

# Chapter H1: Capital

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# Chapter H1: Capital

## Introduction

### About the guidance

H1001 This Chapter gives guidance on capital and its effect on UC.

H1002 – H1014

### The law

H1015 The law says

1. how capital is worked out<sup>1</sup>
2. when people can be treated as having capital they do not have<sup>2</sup>
3. when capital people have can be disregarded<sup>3</sup>
4. when income can be treated as capital<sup>4</sup>
5. when capital can be treated as income<sup>5</sup>
6. single claimants cannot get UC if their capital is above £16,000<sup>6</sup>
7. joint claimants cannot get UC if their combined capital is above £16,000<sup>7</sup>
8. when the total of capital is above a certain limit, the claimant is treated as having income<sup>8</sup>.

*1 WR Act 12, s 5(1)(a) & (2)(a); UC Regs, reg 45; 2 reg 50; 3 reg 46(1)(b); 4 reg 72(3); 5 reg 46(1)(a);*

*6 WR Act 12, s 5(1)(a); UC Regs, reg 18(1)(a); 7 WR Act 12, s 5(2)(a); UC Regs, reg 18(1)(b);*

*8 reg 72(1)*

H1016 – H1019

## Is the resource capital

### What is capital

H1020 Capital is not defined in the regulations but what is meant by capital can be found in general law. The items listed below cover the kinds of things that would normally be regarded as a person's capital but is not a definitive list

1. savings from income such as money held in
  - cash
  - a bank or building society account
  - a save as you earn scheme
  - Post Office account
2. a lump-sum or one-off payment such as

- compensation for a personal injury
- money which has been borrowed
- one made by an employer to a person who is made redundant and the payment is not earnings
- one made by the HO to people on the Refugee Resettlement Programme
- one made to recompense people who have incorrectly had to pay care charges in the past

3. investments such as

- businesses
- capital and income bonds
- individual savings accounts (ISAs)
- national savings certificates
- personal pension schemes
- premium bonds
- stocks and shares
- unit trusts

4. real property or in Scotland heritable property, that is land and anything that has its foundations in the land such as a house **and**

5. a beneficial interest in the capital of a trust.

H1021 A payment is capital if it is

1. not made or due to be made regularly **and**
2. made without reference to a period.

The payment is income if this does not apply<sup>1</sup>.

*1 UC Regs, reg 46(3)*

H1022 A person's personal possessions are not to be treated as capital<sup>1</sup>.

*1 UC Regs, reg 46(2)*

### **Capital payable by instalments**

H1023 Where capital is payable by instalments, each payment of an instalment is to be treated as income if the amount outstanding combined with any other capital the person has (including the other member of a couple where this applies) exceeds £16,000. Where this does not apply, then the payments of instalments are to be treated as capital<sup>1</sup>.

*1 UC Regs, reg 46(4)*

H1024 – H1034

## Rights to capital

H1035 People have a right to capital that is due to them now or in the future. That right can be sold unless there is something that says they cannot sell it.

H1036 They also have a right to sue, which means go to Court, if

1. the capital is not paid to them when due **and**
2. there is no other way they can get the capital.

In England and Wales this is sometimes called “a chose in action”. In Scotland the action is sometimes called “accounting”.

H1037 Such rights are capital because they can be sold<sup>1</sup>.

*1 R(SB) 31/83*

### Example

On 1.3.10 Sonia agreed to sell her house to her brother Norman for £95,000. Norman could not afford to pay his sister the full amount so Sonia agreed that he could pay £40,000 on 1.3.10 and the remaining £55,000 on 1.3.14. On 8.3.14 Sonia makes a claim for UC. She states she has no capital but that she is owed £55,000 as Norman did not pay her as agreed. The DM decides that Sonia has rights to capital.

**Note:** See H1643 for guidance on how to get an expert valuation of rights to capital.

H1038 – H1049

## When income becomes capital

H1050 Income becomes capital if it has not been spent by the end of the assessment period after the one in which it was received.

### Example

Pearl makes a claim for UC on 6 February. She declares savings in a bank account of £5,973.00. On 24 February, her earnings of £250.00 are paid into that account. Her assessment period is calculated as 6 Feb to 5 March and the earnings are taken into account as part of her income for that assessment period. When the next assessment period begins on 6 March, Pearl still has some of the unspent earnings so the bank account balance is now £6,105.00. In the assessment period from 6 March to 5 April she will therefore be treated as having an assumed yield from that capital of £4.35.

H1051 – H1069

# Does the person own the capital

## General

### Ownership of capital

- H1070 Only the capital where people are the beneficial owners is included when working out what capital they have.
- H1071 People are beneficial owners of capital if they have a beneficial interest in it. A person is the joint beneficial owner of capital if more than one person has a beneficial interest in the same capital.
- H1072 A person whose name the capital is in is called the legal owner. A person is the joint legal owner of capital if more than one person is the legal owner of the same capital.
- H1073 People who are the beneficial owners of capital are usually the legal owners. People who are the legal and beneficial owners of capital hold that capital for themselves and can use it as they wish.
- H1074 Legal owners who are not the beneficial owners of capital are holding that capital on trust for the beneficial owners<sup>1</sup>. They cannot use the capital for themselves. It should be used for the beneficial owners.

*1 R(SB) 23/85*

- H1075 Legal owners can hold capital which

1. they **and**
2. other people who are not the legal owners

are the beneficial owners of. In that case the legal owners are holding the capital on trust for themselves and the other beneficial owners. The legal owners can use for themselves only the capital which they are the beneficial owners of. The remaining capital should be used for the other beneficial owners.

- H1076 Only the legal owners of capital can withdraw or sell it.

### Ownership of capital of a child or young person

- H1077 Capital owned either legally or beneficially by a dependent child or qualifying young person is not to be included in the capital of the claimant<sup>1</sup>. However, the DM may still need to make enquiries about such capital if it appears to be owned by the claimant but is actually beneficially owned by a child or young person for whom they are responsible.

*1 WR Act 12, s 5*

- H1078 Children and young people may not be the legal owners of the capital of which they are the beneficial owners. This is because businesses, such as banks, will not enter into a contract with them. If they are the beneficial owners and not the legal owners their capital will be held on trust by another person.

H1079 Children and young people become the legal owners of their capital when the terms of the trust say they can have the capital. In England and Wales this may be when they are 18 years old and in Scotland when they are 16.

H1080 A child or young person cannot be the legal owner of

1. real or heritable property (see H1020 4.) **or**
2. shares.

Sometimes a mistake is made and a child or young person is shown as the legal owner.

### **How a person gets a beneficial interest in capital**

H1081 People can get a beneficial interest in capital by

1. saving up their income such as money in a bank account
2. using their money to buy capital such as premium bonds
3. using money which has been lent to them, such as a mortgage, to buy capital<sup>1</sup>
4. being given capital such as a lump-sum payment of compensation
5. having a beneficial interest in a trust.

*1 R(IS) 8/92*

H1082 - H1089

### **How to work out if a person is the beneficial owner of capital**

#### **The person is the legal owner**

H1090 If people are the legal owners of capital, assume that they are the beneficial owners unless

1. there is written evidence such as a Deed of Trust which says who has a beneficial interest in the capital **or**
2. the legal owners say they have
  - 2.1 no beneficial interest **or**
  - 2.2 only a share in the beneficial interest.

**Note:** It is the responsibility of the legal owners of capital to establish that they are not the beneficial owners.

#### **Written evidence**

H1091 If there is written evidence naming who has a beneficial interest in the capital the people named in the evidence are the beneficial owners.

## **No beneficial interest in the capital or only a share in it**

H1092 If the legal owners say they have no beneficial interest in the capital or only a share in it the DM has to decide who has a beneficial interest in the capital in order to decide who the beneficial owners are.

H1093 To decide who has a beneficial interest the DM needs to know

1. whose capital it is **and**
2. what the person whose capital it is says it has to be used for.

To decide whose capital it is the DM needs to know whose money was used to get the capital.

## **The legal owners use their money to get capital**

H1094 Legal owners who use their money to get capital have a beneficial interest in that capital and are beneficial owners of it.

H1095 A legal owner of a bank account is the

1. sole beneficial owner of the account if only the legal owner's money is paid into the account **and**
2. joint beneficial owner if there is more than one legal owner and one or more of the legal owners pays money into the account.

H1096 If the legal owners

1. use their money to get capital **and**
2. they say they cannot use the capital because they have set it aside for another person

the legal owners are the beneficial owners of the capital unless they have actually created a trust<sup>1</sup>.

### **Example**

Hugh has some money in a building society account. The account is in his name so he is the legal owner of the money. He says that the money in the account, which he alone deposited, is not his because it is used to pay his grandchild's school fees. The DM decides that Hugh is the beneficial owner of all the money in the account.

This is because he is the only person who has put money into the account and there is no evidence of a clear indication that his intention was to create a trust.

*1 R(IS) 1/90*

## **The legal owners do not use their money to get the capital**

H1097 If the legal owners

1. do not use their own money to get the capital **and**

2. the person whose money has been used says the money has been
  - 2.1 lent **or**
  - 2.2 givento the legal owners

the legal owners are the beneficial owners of the capital.

H1098 A legal owner of a bank account is the beneficial owner of any money in the account which has been lent or given to the legal owner by another person.

H1099 If the legal owners

1. do not use their own money to get capital **and**
2. the money which has been used belongs to
  - 2.1 a child or young person **or**
  - 2.2 some other people and they say
    - 2.2.a it is their capital **and**
    - 2.2.b who the capital is to be used for

the legal owners are not the beneficial owners of the capital because they are holding it on trust.

### **Example**

Pradeep has a building society account. It is in her name so she is the legal owner of the money in that account. However, she says that the money in the account belongs to her sister Leena who is working abroad. On the day the account was opened £20,000 was put into it. Nothing has been paid into the account except interest and no money has been taken out. The DM has evidence from Leena that she gave £20,000 to Pradeep to save for her whilst she was working abroad and she wants it, and the interest, back when she returns. The DM decides that Pradeep is not the beneficial owner of the money in the building society account because she is holding it on trust for Leena.

### **More guidance**

H1100 H1120 - H1339 gives guidance on how to work out the beneficial interest a person has in capital in certain types of cases.

H1101 - H1119

# Beneficial ownership in particular cases

## About the guidance

- H1120 This part gives guidance on how to work out if a person is the beneficial owner of capital in certain types of cases.
- H1121 The guidance in this part involves principles of law. The law in England and Wales can be different from the law in Scotland but the outcome may be the same. If the outcome is different, the guidance will be distinguished.

