

16045 A step-relationship between a man and a child or qualifying young person continues to exist

1. after the death of the child's or qualifying young person's mother<sup>1</sup>
2. after the marriage between the man and the child's or qualifying young person's mother has ended by divorce

even though either, or both of them might then remarry with different partners<sup>2</sup>.

*1 R(F) 1/79; 2 R(S) 4/81*

## **Adoptive parents**

16046 A child or qualifying young person who has been legally adopted is the dependant of the adoptive parents **not** of the natural parents<sup>1</sup>. From the date of the adoption order the adoptive parents should be regarded as the parents of the child or qualifying young person.

*1 Children Act 1975; R(SB) 24/86*

## **Child born following artificial insemination**

16047 A person who is treated as the mother<sup>1</sup> or father<sup>2</sup> of a child born as the result of artificial insemination is treated as the mother or father of that child for all purposes<sup>3</sup>. However, where a person is not treated as the mother or father, they are treated as not being the mother or father for all purposes<sup>4</sup>.

*1 Human Fertilisation and Embryology Act 1990, s 27; 2 s 28; 3 s 29(1); 4 s 29(2)*

16048 - 16049

# Child benefit and contributing tests

## Child benefit test

16050 Entitlement to CHB is a basic condition for entitlement to an increase of benefit for a

1. child or qualifying young person<sup>1</sup> **and**
2. person caring for a child or qualifying young person<sup>2</sup> (but see DMG 16125 - 16134).

*1 SS CB Act 92, s 80(1); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2;  
2 SS CB Act 92, s 82, 85 & 86A; Sch 2, para 2*

16051 DMs at the Child Benefit Centre decide questions on a person's entitlement to CHB. To be entitled to an increase for a child or qualifying young person<sup>1</sup>, the DM dealing with the dependency claim should decide whether a person is

1. entitled to<sup>2</sup> **or**
2. treated as entitled to

CHB for the child or qualifying young person.

*1 SS CB Act 92, s 80(1); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2, Part I;  
2 SS CB Act 92, s 82, 85, 86A; Sch 2, Part II*

## Entitled to child benefit

16052 A person is entitled to CHB if that person is responsible for

1. a child or qualifying young person **or**
2. children or qualifying young persons<sup>1</sup>.

**Note:** See DMG 16040 for the definition of child and DMG 16041 for the definition of qualifying young person.

*1 SS CB Act 92, s 141*

16053 A week for CHB purposes is defined as a period of seven days beginning Monday<sup>1</sup>.

*1 SS CB Act 92, s 147(1)*

16054 Although there may be **entitlement** to CHB, it may not be **payable** for any week while the claimant remains entitled to CHB, entitlement to the increase of benefit also remains<sup>1</sup>.

*1 R(P) 3/85*

16055

16056 Although the claimant would continue to be entitled to CHB for the purposes of deciding entitlement to the increase, the claimant can be treated as not entitled to CHB (see DMG 16064).

## Treated as entitled to child benefit

16057 A person who is living with a spouse is treated as entitled to any CHB the spouse is entitled to<sup>1</sup>.

*1 SS CB Act 92, s 122(4)*

16058 A person is treated as entitled to CHB for any period during which

1. CHB has been awarded to a parent of that child or qualifying young person and both

1.1 the child or qualifying young person **and**

1.2 the claimant

are residing with that parent **and**

2. the person is

2.1 wholly or mainly maintaining the child or qualifying young person (see DMG 16550) **or**

2.2 also a parent of that child or qualifying young person<sup>1</sup> (see DMG 16032).

*1 SS Ben (Dep) Regs, reg 4A(1)*

16059 The only circumstances in which a person may be treated as entitled to CHB are where CHB has been awarded to a parent of that child, and the child and the person are both living with that parent.

16060

16061 Entitlement to CHB starts from and including the first Monday following the birth of the child. A person is treated as entitled to CHB from the Monday of the week in which the child was born<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 4A(1)(b)*

## Absence abroad

16062 Where a person in GB, including Northern Ireland claims an increase of benefit and

1. that person, or their spouse or civil partner if residing together, is entitled to the family benefits of a country outside the UK under either European Community regulations or reciprocal convention **and**

2. there is no entitlement to CHB

the claimant is treated as entitled to CHB for the period of entitlement to family benefits<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 4A(4); SS Ben (PA) Regs, reg 13A; Social Security (Northern Ireland Reciprocal Arrangements) Regulations, reg 2; Regulation (EEA) 1408/71; SS (IB for D) Regs, reg 6(2)*

16063 Where

1. the person and the child or qualifying young person **or**
2. the child or qualifying young person

is absent from GB see DMG Chapter 07.

## **Treated as not entitled to child benefit**

16064 A person who is entitled to CHB for a child or qualifying young person but who is not a parent of the child or qualifying young person is treated as not being entitled to that benefit if the child or qualifying young person

1. is not living with the claimant but is living with a parent<sup>1</sup>
2. is living with the claimant and a parent but the claimant is not wholly or mainly maintaining the child or qualifying young person<sup>2</sup> (see DMG 16550).

*1 SS Ben (Dep) Regs, reg 4B(1)(a); 2 reg 4B(2)*

### **Example**

A grandfather is entitled to CHB for his daughter's child and claims an increase of his benefit for that child. But the child lives with the mother and not the grandfather. He is treated as not entitled to CHB.

16065 A person who is entitled to CHB is treated as not being entitled in respect of any day after the child or qualifying young person has died<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 4B(1)(c)*

16066 A claimant is treated as not entitled to CHB where entitlement to that benefit remains but is not payable because of the provisions in DMG 16054<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 4B(3); SS (IB for D) Regs, reg 7(3)*

16067 CHB entitlement depends on the claimant's situation at the start of the week<sup>1</sup>. The claimant therefore should be treated as not entitled to CHB from the Monday following the changes in DMG 16054.

*1 SS CB Act 92, s 147(1)*

16068 Where the qualifying young person receives IS awarded from a Monday the claimant is treated as not entitled to CHB from that date. However, where the IS is awarded from any other day the claimant is treated as not entitled to CHB from the Monday following.

16069 Where a claimant is treated as not entitled to CHB, entitlement to an increase for a child or qualifying young person also stops. Entitlement to an increase of IB or SDA stops from the same day that the claimant is treated as not entitled to CHB. Entitlement to an increase of RP, CA, WMA, WPA and IIDB with US stops from

1. the next payday following the date the claimant is treated as not entitled to CHB<sup>1</sup> **or**
2. the same day that the claimant is treated as not entitled to CHB where that is a payday.

*1 SS (C&P) Regs, reg 16*

### **Example 1**

A claimant is entitled to an increase of IBLT for a qualifying young person. On Tuesday 3.5.11 the qualifying young person starts paid work. CHB is not payable from Monday 9.5.11. From 9.5.11 the claimant is treated as not entitled to CHB. There is no entitlement to the increase of IBLT from and including 9.5.11.

### **Example 2**

A claimant is entitled to an increase of CA for a qualifying young person, which is paid on a Wednesday. On Tuesday 27.9.11 the qualifying young person begins advanced education. CHB is not payable from Monday 3.10.11. Also, from 3.10.11 the claimant is treated as not entitled to CHB. The last payday on which the increase is paid is 28.9.11. There is no entitlement to the increase from and including 5.10.11.

- 16070 Where entitlement has stopped in the circumstances in DMG 16069, a new claim will normally be required for entitlement to the increase to be considered again.

## **No entitlement to child benefit at time of claim**

- 16071 The DM should delay making a decision on CDIs until the outcome of the claim for CHB is known where it

1. has not been made by the claimant, spouse or civil partner **or**
2. has been made but has not yet been decided.

- 16072 The DM should defer making a decision on the increase to allow the Secretary of State to take suitable action if<sup>1</sup>

1. a CHB claim has not been made **and**
2. it is not known whether the claimant, spouse or civil partner intend to make a claim.

If there is no evidence that a claim for CHB is about to be made, the DM should disallow the claim for CDI because the claimant is not entitled, or not treated as entitled to CHB.

*1 SS (C&P) Regs, reg 9(3); R(S) 3/80*

- 16073 The claimant, spouse or civil partner may claim and be awarded CHB retrospectively, for the period for which CDI was claimed and disallowed.

Disallowance of a claim for CDI disposes of that claim. The DM cannot supersede the decision because of a relevant change of circumstances.

16074 Where a decision is superseded, based on a relevant change of circumstances the superseding decision does not have effect before the date on which it is decided the change took place.

16075 The claimant cannot make a new claim for that period, as the DM is prevented from a second decision being made for the period already disallowed<sup>1</sup>. The only way in which the earlier period can be reconsidered is if the claimant appeals against the original disallowance.

*1 R(S) 1/83*

## **Children or qualifying young persons in local authority care who spend periods at home or elsewhere**

16076 If a child or qualifying young person has been in the care of a LA for

1. eight weeks for at least one day a week
2. any of the reasons referred to in the Benefit Specific Guidance

entitlement to CHB for that child or qualifying young person normally ends<sup>1</sup>. Child Benefit Centre DMs make this decision. They also decide whether entitlement to CHB is re-established, either by the original or a different claimant.

*1 SS CB Act 92, Sch 9, para 1; CHB (Gen) Regs, reg 18*

### **Example**

A claim for CDI can be made for a child in care who is ordinarily allowed home to spend each weekend with a parent. The parent need not have been entitled to CHB before the child was taken into care.

16077 During the first eight weeks in care, entitlement to CHB and CDI continues<sup>1</sup>. The child or qualifying young person is treated as living with the CHB claimant<sup>2</sup>. This does not apply, however, where the child or qualifying young person has gone to live with the claimant less than eight weeks before going into care.

*1 CHB (Gen) Regs, reg 16(1); 2 SS CB Act 92, s 143(2)*

16078 After the eighth week of care when entitlement to CHB normally ceases, there may be revived or continued entitlement<sup>1</sup>. The Child Benefit Centre DM decides entitlement on a new claim.

*1 CHB (Gen) Regs, reg 16(1)*

16079 Entitlement to CHB is for the weeks in which the child or qualifying young person spends the whole of at least one day with the claimant<sup>1</sup>, even though this day may not be a Monday. All awards or reinstatement of CHB are made on the basis that the child or qualifying young person is living with the claimant<sup>2</sup>. Where CHB is awarded

in these circumstances, entitlement to CDI for the child or qualifying young person is established<sup>3</sup>.

*1 CHB (Gen) Regs, reg 16(2); 2 SS CB Act 92, s 143(1)(a); 3 s 80(1) & 81(1); WR Act 09, s 37(1)*

## Procedural arrangements

16080 Cases where the CHB test is satisfied are rarely referred to the DM at the beginning of the claim. If the CHB test is satisfied but the claimant is not contributing for each child or qualifying young person at the prescribed weekly rate, an undertaking to contribute will be sought. Cases referred to the DM at the beginning of a claim are those where

1. doubt arises in the satisfaction of the CHB test **or**
2. the CHB test is apparently satisfied, but not the contributing test, and the claimant has not responded to the invitation to sign the undertaking or has refused to sign it.

But see DMG 16059 - 16060 on the limited effect of undertakings from 26.11.84.

16081 Where

1. doubt arises about the satisfaction of the CHB test **and**
2. there is no question of postponing a decision **and**
3. the DM decides that the CHB test is not satisfied

the claim should be disallowed because the claimant is not entitled to CHB and cannot be treated as entitled (see DMG 16057 - 16060).

16082 Where the CHB test is apparently satisfied, but not the contributing test, the claimant is given the opportunity of signing the undertaking. In this case, unless the DM considers the contributing test is satisfied, disallowance is appropriate because insufficient contributions have been made (see DMG 16059 - 16060). An example of the DM considering the contribution test to be satisfied is where the claimant's cash contribution is increased by contributions in kind and therefore no undertaking is required.

16083 - 16089

## Contributing test - increases for children and qualifying young persons

16090 Although a claimant may satisfy the CHB test and be entitled to a CDI the CDI will not be payable unless

1. the child or qualifying young person is living with the claimant<sup>1</sup> **or**
2. the contributing test is satisfied.

*1 SS CB Act 92, s 81(1) & (2); WR Act 09, s 37(1)*

16091 The DM should only consider the contributing test where the claimant is

1. entitled to CHB **and**
2. not living with the child or qualifying young person.

**Note:** The test should also be considered where the claimant continues to be treated as entitled to CHB as in DMG 16058. But these cases will be rare.

16092 The test is satisfied if the

1. the claimant **or**
  2. the claimant and spouse or civil partner if they are residing together
- contributes to the cost of providing for the child or qualifying young person.

16093 To satisfy the test the contribution must be

1. at a weekly rate not less than the amount of the CDI payable **plus**
2. the amount of CHB payable to the claimant or the claimant and spouse or civil partner if they are residing together.

16094 Where the CDI is reduced because of an overlapping benefit, it is this reduced rate that the claimant must contribute<sup>1</sup>.

*1 R(S) 10/81*

### Contributing test treated as satisfied

16095 Except in an increase of CA, if the CHB test is satisfied, but the contributing test is not, the claimant is treated as satisfying the contributing test if

1. a written agreement is made to make the right contributions<sup>1</sup> **and**
2. on receiving the increase the contributions<sup>2</sup> are made.

*1 SS Ben (Dep) Regs, reg 5(1)(a); 2 reg 5(1)(b)*

16096 - 16099

## Undertaking to contribute

16100 An undertaking must be completed at or about the beginning of the period for which a CDI is claimed. The contributing test cannot be treated as satisfied on the basis of an agreement completed a week or more after the start of the period when the CDI was claimed<sup>1</sup>. Agreements should be obtained quickly if loss of benefit is to be avoided.

*1 R(U) 3/78*

## Child or qualifying young person “living with”

16101 Even when the CHB test has been satisfied a CDI is not payable unless

1. the child or qualifying young person is living with or treated as living with the claimant **or**
2. the required contributions are being made towards the cost of providing for the child or qualifying young person.

16102 The term “living with” is not defined in legislation. Each case must be decided on its own particular facts, after taking into account all the circumstances. “Living with” is not the same as “residing together” or with “presence under the same roof” and does not necessarily involve the exercise of care and control<sup>1</sup>.

*1 R(F) 2/79*

16103 A child or qualifying young person who is not actually living with a person in a particular week should be treated as living with them if, in the 16 weeks prior to the week in question, any absences of the child or qualifying young person did not exceed 56 days in total<sup>1</sup>. Any periods of absence of the child or qualifying young person due to

1. full-time education by attendance at a recognized educational establishment **or**
2. undergoing medical or other treatment as an in-patient in a hospital or similar institution **or**
3. being in residential accommodation made by special arrangement<sup>2</sup>

should be disregarded<sup>3</sup>. The maximum number of days of absence which can be disregarded under **2.** and **3.** is 84 days<sup>4</sup>.

*1 SS CB Act 92, s 143(2); 2 National Health Service Act 2006, Sch 20; National Health Service (Wales) Act 2006, Sch 15; Children Act 1989; SW (Scot) Act 68; NHS (Scot) Act 78, s 37; Ed (Scot) Act 80; Mental Health (Scotland Act 1984; Children (Scotland) Act 1995; 3 SS CB Act 92, s 143(3); 4 CHB (Gen) Regs, reg 10*

16104

# Increases for adults

## General

### Benefits that can be increased

16105 The rate of certain benefits may be increased for an adult dependant. Although for some of these the increase has now been abolished there may be continuing entitlement if certain conditions are satisfied. See DMG 16106 - 16112. The table below shows the benefits that may be increased and the dependants concerned. The guidance on ADIs in DMG 16114 - 16211 is retained for transitional cases and those benefits not affected.

Benefit	Wife	Husband	People with care of child or qualifying young person	Civil Partner
IB	X	x	X	X
MA	X	x		X
SDA	X	x	X	X
IIDB (with US)	x	x	X	X
RP (Cat A)	X	x	X	
RP (Cat C)	X	x		
CA	X	x	X	X
Old Cases	X	x	X	X
US with WC	x	x	X	X

### Incapacity benefit and severe disablement allowance

16106 An increase may be claimed if the claimant is entitled to IB or SDA.

### Maternity allowance

16107 ADIs for MA were abolished for claims made on or after 6.4.10<sup>1</sup> but a woman will continue to have entitlement to an ADI where her MA is payable for a MAP<sup>2</sup> which

1. begins before 6.4.10 **and**
2. ends on or after 6.4.10<sup>3</sup>.

*1 WR Act 09, s 15(1); 2 SS CB Act 92, s 35(2); 3 WR Act 09, s 15(2)(a)*

## Carer's allowance

16108 ADIs for CA were abolished for claims made on or after 6.4.10<sup>1</sup> but a claimant will continue to have entitlement to an ADI<sup>2</sup> until 6.4.20 or the date on which entitlement to an ADI ends<sup>3</sup> if it is earlier, where

1. they applied for an ADI before 6.4.10 from a date no later than 5.4.10 **and**
2. immediately before 6.4.10 they are
  - 2.1 entitled to an ADI **or**
  - 2.2 would be entitled to an ADI if the earnings rule<sup>4</sup> did not apply.

**Note 1:** 2.1 will apply where the amount of ADI payable is extinguished under the overlapping benefit provisions<sup>5</sup>.

**Note 2:** 2.2 only applies if entitlement has been established by actual payment of ADI prior to the earnings extinguishing payability.

