

Chapter 44 - Normal amount payable & Components

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The guidance on this subject has been moved to Chapter 51	44651
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Statutory Payments

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Chapter 44 - Normal amount payable & Components

Amount payable

General

Scope of this Chapter

44001 This Chapter explains how to calculate the normal amount payable for ESA. The rules are different for urgent cases (see DMG Chapter 54).

44002 Other rules apply where people are

1. in hospital
2. without accommodation
3. members of religious orders
4. prisoners
5. temporarily separated members of a couple or polygamous marriage
6. absent from GB/UK
7. entitled to a mortgage interest run-on
8. from abroad or subject to immigration control.

See DMG Chapter 54 for guidance on these special cases. Guidance on how to calculate the amount payable for a part week is in DMG 46041 et seq.

Meaning of benefit week

44003 Benefit week means¹

1. a period of seven days ending on a day which the DM directs **and**
2. when calculating the amount of income to take into account a period of seven days ending on
 - 2.1 the day before the first day of the benefit week following the date of claim **or**
 - 2.2 the last day on which ESA is paid if it is in payment for less than a week.

1 ESA Regs, reg 2(1)

Meaning of claimant

44004 Claimant means¹ a person who has claimed ESA.

1 WR Act 07, s 24(1)

Meaning of terminally ill

44005 A claimant is considered to be terminally ill if they have a progressive disease from which death may reasonably be expected within six months¹.

1 ESA Regs, reg 2(1)

Meaning of qualifying age for state pension credit

44006 The qualifying age for SPC¹ means

1. in the case of a woman, pensionable age, **or**
2. in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man.

Note: See DMG Chapter 75 for guidance on pensionable age.

1 ESA Regs, reg 2(1)

Deciding entitlement

44007 The DM cannot decide entitlement to ESA until all of the information for the claim has been received (see DMG Chapter 02). Claimants will indicate when claiming whether they wish to receive

1. ESA(Cont) **or**
2. ESA(IR).

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

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

44008 If claimants indicate that they wish to receive ESA(IR) the DM should calculate any entitlement to

1. ESA(Cont), (the personal rate) **and**
2. ESA(IR), (the applicable amount).

The DM must then consider the guidance at DMG 44045 - 44049 to decide the amount of ESA to be paid.

44009 - 44010

The assessment phase

Meaning of assessment phase

44011 The assessment phase is the period of time during which the initial LCWA takes place. It is generally a fixed period of 13 weeks beginning with the first day of entitlement to ESA¹. Entitlement will usually commence after the claimant has served seven waiting days². The assessment phase may sometimes be extended in certain circumstances, for example should the WCA not take place within the first 13 weeks³.

Note: DMG Chapter 41 provides guidance on waiting days.

1 WR Act 07, s 24(2); 2 Sch 2, para 2; 3 ESA Regs, reg 4(2)

44012 The assessment phase is calculated differently for those claimants who

1. have previously claimed ESA and the PLCW links to an earlier PLCW (see DMG 44019) **or**
2. are appealing a decision embodying an adverse determination on LCW (see DMG 44022) **or**
3. claim ESA immediately following an award of JSA EPS (see DMG Chapter 20).

44013 The normal amount of ESA payable will depend on whether the claimant is in the assessment phase. Unless the claimant is within a prescribed group (see DMG 44636) then during the assessment phase

1. the support component is not payable¹
2. the personal allowance² for ESA(IR) (see DMG 44056) and the personal rate for ESA(Cont) are age related³ (see DMG 44027).

Note: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

1 WR Act 07, s 2(2), s 2(3), s 4(4) & s 4(5); 2 ESA Regs, reg 67(1); 3 reg 67(2)

44014 In cases where the assessment phase has lasted for a period longer than 13 weeks payment of the support component may be backdated to the first day after the 13th week (see DMG 44647)¹.

1 WR Act 07, s 2(4)(b), s 4(6)(b); SSCS (D&A) Regs, reg 6(2)(r) and 7(38) & (40)

Ending of the assessment phase – new claimants

44015 The assessment phase ends on

1. the last day of the relevant period¹ (see DMG 44016) **or**
2. the date of the determination in DMG 44017 if later².

1 ESA Regs, reg 4(1) & (3); 2 reg 4(2)

Meaning of relevant period

44016 The relevant period is the period of 13 weeks beginning with

1. the first day of the assessment phase (that is, the first day of ESA entitlement)¹ **or**
2. where the first day of ESA entitlement immediately follows an award of JSA EPS, the first day of the EPS².