H1122 - H1129

## Businesses and limited companies

### Businesses

- H1130 A person who is the only owner of a business is the beneficial owner of all of the capital of the business.
- H1131 A person who owns a business with others has an equal share of the beneficial interest in the capital of the business unless the owners agree the shares should not be equal<sup>1</sup>. The agreement between the owners does not have to be in writing. A person who has a share in the beneficial interest is a joint beneficial owner.

*1 Partnership Act 1924, s 24(1)*

### Limited companies

- H1132 A company's capital is owned by the company. Directors of the company are not the beneficial owners of the capital of the company.
- H1133 If a director has lent capital to the company the loan is included in the capital of the company. The director's rights to the capital that has been lent are included when working out the director's capital.
- H1134 If a director
1. has shares in the company **and**
  2. is the sole or joint beneficial owner of those shares
- the shares will be included when working out the director's capital.

## Bank, post office and building society accounts

- H1135 A bank, PO or building society account can be more than one asset in certain circumstances. This applies if evidence clearly shows that there is a separate part of a jointly owned bank or similar account where a claimant has
1. no beneficial interest **or**
  2. a sole beneficial interest.

If **1.** applies, the claimant is only treated as possessing an equal share of the amount where the beneficial interest is shared.

If **2.** applies, the claimant is treated as possessing the whole amount that is solely owned and an equal share of the amount where the beneficial interest is shared.

If neither **1.** or **2.** apply the claimant is treated as beneficially owning the whole account in equal shares with the other joint owners.

### **Example**

On 8 March Andrew makes a claim for UC. He has a joint bank account with his mother, Hilda, who is in a care home. There is no dispute that Andrew and Hilda are the joint legal owners of the account in which, on 8 March, there is the sum of £12,400. Andrew provides evidence that he received a legacy of £2,000 which he paid into the account and that Hilda has made all other deposits. The only withdrawals have been made to pay Hilda's care home fees. The DM decides that Andrew has capital of £2,000, the amount of his beneficial interest in the account.

H1136 - H1139

## **Capital held by a solicitor**

H1140 People are the beneficial owners of capital, such as a payment of damages for personal injury, if it is held by their solicitor<sup>1</sup> unless

1. in England and Wales the amount to be repaid to the Legal Services Commission has not been worked out (see H1141 - H1142) **or**
2. in Scotland
  - 2.1 the amount to be repaid to the Scotland Legal Aid Board has not been recovered **and**
  - 2.2 a discharge has not been granted (see H1143 - H1144).

*1 R(SB) 17/87*

H1141 In England and Wales the Legal Services Commission provides funding to help people take or defend legal proceedings. A person may have to repay all or some of their legal costs out of money or property they have gained or kept as a result of the proceedings. In such cases, the funding provided by the Legal Services Commission can act as a loan.

H1142 Where H1141 applies the Legal Services Commission work out a fair and reasonable amount of the costs to be repaid. Until the Legal Services Commission do this, money or property gained or kept is held by a person's solicitor. A person is not the beneficial owner of any such money or property until after the amount to be repaid to the Legal Services Commission has been worked out.

### **Example**

Alison was awarded the sum of £25,000 as payment of damages following a road traffic accident. This money is being held by Alison's solicitor. Alison received

funding from the Legal Services Commission. Alison is not the beneficial owner of the sum she was awarded until the Legal Services Commission work out the amount to be repaid.

H1143 In Scotland the Scottish Legal Aid Board provides funding to help certain people take or defend legal proceedings. The Board is able to recoup their expenditure out of any property recovered or preserved for the person granted legal aid. The Board is also able to recoup their expenditure where there is a settlement to avoid proceedings or bring them to an end. In such cases, the funding provided by the Scottish Legal Aid Board can act as a loan.

H1144 Where H1143 applies the money or property gained or preserved is usually paid to the Scottish Legal Aid Board. However, the money or property may be held by a person's solicitor and the amount to be repaid worked out by the Scottish Legal Aid Board. The person's solicitor cannot dispose of the money or property or use it in any way until the Board has recovered the amount due and granted the person a discharge. A person is not the beneficial owner of such money or property until

1. the amount to be repaid to the Scottish Legal Aid Board has been recovered  
**and**
2. a discharge has been granted.

H1145 - H1149

## **Gifts**

H1150 A person who is given capital is the beneficial owner of that capital. In England and Wales it can be assumed a gift has been made if the people involved are related in certain recognised ways. This is called presumption of advancement.

H1151 It can be assumed a child has been given the beneficial ownership of capital if

1. the parent of **or**
2. a person who has assumed financial responsibility for

the child gives legal ownership of the capital to that child.

H1152 It can be assumed wives have been given the beneficial ownership of capital if the husband has given legal ownership of the capital to them. This also applies to women who are given legal ownership of capital by the man they are going to marry.

H1153 It has been held that the presumption of advancement does not have the force that it had in the past. Accordingly it is easier for circumstances to show that the transfer of capital from husband to wife is not a gift<sup>1</sup>. The DM should not therefore assume that beneficial ownership has been given away if there is evidence to show that an outright gift was not made.

## Tax-Free Childcare

H1154 Tax-Free Childcare is a scheme to help working parents with the cost of childcare launched in 2017<sup>1</sup>. It is payable for any number of eligible children up to the age of 12, or up to 17 where the child is disabled. Parents will be able to open an online account which they can use to pay for childcare from a registered provider. For every £8 the parent puts into the account, the government will pay in an extra £2. The government will pay up to a maximum of £2000 per year per child or £4000 per year for an eligible disabled child.

*The Childcare Payments Act 2014; The Childcare Payments (Eligibility) Regulations 2015 (2015/448);  
The Childcare Payments Regulations 2015 (2015/522).*

H1155 National Savings and Investments will run the accounts on behalf of HMRC and the parent will be the account holder. The account holder is restricted to only being able to

1. instruct the account provider to make payments to a registered childcare provider **and**
2. withdraw their 80% share from the account (with the government's 20% share going back to the government).

H1156 The Tax-Free Childcare account is not a normal bank account belonging to the parent. The parent does not have unrestricted access to the 20% top up element. They cannot access that element for general purposes and so it is not considered to be their capital.

H1157 One of the conditions of being eligible for Tax-Free Childcare payments is that neither the claimant nor partner is in receipt of UC. However, it is recognised that people will move between Tax-Free Childcare and UC as their circumstances change. To ease transition between the two, it has been agreed that the parent will still remain entitled to the Tax-Free top up payments until the end of the quarterly entitlement period in which they join UC. Also they may use up any balance that there may be in their Tax-Free Childcare account when they claim UC. They have up to 2 years after they leave Tax-Free Childcare to do this.

H1158 Where a person makes a claim for UC and they have one of these online accounts, 80% of what is in the account will be taken into account as capital for the purposes of calculating entitlement to UC. The remaining 20% in the account will be ignored. The parent can also decide to close the account at which point 80% of what is in the account will be paid back to the parent and the remaining 20% will be returned to the government.

H1159 - H1168

## Interest in the estate of a person who has died

H1169 When people die the capital they have is called the estate.

H1170 People have died

1. testate if they have left a will which says who gets the capital **or**
2. intestate if they have not left a will.

H1171 An estate is administered or distributed by

1. executors if there is a will **or**
2. if there is not a will
  - 2.1 in England or Wales administrators
  - 2.2 in Scotland executors dative.

They hold the dead person's estate on trust and may also be beneficiaries of the estate.

H1172 It may take a long time before the executor, administrator or executor dative can administer or distribute the estate. The administration or distribution is usually complete when

1. all the dead person's
  - 1.1 capital is accounted for **and**
  - 1.2 debts are paid **and**
2. any dispute is settled.

H1173 An executor, administrator or executor dative does not have to administer an estate<sup>1</sup> until

1. in England and Wales one year after the date of death **or**
2. in Scotland six months after the date of death **or**
3. a longer period if the estate is complex.

*1 R(SB) 5/85(T)*

H1174 The people named in a will or the relatives of a person who has died intestate have no interest in specific property in the estate until the executors, administrators or executors dative

1. are in a position to distribute the estate **or**
2. would be in a position to complete the administration of the estate if they had acted properly.

**Note:** This does not apply to property specifically bequeathed in a will. Such property belongs to the person who inherits the property from the date of death of the person whose estate is being administered and is actual capital. This is subject only to the right of the executors or executors dative to resort to the asset if the remainder of the estate is insufficient to meet the outstanding debts of the deceased<sup>1</sup>.

*1 R(IS) 1/01*

H1175 Pending the completion of the administration, a beneficiary without a specific bequest (a residuary beneficiary) has valuable rights in the form of a chose in action

(see H1036). This can be valued (H1643) and should be taken into account as actual capital. If the residuary beneficiary gives away his interest by a deed of variation before administration is complete then this may amount to deprivation and the DM should consider H1815 et seq.

H1176 At the end of the period in H1173 the people named in a will or the relatives of a person who has died have a right to the capital that is due to them from the estate (see H1035). A person's rights to capital are included when working out that person's capital.

H1177 Separate guidance sets out cases where DMs may require expert valuation of rights to capital (see H1637 et seq).

H1178 People only have a beneficial interest in the capital assets of the estate when ownership of those assets has been transferred to them.

H1179

## **Interest in a trust**

### **When there is a trust**

H1180 There is a trust when a person

1. gives capital to another person to hold **and**
2. says for whom that capital has to be used.

H1181 The person

1. giving the capital in England and Wales is the donor or in Scotland the truster
2. holding the capital is the trustee and is the legal owner of the capital
3. who the capital has to be used for is the donee and is the beneficial owner.

H1182 People for whom the capital has to be used can include the trustee.

H1183 - H1184

### **Trustees**

H1185 A trustee can be any person or body such as

1. a relative
2. solicitor
3. bank
4. in England and Wales the
  - 4.1 donor
  - 4.2 Court of Protection
  - 4.3 Public Trustees
5. in Scotland the truster.

H1186 A trustee has to do what the terms of the trust and the law says<sup>1</sup>.

H1187 - H1189

### **Terms of a trust**

H1190 The terms of a trust say

1. what is being held on trust **and**
2. who the donees are.

H1191 The terms do not have to be written down provided the trust property is not land, but if they are they may be in a

1. will **or**
2. deed of trust **or**
3. deed of settlement.

**Note:** In Scotland the DM must check that the creation of the trust satisfies Scottish law<sup>1</sup> to prove the existence of a trust.

