

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 4 Amendment 57 – February 2019

1. This letter provides details on Amendment 57; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

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3. Amendment 57 affects chapter 23. The changes:

incorporate DMG Memos 6/17, 14/17 & 5/18 and ADM Memos 7/17, 8/17 and 10/17.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Chapter 23 - Normal amount payable

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Chapter 23 - Normal amount payable

Amount payable

General

Scope of this Chapter

- 23001 This Chapter explains how to calculate the normal amount payable for JSA and IS. The rules are different for
1. trade disputes (see DMG 32000 et seq)
 2. transitional protection (see DMG 36001 and 37000 et seq).
 3. joint claim couples that are sanctioned (see DMG 34057 and 34144)
- 23002 Other rules apply where people are
1. in hospital (see DMG 24002 et seq)
 2. without accommodation (see DMG 24156)
 3. members of religious orders (see DMG 24170)
 4. prisoners (see DMG 24185 et seq)
 5. temporarily separated members of a couple or polygamous marriage (see DMG 24241)
 6. absent from GB/UK members of a couple or polygamous marriage (see DMG 24247 et seq)
 7. appealing against a decision because of capability for work (see DMG 24370 et seq)
 8. entitled to a mortgage interest run-on (see DMG 24390 et seq)
 9. from abroad or subject to immigration control (see DMG 24500 et seq).
- 23003 Guidance on how to calculate the amount payable for a part week is in DMG 33100 et seq.

JSA

Meaning of claimant

- 23004 Claimant means¹
1. one person who claims JSA or IS **or**
 2. in the case of a joint claim for JSA
 - 2.1 the couple **or**
 - 2.2 each member of the couple
- as the context requires.

1 JS Act 95, s 35(1); IS (Gen) Regs, reg 2(1)

Deciding entitlement

- 23005 The DM cannot decide entitlement to JSA until all of the information for the claim has been received (see DMG Chapter 03). Claimants will indicate on their claim forms whether they wish to receive

1. JSA(Cont) **or**
2. JSA(IB).

Claimants who wish to receive JSA(IB) may also meet the qualifying conditions for JSA(Cont).

Note: If all of the information for the claim is not received, the DM may award a short term benefit advance .

- 23006 If claimants indicate that they wish to receive JSA(IB) the DM should calculate
1. any entitlement to JSA(Cont), (the personal rate) **and**
 2. any entitlement to JSA(IB), (the applicable amount).

The DM must then consider the guidance at DMG 23015 - 23020 to decide the amount of JSA to be paid.

JSA(Cont) - personal rate

23007 JSA(Cont) is paid for the claimant only. There are no increases for any partner or dependants. The personal rate is calculated by¹

1. deciding the age-related amount payable to the claimant **and**
2. deducting, in each benefit week
 - 2.1 any earnings² (see DMG 26001 et seq and 27000 et seq) **and**
 - 2.2 pension payments³ (see DMG 23800 et seq).

Note: Where the calculation results in a fraction of a penny, it should be rounded up to the next whole penny⁴.

1 JS Act 95, s 4(1); 2 JSA Regs, reg 80; 3 reg 81; 4 reg 79(2)

23008 If a claimant receives both earnings and pension payments in the same benefit week it does not matter which deduction is made first. The DM should adopt the most practical order. As pension payments are less likely to vary, these will often be deducted before the earnings.

Example 1

Stephen claims JSA, he is entitled to JSA(Cont). Stephen receives an occupational pension and works for ten hours per week. The amounts received do not vary. As the amounts received do not vary the DM decides to deduct the earnings first and then the occupational pension.

Example 2

Sanjay claims JSA, he is entitled to JSA(Cont). He receives an occupational pension and works P/T on a casual basis. The DM decides to deduct the occupational pension first and deduct the earnings when received.

Example 3

Pam claims JSA, she is entitled to JSA(Cont). Pam receives an occupational pension and works for twelve hours per week. The DM decides to deduct the occupational pension first because after this deduction JSA is not payable to Pam.

23009 JSA(Cont) has two separate age-related amounts. They are for claimants aged

1. 16 to 24
2. 25 and over¹.

1 JS Act 95, s 4(2); JSA Regs, reg 79(1)

JSA(IB) - applicable amount

23010 **[See DMG Memo JSA/IS 64]** JSA(IB) is paid for the claimant and any family¹. The applicable amount includes²

1. the claimant's personal allowance. This may include an amount for a joint-claim couple, partner or, in the case of a polygamous marriage, partners³ (see DMG 23034) **and**
2. if appropriate
 - 2.1 a personal allowance for any dependants (see DMG 23039)
 - 2.2 a FP
 - 2.3 other premiums
 - 2.4 certain housing costs
 - 2.5 any transitional element (see DMG 36301).

Note: In special circumstances a claimant can have an applicable amount of nil⁴.

1 JS Act 95, s 35; JSA Regs, regs 76, 77 & 78; 2 JS Act, s 4(5); JSA Regs, regs 83 to 87; 3 regs 84(1) & 86B; 4 JS Act, s 4(12)

23011 Except in TD cases, when deciding a JSA claim the JSA(IB) applicable amount should be awarded in full. Where appropriate it should include

1. SDP **and**
2. housing costs¹.

1 SS CS (D&A) Regs, reg 15

23012 A claimant may be entitled to housing costs from the start of a claim (see DMG 23661). If so, the DM cannot make an award of JSA until the amount of housing costs is known. Where a claimant

1. makes a claim for JSA **and**
2. is not entitled to housing costs from the start of the claim (see DMG 23650 et seq) **and**
3. will be entitled to housing costs at a later date

the DM may make an award of JSA for a definite period, up to the day before entitlement to housing costs arises.

23013 The law¹ allows a claim to be treated as made for a definite period where a relevant change of circumstances is expected. Where the DM considers that a definite award is not appropriate, an award may be made for an indefinite period. This is so even if at the date of decision the amount of housing costs is not known².

1 SS (C&P) Regs, reg 17(3); 2 reg 17(1)

Example

Dan is a married man aged 43 claiming jointly with his wife, Sara, who is aged 40. Sara works P/T and earns £43 per week. Dan satisfies the JSA(Cont) conditions and is entitled to £56.20 per week. The couple also satisfies the JSA(IB) conditions and are entitled to £50.15 per week (£83.15 - £33. Sara's wage after £10 disregard). Although still a joint claim couple the DM awards JSA(Cont) of £56.20 per week.

IS

Amount of IS payable

23026 One of the conditions of entitlement for IS is that the claimant should have

1. no income **or**
2. income that does not exceed the applicable amount¹.

1 SS CB Act 92, s 124(1)(b)

23027 The amount of IS payable is, if the claimant has

1. no income, the applicable amount **or**
2. income that does not exceed the applicable amount, the difference between the income and the applicable amount¹.

1 SS CB Act 92, s 124(4)

Applicable amount [See DMG Memo JSA/IS 64]

23028 [See **DMG Memo JSA/IS 106**] IS is paid for the claimant and any family¹. The applicable amount includes²

1. the claimant's personal allowance. This may include an amount for any partner or, in the case of a polygamous marriage, partners³ (see DMG 23034) **and**
2. if appropriate
 - 2.1 a personal allowance for any dependants (see DMG 23039)
 - 2.2 a FP
 - 2.3 other premiums
 - 2.4 certain housing costs
 - 2.5 any TE (see DMG Chapter 36).

Note: In special circumstances a claimant may have an applicable amount of nil⁴.
An applicable amount may also be reduced in certain circumstances or may be limited to allowable housing costs only (see DMG Chapter 24).

1 SS CB Act 92, s 137; IS (Gen) Regs, regs 14, 15 & 16; 2 reg 17; 3 reg 18(1); 4 SS CB Act 92, s 135(2)

23029 When deciding an IS claim the applicable amount may be awarded without

1. housing costs¹ **or**
2. SDP²

if there is not enough evidence to include these elements.

1 SS CS (D&A) Regs, reg 13(1); 2 reg 13(2)

23030 The applicable amount may be revised or superseded if further information about SDP or housing costs is received after the IS claim or question has been decided¹.

1 SS CS (D&A) Regs, reg 3 & 6

Personal allowances for JSA(IB) and IS

Personal allowances

Claimant's personal allowances

23031 The normal applicable amount will always include

1. a personal allowance for the claimant **and**
2. an amount for the claimant's partner, if the claimant is a member of a couple¹ (and, if appropriate, an amount for any children – see DMG 23039))

1 JSA Regs, reg 83(a) & 86A(a); IS (Gen) Regs, reg 17(1)(a)

23032 The personal allowance may be different if

1. one or both members of a couple are aged 16 or 17 (see DMG 30500 et seq)
or
2. the claimant is a member of a polygamous marriage (see DMG 23034).

Structure of allowances

23033 There are separate rates of personal allowance¹ for

1. a single claimant aged
 - 1.1 16 or 17
 - 1.2 18 to 24
 - 1.3 25 or over
2. a lone parent aged
 - 2.1 16 or 17
 - 2.2 18 or over
3. a couple
 - 3.1 one or both aged 16 or 17
 - 3.2 both aged 18 or over.

1 JSA Regs, Sch 1, para 1; IS (Gen) Regs, Sch 2, para 1

Personal allowances for polygamous marriages

23034 In polygamous marriage cases the claimant's applicable amount should include personal allowances for

1. the claimant and the eldest partner at the correct couple rate (see DMG 23033 3.)¹ **and**
2. each other partner **the difference** between the
 - 2.1 higher rate for a couple (see DMG 23033 3.2) **and**
 - 2.2 rate for a single claimant aged 25 or over (see DMG 23033 1.3)².

The amount may be different where one or more partners are aged 16 or 17.

1 JSA Regs, reg 84(1)(a) & 86B(a); IS (Gen) Regs, reg 18(1)(a);

2 JSA Regs, reg 84(1)(b) & 86B(b); IS (Gen) Regs, reg 18(1)(b)

Other multiple relationships

23035 DMG 23034 only applies if the claimant is married to all the other members of the relationship. There is no special rule to cover relationships where a person is not married to all, or any of, the other members of the relationship.

23036 If the claimant is not married to all of the other members of the relationship, the DM should treat any unmarried member as a single claimant or, if appropriate, lone parent.

23037 If the claimant is not married to any of the members, the DM should treat each member of the relationship as a single claimant or, if appropriate, lone parent.

Example 1

Alan, Bronwyn and Carol live in the same household but are not married to each other. Alan, who is aged 31, claims JSA and states that he is in a multiple relationship with both Bronwyn and Carol. He is treated as a single claimant and is awarded the personal allowance for a person aged 25 or over. Bronwyn and Carol are also treated as single.

Example 2

Alan, Bronwyn and Carol live in the same household. Alan is married to Bronwyn but in his JSA claim states that he is also in a relationship with Carol. Alan is treated as a member of a married couple with his wife Bronwyn and is awarded the personal allowance for a couple. Carol is treated as single.

23038

Dependant's personal allowances

[See DMG Memo JSA/IS 64]

23039 **[See DMG Memo JSA/IS 106]** The claimant's applicable amount should include an amount for any

1. child **or**
2. young person

who is a member of the claimant's family (see DMG Chapter 22), who does not have capital over £3000¹ (see DMG Chapter 29) and who was born before 6.4.17

1 JSA Regs, reg 76, 77, 78, 83(b) & 84(1)(c); IS (Gen) Regs, reg 14, 15, 16, 17(1)(b) & 18(1)(c)

23040 A personal allowance can be awarded for a child born after 6.4.17, but only where

1. the claimant already has at least one other child or young person in their family born before 6.4.17¹ (this would include a child or young person joining the family after 6.4.17 but who was born on or before 6.4.17)
2. a 3rd or subsequent child born after that date can only be included in the claimants award where one of the exceptions in Appendix 9 applies.

1 The Social Security (Restrictions on amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 reg 5 & 6

Structure of allowances

23041 **[See DMG Memo JSA/IS 106]** The dependant's personal allowances are age-related and before 10.4.00 there were three rates. But from 10.4.00 onwards there are only two rates of personal allowances for children and young persons¹. These are from

1. birth to the day before the first Monday in the September after the 16th birthday **and**
2. the first Monday in the September after the 16th birthday to the day before the 20th birthday.

1 JSA Regs, Sch 1, para 2; IS (Gen) Regs, Sch 2, para 2

23042 When a dependant reaches age 16 the personal allowance does not increase until the first Monday in the September which follows the sixteenth birthday. Although because both categories are paid at the same rate there will be no material change.

