

Chapter 24 - Special cases

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Chapter 24 - Special cases

General

Scope of this Chapter

- 24001 This Chapter explains how to calculate the amount of JSA or IS payable where people are
1. in hospital (see DMG 24002)
 2. members of joint-claim couples where one member fails to attend or fails to satisfy the labour market conditions (see DMG 24145)
 3. members of joint-claim couples where one member is outside GB (see DMG 24146)
 4. without accommodation (see DMG 24156)
 5. members of religious orders (see DMG 24170)
 6. prisoners (see DMG 24197)
 7. temporarily separated members of a couple or polygamous marriage (see DMG 24241)
 8. absent from GB/UK (see DMG 24247)
 9. appealing against a decision that they are not incapable of work (see DMG 24370)
 10. entitled to a mortgage interest run-on (see DMG 24390)
 11. from abroad or subject to immigration control (see DMG 24500)
 12. living in a care home or independent hospital (see DMG 24163).

People in hospital

General

JSA(Cont) or JSA(IB) claimant admitted to hospital

24002 A JSA claimant who is admitted to hospital will not normally be able to satisfy the conditions of being available for employment, ASE and capable of work. But there are special provisions (see DMG Chapters 20 and 21) for treating a claimant as available for employment, ASE and capable of work for periods of up to two weeks sickness

1. twice in any JSP **or**
2. if the JSP lasts for more than a year, twice in any year.

Claimants may continue to receive JSA for these periods.

Note: The following guidance does not apply to JSA(Cont).

24003 - 24006

Free in-patient treatment

Deciding free in-patient treatment

24007 A person must be in each of the following categories to be receiving free in-patient treatment

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

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

1 NHS Act 06; NHS (Scot) Act 78; NHS & CC Act 90

Maintained free of charge

24008 A person is treated as being maintained free of charge¹ in a hospital or similar institution unless

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

1 SS (HIP) Regs, reg 2(2); 2 NHS Act 06, s 44; NHS (Scot) Act 78, s 58 & Sch 7A, para 14; NHS & CC Act 90, Sch 2, para 14; 3 SS (HIP) Regs, reg 2(2)

24009 In any other circumstances the person is treated as maintained free of charge. For example when

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

3. a person is a patient in a care home being funded under arrangements made by the HA³.

1 NHS Act 06, s 190; NHS (Scot) Act 78, s 55; 2 NHS Act 06, s 190; NHS (Scot) Act 78, s 56; 3 NHS Act 06; NHS (Scot) Act 78

Burden of proof

- 24010 The burden of proving that a person is not being maintained free of charge rests with that person¹.

1 CS 591/49

24011 - 24014

Medical or other treatment

- 24015 To be treated as receiving free in-patient treatment a person must be receiving

1. medical treatment, for example
 - 1.1 surgical treatment
 - 1.2 administration of drugs and injections **or**
2. other treatment which includes nursing services by professionally trained staff in the form of
 - 2.1 observation
 - 2.2 therapy
 - 2.3 support appropriate to the person's needs
 - 2.4 advice and training in domestic and social skills.

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

- 24016 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment¹.

1 R(S) 26/54

- 24017 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day¹.

1 R(S) 4/84

Hospital or similar institution

Hospital

24018 A hospital¹ is any of the following

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

1 SS (HIP) Regs, reg 2(2); NHS Act 06, s 275; NHS (Scot) Act 78, s 108

24019 Illness includes¹

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

1 NHS Act 06, s 275; NHS (Scot) Act 78, s 108

24020 Mental disorder means

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

1 MH Act 83, s 1(2); 2 Mental Health (Scotland) Act 1984

Similar institution

24021 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the DM should decide as a question of fact whether it is similar to a hospital taking into account

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

24022 A hospital or similar institution also includes those

1. maintained by or on behalf of the¹
 - 1.1 DH
 - 1.2 Welsh Office
 - 1.3 Scottish Executive Department of Health **or**
2. maintained or administered by the Defence Council, for example an army, navy or air force hospital.

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

1 NHS Act 06, s 4; NHS (Scot) Act 78, s 102

Examples of hospitals or similar institutions

24023 A hostel or care home providing accommodation and social care to former alcoholics or drug addicts is not similar to a hospital.

An institution caring for former alcoholics, drug addicts or psychiatric patients which provides a degree of medical treatment or rehabilitation by trained nursing staff may be a similar institution to a hospital.

A care home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the care home. But if the provision of nursing care is minimal, for example rarely expected, the care home may not be a hospital.

24024 - 24027

In-patient

24028 In-patient is not defined and should be given its ordinary meaning of a patient who occupies a bed in a

1. hospital **or**

2. similar institution

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

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

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

24029 Examples of when a person would be included as an in-patient are where the person is

1. a patient and spends part of each day away from the hospital
2. provided with meals by close relatives
3. a nurse treated in the nursed sick bay of the hospital in which the nurse works¹.

1 R(S) 2/52

24030 Examples of when a person would not be included as an in-patient are where the person is

1. receiving treatment at home during the period a rehabilitation centre is closed for a holiday¹
2. a matron receiving treatment in ordinary living quarters at a hospital².

1 R(I) 14/56; 2 R(S) 28/52

Prescribed legislation

24031 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation¹. Whether a person is to be treated as an in-patient, depends on the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

1. the DH **or**
2. the Scottish Executive Department of Health **or**
3. a Health Board in Scotland **or**
4. a NHS Trust.

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

1 NHS Act 06; NHS (Scot) Act 78; NHS & CC Act 90

England and Wales

24032 HAs acting on behalf of the Secretary of State can

1. arrange for long term health care in a care home for a person whom they assess as needing that care¹ (in this case the service must be provided free of charge and the HA is responsible for the full cost) **or**
2. contribute to the cost of care through payments to a LA, voluntary organization or housing association² for
 - 2.1 social care **or**
 - 2.2 accommodation **or**
 - 2.3 housing costs
 for a person who does not need in-patient care from the NHS **or**
3. make grants to voluntary organisations³ towards the cost of care for a person who does not need in-patient care from the NHS.

