

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 5 Amendment 56 – February 2019

1. This letter provides details on Amendment 56; 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

<https://www.gov.uk/government/publications/decision-makers-guide-vols-4-5-6-and-7-jobseekers-allowance-and-income-support-staff-guide>

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

3. Amendment 56 affects chapter 29. The changes:

incorporate DMG Memos 12/18 and 18/18.
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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Can capital be disregarded

The law

29351 The law allows for all capital to be included unless it can be disregarded¹.

1 JSA Regs, reg 108 & Sch 8; IS (Gen) Regs, reg 46 & Sch 10

Onus of proof

29352 The claimant has to show that the capital can be disregarded. If there is no evidence to show capital can be disregarded, it is included when working out the amount of capital a claimant has.

What the DM decides

29353 The DM decides if capital can be disregarded

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

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

29354 The DM decides all of the disregards which apply to each item of capital. This is because income from capital is taken into account as income and not capital if certain disregards apply. DMs should note that this also applies if the capital is worth nothing.

29355 For certain disregards the DM has to decide if it is reasonable to disregard capital for a longer period. Capital is disregarded

1. indefinitely **or**
2. up to two years **or**
3. 52 weeks **or**
4. 26 weeks or more if it is reasonable **or**
5. 26 weeks
6. for a prescribed period.

29356

Capital disregarded indefinitely

Adoption allowance

29357 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

1. long-term foster parent wishes to adopt but cannot afford to lose their boarding out allowance **or**
2. child's prospects of adoption are lowered because of disability.

Each LA has its own scheme. There is usually a rule that ends the allowance when the adopted child or young person stops living with the adopter.

29358 Payments of adoption allowances made under specific legislation¹ are disregarded indefinitely².

1 Adoption and Children Act 2002, s 2(6)(b) 3 or 4; 2 JSA Regs, Sch 8, para 61; IS (Gen) Regs, Sch 10, para 68

Special guardianship payments

29359 Special guardianship payments are made in England and Wales to provide more security for a child than long-term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Any special guardianship payment made to the claimant under specific legislation¹ is fully disregarded indefinitely². In order to find out if the payments are made under the specified legislation, the DM can make enquiries of the paying body.

1 Children Act 1989, s 14F; 2 JSA Regs, Sch 8, para 61A; IS (Gen) Regs, Sch 10, para 68A

Annuities

29360 An annuity is a fixed sum payable at specified intervals in return for a premium paid either by instalments or in a single payment. An annuity is normally taken out to provide an income in retirement. Both the right to receive income from an annuity and the surrender value of the annuity are disregarded indefinitely¹. Payments made under an annuity are capital which is treated as income.

1 JSA Regs, Sch 8, para 16; IS (Gen) Regs, Sch 10, para 11

Best Start Grants

29361 The Scottish Government introduced Best Start Grants to provide early years assistance to people living in Scotland¹. From 10.12.18 under Best Start Grants, Pregnancy and Baby Grants are being introduced, with other elements introduced at a later date. The Scottish Government will be responsible for deciding on the claims to these grants and for making payments. All elements of Best Start Grant are disregarded indefinitely².

1 The Social Security (Scotland) Act 2018, s. 32; 2 JSA Regs, Sch 8, para 68; IS (Gen) Regs, Sch 10, para 75

Business assets

The law

- 29362 The assets of a business are disregarded indefinitely if
1. the person owns all or some of the assets and works in the business as a S/E earner¹ **or**
 2. the assets have been acquired by a person receiving assistance under the S/E Employment Option of the ND (see DMG 14132) for the purpose of establishing or carrying out the commercial activity for which the assistance is being received².

1 JSA Regs, Sch 8, para 11(1); IS (Gen) Regs, Sch 10, para 6(1);

2 JSA Regs, Sch 8, para 11(3); IS (Gen) Regs, Sch 10, para 6(3)

- 29363 The assets of a business are disregarded for a reasonable period to allow them to be sold if the person
1. owns all or some of the business assets and has stopped working in the business as a S/E earner¹ **or**
 2. was receiving assistance under the S/E Employment Option of the ND (see DMG 14132) and has ceased carrying on the commercial activity in respect of which such assistance was being received².