*1 Requirements of Writing (Scotland) Act 1995, s 1(2), (3) and (4); R(IS) 10/99*

H1192 - H1194

### **Interest in a trust**

H1195 H1205 - H1243 gives guidance on

1. some interests people can have in a trust **and**
2. when they get their interest.

H1196 A person's rights to capital under a trust are included when working out what capital a person has.

H1197 More than one person can have an interest in a trust. If more than one person has an interest in a trust the person is not a joint beneficial owner. Each person's interest belongs to that person. It is not shared with the other people having an interest in the trust.

H1198 The expenses of the trustees will be deducted before any payments are made out of the trust.

H1199 - H1204

### **Contingent interest**

H1205 Persons have a contingent interest in a trust if they have to do something or something has to happen before they can get the interest.

H1206 For example, if the terms of the trust say a person can have £10,000 if the person lives to the age of 21 the interest is a contingent interest. If the person lives to the age of 21 the person gets £10,000. If the person does not live to the age of 21 the person gets nothing.

H1207 Trustees pay the income earned on a contingent interest to the people who have the interest if the

1. terms of the trust do not say who gets the income **and**
2. people with the interest have
  - 2.1 reached the age of maturity, which in England and Wales is 18 years old and in Scotland 16 **and**
  - 2.2 not yet been required to meet the contingency<sup>1</sup>.

Any income which is paid is taken into account as income. The DM should decide if people have notional income if they are due income from a trust and it is not paid.

*1 Trustee Act 1925, s 31(1)(ii); Trusts (Scotland) Act 1961, s 5*

H1208 For example, in England and Wales if the terms of the trust say a person can have £10,000 if that person lives to the age of 21 the trustees can pay the person the income earned on the £10,000 from the age of 18 because the person

1. has reached the age of majority **and**
2. has not yet been required to meet the contingency as the person has not lived to the age of 21.

H1209 - H1214

### **Life interest or life rent**

H1215 In England and Wales people have a life interest or in Scotland a life rent in a trust if they have an interest for the duration of their life. A person may have a life interest or a life rent in the

1. capital **or**
2. real or heritable property (see H1020 4.), such as a house

of a trust. People will receive the income from capital if they have a life interest or life rent in it.

H1216 For example, a person has a life interest or a life rent in the

1. income if the terms of a trust say a person can have the interest paid on the funds of the trust for life **or**
2. property if the terms say a person has the right to live in it for life.

H1217 People keep the right to live in the property even if they do not live in it. But the trustees may decide to sell the property if the person no longer needs it to live in for example when a person goes permanently into residential care.

- H1218 If the property is sold the person will have a right to
1. the income from the money the trustees get from selling the property **or**
  2. be paid a lump sum from the money equal to the value of the person's remaining life interest or life rent.

H1219 Rights under a life interest or life rent end with the death of the person who has the life interest. The assets of the trust fund do not form part of their estate.

H1220 - H1224

### **Reversionary interest**

H1225 In England and Wales an interest in a trust is reversionary if the possession or enjoyment of it is postponed to the prior interest of another person in the same capital.

#### **Example**

George has a reversionary interest in a house if the terms of the trust say

1. Edith has a life interest in that house **and**
2. George gets the house on the death of Edith.

George's interest in the house is reversionary until he takes possession of the house. George takes possession of the house when Edith dies.

H1226

H1227 A reversionary interest is not the same as a contingent interest because people with a reversionary interest already have an interest in a trust. They do not have to do something or wait for something to happen before they get an interest in a trust but a person with a contingent interest does.

H1228 If people with a reversionary interest die before they take possession of their interest the reversionary interest is included in their estate.

### **Vested interest**

H1229 Children or young people have a vested interest in capital which

1. they are the beneficial owners of **and**
2. is being held for them until they reach the age of majority, which in England and Wales is 18 years old and in Scotland 16.

H1230 A vested interest is not the same as a contingent or reversionary interest because the capital already belongs to the child or young person. A child or young person may have a contingent or reversionary interest in a trust which has been set up with another person's capital.

H1231 If children and young people with a vested interest die before they get their interest the interest is included in their estate.

H1232 In England and Wales trustees may decide to pay the income earned on a vested interest to the parent or guardian of the child or young person who has the interest<sup>1</sup>. If the trustees make a payment of income it is income which is treated as capital. The trustees cannot be made to pay over the income.

*1 Trustee Act 1925, s 31(1)(i)*

H1233 - H1235

### **Discretionary trusts**

H1236 A discretionary trust is one where the trustees have the discretion to make payments to certain people. Such people have an interest and in England and Wales are called discretionary objects.

H1237 Many trusts let the trustees invest the capital of a trust at their absolute discretion. This means the trustees have a choice in how the capital is invested. This does not mean the trust is a discretionary trust. There has to be something else in the terms of the trust to show it is a discretionary trust.

H1238 The trustees of a discretionary trust may or may not make payments to the people with an interest. The trustees cannot be made to make payments to those people.

H1239 - H1240

### **Charitable trusts**

H1241 A charitable trust is a trust which is set up for

1. the relief of poverty **or**
2. the advancement of education or religion **or**
3. any other purpose which benefits the community.

H1242 Trustees of a charitable trust have discretion to make payments to people who satisfy the terms of the trust. They may or may not make payments. They cannot be made to make payments.

H1243

### **Jointly-owned capital**

#### **Real or heritable property**

H1244 In England and Wales, when two or more people jointly own real property (see H1020 4.) they do so as

1. joint-tenants **or**
2. tenants in common.

H1245 When people jointly own real property as joint-tenants each person owns the whole asset jointly and they have no separate and distinct shares. If a joint-tenant dies the asset passes to the surviving joint-tenant or joint-tenants. However when people

jointly own real property as tenants in common each person's interest in the asset is their own share. The shares of tenants in common may be equal or unequal. If a tenant in common dies their share of the asset does not pass automatically to the surviving tenant or tenants in common.

H1246 The terms joint-tenants and tenants in common are legal terms appropriate to joint ownership of real property in England and Wales. DMs should not confuse them with tenancies that arise when people rent land or premises.

H1247 In Scotland, when two or more people own heritable property (see H1020 4.) they do so as

1. joint owners **or**
2. common owners.

H1248 When two or more people own heritable property as joint owners they do not have individual rights in the property which would allow them to deal with the property as individuals. Joint owners cannot dispose of their share of the property. If a person stops being a joint owner their share of the property goes to the other joint owners.

H1249 Where two or more people own property as common owners, each has a separate share in the property which they can dispose of independently of the other common owners.

H1250 If a claimant beneficially owns a capital asset with one or more persons the DM will have to decide whether those people own the asset as

1. joint-tenants or, in Scotland, joint owners **or**
2. tenants in common or, in Scotland, common owners.

### **How to decide ownership of jointly-owned capital**

H1251 In England and Wales, when two or more people buy real property they should be asked

1. whether they wish to be
  - 1.1 joint-tenants **or**
  - 1.2 tenants in common **and**
2. if 1.2 applies the share of the property each person wishes to own.

#### **Example**

Mick and his civil partner George decide to buy a house in Bedford. When asked, George wants to leave his share of the property to his children Neil and Sophie. Mick and George therefore agree to be tenants in common. Mick provided 75% of the purchase price and George the other 25%. They therefore agree that Mick should own 75% of the property and George should own 25%.

H1252 In Scotland, when two or more people buy heritable property they will decide whether to be joint owners or common owners. The common owners should decide the share of the property each person wishes to own.

**Example**

Frazer and his wife Morag decide to buy a house in Dundee. They decide to be common owners. Frazer and Morag both wish to have an equal share of the property. Therefore they decide that they should both own 50% of the property.

**Other ways to become tenants in common or common owners**

H1253 As well as making a decision when real or heritable property is bought, there are other ways in which people can become tenants in common or common owners. These include

- being left real or heritable property under the terms of a will
- contributing to the purchase price of real or heritable property, for example under the right to buy scheme (see H1309 et seq)
- changing from joint-tenants or joint owners to tenants in common or common owners.

**Example 1**

Sue and Melinda are sisters who inherited their mother's house. The terms of their mother's will specified that Sue should own 60% of the house and Melinda 40% of the house as tenants in common.

**Example 2**

Cecilia bought her council house under the right to buy scheme. She obtained a statutory discount of £8,000. Her son Ross provided the other £32,000 necessary for her to buy the house. The statutory discount obtained by Cecilia is her contribution to the purchase price of the property. There is no evidence that Cecilia and Ross wanted to own different shares in the house. Therefore Cecilia owns 20% of the property and Ross 80%.

**Example 3**

When Alan and Lynnette were married they bought a house as joint-tenants. However, when they divorced Alan gave notice to Lynnette that he wished to put an end to his 50% interest in the property. Alan did this so that in the event of his death the house would not automatically pass under the rules of survivorship to Lynnette. The effect of this notice is that the joint-tenancy is changed into a tenancy in common which gives both Alan and Lynnette separate and distinct shares in the property.

H1254 When one person uses their money to buy real or heritable property in the name of another person there is a presumption of a resulting trust (see H1308). If that other person also contributes to the purchase of the property the two people will be

tenants in common unless there is evidence of a contrary intention. However, DMs should note H1308 1. and the rule of presumption of advancement (see H1150 et seq).

H1255 A person who is a tenant in common or common owner does not necessarily own an exact percentage of a property. For example, one person could own 36.71% of a house and another person the other 63.29%.

H1256 After it has been agreed between tenants in common or common owners what share each person owns it is possible for the agreed shares to be varied. This may happen where a tenant in common or common owner

1. pays
  - 1.1 the mortgage **or**
  - 1.2 a greater share of the mortgageon a property **or**
2. spends money on improvements to a property.

#### **Example**

Shahid and his brother Saleem bought a house together as tenants in common. They agreed that each of them should own 50% of the property and pay half the mortgage. Shahid takes unpaid leave from his job to travel abroad so he is not able to make repayments on his share of the mortgage. Saleem therefore agrees to pay all of the mortgage on the property. Saleem's share of the property increases in proportion to the extra payments he makes. Shahid's share of the property decreases by the same amount.

H1257 If a claimant reduces his share of a jointly-owned property the DM should consider the rules on deprivation of capital see H1795 et seq.

#### **Evidence of joint-ownership**

H1258 Evidence of the type of joint-ownership of real or heritable property and if appropriate the share each person owns can be obtained from

1. the deeds to the property **or**
2. information on the file of the solicitor acting for the people buying the property **or**
3. a definitive agreement between the people buying the property.