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

1 NHS Act 06, s 12; 2 s 28A; 3 HS & PH Act 68, s 64

Scotland

24033 Health Boards acting on behalf of Scottish Ministers can

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

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

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

Services provided under NHS legislation

24034 Examples of services under NHS legislation are¹

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

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

1 NHS Act 06, s 3(1); NHS (Scot) Act 78, s 36 & 37

Imprisonment

24035 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment because these wings are administered by

1. the Home Office **or**
2. in Scotland, the Scottish Executive Justice Department.

Prisoner admitted to hospital

24036 The DM should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation¹ is not a patient for IS purposes and has an applicable amount of nil **or**
2. under prescribed mental health legislation² other than that in **1.** above is a patient for IS purposes and has entitlement to their full applicable amount.

1 IS (Gen) Regs, reg 21(3ZA) Sch 7, para 2A; MH Act 83 s 47, s 45A; MH (C & T) (Scot) Act 03 s 136, s 130; Criminal Procedure (Scotland) Act 1995; 2 MH Act 83

24037 - 24040

Community care arrangements

Arrangements by Health Authorities and Health Boards

24041 As part of a community care programme, a HA or Health Boards may make a variety of arrangements with care homes or hostels for

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

The DM should consider DMG 24007 to decide whether the person is receiving free in-patient treatment in the home or hostel (if the LA is involved in the arrangements see DMG 24063).

24042 Examples of arrangements made by HAs and Health Boards under community care programmes are

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

24043 - 24047

Points to consider

24048 The DM should consider the guidance in DMG 24049 - 24054 when deciding whether the person is receiving free in-patient treatment in the new accommodation.

24049 When deciding whether the new accommodation is a hospital or similar institution the DM should consider the definition in DMG 24018 et seq. The DM should not compare the new accommodation with the person's previous hospital accommodation.

24050 If the arrangements with the HA or Health Board and the home or hostel are under any of the provisions of the prescribed legislation¹, DMG 24007 is satisfied.

1 NHS Act 06; NHS (Scot) Act 78; NHS & CC Act 90

24051 If a HA or Health Board helps a voluntary sector home by awarding a grant or loan under other legislation¹, DMG 24007 is not satisfied. But if the HA or Health Board have a contractual agreement to pay a grant for future financial years, this may be evidence that the agreement has been made under prescribed legislation², and the person may be receiving free in-patient treatment.

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

2 NHS Act 06; NHS (Scot) Act 78; NHS & CC Act 90

24052 A HA or Health Board may agree to provide help to a home on the assumption that the person will not be treated as receiving free in-patient treatment for IS or JSA(IB) purposes. For example, they may agree to pay the difference between

1. ordinary applicable amounts of IS or JSA(IB) **and**
2. the amount charged for the home.

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

1 NHS Act 06; NHS (Scot) Act 78; NHS & CC Act 90

24053 A HA or Health Board can provide financial assistance or services, for example they may provide trained nursing staff. If the home reimburses

1. the **full** cost of the services to the HA or Health Board, DMG 24007 is not satisfied and the person is not receiving free in-patient treatment **or**
2. part of the cost of the services, the arrangement may be under prescribed legislation¹.

1 NHS Act 06; NHS (Scot) Act 78; NHS & CC Act 90

24054 The arrangement between the HA or Health Board must include continuing help. If a placement is found without any continuing commitment from the HA or Health Board to fund the care, DMG 24007 is not satisfied. For example, a hospital social worker may help a patient who is about to be discharged to find a suitable care home.

24055 - 24060

Existing cases - Revision or Supersession

24061 The DM may decide that a person who is already living in a home or hostel under arrangements made by a HA or Health Board is receiving free in-patient treatment. The provision of DMG guidance is not grounds to revise or supersede an existing decision, and the existing decision continues to apply.

24062 Enquiries should be made to decide whether all the conditions in DMG 24007 are satisfied if

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

If all the conditions in DMG 24007 are satisfied the person is receiving free in-patient treatment.

Local authority placements

24063 LAs have responsibilities for placing people in care homes¹. LAs

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

If a LA has made the placement, the conditions in DMG 24007 are not satisfied because the placement has not been arranged under prescribed legislation³. Any funding from the HA or Health Board does not affect the placement.

*1 NA Act 48; SW (Scot) Act 68; 2 NHS Act 06, s76; NHS (Scot) Act 78;
3 NHS Act 06; NHS (Scot) Act 78; NHS & CC Act 90*

24064 - 24071

Periods of free in-patient treatment

Period of free in-patient treatment

24072 A person is receiving free in-patient treatment for any period that the conditions in DMG 24007 are satisfied. When working out such periods, DMs **should not count**

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

as days of free in-patient treatment¹.

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

24073 DMs **should count**

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

24074 A period of free in-patient treatment therefore

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

24075 If a patient is transferred from one hospital to another, the day of transfer is treated as a day in hospital¹.

1 R(S) 4/84

Example

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

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

24076 - 24090

Hospital in-patients - applicable amounts

General

Revision or supersession of premiums

24091 See DMG Chapter 23 for guidance on the effect of hospital admission on premiums.

24092

Housing costs

24093 If the claimant is treated as continuing to occupy a dwelling as the home, the DM should consider housing costs (see DMG Chapter 23).

Transitional element

24094 In some cases there may be entitlement to a TE (see DMG Chapter 36).

Patients who normally live in a care home, or residential accommodation

24095 From 6.10.03 the special rules for calculating an applicable amount where the patient normally lives in

1. a care home, if the claimant has PR
2. residential accommodation

have been abolished.