23043 - 23045

Housing costs for JSA(IB) and IS

Introduction

23400 Until 6.4.18 help for owner occupier payments was included in a claimant's award of an income related benefit (also referred to as support for mortgage interest (SMI)). From 6.4.18 SMI was changed from a benefit to a loan secured by a charge on the property.¹ See ADM Memo 8/18. For guidance on the transition from SMI housing costs to SMI loans, see Appendix 8. For advice on Support for Mortgage interest prior to 6.4.18, DMs may wish to contact DMA Leeds.

1 LMI Regs 2017

The rules for housing costs are usually the same for JSA(IB) and IS. The guidance will show where the rules are different.

Basic conditions of entitlement

23401 Claimants are entitled to housing costs if they or members of their family are¹

1. liable for those costs **and**
2. responsible for those costs **and**
3. treated as living in the home those costs are for **and**
4. those costs are allowable.

1 JSA Regs, Sch 2, para 1(1); IS (Gen) Regs, Sch 3, para 1(1)

Claimants without housing costs

23402 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is no

1. liability or responsibility for housing costs **and**
2. entitlement to housing costs.

Rounding of fractions

23403 Where any calculation relating to this guidance results in a fraction of a penny, it should be rounded up to the next whole penny¹.

1 JSA Regs, Sch 2, para 19; IS (Gen) Regs, Sch 3, para 19

23404 - 23406

Definitions

23407 The following paragraphs explain the meaning of terms used throughout this guidance on housing costs.

Close relative

23408 A close relative is¹

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-son-in-law, step-daughter, step-daughter-in-law, brother, brother-in-law, sister, sister-in-law **and**
2. similar relationships arising through civil partnerships².

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 CP Act 04, s 246

23409 Brother and sister includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and becomes the brother or sister of any other child of those parents. The child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends upon the legal relationship and not the blood relationship¹.

1 R(SB) 22/87

Disabled person

23410 For housing costs purposes, a disabled person is a person who¹

1. receives, or has living with them someone who receives
 - 1.1 DP **or**
 - 1.2 DCP **or**
 - 1.3 EPP² **or**
 - 1.4 HPP **or**
2. would, if they were entitled to JSA(IB) or IS, receive the premiums at 1.
3. is disabled or severely disabled for the purposes of specified Tax Credits legislation
4. from 3.4.17, is a person in respect of whom the support component is payable or they are a member of the work-related activity group³ **or**
5. would but for the application of time limiting, be entitled to ESA⁴
6. a person who is entitled to UC that

- 6.1** includes the LCW or LCWRA element⁵ **or**
 - 6.2** would include the LCW element
 - 6.2.a** but for the fact that the LCWRA element was included with respect to the person's partner **or**
 - 6.2.b** but for entitlement to the carer element⁶
- is also a disabled person⁷.

1 JSA Regs, Sch 2, para 1(3); IS (Gen) Regs, Sch 3, para 1(3) ESA Regs, Sch 6, para 1; 2 JSA Regs, Sch 2, para 1(3)(c); 3 IS Gen Regs, Sch 3, para 1(3)(d)(i); JSA Regs, Sch 2, para 1(3)(e)(i); 4 IS Gen Regs, Sch 3, para 1(3)(d)(ii); JSA Regs, Sch 2, para 1(3)(e)(ii); 5 UC Regs, reg 27(1); 6 reg 29(4); 7 IS Regs, Sch 3 para 1; JSA Regs, Sch 2 para 1(3); ESA Regs, Sch 6 para 1(3); SPC Regs, Sch II para 1(2)

- 23411 A disabled person will not cease to be treated as a disabled person if they are¹
- 1.** disqualified from receiving benefit **or**
 - 2.** treated as capable of work because they
 - 2.1** are incapable of work due to their own misconduct **or**
 - 2.2** fail without good cause to
 - 2.2.a** attend for **or**
 - 2.2.b** submit to
 medical or other treatment that may be required **or**
 - 2.3** fail without good cause to observe the rules of behaviour.

See DMG 23135 et seq for further guidance.

1 JSA Regs, Sch 2, para 1(4); IS (Gen) Regs, Sch 3, para 1(4)

Dwelling occupied as the home

- 23412 "Dwelling occupied as the home" means¹
- 1.** the dwelling and any
 - 1.1** garage
 - 1.2** garden
 - 1.3** outbuildings
 normally occupied by the claimant as the home **and**
 - 2.** any buildings or land not occupied as the home where it is not practicable or reasonable to sell them separately **and**
 - 3.** in Scotland, any croft land on which the dwelling is situated.

Note: This means only the dwelling currently occupied as the home. It does not include any dwelling which is no longer occupied as the home².

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 R(IS) 5/96

Example

John and Chloe live on a plot of land on which there is a caravan, some outbuildings and an old cottage in need of repair. They are allowed to use the caravan as a temporary residence while the cottage is being repaired. They sleep in the caravan but have things stored in the outbuildings and cottage. The caravan has a fixed mains water supply and is linked directly to the electricity mains. There are no mains supplies to the cottage. The land could not be divided into two, with the caravan and site being owned or used separately from the cottage and site.

The DM decides that the dwelling includes the caravan, outbuildings and land and the cottage is occupied to a limited extent as part of that dwelling. John can therefore have housing costs assessed on the basis that the whole of the landholding, cottage, caravan and outbuildings are to be treated as the dwelling normally occupied by him.

Normally occupied

- 23413 The dwelling normally occupied as the home is the home where the claimant and their family normally live. In this context “normally” means “usually”. Periods of residence, or absence, that are of an exceptional nature should be disregarded.

Rooms sublet

- 23414 Rooms that are sublet in a house are part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

Housing costs

- 23415 Housing costs are¹

1. rents or ground rents on long tenancies
2. service charges
3. payments by way of rent charge
4. payments under co-ownership schemes
5. payments for tenancies or licences of Crown tenants
6. payments for tents and their sites.

1 JSA Regs, Sch 2, para 1(2), 5 & 16; IS (Gen) Regs, Sch 3, para 1(2), & 17

23416 Only those payments in DMG 23415 should be allowed as housing costs. For example

1. rent required by a person who
 - 1.1 is making payments under a shared ownership scheme
 - 1.2 owns jointly with the claimant the property occupied by the claimant **and**
 - 1.3 does not live in that property
2. water charges paid via a landlord (for example paid at the same time as service charges)

should not be allowed as housing costs.

Note: This list is not exhaustive.

1 R(IS) 19/93

Water charges

23417 Water charges means¹ any

1. water charges **and**
2. sewerage charges

in respect of the dwelling which a person occupies as their home.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); Water Act 1991, Part V, Ch 1;
Local Government Finance Act 1992, Sch 11*

Steps to follow when deciding housing costs

- 23418 When deciding a claimant's housing costs, the DM should determine
1. if the claimant or partner is liable for the housing costs (see DMG 23423)
 2. if the amount spent is on the dwelling occupied as the home (see DMG 23412 and 23430 et seq)
 3. if the housing costs cannot be met (see DMG 23460)
 4. how to apportion the housing costs if the dwelling is used for domestic and business use (see DMG 23495)
 5. if there are any other eligible housing costs that can be allowed (see DMG 23605 et seq)
 6. if a deduction for a non-dependant is necessary (see DMG 23756)
 7. the start date of entitlement to housing costs (see DMG 23650 et seq).

23419 - 23422

Liability for housing costs

- 23423 A person is liable to meet housing costs where the
1. liability falls on them, their partner, or in the case of joint-claim couples, the other member of that couple, except where the liability is to another member of the same household¹ **or**
 2. person liable for those costs is not meeting them **and**
 - 2.1 the claimant has to meet the costs to keep on living in the home **and**
 - 2.2 it is reasonable in all the circumstances to treat the claimant as liable for the costs² **or**
 3. costs are shared with other members of the household who are not close relatives of the claimant, the claimant's partner, or the other member of a joint-claim couple **and**
 - 3.1 at least one member of the household is liable for those costs **and**
 - 3.2 it is reasonable in the circumstances to treat the claimant as sharing responsibility³.

1 JSA Regs, Sch 2, para 2(1)(a); IS (Gen) Regs, Sch 3, para 2(1)(a); R(IS) 4/00;

2 JSA Regs, Sch 2, para 2(1)(b); IS (Gen) Regs, Sch 3, para 2(1)(b); R(IS) 12/94; R(IS) 8/01;

3 JSA Regs, Sch 2, para 2(1)(c); IS (Gen) Regs, Sch 3, para 2(1)(c)

Trade disputes

- 23424 Where a member of a family is affected by a TD, the housing costs should be treated as the responsibility of a member of the household who is not affected by the TD¹ (see DMG Chapter 32).

1 JSA Regs, Sch 2, para 2(2); IS (Gen) Regs, Sch 3, para 2(2)

Responsibility for housing costs

- 23425 A claimant who is liable for a housing cost is responsible for that cost unless someone else has accepted responsibility for it. If responsibility is shared, the claimant is responsible only for their share¹.

1 JSA Regs, Sch 2, para 5(5); IS (Gen) Regs, Sch 3, para 5(5); R(IS) 4/00;

23426 - 23429

Treated as occupying a dwelling as the home

Definitions

23430 The following definitions apply only to this guidance on treating a person as occupying a dwelling as the home.

Medically approved

23431 Medically approved means certified by a medical practitioner¹.

1 JSA Regs, Sch 2, para 3(13)(a); IS (Gen) Regs, Sch 3, para 3(13)(a)

Patient

23432 A patient is a person undergoing

1. medical **or**
2. other treatment

as an in-patient in a hospital or similar institution¹.

1 JSA Regs, Sch 2, para 3(13)(b); IS (Gen) Regs, Sch 3, para 3(13)(b)

Residential accommodation

23433 Residential accommodation is accommodation provided under specified arrangements, specific care home, Abbeyfield Home and independent hospital¹ (see DMG Chapter 24).

1 JSA Regs, Sch 2, para 3(13)(c); IS (Gen) Regs, Sch 3, para 3(13)(c)

Student

23434 A student is for

1. JSA, a F/T student **and**
2. IS, a student on certain F/T courses

For further information see the guidance on students in DMG Chapter 30.

Training course

23435 Training course means a course of training or instruction provided wholly or partly by, or on behalf of, or by arrangement with, or approved by or on behalf of¹

1. Scottish Enterprise **or**
2. Highlands and Islands Enterprise **or**
3. Skills Development Scotland

4. a government department **or**
5. the Secretary of State.

1 JSA Regs, Sch 2, para 3(13)(d); IS (Gen) Regs, Sch 3, para 3(13)(d)

Dwelling where claimant normally lives

23436 Unless DMG 23438 - 23446 applies, a claimant should

1. be treated as living in the home where they, or members of their family normally live (see DMG 23413 and DMG 29397) **and**
2. not be treated as occupying any other dwelling as the home¹.

1 JSA Regs, Sch 2, para 3(1); IS (Gen) Regs, Sch 3, para 3(1)

23437 To decide where a claimant normally lives the DM should

1. consider all homes that the claimant has, whether or not the homes are in GB¹ **and**
2. not treat the claimant as living in more than one home, unless the circumstances in DMG 23441 - 23446 apply **and**
3. where the claimant is responsible for housing costs on more than one property, and DMG 23441 et seq does not apply, treat the claimant as living in the home they normally occupy.

1 JSA Regs, Sch 2, para 3(2); IS (Gen) Regs, Sch 3, para 3(2)

Full-time students and claimants on training courses

23438 Single claimants and lone parents who are F/T students or on a training course, may have different homes in term time and vacations. Such a claimant should be treated as occupying the home for which they are liable to pay housing costs if¹ they are

1. occupying one of the homes because they are
 - 1.1 a F/T student **or**
 - 1.2 on a training course **and**
2. liable for the housing costs on either, but not both, of the homes they live in when
 - 2.1 attending the course of study or training **or**
 - 2.2 not attending the course of study or training and they are not absent from the home for which they are liable².

1 JSA Regs, Sch 2, para 3(3); IS (Gen) Regs, Sch 3, para 3(3)

2 JSA Regs, Sch 2, para 3(4); IS (Gen) Regs, Sch 3, para 3(4)

- 23439 Students whose main purpose of living in their home is to attend a course of study will not normally be treated as living there for periods of absence outside the period of study. The exception is when the absence is due to admission to hospital for treatment¹.

1 JSA Regs, Sch 2, para 3(4); IS (Gen) Regs, Sch 3, para 3(4)

Temporary accommodation

- 23440 A claimant who
1. has to move into temporary accommodation so that essential repairs can be carried out to their home **and**
 2. is liable to pay housing costs for either, but not both the home or temporary accommodation

should be treated as living in the dwelling for which they have to pay housing costs¹.