H1259 When a claimant states that he owns a share of real or heritable property as a tenant in common or common owner the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the property. If the claimant is unable to provide evidence of unequal shares in the property, the DM should decide on the balance of probability (see ADM Chapter A1: Principles of decision making and evidence) that the shares are equal.

## **Other assets**

H1260 Two or more people may jointly own other assets such as bank accounts (see H1135) and shares. When a claimant states that he has a separate right of ownership of an asset the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the asset.

### **Example**

Kathy and her father have a joint building society account. The account is in both their names so they are joint legal owners of the account. There is £15,000 in the account on the date of Kathy's claim for UC. Kathy provides evidence that both she and her father paid money into the account but no evidence of the amount paid by each of them. The DM decides that Kathy is treated as having a half share in the account (£7,500).

H1261 A person does not have a joint beneficial interest in a trust if more than one person has an interest in that trust. Each person's interest belongs to that person. It is not shared with other people having an interest in the trust.

## **Jointly-owned capital outside the United Kingdom**

H1262 To decide the type of joint ownership of a capital asset outside the UK the DM should consider

1. the law of the country where the asset is held **and**
2. the basis on which the asset is held.

The DM should obtain evidence of joint ownership. If the DM is satisfied that the law of the country where the asset is held is not different, the guidance at H1244 et seq should be followed. DMs should send cases of doubt to DMA Leeds for advice.

## **Valuation of jointly-owned capital**

H1263 See H1631 - H1648 for guidance on how to value a claimant's share of jointly-owned capital.

H1264 - H1265

## **Couples who are separated, divorced or whose civil partnership has been dissolved**

H1266 People who are married or civil partners and have separated are the beneficial owners of capital if they were the owners before the breakdown of the marriage or civil partnership. That capital is included when working out what capital a person has.

H1267 After they have separated, divorced or dissolved their civil partnership a couple may

1. ask a Court to **or**

2. on the advice of their solicitors **or**

3. themselves

decide which one of them gets the capital. The proceedings in Court are called ancillary proceedings.

H1268 A Court will take into account

1. the ages of the couple

2. their state of health

3. whether they are able to work and if so what earnings they can get

4. how long they have been married or in a civil partnership or, in Scotland, how long each party has been economically dependent on the other

5. each person's needs

6. what one of them is able to give to the other

before issuing an order which will say what capital each of them gets.

H1269 A Court may decide that the house in which they used to live

1. cannot be sold until a future date if children of the marriage or civil partnership are still living in it **or**

2. can be given to the one who the children are living with and the other one gets

2.1 money immediately or in the future **or**

2.2 no money.

H1270 People will be the beneficial owners of any capital the Court awards them outright<sup>1</sup>.

*1 R(IS) 4/96*

H1271 If the couple do not go to Court and share up the capital

1. in the way their solicitors say **or**

2. between themselves

a person will be the beneficial owner of the capital the person is left with. If 2. applies and there is clear evidence that capital has been given away so the person can get benefit or more benefit the DM should decide whether the person has notional capital.

H1272 A person may seek an order for financial provision and property adjustment which occurs<sup>1</sup>

1. on the granting of a decree of

1.1 a divorce or dissolution of civil partnership **or**

1.2 nullity of marriage or civil partnership **or**

1.3 separation **or**

2. at any time after any of the events in 1..

H1273 A person does not have a beneficial interest in any capital they are seeking unless and until, a property adjustment order is made<sup>1</sup>.

*1 R(IS) 1/03*

H1274 - H1275

## **Mentally sick or disabled persons**

### **Beneficial interest**

H1276 People who are

1. mentally sick or disabled **and**
2. unable to deal with their capital

do not lose their beneficial interest in capital<sup>1</sup>. Another person may be appointed to deal with it.

*1 R(IS) 9/04*

### **Court of Protection**

H1277 In England and Wales the Court of Protection

1. protects **and**
2. deals with

the capital of a mentally sick or disabled person<sup>1</sup>.

*1 Mental Health Act 1983*

H1278 The Court may appoint another person to deal with the capital. A person appointed by the Court is called a Deputy. The Court will issue an order which says what

1. money the Deputy can deal with **and**
2. the Deputy has to do with the money.

The Deputies have to go back to Court if they want more money or to do something else with the money.

H1279 The Court may take some time to reach a decision. The Court can issue interim certificates if mentally sick or disabled people need money immediately to pay for their day to day needs such as nursing home fees. The certificate will say what and how much money can be used by a person to pay for those needs.

H1280 Capital held by the Court or Deputies is held on trust.

### **The Courts in Scotland**

H1281 In Scotland the Sheriff Court has powers similar to the Court of Protection in England and Wales. A person appointed<sup>1</sup> by the Sheriff Court to deal with the capital of a mentally sick or disabled person is called a guardian.

*1 Adults with Incapacity (Scotland) Act 2000*

## **Power of Attorney**

- H1282 People who give another person power of attorney authorize that person to deal with
1. all of their money if they give the person unlimited power **or**
  2. some of their money if they give them restricted power.
- H1283 People who give another person power of attorney remain the beneficial owners of their capital.
- H1284 In England and Wales people with power of attorney are not authorized if the person who gave them power
1. becomes mentally sick or disabled **and**
  2. the power has not been registered with the Court of Protection.
- H1285 In Scotland, a power of attorney granted on or after 2 April 2001 lapses when a person becomes incapable of managing their own affairs unless it is a continuing power. If it is a continuing power of attorney, certain conditions need to be met, including registration with The Office of the Public Guardian, prior to any use of the power of attorney. (See the Agents, Appointees, Attorneys and Deputies Guide for more detail.)

## **Appointees**

- H1286 A person appointed by the Secretary of State to act, for SS purposes only, on behalf of another person is called an appointee.
- H1287 These appointees cannot deal with the capital of a mentally sick or disabled person unless they have been appointed
1. in England and Wales the Deputy by the Court of Protection **or**
  2. in Scotland the guardians by the Sheriff Court.
- Note:** See the Agents, Appointees, Attorneys and Deputies Guide for more detail.

## **Person not appointed or authorized**

- H1288 A person who has not been
1. appointed **or**
  2. authorized
- who is holding capital of a mentally sick or disabled person is holding it on trust.

## **Misuse of capital**

- H1289 In England and Wales mentally sick or disabled people have rights to capital if the person who is

1. appointed or authorized to deal with their capital **or**
2. not appointed or authorized

misuses the capital. For example, if they use the capital for themselves or give it away. In such circumstances the beneficial owner has a chose in action to recover the capital that has been misused (see H1036). The value of the chose in action is actual, not notional capital<sup>1</sup>.

*1 R(IS) 17/98*

H1290 However, a person who has power of attorney for another person can make gifts that are not unreasonable<sup>1</sup>. Examples of gifts that are not unreasonable to make are normal birthday, wedding or seasonal (for example Christmas) gifts. Where gifts that have been made by a person with power of attorney are unreasonable H1289 applies but where they are not unreasonable H1815 et seq should be considered<sup>2</sup>.

### **Example**

Helen has power of attorney for her mother, Barbara, who is in receipt of UC. Helen's daughter, Kaitlan, celebrates her eighteenth birthday. Barbara had told Helen that she would buy Kaitlan a car for her eighteenth birthday. Helen therefore gives Kaitlan £2,000 of Barbara's money so she can buy a car. The DM decides that the gift is not unreasonable. The DM also considers whether the rules on notional capital apply.

*1 Enduring Powers of Attorney Act 1985, s 3; 2 R(IS) 17/98*

H1291 - H1299

## **Real or heritable property**

### **Ownership of real or heritable property**

H1300 The legal owner of real or heritable property (see H1020 4.) is also the beneficial owner unless there is

1. something in writing such as a conveyance that
  - 1.1 dates from the time the person gets the property **and**
  - 1.2 says who has a beneficial interest in the property **or**
2. a mistake is made **and**
  - 2.1 nothing is put in writing **or**
  - 2.2 what is put in writing is wrong **or**
3. a fraud which shows the person got the property dishonestly **or**
4. a resulting trust (see H1308).

H1301 An attendance note or other information in the file of the solicitor acting for the legal owner when the property is bought may show a mistake has been made. For example, there is

1. an attendance note which says the legal owners told the solicitor who they wanted the beneficial owners to be **or**
2. evidence which says another person put up all or some of the money to buy the property and had not made a gift of it to the legal owners.

H1302 Accept what the legal owners say if

1. they say they have no beneficial interest in the property or only a share in it **and**
2. there is evidence from the solicitor which agrees with what the legal owners say.

H1303 Accept people named as the actual owners are the legal and beneficial owners of the property if there is evidence which says

1. those claiming to own the property got it dishonestly **and**
2. who the actual owners of the property are.

H1304 If there is no evidence of a mistake or a fraud the DM has to decide who has a beneficial interest in the property.

H1305 It is very difficult to get a beneficial interest in real property after it has been bought. However people can be given a beneficial interest, for example by a deed gift.

H1306 People do not necessarily get a beneficial interest in property just because they

1. pay the legal owner's mortgage on the property **or**
2. spend money on the property, for example paying for central heating to be installed.

Such people may have a charge on the property. The amount of the charge is equal to the amount of money they have spent. Such a charge is sometimes called a lien.

H1307 The partner of the legal owner of a property can get a beneficial interest in that property if they pay the mortgage because the legal owner can no longer afford to do so.

### **Resulting trust**

H1308 Legal owners are holding property on a resulting trust if another person puts up the money to buy the property and

1. there is no evidence to say the other person has given the money or the property to the legal owners **and**
2. the rule of presumption of advancement (see H1150 - H1153) does not apply<sup>1</sup>.

*1 R(SB) 49/83; R(SB) 1/85*

### **Right to buy scheme**

- H1309 The right to buy scheme lets some LA tenants buy the property they are tenants of at a discounted price. The amount of the discount is based on the number of years the person has been a tenant.
- H1310 People who buy property under the right to buy scheme have a beneficial interest in the property because of the discount they get. They are
1. the legal and beneficial owners of the property if they use their money or raise money to pay all of the balance of the purchase price **or**
  2. the joint legal and joint beneficial owners if
    - 2.1 another person uses their money or raises money to pay all of the balance **and**
    - 2.2 the person at 2.1 is one of the legal owners **or**
  3. holding the property on trust for themselves and another person if that other person
    - 3.1 uses their money or raises money to pay all of the balance **and**
    - 3.2 is not a legal owner.
- H1311 Under the scheme the people buying the property have to pay back some of the discount if the property is sold within three years of it being bought.