24096

Membership of the family

24097 The DM should consider the guidance in DMG Chapter 22 to decide whether a patient is still a member of a family if the patient is a

1. lone parent **or**
2. member of a couple **or**
3. member of a polygamous marriage
4. a child or young person.

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

Rounding

24098 If the applicable amount would include a fraction of a penny, it should be rounded up to the next whole penny¹.

1 JSA Regs, Sch 5, para 18 & Sch 5A, para 13; IS (Gen) Regs, Sch 7, para 20

24099 - 24105

JSA(Cont) cases

Claimant in hospital

24106 The personal rate of a JSA(Cont) claimant is not affected if the claimant is in hospital. But a JSA claimant who is in hospital will not normally be able to satisfy the conditions of being

1. available for employment **and**
2. ASE **and**
3. capable of work

and may need to claim IS or another appropriate benefit, for example IB.

Note: There are special provisions for treating a claimant as available for employment, ASE and capable of work (see DMG Chapter 20 and 21) for periods of up to two weeks sickness twice in any JSP or if the JSP lasts for more than a year, twice in any year.

IS cases

Claimant in hospital more than four weeks

24107 The DM should consider whether any SDP should continue when the claimant has been in hospital for four weeks (see DMG Chapter 23).

All IS/JSA(IB) cases

Person in hospital

24108 The normal applicable amount of a claimant may be affected when the claimant or a member of his family has been a patient for a continuous period of more than 52 weeks. At this point the DM should consider withdrawing¹ any

1. HPP
2. DP
3. EDP
4. DCP.

Note: But the claimant will not normally be able to satisfy all the conditions for JSA (see DMG 24106), and may need to claim IS or another appropriate benefit, for example IB.

1 JSA Regs, Sch 1, para 12(5), 13(2), 15A(2), 16(2); IS (Gen) Regs, Sch 2, para 10(6), 11(2), 13A(2), 14(2)

Example

Bert suffered a stroke in 2008 and was admitted to hospital on 1.8.08. Bert went on home leave for a few days over Christmas returning to hospital on 27.12.08. On 1.8.09 a DM decides Bert is now entitled to a Disability premium, as he has been incapable of work for a period of 364 days. The removal of the disability premium is not considered until after 52 continuous weeks as an in-patient and therefore will not be appropriate until December 2009.

24109 - 24144

Others

One member of joint-claim couple fails to attend or satisfy the labour market conditions

24145 Where one member of a joint-claim couple

1. fails to attend the New Jobseekers Interview¹ **or**
2. for a period determined by the Secretary of State
 - 2.1 is not available for employment
 - 2.2 is not actively seeking employment
 - 2.3 does not have a current JSAG²

calculate the applicable amount for the other member as if they are a single claimant for the relevant period (for attendance issues see DMG 20911).

1 JSA Regs, Sch 5, para 17A(a); 2 Sch 5, para 17A(b)

One member of joint-claim couple is outside GB – new claims

General

24146 A joint claim couple may be entitled to Jobseeker's Allowance although one member of the couple is outside of GB if that person is treated as being in GB. A person can be treated as in GB for

1. four weeks
2. up to seven days (see DMG 072154) **or**
3. any period abroad in a hospital or similar institution for NHS treatment (see DMG 070661 - 070668).

Treated as in GB for four weeks

24147 For Jobseeker's Allowance a person who is temporarily absent from GB is treated as being in GB for four weeks if

1. that person is in Northern Ireland **and**
2. the absence is not expected to last more than 52 weeks.

but only where the absence occurs at the date of claim¹.

1 JSA Regs, reg 50(6B)(a)

Attending a job interview

24148 For a joint claim Jobseeker's Allowance a person is treated as in GB during a temporary absence lasting seven consecutive days¹ or less where

1. the absence is to attend a job interview

but only where the absence occurs at the date of claim².

1 Jobseeker's Allowance Regs, reg 50(6B)(c); 2 reg 50(6B)

Person receiving a training allowance

24149 A Joint claim couple where one person is receiving a training allowance can be paid JSA for an absence from GB lasting four weeks if that person

1. is in receipt of a training allowance¹

but only where the absence occurs at the date of claim²

1 JSA Regs, reg 50(6B)(b); 2 reg 50(6B)

Treated as in GB for the duration of the absence

24150 One of a joint claim couple can be treated as being in GB for the duration of their absence¹ if

1. the absent person was entitled to Jobseeker's Allowance immediately before leaving GB²
2. the person is receiving treatment at a hospital or other institution where the treatment is being provided outside GB³ under prescribed legislation⁴

*1 Jobseeker's Allowance Regs, reg 50(6AA); 2 reg 50(6AA)(a); 3 reg 50(6AA)(b);
4 NHS Act 06, s 3 & 123: NHS & CC Act 90, Sch 2, para 13*

Absence during claim

24151 Where an absence, described at DMG 24147, 24148 or 24149, occurs during the currency of a joint claim the joint claim couple will no longer be members of the same household¹ and the joint claim will end. The person who is still in GB will continue to receive JSA as a single person²

1 JSA Regs, reg 78; 2 reg 83

24152 - 24155

People without accommodation - Income-based Jobseeker's Allowance and Income Support

Applicable amount for people without accommodation

24156 Where a DM decides that a claimant has no accommodation the applicable amount should include only the normal personal allowance for the claimant and any partner¹. The DM **cannot** for example include dependants allowances, housing costs, premiums or TE.

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

1 JSA Regs, reg 85 & Sch 5, para 3 & Sch 5A, para 2; IS (Gen) Regs, reg 21 & Sch 7, para 6

24157 DMG 24156 applies only to people **without** accommodation. The fact that a person may have no fixed address is not relevant to the decision.

Meaning of accommodation

24158 The word “accommodation” is not defined in the SS legislation, but in this context it means an effective shelter from the elements

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

24159 The site of the accommodation may alter from day to day, but it is still accommodation if the structure is habitable. Materials which give only a small amount of protection from the elements, for example

- cardboard boxes
- sleeping bags
- bus shelters
- park benches

do not fall within the description of accommodation.

