

# Department for Work and Pensions

DECISION MAKING AND APPEALS

## Decision Makers Guide

### Volume 9 Amendment 28 – October 2018

1. This letter provides details on Amendment 28; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

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

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

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

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

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

3. Amendment 28 affects chapters 52, 54. The changes:
  - Minor amends to paras 52670 & 52676 in Chapter 52.
  - Chapter 54 - I've removed references to Urgent Case Payments (as they no longer exist!) in Chapter 54.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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##### Chapter 52

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##### Chapter 54

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##### Chapter 54

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## Payments from a local authority in lieu of community care services or health care

52425 Payments received from a LA which are in lieu of

1. community care services<sup>1</sup> **or**
2. health care<sup>2</sup>

are disregarded indefinitely<sup>3</sup>.

*1 Community Care (Direct Payments) Act 1996; Health and Social Care Act 2001, s 57; Social Work (Scotland) Act 1968, s 12B; 2 National Health Service Act 2006, s 12A - 12D; 3 ESA Regs, Sch 9, para 56*

## Payments under the Supporting People programme

52426 Payments under the Supporting People programme are disregarded indefinitely<sup>1</sup>.

The disregard applies

1. in respect of any payment made by
  - 1.1 a LA (including a county council) **or**
  - 1.2 the National Assembly for Wales
2. to or on behalf of the claimant or partner relating to a service which is
  - 2.1 provided to develop **or**
  - 2.2 to sustain the capacity ofthe claimant or partner to live independently in their accommodation.

*1 ESA Regs, Sch 9, para 55*

## Personal pensions

### The law

52427 The value of

1. the right to receive a personal pension **and**
2. any funds held under a personal pension scheme

is disregarded indefinitely<sup>1</sup>.

*1 ESA Regs, Sch 9, para 28 & para 29*

### Meaning of personal pension scheme

52428 Personal pension scheme<sup>1</sup> means a

1. personal pension scheme as stated in pensions law<sup>2</sup>

2. an annuity contract or trust scheme approved under tax law<sup>3</sup>
3. personal pension scheme approved under tax law<sup>4</sup>.

*1 ESA Regs, reg 2(1); 2 Pension Schemes Act 1993, s 1; 3 Income and Corporation Taxes Act 1988, Part XIV, Chapter III; 4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV*

52429

## Personal possessions

52430 Personal possessions such as clothing, jewellery, and cars are disregarded indefinitely (but see DMG 52432)<sup>1</sup>.

*1 ESA Regs, Sch 9, para 14*

52431 Personal possessions are not disregarded if people buy them to reduce the amount of capital they have so that they can get

1. ESA, JSA or IS **or**
2. more ESA, JSA or IS<sup>1</sup>.

*1 ESA Regs, Sch 9, para 14*

## Premises lived in by a partner or relative

### The law

52432 Premises such as a house or flat are disregarded indefinitely if they are occupied in whole or in part as the home by a

1. partner or relative of a single claimant or any member of the family **and** the partner or relative is
  - 1.1 has reached the qualifying age for SPC **or**
  - 1.2 is incapacitated **or**
2. former partner of the claimant **and** the claimant and former partner are not estranged, divorced or former civil partners whose partnership has been dissolved<sup>1</sup>.

**Note:** A claimant and former partner who are separated are not necessarily estranged.

*1 ESA Regs, Sch 9, para 4*

### Example

Max is in receipt of ESA(IR). He goes into residential care and his wife Sheila remains in their marital home. Sheila visits Max on a regular basis. The DM decides that Max and Sheila are not estranged.

- 52670 To work out the exact value of stocks and shares
1. use the free internet tool Yahoo Finance to find the highest and lowest price for the day before the date of claim or supersession **and**
  2. deduct the lowest price from the highest price **and**
  3. divide the figure at **2.** by four **and**
  4. add the figure at **3.** to the lowest price **and**
  5. multiply the figure at **4.** by the number of that stock or share the person has.

52671 Once the share value has been calculated as in DMG 52669, deduct 10% costs of sale as per DMG 52611, rounding down in the claimant's favour at the last stage in the calculation.

### **Example**

Roy has 250 Marks and Spencer shares. The highest and lowest share prices for the day before the date of claim is £4.1750 and £4.1250 respectively.

Deduct the lowest from the highest price ( $£4.1750 - £4.1250$ ) = £0.05

Divide £0.05 by 4 = £0.0125

Add £0.0125 to the lowest share price ( $£0.0125 + £4.1250$ ) = £4.1375

Multiply £4.1375 by the number of share (250) = £1034.3750

Deduct 10% expense of sale = £930.93.

## **Incumbrances secured on stocks and shares**

- 52672 Stockbrokers have an incumbrance secured on stocks or shares if the person they have bought the stocks or shares for has not paid
1. the broker for them **or**
  2. the broker's commission<sup>1</sup>.

