

Chapter H2: Capital disregards

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Chapter H2: Capital disregards

Introduction

The law

H2001 All capital is to be taken into account unless it is to be¹

1. treated as income **or**
2. disregarded.

1 UC Regs, reg 46(1)

Onus of proof

H2002 The claimant has to show that the capital can be disregarded. If there is no evidence to show capital can be disregarded, it is included when working out the amount of capital a claimant and their partner has.

What the DM decides

H2003 The DM decides if capital can be disregarded

1. at the date of claim, revision or supersession **and**
2. before it is valued.

The DM does not have to know the value of capital to decide if it can be disregarded.

H2004

H2005 Capital is disregarded¹

1. indefinitely **or**
2. for a period of up to 12 months **or**
3. for a period of up to 6 months **or**
4. for more than 6 months if it is reasonable.

1 UC Regs, reg 48; Sch 10

H2006 – H2020

Capital disregarded indefinitely

Business assets

The law

H2021 Assets which are used wholly or mainly for the purposes of a trade, profession or vocation which the person is carrying on, are disregarded indefinitely¹.

1 UC Regs, Sch 10, para 7

Example

John owns an amusement arcade in Bournemouth. He stopped working in the arcade on 31 October and claimed UC on 3 November. The assets of the business are a lease on the building, gaming machines and tools used to repair the machines. John states the value of these assets is £45,000. John also states that he is not going to sell the assets because he needs them when he opens the arcade again in the following April. The DM decides that the assets of the business can be disregarded.

Note: A different disregard applies if persons are not able to work in the business because they are ill or physically or mentally disabled and are going to start or return to work in the business (see H2117).

Meaning of business assets

H2022 Business assets include standard items such as machinery, vehicles, fixtures and cash held in the bank (including money held following the sale of assets). They may also include items such as customer lists and contacts, current and future contracts and goodwill.

H2023 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as “work in hand” may result in an income receipt and so would be appropriate for inclusion in the profit and loss account¹. Where doubt exists as to whether a particular asset would represent a capital or income receipt upon its sale, the principles of commercial accounting must be applied i.e. the approach that would be taken by an accountant or the HMRC to such a receipt or holding.

1 UC Regs, reg 57(3)

Meaning of gainful self-employment

H2024 A claimant is in gainful self-employment if for the purposes of UC, the Secretary of State has determined that

1. the claimant is carrying on a trade, profession or vocation as their main employment **and**
2. the earnings from 1. above are self-employed earnings **and**
3. the trade, profession or vocation is organised, developed regular and carried on in expectation of profit¹.

Note: Please see chapter H4: Earned Income: self-employed earnings for details.

1 UC Regs, reg 64

H2025 People can be in gainful self-employment even if they have another job as an employee.

When people are working in the business

H2026 People are working in the business if they do some work for the business in a practical sense. There is no set definition of the type and amount of work that has to

be done for the person to be classed as carrying on a trade, profession or vocation and the DM must decide each case on its merits¹.

1 R(IS) 14/98

H2027 A partner in a business managed and worked exclusively by others is not working in the business. Such people are often known as a “sleeping partner”. Even if that person receives a share of the profits of the business he is not engaged in that trade, profession or vocation¹.

1 R(IS) 14/98

Personal injury compensation payments

H2028 Where a person has been awarded a sum in consequence of a personal injury to that person and the sum is

1. held in trust **or**
2. administered on behalf of that person by the court **or**
3. only able to be disposed of by the direction of the court

the amount shall be disregarded from the calculation of the person’s capital¹. (See also H2092.) Payments made from the Criminal Injuries Compensation Fund and the Thalidomide Trust will be included in this disregard.

1 UC Regs, reg 75(1), (4) & (5)

H2029 The meaning of made “in consequence of a personal injury” can include where the claimant’s solicitor fails to secure the personal injury payment and the claimant sues their solicitor for professional negligence and receives a compensation payment to the value of what they should have received. However if any damages are also paid for any additional loss created by the professional negligence then this would not be disregarded¹.

Note 1: Payments of income from the trust are income from capital. However such income is disregarded (see ADM Chapter H5: Unearned income).

Note 2: This disregard does not apply if the injury was to a claimant’s deceased partner².

Note 3: A payment made in relation to the costs of care associated with an unwanted child in a “wrongful birth” case is a payment made because of a personal injury, for instance in the case of a failed sterilisation or vasectomy.