*1 WR Act 09, s 15(1); 2 s 15(3); s 15(2)(b); 3 s 15(3); 4 SS CB Act 92, s 92; 5 SS (OB) Regs, reg 10*

## Example

Brian claims CA and has entitlement from 8.3.10. He claims an ADI for his wife Paula. However, Paula works and has earnings of £100 a week. The DM disallows the increase. Paula stops work on 30.7.10. Brian is not entitled to an ADI when Paula stops work.

## Unemployability supplement

16109 US was abolished from 6.4.87. However entitlement to US will continue<sup>1</sup> where the claimant

1. was in receipt of US immediately before 6.4.87 **or**
2. claimed US before 6.4.87 for a period starting before 6.4.87 but the award was not made until after that date **or**
3. an award was made before 6.4.87 for a period starting before 6.4.87 but benefit was not received until after that date

providing the other conditions for entitlement are satisfied. Further guidance is in Benefit Specific Guidance.

*1 SS CB Act 92, Sch 7, para 1*

16110 Where the savings provisions in DMG 16109 are satisfied, entitlement to an ADI of IIDB (with US) will also continue<sup>1</sup>. Where dependency arises on or after 6.4.87 entitlement to an ADI can be established providing the conditions in DMG 16109 are satisfied for the personal benefit.

*1 SS CB Act 92, Sch 7, para 6(1)*

### **Category A and category C retirement pension**

16111 ADIs for Cat A and Cat C RP were abolished for claims made on or after 6.4.10<sup>1</sup>. However, claimants<sup>2</sup> will continue to have entitlement to an ADI where they have applied for an ADI<sup>3</sup> before 6.4.10 and immediately before 6.4.10 they were

1. entitled to an ADI **or**
2. would be entitled to an ADI if the earnings rule<sup>4</sup> did not apply.

**Note:** ADIs will continue to be payable where a person who is entitled to a Cat A or a Cat C RP remains married after their spouse has received a GRC<sup>5</sup>.

*1 Pensions Act 07, s 4(1); s 4(2); 2 s 4(6); 3 s 4(5); 4 SS CB Act 92, s 92;  
5 Marr (SSC) Act 13, Sch 4, Part 5, para 15*

16112 If the circumstances in DMG 16111 apply, claimants will continue to have entitlement to an ADI until<sup>1</sup> whichever is the earlier, or the earliest, of

1. 6.4.20 **or**
2. the date on which entitlement to an ADI ends **or**
3. the date the claimant's wife attains pensionable age.

*1 Pensions Act 07, s 4(7)*

### **Entitlement to more than one increase**

16113 A claimant cannot be entitled to an increase for more than one adult dependant under the same provisions for the same period<sup>1</sup>. But the claimant may be entitled

1. to an increase for different dependants for different periods under the same provisions **and**
2. to an increase of different benefits for the same period under more than one of the provisions for the same or for different adult dependants.

Where the personal benefits are incompatible, entitlement to an increase of both benefits cannot be for the same period. There is also a restriction on a man's right to an increase of Cat A or Cat C RP for a woman caring for a child or qualifying young person (see DMG 16162).

*1 SS CB Act 92, s 82(5); s 88*

16114 Where more than one increase is payable for the same period, their combined amount cannot exceed the standard rate of increase<sup>1</sup>.

*1 SS (OB) Regs, reg 9*

## Claim and duration

16115 Claims for an increase of benefit should be made in the prescribed manner and within the time limits<sup>1</sup> (see DMG Chapter 02). When making a claim an increase is regarded as a separate benefit<sup>2</sup>.

*1 SS A Act 92, s 1; 2 SS (C&P) Regs, reg 2(3)*

16116 There is no entitlement to an increase for any period where there is no entitlement to the personal benefit concerned. For RP and WB there is a further condition that the personal benefit contains a basic pension<sup>1</sup>. Where the personal benefit is not **payable** because of the overlapping benefit provisions the increase may still be payable (see DMG Chapter 17).

*1 SS CB Act 92, s 61(1)*

16117 These provisions affect only the rate or amount of benefit **payable** to a person. They do not affect entitlement to the benefit or any rights or obligations which depend on entitlement to the benefit<sup>1</sup>.

*1 SS (OB) Regs, reg 16*

16118 Except where the benefit is payable weekly, an increase is payable from and including the first day of entitlement to the last day<sup>1</sup>. Where the benefit is payable on a weekly basis the increase is payable from the first payday on which all the conditions of entitlement and payability are satisfied.

*1 SS (C&P) Regs, reg 16*

## Rate of increase

16119 Standard rate of increase means the amount specified<sup>1</sup> as the increase in the benefit for an adult dependant<sup>2</sup>.

*1 SS CB Act 92, Sch 4, Part IV; 2 SS Ben (Dep) Regs, reg 1(2)*

16120 Where the rate of the personal benefit is linked to a contribution record, the rate of the increase is also linked to that record. In Cat A RP cases where

1. the second contribution condition is not satisfied **and**
2. RP is based on BP due at a reduced percentage rate<sup>1</sup>

the amount of the increase is due at the same reduced percentage rate<sup>2</sup>.

*1 SS CB Act 92, s 44(3)(a); 2 SS (WB & RP) Regs, reg 6*

16121 Where

1. an increase of IBST is being paid **and**
2. the claimant is over pensionable age

the amount of the increase is linked to the rate of RP payable had the claimant retired. If the contribution conditions for RP are not satisfied the amount of increase is reduced to the same percentage rate as the RP<sup>1</sup>.

*1 SS CB Act 92, s 30A, 60 & 87; SS (WB & RP) Regs, reg 13; SS (IB for D) Regs, reg 13*

## **Entitlement and payability**

16122 DMs should note the difference between entitlement and payability. Although benefit may not be payable, for example due to earnings, entitlement may remain<sup>1</sup>.

*1 [1984] 1 WLR 1353*

16123 - 16124



# Increase for a partner

## Increase for a spouse or civil partner

### Meaning of child

16125 A child is a person who has not reached the age of 16<sup>1</sup>.

*1 SS CB Act 92 s 122 & 142*

### Meaning of qualifying young person

16126 A qualifying young person is a person who is not a child<sup>1</sup> and who

1. has not reached a prescribed age **and**
2. satisfies other conditions<sup>2</sup>.

**Note 1:** No-one who reached the age of 19 before 10.4.06 can be a qualifying young person<sup>3</sup>.

**Note 2:** See DMG 16127 – 16134 for guidance on the prescribed age and other conditions.

*1 SS CB Act 92, s 122(1) & 142(2); 2 CHB (Gen) Regs, reg 2 - 8; 3 reg 2(5)*

### Education and training condition

16127 This condition applies to a person who has not reached age 20<sup>1</sup> **and**

1. is undertaking a course of full-time education which is not advanced education and not provided by virtue of his employment or any office held but which is provided
  - 1.1 at a school or college<sup>2</sup> **or**
  - 1.2 elsewhere but is approved by HMRC Commissioners and the full-time education was being received there when that person was still a child<sup>3</sup> **or**
2. is undertaking approved training that is not provided through a contract of employment<sup>4</sup> **or**
3. having undertaken a course of full-time education as in 1. has been accepted or is enrolled on a further course of full-time education<sup>5</sup> **or**
4. having undertaken a course of full-time education or approved training as in 1. or 2. has been accepted or is enrolled on further approved training<sup>6</sup>.

*1 CHB (Gen) Regs, reg 3(1); 2 reg 3(2)(a)(i); 3 reg 3(2)(a)(ii) & 3(3); 4 reg 3(2)(c); 5 reg 3(2)(b); 6 reg 3(2)(d)*

16128 A person aged 19 can only satisfy the conditions in DMG 16127 1. and 2. if

1. the education or training began **or**
  2. the person was accepted or enrolled on the education or training
- before they were 19<sup>1</sup>.

*1 CHB (Gen) Regs, reg 3(4)*

### **16 year olds (15 year olds in Scotland)**

- 16129 A 16 year old (in Scotland also a 15 year old) who has left relevant education or training will still be a qualifying young person until the 31st August following their 16th birthday<sup>1</sup>. Where a person reaches age 16 (in Scotland also age 15) on 31st August, that person will still be a qualifying young person until 1st September<sup>2</sup>.

*1 CHB (Gen) Regs, reg 4(1) & 4(2); 2 reg 4(3)*

### **Extension period for 16 and 17 year olds**

- 16130 The extension period<sup>1</sup>

1. begins on the first day of the week after that in which the 16/17 year old ceased to be in education or training **and**
2. ends 20 weeks later.

**Note:** If the young person reaches age 18 before the period in **2.**, the extension period ends on the CHB payday after their 18th birthday.

*1 CHB (Gen) Regs, reg 5*

- 16131 This period applies to people aged under 18

1. who have ceased to be in education or training **and**
2. who are registered for work, education or training with a qualifying body<sup>1</sup> **and**
3. who are not engaged in remunerative work **and**
4. whose extension period has not expired **and**
5. where, immediately before the extension period began, the person who is responsible for them was entitled to CHB for them **and**
6. where the person who is responsible for them has made
  - 6.1 a written request to the HMRC Commissioners **or**
  - 6.2 a request by other means acceptable to the HMRC Commissionerswithin three months of the education or training ceasing for the payment of CHB during the extension period

and so are still a qualifying young person by virtue of being in the CHB extension period<sup>2</sup>.

**Note:** Whilst the young person is under 18, CHB can be extended every time the conditions in DMG 16130 and 16131 are satisfied.

*1 CHB (Gen) Regs, reg 5(4); 2 reg 5(2)*

## **Interruptions**

16132 Up to the age of 20, where a person's education or training has been interrupted and immediately before it was interrupted they were a qualifying young person under the conditions in DMG 16127 - 16131, they will remain a qualifying young person for the duration of the interruption.

16133 Subject to the exception in DMG 16134, the condition in DMG 16132 will only apply where the period of interruption is

1. one of up to six months duration, even if it began before the person was 16, but only to the extent that it is considered to be reasonable in the opinion of the HMRC Commissioners<sup>1</sup> **or**
2. due to illness or disability and for a period that is considered reasonable in the opinion of the HMRC Commissioners<sup>2</sup>.

*1 CHB (Gen) Regs, reg 6(3)(a); 2 reg 6(3)(b)*

16134 Where the period of interruption is or is likely to be immediately followed by a period during which the person

1. has provision made to undertake non approved training **or**
2. is receiving advanced education **or**
3. is receiving education by virtue of his employment or any office held

then they will not satisfy the condition<sup>1</sup> in DMG 16133.

*1 CHB (Gen) Regs, reg 6(4)*

## **Carer's allowance**

16135 If DMG 16108 applies, there is entitlement to an increase of CA for an adult dependant<sup>1</sup> for any period during which<sup>2</sup>

1. the claimant is residing with a spouse or civil partner **and**
2. that spouse or civil partner is not engaged in any employment for which their weekly earnings exceed the amount of the increase.

*1 SS CB Act 92, s 90; 2 SS Ben (Dep) Regs, reg 12(2) & Sch 2, Part II*

- 16136 If the spouse's or civil partner's earnings are more than the amount of the increase, entitlement to the increase ends. However a fresh claim is not required<sup>1</sup> for entitlement to be considered again (see DMG 16253).

*1 SS CB Act 92, s 92*

## **Industrial injuries disablement benefit (with unemployability supplement)**

- 16137 IIDB (with US) can be increased<sup>1</sup> for any period during which the claimant is
1. residing with a spouse or civil partner **or**
  2. contributing to the maintenance of a spouse or civil partner at a weekly rate not less than the increase payable.

*1 SS CB Act 92, Sch 7, para 6(1)(a)*

- 16138 The increase is not payable in any benefit week where
1. the claimant is residing with a spouse or civil partner **and** that spouse's or civil partner's earnings exceed the weekly rate of JSA(Cont) for a person aged 25 or over<sup>1</sup> **or**
  2. the claimant is not residing with their spouse or civil partner **and** that spouse's or civil partner's earnings exceed the standard rate of increase<sup>2</sup>.

*1 SS Ben (Dep) Regs, reg 8(2); 2 reg 8(6)*

## **Incapacity benefit and severe disablement allowance**

- 16139 The weekly rate of IB and SDA can be increased<sup>1</sup> for any period for which
1. the claimant is residing with a spouse or civil partner **and** either<sup>2</sup>
    - 1.1 that spouse or civil partner has reached their qualifying age **or**
    - 1.2 the claimant is entitled to CHB in respect of a child or qualifying young person **or**
  2. the claimant has a spouse or civil partner who has reached their qualifying age and who is not residing with them but the beneficiary is contributing to the maintenance of that spouse or civil partner at a weekly rate not less than the amount of the ADI<sup>3</sup>.

*1 SS CB Act 92, s 86A; 2 SS (IB for D) Regs, reg 9(1)(a); 3 reg 9(1)(b)*

- 16140 Qualifying age<sup>1</sup> means
1. for a woman – pensionable age **or**
  2. for a man – the age which would be pensionable age for a woman born on the same date as the man.

**Note:** See DMG Chapter 75 for guidance on pensionable age.

*1 SPC Act 02, s 1(6)*

## Maternity allowance

16141 If DMG 16107 applies, the weekly rate of MA can be increased<sup>1</sup> for any period during which

1. the claimant is residing with her husband or civil partner **or** is contributing to their maintenance at a weekly rate not less than the standard rate of increase **and**
2. the claimant's husband or civil partner does not have weekly earnings exceeding the standard rate of increase.

*1 SS CB Act 92, s 82(2)*



# Increase for a wife

## Category A and category C retirement pension

16142 If DMG 16111 applies, a Cat A or Cat C RP can be increased<sup>1</sup> for any period during which the claimant is

1. residing with his wife **or**
2. contributing to his wife's maintenance at a weekly rate not less than the amount of the ADI payable.

*1 SS CB Act 92, s 83*

16143 There is no entitlement to an increase of Cat A or Cat C RP where

1. the claimant is residing with his wife **and** the wife's earnings in the preceding benefit week exceed the weekly rate of JSA(Cont) for a person aged 25 or over<sup>1</sup> **or**
2. the claimant is not residing with his wife **and** the wife's earnings exceed the standard rate of increase<sup>2</sup>.

*1 SS Ben (Dep) Regs, reg 8(2); 2 SS CB Act 92, s 83(2)(b)*

### Example

A man claims and is awarded RP on 8.11.04 together with an increase for his wife who does not live with him. His benefit payday is Monday. His wife starts work on 15.11.04. Her payday is Friday.

On 19.11.04 she receives £80 net. The earnings are treated as paid on 22.11.04. The earnings in the benefit week beginning 22.11.04 affect the increase of RP in the same week. As the earnings exceed the standard rate of increase, there is no entitlement to the increase from 22.11.04 to 28.11.04.

16144 Before 16.9.85 an increase was payable subject to a tapered earnings rule. This rule continues to apply in certain cases (see DMG 16290).

16145 - 16149



# Increase for a husband

## Category A retirement pension

16150 If DMG 16111 applies, Cat A RP can be increased where the claimant's entitlement to it began immediately after a period during which she was entitled to an increase of IB for her spouse or civil partner<sup>1</sup> and either she is<sup>2</sup>

1. residing with her husband **or**
2. contributing to his maintenance at a weekly rate not less than the amount of the increase which is payable.

*1 SS CB Act 92, s 84(1)(a); 2 s 84(2)*

16151 There is no entitlement to an increase of Cat A RP where

1. the claimant is residing with her husband **and** the husband's earnings in the preceding benefit week exceed the weekly rate of JSA(Cont) for a person aged 25 or over<sup>1</sup> **or**
2. the claimant is not residing with her husband **and** the husband's earnings exceed the standard rate of increase<sup>2</sup>.

*1 SS Ben (Dep) Regs, reg 8(2); 2 SS CB Act 92, s 84(2)(b)*

16152 The residence, maintenance and earnings conditions must be satisfied continuously. Entitlement to an increase of Cat A RP stops<sup>1</sup> if a husband

1. stops residing with the claimant **or**
2. is not sufficiently maintained by the claimant **or**
3. who is not residing with the claimant, in any week earns in excess of the specified amount.

*1 SS CB Act 92, s 84(1)(b)*

16153 - 16158



# Persons caring for a child or qualifying young person

## MA, Cat A and Cat C RP and IIDB (with US)

16159 Where there is continuing entitlement to MA<sup>1</sup>, Cat A and Cat C RP<sup>2</sup> and IIDB (with US)<sup>3</sup> these benefits can be increased for a person who has care of a child or qualifying person where that person

1. is neither the claimant's spouse or civil partner nor a child or qualifying young person **and**
2. the claimant is entitled to CHB for the child or qualifying young person and
3. either
  - 3.1 the person concerned is
    - 3.1.a residing with the claimant<sup>4</sup> **or**
    - 3.1.b employed by the claimant in an employment where the weekly expenses incurred by the claimant are not less than the standard rate of increase **and** was employed before the claimant became incapable of work or entitled to a Cat A or Cat C RP or the need for employment first arose after the claimant became incapable of work or entitled to Cat A or Cat C RP<sup>5</sup> **or**
  - 3.2. the claimant is contributing to the maintenance of the person concerned at a weekly rate of the standard rate of increase or more<sup>6</sup>.

*1 SS CB Act 92, s 82(4); 2 s 85; 3 Sch 7, para 6(1)(b);*

*4 SS Ben (Dep) Regs, reg 10(2)(b)(i); 5 reg 10(2)(b)(ii); 6 reg 10(2)(b)(iii)*

16160 There is no entitlement where the person having care is

1. absent from GB<sup>1</sup> unless
  - 1.1 the person is residing with the claimant outside GB **and**
  - 1.2 the claimant is not disqualified for receiving that benefit because of absence from GB<sup>2</sup> **or**
2. imprisoned or detained in legal custody<sup>3</sup> (see DMG Chapter 12).