1 JSA Regs, Sch 2, para 3(5); IS (Gen) Regs, Sch 3, para 3(5)

Liable for two homes

- 23441 A person who is liable to make payments on two dwellings should be treated as living in, and allowed housing costs for both dwellings where they
1. have left their former home, and remain absent, because of fear of violence
 - 1.1 in that home **or**
 - 1.2 by a former member of their familyand it is reasonable to meet housing costs on both homes¹ **or**
 2. are members of a couple or polygamous marriage and have a partner who is a student or on a training course and it is
 - 2.1 unavoidable that they have two homes **and**
 - 2.2 reasonable to meet both housing costs².

1 JSA Regs, Sch 2, para 3(6)(a); IS (Gen) Regs, Sch 3, para 3(6)(a); 2 JSA Regs, Sch 2, para 3(6)(b); IS (Gen) Regs, Sch 3, para 3(6)(b)

- 23442 The question of reasonableness in DMG 23441 should be decided at the date the DM considers the issue and in the light of all the circumstances. These may include
1. the length of the absence
 2. whether the claimant could reasonably be expected to take steps to end the liability for the former home

3. whether there is a hope of resuming occupation
4. whether it is practicable to end the liability
5. the claimant's situation and means of support
6. the extent to which the liability was in practice being met other than through IS or JSA(IB).

23443 A person can also be treated as living in, and allowed housing costs for, two homes for up to four weeks if¹

1. they move to a new home, for a reason other than those in DMG 23440 and 23441 **and**
2. they are liable for housing costs on both homes **and**
3. the liability to make payments for both homes is unavoidable.

1 JSA Regs, Sch 2, para 3(6)(c); IS (Gen) Regs, Sch 3, para 3(6)(c)

23444 The four weeks under DMG 23443 is payable from the first day of the benefit week in which the move occurs¹.

1 JSA Regs, Sch 2, para 3(6); IS (Gen) Regs, Sch 3, para 3(6)

23445 A claimant can be allowed housing costs for two separate properties if he is treated as living in both dwellings as the home. See DMG 23441 for the criteria where more than one property could be the dwelling occupied as the home¹.

1 R(JSA) 9/03

23446 Claimants are entitled to an additional amount for these housing costs if

1. the claimant or partner is
 - 1.1 liable for those costs (see DMG 23423) **and**
 - 1.2 responsible for those costs **and**
 - 1.3 treated as living in the home that these costs are for (see DMG 23441) **and**
2. those costs are allowable.

Treated as living in the home before moving in

23447 A claimant may be treated as living in their home for up to four weeks before the date they moved in where¹

1. they have moved in to the home and were liable to make payments for that home before moving in **and**
2. if a
 - 2.1 JSA claim, they had claimed JSA before moving in **or**

- 2.2 IS claim, they had claimed IS before moving in **and**
- 3. a decision was
 - 3.1 not made on the claim **or**
 - 3.2 made on the claim but no housing costs were included **or**
 - 3.3 made refusing the claim, but another claim was made within four weeks of moving in **and**
- 4. the delay in moving in was reasonable because
 - 4.1 the home was being adapted to meet the needs of a disabled member of the family **or**
 - 4.2 they were waiting for a decision on a connected SF claim and either
 - 4.2.a a member of the family is aged five or under **or**
 - 4.2.b the claimant's applicable amount includes PP, EPP, HPP, DP, SDP or DCP **or**
 - 4.2.c a CTC is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation **or**
 - 4.3 when they became liable to pay the housing costs they were
 - 4.3.a a patient **or**
 - 4.3.b in residential accommodation.
 - 4.4 they were waiting for a decision on a local welfare provision claim and either
 - 4.4.a a member of the family is aged five or under **or**
 - 4.4.b the support component or the WRAC is payable **or**
 - 4.4.c the claimant's applicable amount includes PP or SDP **or**
 - 4.4.d a CTC is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation²

1 JSA Regs, Sch 2, para 3(7); IS (Gen) Regs, Sch 3, para 3(7)

23448 - 23449

Temporary absences from home

Trial periods in residential accommodation

23450 Claimants who enter residential accommodation

- 1. to see whether the accommodation is suitable for their needs **and**
- 2. with the intention of returning home if the accommodation is unsuitable **and**

3. whose part of the home normally occupied has not been let or sublet

should be treated as living in their home and have their housing costs allowed for up to 13 weeks from the day of entry. The number of weeks for which the absence is treated as temporary is subject to an overall maximum of 52 weeks¹ (see DMG 23454).

1 JSA Regs, Sch 2, para 3(8) & (9); IS (Gen) Regs, Sch 3, para 3(8) & (9)

Example

Nigel has been in hospital for 43 weeks. He receives housing costs for his own home throughout that period. Nigel goes into residential accommodation for assessment. Nigel continues to be treated as temporarily absent from his own home and paid housing costs for that home for a further nine weeks or until a decision is made that he will not return to live in his own home, whichever is the sooner.

Temporary absences up to 13 weeks

23451 Unless DMG 23450 or 23454 applies, a person should be treated as living in their home for any period of temporary absence of not more than 13 weeks if¹

1. they intend to return to live in the home **and**
2. the part of the home they normally live in has not been let or sublet to another person **and**
3. the period of absence is unlikely to exceed 13 weeks.

1 JSA Regs, Sch 2, para 3(10); IS (Gen) Regs, Sch 3, para 3(10)

23452 The intention to return to live in the home (see DMG 23451 1.) must

1. be unqualified **and**
2. be present from the start of the period of absence **and**
3. not be conditional on a future event.

Note: An intention to return to live in the home formed after the start of the period of absence would not be enough.

23453 When considering DMG 23451, housing costs may be allowed for up to 13 weeks from the first day of absence. Where the absence is likely to exceed 13 weeks the absence should be treated as permanent from the first day of absence, and housing costs should not be awarded.

Temporary absences up to 52 weeks

23454 A person should be treated as living in their home for a period of temporary absence of not more than 52 weeks if¹

1. they intend to return to live in the home **and**
2. the part of the home they normally live in has not been let or sublet **and**
3. they
 - 3.1 are required to live as a condition of bail, in either
 - 3.1.a a dwelling, other than the dwelling he occupies as his home **or**
 - 3.1.b a hostel **or**
 - 3.2 are
 - 3.2.a patients resident in a hospital or similar institution **and**
 - 3.2.b **for JSA(IB) only**, treated as capable of work during a short period of sickness **or**
 - 3.3 are, or a member of the family is, undergoing
 - 3.3.a medical treatment **or**
 - 3.3.b medically approved convalescence
in the UK or elsewhere in accommodation that is not residential accommodation **or**
 - 3.4 are on a training course in the UK or elsewhere **or**
 - 3.5 are providing medically approved care for another person who is residing in the UK or elsewhere **or**
 - 3.6 are caring for a child whose parent or guardian is temporarily absent from the dwelling that they normally occupy because they are receiving medically approved care or treatment **or**
 - 3.7 are
 - 3.7.a residing in the UK or elsewhere **and**
 - 3.7.b providing medically approved care
in accommodation that is not residential accommodation **or**
 - 3.8 are students to whom DMG 23438 and 23439 do not apply **or**
 - 3.9 are receiving care in residential accommodation other than in DMG 23450 **or**
 - 3.10 have left the home because of fear of violence in it, or from a former member of the family, and DMG 23451 does not apply **or**
 - 3.11 **for IS claims only**, are detained in custody on remand pending trial or pending sentence upon conviction **and**
4. the absence is unlikely to
 - 4.1 exceed 52 weeks **or**

- 4.2** substantially exceed 52 weeks in exceptional circumstances (for example, where an IS claimant has gone into hospital or a JSA claimant has to live in a bail hostel as a condition of bail).

1 JSA Regs, Sch 2, para 3(11) & (12); IS (Gen) Regs, Sch 3, para 3(11) & (12)

23455 The intention to return to live in the home (see DMG 23454 1.) must

1. be unqualified **and**
2. be present from the start of the period of absence **and**
3. not be conditional on a future event out of the claimant's control.

Note: An intention to return to live in the home formed after the start of the period of absence would not be enough.

23456 If DMG 23454 applies, housing costs may be allowed for up to 52 weeks from the first day of absence¹. But a person may have several periods of temporary absence from home. The absences are treated as temporary if the claimant is not absent from home for more than 52 consecutive weeks.

1 JSA Regs, Sch 2, para 3(12); IS (Gen) Regs, Sch 3, para 3(12)

23457 The absence should be treated as permanent from the day that it is known that the absence

1. will exceed 52 weeks **or**
2. is likely to
 - 2.1 exceed 52 weeks **or**
 - 2.2 substantially exceed 52 weeks in exceptional circumstances¹.

1 JSA Regs, Sch 2, para 3(11)(d); IS (Gen) Regs, Sch 3, para 3(11)(d)

Example 1

Jon is in receipt of JSA(IB). He has to live in a hostel as a condition of bail. He intends to return to live in his own home when he leaves the hostel. His home has not been let or sublet. He has to live in the hostel for eight weeks. The DM determines that Jon is temporarily absent from his home from the date he went to live in the hostel.

Example 2

Christina is in receipt of IS and lives alone in her own home. In February Christina decides to go and care for her mother who lives in the next town. She expects to be away from her home until August. The DM determines that Christina is not temporarily absent from home because the care is not medically approved, housing costs stop from February.

Example 3

Janet is in receipt of IS and lives alone in her own home, In December 08 Janet is admitted to hospital suffering from an eating disorder. In November 09 the DM advises Janet that her housing costs are to be removed in the next few weeks because she will have been temporarily absent from her home for 52 weeks. The hospital social worker responded advising that Janet would be discharged from hospital for 1 night just prior to the December expiry. Janet returned home for 1 night and was readmitted to hospital the following day. A further 52 week period of temporary absence could be considered from the date of Janet's readmission.

23458 - 23459

Housing costs not met

23460 Housing costs should not be allowed for

1. HB expenditure¹ **or**
2. claimants in care homes, Abbeyfield Home or independent hospitals, unless their absence from the home that they normally live in is temporary² (see DMG 23450 et seq) **or**

*1 JSA Regs, Sch 2, para 4(1)(a); IS (Gen) Regs, Sch 3, para 4(1)(a); 2 JSA Regs, Sch 2, para 4(1)(b);
IS (Gen) Regs, Sch 3, para 4(1)(b)*

23461 HB expenditure means¹

1. any element for which HB may be payable² **and**
2. which are not allowable as housing costs in the claimant's applicable amount³.

*1 IS (Gen) Regs, reg 2(1); 2 SS (HB) Regs, reg 10(1); 3 IS (Gen) Regs, reg 17(1)(e) & 18(1)(f);
JSA Regs, reg 83(f) & 84(1)(g)*

23462 - 23494

Apportionment of housing costs

Composite hereditaments

23495 A composite hereditament is¹ a property with both

1. domestic **and**
2. business

premises, for example, a shop with a flat above.

1 JSA Regs, Sch 2, para 5(1) & (4); IS (Gen) Regs, Sch 3, para 5(1) & (4); Local Government Finance Act 1988, s 41(1); Abolition of Domestic Rates etc. (Scotland) Act 1987, s 26(1)

23496 If a claimant occupies a composite hereditament, housing costs should be awarded for the part of the property used by the claimant for their own domestic use.

23497 - 23599

Other housing costs

Definitions

23600 The following paragraphs explain the meaning of terms used throughout this guidance on other eligible housing costs.

Shared ownership schemes

23601 Property can be owned jointly by more than one person or organization (see DMG Chapter 29). This is known as shared ownership and can include many different types of arrangement. DMs should note that for housing costs purposes, shared ownership does not simply mean co-ownership.

23602 A co-ownership scheme in this context is¹ a specific type of scheme under which the

1. home is let by a housing association **and**
2. money payable to someone ceasing to be a member of the scheme is based directly or indirectly on the value of the property.

Note: Such a scheme does not involve the purchase of a share of the property so no house purchase loan is involved.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

23603 A shared ownership scheme is more likely to involve the claimant

1. buying a share in the property **and**
2. paying rent for the remaining share.

23604

Crown tenants

23605 Crown tenants¹ are tenants or licensees of homes which

1. belong to **or**
2. are held on trust for

the Crown or a government department. They do not include tenants in homes managed by the Crown Estates Commission or tenants of the Duchies of Cornwall or Lancaster.