1 KQ v SSWP (IS) [2011] UKUT 102 (AAC); [2011] AACR 43; 2 R(IS) 3/03

H2030 Payments can only come within this disregard where the claimant or partner for whom the payment was made themselves suffered a physical and/or psychological injury. If there is any doubt as to what the payment was awarded for, then the DM should request sight of the papers awarding the amount. These should specify on what basis the award was made.

Example 1

Peter's wife was killed in a road traffic accident and he was awarded £36,000 which covered loss of earnings. As the award was not due to Peter suffering any injury to himself, then this amount would be taken in account when calculating his capital.

Example 2

Fiona received £100,000 as the result of an assault on her partner which resulted in his death. The award was for the psychological injury to Fiona arising from her witnessing the attack. As the amount was awarded for the injury to Fiona, the amount is disregarded in calculating her capital.

Premises occupied as the home

The law

H2031 The premises occupied by a person as their home is disregarded indefinitely. Only one set of premises can be disregarded¹. In some circumstances, more than one property can make up the premises occupied as the home².

1 UC Regs, Sch 10, para 1; 2 Secretary of State v. Miah; R(JSA) 9/03

H2032 – H2036

Premises which have not been occupied as the home

H2037 Premises which

1. have been bought **and**
2. have not been lived in as the home by the claimant or any member of the claimant's family cannot be disregarded¹ as premises occupied as the home.

1 R(SB) 27/84

Premises not occupied as the home for a time

H2038 Premises usually occupied as the home are disregarded if

1. they are not occupied for a time **and**
2. the intention is to return to live in the premises as the home.

For example, if a person goes into residential care on a temporary basis and intends to return to the house which the person usually occupies as the home, the house is disregarded.

Croft land and small-holdings

H2039 Croft land and small-holdings can be treated as part of the premises occupied as the home if they cannot be sold separately.

More than one set of premises owned

H2040 If a claimant owns more than one set of premises, the DM will have to decide whether each set of premises can be disregarded as the premises occupied by a person as their home. Where a claimant has only one home that is spread over two physical buildings the DM should decide that each is the premises occupied as the home if each is normally occupied by the claimant.

H2041 Factors the DM should consider when deciding whether the claimant has only one home are

1. the proximity of the premises, the closer premises are to each other the more likely they are to be one home
2. who lives in each of the premises, for example whether
 - 2.1 each of the premises is occupied by members of the claimant's family (see ADM Chapter E2: Awards, benefit unit and maximum amount) **or**
 - 2.2 one of the set of premises is occupied solely by non-dependants
3. the reason for the purchase of more than one set of premises, for example whether it was
 - 3.1 to avoid statutory overcrowding¹ **or**
 - 3.2 an investment opportunity **or**
 - 3.3 to have a
 - 3.3.a weekend retreat **or**
 - 3.3.b country cottage.

If **2.2**, **3.2** or **3.3** apply, the DM should decide that the claimant **does not** have only one home and therefore only one set of premises would be disregarded as the premises occupied as the home.

1 Housing Act 1985, s 325 & 326; Secretary of State v. Miah; R(JSA) 9/03

H2042 When considering whether the claimant normally occupies more than one set of premises as his home, the DM should decide that the claimant's home is the place where he

1. lives
2. eats
3. sleeps
4. bathes
5. relaxes
6. enjoys with his family.

Example 1

Keith and Elma have eleven children, eight of whom are at school and three of whom are in work. They all lived in a three bedroomed house. When Keith and Elma are advised of the rules of statutory overcrowding they purchase another three

bedroomed house in the same street. There are two other properties between the houses Keith and Elma own. Elma and the five youngest children continue to live in the original house and the other children go to live in the newly purchased house. Keith lives, sleeps, eats, bathes, relaxes and enjoys with his family the original house four days a week and the newly purchased house three days a week. Keith is made redundant and claims UC. The DM decides that Keith normally occupies both houses. The DM also decides that both houses are disregarded as the premises occupied as the home.

Example 2

Carys lives in Cambridge and is in receipt of UC. She inherits a cottage in Wales. Carys has relatives who live in Wales. She therefore decides to keep the cottage for her use when she visits her relatives. The DM decides that the cottage in Wales is not disregarded as the premises occupied as the home.