*1 SS Ben (Dep) Regs, reg 10(2)(c); 2 reg 10(3); 3 reg 10(2)(d)*

## Restriction of increase of Category A retirement pension

16161 There is no entitlement to an increase of Cat A RP for a person caring for a child or qualifying young person if the claimant's spouse or civil partner is entitled to Cat B or Cat C RP<sup>1</sup>.

*1 SS CB Act 92, s 85(2A)*

## Restriction of increase of Category C retirement pension

- 16162 There is no entitlement to an increase of Cat C RP for a person caring for a child or qualifying young person if<sup>1</sup> the claimant's spouse is entitled to Cat B or Cat C RP<sup>1</sup>.

*1 SS CB Act 92, s 85(3)*

## Incapacity benefit and severe disablement allowance

- 16163 IB and SDA<sup>1</sup> can be increased for an adult who

1. resides with the claimant **and**
2. cares for a child or qualifying young person for whom the claimant is entitled to CHB<sup>2</sup>.

*1 SS Ben (Dep) Regs, reg 12; 2 SS (IB for D) Regs, reg 9(1)(c)*

- 16164 IB and SDA<sup>1</sup> can also be increased for an adult who

1. does not reside with the claimant **and**
2. cares for a child or qualifying young person for whom the claimant is entitled to CHB<sup>2</sup>.

*1 SS Ben (Dep) Regs, reg 12; 2 SS (IB for D) Regs, reg 9(1)(d)*

## Treated as entitled to child benefit

- 16165 For the purposes of DMG 16163.2. the claimant is treated as if he were entitled to CHB for a child or qualifying young person throughout any period during which<sup>1</sup>

1. CHB has been awarded to a parent of that child or qualifying young person
2. that parent resides with the claimant **and**
3. either
  - 3.1 the child or qualifying young person is being wholly or mainly maintained by the claimant **or**
  - 3.2 the claimant is also a parent of the child or qualifying young person.

*1 SS (IB for D) Regs, reg 9 (2B)(a)*

### Example 1

Amanda and Frederick are not married and live together with their two children Paul and James. Amanda cares for the children and is entitled to and receives CHB for them. Frederick is entitled to IB and claims an ADI for Amanda. The DM decides that Frederick can be treated as entitled to CHB<sup>1</sup> and that therefore he is entitled to an ADI<sup>2</sup>.

## Example 2

Pat and Edward are not married but live together with two children Esther and Dan. Pat is their mother. She cares for the children and receives CHB for them. Edward is not the children's father but wholly maintains them. Edward is entitled to IB and claims an ADI for Pat. The DM decides that Edward is treated as entitled to CHB<sup>3</sup> for the children and that therefore he is entitled to an ADI<sup>4</sup>.

*1 SS (IB for D) Regs, reg 9(2B)(a)(ii); 2 reg 9(1)(c); 3 reg 9(2B)(a)(i); 4 reg 9(1)(c)*

## Period between birth and first day of entitlement to child benefit

16166 Where an ADI is awarded for an adult having care of a child or qualifying young person in the circumstances<sup>1</sup> set out in DMG 16163

1. the claimant **or**
2. the claimant's spouse or civil partner with whom the claimant is residing **or**
3. a parent (other than the claimant) who would satisfy the conditions in DMG 16165 if they were entitled to CHB

shall be treated as entitled to CHB in respect of a child from the Monday of the (Monday to Sunday) week in which the child was born<sup>2</sup>.

*1 SS (IB for D) Regs, reg 9(1)(c); 2 reg 9(2B)(b)*

## Example

Bruce and Nancy live together but are not married. On Tuesday 14.11.06 Nancy gives birth to their son Jack. Nancy is entitled to CHB for Jack from Monday 20.11.06. The DM treats Nancy as being entitled to CHB from Monday 13.11.06.

## Foreign family benefits

16167 Where an ADI would be payable to an adult caring for a child or qualifying young person in the circumstances<sup>1</sup> set out in DMG 16163 and

1. the claimant **or**
2. the claimant's spouse or civil partner with whom the claimant is living **or**
3. a parent (other than the claimant) who would satisfy the conditions in DMG 16165 if they were entitled to CHB

is (under an agreement made with the government of another country outside the UK) entitled to the family benefits of that country in respect of the child or qualifying young person and is not entitled to CHB, then that person shall, for the purposes of entitlement to an ADI to IB be treated as if they were entitled to CHB<sup>2</sup>.

*1 SS (IB for D) Regs, reg 9(1)(c); 2 reg 9(2C)*

## Example

Markus and Anna live together in GB with their two children Christian and Alex. They are not married. Markus looks after the children. He receives Swedish family benefits for the children and is not entitled to CHB. Anna is entitled to IB and claimed an increase for Markus. The DM decided that for the purposes of entitlement to the ADI, Markus was entitled to CHB which in turn meant that Anna could be treated as entitled to CHB. The DM awarded the ADI accordingly.

## Carer's allowance

16168 If DMG 16108 applies, the weekly rate of CA can be increased for a person who has care of a child or qualifying young person<sup>1</sup> for any period where the person is neither the claimant's spouse or civil partner nor a child or qualifying young person and

1. has care of a child or qualifying young person for whom the claimant is entitled to CHB **and**
2. resides with the claimant **and**
3. is not engaged in employment other than caring for the child or qualifying young person referred to in paragraph 1. (see DMG 16210) from which the earnings exceed the standard rate of increase.

*1 SS Ben (Dep) Regs, Sch 2, para 7(b)*

16169 There is no entitlement where<sup>1</sup> the person caring for the child or qualifying young person is

1. imprisoned or detained in legal custody **or**
2. absent from GB, except where the person caring for the child or qualifying young person is residing with the claimant outside GB and the claimant is entitled to CA.

*1 SS Ben (Dep) Regs, Sch 2, para 7 (g)(ii)-(iv)*

## Care of child or qualifying young person

16170 Having care of a child or qualifying young person does not mean having the "main care", for example it does not mean that the amount of care undertaken must be more than the care given by the claimant<sup>1</sup>. The number of hours during which the claimant or the spouse or civil partner and the carer spend with the child<sup>2</sup> or qualifying young person is irrelevant.

*1 CS 726/49(KL); 2 R(S) 20/54*

16171 The test is whether the carer

1. performs, to a substantial extent, those duties with which the child or qualifying person needs help **or**
2. exercises supervision over the child or qualifying young person which is one of the needs of childhood.

16172 The duties might occur only for a few hours in a day.

### **Example 1**

A woman who is employed by the claimant from 9 am to 2.30 pm seven days a week to do household tasks, including buying and washing the child's clothes, cleaning the child's bedroom and cooking the child's mid-day meal. The woman has care of the child. What she does for the child is a substantial part of the child's care<sup>1</sup>.

*1 CS 726/49(KL)*

### **Example 2**

In the case of an older child, who might need little more than the general supervision of a parent, no-one else can satisfy the test of care while the child is living with the parent<sup>1</sup>.

*1 CS 726/49(KL)*

16173 The test in DMG 16171 is not satisfied when the child or qualifying young person is at boarding school. The provisions refer to the person caring for a child or qualifying young person not merely being employed for the purpose of caring for a child or qualifying young person. In a case in which a man claimed an increase for his housekeeper the Commissioner held that she did not have the care of the child while the child was away at school. During the term the housekeeper had no opportunity of performing duties for which a child needs assistance or of exercising any supervision<sup>1</sup>. The child's absence from home was not for a visit of short duration.

*1 R(S) 17/54*

## Temporary interruption of care of child or qualifying young person

- 16174 There are no statutory provisions for temporary interruptions in the care of a child or qualifying young person. But DMs should not disallow for brief periods of interruption (for example holidays and sickness).

### Employed by the claimant

- 16175 In deciding whether a person is employed by the claimant, it does not matter whether that person is employed only by the claimant or by several people at the same time. If it is decided that the person is employed by the claimant, the employment condition is satisfied<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 10(2)(b)(ii)*

- 16176 Although it is accepted that a person is employed by the claimant it must still be established that the person employed has care of the child or qualifying young person.

- 16177 There is no requirement that the employment is for the purpose of caring for the child or qualifying young person. The "employed by" test can be satisfied by employment which is unrelated to the running of the claimant's household.

16178

### Person caring for child or qualifying young person changes

- 16179 Benefit may be increased where a person has care of the child or qualifying young person<sup>1</sup>. The increase is not confined to one person throughout the period of claim.

*1 SS CB Act 92, s 82 & 85(2); SS Ben (Dep) Regs, reg 12(2) & Sch 2, para 7*

- 16180 If the person caring for the child or qualifying young person changes, there may be entitlement to the increase if

1. there was necessity for the care **and**
2. a person was employed

before the claimant became incapable of work or entitled to Cat A or Cat B RP. The DM should consider the need for care of the child or qualifying young person and not the person caring.

- 16181 Where the person caring for the child or qualifying young person changes after the claimant became incapable of work or entitled to Cat A or Cat B RP there will be

entitlement to the increase for the second person, subject to the other conditions being satisfied. But a fresh claim for the second person will be needed.

16182 - 16189

## **Need arose after entitlement begins**

16190 If the person was not employed by the claimant before the need to claim, the DM should consider whether the need for the employment first arose after this date. Some examples of changes of circumstances which could account for the employment of the person are

1. the death of the claimant's spouse or civil partner
2. the claimant takes on additional domestic responsibilities such as the care of a child or qualifying young person or elderly person
3. a daughter or son who took some part in running the home leaves home.

16191 A claimant whose spouse or civil partner has died after claiming benefit may, while still employed, have had the child or qualifying young person looked after by a relative. Shortly after claiming benefit the claimant may employ a person to care for the child or qualifying young person. The DM should accept that the necessity for the employment first arose after the claim was made.

16192 If a MA claimant employs a person to run her household or for any other purpose during the MAP because of pregnancy or confinement, the DM should accept that the need arose after the claim was made.

16193 If the

1. claimant is living with the spouse or civil partner **and**
2. spouse or civil partner is in employment

the person who has care of the child or qualifying young person may be employed by the claimant's spouse, or civil partner and not by the claimant.

## **Weekly expenses incurred by the claimant**

16194 A claimant may only be entitled to an increase of benefit for a person who is

1. caring for a child or qualifying young person **and**
2. employed by the claimant

if the claimant's weekly expenses for the employment are not less than the standard rate of the increase. These expenses usually consist of the gross wage or salary paid to the person by the claimant plus the claimant's share of any employed earner's contribution payable for the employment.

- 16195 The DM should look at the claimant's expenses and not simply the amount received by the person caring. Expenses as in DMG Chapter 15 can also be taken into account provided they are actually incurred by the claimant. For example, if a claimant spends £10 a week taking a child to a child minder that amount should be taken into account as an expense incurred by the claimant.
- 16196 There is no prescribed test that expenses incurred by the claimant should be reasonably incurred.

## **Child minder**

- 16197 Some people employ a child minder to look after a child while one or both parents work. In many cases there will be little doubt that the minder has the care of the child and that the minder is employed by the claimant.
- 16198 It does not matter that several different people are also employing that person. Where that person is being employed by several different people an increase of benefit may already be in payment to one or more of those people for the child minder. No adjustment is necessary under the overlapping benefits provisions<sup>1</sup>.

*1 SS (OB) Regs, reg 9*

16199 - 16209

## Earnings - person having care of a child or qualifying young person

16210 In calculating the earnings of a person having care of a child or qualifying young person no account should be taken of any earnings derived from employment by the beneficiary in caring for a child or qualifying young person for whom the beneficiary is entitled to CHB<sup>1</sup>. Where the person resides with or is maintained by the claimant, any other earnings will affect payment of the increase. Where the person is employed by, but does not reside with claimant any other earnings should be ignored.

*1 SS Ben (Dep) Regs, reg 8(5) & Sch 2, para 7(b)(iii); SS (IB for D) Regs, reg 10(3)*

### Example

A man in receipt of IBLT claims an increase of benefit for a woman residing with him who has care of his child. He is entitled to CHB for that child. For this care she is paid £85 a week by the claimant. In addition, she has other gainful employment from which her earnings are £45 per week.

The weekly rate of JSA(Cont) for a person aged 25 or over is £71.00.

In total the woman earns £130 per week. However, £85 is from the employment by the claimant caring for the child and can therefore be disregarded. The earnings to be taken into account are £45 per week. No adjustment is necessary.

16211 Where earnings are taken into account, they affect an increase in the same way as increases for a spouse or civil partner.

16212 - 16219



# Earnings

## Earnings - child dependants

16220 Where the claimant is one of two persons who are

1. spouses living together **or**
2. an unmarried couple who are LTAMC

and the other person had earnings in the benefit week before that in which the increase is to be paid, the amount of the increase may be reduced by those earnings<sup>1</sup>.

**Note:** For IIDB purposes, this also applies to civil partners living together or a same-sex couple who are LTAMC<sup>2</sup>.

*1 SS CB Act 92, s 80(3)-(7) & 90(b); SS Ben (Dep) Regs, Sch 2, para 2A - 2C;  
2 SS CB Act 92, Sch 7, para 4(3)(a)(ii)*

16221 The benefits affected<sup>1</sup> are

1. IBST(H)
2. RP
3. IBLT
4. SDA
5. IIDB (with US)
6. CA.

*1 SS CB Act 92, s 80(2) & 90(b) & Sch 7, para 4*

16222 Where the claimant's partner had earnings of £245 or more in the benefit week before that in which the increase is to be paid, no increase will be paid for the first child or qualifying young person<sup>1</sup>. After this, the rule operates in steps of £33. For each multiple of £33 by which the earnings exceed £245, the increase for a further child or qualifying young person will not be payable<sup>2</sup>.

*1 SS CB Act 92, s 80(4)(a) & Sch 7, para 4(4)(a); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2, para 2B(a);  
2 SS CB Act 92, s 80(4)(b) & Sch 7, para 4(4)(b); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2, para 2B(b)*

### Example

A claimant is living with his wife and they have three children.

Earnings in previous week	Increase payable for
Nil to £244	three children
£245 to £277	two children
£278 to £310	one child
£311 or more	no children.

The DM's decision does not remove entitlement but only affects the payment of CDIs.

16223 Earnings affect payment of the increase from

1. the pay-day (for IIDB (with US), RP and CA) **and**
2. the period of seven days ending on the day benefit is due to be paid (for IB and SDA)

following the week in which the earnings are calculated.

### **Earnings for less than a week**

16224 When considering the earnings rule the DM should consider the **total** earnings in the previous week. Where the claimants partner does not work for a full week, the earnings from the days worked may still affect the whole benefit to be paid in the next week. If that person works only one day but on that day earns more than the prescribed weekly amount, no increase is paid in the next week.

### **Occupational and personal pensions**

16225 Payments of occupational and personal pension are taken into account when calculating earnings unless savings provisions apply (see DMG Chapter 15).

16226 - 16249

## **“All or nothing” earnings rule - adult dependants**

16250 From 16.9.85 all increases are subject to the “all or nothing” earnings rule, that is if the earnings are over a certain amount no increase is due. But note the savings provisions for the “tapered” earnings rule (see DMG 16290). The “all or nothing” earnings rule is linked to the amount of **either**

1. the standard weekly rate of JSA(Cont) for a person aged 25 or over **or**
2. the standard rate of the increase.

### **Entitlement or payability**

16251 Earnings can affect

1. entitlement to the increase **or**
2. the payability of the increase.

But where entitlement to the increase ends because of the dependant’s earnings, the award should continue but the increase is not payable for the weeks affected by those earnings<sup>1</sup>.

*1 SS CB Act 92, s 92*

16252 This provision only operates by keeping a current award in force. If the earnings are too high at the beginning of a claim and earnings affect entitlement the DM should either

1. disallow the increase **or**
2. consider an advance award<sup>1</sup>.

*1 SS (C&P) Regs, reg 13*

16253 Where either entitlement or payability ends only because of the dependant’s earnings there will be no need for a fresh claim when the earnings fall below the specified limit.

### **Week in which earnings rule is to be applied**

16254 For all increases of benefit, earnings will be attributed to complete benefit weeks and will affect payment of benefit either in the same or the following benefit week.

16255 Where an adult dependant is in employed earners employment or is S/E and receives payments in respect of royalties or copyright, any earnings will be treated as paid on the first day of the benefit week

1. following the benefit week in which the payment is due to be paid<sup>1</sup> where there is an increase of
  - 1.1 Cat A RP for a non-resident spouse<sup>2</sup>
  - 1.2 Cat C RP for a non-resident spouse<sup>3</sup>
  - 1.3 US for a non-resident spouse or civil partner<sup>4</sup>
  - 1.4 MA for any adult dependant<sup>5</sup>
  - 1.5 CA for a resident spouse or civil partner and person having care of
    - 1.5.a a child **or**
    - 1.5.b children **or**
    - 1.5.c a qualifying young person **or**
    - 1.5.d qualifying young persons<sup>6</sup> **or**
2. in which the payment is due<sup>7</sup> where there is an increase of
  - 2.1 Cat A RP for a resident spouse and person having care of
    - 2.1.a a child **or**
    - 2.1.b children **or**
    - 2.1.c a qualifying young person **or**
    - 2.1.d qualifying young persons<sup>8</sup>
  - 2.2 Cat C RP for a resident wife and person having care of
    - 2.2.a a child **or**
    - 2.2.b children **or**
    - 2.2.c a qualifying young person **or**
    - 2.2.d qualifying young persons<sup>9</sup>
  - 2.3 US for a resident spouse<sup>10</sup> or civil partner
  - 2.4 IB<sup>11</sup> and SDA<sup>12</sup> for any adult dependant.