1 WR Act 07, s 24(2)(a); ESA Regs, reg (4)(a); 2 reg 4(b) & (5); JSA Regs, reg 55ZA; JSA Regs 13, reg 46A

Example

Pat is entitled to JSA, and sends in fit notes when he has flu and develops a chest infection. He starts an EPS on 10.6.15. Pat has serious injuries after a road traffic accident on 9.7.15, and is admitted to hospital. He claims ESA from 9.7.15, and on 1.9.15 the DM determines that Pat is treated as having LCW. The relevant period begins on 10.6.15, the first day of the EPS, and ends on 9.9.15.

44017 Where a LCW determination has not been made within the relevant period in DMG 44016¹, the assessment phase will end once it has been determined that the claimant has LCW² either by

1. a LCWA being carried out (see DMG Chapter 42)³ **or**
2. the claimant being treated as having LCW (see DMG Chapter 42)⁴.

1 ESA Regs, reg 4(4); 2 reg 4(2); 3 reg 4(3)(a), 19 & Sch 2; 4 reg 4(3)(b), 20, 25, 26, 29 or 33(2)

Example

After serving waiting days for the period 25-31 May, Claudia has been entitled to ESA since 1 June on the basis of medical evidence supplied by her GP. A LCWA is not carried out until 10 September. On 12 September the DM determines that Claudia has LCW. Claudia's assessment phase ends on 12 September.

44018 Where

1. a claimant's entitlement to ESA ends, for example because they have returned to work, after the 13th week of entitlement but before the WCA has been carried out **and**
2. the claimant asks for arrears of a component to be paid from week 14

the DM should make a decision refusing to supersede the decision which awarded entitlement, or any later superseding decision, on the grounds that the conditions allowing supersession are not satisfied. See [DMG 04019 - 04020](#) for guidance on making a decision not to supersede. The decision carries the right of appeal to the FtT¹.

1 SS Act 98, s 12(1); R(DLA) 1/03

Ending of the assessment phase - previous claimants

44019 Where

1. the claimant's current PLCW links to an earlier PLCW under the 12 week linking rule¹ (see DMG Chapter 42) **and**
2. the claimant was entitled to ESA in that earlier period² **and**
3. the assessment phase had not ended in that earlier period³

the assessment phase begins on the first day of entitlement in the earlier period⁴.

Note: See DMG 44020 where the claimant was previously entitled to JSA.

1 ESA Regs, reg 5(2)(a)(i); 2 reg 5(2)(a)(ii); 3 reg 5(2)(a)(iii); 4 reg 5(1)(a)

44020 When adding together periods of entitlement to ESA as in DMG 44019, a claimant is treated as entitled to ESA for any period where they were

1. entitled to JSA **and**
2. treated as capable of work or as not having LCW during an EPS¹.

Note: See DMG Chapter 20 for guidance on JSA and EPS.

1 ESA Regs, reg 5(1) & (1A); JSA Regs, reg 55ZA; JSA Regs 13, reg 46A

Example

Tricia is awarded ESA from 15.4.15 after injuring her wrist in a fall. She claims JSA from 14.5.15. Tricia is diagnosed with a suspected eye infection affecting her vision, and starts an EPS on 29.5.15 after sending in fit notes from her GP. She makes a further claim for ESA on 20.7.15, as she is now experiencing significant mobilising problems. Tricia is later diagnosed with multiple sclerosis, and found to have LCW and LCWRA. Tricia is awarded the support component from 30.7.15, as the ESA award for the periods 15.4.15 – 13.5.15 and from 20.7.15 are combined with the period of JSA EPS (29.5.15) to total 13 weeks.

44021 Where DMG 44019 applies, the assessment phase ends on the day when the total number of weeks entitlement in the earlier period and current period is 13 weeks provided that it has been determined that the claimant

1. has LCW **or**
2. is treated as having LCW¹.

Note: Where the entitlement in the previous period was 13 weeks or more see DMG 44636 2. for guidance on backdated entitlement to the support component.

1 ESA Regs, reg 5(1)(b)

44022 If by the time that period referred to in DMG 44019 ends it has not yet been determined that the claimant has LCW, then the assessment phase will end once it has been determined that the claimant has LCW, provided that

1. a LCW determination has not been carried out within 13 weeks of the first day of entitlement to ESA¹ **and**
2. there has been no determination treating the claimant as having LCW².