Example 3

Bruce owns a house in London. He gets a job in Manchester and buys a flat there to live in during the week. He spends the weekends at his house in London. Bruce loses his job and returns to London to claim UC. He states he will live in London but will visit his flat once a month in order to maintain it and possibly look for work in Manchester. The DM decides that Bruce does not normally occupy the flat in Manchester. The DM also decides that the flat in Manchester is not disregarded as the premises occupied as the home.

Example 4

Adam is single. He lives at 25 Station Road which is a semi-detached house. The house adjoining his, 27 Station Road, comes on the market after being uninhabited for two years. It is in a derelict condition. Adam buys it cheaply. He sometimes sleeps and eats at 27 Station Road while he undertakes the necessary repairs in order to let or sell it but he spends most of his time at 25 Station Road. Adam then suffers an injury at work and claims UC. The DM decides that as Adam purchased 27 Station Road as an investment it is not disregarded as the premises occupied as the home.

Example 5

Wasim and his wife Ruksana live in a four bedroomed house. They have twelve children. To avoid statutory overcrowding, Wasim and Ruksana buy another house in the street where they live. Their four eldest children, all of whom are aged over 21 live in this other house and Wasim, Ruksana and their other children do not spend any time there. Wasim is made redundant and makes a claim for UC. The DM decides that only the house where Wasim and Ruksana live can be disregarded as the premises occupied as the home.

Life insurance policies

The law

H2043 The value of a life insurance policy still in force is disregarded indefinitely¹.

1 UC Regs, Sch 10, para 9

Investments which include life insurance

H2044 Investments which include some life insurance are disregarded indefinitely if the agreement states how payment on death is worked out. It does not matter whether the amount paid on death is

1. more than **or**
2. equal to **or**
3. less than

the amount the person would get if the investment is surrendered the day before the date of death¹.

1 R(IS) 7/98

Money deposited with a housing association

H2045 Money deposited with a housing association is disregarded indefinitely if the money has to be deposited as a condition of living in the home¹. A housing association is a non-profit making voluntary body formed with the aim of providing good quality low cost housing². See H2119 for disregard where money is deposited with a housing association to purchase premises.

1 UC Regs, Sch 10, para 12; 2 Housing Association Act 85, s 1(1)

Occupational and personal pensions

The law

H2046 The value of any right to receive a pension under

1. an occupational or personal pension scheme¹ **or**
2. any other registered pension scheme²

is disregarded indefinitely³.

1 Pension Schemes Act 1993, s 1; Finance Act 2004, s 153; 2 UC Regs, Sch 10, para 10

Payment made to holders of the Victoria Cross or George Cross

H2047 Any payment made to people because they hold the

1. Victoria Cross **or**
2. George Cross

is disregarded indefinitely¹.

1 UC Regs, Sch 10, para 19

Premises lived in by a close relative

The law

H2048 Premises that are occupied as the home by a close relative of a person are disregarded indefinitely where the close relative has

1. LCW **or**
2. reached the qualifying age for SPC¹.

1 UC Regs, Sch 10, para 2

H2049 A close relative in relation to a person means¹

1. parent
2. parent-in-law
3. son
4. son-in-law
5. daughter
6. daughter-in-law
7. step-parent
8. step-son
9. step-daughter
10. brother
11. sister
12. where any of 1. – 11. is a member of a couple, the other member of the couple.

1 UC Regs, reg 2

Premises occupied by former partner

H2050 Premises that are occupied by a person's former partner as their home are disregarded indefinitely where the person and their former partner are not estranged but are living apart by force of circumstances. For example, where the person is in long-term care¹.

1 UC Regs, Sch 10, para 3

Special compensation schemes

H2051 Where a person receives a payment of capital from one of a specified type of compensation scheme, such a payment will be disregarded indefinitely from the calculation of that person's capital¹. The compensation schemes are those established or approved by the Secretary of State or from a trust established with funds provided by the Secretary of State and

1. provide compensation or support in respect of²

- 1.1 a person
 - 1.1.a having been diagnosed with variant Creutzfeldt-Jakob disease
or
 - 1.1.b being infected from contaminated blood products (these schemes include The Fund, the Eileen Trust, MFET Ltd, SIBSS (in Scotland) and an approved blood scheme (in England and Wales) **or**
- 1.2 the 2005 London bombings (the London Bombings Relief Charitable Fund) **or**
- 1.3 persons who have been interned or suffered forced labour, injury, property loss or loss of a child during the Second World War **or**
- 1.4 the terrorist attacks in London on 22.3.17 or 3.6.17 (the London Emergencies Trust) **or**
- 1.5 the bombing in Manchester on 22.5.17 (the We Love Manchester Emergency Fund) **or**
- 2. support persons with a disability to live independently in their accommodation³.