*1 SS Ben (C of E) Regs, reg 7(a); 2 SS CB Act 92, s 83(2)(b) & 84(2)(b);  
3 s 83 (2)(b); 4 Sch 7 para 6(1)(a)(ii); 5 s 82(2);  
6 SS Ben (Dep) Regs, Sch 2 para 7; 7 SS Ben (C of E) Regs 7(b);  
8 SS CB Act 92, s 83(2)(a), 84(2)(a) & 85(2); 9 s 83(2)(a) & 85(2);  
10 Sch 7 para 6(1)(a)(i); 11 s 86A; 12 s 90*

### **Benefit weeks affected by earnings**

16256 For the ADI where earnings are treated as paid on first day of the benefit week following the benefit week in which the payment is due to be paid, earnings attributed

to a benefit week will affect payment of the ADI in the same benefit week. For the ADI where earnings are treated as paid on the first day of the benefit week in which payment is due, earnings attributed to a benefit week affect payment of the increase in the following benefit week.

**Example 1**

A man is entitled to an increase of RP for his wife who resides with him. She works and is paid £30.00 each week on a Friday. The claimant's RP is paid weekly in advance on Monday.

Earnings paid on Friday 6.12.96 will be treated as paid on Monday 2.12.96 and attributed to the period 2.12.96 to 8.12.96. These earnings affect the ADI in the benefit week 9.12.96 to 15.12.96.

**Example 2**

A Woman is entitled to an increase of IB for her husband who does not live with her. He works and is paid a salary each month of £162.50 on the last day of the month. The claimant's IB is paid fortnightly in arrears on Wednesday.

Earnings paid on Tuesday 31.12.96 will be treated as paid on Thursday 26.12.96. Earnings due on Friday 31.1.97 will be treated as paid on Thursday 30.1.97. The earnings treated as paid on 26.12.96 will be attributed to the five week period 26.12.96 to 29.1.97 at the weekly amount of £37.50. These earnings affect the ADI in the benefit weeks 2.1.97 to 5.2.97.

16257 - 16269



## Earnings for less than a week

16270 A dependency increase may be claimed where the dependant does not work for a full week. This may be where the employment is part time or where full time work begins in the middle of a week. If the dependant earns more than the weekly earnings limit, the increase is not payable.

### **Example**

An ADI is in payment for IB, payday Monday. On Wednesday 20.11.96 the dependant starts full time work and is due to be paid on Friday. The earnings for Wednesday, Thursday and Friday exceed the earnings limit. As the earnings in the week commencing on 18.11.96 are in excess of the limit and are treated as paid on 19.11.96, no increase is payable from 26.11.96.

16271 - 16279



## **Occupational or personal pension included as earnings**

16280 Payments of occupational or personal pension are taken into account as earnings when calculating the earnings of an adult dependant<sup>1</sup> unless savings provisions apply<sup>2</sup>. See DMG Chapter 15 for guidance on what constitutes an occupational or personal pension.

*1 SS CB Act 92, s 89; 2 SS (SEB) Regs, reg 2(1) & (2)*

16281 - 16284

## **Pension protection fund payments included as earnings**

16285 PPF periodic payments are taken into account as earnings when calculating the earnings of an adult dependant<sup>1</sup>. See DMG Chapter 15 for guidance on these payments.

*1 SS CB Act 92, s 89(1A); SS Ben (Dep) Regs, Sch 2, para 9*

16286 - 16289



# Tapered earnings rule - adult dependants

## Savings provisions

16290 Before 16.9.85 there was a tapered earnings rule. The effect of this rule is to make the increase payable in full if the dependant's weekly earnings are less than the amount specified. Where the earnings exceed that amount, the weekly rate of the increase is reduced where the excess

1. is less than £4, by 5p for each complete 10p of the excess
2. is more than £4, by 5p for each 10p of the excess up to £4, and by 5p for each complete 5p of any further excess.

16291 The tapered earnings rule applied to an increase of

1. IB<sup>1</sup>
2. SDA
3. RP (Cat A and Cat C)
4. IIDB (with US)

for a wife residing with the claimant or a woman caring for a child or qualifying young person and residing with the claimant.

*1 SS (IB) (Trans) Regs, reg 25(2)(f)*

16292 The tapered earnings rule was abolished from 16.9.85. But there are savings provisions<sup>1</sup> (see DMG 16293).

*1 SS (IB) (Trans) Regs, reg 24(4); SS Ben (Dep) Regs, reg 8(6);  
Social Security Benefit (Dependency) Amendment Regulations 1992, reg 4*

16293 The tapered earnings rule may continue to apply, if it is more favourable to the claimant and the claimant

1. was entitled to an increase on 14.9.85 or for a period including that day **and**
2. remains continuously entitled to that increase on or after that day<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 8(6); Social Security Benefit (Dependency) Amendment Regulations 1992, reg 4*

16294 The savings provisions continued with the introduction of IB. However they will cease to apply where<sup>1</sup>

1. no IB(LT) has been paid for a continuous period of at least 57 days **or**
2. no ADI has been paid for a continuous period of at least 57 days **or**
3. the ADI has not been adjusted because of the dependant's earnings for a continuous period of at least 57 days.

*1 SS (IB) (Trans) Regs, reg 25(3)*

16295 The tapered earnings rule does not apply in any week where the dependant's earnings exceed £81.50<sup>1</sup>.

*1 SS (IB) (Trans) Regs, reg 25(4)*

16296 Where the dependant becomes involved in a trade dispute entitlement to the increase may end. If entitlement ends the savings provisions may no longer apply.

16297 The savings provisions cease to apply where a claimant moves between benefits. For example where a claimant who is entitled to IB and continues to benefit from the tapered earnings rule becomes entitled to RP the tapered earnings rule will no longer apply<sup>1</sup>.

*1 R(P) 4/93*

### **Week to which tapered earnings is to be applied**

16298 The guidance in DMG 16254 et seq applies equally to tapered earnings cases.

16299 - 16309

# Trade disputes

## Dependant involved in trade dispute

16310 Although the other conditions for entitlement to an increase may be satisfied, a claimant is not entitled to an increase for an adult dependant when that dependant

1. is not entitled to JSA **or**
  2. would not have been entitled had there otherwise been entitlement to JSA
- as a result of being involved in a trade dispute<sup>1</sup>.

*1 SS CB Act 92, s 91*

16311 People who have lost employment or withdrawn their labour because of a trade dispute are not entitled to JSA<sup>1</sup>.

*1 JS Act 95, s 14*

## Benefits affected

16312 These provisions<sup>1</sup> affect increases of

1. IB
2. MA
3. RP (Cat A or Cat C)
4. SDA
5. CA

for an increase for a wife, husband, civil partner or person caring for a child or qualifying young person

*1 SS CB Act 92, s 91*

## Decision on disentitlement

16313 In deciding whether a claimant is entitled to an ADI the DM should follow the decision on the dependant's entitlement to JSA. Where the decision on JSA entitlement is delayed the DM should defer making a decision on the increase.

16314 In practice, a case in which an adult dependant appears to be connected with a trade dispute should not be referred to the DM until the basic information concerning that person's involvement in the dispute has been obtained.

16315 - 16320

## Effective date of disentitlement

- 16321 Where the dependant is not entitled to JSA because of their involvement in a trade dispute, entitlement to the increase of<sup>1</sup>
1. IB, MA and SDA stops from the first day for which the dependant is, or would have been, disentitled<sup>2</sup>
  2. RP (Cat A or Cat C) and CA stops from the next payday following the first day for which the dependant is, or would have been disqualified<sup>3</sup>.

*1 SS CB Act 92, s 91; 2 SS (C & P) Regs, reg 16(4); 3 reg 16, 22 & Sch 6*

## Further claim following disentitlement

- 16322 Entitlement to the ADI stops if a disallowance is appropriate<sup>1</sup>. A new claim should be made before entitlement is considered again.

*1 SS CB Act 92, s 91*

- 16323 For an increase of Cat A RP for a dependent husband, the conditions of residence, maintenance and earnings must be satisfied continuously<sup>1</sup>. If entitlement stops because one of these conditions is not satisfied, it cannot be reinstated (see DMG 16154). However, if there is a period of disentitlement because the dependant was involved in a trade dispute, the entitlement can be restored following the end of the period of disentitlement on receipt of a new claim. This is provided the conditions of residence, maintenance and earnings were satisfied continuously.

*1 SS CB Act 92, s 91(1)(b) & (2)*

16324 - 16329

## Appeals to a First-tier Tribunal

- 16330 Where a claimant appeals against disentitlement, advice should be obtained from the DM who gave the decision on the trade dispute.
- 16331 The appeal papers should be sent to the Appeals Manager who will consider whether the grounds of appeal give grounds for reconsidering the original decision. If there are no grounds for revising the original decision, DM who gave the decision on the trade dispute will prepare draft paragraphs on the trade dispute for inclusion in the submission to the FtT.

## Effects on savings provisions of disentitlement

16332 With effect from 16.9.85, new earnings rules were introduced for adult dependants. However, savings provisions for earlier cases provided for the “tapered” earnings rule still to apply where the claimant

1. was entitled to an increase of one of the specified benefits on 14.9.85 or for a period including that day **and**
2. remains continuously entitled to that increase on or after that day.

16333 Where an unfavourable decision is given<sup>1</sup>, entitlement to the increase will stop. As a result the savings provisions are no longer satisfied and the “tapered” earnings rule no longer applies when entitlement to an increase arises again.

*1 SS CB Act 92, s 91*

16334 Similarly, where the claimant is not entitled to receive the increase because of disentitlement, the savings provisions which relate to the inclusion of occupational pension as earnings will no longer be satisfied.

16335 - 16339



# Residence of one person with another

## Residing with - general

- 16340 The questions of whether a person is residing with another person arises in
1. treating as entitled to CHB where spouses are residing together<sup>1</sup> **and**
  2. treating as entitled to CHB where the claimant is residing with the parent and child or qualifying young person<sup>2</sup> **and**
  3. the contributing test<sup>3</sup> **and**
  4. the earnings rule<sup>4</sup>.

*1 SS CB Act 92, s 122(3); SS (IB for D) Regs, reg 6(1);  
2 SS Ben (Dep) Regs, reg 4A(1); 3 SS CB Act 92, s 81(3);  
4 s 80(3), Sch 7, para 4(3); SS Ben (Dep) Regs, Sch 2, para 2A(a)(i)*

## Distinction between “living with”, “living together” and “residing together”

- 16341 The “living with” question occurs in
1. the contributing test<sup>1</sup> **and**
  2. treating as entitled to CHB where a man is **not** living with the child or qualifying young person<sup>2</sup>.
- Note:** the provision in 2. has been repealed but still applies in certain situations<sup>3</sup>.
- 1 SS CB Act 92, s 81(1) & (2); 2 SS Ben (Dep) Regs, reg 4A(2);  
3 SS Ben (Dep) Amdt Regs, reg 3*

- 16342 For a married couple “living with” and “living together”, a man and his wife shall not be treated as living together unless
1. they are permanently living in separation either by agreement or under an order of a court **or**
  2. one of them has deserted the other and the separation incident to the desertion has not come to an end.

- 16343 In deciding whether a husband and wife are residing together the interpretation in DMG 16342 should **not** be used. The definition should only be used where “living with” or “living together” are the words used<sup>1</sup>.

*1 R(U) 11/62*

16344 - 16349

## Deciding residence questions

16350 Whether a person

1. is or was residing with another person **or**
2. whether people are residing together

should be decided in accordance with legal provisions<sup>1</sup> which provide that people are not to be regarded as having stopped residing together only because of a temporary absence<sup>2</sup>.

*1 SS Ben (PRT) Regs; 2 reg 2(4)*

16351 For increases of benefit for RP (Cat A and Cat C) for a husband<sup>1</sup> or person caring<sup>2</sup> the provisions at DMG 16150 do not apply. This is because these increases are not specified in legal provisions<sup>3</sup>. Also, an increase of IB, CA or IIDB (with US) for a person caring for a child or qualifying young person are not covered. This is because the law only applies to spouses and civil partners.

*1 SS CB Act 92, s 84; 2 s 85; 3 SS Ben (PRT) Regs, reg 2(2)(a)*

16352 The question of residence should be considered with regard to the particular circumstances of the case being decided. In the guidance on residence a number of different situations considered by the Commissioners are referred to. The DM should be careful in applying these decisions in other cases unless the circumstances of the case are the same.

16353 Generally when considering “residence” it should be given its ordinary meaning in the English language, for example to dwell permanently or for a considerable time to have one’s settled or usual abode, to live in or at a particular place<sup>1</sup>. This is a general definition and DMs should refer to the rest of the guidance on residence before deciding any questions.

*1 CG 32/49 (KL)*

## European Community law and conventions with other countries

16354 The effect of the EC law and reciprocal agreements is that some people who are absent from GB may be treated as being in GB (see DMG Chapter 07). This does not mean that they should be accepted as residing together if, apart from that provision, they would not be treated so. Where entitlement to benefit is conditional on the satisfaction of the residence test, it should be decided in the light of the facts of the case.

16355 -16359

## People living in the same accommodation

16360 The residence test is normally satisfied where the people concerned have their common home under the same roof. It is not important

1. who is the tenant or owner of the house in which they live **or**
2. whether it is the dependant or claimant who is the head of the household<sup>1</sup>.

But where the relationship is that of owner and tenant or lodger (that is, a commercial relationship) the test is not satisfied (see DMG 16353)<sup>2</sup>.

*1 CU 201/50; 2 CU 257/50*

16361 Payment of rent or board does not prevent the DM deciding that people are residing together. A man and wife or civil partners who live in the same household can be accepted as residing together even though one of the couple pays the other a weekly amount for board.

16362 If a husband and wife are living under the same roof it should be presumed that they are residing together. Strong evidence would be required for another conclusion to be reached. If either of the parties states that residence has ended but the couple still live under the same roof, the onus is on that person to show that they are living separately<sup>1</sup>.

*1 R(P) 14/52*

16363 A husband and wife may not be residing together although they are living in the same house. This may occur where the couple live in separate parts of the same house and do nothing for each other<sup>1</sup>.

*1 R(S) 11/53*

16364 People may reside together although due to accommodation difficulties, a large amount of time is spent separately. For example a husband and wife who are living in the same prescribed accommodation but due to accommodation difficulties sleep in separate dormitories can be accepted as residing together<sup>1</sup>. In this situation the separation is against their will. In contrast it could not be accepted that a couple who live in the same hotel but choose to occupy separate bedrooms are residing together.

*1 R(P) 15/56*

## Whether residence has ended

16365 Where two people have lived together in the same home but are now physically apart the first question to consider is whether residence together has stopped. If residence together has ended it must be considered whether the absence is temporary.

16366 It should not be accepted that people are residing together or that an absence is temporary where the people concerned have never resided together<sup>1</sup>.

*1 Salton v. New Beeston Cycle Co [1899] ICH 77*

## Partners - absence in hospital

16367 For the purposes of an increase of

1. IB for a spouse or civil partner **and**
2. RP (Cat A and Cat C) for a wife **and**
3. SDA for a spouse or civil partner **and**
4. CA for a spouse or civil partner **and**
5. IIDB (with US) for a spouse or civil partner

a husband and wife should still be treated as residing together if either or both of them are in hospital. This provision applies whether the absence is temporary or permanent<sup>1</sup>.

*1 SS Ben (PRT) Regs, reg 2(2)*

16368 Despite this provision, a husband and wife or civil partner may have stopped residing together if one or both of them is in hospital. This may happen where residence has ended for a reason other than absence in hospital<sup>1</sup>. For example where before admission to hospital the couple had stopped residing together or since admission one of the couple had deserted the other. A decision that residence has ended should not be given just because of the length of absence in hospital<sup>2</sup>.

*1 R(S) 8/60; 2 R(S) 8/60*

16369 As the relevant legislation<sup>1</sup> refers only to spouses and civil partners, the rule in DMG 16367 does not apply to increases of

1. RP (Cat A and Cat C) for a husband or a person caring for a child or qualifying young person
2. IB, CA, or IIDB (with US) for a person caring for a child or qualifying young person.

In considering these increases of benefit, the DM should not decide that residence has ended where the absence is only due to admission to hospital. The DM should decide these cases by using the guidance in DMG 16360 - 16366.

*1 SS (Ben) (PRT) Regs reg 2(2)*

## Partners - absence because of work

16370 When a spouse or civil partner works away from home and returns regularly each weekend, the DM should decide that residence has not ended.

16371 - 16379

## Temporary absence

16380 Two people should not be regarded as having stopped residing together where the absence is only temporary<sup>1</sup>. There is no statutory definition of a temporary absence and no period of time is specified after which an absence can no longer be regarded as temporary. Each case must be decided on its circumstances<sup>2</sup>.

*1 SS Ben (PRT) Regs, reg 2(4); CAO & Secretary of State v Ahmed and others; 2 R(S) 1/85*

16381 An absence which is not permanent is not necessarily a temporary absence<sup>1</sup>. The test is whether an absence is

1. merely temporary **or**
2. not merely temporary<sup>2</sup>.

An indefinite absence is not a temporary absence<sup>3</sup>. But an absence is not of indefinite length if there is a date beyond which it cannot continue.