1 ESA Regs, reg 5(3A)(a); 2 reg 5(3A)(b)

The assessment phase - claimants appealing a decision

44023 Where the claimant

1. has made and is pursuing an appeal against a decision which embodies a determination that the claimant does not have LCW **and**
2. is entitled to ESA

DMG 44019 - 44022 and 44636 do not apply to the PLCW until a determination of LCW is made after the FtT has heard the appeal¹. But see DMG 44024 where there is a change of circumstances before the appeal is heard.

Note: See DMG Chapter 42 for detailed guidance on awards of ESA made pending the outcome of an appeal.

1 ESA Regs, reg 5(4) & 7(2)

Example

Emile's award of ESA began on 12.2.10 and was terminated from 20.4.10 following application of the WCA. He makes an appeal on 11.5.10 and is awarded ESA from 20.4.10. On 8.9.10 his appeal is allowed, the FtT finding that he has LCW and LCWRA, and should be placed in the support group. The FtT determinations are binding on the DM. The decision awarding ESA from 20.4.10 is superseded to award the support component from 14.5.10, the 14th week of the combined PLCW.

44024 DMG 44023 does not apply where there is a change of circumstances which leads the DM to make a determination that the claimant

1. has LCW following application of the WCA **or**
2. is treated as having LCW other than in DMG 42202.

The guidance in DMG 44019 - 44022 and 44636 applies instead.

Example 1

Robin's award of ESA was terminated after ten weeks following application of the WCA. He makes an appeal, and is awarded ESA from the date his previous entitlement ended. Two months later he is admitted to hospital and is referred for

the WCA. The HCP advises that Robin should be treated as having LCW as a hospital

patient, and that he does not have and cannot be treated as having LCWRA. The assessment phase ends after week three of the current PLCW. The component is awarded from week four of the current PLCW where Robin is found to have LCW and LCWRA, and the support component is awarded by the FtT, or following application of the WCA if that takes place before the FtT hears the appeal.

Example 2

Denise's award of ESA is terminated after 20 weeks following application of the WCA, and she makes an appeal. She is awarded ESA from the date her previous entitlement ended. Several weeks later Denise produces evidence that her condition has deteriorated and she is referred for the WCA. The DM determines that she has LCW and LCWRA, and is placed in the support group. The support component is paid from the first day of the award made after the appeal was lodged, even though her appeal has yet to be heard.

44025

The main phase

44026 The main phase of ESA begins where there is entitlement to the support component (see **DMG 44631 for guidance on entitlement to the component**)¹. The assessment phase must usually have been completed before a claimant enters the main phase (see DMG 44011 - 44024).

Note: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

1 ESA Regs, reg 2(1)

44027 The prescribed amount payable during the main phase of ESA may be increased depending on

1. the claimant's age **and**
2. if the claimant is a member of a couple, their circumstances.

Guidance later in this chapter provides more details.

44028

ESA(Cont)

44029 ESA(Cont) is paid for the claimant only. There are no increases for any partner or dependants. The amount for each benefit week is calculated by¹

1. deciding the personal rate appropriate to the claimant² **and**
2. adding the amount of the support component if the claimant is entitled to this³
and
3. deducting⁴
 - 3.1 any pension payments⁵ **and**
 - 3.2 any PPF periodic payments⁶ **and**
 - 3.3 any councillors' allowances⁷.

Note 1: Where the calculation results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded⁸.

Note 2: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

1 WR Act 07, s 2; 2 s 2(1)(a); ESA Regs, reg 67(2); 3 s 2(1)(b); 4 WR Act 07, s 2(1)(c); 5 s 3(1)(a); 6 s 3(1)(b); 7 s 3(1)(c); 8 ESA Regs, reg 3(a)

44030 In the assessment phase only, ESA(Cont) has two separate personal rates. They are for claimants aged

1. less than 25 **or**
2. 25 and over¹.

In the main phase all ESA(Cont) claimants, regardless of their age, are entitled to the 25 and over rate².

1 WR Act 07, s 2(1)(a); ESA Regs, reg 67(2) & Sch 4, para 1(1)(b) & (c); 2 reg 67(2) & Sch 4, para 1(1)(a)

44031 - 44034

ESA(IR)

Amount of ESA(IR) payable

44035 One of the conditions of entitlement for ESA(IR) is that the claimant should have

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

1 WR Act 07, Sch 1, para 6(1)(a)

44036 The amount of ESA(IR) payable is

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

1 WR Act 07, s 4(1)

Applicable amount

44037 ESA(IR) is paid for the claimant and any partner or partners¹. There is no amount for dependants. 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 44061). During the assessment phase the personal allowance is age related (see DMG 44058) **and**
2. if appropriate
 - 2.1 premiums
 - 2.2 certain housing costs **and**
3. if appropriate the support component⁴.