H1312 - H1329

## **When a person is not the beneficial owner of capital**

### **Bankruptcy**

- H1330 When a person is made bankrupt
1. in England and Wales a Receiver in Bankruptcy **or**
  2. in Scotland an interim trustee
- is appointed. Then a Trustee in Bankruptcy is appointed. The Receiver in Bankruptcy or the interim trustee may be the same person as the Trustee in Bankruptcy.
- H1331 People who have been made bankrupt have no power to deal with their property except with the approval of the court once the bankruptcy order is made. This being so, they should normally be treated as having no beneficial interest in their capital from the date of the order. It may be some time after this that a trustee in bankruptcy is appointed<sup>1</sup>.
- 1 KS v SSWP (JSA) [2009] UKUT 122 (AAC); [2010] AACR 3*
- H1332 If the bankrupt person is the joint beneficial owner of capital the other beneficial owners still have a beneficial interest in the capital unless they are also bankrupt.

### **Court orders**

- H1333 A Court can make an order such as a restraint order which stops people withdrawing or selling their capital.
- H1334 The order will list the capital involved.
- H1335 During the period of the order the people named in the order remain the beneficial owners of the capital. The restraint order restricts a person from dealing with the property listed in the order so that they are unable to do anything with it that is not permitted under the order. The practical effect of this is that while a person will be the beneficial owner of the property, the value of such property is shown as nil for benefit purposes.
- H1336 The period starts with the date of the order and ends on the date
1. given in the order **or**
  2. the Court withdraws the order.
- H1337 The order may let people withdraw a fixed sum of money each week from their capital to pay for living expenses. If money is withdrawn it should be treated as the person's capital. If the claimant spends the amount he is allowed to withdraw then this will have no effect on his benefit.
- H1338 In Scotland an arrestment has a similar effect.

### **Liability to repay capital**

- H1339 People have a beneficial interest in capital that has been given to them even if it has to be repaid. However, people no longer have a beneficial interest in capital they have been given if they are under a certain and immediate liability to repay it<sup>1</sup>. People are no longer the beneficial owners of the capital from the date the certain and immediate liability arises.

*1 R(IS) 5/99*

H1340 – H1600

## **What is the value of capital**

### **General**

- H1601 All of the capital a single claimant, or for joint claimants their combined capital, is included when working out the amount of capital but not capital which is disregarded<sup>1</sup>.

*1 WR Act 12, s 5; UC Regs, reg 46*

### **Capital in the UK**

- H1602 The value of capital which a person has in the UK, is its current market or surrender value less
1. 10% of the value if there are costs of sale **and**
  2. the amount of any encumbrances secured on the capital<sup>1</sup>.

*1 UC Regs, reg 49(1)*

### **Example**

Louise owns a holiday home in Cornwall valued at £125,000. She has a mortgage on the property of £100,500. The costs of sale (10% of the value) would be £12,500. This leaves the amount of capital to be taken into account as £12,000.

### **Costs of sale**

- H1603 10% of the current market or surrender value or price is only deducted if there are costs when a person sells capital. 10% of the value or price is deducted even if the actual costs are more or less than that amount.
- H1604 There are normally costs of sale if a person
1. uses another person to sell the capital, such as
    - 1.1 an estate agent
    - 1.2 a broker
    - 1.3 an auctioneer **or**
  2. needs the services of another person before the capital can be sold, such as
    - 2.1 a solicitor **or**
    - 2.2 an accountant.
- H1605 There are always costs of sale if the capital is real or heritable property (see H1020 4.)<sup>1</sup>.

*1 R(IS) 21/93*

- H1606 Costs of sale do not include the cost of
1. postage, such as when a person applies in writing to withdraw premium bonds **or**
  2. travelling expenses such as bus fares when a person visits a building society to withdraw money.
- H1607 DMs work out 10% of the current market or surrender value or price if there are costs of sale. Costs of sale are worked out before a deduction is made for any encumbrances secured on the capital.

### **Capital outside of the UK**

- H1608 The value of capital which a person has outside of the UK is
1. its current market or surrender value in the country outside of the UK if people can transfer the money they get for the capital to the UK **or**
  2. the price people get for it if sold to a willing buyer in the UK if the country will not let them transfer money to the UK.

*1 UC Regs, reg 49(2)*

### **Example**

Filipe owns a house in Portugal which has been valued at the equivalent of £62,000. He has a mortgage of £50,000 on the house. He would be able to transfer proceeds of the sale of the house to the UK. The full value of the property is taken into account as his capital and so as his capital exceeds £16,000, he is not entitled to UC.

## Capital not held in sterling

H1609 If the capital held by a person is in a currency other than sterling, the value should be calculated after deducting any banking charges or commission that is payable for the purpose of converting that capital into sterling<sup>1</sup>.

*1 UC Regs, reg 49(3)*

## Current market value

H1610 Current market value means the price a willing buyer will pay a willing seller in that market on the relevant date<sup>1</sup>. The market is the market for what is for sale. So if a house is for sale it is the property market. The relevant date is the date of claim or date of revision/supersession.

*1 R(SB) 6/84*

H1611 DMs work out the current market value

1. themselves **or**
2. from evidence given by the claimant or person whose capital it is **or**
3. from evidence from an expert valuer.

## Current surrender value

H1612 Current surrender value means the money people would get if

1. they withdraw their capital on the date of claim, revision or supersession **and**
2. that date is before the date a person gets the capital under the terms of the agreement **and**
3. the terms of the agreement lets a person withdraw the capital before the agreed date.

H1613 The DM accepts the money people would get on the date of claim, revision or supersession as the value. If the agreement does not let a person withdraw capital before the agreed date the value of the capital is its current market value.

## Capital with more than one value

H1614 DMs have to decide which value to accept if capital has more than one value, such as when capital has a current market and surrender value<sup>1</sup>.

*1 R(SB) 6/84*

## Encumbrances secured on capital

H1615 An encumbrance is secured on capital when a person is owed money and has a right

1. to the capital **or**
2. to stop it being sold

until the money owed is paid back. Such a debt is a legal charge or mortgage and is deducted from the value of capital. A debt which is not secured is not deducted<sup>1</sup>.

*1 R(IS) 21/93*

H1616 The amount of the encumbrances which are deducted is the amount of money owed on the date of claim, revision or supersession. The amount is deducted from the capital which the debt is secured on. If the debt is secured on more than one item of capital it is deducted from

1. the total of the values of the capital on which it is secured **and**
2. the total of the values of the capital which
  - 2.1 is not disregarded **and**
  - 2.2 on which it is secured

if any of the capital on which it is secured is disregarded when working out what capital a person has<sup>1</sup>.

### **Example**

On 29 January Anwar makes a claim for UC. His capital consists of 20,000 shares and two houses. He lives in one of the houses, the other is unoccupied. Anwar has a mortgage which he used to buy the house he lives in. However, the mortgage is secured on his other house. He is in debt to his bank. The bank is holding the share certificates and has a charge on the two houses as security for the debt. On 29 January the current market value of the shares is £50,000 and that of the unoccupied house is £72,000. The amount outstanding on the mortgage is £45,000 and the debt to the bank is £62,000.

The DM decides that the value of the unoccupied house, less 10% for costs of sale and the mortgage which is secured on it, is £19,800. The DM also decides that the value of the shares, less 10% for costs of sale, is £45,000. Finally, the DM decides that the value of the unoccupied house and shares, less the debt to the bank which is secured on them, is £2,800 (£19,800 + £45,000 - £62,000 = £2,800).

*1 R(IS) 21/93*

H1617 The DM needs to know the amount of money owed on encumbrances secured on capital at the date of claim or revision. The person whose capital it is has to

1. provide evidence of the amount owed **or**
2. give permission for someone else to get the information.

The amount owed is deducted from the current market or surrender value or price.

H1618 The DM should not make a deduction if there is no evidence of the amount owed or permission is not given to get the information and the DM cannot work out the amount owed from the available evidence.

H1619 - H1630

## Jointly-owned capital

### The law

H1631 Where more than one person has a beneficial interest in a capital asset, those persons are to be treated as having an equal share in the whole of that beneficial interest, unless there is evidence to show that the shares are divided in a different way<sup>1</sup>.

*1 UC Regs, reg 47*

H1632 It was assumed that the jointly-owned capital rule applied to all types of joint ownership. However a Commissioner decided that the jointly-owned capital rule did not apply to real property (see H1020 4.) which two or more people beneficially own as tenants in common<sup>1</sup>. The Commissioner's decision was upheld by the Court of Appeal.

*1 R(IS) 4/03*

H1633 See H1244 et seq for guidance on how to decide whether a claimant owns a capital asset with one or more persons as a

1. joint-tenant or, in Scotland, joint owner **or**
2. tenant in common or, in Scotland, common owner.

### Joint-tenant or joint owner

H1634 Where the claimant's interest in jointly-owned capital is as a joint-tenant or a joint owner the DM should

1. treat the claimant and the other beneficial owners as having equal shares in the asset<sup>1</sup> **and**
2. value the claimant's deemed share itself, under the normal rules.

*1 UC Regs, reg 47*

H1635 The DM should not assume that

1. the market value in all cases is the market value of the whole asset divided by the number of beneficial owners **or**
2. in the case of a dwelling, any joint-owners who live in the property do not live there.

### Tenant in common or common owner

H1636 Where the claimant has an interest in an asset as a tenant in common or a common owner the DM should value the claimant's actual share<sup>1</sup>.

*1 R(IS) 4/03*

### Example 1

Cecilia and her son Ross own a house as tenants in common. Cecilia owns 20% of the property and Ross owns 80% but he does not live in it. Cecilia goes into a care home and makes a claim for UC. The DM decides that the value of Cecilia's share of the house cannot be disregarded. The DM also decides to take the value of Cecilia's 20% share of the house into account.

### Example 2

Sue and Melinda own a house as tenants in common. Sue owns 60% of the property and Melinda 40%. Sue and Melinda both go into a care home and claim UC. The DM decides that their share of the value of the house cannot be disregarded. When deciding Sue's claim for UC, the DM takes the value of her 60% share of the property into account. When deciding Melinda's claim for UC, the DM takes the value of her 40% share of the property into account.

## Capital asset in the UK

H1637 Where a claimant is a joint-tenant or joint owner, the DM should establish the market value of the deemed share. Where a claimant is a tenant in common or a common owner, the DM should establish the market value of the actual share (see **Examples** at H1636). The market value is the price that a willing buyer would pay a willing seller<sup>1</sup> for the share the claimant is deemed to possess or actually possesses.

