

# Department for Work and Pensions

DECISION MAKING AND APPEALS

## Decision Makers Guide

### Volume 14 Amendment 47 – Oct 2018

1. This letter provides details on Amendment 47; 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/lq/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 47 affects chapters 85 & 86. The changes:
  - Chapter 84 –Minor amends to paras 84762 & 84770 to change Google Finance to Yahoo Finance.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

#### Remove

#### Chapter 84

84430 – 84442 (1 page)  
84759 – 84770 (1 page)  
84781 – 84795 (1 pages)

#### Insert

#### Chapter 85

84430 – 84442 (1 page)  
84759 – 84770 (1 page)  
84781 – 84795 (1 pages)



- 1.2** in Scotland, accommodation in which a care home service is provided<sup>3</sup>. That is, a service that provides accommodation, together with nursing, personal care, or personal support for people by reason of their vulnerability or need.
- 2.** an independent hospital is
  - 2.1** in England, a hospital that is not a health service hospital as defined in legislation<sup>4</sup>
  - 2.2** in Wales, a hospital that is not a health service hospital as defined in legislation<sup>5</sup>
  - 2.3** in Scotland, an independent healthcare service as defined in legislation<sup>6</sup>.

*1 SPC Regs, reg 1(2); 2 Care Standards Act 2000, s 3; 3 Regulation of Care (Scotland) Act 2001, s 2;*

*4 National Health Service Act 2006, s 275; 5 Care Standards Act 2000, s 2;*

*6 Regulation of Care (Scotland) Act 2001, s 2(5)(a) & (b)*

84430 See DMG 84521 - 84522 for guidance on other payments which are disregarded.

### **Meaning of diagnosed person**

84431 Diagnosed person means people

- 1.** who have been diagnosed as suffering **or**
- 2.** who have been diagnosed after their deaths as having suffered from variant Creutzfeldt-Jakob disease<sup>1</sup>.

*1 SPC Regs, Sch V, Part I, para 13(6)*

### **Meaning of the relevant trust**

84432 The relevant trust means a trust set up from funds provided by the Secretary of State for the benefit of certain people who suffered from **or** who are suffering from variant Creutzfeldt-Jakob disease<sup>1</sup>.

*1 SPC Regs, Sch V, Part I, para 13(6)*

### **Meaning of trust payment**

84433 Trust payment means a payment under the relevant trust<sup>1</sup>.

*1 SPC Regs, Sch V, para 13(6)*

84434 - 84435

## Pensions

### The law

84436 The value of the right to receive income

1. from an occupational pension scheme **or**
2. from a personal pension **or**
3. under a retirement annuity contract

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

*1 SPC Regs, Sch V, Part I, para 22 & 23*

### Meaning of occupational pension scheme

84437 Occupational pension scheme means the same as stated in pension law<sup>1</sup>.

*1 SPC Act 02, s 17; Pension Schemes Act 1993, s 1*

### Meaning of personal pension scheme

84438 Personal pension scheme means the same as stated in pension law<sup>1</sup>.

*1 SPC Act 02, s 17; Pension Schemes Act 1993, s 1; Pension Schemes (Northern Ireland) Act 1993, s 1*

84439 - 84440

## Personal possessions

84441 All personal possessions such as clothing, jewellery, and cars are disregarded indefinitely<sup>1</sup>.

*1 SPC Regs, Sch V, Part I, para 8*

### Premises lived in by a partner or relative

### The law

84442 Premises such as a house are disregarded indefinitely if they are occupied as the home in whole or in part by a

1. person who is a
  - 1.1 close relative (see DMG 84443) **or**
  - 1.2 grandparent **or**
  - 1.3 grandchild **or**
  - 1.4 uncle **or**
  - 1.5 aunt **or**