Note: Greenwich Hospital Estate tenants are Crown tenants.

1 JSA Regs, Sch 2, para 16(1)(e); IS (Gen) Regs, Sch 3, para 17(1)(e); JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Housing association

23606 A housing association is a non-profit making voluntary body formed with the aim of providing good quality low cost housing¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); Housing Associations Act 1985, s 1(1)

Long tenancy

23607 A long tenancy is¹ one where the lease is made by deed, registered with the Land Registry and granted for

1. a specific number of years, exceeding 21 **or**
2. a term fixed by law with a covenant or obligation for perpetual renewal (unless DMG 23608 applies).

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

23608 An original lease that is not a long tenancy may have been sublet for a fixed term. Even if there is a covenant or obligation for perpetual renewal it should not be treated as a long tenancy.

23609 In some cases a lease may be granted for life rather than for a set number of years. The law provides¹ for life tenancies to be converted to 90 year leases. Such a tenancy for life should be treated as a long tenancy.

1 Law of Property Act, s 149(6)

Rent charge

23610 Rent charges, including chief rents, are rents charged to people under the conditions by which they own the freehold¹.

1 JSA Regs, Sch 2, para 16(1)(c); IS (Gen) Regs, Sch 3, para 17(1)(c); Rent charges Act 1977, s 1

Other eligible housing costs

23611 Other eligible housing costs are payments for¹

1. rents or ground rents on long tenancies
2. service charges (see DMG 23613)
3. rent charges (see DMG 23617)
4. co-ownership schemes (see DMG 23618)

Deductions for repairs and improvements

23632 The charges for other eligible housing costs in DMG 23611 may include an amount for repairs and improvements (see ADM memo 8/18 paragraph 97). In such a case the amount for repairs and improvements cannot be allowed and should be deducted¹

1 JSA Regs, Sch 2, para 16(2)(c); IS (Gen) Regs, Sch 3, para 17(2)(c)

23633 Where service charges include an amount for repairs and improvements listed in ADM memo 8/18, paragraph 97, and are undertaken to maintain the fitness for human habitation, they should not be allowed.

23634 - 23635

Contingency funds

23636 Service charges may contain an element that is paid into some kind of fund or reserve. These are most commonly referred to as

1. contingency funds **or**
2. reserve funds **or**
3. sinking funds.

23637 Payments made into such a fund are “for” the general purposes of the fund, whether or not there has been any expenditure in the year in question. If those purposes include both allowable and non-allowable elements, make a corresponding apportionment of the relevant annual payment to determine how much can be allowed.

23638 – 23639

Costs payable regularly

23640 The amount of the invoice should be converted to give a weekly amount

Costs payable over 53 weeks or irregularly

23641 Where other housing costs are payable for 52 weeks **but**

1. paid for 53 weeks **or**
2. paid irregularly **or**
3. no such costs are payable or collected in certain periods **or**
4. the costs for different periods are different amounts

the weekly amount is the amount payable for the year divided by 52¹.

1 JSA Regs, Sch 2, para 16(3); IS (Gen) Regs, Sch 3, para 17(3)

23642 Those housing costs attributed to a fixed 52 week period under DMG 23641 are payable from the date the liability arose.

Note: At any one time, a claimant's award of housing costs for service charges may therefore be made up of housing costs arising from different liabilities notified at different times.

Example

The claimant's award of IS includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.07 - 31.3.08. The amount for housing costs is due to end on 31.3.08. In February 2008 the claimant sends in an estimate of service charges for the 2008-09 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.08 - 31.3.09. On 9.9.08 the claimant receives an invoice for £243.85, being the balance of finalised service charges for the 2007-8 year, and sends it to the DWP. The DM supersedes the decision of February 2008 to award housing costs of £10.87 and £4.69 for the period 9.9.08 - 31.3.09, and £4.69 for the period 1.4.09 - 6.9.09, the balance for the 2007-08 year charges being paid over a 52 week period. If a further estimate for charges for the 2008-09 year is received, the September 2008 decision may be superseded accordingly.

Payment of costs waived

23643 Other housing costs should continue to be allowed for up to eight weeks if

1. the claimant or a member of the family pays for reasonable repairs or redecoration to the home **and**
2. that work was not the responsibility of the claimant or any member of the family **and**
3. payment for other housing costs is waived because the work has been done¹.

1 JSA Regs, Sch 2, para 16(4); IS (Gen) Regs, Sch 3, para 17(4)

23644 - 23646

Housing costs - starting dates of entitlement

23647 With the exception of the housing costs payable at the start of a claim (see DMG 23661) all other eligible housing costs have a QP.

23648 [See Memo DMG 43/09] For most new claims made after 5.1.09 the QP is 13 weeks.

Note: The 13 week QP was introduced under a temporary package of measures to support home owners, the temporary measures will remain until 31.3.16.

23649 [See Memo DMG 43/09] In cases that do not qualify for the temporary package of measures, usually only those where the claim links to an earlier award, the length of the QP depends on whether the housing costs are new or existing housing costs.

23650 - 23660

Housing costs payable at the start of the claim

23661 Where claimants, their partners, or either member of a joint-claim couple, are not less than the qualifying age for SPC¹, all housing costs are paid in full from the first day of entitlement to JSA(IB) or IS². Housing costs are also paid in full from the first day of entitlement to SPC. See DMG 78170 et seq for guidance on SPC.

1 SS CB Act 92, s 124(1)(aa); 2 JSA Regs, Sch 2, para 8(1)(a) ; IS (Gen) Regs, Sch 3, para 9(1)(a)

23662 All claimants should be paid housing costs for

1. co-ownership schemes (see DMG 23618)
2. crown tenancies (see DMG 23619)
3. tents and their sites¹ (see DMG 23621)

from the first day of entitlement to JSA(IB) or IS.

1 JSA Regs, Sch 2, para 8(1)(b) & (2)(b); IS (Gen) Regs, Sch 3, para 9(1)(b) & (2)(b)

23663 - 23666

Start date for housing costs

23667 The amount of the award for housing costs is¹

1. nil where claimants have not been continuously entitled to JSA(IB) or IS for 39 weeks²
2. for claimants who have been entitled to JSA(IB) or IS for a continuous period of 39 weeks or more³,

21 the amount of any

2.1.a rent or ground rent relating to a long tenancy **and**

2.1.b service charges and

2.1.c rent charges.

1 IS (Gen) Regs, Sch 3, para 17); JSA Regs, Sch 2, para 6; 2 JSA Regs, Sch 2, para 7(1)(b); IS (Gen) Regs, Sch 3, para 8(1)(b); 3 JSA Regs, Sch 2, para 7(1)(a); IS (Gen) Regs, Sch 3, para 8(1)(a)

JSA(IB) starting date of entitlement - waiting days

23668 A claimant is not entitled to JSA when serving waiting days¹. As a result waiting days do not count towards any housing costs qualifying period.

1 JS Act 95, Sch 1, para 4

23669

Housing costs - sanctions JSA(IB) only

23670 If a JSA claimant is sanctioned (see DMG Chapter 34) that claimant is still entitled to JSA, but JSA is not paid.

23671 Sanctioned periods will count towards the qualifying periods for housing costs as long as the claimant has been continuously entitled to JSA(IB) for the qualifying period.

Housing costs - hardship JSA(IB) only

23672 JSA claimants may be entitled to a hardship payment (see DMG Chapter 35) if they

1. are not available **or**
2. are not ASE **or**
3. have not got a valid JSAG **or**
4. a question has been passed to the ESDM on 1. to 3. **or**
5. are sanctioned.

Hardship payments are payments of JSA(IB).

23673 Some JSA claimants are not entitled to a hardship payment straightaway (see DMG Chapter 35). Such claimants who are not entitled to hardship payments, are not entitled to JSA(IB).

23674 JSA hardship payments will count towards the qualifying periods for new and existing housing costs as long as the claimant has been continuously entitled to JSA(IB) for the QP.

Note: Once the QP is satisfied, normal linking rules apply.

23675 - 23699

Linking rules

Breaks in entitlement to JSA(IB), ESA(IR) or IS

23700 Breaks in entitlement to JSA(IB), ESA(IR) or IS can affect the claimant's housing costs. This is because most eligible housing costs have a QP (see DMG 23647 et seq). But there are special rules under which claimants can be treated as entitled to JSA(IB) or IS in certain circumstances.

23701 If there are breaks in entitlement, claimants can be treated as entitled to JSA(IB), ESA(IR) or IS for periods¹ of

1. twelve weeks or less (see DMG 23708)
2. 26 weeks or less, in certain circumstances (see DMG 23709)
3. more than 26 weeks, in certain circumstances (see DMG 23712)
4. 52 weeks or less (see DMG 23715).

*1 JSA Regs, Sch 2, para 13 & 18(1)(c); IS (Gen) Regs, Sch 3, para 14;
IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32*

Previous entitlements

23702 Where a person moves from

1. IS to JSA
2. JSA to IS
3. SPC to JSA
4. being the partner of a person who was previously in receipt of SPC to IS or JSA¹
5. being either member of a joint claim couple who was previously in receipt of SPC to JSA²

they can receive the same amount of housing costs current when entitlement to the first benefit ended³.

*1 JSA Regs, Sch 2, para 1A(1ZA); IS (Gen) Regs, Sch 3, para 1A(1A);
2 JSA Regs, Sch 2, para 1A(1B); 3 Sch 2, para 1A(1)(a); IS (Gen) Regs, Sch 3, para 1A(1)(a)*

23703 The provisions above apply if, immediately before entitlement ended, housing costs

1. were payable on the previous claim¹ (in full or in part) **and**
2. the circumstances affecting the calculation of those housing costs remain unchanged².

*1 JSA Regs, Sch 2, para 1A(1ZA)(a); IS (Gen) Regs, Sch 3, para 1A(1A)(a);
2 JSA Regs, Sch 2, para 1A(1ZA)(b); IS (Gen) Regs, Sch 3, para 1A(1A)(b)*

23704 Breaks in entitlement between claims are ignored for any period

1. of 12 weeks or less **or**
2. up to 26 weeks where
 - 2.1 payments from an insurance policy to insure against loss of employment have ceased¹.

1 JSA Regs, Sch 2, para 1A(1A); IS (Gen) Regs, Sch 3, para 1A(1A)

23705 - 23707

Twelve week linking periods

23708 Where there are breaks in entitlement to JSA(IB), ESA(IR) or IS, claimants are treated as being continuously in receipt of, and entitled to JSA(IB) or IS for any period

1. when entitlement is decided on revision, supersession or appeal **or**
2. of twelve weeks or less during which
 - 2.1 they were not in receipt of JSA(IB), ESA(IR) or IS **and**
 - 2.2 that period is immediately between two periods when
 - 2.2.a they were in receipt of JSA(IB), ESA(IR) or IS or a combination of the two **or**
 - 2.2.b they were treated as in receipt of JSA(IB), ESA(IR) or IS **or**
 - 2.2.c they are treated as entitled to JSA(IB), ESA(IR) or IS for certain reasons because their capital exceeds £16,000 or their income exceeds the applicable amount (see DMG 23734 - 23742) **or**
 - 2.2.d entitlement to JSA(IB), ESA(IR) or IS is decided on revision, supersession or appeal¹.

1 JSA Regs, Sch 2, para 13(1)(a), 13(4) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(a), 14(3A) & 14(15); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

26 week linking periods

23709 Claimants can be treated as entitled to JSA(IB), ESA(IR) or IS for periods of up to 26 weeks where they regain entitlement and have had payments from an insurance policy to insure against the loss of employment and those payments have ceased (see DMG 23710).

Payments from insurance policies against the loss of employment

- 23710 Claims should be linked together and the weeks between them ignored where¹ the
1. claimant or a member of their family has
 - 1.1 received payments from an insurance policy taken out to insure against the loss of employment and those payments are exhausted **and**
 - 1.2 had a previous award of JSA(IB), ESA(IR) or IS which included housing costs **and**
 2. previous award stopped not more than 26 weeks before the date the new claim was made.

1 JSA Regs, Sch 2, para 13(10), 13(11) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(8) & (9); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

23711

More than 26 weeks

- 23712 Claimants can be treated as entitled to JSA(IB), ESA(IR) or IS for periods of more than 26 weeks where
1. the claimant or their partner is participating in certain training or attending certain courses (see DMG 23713) **or**
 2. they have income from mortgage payment protection insurance (see DMG 23714).