*1 R(SB) 6/84*

## Land or premises

H1638 In the case of land or premises the DM should obtain an expert opinion of the market value of the deemed or actual share. In either case the DM should ensure that the expert has taken into account

1. that the claimant is assumed to be a willing seller **and**
2. whether the other owners would be willing and able to buy the share **and**
3. whether the other owners would agree to the sale of the asset as a whole **and**
4. in a case where the other owners would not buy the share or agree to a sale of the asset as a whole
  - 4.1 whether on the facts of the claimant's particular case the courts would order
    - 4.1.a the sale of the property as a whole **or**
    - 4.1.b the partition of the property **and**
  - 4.2 the length of time a purchaser may have to wait before obtaining possession **and**

- 4.3 the legal costs a buyer may have to pay if an application to the courts for an order for sale and/or partition was pursued (this includes both the buyer and the other parties costs) **and**
- 5. the rights of occupation of the other owners **and**
- 6. whether any of the other owners are occupying the property and whether they would be willing to vacate the property **and**
- 7. any rights of occupation possessed by any occupants who are not owners (e.g. tenants) **and**
- 8. any encumbrances secured on the asset being valued **and**
- 9. any legal protection available to a potential purchaser **and**
- 10. any risk that the legal owners may
  - 10.1 sell the property and keep the proceeds for themselves **or**
  - 10.2 encumber the property with secured debts **or**
  - 10.3 lease the property **and**
- 11. whether there are planning or other restrictions on the property **and**
- 12. whether there is a current market for the claimant's share of the property or whether one might develop in the future.

**Note 1:** The valuer should consider whether and to what extent each of the above factors would encourage or discourage a potential purchaser.

**Note 2:** For the purposes of H1638 4.1 the valuer should not simply assume that an order will be granted. The specific facts of the case and the relevant law should be considered. This is because the purpose for which joint-ownership was established will need to be scrutinized in order to assess whether a court would order a sale<sup>1</sup>.

**Note 3:** For the purposes of H1638 5, a person can fall within the term "excluded occupier" if they share the living space of the property with the claimant. However, this does not give the person any rights against eviction. For a person to acquire rights against eviction the nature of any licence to remain should be such that it can be determined by giving reasonable notice.

**Note 4:** This is not an exhaustive list of the factors relevant to the value of a deemed or actual share. In order to reach an opinion on the value of a particular share, a valuer may have to take additional factors into account<sup>1</sup>.

*1 R(IS) 1/01*

**Note 5:** Scottish valuations are made on a different basis from those undertaken in the rest of Britain. In particular they do not involve a discount for factors such as delayed right to possession.

1. whether on the facts of the case there is any market for the deemed or actual share and where that market lies **and**
2. how the market value has been calculated including factors relevant to that calculation and how they affect it **and**
3. either
  - 3.1 what comparables have been relied on **or**
  - 3.2 how the valuation has been arrived at without using comparables **and**
4. whether the valuer has any experience or knowledge of the sale of an undivided share in the circumstances of the claimant's case **and**
5. how location, size and condition of a property affect its value **and**
6. if the property is leasehold, details of the length of the lease and any special terms in it.

**Note 1:** A valuation arrived at simply by dividing the value of the property as a whole by the number of owners and then giving a single discount to reflect the restricted demand for a deemed or actual share does not meet the requirements of the regulations.

**Note 2:** The expert may have to make assumptions because the information is not available. If this is the case, the DM should ensure that the expert has stated what information is missing and the assumptions that have been made<sup>1</sup>.

*1 R(JSA) 1/02*

H1640 The DM should accept a valuation that satisfies H1637 and H1638 and not accept one that does not. If provided with more than one valuation that satisfies H1637 and H1638 the DM should decide between them according to which presents the stronger evidence and arguments.

H1641 The value of a deemed or actual share in a capital asset is

1. the market value of the deemed or actual share less
2. 10% if there would be any expenses of sale<sup>1</sup>.

**Note:** The amount of any encumbrances secured on the asset should not be deducted from the market value of the deemed or actual share in these cases. The encumbrances should be taken into account by the valuer when establishing the market value.

*1 UC Regs, reg 49(1)*

H1642 Administrative procedures for obtaining expert opinions on the value of deemed or actual shares in capital assets have been set up (H1643). If an opinion under these procedures is challenged on appeal

1. the instructions and evidence given to the valuer should be included in the evidence put to the tribunal **and**
2. obtain a written report from the valuer

3. the valuer may be called as a witness if necessary.

H1643 Benefit Delivery Specialist Operations Team issue guidance<sup>1</sup> on how to get an expert valuation of

1. real or heritable property (see H1020 4.)
2. the assets of a business
3. investments
4. shares which are not quoted on the Stock Exchange, such as shares in a private company
5. an interest in a trust
6. current rights to capital
7. capital which is outside the UK.

*1 Valuation of Capital Assets Handbook*

### **Bank, post office and building society accounts**

H1644 To calculate the value of a deemed share in a bank, post office or building society account the DM should establish

1. the amount that is jointly owned by the claimant and the other beneficial owners (see H1135) **and**
2. the value of the deemed share by dividing the amount jointly held by the number of beneficial owners.

**Note:** If the account is with an institution that is in financial difficulty, an expert valuation of the value of the deemed share should be obtained.

### **Other assets**

H1645 An expert opinion should be obtained as to what a willing buyer would in reality be prepared to pay to a willing seller for the deemed or actual share. The DM should then deduct

1. 10% if there would be any expenses of sale **and**
2. the amount of any encumbrances secured on the asset<sup>1</sup>.

*1 UC Regs, reg 49(1)*

### **Value of a deemed or actual share in a capital asset outside the UK**

H1646 The value of a deemed or actual share in a capital asset outside the UK depends on whether or not the country will allow money to be transferred to the UK.

H1647 The onus is on the claimant to provide a letter from a bank of the country where the asset is held, or a letter from the Embassy of the country concerned. If there are difficulties getting this information, Benefit Delivery Specialist Operations Team will take expert advice from the Valuations Office in London.

H1648 The value of the deemed or actual share of the capital asset is

1. the market value of the deemed or actual share where there is no ban on the transfer of money to the UK **or**
2. if there is such a ban, the amount it would raise if it was sold in the UK to a willing buyer<sup>1</sup>.

**Note:** In most cases an expert valuation of the value of the deemed share will be needed.

*1 UC Regs, reg 49(2)*

## **Business assets**

H1649 Business assets are the things which are risked and used in the business. Business assets can include

1. capital which may be in a bank or building society account, some other investment, or cash
2. money owed to the business, which is a current right to capital
3. business premises, including the lease on such premises
4. machinery and equipment such as
  - 4.1 cars and vans
  - 4.2 sewing and gaming machines
  - 4.3 work benches and display cabinets
  - 4.4 refrigerators and freezers
  - 4.5 computer equipment and facsimile machines
  - 4.6 desks and chairs
5. stock, including livestock such as cows and horses.

## **Value of business assets**

H1650 The current market or surrender value or price of each business asset is needed. So if there are 30 sewing machines the DM has to decide the current market value or price of each machine.

## **Encumbrances secured on business assets**

H1651 Only debts which are encumbrances secured on the business asset are deducted. So if suppliers are owed money and their debt is not secured on any of the business assets no deduction is made.

H1652 A bank may have a floating charge on the business assets if the business has an overdraft. A floating charge is an encumbrance secured on each business asset. The amount to deduct from the total value of all the business assets is the amount overdrawn on the date of claim, revision or supersession.

## Funds held by the Court of Protection

H1653 When a mentally sick or disabled person has funds held by the Court of Protection (see H1277 et seq), those funds should be valued in accordance with H1602 - H1608. The person's incapacity does not affect this<sup>1</sup>.

*1 R(IS) 9/04*

### Example

Veronica lives in a care home and makes a claim for UC. She has capital of £82,000 which was inherited from her father and is held by the Court of Protection.

Veronica's brother, Henry, is her Deputy. Henry states that Veronica's capital has negligible value because of her incapacity. However, the DM decides that Veronica is not entitled to UC because the value of her capital exceeds £16,000.

H1654 – H1655

## Individual savings account

H1656 An individual savings account is an investment. People can invest up to a certain amount of money in one in each tax year if they are

1. 16 or over **and**
2. resident or ordinarily resident in the UK for tax purposes.

The value of an individual savings account is what people would get if they withdrew their investment on the date of claim or supersession. Any income, which is paid out of an individual savings account, is income from capital and should be added to the claimant's capital from the day it is due to be paid to them<sup>1</sup>.

*1 UC Regs, reg 72(3)*

H1657 Normally, a mortgage is an encumbrance secured on the property bought with the mortgage. If someone says they are using an individual savings account to pay off their mortgage this is not likely to be an encumbrance secured on the individual savings account and it should be valued as such.

H1658 It is a requirement of the regulations that the individual savings account remain in the beneficial ownership of the investor<sup>1</sup>.

*1 The Individual Savings Account Regulations 1998 para 4(6)*

**Note:** If there is evidence that the individual savings account or personal equity plan was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the individual savings account or personal equity plan then it may constitute an equitable charge and they should be valued taking that into account.

## Lifetime individual savings account

H1659 The Lifetime individual savings account is available for people who are aged 18 to 40 when it is opened. It is similar in many ways to a normal individual savings account with the addition of a government bonus of 25% paid on the contributions made by the saver of up to a limit of £4000 annually. This Lifetime individual savings account should be treated as capital from the outset with a value of

1. 75% of the surrender value where the person is under age 60 **or**
2. 100% of the surrender value where the person is over age 60

taken into account.

## Stocks and shares quoted on the London Stock Exchange

### Value of stocks and shares

H1660 Initially, a claimant will be asked to value their shares themselves. If the DM needs to be involved in valuing the stocks and shares, the value 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.

H1661 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.

H1662 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 application for supersession **and**
2. multiply the figure at 1. by the number of that stock or share the person has.

H1663 An exact valuation is needed if the value of the stocks or shares are close to the lower or upper capital limits or there is a change to the amount of assumed yield when the value is added to any other capital the claimant and partner has<sup>1</sup>.

*1 R(IS) 18/95*

H1664 To work out the exact value of stocks and shares

1. use the Shares Wizard tool available on the Intranet A-Z 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.

H1665 Once the share value has been calculated as in H1663, deduct 10% costs of sale as per H1602 et seq, 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.

## **Encumbrances secured on stocks and shares**

H1666 Stockbrokers have an encumbrance 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>.