## **Stocks and shares quoted on the London Stock Exchange**

### **Value of stocks and shares**

- 84759 The value of stocks and shares can be obtained from the financial pages in a newspaper which is dated the same date as the date of claim or supersession. A newspaper gives the price for most of the stocks and shares quoted on the London Stock Exchange. A valuation using the price given in a newspaper is not an exact valuation.
- 84760 To decide if an exact valuation is needed, first work out the value of the stocks and shares using the price given in a newspaper. An exact valuation is always needed if the price of a stock or share is not given in a newspaper.
- 84761 To work out the value of stocks and shares from the price given in a newspaper
1. find the price of the stock or share in a newspaper which is dated the same date as the date of claim or supersession **and**
  2. multiply the figure at 1. by the number of that stock or share the person has.
- 84762 An exact valuation may be needed if DMG 84911 applies. To work out the exact value of stocks and shares<sup>1</sup>
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
  2. deduct the lowest price from the highest price
  3. divide the figure at 2. by four
  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.

*1 R(IS) 18/95*

- 84763 Once the value has been calculated as in DMG 84762 deduct 10% for expense of sale as in DMG 84692. Round down in the claimant's favour at the last stage of 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 shares (250) = £1034.3750

Deduct 10% expense of sale = £930.93

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

- 84764 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*

84765 - 84766

- 84767 The amount of the incumbrance is the amount owed to the stockbroker.

### **Government securities**

- 84768 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
- 84769 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 84759 et seq.).
- 84770 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 costs for this service should be met by the claimant. The information can be obtained from the London Stock Exchange website, although this only holds data from 1999 onwards.

# **Deprivation of capital**

## **General**

### **The law**

- 84781 People should be treated as having capital they do not have if they deprive themselves of their capital for the purpose of getting SPC or more SPC<sup>1</sup>. People are not treated as having the amount by which notional capital is reduced under the diminishing notional capital rule<sup>2</sup>. People have not deprived themselves of capital if they disposed of it
1. to reduce or pay a debt owed by themselves<sup>3</sup> **or**
  2. to buy goods or services and it was reasonable in their case to buy such goods or services<sup>4</sup>.

*1 SPC Regs, reg 21(1); 2 reg 21(1); 3 reg 21(2)(a); 4 reg 21(2)(b)*

### **Who the law applies to**

- 84782 The law applies only to people who were the beneficial owners or joint beneficial owners of the capital which they have deprived themselves of. So if claimants are the joint beneficial owners of a building society account which has £10,000 in it and the claimant's share is £4,000 the law
1. applies if claimants deprive themselves of that £4,000 or any part of it for the purpose of getting SPC or more SPC **and**
  2. does not apply if the other £6,000 or any part of it is spent or given away.
- 84783 The law does not apply if another person, such as
1. an appointee appointed by the Secretary of State **or**
  2. someone with power of attorney (unless DMG 84294 applies)
- deprives people of their capital.
- 84784 DMs should decide the question of deprivation each time SPC 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 SS Act 98, s 17*

84785 - 84790

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

### **Meaning of deprive**

- 84791 The meaning of deprive is not a question of law and should be given its normal every day meaning<sup>1</sup>. So people have deprived themselves of capital if they no longer have it even if they use it to get other capital<sup>2</sup>.

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

### **Onus of proof**

- 84792 People have to show they no longer have capital<sup>1</sup>.

*1 R(SB) 38/85*

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

- 84793 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real or heritable property (see DMG 84022 4.), such as a house, has been transferred to another person **or**
2. a deed, such as a deed of
  - 2.1 gift **or**
  - 2.2 trust **or**
  - 2.3 settlementwhich shows capital has been given to another person **or**
3. receipts which show what the capital has been spent on.

### **What the DM decides**

- 84794 The DM decides if people have

1. the capital **or**
2. deprived themselves of it.

DMs do not have to decide if people have deprived themselves of capital for the purpose of getting SPC or more SPC if they decide those people have the capital. Such capital is included when working out actual capital.

- 84795 DMs should decide people have actual capital if

1. there is evidence to show they had the capital **and**
2. those people cannot show they no longer have it<sup>1</sup>.

*1 R(SB) 38/85*