Employment rehabilitation centres and specified training

- 23713 A claimant should be treated as continuously in receipt of, and entitled to, JSA(IB), ESA(IR) or IS for any period that they¹
1. are not (or no longer) entitled to JSA(IB), ESA(IR) or IS **and**
 2. are not entitled because they, their partner, or in the case of a joint-claim couple the other member of that couple, are
 - 2.1 participating in arrangements for specified training **or**
 - 2.2 attending a course at an employment rehabilitation centre.

1 JSA Regs, Sch 2, para 13(3) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(3) & (3A); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; E & T Act 73, s 2

Payments from payment protection insurance

23714 Claimants who

1. are treated as entitled to JSA(IB), ESA(IR) or IS solely because their income exceeds their applicable amount (see DMG 23735, 23737 and 23742) **and**
2. have included in their income payments from an insurance policy taken out to insure against the risk of being unable to meet eligible housing costs

should be treated as entitled throughout any period that payments are made under the terms of the policy¹.

1 JSA Regs, Sch 2, para 13(9); IS (Gen) Regs, Sch 3, para 14(6)

52 week linking periods

23715 A claimant can be treated as entitled to JSA(IB), ESA(IR) or IS for periods of up to 52 weeks¹ where the claimant or their partner

1. had already qualified for housing costs before losing entitlement to JSA(IB), ESA(IR) or IS² (see DMG 23716)
2. is participating in an ND option, an EZ scheme, or a prescribed government scheme³ (see DMG 23719).

1 JSA Regs, Sch 2, para 13(13)(a); IS (Gen) Regs, Sch 3, para 14(11)(a); ESA Regs, Sch 6, para 15(16)(a)

2 JSA Regs, Sch 2, para 13(15); IS (Gen) Regs, Sch 3, para 14(13); ESA Regs, Sch 6, para 15(18)

3 JSA Regs, Sch 2, para 13(14)(c); IS (Gen) Regs, Sch 3, para 14(12)(c); ESA Regs, Sch 6, para 15(17)(c)

Qualifying period for housing costs already served

23716 Most eligible housing costs have a QP (see DMG 23647 et seq). Such a QP may have to be served again following a break in entitlement to JSA(IB), ESA(IR) or IS. But there is a linking rule for cases where the QP has already been served when entitlement to JSA(IB), ESA(IR) or IS ends.

23717 The linking rule applies if¹, immediately before entitlement ended, housing costs

1. were payable on the previous claim (in full or in part) **or**
2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 23756 et seq).

1 IS (Gen) Regs, Sch 3, para 14(13); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32;

JSA Regs, Sch 2, para 13(15) & (18)(1)(c); ESA Regs, Sch 6, para 15(18)

23718 In such a case, treat the claimant as continuously in receipt of JSA(IB), ESA(IR) or IS for any period of 52 weeks or less¹ during which they were not entitled because

1. the claimant or partner
 - 1.1 had started employment as an employed or S/E earner **or**
 - 1.2 had increased their hours in such employment **or**

2.4 entitlement to IS or JSA(IB) is decided on appeal or review.

*1 IS (Gen) Regs, Sch 3, para 14(1)(a) & (10); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32;
JSA Regs, Sch 2, para 13(1)(a), 13(12) & 18(1)(c)*

23726 This means that WtWBs do not lose entitlement to housing costs by having to serve a further QP. Breaks of 104 weeks or less are protected in the same way as other claimants who have a break of up to twelve weeks (see DMG 23708).

23727

Not entitled on revision, supersession or appeal

23728 A claimant is treated as not in receipt of JSA or IS for any period that entitlement is found not to exist on revision, supersession or appeal unless that period falls in a period in DMG 23708 **2**.¹

*1 JSA Regs, Sch 2, para 13(1)(b), 13(4) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(b) & 14(3A);
IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32*

Participation in new deal and employment zone schemes

23729 Claimants should be treated as continuously in receipt of and entitled to JSA(IB) or IS for any period that they¹

1. are not (or no longer) entitled to JSA(IB) or IS **and**
2. are not entitled because they, their partner, or the other member of a joint-claim couple, are participating in
 - 2.1 the EO(S/E) **or**
 - 2.2 a waged option of the voluntary sector or environment task force options of NDYP **or**
 - 2.3 the intensive activity period (IAP) of ND25+ **or**
 - 2.4 an EZ scheme **or**
 - 2.5 flexible new deal.

Note: See DMG Chapter 14 for full guidance on ND.

*1 JSA Regs, Sch 2, para 13(3A), 13(4) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(3ZA) & (3A);
IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32*

23730 The time spent on an ND option or EZ scheme counts towards any QP for housing costs. But that period may have already been served when the person goes on the ND option or EZ scheme. If so, the person will not have to serve a fresh period if they return to JSA(IB) or IS within twelve weeks of leaving that option or scheme (see DMG 23708)¹.

1 JSA Regs, Sch 2, para 13(1)(a), 13(4) & (18)(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(a) & (3A); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

JSA(Cont)

23731 A person may have been getting JSA(Cont) immediately before going on to an ND option or EZ scheme. Such a person may claim JSA(IB) at the end of that option or scheme. Where appropriate the claimant can be treated as entitled to JSA(IB) for the

1. period when they were entitled to JSA(Cont)¹ (see DMG 23737) **and**
2. time they spent on the ND option or EZ scheme².

1 JSA Regs, Sch 2, para 13(5)(bb); 2 para 13(3A) & (4)

23732 A person may have been getting JSA(Cont) immediately before going on an ND option or EZ scheme. Such a person may claim IS at the end of that option or scheme. In such a case treat the claimant as entitled to IS for the

1. period when they were entitled to JSA(Cont) (see DMG 23737)¹ **and**
2. time they spent on the ND option or EZ scheme².

1 IS (Gen) Regs, Sch 3, para 14(3B); 2 para 14(3ZA) & (3A)

Change of claimant

23733 A couple may decide to change claimants when one of them comes to the end of the ND option or EZ scheme. Treat the new claimant as being in receipt of and entitled to JSA(IB) or IS for the same period as their partner if¹

1. the claimant is a member of a couple or polygamous marriage **and**
2. immediately before one of them went on an ND option or EZ scheme, or flexible new deal, the claimant's partner was in receipt of JSA(IB) or IS for both or all of them **and**
3. immediately after the end of that option or scheme the claimant has become the claimant because of an election by the members of the couple or polygamous marriage.

1 JSA Regs, Sch 2, para 13(1)(ee) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(ee); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

Capital exceeds £16,000/income exceeds applicable amount

23734 The rules are different for JSA and IS with the exception of cases involving

1. lone parents and carers (see DMG 23741) **and**
2. claimants who receive payments from payment protection insurance (see DMG 23714).

23742 In such a case treat the claimant as entitled to JSA(IB) or IS throughout any continuous period of not more than 39 weeks¹

1. following the refusal of a claim made by them or on their behalf **and**
2. during which they are not
 - 2.1 engaged in or treated as engaged in remunerative work **or**
 - 2.2 the partner of a person engaged in or treated as engaged in remunerative work **or**
 - 2.3 a F/T student (except where they would be entitled to IS) **or**
 - 2.4 absent from GB, except on a temporary basis (see DMG 071940 and 072132 et seq).

1 JSA Regs, Sch 2, para 13(7) & (8); IS (Gen) Regs, Sch 3, para 14(5A) & (5B)

Treated as in receipt of and entitled to JSA(IB) or IS on another person's claim

Claimant previously a member of a couple or polygamous marriage

23743 A claimant should be treated as being in receipt of and entitled to JSA(IB) or IS for the same period as a former partner if¹ the claimant

1. was a member of a couple or polygamous marriage **and**
2. had a partner who was in receipt of JSA(IB), SPC or IS for them both for a past period **and**
3. is no longer a member of the couple or polygamous marriage **and**
4. claims JSA or IS within
 - 4.1 twelve weeks **or**
 - 4.2 in the circumstances set out in DMG 23717 et seq, 52 weeksof ceasing to be a member of that couple or polygamous marriage¹.

1 JSA Regs, Sch 2, para 13(1)(c), 13(12) to 13(15) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(c), 14(10) to 14(13); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

Claimant becomes a member of a couple or polygamous marriage

23744 A claimant should be treated as having been in receipt of and entitled to JSA(IB) or IS for the same period as their partner, or the other member of a joint-claim couple, if¹

1. the claimant's partner or the other member of a joint-claim couple has for a past period been paid JSA(IB), SPC or IS as a
 - 1.1 single claimant **or**

- 1.2 lone parent **and**
 - 2. the claimant claims JSA or IS within
 - 2.1 twelve weeks **or**
 - 2.2 in the circumstances set out in DMG 23717 et seq, 52 weeks
- of becoming a member of a couple or polygamous marriage.

1 JSA Regs, Sch 2, para 13(1)(d), 13(1)(dd) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(d); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

Change of claimant

- 23745 A claimant should be treated as being in receipt of and entitled to JSA(IB) or IS for the same period as their partner if the
- 1. claimant is a member of a couple or polygamous marriage **and**
 - 2. claimant's partner has been in receipt of JSA(IB), SPC or IS for both or all of them for a past period **and**
 - 3. claimant has become the claimant as the result of a decision by the members of the couple or polygamous marriage¹.

Note: See DMG 23733 if the change of claimant happens when a ND programme or EZ scheme ends.

1 JSA Regs, Sch 2, para 13(1)(e) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(e); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

Change of family

- 23746 A claimant X should be treated as being in receipt of and entitled to JSA(IB) or IS for the same period as person Y if¹
- 1. X was a member of Y's family (Y not being a former partner) **and**
 - 2. Y was entitled to JSA(IB), SPC or IS and at least one other member of the family was a child or young person **and**
 - 3. X becomes a member of another family which includes that child or young person **and**
 - 4. X claims JSA or IS within
 - 4.1 twelve weeks **or**
 - 4.2 in the circumstances set out in DMG 23717 et seq, 52 weeks or 104 weeks

of Y ceasing to be a entitled to JSA(IB) or IS.

1 JSA Regs, Sch 2, para 13(1)(f), 13(12) to (15) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(f) & 14(10) to (13); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

23747 - 23755

1. number of joint occupiers **and**
2. part of the housing costs for which they are each responsible¹.

Note 1: All members of a couple or polygamous marriage should be regarded as one joint occupier.

Note 2: If a joint owner does not actually occupy the dwelling, then the remaining owner would be liable for the full non-dependant deduction.

1 JSA Regs, Sch 2, para 17(5); IS (Gen) Regs, Sch 3, para 18(5)

Non-dependant deduction not appropriate

23770 Deductions should not be made if

1. the claimant or any partner is¹
 - 1.1 blind or treated as blind for the purpose of entitlement to HPP and DP **or**
 - 1.2 receiving for themselves
 - 1.2.a "AA" **or**
 - 1.2.b the care component of DLA **or**
 - 1.2.c the daily living component of PIP **or**
 - 1.2.d AFIP
2. non-dependants are²
 - 2.1 living with the claimant but the dwelling normally occupied as the home is elsewhere **or**
 - 2.2 in receipt of a training allowance in connection with a youth training scheme³ **or**
 - 2.3 F/T students
 - 2.3.a in a period of study **or**
 - 2.3.b not in remunerative work during the recognized summer vacation relevant to their course **or**
 - 2.4 under 25 and in receipt of JSA(IB) or IS⁴ **or**
 - 2.5 from 3.4.17, under 25, in receipt of ESA and is not a member of the work-related activity group or a member of the support group⁵ **or**
 - 2.6 people for whom claimants have a deduction made in the calculation of any rent rebates or allowances **or**
 - 2.7 people who jointly occupy the claimant's home and are
 - 2.7.a co-owners with the claimant or the claimant's partner **or**

- 2.7.b** jointly liable with the claimant or partner to make payments to a landlord
- regardless of when the co-ownership or joint liability started **or**
- 2.8** not living with the claimant because they
 - 287.a** have been patients for more than 52 weeks (see DMG Chapter 24) **or**
 - 2.8.b** are prisoners (see DMG Chapter 24).
- 2.9** in receipt of SPC.
- 2.10** is entitled to UC **and**
 - 2.10.a** is aged less than 25 **and**
 - 2.10.b** does not have any earned income⁶

1 JSA Regs, Sch 2, para 17(6); IS (Gen) Regs, Sch 3, para 18(6); 2 JSA Regs, Sch 2, para 17(7); IS (Gen) Regs, Sch 3, para 18(7); 3 E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 1990, s 2; 4 JSA Regs, Sch 2, para 18(1)(c); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; 5 IS (Gen) Regs, Sch 3, para 18(7)(i) : 6JSA Regs, Sch 2 para 17(j); IS Regs, Sch 3 para 18(j);

Note 1: For non-dependant purposes in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period.