*1 R(IS) 18/95*

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

H1667 The amount of the encumbrance is the amount owed to the stockbroker.

## **Government securities**

H1668 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.

H1669 The value of Government Securities should be worked out in the same way as for stocks and shares (see H1659 et seq).

H1670 The Shares Wizard tool available on the Intranet A-Z 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.

H1671 - H1672

## Unit trusts

### Value of unit trusts

H1673 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

H1674 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.

## Value of capital in certain cases

### Bank and building society accounts

H1675 A person who has money in a bank or building society account has a right to capital. The value of the rights to capital is the balance in the account on the date of claim or application for supersession because it is assumed the bank or building society will be able to pay out the money when asked.

H1676 An expert valuation of a right to capital is needed if there is something which stops people getting their money out of a bank or building society account, such as the

1. person is the beneficial owner of the money in the account and not the legal owner and the legal owner will not withdraw the money **or**
2. bank or building society has gone into liquidation.

## Right to receive income

H1677 An expert valuation is needed of the value of the right to receive an income if the income can be signed over to another person.

H1678 Income which cannot be signed over to another person is

1. periodical maintenance payments
2. public service pensions, such as a civil service pension
3. SS benefits and allowances, such as CHB.

### **Shares in a private company**

H1679 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

H1680 The value of the shares is not worked out by dividing the value of all the shares in the company by the number of shares a person has<sup>1</sup>. If the company's auditors say what a fair value is the expert valuation cannot be more than this figure and is more likely to be less<sup>2</sup>.

*1 R(SB) 18/83; 2 R(IS) 2/90*

H1681 The expert valuation should take into account

1. anything in the articles of association which restricts the sale of the shares, such as the shares can only be sold
  - 1.1 to the other shareholders and the shareholders will not buy them **or**
  - 1.2 if the directors agree and they do not agree **and**
2. whether the person's shares in the company are a minority, equal or controlling interest.

H1682 - H1744

### **How to work out the total amount of capital**

H1745 For each person add together the total of actual capital, income treated as capital and notional capital. This is the total amount of capital each person has.

H1746 The total amount of capital a claimant has is the total amount of

1. the claimant's capital if the claimant is a single claimant **or**
2. the combined capital of both members of a couple where it is a joint claimant<sup>1</sup>.

*1 WR Act 12, s 5*

H1747 Where the claimant is a member of a couple but claims as a single person, the claimant's capital is to be treated as including the capital of the other member of the couple<sup>1</sup>.

*1 UC Regs, reg 18(2)*

H1748 Where the person claiming as a single person is party to a polygamous marriage<sup>1</sup>, no account is taken of the capital of their spouse or any other parties to the polygamous marriage.

*1 UC Regs, reg 3(4)*

### **Notional capital**

H1749 The DM has to decide if a person has notional capital if the total of actual capital and income which is treated as capital is £16,000 or less<sup>1</sup>.

*1 R(SB) 45/83*

H1750 The total amount of notional capital for each person is the total of the value of each item of notional capital that person has.

H1751 - H1759

## **Effect of capital on benefit**

### **When claimant cannot get benefit**

H1760 Claimants cannot get benefit if the total amount of capital is more than £16,000<sup>1</sup>.

*1 WR Act 12, s 5; UC Regs, reg 18*

### **Assumed yield from capital**

H1761 Claimants are treated as having an assumed yield of £4.35 a month for

1. each complete £250 of capital over £6,000 up to and including £16,000 **and**
2. any capital which is left and which is not a complete £250<sup>1</sup>.

See Appendix 1 to this Chapter for a table which shows how to work out assumed yield.

*1 UC Regs, reg 72(1)*

H1762 Assumed yield does not apply<sup>1</sup> where

1. the capital has been disregarded **or**
2. the actual income from that capital is taken into account where that income is from
  - 2.1 an annuity **or**
  - 2.2 a trust.

*1 UC Regs, reg 72(2)*

H1763 Where assumed yield has been applied, any actual income that comes from the capital such as rent, interest or dividends, should be treated as part of the person's capital from the day it is due to be paid to the person<sup>1</sup>.

*1 UC Regs, reg 72(3)*

### **When capital does not affect benefit**

H1764 Capital does not affect what benefit claimants can get if their capital is £6,000 or less.

H1765 - H1794

## **Deprivation of capital**

### **The law**

H1795 [\[See ADM memo 13-15\]](#) The law says people are treated as having capital they do not have if they deprive themselves of capital to get UC or more UC<sup>1</sup>. The capital people are treated as having is called notional capital.

*1 UC Regs, reg 50(1)*

H1796 People are not treated as having capital of which they have deprived themselves if

1. it reduces or pays a debt owed by the person **or**
2. they purchase goods and services and that expenditure was reasonable in the circumstances of that person's case<sup>1</sup>.

*1 UC Regs, reg 50(2)*

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

H1797 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.

H1798 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 H1290 applies)

deprives claimants' of their capital. H1289 gives guidance on how to treat claimants capital in these circumstances.

H1799 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>.

H1800 - H1814

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

### **Meaning of deprive**

H1815 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 get other capital<sup>2</sup> or personal possessions.

**Note:** This is subject to the provisions of H1796. So for example a person may have bought a second car but they are single and can provide no reason for why they need 2 cars, so the DM does not think the expenditure was reasonable.

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

### **Onus of proof**

H1816 People have to show they no longer have capital<sup>1</sup>.

*1 R(SB) 38/85*

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

H1817 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real or heritable property (see H1020 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
  - 3.1 what the capital has been spent on **or**
  - 3.2 which debts have been paid out of the capital.

### **What the DM decides**

H1818 The DM decides if a single claimant or a partner for joint claimants have

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

DMs do not have to decide if single claimants or partners have deprived themselves of capital for the purpose of getting benefit or more benefit if they decide claimants or partners still have the capital. Such capital is included when working out what actual capital the claimant or partner has.

H1819 DMs should decide claimants or partners have actual capital if

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

*1 R(SB) 38/85*

### **Evidence which may show people had capital**

H1820 Evidence which may show people had capital can include information

1. given when UC was claimed or claimed previously, such as when claimants have said they
  - 1.1 had capital and do not say they have capital now **or**
  - 1.2 owned the house in which they used to live and do not say what has happened to the house when they move into accommodation they do not own **or**
2. information from another source, such as from the former employer, which shows claimants have got a one-off payment.

H1821 - H1824

### **Have people deprived themselves of capital for the purpose of getting UC or more UC**

#### **Onus of proof**

H1825 DMs have to show the claimant's or partner's purpose was to get UC or more benefit if they decide claimants or partners have deprived themselves of capital<sup>1</sup>. Getting UC or more UC may not be the claimant's or partner's predominant purpose but it must be a significant one<sup>2</sup>. So when claimants give away all their capital to a relative just before claiming UC their

1. main, or predominant, purpose may be to benefit the relative **and**
2. intention, or significant purpose, may be to reduce their capital so they can get UC or more UC.

*1 UC Regs, reg 50(1); 2 R(SB) 40/85*

#### **What the DM decides**

H1826 DMs have to decide if the claimant's or partner's significant purpose was to get UC or more UC. The DM has to make such a decision each time claimants or partners deprive themselves of capital. So if a claimant has spent their capital on several things the DM has to decide the claimant's purpose for each act of deprivation.

H1827 Normally there is no direct evidence to show the claimant's or partner's purpose was to get UC or more UC. So the DM has to consider all the facts of each case when making the decision<sup>1</sup>.

*1 R(SB) 9/91*

## **Facts which the DM should consider**

### **Were people mentally capable when they deprived themselves of capital**

- H1830 Claimants or partners who are not mentally capable have not deprived themselves of capital for the purpose of getting UC or more UC if they were not mentally capable at the time they deprived themselves of capital.
- H1831 Such claimants or partners have actual capital if they gave their capital to another person because the gift is not valid. The person who has been given the capital is holding it on trust for the claimant or partner

### **Did claimants have a choice when they deprived themselves of capital**

- H1832 The DM has to decide why claimants or partners chose to deprive themselves of capital when they did if they had a choice in the matter<sup>1</sup>. The fact that claimants had a choice does not mean their purpose was to get UC or more UC. It is a fact which the DM should take into account when deciding the claimant's or partner's purpose.

*1 R(SB) 12/91*

- H1833 Claimants or partners have no choice if they use their capital to pay
1. for the necessities of life, such as food and fuel **or**
  2. debts **or**
  3. the Department to repay an overpayment.

Claimants or partners who had no choice have not deprived themselves of capital to get UC or more UC.

- H1834 Claimants or partners have a choice if they
1. give their capital away
  2. spend their capital extravagantly or imprudently even if they say they have used it to pay for the necessities of life

**Note:** See H1339 if a person has a certain and immediate liability to repay capital that has been given to them.

*1 R(SB) 12/91*

H1835 – H1839

### **Did people know capital affects the amount of universal credit they can get**

- H1840 Claimants or partners have not deprived themselves of capital for the purpose of getting UC or more UC if they did not know that the capital they have deprived themselves of would affect the amount of UC they could get<sup>1</sup>.

*1 R(SB) 12/91*

H1841 DMs have to show claimants or partners did have such knowledge if they are to decide the purpose was to get UC or more UC. Facts which the DM should consider include

1. previous claims for UC or other means-tested benefits (IS, JSA for example) which may show claimants or partners
  - 1.1 did not get UC/other means-tested benefits, or got a reduced amount, because of the capital they had **or**
  - 1.2 have been told about the effect of capital on UC/other means-tested benefits
2. official forms and leaflets which claimants or partners have been given when claiming UC/other means-tested benefits<sup>1</sup> **and**
3. the claimant's or partner's educational standing<sup>2</sup>.

*1 R(SB) 12/91; 2 R(SB) 12/91*

### **Did people say what they were going to do with their capital**

H1842 Claimants or partners have not deprived themselves of capital for the purpose of getting UC or more UC if they

1. say exactly what they are going to do with their capital **and**
2. are told by an officer of DWP it **will not** affect the amount of UC they can get **and**
3. do what they said they were going to do with their capital.

H1843 However, DMs should consider whether claimants or partners have deprived themselves of capital for the purpose of getting UC or more UC if they

1. say exactly what they are going to do with their capital **and**
2. are told by an officer of DWP it **will** affect the amount of UC they can get **and**
3. do what they said they were going to do with their capital.

### **When did people deprive themselves of capital**

H1844 The DM should consider the date claimants or partners deprived themselves of capital. Such a fact is more relevant if deprivation is near to the date of the claim or the date the claimant's circumstances change<sup>1</sup>.