*1 R(S) 1/85; 2 R(I) 37/55; 3 R(S) 1/85*

16382 Except where there are special circumstances, an absence of more than twelve months cannot be regarded as temporary<sup>1</sup>. The DM should consider

1. the relationship of the people concerned **and**
2. the circumstances of the separation **and**
3. the amount of contact **and**
4. how long the absence has lasted **and**
5. how much longer it is expected to last **and**
6. the intentions of the people concerned about further contact or resumption of residence **and**
7. the purpose of the absence<sup>2</sup>.

*1 R(S) 9/55; R(U) 16/62; 2 CAO & Secretary of State v Ahmed and others*

16383 An absence which has been accepted as temporary can be regarded as other than temporary at any time. This decision could be made because for example

1. either or both of the people concerned do not intend to resume residence together **or**
2. the length of the absence and there being no indication to show that residence will resume in the foreseeable future.

- 16384 Once a DM has decided that
1. the absence is not temporary **and**
  2. that residence has ended

that absence cannot again be accepted as temporary if the couple state an intention to reside together again. In this situation residence together cannot be accepted unless the couple actually reside together (see DMG 16350) for example in the same home.

**Note:** The eventual end of the absence does not make that absence only temporary<sup>1</sup>.

*1 R(S) 1/85*

- 16385 If the couple had already decided to resume residence when the DM
1. gave the decision **and**
  2. was ignorant of that intention

there may be grounds for superseding the decision. If the circumstances of a particular case prevent a couple residing together again their intention will not be a decisive factor<sup>1</sup>.

*1 R(S) 10/83*

## **Period of absence known or reasonably certain**

- 16386 Where the period of absence is known or can be guessed with reasonable certainty, for example where it is due to
1. imprisonment<sup>1</sup>
  2. employment away from home **or**
  3. a period of study or training

the DM should consider the factors set out below (see also DMG 16382).

*1 CS 541/50*

- 16387 A husband and wife or civil partners whose absence from each other would not at the most exceed three years and would probably be substantially less, is treated as a temporary absence<sup>1</sup>.

### **Example**

A husband's two year absence from his wife because of national service<sup>2</sup> was treated as a temporary absence.

Decisions should be the same involving absence due to military service, unless there are other factors which show that residence has ended.

*1 CS 541/50; 2 R(S) 6/54*

16388 A claimant who had already been absent from GB for three years was treated as only temporarily absent. The claimant had always intended to return to GB and at the date of the decision there were reasonable prospects of his return within the next six months<sup>1</sup>.

*1 R(S) 9/55*

16389 A decision on whether an absence for a **known or reasonably certain** period is temporary is not affected by the date of the decision. If at the start of the period the absence was temporary then the same decision should be reached if it were made later in the period<sup>1</sup>. This is because where the absence is for a certain or nearly certain period the situation will be the same at any time during the absence as at the beginning. Where the length of absence is

1. not known or is uncertain **or**
2. there is a change of intention by one or both of the parties

the DM may reach a different decision if a decision is given later in the period. In reaching that decision the DM has the advantage of hindsight<sup>2</sup>.

*1 CS 541/50; 2 R(S) 10/83*

### **Incapacity benefit**

16390 Where a claimant is entitled to an increase of IB for an adult<sup>1</sup>, other than the spouse or civil partner of the claimant, and the adult is **either**

1. absent from GB **or**
2. in prison or detained in legal custody

the claimant is not entitled to the increase.

*1 SS (IB for D) Regs, reg 9, 1(c) or (d) & reg 14*

16391 The claimant may be entitled to the increase where the person

1. is absent from GB **and**
2. resides with the claimant who is also temporarily absent from GB and not disqualified from receiving IB<sup>1</sup>.

*1 SS Ben (PA) Regs*

### **Period of absence unknown or uncertain**

16392 Where an absence has been accepted as temporary, the DM should consider whether there is any reasonable prospect of it ending in the foreseeable future after the absence has lasted for a year.

- 16393 Unless there are special circumstances, the foreseeable future should be not more than six months. Where there are special circumstances the period is not limited to either six months or any other particular period. If the DM decides that reasonable prospects of return do exist, the absence can continue to be regarded as temporary and the case looked at again at six monthly intervals.
- 16394 If the DM decides that residence together has ended, the decision to supersede should take effect from the day the superseding decision is made, not from the date of the original decision. If the DM originally decided that the absence was temporary because of the couple's stated intention, a decision that this is unlikely does not affect their original intention. In this situation the grounds for supersession would be on a change of circumstances.
- 16395 In contrast, if the evidence shows that the couple **never** intended to reside together again the grounds for supersession would be based on a mistake of fact. In this case the effective date of the superseding decision may be the date of the original decision.
- 16396 DMG 16397 - 16401 gives guidance on examples the DM should consider when making a decision on absence.
- 16397 At the date of decision the claimant and his mother, who was in Italy, had been separated for three years. There was no intention to resume residence together and no prospect of it happening within a year. It was decided that the claimant and his mother were not residing together<sup>1</sup> (compare with DMG 16354)<sup>2</sup>.
- 1 R(S) 10/55; 2 R(S) 9/55*
- 16398 A claimant had been absent from his wife for 24 years because of his employment as a merchant seaman. In that time he visited his wife from time to time and supported his wife and family during his absence. The evidence showed that he intended to return to his family when he retired and at the date of the hearing had already bought an air ticket for the journey home. It was decided that the absence was only temporary and that the claimant and his wife are to be treated as residing together.
- 16399 A claimant who had been absent from his wife for about four years was treated as only temporarily absent and as a result the residence test was satisfied. There was no estrangement and the separation was caused only by force of circumstances which included the claimant's health. The claimant sent his wife money whenever he could (although not enough to satisfy the maintenance test had that question arisen) and he was in regular contact with her. Two years after the start of the separation he returned home for a visit lasting four weeks. It was decided that it was the claimant's intention to resume residence and that he had reasonable prospects of being able to do so.

- 16400 The absence of a Pakistani from his wife, also a native of Pakistan, which had lasted for about 2 years, was treated as temporary. Until he came to GB to get work, the claimant and his wife had lived together in Pakistan. It was their intention to set up home in GB as soon as the necessary arrangements, financial and otherwise, could be made. There was evidence that the claimant was in a position to carry out his intention and that his wife and children were likely to join him in GB within a few months.
- 16401 In a case similar case where the separation of the spouses had lasted over 4 years and the evidence showed that there was no reasonable prospect of an early ending of it, this was treated as not temporary absence.

### **Absence for parts of a week only**

- 16402 Residence can be accepted where the absence is for part of a week. Residence should normally be accepted where the absence is due to one person being away for parts of a week due to their employment.

#### **Example**

A claimant was admitted to hospital before he could take up permanent residence with a woman. He remained there for over 2 years. Since his discharge from hospital, the claimant had lived with his father from Monday to Friday each week. At week-ends and holidays he lived with the woman. This situation existed because the claimant's disability needed a great amount of nursing and because the woman had to go out to work to maintain her child. The claimant was treated as residing with the child's mother for the purposes of the CHB test<sup>1</sup> although the parties did not reside together all the time.

*1 SS Ben (Dep) Regs, reg 4A(1)*

### **Resumption of residence together**

- 16403 Where after having been apart a couple resume residence together, with the intention that it will be permanent, a new period of residence begins. Any subsequent separation should be considered in the normal way without regard to the previous absence<sup>1</sup>.

*1 R(S) 25/54*

16404 -16409



# Maintenance

## Maintenance - basic provisions

16410 A person claiming an increase of benefit for a dependant may be required to show that the dependant is being maintained to a specified extent. This is referred to as the maintenance test. The test is applied in two periods which are

1. the pre-claim period **and**
2. the period of claim.

16411 To satisfy the maintenance test the claimant must

1. when incapable of work or not entitled to Cat A or Cat B RP, contribute to the dependant's maintenance at a rate not less than the amount of the increase received for that person<sup>1</sup> (this is described as the "period of claim") **and**
2. in the pre-claim period have contributed in the case of
  - 2.1 an adult dependant to the dependant's maintenance at a weekly rate not less than the standard rate of increase<sup>2</sup> (see DMG 16469 - 16470)  
**or**
  - 2.2 a child dependant more than half of the maintenance cost of the child or qualifying young person<sup>3</sup> (see DMG 16550).

*1 SS Ben (Dep) Regs, reg 2(1)(a) & 11(1)(a); SS (IB for D) Regs, reg 2(1)(a) & 12(1)(a);*

*2 SS Ben (Dep) Regs, reg 11(1)(a); SS (IB for D) Regs, reg 12(1)(a);*

*3 SS Ben (Dep) Regs, reg 2(1)(b); SS (IB for D) Regs, reg 2(1)(b)*

## Meaning of "contributing to the maintenance" and "maintaining"

16412 The expressions "maintenance", "maintaining" and "contributing to the maintenance" are not defined. When deciding a question of maintenance the DM should note that

1. the question whether a person has been and/or is being maintained by another person should be decided on the facts of the case (the DM should not speculate as to what the position might have been<sup>1</sup>)
2. the maintenance test
  - 2.1 must be decided on what the claimant has actually contributed **and**
  - 2.2 cannot be decided on the amount of any legal liability to contribute<sup>2</sup>
3. where claimants state they are paying as much as they can afford the test should not be modified (if the amounts contributed are insufficient the appropriate maintenance test will not be satisfied<sup>3</sup>)

4. “maintaining” does not mean that the contributor has to ensure that the money is used for the purposes of maintenance, but the contributor must take all practical steps to provide the money<sup>4</sup>
5. maintenance whether in cash or kind must be readily available for the use of the dependant<sup>5</sup>
6. if a claimant pays money for the support of a child or qualifying young person to a spouse who passes it on to someone looking after the child or qualifying young person, the money is a contribution from the claimant and not the spouse because the spouse is merely passing the money on.

**Note:** For the purpose of 5. a contributor may pay a regular sum into a bank account for a dependant. But if the dependant or the person responsible for the dependant does not know about it the claimant cannot be said to be maintaining the dependant.

*1 CI 38/50; 2 CSI 50/49; R(U) 3/66 para 8; 3 R(S) 1/52; 4 CS 638/49; 5 R(F) 9/61*

16413 Also when deciding a question of maintenance the DM should consider DMG 16414 - 16416 which are examples of Commissioners decisions.

16414 A claimant contributed the increase of benefit he received for his daughter into the family fund out of which she was maintained<sup>1</sup>. He and other members of the family were also maintained out of this fund. It was decided that the claimant was not maintaining his daughter because other people were maintained out of the fund.

*1 CS 801/49*

16415 In considering the wholly or mainly maintaining test in the case of a claimant whose wife, a hospital in-patient, had been allowed home for a few days, a person who provides accommodation and sustenance for an occasional visitor is not “wholly or mainly maintaining” that visitor. Maintenance must be continuous<sup>1</sup>.

*1 R(S) 26/51*

16416 In a case where the dependant, a hospital in-patient, was allowed home each weekend and for holidays, Commissioners said that in their view “a claimant cannot be said to be wholly or mainly maintaining ..... unless he wholly or mainly maintains that person for at least 2 consecutive weeks<sup>1</sup>.”

*1 R(I) 15/54*

16417 A person who makes only intermittent contributions can still satisfy the quite different “contributing” test by means of those contributions for isolated weeks during the period of the claim if the test was satisfied in the pre-claim period.

### **Burden of proof**

16418 The burden of proving that the “wholly or mainly maintaining” or “the contributing test” is satisfied rests with the claimant. In a case in which the wholly or mainly maintaining test applied, information about the family fund from which the dependant was maintained was not known and on the evidence the Commissioner felt unable to

assume that the claimant satisfied the test. He held that the claimant had not proved that he satisfied the test<sup>1</sup>.

*1 R(U) 37/52*

## **Maintenance established due to benefit erroneously paid**

16419 If

1. an incorrect rate of benefit has been paid to a claimant **and**
2. the claimant has used the extra money to maintain the dependant

discovery of the error ends the period of maintenance unless the maintenance condition is satisfied on other grounds<sup>1</sup>. See also DMG 16523 for the conditions under which the claimant may again become entitled to the increase.

*1 CS 254/50*

## **Pre-claim period**

16420 The pre-claim period for increase of

1. IB, SDA or IIDB (with US) is a period when the claimant was not incapable of work **and**
2. RP is a period when the claimant was not entitled to a Cat A or Cat B RP.

**Note:** The period during which the pre-claim test is to be satisfied is not defined.

## **IB, SDA, IIDB (with US) and RP**

16421 For the purposes of an increase of IB,SDA, IIDB (with US) and RP, the pre-claim test period should be taken to be a period, of whatever length, ending

1. immediately or shortly before the beginning of the period of incapacity **or**
2. before the date of entitlement.

In an increase of these benefits it can include periods of unemployment, non-employment, self-employment, imprisonment and (in RP cases only) incapacity.

**Note:** The period during which the pre-claim test is to be satisfied is not defined.

16422 In the case of a claim to IB the pre-claim period is the period immediately before the claimant becomes incapable of work. This is irrespective of whether

1. entitlement to IB starts at some time **after** incapacity started (Example 1) **or**
2. there is entitlement to the CDI immediately following the claimant becoming incapable (Example 2).

### Example 1

A person who has been in employment becomes incapable of work. During the first part of the incapacity, SSP is in payment and this is eventually followed by IB. The pre-claim period is the period when the claimant was not incapable and not the period when SSP was in payment.

### Example 2

A person under pensionable age becomes incapable of work and claims IBST(L) which is eventually followed by IBST(H). When the claimant becomes entitled to IBST(H), CDI is claimed. The “pre-claim” period is the period when the claimant was not incapable of work.

## Dependency arises after specified time

16423 If the dependency arises after the claimant first became, incapable or entitled, the maintenance condition in the pre-claim period<sup>1</sup> does not apply. The claimant does not have to show that contributions were made at more than half the cost of maintenance in the pre-claim period.

*1 SS Ben (Dep) Regs, reg 2(1)(b) & 11(1)(a)*

16424 Where dependency first arises after the specified time, the only maintenance condition to be satisfied is that the claimant is contributing at not less than the required weekly rate. A claimant cannot be expected to satisfy this condition until the increase in question has been actually received<sup>1</sup>. As a result, where dependency first arises after the specified time

1. the test in the pre-claim period does not apply **and**
2. the maintenance test should be regarded as satisfied<sup>2</sup>.

A claimant will therefore be entitled to the benefit providing the amount of the increase of benefit received is contributed towards the maintenance of the other person on receipt of the actual benefit.

*1 CS 58/49 (KL); R(S) 7/89; 2 SS Ben (Dep) Regs, reg 2(1)(a) & 11(1)(a)*

16425 Dependency may arise after the specified time where during a current claim the claimant

1. assumes responsibility for a new dependant **or**
2. begins to contribute at the required weekly rate towards the maintenance of a person who was formerly a dependant but for whom the claimant did not satisfy the maintenance condition in the pre-claim period.

### Example

If a person, to whom the claimant is not married, and their children begin residing with the claimant, the CHB test would need to be satisfied for both dependants. The maintenance test would also need to be satisfied for the person caring for the child.

16426 A claimant who begins or resumes maintenance of a person may be able to show, by making contributions at the required weekly rate, that actual dependency has arisen after the time when they were in employment, not incapable of work, etc, and that they are contributing at the required rate<sup>1</sup>. The claimant cannot establish that they have been contributing by making, for example, one payment to cover 13 weeks in arrears.

*1 CU 303/50*

16427 The claimant should establish that contributions are currently being made on a regular basis. There is no authority, statutory or otherwise, concerning a minimum requirement for the satisfaction of this condition, but in cases mentioned in DMG 16411 the DM should not accept that dependency has arisen and that the claimant is contributing at the required weekly rate until contributions at that rate have been made for a period of 13 weeks.

16428 Where the claimant has contributed, and satisfies all other conditions for entitlement to an increase, the DM should award the increase from the beginning of the 13 week period. Where it is necessary to supersede the original award in order to award the increase, the ground for the superseding decision will be that the payments are a relevant change of circumstances.

16429 There may be cases where the claimant shows that they are prepared to contribute at the required rate although in the pre-claim period up to the date of claim their contributions, though regular and established, were not quite sufficient to satisfy the maintenance condition. In these cases it might be possible to accept that dependency has arisen and that the claimant is contributing at the required weekly rate after the payment at the required rate for less than 13 weeks.

16430 - 16439



## Maintenance test - period of claim

16440 If the DM decides that the claimant contributed at the required weekly rate during the pre-claim period, the claimant must contribute the required weekly amount by passing on the increase to the dependant. In cases where the dependency increase is payable at a reduced rate, the claimant is required to pay only the amount of the dependency increase actually in payment<sup>1</sup>.

*1 R(I) 10/51*

16441 If the claimant fails to pass on the increase the DM may be asked to supersede the award. Guidance on contributing at the required weekly rate during the periods of claim is in DMG 16510 - 16513.

16442 - 16449



## Maintenance test satisfied in pre-claim period - increase not payable

16450 Although a claimant may have satisfied the maintenance condition in the pre-claim period, an increase of benefit for the dependant may not be **payable**, either from the beginning of the claim or some later date, for a reason other than failure to satisfy a maintenance condition for example because

1. of the overlapping benefit provisions **or**
2. the dependant's earnings exceed the limit.

16451 The increase may be put back into payment from the date the grounds which affected payment ceased to exist, for example when the partner's earnings are below the limit.