Note 2: Where a person under **1.2** has been an inpatient for a sufficient period of time they will no longer be receiving AA or DLA and as such the non-dependant will no longer be exempt from attracting a non-dependant deduction.

Deduction appropriate – UC non-dependants

23771 Where a non-dependant is entitled to UC and is

1. aged 25 or over **or**
2. aged less than 25 and has earned income

a deduction at the rate described in Appendix 7 will be appropriate.

Participation in new deal for young people

23772 If a non-dependant goes on to NDYP a deduction from allowable housing costs should be considered as normal.

23773 - 23774

Calculation of a non-dependant's gross weekly income

23775 When calculating the gross weekly income of a non-dependant disregard¹ any

1. AA
2. DLA
3. payments, including payments in kind (see DMG Chapter 28), made under, or derived from
 - 3.1 the Macfarlane Trust
 - 3.2 the Macfarlane (Special Payments) Trust
 - 3.3 the Macfarlane (Special Payments) (No. 2) Trust
 - 3.4 the Fund
 - 3.5 the Eileen Trust
 - 3.6 the Independent Living Fund (2006) (but see **note**)
 - 3.7 MFET Limited
 - 3.8 the Skipton Fund
 - 3.9 the Caxton Foundation.
 - 3.10 the London Emergencies Trust (LET) and the We Love Manchester Emergency Fund (WLMEF)
4. PIP
5. AFIP

Note 1: The Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if a claimant receives funding from any of these replacement schemes.

1 JSA Regs, Sch 2, para 17(8); IS (Gen) Regs, Sch 3, para 18(8)

23776 - 23778

Questions that cannot be decided immediately

Insufficient information to determine housing costs - IS only

23779 Where a DM is

1. deciding an IS claim **or**
2. determining an issue on IS housing costs

the applicable amount should include any housing costs that can be determined immediately on the evidence available¹. Where there is insufficient evidence IS can be awarded without housing costs.

1 SS CS (D&A) Regs, reg 13(1)

23780 If there are several housing costs on the IS claim the applicable amount should include only those housing costs where there is sufficient information to make a decision.

23781 The decision may be revised or superseded if further information about any of the claimant's housing costs is received after the IS claim or question has been decided¹.

1 SS CS (D&A) Regs, regs 3 & 6

23782 - 23799

Appendix 4

Housing costs - amount of non-dependant deductions

1 This appendix provides the rates of the non-dependant deductions¹.

1 JSA Regs 95, Sch 2, para 17(1); IS (Gen) Regs, Sch 3, para 18(1)

Rates from 8.4.13

2 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £87.75
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £126.00 £13.60
 - 2.2 £126.00 to £185.99 £31.25
 - 2.3 £186.00 to £241.99 £42.90
 - 2.4 £242.00 to £321.99 £70.20
 - 2.5 £322.00 to £400.99 £79.95
 - 2.6 £401.00 or more £87.75
3. any other non-dependant aged 18 or over for whom deductions are relevant - £13.60

Rates from 7.4.14

3 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £91.15
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £128.00 £14.15
 - 2.2 £128.00 to £187.99 £32.45
 - 2.3 £188.00 to £244.99 £44.55
 - 2.4 £245.00 to £325.99 £72.95
 - 2.5 £326.00 to £405.99 £83.05
 - 2.6 £406.00 or more £91.15
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.15.

Rates from 6.4.15

4 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £93.80
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £129.00 £14.55
 - 2.2 £129.00 to £188.99 £33.40
 - 2.3 £189.00 to £245.99 £45.85
 - 2.4 £246.00 to £327.99 £75.05
 - 2.5 £328.00 to £407.99 £85.45
 - 2.6 £408.00 or more £93.80
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.55.

Rates from 11.4.16

5 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £94.50
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £133.00 £14.65
 - 2.2 £133.00 to £194.99 £33.65
 - 2.3 £195.00 to £252.99 £46.20
 - 2.4 £253.00 to £337.99 £75.60
 - 2.5 £338.00 to £419.99 £86.10
 - 2.6 £420.00 or more £94.50
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.65.

Rates from 10.4.17

6 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £95.45
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £136.00 £14.80
 - 2.2 £136.00 to £199.99 £34.00
 - 2.3 £200.00 to £258.99 £46.65
 - 2.4 £259.00 to £345.99 £76.35
 - 2.5 £346.00 to £429.99 £86.95
 - 2.6 £430.00 or more £95.45
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.80.

Rates from 6.4.18

7 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £98.30
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £139.00 £15.25
 - 2.2 £139.00 to £203.99 £35.00
 - 2.3 £204.00 to £264.99 £48.05
 - 2.4 £265.00 to £353.99 £78.65
 - 2.5 £354.00 to £438.99 £89.55
 - 2.6 £439.00 or more £98.30
3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.25.

Appendix 5

Housing costs - unsafe structural defects

This Appendix contains a list of structural elements that are considered to come within the meaning of unsafe structural defects. But DMs should note that

1. all work connected with items on the list is not automatically entitled to help as an unsafe structural defect, however help may be available under a different repairs and improvement provision.
2. the list is not exhaustive - other work could come within the meaning of the repair of an unsafe structural defect when considered on its merits
3. the costs of survey work reasonably necessary or incidental to the carrying out of actual physical remedial work should be included

Relevant structural elements

- Foundations, including damp proof courses
- External load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door
- Party floors, excluding any applied finish, bedding or floorboards
- Load bearing roof components, including ceiling joists
- Private balcony floors, excluding any applied finish or bedding
- Communal balconies, excluding handrails, balustrades and any applied finish or fittings
- Communal staircases, excluding handrails, balustrades and any applied finish or fittings
- Internal load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door
- Parapet walls
- Chimney stacks
- Structures on the structure, such as motor rooms and water tank enclosures
- Roof coverings where the section of the roof affected, or the nature of the defect, is such as to require the replacement of all or a significant part of the roof
- Door frames, but not external or internal doors
- Window frames, (but not sashes or glass to windows, which may qualify under a different provision)
- Lift shafts

Appendix 6

Housing costs - ineligible service charges - previous rules and guidance

- 1 The following guidance explains the changes that were made to the definition of ineligible service charges before 1.4.00. The changes all refer to whether service charges for counselling and other support services fell to be deducted from other housing costs as ineligible service charges.
- 2 The rules that apply from 1.4.00 onwards are at DMG 23613 et seq.

Meaning of ineligible service charges before 18.8.97

- 3 Before 18.8.97, a deduction was made from other housing costs for the following ineligible service charges¹
 1. living expenses for
 - 1.1 meals - including the
 - 1.1.a preparation of meals **or**
 - 1.1.b provision of unprepared food **or**
 - 1.2 laundry - other than provision of
 - 1.2.a premises **or**
 - 1.2.b equipmentto enable people to do their own laundry **or**
 - 1.3 leisure items such as
 - 1.3.a sports facilities - but not a children's play area **or**
 - 1.3.b television rental and licence fees - except television and radio relay charges **or**
 - 1.4 cleaning of rooms and windows, except
 - 1.4.a where the claimant or any member of their household is unable to clean them **or**
 - 1.4.b where the cleaning is for a communal area **or**
 - 1.5 transport **or**
 2. acquisition of furniture or household equipment or use of such items where the items will become the property of the claimant under an agreement with the landlord **or**

3. provision of an emergency alarm system except where such a system is in accommodation
 - 3.1 specifically designed or adapted for elderly, sick or disabled people **or**
 - 3.2 which is particularly suitable for such people, having regard to
 - 3.2.a its size
 - 3.2.b heating system **and**
 - 3.2.c other major features or facilities **or**
4. medical expenses - including the cost of treatment of counselling related to a
 - 4.1 mental disorder
 - 4.2 mental handicap
 - 4.3 physical disablement
 - 4.4 past or present alcohol or drug dependence **or**
5. nursing or personal care - including assistance
 - 5.1 at meal times **or**
 - 5.2 with personal appearance or hygiene **or**
6. general counselling or other support services, who ever provides those services, except those which
 - 6.1 relate to the provision of adequate accommodation **or**
 - 6.2 are provided by the landlord or someone employed by the landlord where a majority of their time is spent providing a service (other than this one) which would be eligible **or**
7. charges not specified in 1. to 6. but which are not connected with the provision of adequate accommodation.

1 JSA Regs, Sch 2, para 16(2)(b); IS (Gen) Regs, Sch 3, para 17(2)(b); SS (HB) Regs, Sch 1

Meaning of ineligible service charges from 18.8.97 to 31.3.00

- 4 On 18.8.97¹ the meaning of “ineligible service charges” changed following a Court judgment². The judge noted that in deciding whether charges for general counselling or other support services related to “the provision of adequate accommodation” (see paragraph 3 6.) the phrase
 1. should be interpreted narrowly
 2. incorporates only those services that would preserve the condition of the accommodation’s fabric as the landlord undertakes to provide it **and**
 3. does not encompass dealing with problems about whether the tenant might
 - 3.1 lose the property

3.2 make a mess of the property **or**

3.3 aggravate the neighbours.

1 HB (Gen) Amdt (No. 2) Regs 1997, reg 2; DC decision in R v. HB Review Boards for Sutton, Swansea and Ors.

5 From 18.8.97 to 31.3.00, a deduction should be made in respect of charges made for general counselling or other support services, whoever provided those services, **except** those which¹

1. relate to the provision of adequate accommodation **or**

2. are provided by

2.1 the landlord **or**

2.2 someone employed by the landlord

where a majority of their time is spent providing a service (other than any services eligible under this paragraph or under **3.**) which would be eligible **or**

3. are provided to a claimant in supported accommodation by

3.1 the landlord **or**

3.2 someone on the landlord's behalf

and are payable as a condition on which the claimant's right to occupy the accommodation depends.

1 HB (Gen) Regs

6 "Supported accommodation" means¹ accommodation which was occupied or available for occupation on 18.8.97 and which was at that date and continues to be

1. a resettlement place (for persons without a settled way of life) where the landlord is assisted with a grant under certain law²

2. accommodation provided by

2.1 a housing authority

2.2 a registered social landlord³

2.3 a charity

2.4 a voluntary organization

2.5 in England - a non-metropolitan county council⁴

2.6 in Scotland

2.6.a a registered housing association **or**

2.6.b a recognised body⁵

where care, support or supervision is provided by, or on behalf of, that body to the occupants of that accommodation

3. accommodation occupied by HB claimants protected under certain law⁶, who are provided with care, support, or supervision by, or on behalf of, the landlord.

1 HB (Gen) Regs, Sch 1, para 7; 2 JS Act, s 30; 3 Housing Act 1996, Part I; 4 Local Government Act 1972, s 1; 5 Law Reform (Misc Provisions) (Scotland) Act 1990, s 1(7); 6 HB (Gen) Amdt Regs 1995, reg 10(1)(a)

7 Accommodation which would otherwise fall within the meaning of “supported accommodation” may not have been available for occupation on 18.8.97. Treat such accommodation as available for occupation¹ if it was not available solely by reason of temporary closure due to

1. refurbishment **or**
2. cleansing **or**
3. pest control.

1 HB (Gen) Regs, Sch 1, para 7

Appendix 7

Housing costs - leasehold major works

INTRODUCTION

- 1 The following guidance explains about the amount of benefit allowed as a housing cost for leasehold residents where their accommodation is modernised under the Decent Homes initiative.

Background

- 2 The Decent Homes initiative was extended by the Public Service Agreement in response to a challenge from the government to increase the number of households in the private sector living in decent homes. This includes homes of former LA tenants who have purchased their property under the right to buy scheme.
- 3 In order to be decent a home should meet the current statutory minimum standard for housing, be in a reasonable state of repair and have reasonably modern facilities and services.
- 4 The building components that should be in a reasonable state of repair include external walls, roof structure and coverings, windows and doors, heating systems, plumbing and electrics. Modern facilities are indicated by kitchens less than 20 years old and bathrooms less than 30 years old and, for blocks of flats, there should be adequate size and layout of common areas.
- 5 Landlords are achieving the Decent Homes standard by a programme of regeneration and refurbishment with building works carried out on their leasehold housing stock.

Costs

- 6 The cost of the structural work and refurbishments will be charged to leaseholders through service charges. A service charge is, as decided in R(IS) 4/91, a charge which the claimant is obliged to pay in terms of their occupancy agreement for services rendered in terms of that agreement.
- 7 Some residents may choose to meet their service charge costs by obtaining a home improvement loan. From 6.4.18, these loans can no longer be considered as housing costs (see ADM Memo 8/18).