#### **Example**

Ruth has been in receipt of UC since 2013. On 25.2.15 she transfers legal and beneficial ownership of her house to her daughters and goes to live with her sister. Ruth says that she transferred ownership of her home to her daughters so they still had somewhere to live when she went to live with her sister. The DM decides that there are grounds to revise or supersede the decision awarding UC to Ruth. The DM also decides that, although her predominant motive was to provide a home for

her daughters, a significant purpose was to receive UC. The DM therefore decides that Ruth deprived herself of the value of her house in order to receive UC.

*1 R(SB) 9/91*

## **What are people going to live on after they have deprived themselves of capital**

H1845 The DM should consider what claimants or partners say they are going to live on after they have deprived themselves of capital. Such a fact is more relevant if they have no other capital or income to live on<sup>1</sup>.

*1 R(SB) 9/91*

H1846 The DM cannot decide the purpose of the deprivation was to get UC or more UC if the only fact is that after depriving themselves of capital

1. claimants or partners should have realized **or**
2. the effect of it would be they would need UC<sup>1</sup>.

*1 R(SB) 40/85*

H1847 - H1873

## **Person treated as sole owner or partner in a company**

### **The law**

H1874 Where a person works in a company

1. in a situation similar to that of a sole owner or partner **and**
  2. that company is carrying on a trade or a property business<sup>1</sup>
- that person shall be treated as a sole owner or partner<sup>2</sup>.

*1 Corporation Tax Act 09, s 204; 2 UC Regs, reg 77(1)*

H1875 "Property business" refers to a person deriving income from property (usually in the form of rent) but not as part of carrying on a trade. So this would be a person who bought one or more properties for investment. So where a person has put such property in the name of the company the property will be treated as part of the claimant's capital and **no** disregard would apply<sup>1</sup>.

*1 UC Regs, reg 77(3)(a)*

H1876 Where H1874 above applies

1. the value of the person's holding in the company is disregarded when working out what capital the person has **and**
2. the person is treated as having capital which is equal to
  - 2.1 the value of the capital of that company **or**

**2.2** the person's share of the value of the capital of that company

depending on whether they are like a sole owner or a partner<sup>1</sup>.

*1 UC Regs, reg 77(2)*

### **Like a sole owner or partner**

H1877 Whether a person who has shares in a company is like a sole owner or partner in the business of that company is a question of fact in each case<sup>1</sup>. A person who does not work for the company can be like a sole owner or partner<sup>2</sup>.

*1 R(IS) 8/92; 2 R(IS) 8/92*

H1878 The sole owner of a business has total influence over the day to day running of the business. When a business is jointly owned the number of partners is normally small and the influence a partner has over the day to day running of the business will depend on the terms of the partnership agreement. So for a person to be like a

1. sole owner in the business of the company that person should have total influence over the day to day running of the company, such as when a person owns 99% of the shares in a company<sup>1</sup> **and**
2. partner in the business of the company the
  - 2.1 number of shareholders in the company should be small **and**
  - 2.2 person should have some meaningful influence over the day to day running of the company<sup>2</sup>.

*1 R(IS) 13/93; 2 R(IS) 8/92*

H1879 A person who has some shares in a company which has a large number of shareholders, such as BP, is an investor because such a person has no influence over the day to day running of the company<sup>1</sup>.

*1 R(IS) 8/92*

H1880 Where H1874 applies<sup>1</sup> in respect of a company which is carrying on a trade

1. any assets of the company that are used wholly or mainly for the purposes of the trade are disregarded from the persons capital while they are engaged in activities in the course of that trade<sup>2</sup> **and**
2. the income or the person's share of the income of the company is treated as the person's income and calculated as if they were self-employed earnings<sup>3</sup> (see ADM Chapter H4: Earned income - self-employed earnings) **and**
3. where the person's activities in the course of their trade are their main employment
  - 3.1 the person is treated as if they were in gainful self-employment **and**
  - 3.2 the minimum income floor (see ADM Chapter H4: Earned income - self-employed earnings) applies in relation to any assessment period where the person's earned income is below the specified amount<sup>4</sup>.

*1 UC Regs, reg 77(3); 2 reg 77(3)(a); 3 reg 77(3)(b); reg 57; 4 reg 77(3)(c); reg 62*

H1881 Any self-employed earnings that a person is treated as having as in H1880 **2.** above are in addition to any employed earnings that the person receives as a director or employee of the company<sup>1</sup>.

*1 UC Regs, reg 77(4)*

H1882 [See Memo ADM 22/18] Where a person's earnings come from working through a company as an intermediary or through a managed service company (generally to avoid national insurance) then such earnings are **not** to be calculated as if they were self-employed and the guidance at H1874 to H1881 will not apply<sup>1</sup>. Income under these arrangements is covered by PAYE and so is counted as employed earnings<sup>2</sup>.

*1 UC Regs, reg 77(5); ITEPA 03, Pt 2 Chap 7*

H1883 - H1884

## **What is the amount of notional capital**

### **How to work out the amount of notional capital**

H1885 The amount of notional capital is worked out in the same way as if the person has the capital and this includes applying appropriate disregards.

#### **What the DM decides**

H1886 The DM decides

1. what notional capital can be disregarded (see ADM Chapter H2: Capital disregards) **and**
2. the value of notional capital which cannot be disregarded (see H2601).

H1887 – H1890

## **Value**

### **Capital of a company**

H1891 Normally a person has no beneficial interest in the capital of a company. But if a person who has shares in a company is treated as a

1. sole owner **or**
2. partner

in the business of the company the person is also treated as having the value or a share of the value of the capital of the company if it is not disregarded.

H1892 The value of the capital of the company is the net value of the capital of that company. The net value is the difference between

1. the total value of the capital of the company **and**
2. the amount of any liabilities the company has<sup>1</sup>.

It is not the value of some of the capital of the company<sup>2</sup>.

**Note:** An expert valuation will be needed if the company's auditors do not provide evidence of the net value of the capital of the company.

*1 R(IS) 13/93; 2 R(IS) 13/93*

H1893 The value the person is treated as possessing is

1. all the value if the person is treated as a sole owner **and**
2. a share of the value if the person is treated as a partner.

The share at **2.** is the same fraction as the fraction of shares the person has in the company. So a person who has 40 out of a 100 shares in a company has a two fifth's share of the value.

H1894

### **Capital spent on a resource which is not worth as much**

H1895 If claimants or partners have deprived themselves of capital to get UC or more UC and they spent their capital on a resource which is not worth as much as the capital spent, the value of notional capital is the difference between the value of the

1. capital spent **and**
2. resource which was bought<sup>1</sup>.

**Note:** This may apply when a person has spent capital on personal possessions to get UC or more UC because personal possessions are not normally worth as much as a person paid for them. The DM should **not** consider any further increase in the difference between the amount paid for a personal possession and its current market value<sup>2</sup>.

#### **Example**

Jens makes a claim for UC. Two weeks before making his claim, Jens buys a car for £7,250. The DM decides that Jens bought the car to get benefit. When Jens makes his claim the value of the car is £6,500. The DM decides that Jens has actual capital of £6,500 and notional capital of £750. Although the value of the car reduces, the DM does not make an increase in the amount of notional capital.

*1 R(SB) 38/85; 2 R(IS) 8/04*

### **Capital which people have deprived themselves of**

H1896 If claimants or partners deprive themselves of capital to get UC or more UC the value of the capital they are treated as having is the difference between

1. its value on the date of claim, revision or supersession **and**
2. the amount of any reduction under the diminishing notional capital rule<sup>1</sup>.

*1 UC Regs, reg 50(3)*

H1897 – H1899

### **Diminishing notional capital rule**

## The law

H1900 The law says

1. when the amount of notional capital should be reduced **and**
2. how the amount of the reduction is worked out<sup>1</sup>.

*1 UC Regs, reg 50*

## What the DM decides

H1901 The DM decides

1. when the capital a claimant is treated as having because of deprivation should be reduced **and**
2. the amount of the reduction.

## The diminishing notional capital rule

H1902 Where a claimant is treated as having capital because of deprivation, the amount of capital reduces<sup>1</sup> for each subsequent assessment period<sup>2</sup> (see ADM Chapter E2: Awards, benefit units and maximum amounts, for meaning of assessment period), or where the award has terminated, each subsequent month, where the notional capital exceeds

1. £16,000, by the amount of an award of UC that would be made to that person assuming they met the other basic and financial conditions for UC if it were not for the notional capital **or**
2. £6000 but not £16,000 (including where the notional capital has reduced below £16,000 as in 1. above), by the amount of assumed income generated by that capital<sup>3</sup> (see H1761).

*1 UC Regs, reg 50(3); 2 reg 21; 3 reg 72(1)*

H1903 - H1999

## Appendix 1

### How to work out monthly assumed yield – H1761

Total capital		Assumed yield £
From £	To £	
NIL	6,000.00	NIL
6,000.01	6,250.00	4.35
6,250.01	6,500.00	8.70
6,500.01	6,750.00	13.05
6,750.01	7,000.00	17.40
7,000.01	7,250.00	21.75

7,250.01	7,500.00	26.10
7,500.01	7,750.00	30.45
7,750.01	8,000.00	34.80
8,000.01	8,250.00	39.15
8,250.01	8,500.00	43.50
8,500.01	8,750.00	47.85
8,750.01	9,000.00	52.20
9,000.01	9,250.00	56.55
9,250.01	9,500.00	60.90
9,500.01	9,750.00	65.25
9,750.01	10,000.00	69.60
10,000.01	10,250.00	73.95
10,250.01	10,500.00	78.30
10,500.01	10,750.00	82.65
10,750.01	11,000.00	87.00
11,000.01	11,250.00	91.35
11,250.01	11,500.00	95.70
11,500.01	11,750.00	100.05
11,750.01	12,000.00	104.40
12,000.01	12,250.00	108.75
12,250.01	12,500.00	113.10
12,500.01	12,750.00	117.45
12,750.01	13,000.00	121.80
13,000.01	13,250.00	126.15
13,250.01	13,500.00	130.50
13,501.00	13,750.00	134.85
13,750.01	14,000.00	139.20
14,000.01	14,250.00	143.55
14,250.01	14,500.00	147.90
14,500.01	14,750.00	152.25
14,750.01	15,000.00	156.60
15,000.01	15,250.00	160.95
15,250.01	15,500.00	165.30
15,500.01	15,750.00	169.65

15,750.01 16,000.00

174.00

16,000.01 and over

claimant cannot get benefit

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