Example

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

Note: A different disregard applies if persons are not able to work in the business because they are ill or physically or mentally disabled and are going to start or return to work in the business (see DMG 29520 - 29523).

1 JSA Regs, Sch 8, para 11(1); IS (Gen) Regs, Sch 10, para 6(1);

2 JSA Regs, Sch 8, para 11(4); IS (Gen) Regs Sch 10, para 6(4)

Meaning of business assets

- 29364 Business assets include standard items such as machinery, vehicles, fixtures and cash held in the bank (including money held following the sale of assets). They may also include items such as customer lists and contacts, current and future contracts and goodwill.

29365 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as “work in hand” may result in an income receipt and so would be appropriate for inclusion in the profit and loss account. Where doubt exists as to whether a particular asset would represent a capital or income receipt upon its sale, the principles of commercial accounting must be applied i.e. the approach that would be taken by an accountant or the HMRC to such a receipt or holding.

Meaning of “reasonable period”

29366 When determining what represents a reasonable period for the sale or disposal of an asset, the DM should have regard to

1. the date that the duty to dispose of the asset arose
2. the nature of the asset and the period within which that particular type of asset would normally be expected to be sold or disposed
3. any legal obligations and restrictions existing that could affect both the sale **and** disposal of any assets (e.g. in a partnership situation, the provisions of the partnership deed and the Partnership Act 1890. These provisions could place restrictions and subsequent delays on both the sale of assets, and the disposal of any cash assets resulting from the sale).

Meaning of self-employed earner

29367 S/E earner means a person

1. who is gainfully employed in GB (see DMG 070702) **and**
2. whose employment is not the same as that of an employed earner¹.

1 SS CB Act 92, s 2(1)(b);

29368 People can be S/E earners even if they have another job as an employed earner. An employed earner is a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office, including an elective office, with general earnings¹.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(a)

When people are working in the business

29369 People are working in the business if they do some work for the business in a practical sense. There is no set definition of the type and amount of work that has to be done for the person to be classed as a S/E earner and the DM must decide each case on its merits¹.

1 R(IS) 14/98

- 29370 A partner in a business managed and worked exclusively by others is not working in the business. Even if that person receives a share of the profits of the business he is not a S/E earner¹.

1 R(IS) 14/98

Capital administered by the court

- 29371 Certain capital is disregarded indefinitely if it is administered on behalf of a person by

1. in England and Wales, under certain rules the High Court, County Court or the Court¹ of Protection (see DMG 29277) and any such sum can only be disposed of by order or direction

1.1 of any such court **or**

1.2 where the person concerned is under age 18, prior to that person reaching age 18 **or**

2. in Scotland, the Court of Session or Sheriff Court under certain rules².

1 Civil Procedure Rules 1998, rule 21.11(1); 2 Children (Scotland) Act 1995, s 13

- 29372 The disregard in DMG 29373 applies to capital derived from

1. an award of damages for personal injury to the person whose capital is being administered by the court¹ **or**
2. compensation for the death of one or both parents where the person concerned is under the age of 18².

Note: The disregard in DMG 29372 **2.** ceases to apply when the person concerned reaches the age of 18.

1 JSA Regs, Sch 8 para 42(a) & 43(a); IS (Gen) Regs, Sch 10, para 44(1)(a) & 45(a);

2 JSA Regs, Sch 8 para 42(b) & 43(b); IS (Gen) Regs, Sch 10, para 44(b) & 45(b)

Capital paid by instalments

- 29373 The value of the right to receive any outstanding instalments is disregarded indefinitely if capital is due to be paid by instalments¹.

Note: Depending on the circumstances payments of instalments can be taken into account as capital or income (see DMG 29380 - 29381).