Motor Cars

- 24160 Motor cars are designed as a means of transport. They are not intended for use as a dwelling house or living premises and are not suited for continuous occupation. A person who is living in a car cannot be regarded as having accommodation¹.

1 R(IS) 23/98

Mobile motor homes

- 24161 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and are suited for continuous occupation should be regarded as accommodation.

Absence from home

- 24162 Claimants should be regarded as having accommodation if they are
1. temporarily absent from the dwelling occupied as the home **and**
 2. for the period of their absence, living a lifestyle as though they have no accommodation.

In these circumstances housing costs may be allowed (see DMG Chapter 23).

Care home and Independent hospitals

- 24163 The allowances for residents of care homes or independent hospitals¹ were abolished in October 2005. Residents are entitled to normal applicable amounts. (See Appendix 5 for the regulations prior to October 2005).

1 National Health Service Act 2006, sec 275; Care Standards Act 2000, sec 2; Regulation of Care (Scotland) Act 2001, sec 2(5)(a) & (b)

24164 - 24169

Members of religious orders - Income-based Jobseeker's Allowance and Income Support

Meaning of religious order

24170 A religious order is

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

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

24171

Applicable amount for members of religious orders

Member fully maintained

24172 The applicable amount is nil¹ if the claimant is

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

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

1 JSA Regs, reg 85 & Sch 5, para 4 & Sch 5A, para 3; IS (Gen) Regs, reg 21 & Sch 7, para 7

Example

Isobel is a 54 year old nun who is a member of the Poor Clare Religious Order. The local Poor Clare community group to which Isobel belongs does not receive support from the Orders central funds instead she is supported from the groups community funds derived from donations, legacies and the proceeds from the sale of small items made by the nuns. Isobel is fully maintained by the order.

24173 The commitment to a religious order is often for life. There are few situations where a member of a religious order would be entitled to IS or JSA(IB) although entitlement should be calculated in the normal way if a person leaves the order, ceases to be maintained by it and goes to live in separate accommodation.

Member not fully maintained

24174 JSA(IB) or IS may be awarded if a member of a religious order

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

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

24175 A member of a religious order may have no apparent income or capital of their own. But the DM should consider whether the rules of the order allow

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

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

24176 A member of a religious order may still be fully maintained by the order even though they may have some funds of their own, out of which they may be contributing to the order¹.

1 [2011] EWCA Civ 103

24177 - 24184

Prisoners

JSA(Cont)

[See DMG Memo 07/20]

- 24185 A person who is on temporary release (see DMG Chapter 21) or is detained in custody, will not be able to satisfy the condition of being available for employment, and will not be entitled to JSA(Cont).

JSA(IB)

JSA(IB) claimant is a prisoner

- 24186 A person who is on temporary release (see DMG Chapter 21) or is detained in custody, will not be able to satisfy the condition of being available for employment, and will not be entitled to JSA(IB). The claimant may need to claim IS for housing costs. Any partner may need to claim IS or JSA(IB).

Detained in custody

- 24187 A claimant can be treated as available¹ if, for a maximum of 96 hours before being released, he is held in
1. police detention under specific legislation² **or**
 2. legal custody as defined in Scotland³, so long as they are not a prisoner.

Note: This only treats the claimant as available for the actual period he is in custody.

*1 JSA Regs, reg 14(1)(s); 2 Police and criminal evidence Act 1984, s 118(2);
3 Criminal Procedure (Scotland) Act 1995, s 295*

Example

A man says that he failed to attend the Jobcentre Plus office as required on Thursday 8 June because he was being questioned in police custody from 4pm on Wednesday 7 June until 11am on Saturday 10 June. At 11am he was released and not charged with any offence.

The man was held in police custody for less than 96 hours. He can be treated as available for the whole period he was in custody.

24188 - 24191

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

- 24192 Members of a couple or polygamous marriage are not treated as a member of the household¹ and are not a member of the family if one, both or all of them are

1. detained in custody
 - 1.1 pending trial **or**
 - 1.2 pending sentence upon conviction **or**
2. serving a sentence imposed by a court **or**
3. on temporary release² which may be allowed for a variety of reasons including
 - 3.1 home leave **or**
 - 3.2 attendance at rehabilitation courses **or**
 - 3.3 work during the daytime.

1 JSA Regs, reg 78(3)(b); 2 Prison Act 52; Prisons (Scotland) Act 89, s 39(6)

24193 If DMG 24192 applies to the partner of a JSA claimant¹, the claimant should be treated as

1. a single claimant **or**
2. a lone parent if there is any child or young person in the family (see DMG Chapter 22 for further guidance on membership of the family).

Note: Lone parents may claim IS.

1 JSA Regs, reg 78(3)(b)

24194

Membership of the family - child or young person

24195 Children or young people are not treated as a member of the household¹ and are not a member of the family if they are

1. detained in custody
 - 1.1 pending trial **or**
 - 1.2 pending sentence upon conviction **or**
2. serving a sentence upon conviction.

See DMG Chapter 22 for further guidance on membership of the family.

1 reg 78(5)(i)

24196 If DMG 24195 applies to a child or young person, the claimant's applicable amount should be revised or superseded to exclude

1. any personal allowance or premium for that child or young person **and**
2. if no other dependants remain in the family
 - 2.1 FP **and**
 - 2.2 if the claimant is a lone parent, FP(LP) where applicable.

See DMG Chapter 22 if a child or young person who is in custody or serving a sentence lives with the claimant for part of the benefit week.