16452 It does not matter when considering re-instatement that no contributions were made to the dependant's maintenance during the period when the increase was not payable. The length of time for which the claimant did not contribute is immaterial. The claimant does not have to account for the failure to contribute. But where the period exceeds 12 months, it may be necessary to obtain a written undertaking from the claimant to contribute at a weekly rate of not less than the amount of the increase before payment is restored.

16453 - 16459



## Maintenance test satisfied in pre-claim period - no entitlement to increase

16460 Although a claimant may have satisfied the maintenance condition in the pre-claim period, there may be no **entitlement** to the increase, either from the beginning of the claim or some later date, for a reason other than the failure to satisfy a maintenance condition.

16461 A fresh claim for the increase should be made before entitlement can be considered again. But where the disentitlement is on grounds other than the failure to contribute, the guidance in DMG 16451 on the interval in which no contributions are paid can also be applied to this situation.

16462 A claimant who

1. has been awarded an increase of benefit **and**
2. then is not entitled because of failure to pay over the amount of the increase

may again become entitled if it can be shown that contributions are being made at the required rate. The claimant must show that contributions have resumed at the required rate and that there is a firm intention to continue to do so, for example by signing an undertaking.

16463 The period the claimant must have resumed contributing before it is accepted that they are contributing at the required rate will vary with each case. It will depend on the claimant's past record of contributions, the reason for the lapse and its duration. It might vary from one week in the case of a minor lapse to a maximum of 13 weeks in an extreme case.

16464 - 16468



## Adult dependant - pre-claim period

16469 Cases where

1. the claimant states that contributions are being made to the required extent  
**and**
2. the dependant confirms this

will not ordinarily be referred to the DM (see also DMG 16473).

16470 Where DMG 16469 does not apply and a question arises whether the claimant contributed at the required weekly rate, it is a question of fact to be decided on the individual circumstances of the case. The DM must consider each case individually. Some of the factors to be taken into account are

1. the period between the date of separation of the wife, husband or civil partner and the first payment of a contribution
2. the date the person first took care of the child or qualifying young person
3. whether the claimant had been in full employment since the dates in **1.** and **2.**
4. the pattern of payment of contributions.

16471 If before incapacity etc, the claimant has contributed at the required rate over a substantial period, the condition will be satisfied. The rate at which the claimant was contributing should be decided by reference to the rate at which the claimant was liable for, example by court order, to contribute or had the intention of contributing.

16472 Where payment includes arrears, the amount of arrears should be allocated to a current week and if appropriate to future weeks. Short interruptions in contributions may be disregarded. In a longer pre-claim period it may be possible to disregard longer periods (see DMG 16420 - 16422).

## Contributions end or reduce during pre-claim period

16473 A claimant may have made substantial contributions to the maintenance of a dependant, perhaps for many years, but for a short period before becoming incapable of work or entitled to RP contributions may have ceased, or have been reduced. The DM should consider

1. the reason for the end or reduction **and**
2. the future intentions **and**
3. the prospects of the claimant being able to carry out these intentions.

16474 If the end or reduction is likely only to be temporary and due, for example, to the state of the claimant's health, the DM should decide that contributions were made to the required extent. This will not be the case if the reduction or cessation is clearly final, for example

1. there is no longer a court order **or**
2. the sum required and which the claimant paid under any order was less than the amount of the increase.

### **Contributions increased during pre-claim period**

16475 Where the dependant confirms that the claimant is contributing at the required weekly rate, the case will not be referred to the DM. Exceptionally, however, it may be revealed, for example because of information held in connection with an earlier claim, that contributions were until recently made at less than the required weekly rate.

16476 In deciding whether a claimant has contributed at the required weekly rate, the DM should consider

1. the reason for the increase in contributions **and**
2. whether the increased rate is likely to continue.

16477 Contributions may increase where, for example

1. the sum required under a Court order had recently been increased and the claimant had contributed at the new increased rate **or**
2. irrespective of a Court order, a claimant had agreed to increase the rate of contributions and there was no reason to doubt that contributions would continue to be made at the increased rate.

**Note:** An example of **2.** is when the claimant resumed work after an earlier spell of unemployment or incapacity on realizing that contributions up to that time were insufficient to enable the rate of benefit to be increased for the dependant.

### **Increase in benefit rates**

16478 A person's contributions in the pre-claim period are usually related to the amount which would have to be contributed in order to qualify for an increase of benefit if a claim were made (the standard rate of increase). Where a claim is made shortly after an increase in benefit rates, contributions in the pre-claim period which were made before the increase will have been made at less than the required rate. If the contributions made before the increase in rates satisfied the test which applied at that time they should be treated as if they had been made at the new rate<sup>1</sup>

*1 SS A Act 92, s 155(6)*

16479 There may, however, be a period between the date when the increased rates started and the date from which the increase of benefit is claimed, in which the claimant's contributions, though at a weekly rate of at least the pre-increase rate, have not reached the new level. If the contribution is brought up to the required level from the date when the increased rate started and there is nothing to suggest that the claimant will not continue to contribute at this higher weekly rate, the condition in the pre-claim period may be regarded as satisfied<sup>1</sup>.

*1 R(S) 1/59*

16480 The DM should take into account

1. the rate at which the payments are being made and whether these have been made regularly
2. the period of time since the rates of benefit were changed
3. whether the claimant in fact satisfied the test before the date of the change in rate and if so, for how long
4. whether the claimant has paid the amount necessary to bring the contributions paid since up to the new rate and whether there is an intention to continue to contribute at that increased rate.

#### **Example**

In a case involving a claimant who had contributed at the standard rate of increase for a period of over ten years but because of an increase of rates of benefit did not do so for a period of just under three months before the date of claim, it was accepted that the test in the preclaim period was satisfied<sup>1</sup>. It was not considered necessary for the claimant to pay arrears to bring his contributions up to the required rate in order to satisfy the test. An acceptance of a lapse of three months in making contributions at the required rate should be treated as exceptional. It would only be justifiable if the claimant had been making regular contributions of a substantial amount, for example at a rate sufficient to have satisfied the test, before the increase in benefit rates.

*1 SS Ben (Dep) Regs, reg 11(1)*

### **Insufficient contributions made in pre-claim period**

16481 A Commissioner decided that the test in the pre-claim period<sup>1</sup> was not satisfied by a claimant who contributed sufficiently to his wife's maintenance to satisfy the statutory conditions for an increase of Sickness Benefit for at least 9½ years but insufficient to do so for approximately ten months immediately preceding the date of his claim, even though the deficiency was only 5p a week.

*1 SS Ben (Dep) Regs, reg 11(1)*

16482 A claimant who

1. during the pre-claim period has contributed to the maintenance of the dependant at a rate below the standard rate **and**
2. does not satisfy the test<sup>1</sup>

may be prepared from the date of claim or some later date to contribute at the required weekly rate. Where a claimant contributes for a period, dependency may arise during the period of the claim and should be considered as in DMG 16423 - 16429.

*1 SS Ben (Dep) Regs, reg 11(1)*

## Rate of dependency increase

16483 The amount of ADI varies according to

1. the benefit claimed **and**
2. for IBST whether the claimant is under or over pensionable age<sup>1</sup>.

*1 SS CB Act 92, Sch 4, Part IV*

16484 To qualify for an ADI where the dependant does not reside with the claimant, the claimant will need to have contributed at the rate of the increase during the pre-claim period unless dependency has arisen after the specified time<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 11(1)(b); SS (IB for D) Regs, reg 12*

16485 An IB claimant is deemed to satisfy DMG 16484 if, within one month of having been entitled to an increase of IBST, they become entitled to an increase of IBLT<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 11(2); SS (IB for D) Regs, reg 12(2)*

## Incapacity benefit

16486 The increase of IBST for people over pensionable age<sup>1</sup> will be the relevant percentage of the amount specified<sup>2</sup>. The relevant percentage means the percentage specified<sup>3</sup>.

*1 SS CB Act 92, s 87; 2 Sch 4, Part IV, Col 3, para 1A; 3 SS (WB & RP) Regs, reg 6(3B)*

16487 Where IBST is paid at the IBLT rate<sup>1</sup> the increase will be paid at the relevant percentage of

1. IBST **or**
2. IBLT

whichever is the greater.

*1 SS CB Act 92, s 30A(2)(b), 30B(4) & 87*

16488 - 16490

# Definition of contributions - contributing test

## Contributions in kind

16491 Where cash contributions are less than the sum required or where no cash contributions are made at all, the decision maker should consider any contributions in kind<sup>1</sup>. These contributions may include

1. the provision of clothing
2. gifts (for example on birthdays and at Christmas)
3. money spent on holidays or outings
4. the provision of services and facilities (for example accommodation and transport - but see DMG 16493 for the provision of a home).

*1 R(I) 10/51*

16492 Any case in which the outcome of the claim depends upon the treatment of contributions in kind should be decided as speedily as possible otherwise entitlement to benefit may be lost<sup>1</sup>.

*1 R(U) 3/66; R(F) 1/73*

16493 Provision of a home may be regarded as a contribution to the maintenance of a dependant who is not residing with the claimant, but particular care is necessary in considering such provision since much depends on the nature of the provision and the intention of the persons involved<sup>1</sup>.

*1 R(U) 3/66; R(U) 2/65*

16494 The DM should also consider whether the expenditure is a contribution to the dependant's maintenance and, if so, to what period it should be attributed and what its value is expressed as a weekly sum.

16495 Money spent by a claimant in travelling to visit a dependant should not be accepted as a contribution to the maintenance of the dependant (see DMG 16567).

## Dependant in hospital

16496 Where the dependant is in hospital and

1. the claimant is not making direct contributions in cash towards the maintenance **or**
2. the contributions are at less than the required weekly rate

the DM should take account of any contributions in kind (see DMG 16596).

16497 Expenses which may be regarded as contributions to the dependant's maintenance will normally be for items not provided by the hospital authorities, for example sweets, toiletries, additional clothing, stationery. Provision of these may be in kind or where there are shopping facilities, in cash<sup>1</sup>. The test is satisfied if the claimant gives the specific sum for the purpose of maintenance. The claimant does not have to show that the contribution is in fact used for that purpose (see DMG 16196).

**Note:** The claimant's visiting expenses should not be regarded as a contribution to the patient's maintenance.

*1 R(I) 10/51*

16498 Payments for amenity bed accommodation<sup>1</sup> should count as a contribution by the person paying them to the cost of maintenance of the patient.

*1 NHS Act 06, s 189; NHS (Scot) Act 78, s 55*

16499 Where the dependant in hospital is a person caring for a child or qualifying young person, the conditions for entitlement to an increase other than the maintenance condition may not be satisfied (see DMG 16170).

## **Dependant transferred to hospital during period of claim**

16500 If a dependant is admitted to hospital and

1. an increase of benefit already in payment is conditional upon the satisfaction of the maintenance conditions **or**
2. because of the circumstances of the admission the residence conditions are no longer satisfied

the claimant should prove that the dependant has been maintained from the date of admission.

16501 The decision maker may assume that the claimant continues to maintain the dependant during the first four weeks after the date when they are regarded as having ceased to reside together to allow

1. a reasonable time for the claimant to make suitable arrangements **and**
2. for probable additional expenses, for example for extra clothing and other necessities for the dependant.

After four weeks the cost of maintenance must be calculated as in DMG 16620 and be taken into account.

## Payments under an agreement or Court order

16502 A man who is legally liable to make payments of maintenance can obtain tax relief on those payments by deducting from them prior to payment, the basic rate of tax. These reduced payments should be regarded for maintenance purposes as contributions at the gross amount referred to in the relevant order, deed or agreement. Voluntary payments of maintenance do not qualify for tax relief.

**Note:** The maintenance received by the dependant is regarded as income and therefore the dependant is liable to pay income tax on that amount. However as the maintenance payments are not derived from gainful employment, for SS purposes they are not earnings.

### Dependant owes money to claimant or is in possession of claimant's assets

16503 If dependant

1. owes a claimant money **or**
2. is in possession of assets belonging to the claimant

the assets, money owed or notional interest on these amounts are not contributions to the dependant's maintenance.

16504 Guidance on what may be regarded as contributions to a person's maintenance is also contained in DMG 16550 which deals with the "wholly or mainly maintaining" test. In particular the DM should consider

1. provision of accommodation (see DMG 16587 - 16590)
2. contributions in kind (see DMG16596)
3. income from an asset (see DMG 16570)
4. net income of a person (see DMG 16567)
5. cost of travel (see DMG 16567).

16505 - 16509



# Allocation of contributions - contributing test

## Contributing at a weekly rate

16510 The DM should decide whether a person is contributing, or has contributed, at a particular weekly rate, taking account of all the facts of the situation. A claimant may not have contributed the required amount week by week but may, for example, have contributed

1. fixed amounts fortnightly or monthly in advance or in arrears **or**
2. lump sums designed to cover specific periods<sup>1</sup>.

If the contributions when averaged are equal to the required weekly amount, the DM should accept that the claimant is contributing, or has contributed, at the required weekly rate<sup>2</sup>.

*1 R(U) 25/58; 2 SS Ben (Dep) Regs, reg 11*

16511 If the claimant has not contributed to the cost of maintenance for the whole of the period in question, the DM should consider whether there are portions of that period during which the claimant has in fact contributed. Guidance on allocation of payments in cash or kind is in DMG 16596.

16512 Money spent on gifts should normally be allocated to the week following that in which the gifts are given. But where

1. the claimant contributes in cash **and**
2. contributions fall slightly short of the required amount

it would be reasonable to average any additional expenditure on gifts over the year if it would satisfy the test throughout the year.

16513 Money spent on an outing may be

1. allocated to the week in which it was incurred **or**
2. spread over a period

whichever is in the best interests of the claimant. For example expenditure on an outing each month could be allocated to the week in which the outing took place or spread over the month. Money spent on clothes should be treated in the same way as money spent on gifts.

16514 - 16519

## Regular lump sum payments

16520 In considering cash payments the DM should note

1. the pattern and rate of payments **and**
2. the claimant's intentions **and**
3. the rate at which the claimant is liable to contribute for example by court order.

16521 Regular lump sum payments which are clearly intended to cover a specific period may be accepted as contributions for that period provided that the interval between payments is not excessive. For example, a claimant who arranges to contribute monthly, either in advance or in arrears is clearly contributing to the cost of maintenance during the period covered by the payment. On the other hand, a claimant who

1. has failed to contribute for a period of three months **and**
2. then makes a payment of arrears for that period

should not be regarded as contributing to the cost of maintenance during those months.

16522 A period of three months should not be regarded as a rigid "cut off" period; this will vary from case to case. In the absence of any evidence to the contrary it would be reasonable to regard the lapse in payments as temporary where it does not last more than six weeks. Therefore, a person who had been prevented from contributing over a lengthy period because they were seriously ill in hospital would merit sympathetic consideration.

## Intermittent lump sum payments

16523 Where a claimant had made intermittent payments and it is not possible to accept that contributions to the cost of maintenance had been made throughout the period of the claim, the DM should consider the effect of the individual payments.

16524 Where the sum is more than the required amount the balance should be allocated to future weeks.

16525 Where a lump sum payment of arrears of maintenance is made, whether or not under the direction of a court, such payment does not constitute a contribution to the cost of maintenance for a past period. This is on the basis that, during that period, some person or body other than the claimant must have maintained the dependant. These payments cannot therefore establish or revive title retrospectively. Payment of arrears should be allocated to the week in which they were made and to future weeks where appropriate.

16526 The allocation of the sum to the week of payment and following weeks should be to the claimant's best advantage taking into account the number of weeks to which the sum might be allocated (see also DMG 16540).

### **Allocation where overpayment has occurred**

16527 The guidance in DMG 16523 - 16526 applies where

1. an increase has been awarded **and**
2. the claimant had made only isolated payments during the period of claim **and**
3. the DM has to assess the amount of the overpayment when superseding the award of the increase.

The aim should be to allocate the isolated payments to the week following the week of payment and following weeks in order as to keep the overpayment to a minimum.

### **Income support recovery from arrears of benefit**

16528 Amounts of IS recovered from arrears of a SS benefit can be treated as contributions of maintenance made by the person claiming the benefit. This ensures that a claimant does not lose any rights to continued payments of dependant's benefits because of the non-payment of arrears of dependant's benefit.

16529 The claimant should not be any better off than if the arrears had been paid and they had then been paid immediately to the dependant. Therefore, sums which have been deducted from benefit payable to a dependant should be treated as payments of maintenance made on the date on which the sums were deducted, but must be allocated to the period for which the SS benefit was payable<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 4*

### **Court order - payments greater than contributing test**

16530 Where under a court order the claimant is required to pay a sum greater than is required to satisfy the contributing test for the same period, allocation of intermittent contributions in accordance with the court order could result in little credit being given for substantial contributions. Allocation of these contributions should therefore be considered to the claimant's best advantage (see DMG 16523). See DMG 16621 on the allocation of payments made under a court order for the household fund test.

16531 - 16539

## Allocation of contributions between dependants

16540 Any sums paid by the claimant as a contribution towards either or both

1. the maintenance of the spouse or civil partner
2. the cost of providing for one or more children or qualifying young persons

must be allocated between these dependants to produce the most favourable result for the claimant<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 3(1)*

16541 However, sums paid towards the maintenance of a spouse or civil partner may not be allocated towards the cost of providing for a child, children, qualifying young person or qualifying young persons or vice versa unless

1. the spouse or civil partner is entitled or treated as entitled to CHB for those children or qualifying young persons<sup>1</sup> **and**
2. the claimant
  - 2.1 is entitled or treated as entitled to CHB for the children or qualifying young persons for the period in question<sup>2</sup> **or**
  - 2.2 would have been entitled had the contributions been at the required rate.