Note 1: In special circumstances a claimant may have an applicable amount of nil⁵. An applicable amount may also be reduced in certain circumstances or may be limited to allowable housing costs only (see DMG Chapter 54).

Note 2: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

1 ESA Regs, reg 67(1)(a); 2 reg 67(1); 3 reg 68; 4 WR Act 07, s 4(2)(b); 5 s 4(3)

44038 When deciding ESA(IR) amount payable 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)

44039 The applicable amount may be revised or superseded if further information about SDP or housing costs is received after the claim or question has been decided¹.

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

44040 - 44044

Entitlement to both ESA(Cont) and ESA(IR)

44045 Where a claimant satisfies both the ESA(Cont) and ESA(IR) conditions of entitlement and has no income, the amount payable is the greater of

1. the ESA(Cont) personal rate **and**
2. the ESA(IR) applicable amount¹.

1 WR Act 07, s 6(2)

Example

Jamila is a single woman aged 27 who lives at home with her parents. She claims ESA. She satisfies the conditions for ESA(Cont) and is entitled to £60.50 per week. She also satisfies the conditions for ESA(IR) and is entitled to £67.45 per week. The DM awards ESA of £67.45 per week because this amount of ESA(IR) is greater than the amount of ESA(Cont).

44046 If, using the comparison in DMG 44045, the amount of ESA payable is the applicable amount, ESA(IR) is made up of two elements¹

1. an amount equal to the personal rate **and**
2. an amount that is the difference between the
 - 2.1 personal rate **and**
 - 2.2 applicable amount.

1 WR Act 07, s 6(5)

Example

Graham is a married man aged 50. His wife, Tracey, is also aged 50. Graham claims ESA. He satisfies the conditions for ESA(Cont) and is entitled to £60.50 per week. He also satisfies the conditions for ESA(IR) and is entitled to £87.30 per week. The DM awards ESA of £87.30 per week. The DM decides that Graham's entitlement to ESA is made up of two elements

1. £60.50 which is the amount that is equal to his personal rate **and**
2. £26.80 which is the amount that is the difference between his personal rate and his applicable amount.

The amount under **1.** is attributable to the claimant's entitlement to ESA(Cont)¹. The amount under **2.** is attributable to the claimant's entitlement to ESA(IR)².

1 WR Act 07, s 6(6); 2 s 6(7)

44047 Where a claimant satisfies both the ESA(Cont) and ESA(IR) conditions and has income, the amount payable is the greater of

1. the personal rate **and**

2. the amount by which the applicable amount exceeds the claimant's income¹.

1 WR Act 07, s 6(3)

Example 1

Terry is a married man aged 52. His wife, Julie is aged 51. Terry claims ESA. Julie works P/T and earns £35 per week. Terry satisfies the ESA(Cont) conditions and is entitled to £60.50 per week. He also satisfies the ESA(IR) conditions and is entitled to £79.95 per week (£94.95 - £15 Julie's wages after £20 earnings disregard). The DM awards ESA of £79.95 per week.

Example 2

Ellen is a single woman aged 34. She claims ESA and declares that she has capital of £7,882. She satisfies the ESA(Cont) conditions and is entitled to £60.50 per week. She also satisfies the ESA(IR) conditions and is entitled to £47.65 per week (£55.65 less £8 tariff income). The DM awards ESA(Cont) of £60.50 per week.

44048 If, using the comparison in DMG 44045, the amount payable is the difference between the income and the applicable amount, ESA(IR) is made up¹ of an amount

1. equal to the personal rate² **and**
2. that is the difference between the
 - 2.1 applicable amount less income **and**
 - 2.2 the personal rate³.

1 WR Act 07, s 6(5); 2 s 6(5)(a); 3 s 6(5)(b)

Example

Terry is a married man aged 52. His wife, Julie is aged 51. Terry claims ESA. Julie works P/T and earns £45 per week. Terry satisfies the ESA(Cont) conditions and is entitled to £60.50 per week. He also satisfies the ESA(IR) conditions and is entitled to £62.30 per week (£87.30 - £25 Julie's wages after £20 disregard). The DM awards ESA of £62.30 per week. The DM decides that Terry's entitlement to ESA is made up of two elements

1. £60.50 which is the amount that is equal to his personal rate **and**
2. £1.80 which is the amount that is the difference between his personal rate and his applicable amount less income.