IS

Meaning of prisoner

24197 **[See DMG Memo 07/20]** The applicable amount of an IS claimant is affected if the claimant is a prisoner, or DMG 24210 or DMG 24215 applies to a member of the family. A prisoner¹ is a person

1. detained in custody following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person
 - 1.1 temporarily removed from prison to hospital unless DMG 24198 **3.** applies **or**
 - 1.2 living outside the prison under a pre-release employment scheme² **or**
 - 1.3 released on temporary licence which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
2. detained in custody on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital unless DMG 24198 **3.** applies.
3. released early under the End of Custody Licence arrangements.

1 IS (Gen) Regs, reg 21(3) & Sch 7, para 8; 2 R(I) 9/75

24198 The definition of prisoner does not include a person

1. under suspended sentence **or**
2. sentenced to community service **or**
3. transferred from court or prison to hospital who is detained under mental health legislation¹ (see DMG 24215)
4. released on licence **or**
5. who is on a
 - 5.1 home detention curfew **or**
 - 5.2 court ordered curfew **or**
 - 5.3 restriction of Liberty Order **or**
 - 5.4 mandatory probation service programme.

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

1 MH Act 1983, MH (C & T) (Scot) Act 03

Meaning of detained in custody

24199 The word “detains” describes the physical confinement of a person¹. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

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

1 R(S) 10/56

24200 Detention in custody might be

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

1 R(IS) 1/94

24201 Detention in custody does not include a period before proceedings begin where the person is released on bail.

Life Sentences

24202 Life sentences (or indeterminate sentences) fall into two categories -

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

24203 In both cases the trial judge sets a tariff period which is effectively the "punishment" part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the public. Otherwise they will remain in prison. A trial judge can decline to set a tariff period. In the case of mandatory lifers this is called a 'whole life order'. It means that a prisoner can never become eligible for a Parole Board review or for release.

24204 A prisoner who remains in prison beyond their tariff date does not become eligible for DWP benefits - they are still prisoners. Similarly a life sentence prisoner who is transferred to psychiatric hospital for treatment does not become eligible for DWP benefits when the tariff date has been reached. Such a patient would only become eligible for benefit upon release.

1 IS (Gen) Regs, reg 21

24205 - 24209

Period of detention in custody

24210 When working out the period for which a person is detained in custody

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

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

24211 A period of detention in custody therefore

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

Applicable amount - IS only

Claimant is a prisoner

24212 The applicable amount for a claimant who is a prisoner under DMG 24197 1. is nil¹.

Note: a claimant with an applicable amount of nil is not entitled to that benefit².

1 IS (Gen) Regs, Sch 7, para 8(a); 2 R(IS) 2/95

24213

Claimant is a prisoner on remand awaiting trial or sentence

24214 A person who is held on remand awaiting trial or sentence upon conviction (see DMG 24197 2.) may be entitled to IS¹. The applicable amount² is

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

1 IS (Gen) Regs, Sch 1B, para 22; 2 Sch 7, para 8(b)

Prisoner admitted to hospital

24215 The DM should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation¹ is not a patient for IS purposes and has an applicable amount of nil **or**
2. under prescribed mental health legislation² other than that in 1. above is a patient for IS purposes and has entitlement to their full applicable amount

1 IS (Gen) Regs, reg 21(3ZA) Sch 7, para 2A, MH Act 83 s 47, s 45A; MH (C & T) (Scot) Act 03 s 136, s 130; Criminal Procedure (Scotland) Act 1995; 2 MH Act 83

Technical lifer - England and Wales only

24216 A technical lifer¹ is an administrative classification which was given to certain prisoners² with a life sentence. It was given where the Secretary of State for Justice accepted that the criminal court that heard the individual's case would have given an order for hospital treatment rather than impose a sentence of imprisonment.

1 Regina (EM and others) v SoS for Work and Pensions [2009] EWHC 454 (Admin); 2 IS (Gen) Regs, reg 21(3)

Technical lifer admitted to hospital

24217 A technical lifer admitted to hospital should be treated, for the purposes of entitlement to IS, as though they had been given a hospital order¹ with no term of imprisonment. This means that a person with technical lifer status is eligible for IS as an ordinary hospital in-patient².

1 MH Act 83, s 37; 2 IS (Gen) Regs, reg 21(3)

Note: The practice of treating prisoners as technical lifers was abandoned in 2005. As a result the current number of technical lifers is fixed and will decrease over time.

24218 - 24224

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

24225 Members of a couple or polygamous marriage are not treated as members of the household¹ and are not members of the family if one, both or all of them are detained in custody

1. following sentence to a term of imprisonment by a criminal or civil court, including a person
 - 1.1 temporarily removed from prison to hospital **or**
 - 1.2 living outside the prison under a pre-release employment scheme **or**

- 1.3 released on temporary licence² which may be allowed for a variety of reasons including
 - 1.3.a home leave **or**
 - 1.3.b attendance at rehabilitation courses **or**
 - 1.3.c work during the daytime **or**
- 2. on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital.

See DMG Chapter 22 for further guidance on membership of the family.

1 IS (Gen) Regs, reg 16(3)(b); 2 Prison Act 52; Prisons (Scotland) Act 89

Partner of a prisoner claiming IS

- 24226 The partner of a prisoner may claim IS. The partner claiming IS should be treated as
- 1. a single claimant **or**
 - 2. a lone parent if there is any child or young person in the family (see DMG Chapter 22 for further guidance on membership of the family).

Membership of the family - child or young person

- 24227 Children or young people are not treated as members of the household¹ and are not members of the family if they are
- 1. detained in custody
 - 1.1 pending trial **or**
 - 1.2 pending sentence upon conviction **or**
 - 2. serving a sentence upon conviction.

See DMG Chapter 22 for further guidance on membership of the family.

1 IS (Gen) Regs, reg 16(5)(f)

- 24228 If DMG 24215 applies to a child or young person the claimant's applicable amount should be superseded to exclude
- 1. any personal allowance or premium for that child or young person **and**
 - 2. if no other dependants remain in the family
 - 2.1 **FP and**
 - 2.2 if the claimant is a lone parent, FP(LP) where applicable.