*1 SS Ben (Dep) Regs, reg 3(2); 2 reg 3(3)*

16542 Since 26.11.84 the only circumstance in which a person can be treated as entitled to CHB is where that person is residing with the child or qualifying young person and parent who is entitled to CHB<sup>1</sup>. As a result an allocation involving children or qualifying young persons<sup>2</sup> can only be made where

1. the spouses or civil partner and children or qualifying young persons are residing together **or**
2. the claimant, who is not residing with the parent and children or qualifying young persons, is entitled to CHB.

*1 SS CB Act 92, s 122(3); SS Ben (Dep) Regs, reg 4A(1); 2 reg 3*

16543 - 16549

## Wholly or mainly maintaining

16550 To be entitled to an increase of benefit for

1. a child or qualifying young person **or**
2. a person caring for a child or qualifying young person

the claimant must be entitled or treated as entitled to CHB. In order to establish entitlement to CHB the claimant may have to show that in the pre-claim period they were wholly or mainly maintaining a person, that is contributing more than one half of the cost of the person's maintenance<sup>1</sup>.

*1 SS Ben (Dep) Regs, regs 4A(1) & 2(1)*

16551 The legislation does not specify a method of assessment as to whether a claimant is contributing more than half of the cost of the dependant's maintenance. The principles of the assessment known as the "family fund" or "household fund" method (see DMG 16554 et seq) should be applied to claims for all increases for dependants<sup>1</sup>.

*1 R(I) 1/57*

16552 Where the calculation shows that a claimant is contributing exactly half of the cost of maintaining the dependant it can normally be assumed that the wholly or mainly maintaining test is satisfied<sup>1</sup>.

*1 R(U) 37/52*

16553 The calculation may not be applicable in every case. It should not be used where its application would result in a decision which would clearly be at variance with the evidence of the family circumstances.

## Household fund method

16554 The method assumes that a household pools part of its resources into a common fund to provide for its common needs, for example housing, food, clothing and general household requisites. The household fund consists of all the contributions made, either in cash or kind, towards the common needs of the members of the group forming that household, together with any contributions from outside sources which are intended for the maintenance of one or more members of the group. Once the contributions to the common fund have been assessed, the unit of maintenance is calculated by dividing that total by the number of members in the group. This calculation gives the average cost of maintaining each member. This figure is then compared with the contribution of each contributor. Surpluses or deficiencies can be seen, and the DM can calculate whether the claimant is contributing a surplus to the fund of at least half the unit cost of maintenance and whether that surplus can be applied to the dependant in question.

- 16555 The main points for consideration are
1. the composition of the household
  2. the contributions made to the common fund
  3. the calculation of the unit cost of maintenance for each member of the household (see DMG 16606 - 16608).

## **Composition of the household**

- 16556 The household includes all the people who are
1. living together **and**
  2. maintained out of the household fund

whether or not they are related by blood or marriage. It should include the children or qualifying young persons for whom the claim is made but should exclude boarders and lodgers.

- 16557 Where two or more distinct households are living in the same premises or sharing common conveniences such as accommodation, lighting, heating and cooking but maintain separate household funds, the DM should consider only the household where the dependant is a member.

- 16558 Each member of the household aged 14 or over should be regarded as one unit for calculation purposes, and each child under 14 as half a unit<sup>1</sup>.

*1 R(S) 12/83*

- 16559 Where one member is
1. periodically away from home **and**
  2. not maintained from the household fund during those absences

that person should be regarded as a fraction of a "unit" depending upon the average amount of time spent at home.

### **Example**

A seaman who came home on leave on average for 10 days every 3 months and made no extra contribution to the fund during those periods apart from the regular allotment from his wages, was regarded as being one ninth of a unit.

- 16560 To calculate the household fund as it existed when the claimant was in employment, the household composition at that time should be used, and no account should be taken of changes caused by the claimant becoming unemployed or incapable of work<sup>1</sup>.

*1 CS 52/50*

## Contributions to the household fund

16561 The household fund is the total expenditure of the household on the provision of shelter, food, clothing and general household requisites for all its members. Any contribution from any person which helps to meet one of these needs counts as a contribution towards that fund. Shelter should be regarded as including the cost of such services as lighting and heating which are incidental to the provision of accommodation.

16562 The fund comprises of

1. the contributions of the members who are maintained out of it **and**
2. any contributions from other sources which are clearly for the maintenance of one or more members of the household.

16563 The weekly income of the household must first be established. This includes

1. the net earnings of each member of the household **and**
2. other income coming in, for example SS benefits and IS, maintenance payments under court orders or agreements<sup>1</sup>.

*1 R(S) 12/83*

16564 To count as a contribution to the household, any expenditure must

1. be for the maintenance of one or more members of the household **or**
2. relieve the fund of a charge which it would otherwise have to meet.

The whole of the wages or other income of a member of the household does not usually go into the household fund. A proportion will be retained for various items of personal expenditure.

16565 Whilst making a direct contribution to the fund, members may also buy clothing or meals out of the money retained for personal use. The DM should establish for each contributor to the fund

1. the direct contribution to the fund **and**
2. the amount spent on items for personal use which would normally be a responsibility of the fund.

16566 Money spent by individuals on their meals relieves the fund of the cost of providing those meals and may count as a contribution to the fund. A member may also save the fund certain expenditure by being the owner of the house in which the household lives. Any such extra expenditure by the member or the value of this form of savings to the fund should be added to that member's direct contribution.

## Net income

16567 To calculate the net income, the DM should deduct from the gross income

1. income tax<sup>1</sup>
2. SS contributions, where payable<sup>2</sup>
3. maintenance payments for people not present in the household
4. the cost of travel to and from work.

**Note:** The cost of travel to and from work is neither a contribution to the maintenance of the worker in question nor of any other member of the household. It is as an expense of the employment and should be deducted from the income before it is applied to the household fund.

*1 R(S) 12/83; 2 R(S) 12/83*

## Subsistence payments - member spends time away from home

16568 Where a member of the household

1. spends nights away from home because of work **and**
2. is paid subsistence for that night or those nights by the employer

that payment should be taken as a contribution to that person's subsistence. It does not matter whether the person makes a profit or loss on the payment. The subsistence should not be regarded as a contribution to the household fund.

16569 In calculating the household fund where a person is away from the home on certain nights, the unit cost should be reduced in proportion to the time spent away from home. Therefore a member who spends two complete days and nights away from home will require only five-sevenths of the normal adult unit cost.

## Income from an asset

16570 Income received by a dependant from an asset given or provided by some other person counts as a contribution by that person to the maintenance of the dependants for example

1. proceeds from the sale of a business **or**
2. share of a business, transferred to the dependant by the claimant **or**
3. proceeds the dependant was allowed to retain from the sale of a house owned by the claimant<sup>1</sup>.

*1 R(I) 37/54; R(S) 6/52*

## **Withdrawals from savings**

- 16571 A withdrawal from savings used to meet the needs of a household should be treated as a contribution to the household fund, and it should be spread over the number of weeks during which it was used.

## **Refund of income tax**

- 16572 In calculating a person's earnings, the figure to be taken into account is that existing in the pre-claim period. If at a later date a refund of income tax is received for that period it should be disregarded in the calculation.

## **Payments by boarder or tenant**

- 16573 Where the accommodation is owned by a member of the household any payments made by a boarder or by a tenant of furnished rooms should be excluded from the calculation of the fund. If, however, any of the resulting profit is paid into the fund, it should be regarded as a contribution by the person who renders the services or provides the furnished accommodation.

## **Contributions by people outside the household**

- 16574 Where a contribution towards the maintenance of a member of the household is made from outside the household, the whole of the contribution must be included in the fund, regardless of how the person to whom it is paid may spend it<sup>1</sup>. These contributions should be dealt with in accordance with DMG 16504 **3.** and **4.** and DMG 16540.

*1 CS 52/50*

## **Treatment of certain pensions and other allowances**

- 16575 When certain pensions and other allowances are paid to members of the household or direct to the household fund it may not always be clear, who is the contributor. DMG 16576 - 16586 gives guidance on individual benefits and allowances.

## **Category B retirement pension and composite category A retirement pension**

- 16576 Cat B RP payable to a wife on her husband's contributions should be regarded as a contribution by the husband<sup>1</sup> and should not be specifically related to the wife's maintenance. The AP of Cat B RP must be regarded as a contribution from a wife to the household fund. Where a married woman is entitled to reduced rate Cat A RP which is increased by part of the Cat B RP, the Cat A portion of her RP should be

regarded as her own contribution to the fund. The portion derived from her husband's contributions should be regarded as a contribution from her husband.

*1 C(P) 96/50(KL); R(S) 12/83*

### **Child benefit and guardian's allowance**

- 16577 CHB and GA should be regarded as a contribution from an outside source and included in the total contributions to the household fund from which the unit cost and the surpluses and deficiencies are calculated. It should not be specifically allocated to the children or qualifying young persons for whom it is paid nor to reduce the deficit of any particular member or members of the household. The application of the formula in DMG 16540 will show what part of the claimant's surplus goes to meeting the dependants' deficit.

### **Severe disablement allowance**

- 16578 SDA should be regarded as a contribution from the person who is entitled to the benefit. Although the benefit is non-contributory, if the person who is entitled leaves the household the household fund will suffer financially<sup>1</sup>.

*1 R(S) 2/85*

### **Dependency increases and allowances**

- 16579 Increases of benefits for dependants should be regarded as part of the income of the person by whom they are received, and not the separate income of the dependants (but see increases of WMA). Allowances for dependants paid to disabled ex-service personnel as part of a disability pension should be treated in the same way. Dependant's allowance, emergency grant or children's allowance paid for service with HMF should be regarded as part of the income of the serving person, and contributed to the family fund maintaining those dependants.

### **Workmen's compensation - allowances for children**

- 16580 Allowances paid under WC legislation for the dependent children of a deceased workman should not be treated as the personal income of the recipient. Under WC legislation such dependent children have a right to compensation separate and distinct from that of the widow. Their allowances should, therefore, be treated as their own contribution to the household fund for their own maintenance.

### **Widow's pension**

- 16581 WP under SS legislation or under a Royal Warrant is the personal income of the recipient (but see also WMA).

## **Educational maintenance grants**

- 16582 A maintenance grant received from an education authority for a child or qualifying young person continuing at school should normally be treated as though it was the child's or qualifying young person's own contribution to the household fund for the child's or qualifying young person's own maintenance. This rule may be varied where there is evidence that the grant was awarded to enable the parent or guardian to meet the extra expense of school clothing, sports equipment etc. That part of the grant which is used to meet such extra expense should be entirely disregarded in calculating the amount of the fund.

## **Income support and jobseeker's allowance**

- 16583 IS and JSA should be regarded as a contribution by the person entitled to it.

## **Housing benefit**

- 16584 HB should be regarded as a contribution by the person entitled to it.

## **Widowed mother's allowance**

- 16585 Only the personal element of WMA should be treated as a contribution to the household fund by the mother for her own maintenance. The dependency element should be regarded as a contribution by her to the maintenance of the children or qualifying young persons it covers<sup>1</sup>.

*1 R(I) 20/60*

## **Attendance allowance and disability living allowance**

- 16586 Unless there are exceptional circumstances AA and DLA should be treated as a contribution to the fund by the person for whom the allowance is paid<sup>1</sup>.

*1 R(I) 1/57*

## **Provision of accommodation**

- 16587 If a person owns the house occupied by the household and therefore saves the common fund from expenditure on rent, the value of that saving should be calculated as in DMG 16588 - 16590 and added to any cash contribution the person may make.
- 16588 The rental value of the house should be estimated by assuming that the household were renting the identical house in identical circumstances. Where the owner of the house has also bought the furniture the rental value to be estimated should be that of a furnished house. The DM should ask the claimant for an estimate of rental value. If

1. the claimant is unable or refuses to do this **or**
2. there are doubts about the validity of the evidence provided

the DM should request independent valuation from the District Valuer<sup>1</sup>.

*1 CI 151/50*

16589 If the owner of the property is paying the mortgage out of their own pocket, the amount of these payments should be disregarded as far as the household fund is concerned. But if the mortgage repayments are being made out of the household fund, the owner's contribution to the fund should be reduced by the amount of the repayment. Repairs should be dealt with on the same basis as mortgage payments. The reason for this rule is that the purchase of the house is a personal contract between the purchaser and the building society or other organization which has granted the mortgage. Therefore, if the purchaser is unable to pay the mortgage payments and these are paid out of the household fund, these payments are helping the purchaser to meet a personal liability and to acquire a valuable asset. The amount of the purchaser's contribution to the fund, whether actual or notional should be reduced by any mortgage payments made out of the fund

16590 If a member of the household pays the mortgage on behalf of the prospective owner of the property, the effect of that payment on the household fund depends upon whether the person would have made a higher contribution to the fund had they not paid the mortgage. Therefore, if by paying the mortgage their contribution to the fund was lower than it otherwise would have been, the payment should be regarded as a contribution to the fund and the prospective owner's contribution to the fund should be reduced by the amount of the payment. On the other hand, if a payment of the mortgage had no effect upon their contributions to the fund, the transaction should be regarded as a private matter between the parties concerned, with no consequent effect upon the fund.

16591 Where

1. the house is held on a tenancy **and**
2. the main rent is paid by the household fund **and**
3. part of the house is sub-let

the proceeds of sub-letting, whether or not they exceed the main rent payable for the house, should be taken into account as an addition to the household fund.

16592 Where, the tenancy is held by one particular member of the household who pays the rent out of their own pocket, the proceeds of any sub-letting should be regarded as the income of that member of the household. Their contribution to the fund will be the amount of the main rent less the proceeds from sub-letting.

## Accommodation provided by an employer

16593 Where the claimant lives in a house

1. provided by the employer **and**
2. in which they are required to live as one of the conditions of employment

the rental value of that house does not count as the person's earnings<sup>1</sup>. The rental value of the house should not be regarded as a contribution from the claimant but as a contribution from the employer, to the household in general.

*1 SS Ben (C of E) Regs, reg 3(1)(a)(iii)*

16594 Conversely, where the claimant

1. lives in a house provided by an employer **and**
2. is not required as one of the conditions of employment to live in that house

the rental value of the house is regarded as earnings and therefore their contribution to the household fund.

16595 If the employer pays for the electricity used in the household and pays the council tax of the household the cost of these items should be regarded as

1. the earnings of the claimant whether or not they are required to live in the house **and**
2. their contribution to the fund.

## Contribution in kind

16596 Any contribution in kind to the common fund should be included in assessing a person's contribution for maintenance purposes. Therefore, the market value of coal received by a miner should be included as part of their contribution<sup>1</sup>.

*1 CI 111/50*

16597 Where a person

1. buys an article such as a television set, a washing machine or a piece of furniture for the use of the household **and**
2. pays for it by hire-purchase or by a credit account

that person's weekly contribution to the fund should be calculated by dividing the normal retail price of the article by the number of weeks of its estimated life.

16598 Where this calculation proves difficult and it is known that the item in question can be rented, the weekly amount of a notional rent may be regarded as the claimant's contribution to the fund. This alternative method will, in most cases, provide a higher contribution to the fund but the difference is likely to be small.

16599 Where the item is bought with cash, the amount paid should be divided by the number of weeks of the estimated life of the article in question.

### **Child or qualifying young person spends periods with parent outside the household**

16600 Quite often a child or qualifying young person spends weekends or longer holidays with a parent who lives outside the household. In these circumstances the amount which that parent spends on the child or qualifying young person during these periods for food, accommodation, clothing etc. should be

1. regarded as a contribution to the household fund **and**
2. used to reduce the deficient contribution of the child or qualifying young person in question.

### **Child's or qualifying young person's school fees paid by parent outside the household**

16601 Some parents who are living outside the household, pay the child's or qualifying young person's school fees. Their payments should be treated as contributions to the household fund and allocated specifically to reduce the child's or qualifying young person's deficiency. This is because unless that parent paid the fees it would be necessary for them to be paid from the household fund and therefore the fund is saved that additional charge.

### **Contributor deliberately withholds contributions to the fund**

16602 The amount of the household fund and its distribution would be affected if a person, who is maintained out of the fund, refuses to contribute or deliberately reduces their contribution. If this situation was accepted that person could claim to be a dependant of another member of the household by retaining the whole or part of their income in order to spend it other than upon the cost of maintenance.

16603 Where the whole income of an alleged dependant is not at least equal to their share of maintenance from the household fund, any retention of income should not be allowed to diminish the value of their contribution.

## **Contributor with some exceptional requirement or personal liability**

16604 In certain cases it may be permissible if it can be shown that the amount retained is for some exceptional requirement or personal liability which existed when the claimant was in employment, for example an insurance premium<sup>1</sup>. Conversely, a contributor cannot include as part of their contribution, the cost of any items which would not be borne by the household fund. For example, a contributor to the household fund cannot include as part of their contribution the value of tools or special clothing bought for their occupation.

*1 CI 11/50; CI 266/50*

16605 If an individual has exceptional needs which are paid out of the fund, the cost of the exceptional needs is deducted from the fund before any calculation is made. For example, if a contributor to a family fund is a diabetic and has to have special foods, their contribution to the fund is reduced by the extra cost of these foods.

## **Calculation of maintenance costs**

16606 When the composition of both the household and the household fund has been decided, the DM can then

1. calculate the cost of maintenance of each person in the household **and**
2. decide whether or not the claimant's contribution to the dependant is at least half of that cost.