Service Charge

- 8 To determine what part of the service charge is eligible to be met as a housing cost the claimant will provide the annual service charge account which should include an

itemised breakdown of the total expenditure including the reason that each item or structure has been replaced or refurbished. For example

Items	Major building works	Costs	Unit cost/dwelling	Reason for work
Electrical installations	Replace mains distribution board, rising and lateral mains cables	£13,040	£1,630	Updating old systems and wiring
Rainwater goods	Replace guttering and down pipes	£2,400	£300	Leaking, broken and in disrepair

Note: to be representative of different sized dwellings the unit cost may be presented on the annual account as a fraction or a percentage of the total cost.

- 9 Having identified the amount charged for a year the DM should convert the total costs for the claimant's portion of the refurbishment works into a weekly amount (dividing by 52) and then from that weekly total deduct any ineligible costs. The resulting sum represents the weekly amount of eligible service charge.

Ineligible costs

- 10 Ineligible costs¹ which should be deducted from the weekly amount arise in three circumstances. These are

1. where the costs are inclusive of any items mentioned in paragraph 6(2) of Schedule 1 to the Housing Benefit regulations 2006 (payments in respect of fuel charges)
2. where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit Regulations 2006 (ineligible service charges) the amount attributable to those ineligible service charges;
3. any amount for repairs and improvements.

1 JSA Regs, Sch 2, para 16(2); IS (Gen) Regs, Sch 3, Para 17(2); ESA Regs, Sch 6, Para 18(2); SPC Regs, Sch 2, para 13(2)

- 11 The ineligible charges¹ mentioned in paragraph 10 1. above concern payments in respect of fuel charges and are unlikely to arise under the Decent Homes improvements.

1 HB Regs 06, Sch 1, para 6(2)

- 12 There are several ineligible service charges¹, mentioned in paragraph 10 2. above, which includes any charges that are not connected with the provision of adequate accommodation, however these are unlikely to arise under the Decent Homes improvements.
- 1 Sch 1, para 1*
- 13 “Repairs and improvements”, mentioned in paragraph 10 3. above, means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—
1. Provision of a fixed bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
 2. Repairs to existing heating systems;
 3. Damp proof measures;
 4. Provision of ventilation and natural lighting;
 5. Provision of drainage facilities;
 6. Provision of facilities for preparing and cooking food;
 7. Provision of insulation of the dwelling occupied as a home;
 8. Provision of electric lighting and sockets;
 9. Provision of storage facilities for fuel or refuse;
 10. Repairs of unsafe structural defects;
 11. Adapting a dwelling for the special needs of a disabled person; **or**
 12. Provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 20 who is part of the same family as the claimant.
- 14 Commissioners have addressed some of the issues encountered when determining the eligible and ineligible aspects of the service charge. The Commissioners have decided that:
1. the upkeep/maintenance of communal pathways, gardens¹, repair of a lift and repointing of brickwork are all connected with the provision of adequate accommodation. The costs of a car park barrier, a car park attendant², the installation of a pergola and the repair of a clock tower are all connected with the provision of adequate accommodation.
 2. works which are to be funded out of the service charge can be for the avoidance of the need for the repair of unsafe structural defects. For example, timely replacement of slackening roofing tiles will prevent the roof timbers becoming rotted to the point of collapse through water penetration³.
 3. where there are windows there is natural light already and no need to provide it³.
 4. provision is something not already in existence or the replacement of something which no longer functions³.

5. re-pointing is not a damp proof measure, redecoration is not a repair or improvement and so their associated costs are not deducted from the service charge⁴.
6. by preventing the entry of rainwater a roof may prevent damp, damp proofing may not be the predominant purpose of a roof and although a roof repair might have the predominant purpose of preventing damp a roof renewal would not⁵.

1 CIS/1496/95; 2 CIS/2205/0; 3 R(IS)2/07; 4 CIS/667/02; 5 CIS/2132/98

15 The final weekly amount of the service charge is then attributed to a 52 week period from the date the liability arose¹.

Note: the attribution period for this service charge is independent of any prior service charge that is already in payment so the dates are unlikely to be the same.

*1 JSA Regs, Sch 2, para 16(3); IS (Gen) Regs, Sch 3, Para 17(3);
ESA Regs, Sch 6, Para 18(3); SPC Regs, Sch 2, para 13(3)*

Example

The leasehold residents of a 2 storey flat complex have had their building modernised under the Decent Homes programme at a cost of £90,400, the work involved the prudent renewal of the communal electrical wiring, windows and doors, the lift, replacing all the roof tiles, external redecoration, the perimeter fencing and the upgrading of the roof space insulation. The costs are levied as a service charge and each of the 8 residents are required to contribute an appropriate share of the costs. In this case each persons share of the costs amounted to £11,300 which comprised of £1,100 for wiring, £2,800 for windows and doors, £2,000 for lift renewal, £3,200 for roof tiles, £500 towards redecoration, £900 for fencing and £800 towards insulation.

Resident 1, Juliet, is liable for the service charge (she does not obtain a loan to meet the service charge). The DM decides that the £11,300 is a service charge¹ and that this converts to a weekly amount of £217.31 a week (£11,300 divided by 52). From the weekly amount there should be deducted the costs of any works considered to be, not connected with the provision of adequate accommodation or a repair or improvement. The DM considers that, all the works are connected with the provision of adequate accommodation (therefore there is nothing to deduct as described by paragraph 10 2. above). The DM considers the roof renewal is not a damp proof measure² and therefore not a repair or improvement, the rewiring is not the provision of electrical lighting or sockets³ and not a repair or improvement, the replacement of windows and doors is not the provision of natural lighting or ventilation⁴, the upgrading of roof space insulation with better rated material is not the provision of insulation and neither redecoration⁵, the lift replacement, nor fencing are included in the exhaustive list of potential repair or improvements. As there is nothing in the works to indicate that what is contemplated is anything more than the prudent renewal of protective decoration or the replacement of potentially unserviceable items with similar items, then there is nothing that is a repair or improvement (as described by paragraph 10 3. above) and therefore nothing to deduct. The cost of the building works is met in full giving a housing cost service charge of £217.31 a week.

1 R(IS) 4/91; 2 CIS/2132/1998; 3 CSJSA/160/98; 4 CIS/2901/04; 5 CSJSA/106/98

Typical repairs

16 The following table contains a list of some of the typical building repair and refurbishments carried out on leasehold accommodation under the decent homes initiative highlighting eligibility where the costs are met by a service charge.

Typical repairs			Service charge
Roof	a.	Major Repair	No
	b.	Renewal	Yes
	c.	Replacement	Yes
	d.	Chimney stack repairs	Yes
Roof safety		This may include fitting roof safety rails, or roof safety harness's, allowing regular inspection and maintenance	Yes
Insulation	a.	Roof insulation	Yes if not provision
	b.	Wall insulation	
Building frame repairs	a.	Cladding to the exterior of the building to prevent damage to the structure, insulates protects building from the elements	Yes
Concrete repairs		This may include cleaning, painting and protective coating, or repairs (including the concrete frame)	Yes
External walls	a.	Brickwork cleaning	Yes
	b.	Repairs to brickwork, pointing, repairs to rendered surfaces	Yes
	c.	Replace wall ties	Yes
Balcony walkways	a.	Repairs to balcony balustrades and handrails	Yes
	b.	Repairs to common walkways and balconies	Yes

Windows	a.	Replacement	Yes
	b.	Replacement of single glaze with double glaze	Yes
Communal doors	a.	Repair and replacement of communal doors, ensuring compliance with fire regulations	Yes
External redecoration	a.	Carry out the redecoration to all external elements of the existing fabric of the building, including use of anti-graffiti paint where appropriate	Yes
Communal area repairs & decoration	a.	Carry out redecoration of all communal internal areas including corridors and stairways, using fire retardant and/or anti-graffiti paint where appropriate	Yes
	b.	Replacement of communal flooring	Yes
Rainwater goods	a.	Repair/replace guttering and down pipes	Yes if not provision
Drains	a.	Rod and Jetting wash through all existing drainage and inspection chambers	Yes
	b.	Replace communal waste/soil pipes	Yes if not provision
	c.	Major repairs or replacement	
Electrical Installations	a.	Replace mains distribution board	Yes
	b.	Replace rising and lateral mains cables	Yes
	c.	Replace bulk head lighting to communal staircases & balcony soffits	Yes if not provision
	d.	Replace communal corridor lighting	
TV aerial	a.	Replace analogue aerial with digital, may include replacing cabling serving all units	Yes

	b.	Installation of satellite dish to receive additional channels	Yes
Ventilation	a.	Maintenance and cleaning of communal shafts & flues	Yes
	b.	Replace communal extractor fans	Yes if not provision
Entry Systems and Access	a.	Installation or renewal of entry systems, which may include cabling and handsets in each property	Yes
	b.	Works to comply with Disability Discrimination Act	Yes
Damp works	All methods of damp proofing, which may include:-		
	a.	Insertion of chemical damp proof course	No
	b.	Laying a waterproof membrane on the basement floor	No
Refuse/recycling systems	a.	Replacement or repair of refuse/recycling systems and or hopper heads	Yes if not provision
Bin chambers	a.	Repairs to communal bin chambers	Yes
Lifts	a.	Replacement of lift car, control panel and components	Yes
	b.	Replace lift motor room equipment	Yes
	c.	Major overhaul	Yes
	d.	Installing lifts and shafts	Yes
Dry rot works	May include:-		
	a.	Chemical treatment of problem areas	Yes
	b.	Replacement of structural timbers such as joists	No

Water pumps	May include:-		
	a.	Installation of pumps due to reduced water mains pressure	Yes
	b.	Replacement of an existing pump	Yes
Water supply	a.	Replacement of the water main serving the building	Yes
	b.	Replacement of communal water tanks	Yes
Fire safety	a.	Install, repair or replace communal fire detection systems	No
	b.	Installation or renewal of smoke detectors	No
	c.	Replacement of dry risers to tower blocks (essential part of fire fighting)	Yes
	d.	Install, repair or replace fire escapes	Yes
Lightning protection	a.	Installation or replacement of lightning conductor	Yes
Asbestos removal	a.	Removal of asbestos under controlled conditions	Yes
Communal Heating	a.	Major overhaul or replacement of communal heating systems or individual elements	No
	b.	Installation of communal heating systems	Yes
Estate works	a.	Estate lighting	Yes if not provision
	b.	Controlled access and security	Yes
	c.	Repairs to estate roads or paths	Yes
	d.	Provision and refurbishment of recreational areas	Yes
	e.	Landscaping	Yes
	f.	Boundary walls and fences	Yes

Associated costs	Costs essential to the works, which may include		
		Surveys	Yes
		Preliminaries e.g. site set up costs	Yes
		Fees	Yes
		Access equipment e.g. scaffolding	Yes
		Health and safety	Yes

Appendix 8

TRANSITIONAL END DAY

- 1 From 6.4.18 the regulations which provide for entitlement to payments in respect of loans and loans for repairs and improvements¹ within the IS, JSA(IB), ESA(IR) and SPC regulations are omitted². As a result these SMI payments will no longer be met through those benefits. Payment towards other housing costs, for example, service charges, will continue. Certain transitional arrangements are in place for existing claimants whose housing costs can continue to be met (beyond 6.4.18) but only until the transitional end day³.

1 IS Gen Regs, reg 17(e) & 18(1)(f); JSA Regs, reg 83(f) & 84(1)(g) & 86A; ESA Regs, reg 67(1)(c) & 68(1)(d); SPC Regs, Sch II, Para 1(1)(b) & 1(2)(c) & 8, 9, 11, 12; 2 LMI Regs, reg 18; 3 reg 19

Loan offer made before 6.4.18

- 2 Where the loan offer is made before 6.4.18 the transitional end day will be the earlier of
1. the day described at paragraph 3 below **or**
 2. the day immediately following the day on which entitlement to a qualifying benefit ends¹.

Note: the following paragraphs contain detailed options. DMs should be vigilant when establishing the transitional end day.

1 LMI Regs, reg 19(1)

- 3 For the purposes of paragraph 2.1 the day referred to is the later of
1. for claimants of IS, JSA(IB), ESA(IR) or SPC, where 6.4.18 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after 6.4.18 **or**
 2. the day immediately following the day which is the earliest¹ to occur of the following
 - 2.1 the day the DM receives notification that the claimant does not wish to accept the offer of loan payments **or**
 - 2.2 where the DM
 - 2.2.a receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 9 below **or**
 - 2.2.b has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning

with the loan payments offer date, the day on which that 6 week period ends².