The amount under **1.** is attributable to the claimant's entitlement to ESA(Cont)¹. The amount under **2.** is attributable to the claimant's entitlement to ESA(IR)².

1 WR Act 07, s 6(6); 2 s 6(7)

44049 Where the amount of ESA payable to the claimant does not exceed the claimant's personal rate then that amount is treated as attributable to ESA(Cont)¹.

1 WR Act 07, s 6(4)

44050 - 44055

Personal allowances and premiums for ESA(IR)

Personal allowances

Claimant's personal allowances

44056 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.

1 ESA Regs, reg 67(a)

44057 The personal allowance may be different if

1. one or both members of a couple are aged 16 or 17 (see Appendix 1) **or**
2. the claimant is a member of a polygamous marriage (see DMG 44061).

Structure of allowances: assessment phase

44058 In the assessment phase there are separate rates of personal allowance for¹

1. single claimants aged
 - 1.1 less than 25 **or**
 - 1.2 25 or over
2. lone parents aged
 - 2.1 less than 18 **or**
 - 2.2 aged 18 or over
3. couples where
 - 3.1 both aged 18 or over **or**
 - 3.2 one is aged 18 or over and the other is aged under 18 **or**
 - 3.3 one is aged 25 or over and the other is aged under 18 **or**
 - 3.4 one is aged 18 to 24 and the other is aged under 18 **or**
 - 3.5 both are aged 16 or 17.

Appendix 1 provides guidance as to which rate applies.

1 ESA Regs, Sch 4, para 1

Structure of allowances: main phase

44059 In the main phase of ESA there are no specific age-related personal allowances¹ for single claimants or lone parents. Every claimant without a partner, regardless of age, has the aged 25 or over rate of personal allowance.

1 ESA Regs, Sch 1, para 1(1)(a) & 1(2)(a)

44060 For couples in the main phase there are age-related allowances. Appendix 1 provides guidance as to which rates apply¹.

1 ESA Regs, Sch 1, para 1(3)

Personal allowances for polygamous marriages

44061 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 44058 **3.** and 44059)¹ **and**
2. each other partner **the difference** between the
 - 2.1 higher rate for a couple (see DMG 44058 **3.1)** **and**
 - 2.2 rate for a single claimant aged 25 or over (see DMG 44058 **1.2)**².

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

1 ESA Regs, reg 68(1)(a); 2 reg 68(1)(b)

44062 - 44064

Other multiple relationships

44065 DMG 44061 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.

44066 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.

44067 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 ESA 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

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

44068 - 44070

General rules on premiums

Categories

44071 For ESA(IR) the four categories of premium are¹

1. PP
2. SDP
3. EDP
4. CP.

1 ESA Regs, Sch 4, Parts 2 & 3

Rates of premium

44072 DMs should note that

1. CP is paid at one rate
2. PP for
 - 2.1 single claimants is payable at one of two rates depending on whether the claimant
 - 2.1.a is entitled to the support component **or**
 - 2.1.b is not entitled to the support component
 - 2.2 where the claimant is a member of a couple is payable at one of two rates depending on whether the claimant
 - 2.2.a is entitled to the support component **or**
 - 2.2.b is not entitled to the support component
3. EDP is payable at a
 - 3.1 lower rate if the claimant is single **or**
 - 3.2 higher rate if the claimant is a member of a couple or polygamous marriage
4. SDP is payable at one of two rates depending on
 - 4.1 whether the claimant is single **and**
 - 4.2 where the claimant is the member of a couple or polygamous marriage whether CA is in payment in respect of the claimant.

Note: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See the Appendix to this Chapter for where transitional provisions apply.

Qualifying conditions

44073 Each premium has its own qualifying conditions. See the guidance on individual premiums. To be entitled to a premium the qualifying conditions may apply to

1. the claimant **or**
2. a partner of the claimant.

Multiple premiums

44074 A claimant cannot be entitled to the EDP as well as the PP. Where the claimant is entitled to the PP then the EDP cannot also be paid. The claimant will only be entitled to the PP¹.

1 ESA Regs, Sch 4, para 3

44075 The claimant may be entitled to

1. SDP (see DMG 44111 et seq) **or**
2. CP (see 44166 et seq)

in addition to any premium awarded in DMG 44074¹.