See DMG Chapter 22 if a child or young person who is in custody or serving a sentence lives with the claimant for part of the benefit week¹.

1 reg 16(6)

24229 - 24240

Temporarily separated members of a couple or polygamous marriage - JSA(IB) and IS

Temporary absence - couples

24241 A couple who are temporarily separated continue to be treated as members of the same household, for example, where one member of the couple goes into temporary residential care (respite care). But see DMG Chapter 22 for some exceptions¹. A special assessment is needed where

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

1 JSA Regs, reg 78, Sch 5, para 5 & 6; IS (Gen) Regs, reg 16, Sch 7, para 9 & 10;

*2 Polish Resettlement Act 1947, s 3, part II; 3 E & T Act 73, s 2;
Enterprise & New Town (Scotland) Act 1990*

24242 If DMG 24241 applies, the assessment is the greater of¹

1. the normal applicable amount for the couple **or**
2. the total of the applicable amounts for the claimant and partner assessed **as if** they are both
 - 2.1 single claimants (or lone parents as the case may be) **and**
 - 2.2 living in their present accommodation (see DMG Chapter 23).

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

1 JSA Regs, Sch 5, para 5 & Sch 5A, para 4; IS (Gen) Regs, Sch 7, para 9

Example

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

Assessment 1 - assess as a couple

The claimant is entitled to

1. the normal applicable amount for a couple
2. DP at the couple rate
3. a CP.

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

Assessment 2 - assess as single

The **claimant** is entitled to

1. the normal applicable amount for himself
2. DP at the single rate.

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

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

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

Temporary absence - polygamous marriages

24243 Members of a polygamous marriage who are temporarily separated continue to be treated as members of the same household. But see DMG Chapter 22 for some exceptions¹. A special assessment is needed where a member of a polygamous marriage is absent from the home in the circumstances in DMG 24241 1. (not 1.3)². The claimant's applicable amount should be the greater of³

1. the normal applicable amount for the family **or**

- 2. the total of the applicable amount
 - 2.1 for the members left at home **and**
 - 2.2 for each absent member assessed as if they are each
 - 2.2.a a single claimant (or lone parent as the case may be) **and**
 - 2.2.b living in their present accommodation.

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

1 JSA Regs, reg 78; IS (Gen) Regs, reg 16;

2 JSA Regs, Sch 5, para 6 & Sch 5A, para 5; IS (Gen) Regs, Sch 7, para 10;

3 JSA Regs, Sch 5 & reg 84 & Sch 5A & reg 86B; IS (Gen) Regs, Sch 7 & reg 18

24244 - 24246

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

Introduction

24247 It is a condition of entitlement to JSA and IS that a person is in GB¹. But entitlement can sometimes continue during an absence from GB. Guidance on entitlement to JSA and IS when a person is absent from GB is given in DMG 072150 et seq and 071940 et seq.

1 JS Act 95, s 1(2)(i) & Sch 1, para 11; SS CB Act 92, s 124(1); IS (Gen) Regs, reg 4

Claimant receiving treatment outside Great Britain

24248 The claimant may go abroad to have pre-arranged National Health Service treatment. If the claimant was entitled to JSA or IS immediately before they left GB, then

1. the claimant is treated as still being in
 - 1.1 GB while they are having the treatment **and**
 - 1.2 if they are a member of a couple, in the same household¹ as their partner at home for the period of the treatment **and**
2. JSA or IS can continue in payment².

1 JSA Regs, reg 78(1); IS (Gen) Regs, reg 16(1); 2 JSA Regs, reg 50(6AA) & (6C); IS (Gen) Regs, reg 4(3A)

Claimant absent from Great Britain

24249 A claimant who is absent from GB may be a member of a couple or polygamous marriage. Such a claimant can claim JSA or IS for the family for so long as entitlement continues (see DMG 071940 and 072150). The DM should calculate the applicable amount according to the circumstances of the family in GB¹. The family's income and capital should continue to be treated in the normal way.

*1 JSA Regs, Sch 5, para 10, 11, 12, & 13; Sch 5A, paras. 7 & 8;
IS (Gen) Regs, Sch 7, para 11, 11A, 12 & 12A*

Example

Gerhard is in receipt of IS for himself, his wife and their two children. On 2 March he goes abroad temporarily to visit his mother. He continues to satisfy the other conditions of entitlement while he is abroad. Gerhard's entitlement to IS can continue for the first four weeks of his absence (3 March to 30 March) (see DMG 071943).

Partner in Great Britain claims - couples

24250 Where the claimant is absent from GB, a claim for JSA or IS may be received from the partner in GB. This may be made at any time, even where the relevant period of entitlement in DMG 071943 has not run out. But the new claimant must at all times satisfy the normal conditions of entitlement.

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

1 IS Gen Regs, reg 21

24251 The absent partner should be treated as a member of the family for up to 52 weeks, provided that the absence is temporary (see DMG Chapter 22). Where the absent partner is

1. still in the UK, calculate the applicable amount in the normal way **or**
2. absent from the UK, calculate the applicable amount¹ as if
 - 2.1 the absent partner was still at home, if the period abroad has lasted for the relevant period in DMG 071943 or less **or**
 - 2.2 the partner in GB was a single claimant or lone parent, for any period over that of the relevant period in DMG 071943.

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

1 JSA Regs, Sch 5, para 10 & 11; Sch 5A, para 7; IS (Gen) Regs, Sch 7, para 11 & 11A

Example

Damon is in receipt of IS for himself, his wife Melanie, and their two children. On 16 March, Damon goes abroad temporarily and Melanie claims IS for the family. Damon has agreed to give up his entitlement from the 15th. Melanie satisfies the normal conditions of entitlement and Damon is treated as a member of the family while he is temporarily absent from the UK.