The incumbrance is secured only on the stocks and shares which have not been paid for or on which commission has not been paid. The incumbrance is not secured on any other stocks and shares which the stockbroker buys for the person.

*1 R(IS) 18/95*

- 52673 The amount of the incumbrance is the amount owed to the stockbroker.

## Government securities

52674 Government Securities are stocks issued by the British Government. They are sold in £100 units but re-investments can be for different amounts. Government Securities include

1. consolidated stock
2. conversion loan
3. exchequer stock
4. funding stock
5. Treasury stock
6. 3½% War Loan

52675 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 52665 et seq).

52676 The free internet tool Yahoo Finance will provide DMs with a value provided the stock has not reached the date when the capital invested is repayable. If that date has been reached, the claimant should be advised to write to the Historic Price Service, London Stock Exchange, Old Broad Street, London EC2N 1HP. Any cost imposed by this service would be payable by the claimant. Information can be obtained from the London Stock Exchange website. However, this only holds data from 1999 onwards.

52677 - 52679

## Unit trusts

### Value of unit trusts

52680 To work out the value of a unit in a unit trust

1. find the bid price for a unit in the trust in a newspaper which is dated the same date as the date of claim or application for supersession **and**
2. multiply the figure at 1. by the number of units a person has.

**Note:** the value of a unit trust can also be found at:

<http://markets.ft.com/research/Markets/Data-Archive>

### Costs of sale

52681 Persons apply to the manager of the trust to withdraw their money so there are no costs of sale. This applies even if persons use an agent, such as a stockbroker.

52682 - 52684

# Deprivation of capital

## General

### The law

52805 The law says people are treated as having capital they do not have if they deprive themselves of their capital for the purpose of getting

1. ESA or IS or JSA **or**
2. more ESA or IS or JSA<sup>1</sup>.

*1 ESA Regs, reg 115(1)*

52806 People are not treated as having capital of which they have deprived themselves if

1. the capital is a payment made because of a personal injury to them (including payments from the Children's Memorial Trust - see DMG 52417) **and**
2. the payment is held on trust for their benefit<sup>1</sup>.

They are also not treated as having the amount by which notional capital is reduced under the diminishing notional capital rule<sup>2</sup>.

*1 ESA Regs, reg 115(1)(a), (1)(c) & (1)(d); 2 reg 115(1)(b)*

52807 The law applies if claimants use their capital to buy personal possessions, such as a car, and they bought them to get

1. ESA or IS or JSA **or**
2. more ESA or IS or JSA.

The personal possessions are not disregarded if this applies<sup>1</sup>.

**Note:** See DMG 52895 for guidance on the value of personal possessions if this applies.

*1 ESA Regs, Sch 9, para 14*

52808

### Who the law applies to

52809 The law applies to claimants and partners only if they were the beneficial owner or joint beneficial owners of the capital. So if a claimant is the joint beneficial owner of a building society account which has £10,000 in it and the claimant's share is £4,000 the law

1. applies if the claimant spends or gives away that £4,000 or any part of it for the purpose of getting benefit or more benefit **and**
2. does not apply if the other £6,000 or any part of it is spent or given away.

52810 The law does not apply to claimants and partners if another person, such as

1. an appointee appointed by the DM to act for the claimant **or**
2. someone with power of attorney (unless DMG 52289 applies)

deprives claimants of their capital. DMG 52288 gives guidance on how to treat claimants capital in these circumstances.

52811 DMs should decide the question of deprivation each time benefit is claimed because

1. a decision on a claim is final **and**
2. any fact found or determination made in connection with that decision cannot be carried forward to decide the next claim<sup>1</sup>.

*1 Social Security Act 1998, s 17*

52812 - 52814

## **Have people deprived themselves of capital**

### **Meaning of deprive**

52815 The meaning of deprive is not a question of law and should be given its normal every day meaning<sup>1</sup>. So claimants have deprived themselves of capital if they no longer have it even if they use it to

1. get
  - 1.1 other capital<sup>2</sup> **or**
  - 1.2 personal possessions **or**
2. pay debts.

*1 R(SB) 40/85; 2 R(SB) 40/85*

### **Onus of proof**

52816 People have to show they no longer have capital<sup>1</sup>.

*1 R(SB) 38/85*

### **Evidence that people no longer have capital**

52817 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real or heritable property (see DMG 52020 4.), such as a house, has been transferred to another person **or**
2. a deed, such as a deed of
  - 2.1 gift **or**



# Chapter 54 - Special cases

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# Chapter 54 - Special Cases

## Scope of this Chapter

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

54002



## Person in Hardship

54612 Hardship payments are payments of reduced rate ESA(IR) made to ESA claimants. DMG 53140 et seq outlines how to determine if a claimant is a person in hardship.. The amount of ESA payable in hardship cases is reduced by 20% of the claimant's applicable amount<sup>1</sup>.

*1 ESA Regs, Sch 5 para 14*

54613 - 54999