1 ESA Regs, Sch 4, para 3

Qualifying benefits

In receipt of, or entitled to, a qualifying benefit

44076 A premium may be awarded because the claimant or partner is in receipt of or entitled to a qualifying benefit. Entitlement to the premium may end if receipt of, or entitlement to, the qualifying benefit ceases.

Meaning of in receipt of

44077 A person is in receipt of a qualifying benefit only

1. if it is paid because of that person's own incapacity or disability **and**
2. for the period for which the benefit is paid¹.

1 ESA Regs, Sch 4, para 10; R(IS) 10/94

Example 1

Alan is a married man who claims ESA. His wife, Mary, is in receipt of CA because she cares for him. The CP should be awarded as part of Alan's ESA(IR).

Example 2

Dora's partner, who is aged 57, is in receipt of DLA care component at the highest rate. The EDP should be awarded as part of Dora's ESA(IR).

44078 - 44079

Withdrawal of qualifying benefit

44080 There is a change of circumstances if

1. a qualifying benefit is withdrawn **and**
2. the claimant no longer satisfies that or any other of the qualifying conditions for the receipt of the premium.

The DM should supersede the decision and calculate the effective date of the change of circumstances. DMG chapter 04 provides guidance on supersession.

Concessionary payments of a qualifying benefit

44081 Concessionary payments are **extra-statutory** payments made by the Secretary of State¹ in place of

1. SS benefits **or**
2. HB **or**
3. Tax credits.

They are made when the policy intention to pay benefit cannot be achieved because of a fault in the law. Any concessionary payments for non-payment of a qualifying benefit should be treated as a payment of that benefit².

1 ESA Regs, reg 2(1); 2 Sch 4, para 9

44082 DMs should not confuse concessionary payments with other special payments, known as **ex gratia** payments. **Ex gratia** payments are made as financial redress for maladministration involving

1. loss of statutory entitlement (caused by official error or maladministration)
2. actual financial loss (involving extra expense)
3. delay (due to official error)
4. consolatory payments (made in very exceptional circumstances).

Make enquiries of the Special Payments Section if the type of payment made is unclear.

Delayed awards of qualifying benefits

44083 When considering the award of premiums following the delayed award of a qualifying benefit, special rules on revision or supersession apply. Detailed guidance on those rules is given in DMG Chapter 04.

Treated as in receipt of a qualifying benefit

- 44084 People can be treated as in receipt of a qualifying benefit for any period
1. that they would be in receipt of a qualifying benefit but that benefit is withdrawn because another overlapping¹ non-qualifying benefit is awarded at a higher rate **or**
 2. spent on a course of training or instruction provided or approved by
 - 2.1 the Secretary of State **or**
 - 2.2 Skills Development Scotland² **or**
 3. that they are in receipt of a training allowance³ **or**
 4. for the purposes of the carer premium
 - 4.1 the person in respect of whose care the allowance has been awarded remains in receipt of
 - 4.1.a AA **or**
 - 4.1.b the middle or highest rate of the care component of DLA **or**
 - 4.1.c the daily living component of PIP **or**
 - 4.1.d AFIP⁴.

¹ ESA Regs, Sch 4, para 4(a); 2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2;
³ ESA Regs, Sch 4, 4 para 4(b); para 4(2)(d); 4 ESA Regs, Sch 4, para 4(2)

Definitions

“AA”

- 44085 “AA” means¹
1. AA²
 2. CAA which is paid with a disablement pension because disablement has been assessed at 100%³
 3. ESDA paid because industrial disablement has been assessed at 100%⁴
 4. any
 - 4.1 payments for attendance under the Civilians Personal Injury Scheme⁵**or**

4.2 similar payment to **4.1**

- 5.** any payment for attendance which is part of WDisP. This includes severe disablement occupational allowance paid with CAA.

Note: Payments in **4.** are made to people who receive a disability pension because of war injuries suffered as civilians or civil defence volunteers.

*1 ESA Regs, reg 2(1); 2 SS CB Act 92, s 64; 3 s 104 & 105; 4 s 104 & 105;
5 Personal Injuries (Civilians) Scheme 83, Art 14-16 & 44*

Blind or severely sight impaired

44086 A person is blind or severely sight impaired¹ where they have been certified by a consultant ophthalmologist as

- 1.** blind **or**
- 2.** severely sight impaired

1 ESA Regs, Sch 4, para 6(9)

Treated as blind or severely sight impaired

44087 A person should be treated as blind or severely sight impaired for a period of 28 weeks from the date they regained their eyesight and were no longer certified as described in DMG 44086

Qualifying age

44088 The qualifying age for SPC¹ means

- 1.** for a woman - pensionable age **or**
- 2.** for a man - the age which would be pensionable age for a woman born on the same date as the man.