16607 The first stage is to calculate the unit cost of maintenance for each person who uses the fund. This is done by dividing the total fund by the number of units maintained out of it.

16608 The second stage is to decide whether the claimant can be regarded as contributing more than half the cost of maintenance of the person caring for the children or qualifying young persons for whom an increase of benefit is claimed. Where appropriate DMG 16609 - 16614 should be applied.

16609 If a member of the household does not contribute to the common fund enough to cover the cost of their own maintenance, the amount of the deficiency should be recorded.

16610 If a member of the household contributes more than the cost of their own maintenance, the amount of the surplus should be recorded.

16611 If a person contributes to the fund but is living elsewhere so that their maintenance is not a charge on the fund, the whole of their contribution should be recorded as a surplus.

16612 Where an outside contributor or a person as in DMG 16611 makes a contribution towards the maintenance of one or more persons under the terms of a court order, a legally binding agreement or a clearly defined voluntary agreement, the total contribution should

1. initially be included in the fund for the purpose of calculating the unit cost of maintenance **and**
2. then allocated to reduce the deficiencies of the persons for whom the contribution is being made.

This contribution should not be shown as a surplus as in DMG 16611 This should be done before applying the calculation in DMG 16613

16613 The deficiencies recorded under DMG 16609 should be regarded as being met by the contributors mentioned in DMG 16610 - 16611 in proportion to their surpluses. In other words, the part of the claimant's surplus which is to be allocated to the dependant is that part which bears the same ratio to their total surplus as the dependant's deficiency does to the total deficiencies. The deficiency of the dependant for whom increase of benefit is claimed should not be regarded as a first charge on the claimant's surplus.

16614 To find the amount of the claimant's contribution to the maintenance of a dependant, the following formula can be applied

$$\frac{\text{Dependant's deficiency}}{\text{Total deficiency recorded} \times \text{claimant surplus}}$$

16615 Set out below are some examples of how the calculation is applied. The basic facts of the case apply to all the examples. The details of the fund are changed in each example.

#### **Basic facts**

A man becomes incapable of work and claims an increase of IB for a child. The claimant is not a parent of the child and is not entitled to CHB for the child. It is a basic condition of entitlement to the increase that the claimant is or can be treated as entitled to CHB. As a result the DM must decide whether he can be treated as entitled to CHB<sup>1</sup>. The claimant must show that in the pre-claim period he was wholly or mainly maintaining the child.

*1 SS Ben (Dep) Regs, reg 4A(1)*

#### **Example 1**

Before becoming incapable of work the claimant was in employment. The parent of the child and the child were both residing with the claimant when he was not incapable of work. In the pre-claim period the only contributions were the claimant's earnings and the CHB for the child.

Units	Contribution	Surplus or deficiency
1	claimant £150	+ £85.68
1	parent -	- £64.32
½	child -	- £32.16

child benefit £10.80

Total units - 2½

Total contribution - £160.80

Unit cost of maintenance  $\frac{£160.80}{2\frac{1}{2}} = £64.32$ .

The claimant's surplus must be allocated to the deficiencies of the parent and the child in accordance with DMG 16607. The ratio of the deficiencies is parent two-thirds and child one-third. Therefore the surplus is allocated -

Parent = 2/3 or £57.12

Child = 1/3 or £28.56

As the claimant is contributing more than half the cost of maintenance he can be treated as entitled to CHB

### Example 2

Before becoming incapable of work the claimant was unemployed and in receipt of JSA(Cont). The parent of the child and the child were both residing with the claimant when he was not incapable of work. In the pre-claim period the only contributions were the claimant's JSA and the CHB in respect of the child

Units	Contribution	Surplus or deficiency
1	claimant £47.90	+ £14.42
1	parent -	- £23.48
½	child -	- £16.74

child benefit £10.80

Total contribution - **£58.70**

Unit cost of maintenance  $\frac{£58.70}{2\frac{1}{2}} = £23.48$

The surplus is allocated as follows -

Parent =  $\frac{2}{3}$  or £9.62

Child =  $\frac{1}{3}$  or £4.81.

As a result the claimant would satisfy the CHB test.

### Example 3

Before becoming incapable of work the claimant was in employment earning £150 a week. The parent of the child and child were both residing with the claimant when he was not incapable of work. In addition the other parent of the child, who is not living in the household, contributes £25 a week to the maintenance of the child

Units	Contribution	Surplus or deficiency
1	claimant £150	+ £75.68
1	parent -	- £74.32
$\frac{1}{2}$	child -	- £37.16
	child benefit £10.80	
	maintenance £25	

Total units -  $2\frac{1}{2}$

Total contribution - £185.80

Unit cost of maintenance = £185.80

$2\frac{1}{2}$  = £74.32.

The amount paid as maintenance specifically for the child must be allocated to the maintenance of the child. As the payment of £25 to the child's maintenance is more than half the unit cost of maintenance of the child the person paying that sum must be regarded as maintaining the child. As a result the claimant does not satisfy the CHB test.

#### Example 4

Before becoming incapable of work the claimant was unemployed. However entitlement to JSA(Cont) was exhausted and the claimant was during the pre-claim period in receipt of JSA(IB). This along with the CHB for the child was the only contribution to the fund. The person and the child were both residing with the claimant in the pre-claim period.

Units	Contribution	Surplus or deficiency
1	claimant £91.65	+ £50.67
1	parent -	- £40.98
½	child -	- £20.49

child benefit £10.80

Total units - 2½

Total contribution - £102.45

Unit cost of maintenance £102.45

2½ = £40.98

The surplus is allocated as follows -

parent = 2/3 or £33.78

child = 1/3 or £16.89

As a result the claimant would satisfy the CHB test.

### Child is a student at university or college

- 16616 There are special considerations where the child is a university or college student. The DM should decide whether the claimant is wholly or mainly maintaining the student. It may not always be necessary to apply the full provisions of the household fund calculation. The amount of any annual grant payable to the student by the LA should be established.
- 16617 The maintenance element of a grant paid to a F/T student by a LA is intended to cover the academic terms as well as the Christmas, New Year and Easter holidays. It does not cover the summer holiday. But the maintenance element of a grant paid to a student on a sandwich course is intended to cover the duration of the course exclusive of holidays.

- 16618 Any part of the grant which is directly attributable to the extra cost of the college or university training, for example books, travel, separate accommodation, should be deducted from the grant before it is added to the household fund as the student's contribution. The other income to the fund should be accepted and assessed as set out in DMG 16554 - 16555. Account should also be taken of any annual amount for which the claimant is directly responsible for the student, for example any annual parental contribution to the grant the claimant is required to make.
- 16619 During holiday periods it may also be necessary to take into account any extra contribution made by the dependant from any earnings. The unit cost of maintenance should be assessed and, if it is clear at that stage that the claimant is wholly or mainly maintaining the child, the CHB test should be regarded as satisfied.

### **Child or qualifying young person in hospital at time of claim**

- 16620 If the child or qualifying young person is in hospital at the date an increase is claimed, it will not be possible to apply the household fund method to decide whether the claimant was wholly or mainly maintaining. A comparison should be made between
1. the claimant's contribution to the dependant **and**
  2. the cost of food and accommodation by the hospital.

For advice on expenses which may be regarded as contributions to the dependant's maintenance see DMG 16491.

### **Allocations under court orders or legally binding agreements**

- 16621 If, under the terms of a court order or legally binding agreement
1. a person is bound to pay over a certain sum regularly towards the maintenance of an individual dependant **and**
  2. the terms of the order or agreement are complied with
- any allocation under the order or agreement should be taken into account in any household fund or other maintenance calculation.
- 16622 If the amount allocated exceeds one half the unit cost of maintenance of that dependant, that person must be regarded as mainly maintaining the dependant<sup>1</sup>. This is the case even where the dependant is
1. contributing more than one half the unit cost of their own maintenance **or**
  2. being maintained from some other source.

16623 Where there is a court order or legally binding agreement in force the amount specified in the order or agreement for the maintenance of a particular dependant must initially be allocated to that dependant. But where

1. the dependant is the husband, wife or civil partner of the contributor **and**
2. the amount allocated to the dependants exceeds the unit cost of maintenance

the surplus can be allocated to produce the most favourable result for the claimant<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 3(1)*

16624 A contribution to the maintenance of a person caring for a child or qualifying young person cannot be reallocated in this manner. Surplus contributions made for a husband, wife, civil partner, child or qualifying young person cannot be reallocated to help satisfy the wholly or mainly maintaining test in relation to the person caring for a child or qualifying young person.

16625 Payments of arrears cannot be added to the maintenance paid in any particular week<sup>1</sup>.

*1 R(U) 25/58*

16626 The principles described in DMG 16621 may also be applied whether or not the contribution from outside the household is made under the terms of a

1. court order **or**
2. legally binding agreement.

16627 DMs should note that

1. the contributions in question should be clearly identifiable under a voluntary agreement as being for the maintenance of a particular dependant **or**
2. it should be clear from the circumstances of the case that the contributions are intended to be for the maintenance of a particular dependant or dependants<sup>1</sup> (see also DMG 16612).

*1 CU 544/50*

### **Recovery of income support from arrears of dependency benefit**

16628 Where the needs of the dependant have been taken into account in assessing IS payable

1. to the dependant **or**
2. to some other person other than the claimant

all or part of the IS may in some circumstances be recovered from SS benefit payable to the claimant for the dependant.

16629 Any deduction under those provisions from benefit payable to a claimant for an adult or child dependant for any week is deemed to be contribution of the same amount by the claimant to the maintenance of the dependant for the same week<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 4*

## **Person partly maintained by two or more claimants**

16630 There are special provisions for cases where a person is partly maintained by two or more claimants, each of whom could be entitled to an increase of benefit if they were wholly or mainly maintaining that person<sup>1</sup>.

*1 SS Ben (Dep) Regs, reg 2(2)*

16631 The wholly or mainly maintaining test applies for the CHB test and in particular whether a person can be treated as entitled to CHB. The only circumstances in which a person can be treated as entitled to CHB is where that person is residing with the child or qualifying young person and parent who is entitled to CHB.

16632 As a result, the provisions cannot operate for those rival claimants who are not residing with the child or qualifying young person and the parent entitled to CHB. In this type of case the wholly or mainly maintaining test must be applied only to the claimant actually residing in the household.

16633 Where

1. a child or qualifying young person is partly maintained by two or more people who reside in the household **and**
2. the total contributions made by those other persons would satisfy the wholly or mainly maintaining test

the child or qualifying young person is treated as wholly or mainly maintained by the claimant who contributes the larger or largest amount.

16634 If the contributions are equal, the dependant is treated as maintained by the elder or eldest of the claimants or by the one designated in writing by a majority of the contributing claimants. The increase of benefit may pass from one contributing claimant to another when the majority of the contributing claimants revoke a designation and designate another of their number to receive the increase.

16635 If the one who has been receiving the increase ceases to be entitled to benefit and there are still two or more claimants who are contributing to the dependant's maintenance the provisions should be applied again to those claimants.

16636 This special provision can be applied only to two or more claimants, that is, the contributors must, at the time to which the claim relates, actually be entitled to a benefit for which an increase of benefit may be paid<sup>1</sup>.

*1 CS 547/49*

16637 The application of the household fund rules, sometimes results in two people being treated as contributing equally to the maintenance of a person for whom increase of benefit is claimed. As it cannot be decided accurately how the fund is distributed among the people maintained out of it, there will be an element of doubt as to which of two apparently equal contributors is in fact providing the main maintenance. If only one of the contributors has made a claim for benefit it may be assumed that the claimant is contributing the greater amount and therefore mainly maintaining the child or qualifying young person.

### **Wholly or mainly maintaining test satisfied**

16638 Where, following application of the household fund method of calculation, the claimant can be accepted as wholly or mainly maintaining the child or qualifying young person, the test should be regarded as satisfied until it is clear that it has come to an end<sup>1</sup>. This also applies where no household fund test was applied because dependency did not arise until after the specified time.

*1 CS 58/49 (KL); R(S) 12/83*

16639 Where the household situation remains the same and the claimant contributes to the child's or qualifying young person's maintenance not less than the amount of increase received, the test should be regarded as satisfied. In this situation it will in practice be hard to show that the claimant is not contributing the amount of the increase.

### **Contributing test**

16640 The DM should supersede the decision awarding the increase<sup>1</sup> where

1. an award is made on the basis that the claimant is contributing towards the cost of maintaining a child or qualifying young person at a rate not less than the required rate **and**
2. it is then discovered that the claimant is not doing this.

*1 SS A Act 92, s 25(1)*

16641 The DM may be asked to look again at the award of the increase where the claimant has paid over less than the total amount of contributions required to satisfy the contributing test for the whole period of the claim. The DM should consider whether, looking at the period as a whole

1. the claimant can still be regarded as contributing at the required weekly rate even though there are some gaps in payment **or**

2. that the total amount paid over is slightly less than the total amount required to satisfy the contributing test for every week.

16642 The DM should not supersede the decision awarding the increase if satisfied that the claimant can still be regarded as contributing at the required rate. But if the DM is not satisfied, the aim should be to allocate the isolated payments to the weeks of payment and succeeding weeks in such a manner, taking into account the provisions in DMG Chapter 16, as to keep the overpayment to a minimum.

16643 The DM should not supersede the decision awarding the increase to any case in which the claimant has contributed the full amount although they may not have done so immediately. The DM may be asked to look again at the award of the increase because a considerable period has elapsed between the date on which the

1. increase was paid to the claimant **and**
2. claimant contributed to the maintenance of the child or qualifying young person.

16644 Where an overpayment has occurred, unless the claimant can show that there was no misrepresentation or failure to disclose (see DMG Chapter 09) they must be required to repay not merely the difference between the

1. amount they were required to contribute **and**
2. lesser amount they actually contributed

but the whole of the amount paid to them<sup>1</sup>.

*1 R(U) 11/71*

16645 - 16649

## Special cases

### Rival child dependency claimants - priority of entitlement

- 16650 There is special provision<sup>1</sup> for priority of entitlement where
1. a man is entitled to an increase of Cat A or Cat C RP for a child or qualifying young person **and**
  2. at the same time, his wife is entitled to an increase of Cat B or Cat C RP for the same child or qualifying young person.

Guidance on this is set out in the Benefit Specific Guidance.

*1 SS (OB) Regs, reg 15*

### Widowed mother's allowance

- 16651 A widow who has established entitlement to WMA is entitled to an increase of that benefit for children or qualifying young persons for whom she is entitled to CHB. The children or qualifying young persons must be
1. a son or daughter of the woman and her late husband (this may include a child born after the death of the husband) **or**
  2. a child or qualifying young person for whom her late husband was, immediately before his death, entitled to CHB **or**
  3. if the woman and her late husband were residing together immediately before his death, a child or qualifying young person for whom she was then entitled to CHB<sup>1</sup>.

*1 SS CB Act 92, s 37(2) & 80(5)*

- 16652 Where a widow's entitlement to WMA is based upon the provisions referred to in the Benefit Specific Guidance her late husband should be treated as entitled to CHB for the purpose of satisfying the test in DMG 16651 for any child or qualifying young person for whom
1. a previous husband of the widow by a marriage which ended with that husband's death was, immediately before his death, entitled or treated as entitled to CHB **and**
  2. the widow was entitled or treated as entitled to CHB immediately before the death of her late husband<sup>1</sup>.

Where the death of the previous husband took place before 4.4.77, the condition in **the first part** is satisfied if, at the date of his death, the child or qualifying young person in question was a child of his family. Where the death of the late husband

took place before 4.4.77, the condition in the second part is satisfied if, at the date of his death, the child or qualifying young person was a child of the widow's family<sup>2</sup>.

*1 SS (WB & RP) Regs, reg 16(2); 2 reg 16(3)*

## **Unemployability supplement with workmen's compensation**

16653 A claimant who is entitled to US<sup>1</sup> has the same right to payment for a child or adult dependant as if the injury or disease were one for which IIDB was payable.

Entitlement to US arises where a claimant

1. has been on or after 5.7.48 entitled to WC **and**
2. could be treated as incapable of work and likely to remain permanently incapable.

*1 SS CB Act 92; SS (Gen Ben) Regs, reg 42*

16654 A claim for an increase for a child or adult dependant is treated as if it were a claim for an increase of IIDB<sup>1</sup>. But a claimant is not entitled to payment under these provisions for more than one injury or disease, or during any period for which they are entitled IIDB (with US). The abolition of US from 6.4.87 has no effect on this<sup>2</sup>.

*1 SS (Gen Ben) Regs, reg 45; 2 SS CB Act 92, Sch 8, para 8(6)*

16655 Where a claimant is entitled to an increase for a child or qualifying young person under these provisions<sup>1</sup> there may also be entitlement for an increase for a woman having the care of a child or qualifying young person<sup>2</sup>. Exceptionally, however, a claimant cannot be entitled to an increase for a child or qualifying young person for whom an increase is payable under the PB and MDB scheme. Therefore, they cannot be entitled to an increase for a woman having the care of that child or qualifying young person<sup>3</sup>.

*1 SS (Gen Ben) Regs, reg 45; 2 SS Ben (Dep) Regs, reg 10; 3 PB & MDB Scheme, Art 6(i)(b)*

## **Former constables and firefighters**

16656 There is no provision<sup>1</sup> for awarding entitlement to payments for dependants as if the injury or disease were one in respect of which IIDB was for the time being payable. ADIs are not payable to former constables and fire-fighters whose entitlement to US<sup>2</sup>.

*1 SS (Gen Ben) Regs, reg 44; 2 reg 45*

16657-16999

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