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

From 14 April onwards Melanie's applicable amount is calculated as if she was a lone parent. A personal allowance at the lone parent rate is awarded.

On 21 April, Damon starts temporary remunerative work abroad. This means that Melanie is no longer entitled to IS for the family, because she is a member of a married couple and her partner is in remunerative work.

24252 - 24254

Partner in Great Britain claims - polygamous marriages

- 24255 Where the claimant in a polygamous marriage is absent from GB, a claim for JSA or IS may be received from a partner in GB. A claim may be accepted from such a partner **only** when the absent claimant's entitlement to IS has ended. The new claimant must then satisfy the normal conditions of entitlement.
- 24256 Treat the partner in GB as a single claimant or lone parent¹. Any payments made to the claimant by the spouse/partner while absent from GB should be treated as liable relative payments.

1 JSA Regs, reg 78(3)(c); IS (Gen) Regs, reg 16(3)(d)

Partner absent from United Kingdom

- 24257 The partner of a claimant may be absent from the UK. The absent partner continues to be a member of the claimant's family for up to 52 weeks if the absence remains temporary (see DMG Chapter 22). The normal conditions of entitlement continue to apply during this period as if the absent partner were still at home.
- 24258 The normal rules for calculating the family's applicable amount change when the partner's absence from the UK
1. stops being temporary **or**
 2. exceeds the four or eight week¹ relevant period in DMG 071945
- whichever is the sooner

1 JSA Regs, reg 85 & Sch 5; IS (Gen) Regs, reg 21 & Sch 7, para 11

Amount payable

- 24259 Where DMG 24258 applies, calculate the applicable amount as if the partner absent from the UK was no longer a member of the household¹. This means that the claimants should be treated as if they are single claimants or lone parents when awarding a personal allowance.

*1 JSA Regs, Sch 5, para 10, 11, 12 & 13; Sch 5A, para 7 & 8;
IS (Gen) Regs, Sch 7, para 11, 11A, 12 & 12A*

- 24260 The income and capital of the whole family is taken into account in the normal way for up to 52 weeks of any temporary absence (see DMG 24257). This is so even though no personal allowance is in payment for the absent partner.

24261 After 52 weeks, or when the absence stops being temporary, the absent partner is no longer treated as a member of the household. Any payments from the absent partner should then be treated as liable relative payments.

Example

Paul is in receipt of IS for himself, his wife Lynda, and their son Dale. Their only other income is CHB and a personal pension payment of £40pw made to Lynda. On 7 June, Lynda goes abroad temporarily and Paul carries on claiming IS. Lynda is treated as a member of the family while she is temporarily absent from the UK.

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

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

24262 - 24276

Ilford Park Polish Home - Income Support cases only

24277 The special applicable amount payable to an IS claimant that resides in the Ilford Park Polish Home has been abolished. All claimants are entitled to normal applicable amounts.

24278 - 24369

Reduction in Income Support - appeal against a decision because of capability for work

- 24370 The applicable amount of an IS claimant should be reduced where the
1. DM has decided that the claimant is not incapable of work under the PCA **and**
 2. claimant has made, and is continuing with, an appeal against the DM's decision¹.

1 IS (Gen) Regs, reg 22A(1)

- 24371 The reduction is 20% of the single person's rate as prescribed¹.

	Claimant groups	Appropriate single age reduction
i	Single under 18	Less than 18 rate
ii	Couple both under 18	Less than 18 rate
iii	Single between 18 and 25	18 - 25 rate
iv	Couple one member under 18 the other between 18 and 25	18 - 25 rate
v	Single 25 or over	Over 25 rate
vi	Couple not falling under iv where one member aged 18 or over	Over 25 rate

1 reg 22A(1)(a)

- 24372 The amount of the reduction should be rounded, where it is not a multiple of 5p, to the nearest 5p (2.5p being rounded down).

- 24373 No reduction should be made on the first application of the PCA if on 12.4.95 the claimant¹
1. had been incapable of work for a continuous period of 28 weeks and was still incapable on that date **or**
 2. was in receipt of IVB or SDA.

1 reg 22A(3)

Transitional provisions

- 24374 The DM should not make a reduction¹ if the
1. decision under the PCA against which the claimant has appealed was made after 12.4.95 but before 2.10.95 **and**
 2. claimant's appeal has still not been determined.

1 IS (Gen) (JSA Consequential Amendments) Regs 96, reg 27(3);

Savings provision

- 24375 The DM should not make a reduction if the claimant's appeal is against an incapacity decision made before 13.4.95¹.

1 The Disability Working Allowance & IS (Gen) Amdt Regs 95, reg 20

Claimant entitled to disability premium

- 24376 DP may be affected if the DM decides that the claimant is not incapable of work (see DMG Chapter 23). This applies whether or not the claimant's IS is reduced as in DMG 24371.

24377 - 24389

Housing costs run-on

24390 A person may be entitled to IS in respect of housing costs for a limited period after they start remunerative work (see DMG 20530).

Applicable amount

24391 In these cases the applicable amount is the lowest of¹

1. the applicable amount in respect of housing costs **or**
2. the amount of IS JSA(IB) or ESA(IR) to which the claimant was entitled prior to commencing remunerative work **or**
3. if the claimant was in receipt of training allowance, the amount of IS, JSA, or ESA(IR) which he would have been entitled to in respect of housing costs.

1 IS (Gen) Regs, Sch 7, para 19A(1)

Changes to the applicable amount

24392 The applicable amount in respect of housing costs run on may only be varied if¹

1. there are changes to
 - 1.1 a personal allowance **or**
 - 1.2 premiums **or**
 - 1.3 an applicable amount paid in a special case
2. the amount of housing costs in the applicable amount changes as a result of
 - 2.1 the claimant being entitled to income support for a continuous period of 26 weeks or more **or**
 - 2.2 a change to the Standard Interest Rate **or**
 - 2.3 a non-dependant deduction either becoming or ceasing to become applicable.