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant³.

1 LMI Regs, reg 19(2); 2 reg 19(3); 3 reg 2(1)

Example

William is in receipt of IS that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6.4.18). From this date William is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

- 4 For the purposes of paragraph 3.2.2.a the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received¹.

1 LMI Regs, reg 19(3)(b)

Loan offer made on or after 6.4.18

- 5 Where the loan offer does not occur before 6.4.18 the transitional end day will be the earlier of
1. the day described at paragraph 6 below or
 2. the day immediately following the day on which entitlement to a qualifying benefit ends¹
 3. the day immediately following the day the DM receives notification that the claimant does not wish to receive loan payments¹.

1 LMI Regs, reg 19A(1)

- 6 For the purposes of paragraph 5.1 the day referred to is
1. 7.5.18¹ **or**
 2. where the loan payments offer date is before 7.5.18 **and**
 - 2.1 he DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2.2 the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends².

Note: Where the day described in paragraph **2.1** or **2.2** above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date².

1 LMI Regs, reg 19A(2)(a); 2 reg 19A (2)(b)

7 For claimants of IS, JSA(IB), ESA(IR) or SPC, where 7.5.18 or the day described at paragraph 5.3 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day¹.

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant.

1 LMI Regs, reg 19A(3)

8 Where

1. before 19.3.18 the DM has asked the claimant to provide information needed to

1.1 establish whether the claimant wishes to receive an offer of a loan payment or

1.2 be able to send the loan agreement and associated documents and

2. the claimant has not provided that information

then the preceding paragraphs 5 to 7 do not apply and the support for mortgage interest regulations are removed, subject to paragraph 9, from 6.4.18¹.

1 LMI Regs, reg 19A(4)

9 Where paragraph 8 applies (and this is not because the claimant lacks capacity) and the 6.4.18 is not the first day of the claimants benefit week then the removal of the owner occupier payments from benefit entitlement is effective from the first day of the first benefit week that begins after that date¹.

1 LMI Regs, reg 19A(5)

Persons who lack capacity – identified before 6.4.18

- 10 Where, before 6.4.18 the DM
1. is satisfied that the claimant lacks capacity to make some or all the decisions about entering into the loan agreement **or**
 2. suspects that the claimant may lack such capacity

then claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below¹.

1 LMI Regs, reg 20(1)

- 11 The date referred to in paragraph 10 falls on the day that is the earlier of
1. the day described in paragraph 12 or paragraph 14 **or**
 2. the day immediately following the day on which entitlement to a qualifying benefit ends¹.

1 LMI Regs, reg 20(2)

- 12 For the purposes of paragraph 11.1 that day is the later of
1. 5.11.18 **or**
 2. where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5.11.18 the DM's suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the DM formed that belief¹ **or**
 3. where an application for a decision of a type described in the Note below is made before the later of
 - 3.1 5.11.18 **or**
 - 3.2 the day prescribed in paragraph 12.2the relevant day is the day immediately following²
 - 3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision **or**
 - 3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn³.

1 LMI Regs, reg 20(3)(b); 2 reg 20(3)(c); 3 reg 20(4)

Note: In England and Wales the relevant person is the Court of Protection or Public Guardian and the decision they need to determine would concern registering a lasting power of attorney, appointing a deputy or making an order in order that someone has

the power to act on the claimant's behalf in respect of entering in the loan agreement. In Scotland the relevant person is the Sheriff or Court of Session and the decision they need to determine would concern the making of an intervention order, the appointment of a guardian or the appointment of a judicial factor in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement¹.

1 LMI Regs, reg 20(7); Adults with Incapacity (Scotland) Act 2000, s 53; Judicial Factors Act 1849; Mental Capacity Act 2005; s 16(2);

Example 1

Bert receives SPC which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5.11.18, the later of the dates outlined in paragraph 12.3, which is the earlier of the dates in paragraph 11. Owner occupier payments will continue until that date.

Example 2

Ernest receives SPC which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Financial Deputy. Owner occupier payments continue. On 30.10.18 Jim advises the DM that he has been appointed. The transitional end date for Ernest is 6 weeks after that determination which in this particular case is 11.12.18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

- 13 Where more than one application for a decision (as described in the Note to paragraph 12) is made within the intervening period cited at 12.3 then the periods described in paragraph 12.3 do not start to run until the relevant person has decided the last application or that all the applications are withdrawn¹. Similarly where there is one application for a decision referred to in the Note but it is made within the intervening period to more than one relevant person then the day will be the later of the days².

1 LMI Regs, reg 20(5); 2 reg 20(6)

- 14 Where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5 November the DMs suspicion becomes a belief that the claimant does not in fact lack capacity then the relevant day is the day immediately following the earlier of
1. the day described in paragraph 15 **or**
 2. the day on which the DM is notified that the claimant does not wish to receive loan payments¹.

1 LMI Regs, reg 20(8)

- 15 For the purposes of paragraph 14.1 the relevant day is the earlier of
1. where the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**
 2. where the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends¹.

Note: Where the day described in paragraph **1. or 2.** above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date¹.

1 LMI Regs, reg 20(9)

- 16 For claimants of IS, JSA(IB), ESA(IR) or SPC, where 5.11.18 or the day described at paragraph 14.2 or paragraph 15 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day¹.

1 LMI Regs, reg 20(10)

Appendix 9

Dependants personal allowance

EXCEPTIONS

- 1 There are 5 categories that fall into the exceptions and for whom a child personal allowance will be payable
 1. multiple births (paragraph 2)
 2. adoptions (paragraph 3-4)
 3. non-parental caring arrangements (paragraph 5-6)
 4. non-consensual conception (paragraph 7-8)
 5. continuation of existing exception (paragraph 9).

Multiple births

- 2 An exception applies where
 1. the claimant is a parent (other than an adoptive parent) of the child **and**
 2. the child was one of two or more children born as a result of the same pregnancy **and**
 3. the claimant is responsible for at least two of the children born as a result of that pregnancy **and**
 4. the child is not the first in the order of multiple birth children established under paragraph 11¹.

Adoptions

- 3 An exception applies¹ where
 1. the child or young person has been
 - 1.1 adopted by **or**
 - 1.2 placed for adoption withthe claimant under legislation².

¹ UC Regs, Sch 12, para 3; ² Adoption and Children Act 2002, Adoption and Children (Scotland) Act 2007;

- 4 The exception at paragraph 3 does not apply where the claimant or, if the claimant is a member of a couple, the other member
1. was immediately prior to the child's adoption, a step parent of the child **or**
 2. has at any time been a parent of the child **or**
 3. adopted the child under a convention adoption order or an external adoption¹ **or**
 4. had already adopted the child under the law of any country or territory outside the British Islands².

1 Adoption and Children Act 2002, s 144 ; Adoption and Children Scotland Act 2007, s 119(1);

2 UC Regs, Sch 12, para 3

Non-parental caring arrangements

- 5 An exception applies where the claimant is
1. a friend or family carer of the child **or**
 2. responsible for a child who is also a parent of a child¹.

UC Regs, Sch 12, para 4

Example: Kevin and Penny have two children Jack aged 10 and Jill aged 15, Jill's son Alex is born on 20.12.17. As Kevin is responsible for Jill (who is the parent of Alex) he is entitled to a child allowance for Jack and Jill and also for Alex (under the UC non-parental caring exception criteria).

- 6 For the purposes of paragraph 5.1 the term friend or family carer means a person who is responsible for the child, but is not that child's parent or step parent **and**
1. is named in a child arrangements order, under legislation¹, as a person with whom the child is to live **or**
 2. is a guardian or special guardian² of the child **or**
 3. is entitled to a guardian's allowance³ in respect of that child **or**
 4. in Scotland
 - 4.1 has a kinship care order⁴ in respect of that child
 - 4.2 is a guardian⁵ of that child
 - 4.3 one or more of the parental responsibilities or parental rights⁶ are vested by a permanence order made in respect of that child under legislation⁷**or**

5. fell within any of the above (1. to 4.) immediately prior to the child's 16th⁸ birthday and has since continued to be responsible for that child **or**
6. has taken care of the child in circumstances in which it is likely that child would otherwise be looked after by a local authority⁹ .

Note: the family carer should provide evidence from a social worker to support the declaration that the child would otherwise be looked after by a local authority.

*1 Children Act 1989, s 8; 2 s 5 & s 14A; 3 C & B Act, s 77; 4 Children and Young People (Scotland) Act 2014, s72(1);
5 Children (Scotland) Act 1995, s 7; 6 s 1 or 2; 7 Adoption and Children (Scotland) Act 2007, s 80;
8 UC Regs, Sch 12, para 4(2)(g); 9 para 4(2)(h)*

Non-consensual conception

7 An exception applies where

1. the claimant is the child's parent **and**
2. the DM determines (see paragraph 9) that
 - 2.1 the child is likely to have been conceived as a result of sexual intercourse to which the parent did not agree by choice or did not have the freedom and capacity to agree by choice **and**
 - 2.2 the parent is not living at the same address as the other party to that sexual intercourse¹ .

Note: For 2.2 the DM should accept the claimant's statement if it confirms that they were not living at the same address as the other party.²

1 UC Regs, Sch 12, para 5(1); 2 para 5(4)

8 The freedom or capacity to agree by choice, as prescribed at paragraph 7.2.1 includes, at or around the time the child was conceived, such circumstances in which

1. the parents were personally connected **and**
2. one parent was repeatedly or continuously engaging in behaviour towards the other parent that was controlling or coercive **and**
3. that behaviour had a serious effect on the recipient.¹

Note 1: the parents are personally connected if they are in an intimate personal relationship with each other or they were living together and were members of the same family or they were living together and have previously been in an intimate personal relationship with each other.²

Note 2: the behaviour will have had a serious effect where it causes fear, on at least two occasions, that violence will be used against the parent or it causes serious alarm or³ distress which has a substantial adverse effect on the parent's day to day activities .

1 UC Regs, Sch 12, para 5(2); 2 para 5(5); 3 para 5(6)

- 9 The DM can only make the determination described at paragraph 7.2.1 where
1. a parent provides evidence (that evidence will probably take the form of a completed pro forma) from an approved person that shows
 - 1.1 they had contact with that approved person or another approved person **and**
 - 1.2 their circumstances are consistent with those of a person to whom 1. and 2.1 of paragraph 7 would apply **or**
 2. there has been
 - 2.1 a conviction for an offence of rape under legislation¹
 - 2.2 a conviction for an offence of controlling or coercive behaviour in an intimate or family relationship under legislation²
 - 2.3 a conviction for any offence under the law of a country outside GB that the DM considers to be comparable to either offence mentioned above
 - 2.4 an award under the Criminal Injuries Compensation Scheme in respect of a relevant criminal injury

and the DM considers it likely that the offence or injury (2.1 to 2.4 above)
 - 2.5 was caused by one parent or
 - 2.6 diminished the other parents freedom or capacity to agree to the sexual intercourse

which resulted in the conception of the child³ .

Note 1: no time limit is placed on when the report needs to be made to the approved person after the actual incident that resulted in the pregnancy, in order to be eligible for the exception.

Note 2: There is no requirement to provide evidence from an approved person where the DM is satisfied that the same evidence had already been provided to HMRC in relation to a CTC exception.⁴

1 Sexual Offences Act 2003, s 1 & Sexual Offences (Scotland) Act 2009, s 1; 2 Serious Crime Act 2015, s76; 3 UC Regs, Sch 12, para 5(3); 4 UC (TP) Regs, reg 42(2)

Continuation of existing exception

- 10 The DM does not have to consider whether the claimant falls within the continuation exception¹ because it envisages breaks in a claim and any such previous break in the claimant's entitlement would have removed access to any and all child allowances.

1 UC Regs, Sch 12, para 6;

ORDER OF CHILDREN

- 11 Disregarding any child or qualifying young person who falls into one of the exceptions in paragraphs 2 to 10 above, or those born before 6.4.17, the order of children or qualifying young persons in the claimant's household is established by reference to their date of birth, taking the earliest date first¹.

1 UC Regs, reg 24B(1)

- 12 Where the same date is established, under paragraph 11 above, in relation to two or more children or qualifying young persons for whom the claimant is responsible, the order of the children or qualifying young people in the claimant's family should be determined by the DM to ensure the greatest number of children qualify for the child allowance¹.

1 UC Regs, reg 24B(2)

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