1 UC Regs, reg 76(2); 2 reg 76(1)(a); 3 reg 76(1)(b)

H2052 Where a claim for UC is made by the partner, parent son or daughter of a person referred to in paragraph H2051 1.1 above, a payment of capital received from

- 1. the scheme or trust in respect of the diagnosed or infected person **or**
- 2. the diagnosed or infected person **or**
- 3. the estate of the diagnosed or infected person

shall be disregarded as capital if it would be disregarded in relation to an award of SPC¹.

Note: See paragraph DMG 84426 etc seq and DMG 84462 et seq for guidance on disregard in SPC.

1 UC Regs, reg 76(3); SPC Regs, Sch V, paras 13 & 15

Payment included with other capital

H2053 If the payment is included with other capital the disregard does not apply to the other capital.

H2054 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Evidence

- H2055 The Secretary of State has agreed the payments from the trusts listed in paragraph H2051 above do not have to be declared if they are kept separate from any other capital that the person has. The person getting the payment is told of this.
- H2056 Benefit Delivery Specialist Operations Team will get information about payments from those trusts or fund if it is needed. The trustees and DH should not be contacted.

Funeral plan contract

- H2057 The value of a funeral plan contract is disregarded indefinitely. "Funeral plan contract" means a contract where a person makes payments to secure the provision of a funeral in the UK for the person on their death and where the sole purpose of the plan is to provide for a funeral¹.

1 UC Regs, Sch 10, para 11

Bereavement Support Payment

- H2058 Where a claimant in receipt of UC
1. makes a claim for BSP 12 months or less after their spouse or civil partner died **and**
 2. receives an additional payment of BSP for the first month of their BSP period at either the higher (£3,500) or standard (£2,500) rate¹

the first additional monthly payment is disregarded when calculating that person's capital, where it is made within the previous 12 months².

Note: Where a claimant receives arrears of the regular monthly payment, these are not subject to the capital disregard.

1 BSP Regs, reg 3(2) & (5); 2 UC Regs, Sch 10, para 20

H2059 – H2089

Capital disregarded for up to 12 months

Local authority payments

- H2090 Any payment made by or on behalf of a local authority within the last 12 months, for
1. children, young persons and others under certain legislation¹ **or**
 2. welfare needs related to disability or old age (other than living expenses²)
- shall be disregarded when calculating the claimant's capital³.

1 Children Act 89, s 17, 23B, 23C & 24A; Social Work (Scotland) Act 68, s 12; Children (Scotland) Act 95, s 29 & 30; 2 UC Regs, reg 66(2); 3 UC Regs, Sch 10, para 17

Arrears of benefit

H2091 [See memo ADM 19/18] Any payment received within the previous 12 months by way of arrears of or compensation for late payment of certain benefits are disregarded¹. Those benefits are

1. UC
2. an abolished benefit², namely
 - 2.1 JSA(IB)
 - 2.2 ESA(IR)
 - 2.3 IS
 - 2.4 HB
 - 2.5 CTB
 - 2.6 CTC
 - 2.7 WTC
3. a social security benefit which is not included as unearned income³

1 UC Regs, Sch 10, para 18; 2 WR Act 12, s 33; 3 UC Regs, reg 66(1)(a) & (b)

Example

John received arrears of DLA amounting to £2,400 on 1.10.13. He claims UC on 24.02.14. The £2,400 arrears of DLA are disregarded when calculating his capital up to 30.9.14.

Personal injury payment

H2092 Where a person has received a payment in consequence of a personal injury but it

1. is not held in trust **or**
2. has not been used to purchase an annuity **or**
3. has not been otherwise disposed of

it can be disregarded if it has been paid to the person within the previous 12 months¹. (See also H2028.)

1 UC Regs, reg 75(6)

The social fund

H2093 [See Memo ADM 23/18] A payment made from the social fund within the last 12 months will be disregarded¹.

1 UC Regs, Sch 10, para 16; SSCB Act 92, Part 8

H2093 – H2109

Capital disregarded for up to 6 months

H2110 In the disregards described below that specify a period of 6 months, that period may be extended where it is reasonable in the circumstances of the case¹.