1 IS (Gen) Regs, Sch 7, para 19A(2) & (3)

24393 - 24499

Person from abroad and persons subject to immigration control - JSA(IB) and IS

General

- 24500 Prior to 3.4.00 the definition of a PFA included asylum seekers. The applicable amount for a PFA was nil but many asylum seekers qualified for urgent case payments.
- 24501 The Asylum and Immigration Act 1999 removed entitlement for the vast majority of asylum seekers. The National Asylum Support Service was set up within the Home Office to provide support.

Persons from abroad

- 24502 A PFA is now defined as someone who has failed the habitual residence test¹. See DMG Chapter 7 for guidance on the habitual residence test.

1 JSA Regs, reg 85A(1); IS (Gen) Regs, reg 21AA(1)

- 24503 The applicable amount of a person from abroad is nil¹.

1 JSA Regs, Sch 5, para 14; IS (Gen) Regs, Sch 7, para 17

24504 - 24506

Persons subject to immigration control

24507 A person subject to immigration control (PSIC) means a person who is **not** an EEA national and who¹

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

1 Immigration & Asylum Act 1999 s 115

24508 A PSIC is excluded from IS and JSA(IB)¹ unless they fall within the category in DMG 24509.

1 Immigration & Asylum Act 1999 s 115

PSICs entitled to normal IS/JSA(IB)

24509 The following PSICs can be considered for IS/JSA(IB) under the normal rules:

1. certain asylum seekers¹.

*1 SS (Immigration & Asylum)
Consequential Amendment Regulations 2000 reg 2(5) & Sch 1B, para 21*

PSICs entitled to urgent case payments

24510 PSICs can no longer be considered for urgent case payments¹

1 SS (Misc Amends) (No 5) Regulations 2009 (SI 2009/3228) reg 2(1)

Lone parent is not a PSIC but child or young person is a PSIC

24511 If

1. a lone parent is not a PSIC, or falls within the category in DMG 24509 **and**
2. a child or young person in the family is a PSIC

an amount should be included in the applicable amount for that child or young person¹. (but see DMG 23039)

1 JSA Regs, reg 83(b) & (d); IS (Gen) Regs, reg 17(1)(b) & (c)

Lone parent is a PSIC but child or young person is not a PSIC

- 24512 A lone parent that is a PSIC is not entitled to benefit and so will not be entitled to any applicable amounts for a child or young person that is not a PSIC.

Couples

Claimant is not a PSIC but partner is a PSIC

24513 If the claimant is a member of a couple and is not a PSIC, or falls within the category in DMG 24509, but the partner is a PSIC, the applicable amount will be¹

1. the claimant's personal allowance **and**
2. for any child or young person who is a member of the claimant's family and either not a PSIC or in the category in DMG 24509 (but see DMG 23039)
 - 2.1 the appropriate child or young person's allowance **and**
 - 2.2 a FP **and**
 - 2.3 a DCP, if appropriate **and**
3. any appropriate premium for the claimant **and**
4. housing costs **and**
5. any transitional entitlement.

1 JSA Regs, Sch 5, para 13A(a); IS (Gen) Regs, Sch 7, para 16A(a)

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

Example

Henry lives with his partner, Fleur, who has reached pensionable age and who is a PSIC. Their applicable amount comprises the personal allowance at the single rate. They are not entitled to a PP as it is Fleur who is of pensionable age and, as a PSIC, no premiums are payable in respect of her.

Claimant and partner are not PSICs but child or young person is a PSIC

24514 If

1. the claimant and partner are not PSICs **and**
2. a child or young person in the family is a PSIC

an amount should be included in the applicable amount for that child or young person¹. (but see DMG 23039)

1 JSA Regs, reg 83(d); IS (Gen) Regs, reg 17(1)(c)

24515 - 24530

Polygamous marriages

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

24531 If the claimant is a member of a polygamous marriage and is not a PSIC, or falls within the category in DMG 24509, but one or more of the partners is a PSIC, the applicable amount will be¹

1. the personal allowance for the claimant and one partner who is not a PSIC (including special cases) **and**
2. an amount for any other partner who is not a PSIC **and**
3. for any child or young person who is a member of the claimant's family and either not a PSIC or in one of the exempt categories (but see DMG 23039)
 - 3.1 the appropriate child or young person's allowance **and**
 - 3.2 a FP **and**
 - 3.3 a DCP, if appropriate **and**
4. any appropriate premium for the claimant and the partner in 1. **and**
5. housing costs **and**
6. any transitional entitlement.

1 JSA Regs, Sch 5, para 13A(b); IS (Gen) Regs, Sch 7, para 16A(b)

Claimant and all of partners are not PSICs but child or young person is a PSIC

24532 If

1. the claimant and all of the partners are not PSICs **and**
2. a child or young person in the family is a PSIC

an amount should be included in the applicable amount for that child or young person¹.(but see DMG 23039)

1 JSA Regs, reg 84(1)(c); IS (Gen) Regs, reg 18(1)(c)

Income and capital of a partner, child or young person who is a PSIC

24533 If a claimant is married polygamously to two or more members of the household, the

1. income and capital of each partner **and**

2. income of a child or young person who is a member of the claimant's family should be calculated in the same way as for the claimant¹. The income or capital should then be treated as belonging to the claimant².

Note: The DM should consider the special rules on the income of a child or young person.

1 JSA Regs, reg 88(4); IS (Gen) Regs, reg 23(3); 2 JS Act 95, s 13(2); SS CB Act 92, s 136(1)

Example

Hussain is a member of a polygamous marriage and has three wives, Fatima, Parveen and Yasmin. Yasmin has limited leave to enter the UK and her passport is not endorsed that she is prohibited from working. Yasmin works twelve hours per week and earns £35. Hussain claims IS.

The DM decides that

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

24534 - 24999

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