Note: See DMG Chapter 75 for guidance on pensionable age.

1 ESA Regs, reg 2(1)

44089 - 44090

Pensioner premium

44091 Age is the only qualifying condition for PP.

44092 PP is payable if the claimant or partner has reached the qualifying age for SPC¹.

The two types of PP are

1. single claimants PP - for a single claimant who is aged 60 or over² **and**
2. couples PP - for a claimant who is a member of a couple³.

1 ESA Regs, Sch 4, para 5; 2 Sch 4, para 11(1)(a); 3 Sch 4, para 11(1)(b)

Single claimants

44093 The amount of PP payable in respect of a single claimant depends upon whether there is

1. entitlement to the support component¹ **or**
2. no entitlement to the support component².

1 ESA Regs, Sch 4, para 11(1)(a)(ii); 2 Sch 4, para 11(1)(a)(iii)

Member of a couple

44094 The amount of PP payable in respect of a claimant who is a member of a couple depends upon whether there is

1. entitlement to the support component¹ **or**
2. no entitlement to the support component².

1 ESA Regs, Sch 4, para 11(1)(b)(i)(ii); 2 Sch 4, para 11(1)(b)(iii)

44095 - 44100

Enhanced disability premium

General

44101 EDP is payable if

1. the support component is included in the claimant's applicable amount¹ **or**
2. DLA at highest rate care component is payable in respect of
 - 2.1 the claimant² **or**
 - 2.2 the claimant's partner **where that** partner is aged less than the qualifying age for SPC³ **or**would be payable to the claimant or claimant's partner if they were not a hospital in-patient.
3. the daily living component of PIP at the enhanced rate is payable in respect of
 - 3.1 the claimant **or**
 - 3.2 the claimant's partner where that partner is aged less than the qualifying age for SPC **or**would be payable to the claimant or claimant's partner if they were not a hospital in-patient⁴.
4. AFIP is payable in respect of
 - 4.1 the claimant **or**
 - 4.2 the claimant's partner where that partner is aged less than the qualifying age for SPC⁵ **or**

*1 ESA Regs, Sch 4, para 7(1)(a); 2 Sch 4, para 7(1)(b)(i); 3 Sch 4, para 7(1)(b)(ii);
4 Sch 4, para 7(1)(c); 5 Sch 4, para 7(1)(d)*

Example

Rory's award of IB of £116.35 is converted to ESA(Cont) including a TA of £16.20 when he is placed in the WRAG. Rory is not entitled to IS, and has no other income. On appeal, the FtT decides that he should have been placed in the SG. In implementing the decision, the DM recalculates the TA and awards a TA of £9.85. Rory is also entitled to ESA(IR) of £5.30 (£71.70 + £34.80 + £15.15 EDP – £116.35). His overall ESA entitlement from the effective date of the conversion decision is £121.65.

44102 The EDP is not payable where the claimant

1. is a single person¹ **and**
2. is a patient² and has been for more than 52 weeks³ **or**

3. in the case of a couple or a polygamous marriage where each member is a patient and have been for more than 52 weeks⁴.

1 ESA Regs, Sch 4, para 7(2)(a)(i); 2 reg 69(2); 3 Sch 4, para 7(2)(a)(ii); 4 Sch 4, para 7(2)(b)

Admission to care home or independent hospital

- 44103 DLA highest rate care component may continue to be payable when a person is admitted to a care home or independent hospital. In such a case EDP will continue to be payable until the DLA higher rate care component ceases¹.

1 ESA Regs, Sch 4, para 7(1)

44104 - 44110

Severe disability premium

General

44111 SDP is payable to a severely disabled person¹. There are two rates of SDP.

1 ESA Regs, Sch 4, para 6(1)

Combination of SDP with other premiums

44112 If the conditions for SDP are met, the appropriate SDP rate should be included in the claimant's applicable amount in addition to any other premium.

Lower rate

44113 Single claimants, lone parents and claimants who are deemed to have no partner (see DMG 44116) are entitled to the lower rate SDP¹ if

1. they are in receipt of
 - 1.1 the middle or highest rate of the care component of DLA **or**
 - 1.2 "AA" **or**
 - 1.3 the daily living component of PIP **or**
 - 1.4 AFIP **and**
2. there are no non-dependants aged 18 or over
 - 2.1 normally residing (see DMG 44125) with the claimant **or**
 - 2.2 who the claimant normally resides with **and**
3. CA or UC that includes the CE is not in payment to anyone for caring for them (see DMG 44156).