1 JSA Regs, Sch 8, para 21; IS (Gen) Regs, Sch 10, para 16

Capital which is not sterling

- 29374 Bank charges and commission which are payable when changing capital which is not sterling into sterling are disregarded indefinitely¹. For example, if people get capital of 3,000 Canadian dollars they will have to pay commission when the dollars are changed into British money, so the commission is disregarded.

1 JSA Regs, Sch 8, para 26; IS (Gen) Regs, Sch 10, para 21

2. the total of the arrears and any concessionary payment (“the relevant sum”) is £5,000 or more **and**
3. the relevant sum is paid to rectify or compensate for
 - 3.1 an official error (see DMG 03256) **or**
 - 3.2 an error of law (see DMG 04280) **and**
4. the relevant sum is received in full by the claimant on or after 14.10.01¹.

1 JSA Regs, Sch 8, para 12(2)(a) & (b); IS (Gen) Regs, Sch 10, para 7(2)(a) & (b)

Period of the disregard

29512 The period of the disregard is

1. 52 weeks from the date the relevant sum is received **or**
2. if it is received in its entirety during an award for the remaining period of the award of IS, ESA(IR), JSA(IB) or UC to which DMG 29513 applies
whichever is the longer period¹.

1 JSA Regs, Sch 8, para 12(2); IS Regs, Sch 10, para 7(2)

29513 For the purposes of DMG 29512 2. the remaining period of the award of IS, ESA(IR), JSA(IB) or UC means

1. the award of IS, ESA(IR), JSA(IB) or UC in which
 - 1.1 the relevant sum is received **or**
 - 1.2 the first part of the relevant sum is received if it is paid in more than one instalment **and**
2. any further award either of IS, ESA(IR), JSA(IB) or UC, until the end of the last such further award if
 - 2.1 the further award follows the award at 1. **and**
 - 2.2 the further award begins immediately after the end of the previous award **and**
 - 2.3 the claimant
 - 2.3.a is the person who received the relevant sum **or**
 - 2.3.b is the partner of the person who received the relevant sum **or**
 - 2.3.c was the partner at the date of death of the person who received the relevant sum **or**
 - 2.3.d is a joint-claim couple for a joint-claim jobseekers allowance and either member, or both members of that joint-claim couple received the relevant sum¹.

1 JSA Regs, Sch 8, para 12(3); IS (Gen) Regs, Sch 10, para 7(3)

Example 1

Winston receives JSA(IB) from 8.8.05 to 8.1.06. He then receives IS from 9.1.06 to 29.1.06. On 30.1.06 he reclaims JSA(IB) which is paid for the period 30.1.06 to 30.10.06. On 17.10.05 Winston received £6,995 arrears of JSA(IB) and on 24.4.06 he receives a concessionary payment of £310 because of an official error. Winston starts remunerative work on 31.10.06 but he loses his job and makes a further claim for JSA(IB) on 1.4.07. The DM decides that the arrears and the concessionary payment can be disregarded from the date they were received to the end of Winston's previous JSA(IB) claim.

Additionally the concessionary payment received on 24.4.06 can be disregarded for 52 weeks to 22.4.07 because this is a longer period than the remainder of the JSA(IB) award of 30.1.06.

Example 2

Hannalore is in receipt of IS. On 1.2.07 she receives arrears of £4,950 and on 17.3.07 she receives a concessionary payment of £150 because of an official error. The DM decides that the arrears of £4,950 are disregarded for 52 weeks from 1.2.07 to 30.1.08 and from 17.3.07 the concessionary payment and any of the remaining payment of arrears are disregarded for either 52 weeks or the duration of Hannalore's IS claim, whichever is the longer period.

Example 3

Rhys receives JSA(IB) until 31.8.06. On 15.10.06 he receives a concessionary payment of £15,000 because of an official error. Rhys then has an accident and on 3.11.06 claims IS. The DM decides that the concessionary payment can be disregarded for no more than 52 weeks from 15.10.06.

29514 - 29519