1 UC Regs, reg 48(2)

Premises intended to be occupied

H2111 Premises that a person intends to occupy as their home shall be disregarded in calculating that person's capital where the person

1. has acquired the premises within the last 6 months but has not yet taken up occupation **or**
2. is taking steps to obtain possession and they began those steps within the past 6 months **or**
3. is carrying out essential repairs or alterations in order to make the premises fit for occupation and these have been commenced within the last 6 months¹.

1 UC Regs, Sch 10, para 4(1)

H2112 A person is taken to have commenced steps to obtain possession of premises as in H2111 **2.** above, on the date that legal advice is first sought or proceedings are commenced, whichever is the earlier¹.

1 UC Regs, Sch 10, para 4(2)

Is it reasonable to disregard for longer

H2113 The DM may decide

1. to disregard the premises for a longer period if for example
 - 1.1 legal proceeding are still being taken **or**
 - 1.2 people have got possession and there is a good reason why they have not started to live in the premises
 - 1.3 repairs will take longer than 6 months
2. not to disregard the premises for a longer period if people have for example
 - 2.1 asked for legal advice and not followed it **or**
 - 2.2 got possession and there is no good reason why they have not moved into the premises.

Premises ceased to be occupied

H2114 Where a person has ceased to occupy premises as their home following estrangement from their former partner, those premises can be disregarded from the calculation of that person's capital where

1. the person has ceased to occupy those premises within the past 6 months **or**

2. the person's former partner is a lone parent and occupies the premises as their home¹.

1 UC Regs, Sch 10, para 5

Premises person is trying to sell

H2115 Where a person is trying to dispose of premises, they can be disregarded from the calculation of that person's capital where they are taking reasonable steps to dispose of the premises and those steps have been commenced within the last 6 months¹.

1 UC Regs, Sch 10, para 6

Is it reasonable to disregard for longer

H2116 The DM may decide to disregard the premises for a longer period where for example the person has done all they can to sell the premises and the asking price is no more than the premises are worth.

Business assets

H2117 Where a person has ceased to be engaged in that business within the last 6 months

1. and is taking reasonable steps to dispose of those assets **or**
2. because of incapacity but has a reasonable expectation of being reengaged in that business on their recovery

those business assets can be disregarded from the calculation of that person's capital¹.

1 UC Regs, Sch 10, para 8

Is it reasonable to disregard for longer

H2118 The DM may decide, for example, that it is

1. reasonable to disregard the assets for a longer period if the person is still ill or disabled and can do the work when fit and able **or**
2. not reasonable if there is evidence, such as medical evidence, which says the person will not be able to do the work when fit and able.

Amount to be used to purchase premises

H2119 Where a person has received an amount within the past 6 months which is to be used to purchase premises that the person intend to occupy as their home, that amount can be disregarded from the calculation of that person's capital where it

1. is attributable to the proceeds of the sale of premises formerly occupied as their home **or**
2. has been deposited with a housing association (see H2045) **or**
3. is a grant made to the person for the sole purpose of purchasing a home¹.

1 UC Regs, Sch 10, para 13

Is it reasonable to disregard for longer

H2120 The DM may decide it is reasonable to disregard the amount for a longer period if, for example

1. people have tried but not found premises which are suitable for their or a member of their family's needs (in particular, if one of them is disabled and needs a certain type of accommodation)
2. the person has found premises and the
 - 2.1 sale has not been completed **or**
 - 2.2 seller later decides not to sell.

Amount from insurance policy

H2121 An amount received from an insurance policy within the past 6 months can be disregarded where it is in connection with the loss or damage to the

1. premises occupied by the person as their home **or**
2. personal possessions of that person¹.

1 UC Regs, Sch 10, para 14

Is it reasonable to disregard for a longer period

H2122 The DM may decide it is reasonable to disregard the money for a longer period if for example

1. the repairs will take more than 6 months
2. the replacement of personal possessions will take more than 6 months.

Amount for repairs

H2123 Where, in the past 6 months, a person has acquired a sum of money by way of a loan, grant or otherwise which is to be used for making essential repairs or alterations to premises occupied or intended to be occupied as the person's home, that amount can be disregarded from the calculation of that person's capital but only where it is used for that purpose¹.

1 UC Regs, Sch 10, para 15

Is it reasonable to disregard for longer

H2124 The DM may decide it is reasonable to disregard the grant, loan or otherwise for a longer period if the repairs and alterations will take more than 6 months.

H2125 – H2999

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