1 ESA Regs, Sch 4, para 6(2)(a)

44114 Members of a couple or polygamous marriage are entitled to the lower rate SDP if

1. each member of the couple or polygamous marriage is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the middle or highest rate of the care component of DLA **or**
 - 1.3 the daily living component of PIP **or**
 - 1.4 AFIP **and**
2. there are no non-dependants aged 18 or over
 - 2.1 normally residing (see DMG 44125) with the claimant **or**
 - 2.2 who the claimant normally resides with **and**
3. CA or UC that includes CE is in payment (see DMG 44156) to someone for caring for one
 - 3.1 of a couple **or**

3.2 or more, but not all, of the members of a polygamous marriage¹.

1 ESA Regs, Sch 4, para 6(2)(b)

Higher rate

44115 Members of a couple or polygamous marriage are entitled to the higher rate SDP if

- 1.** the conditions in DMG 44114 **1.** and **2.** are satisfied **and**
- 2.** CA or UC that includes CE is not in payment (see DMG 44156) to someone for caring for any member of a

2.1 couple **or**

2.2 polygamous marriage¹.

1 ESA Regs, Sch 4, para 6(2)(b)

Claimant who is deemed not to have a partner

44116 When deciding entitlement to SDP, a claimant is treated as not having a partner if the partner is

- 1.** not in receipt of
 - 1.1** "AA" **or**
 - 1.2** the middle or highest rate of the care component of DLA **or**
 - 1.3** the daily living component of PIP **or**
 - 1.4** AFIP **and**
- 2.** blind or severely sight impaired or treated as blind or severely sight impaired (see DMG 44086)¹.

1 ESA Regs, Sch 4, para 6(3)

44117 This means that if the claimant is a member of a

- 1.** couple, the claimant must satisfy DMG 44113 to be entitled to SDP **or**
- 2.** polygamous marriage, all remaining partners must satisfy DMG 44114 **1.** for the claimant to be entitled to SDP.

"AA", DLA and CA on admission to hospital

44118 Special rules apply to the treatment of "AA", DLA, CA and PIP when a disabled person is admitted to hospital (see DMG 44181).

Non-dependants

44119 Non-dependants are¹ people who are aged 18 or over who

- 1.** normally reside with the claimant **or**
- 2.** the claimant normally resides with (see DMG 44125).

That is, share the accommodation (see DMG 44127). Certain people who normally reside with the claimant are not regarded as non-dependants (see DMG 44139).

1 ESA Regs, reg 71(1); R(IS) 12/96

44120 - 44124

Meaning of normally resides

44125 Normally resides means usually resides and should be tested over a period to which usually can relate. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

Example 1

Jack normally lives in his mother's house and is not entitled to SDP because his mother is a non-dependant. He goes into respite care for one week every other month. While he is in respite care Jack still normally resides in his mother's house. He does not qualify for SDP.

Example 2

Mary normally lives alone in her own flat. She is entitled to SDP. Her brother Steven comes to stay with her for a week at a time every three months. He is not a non-dependant because he does not normally live with Mary. She keeps her entitlement to SDP whilst Steven is staying with her.

44126 When considering where a person normally resides the DM should have regard to

1. the total amount of time spent in a place
2. how often time is spent in a place
3. how permanent the stay is thought to be
4. the person's intentions
5. individual circumstances
6. what degree the accommodation is shared
7. the services provided
8. whether the person owns or rents any other accommodation
9. whether the person has any liabilities for services/utilities/tv licence.

Example

Agnes who is aged 59 claims ESA. She has been awarded DLA middle rate care component and no one gets CA for caring for her. Agnes owns her own home but for the past two years has slept every night at her son's house. She keeps her clothes

and some of her things at her son's house. She goes home for the day two or three days a week, to clean up and do the garden. But she always returns to her son's to sleep. Agnes is responsible for the bills for her home and she and her son still regard Agnes's house as her home. Agnes's house has never been put up for sale.

The DM decides that Agnes normally lives at her son's house because

1. she sleeps at her son's house every night
2. her clothes and some of her things are kept at her son's
3. she only goes back to her own house occasionally and in daylight hours
4. she spends the majority of her time at her son's house.

Agnes is not entitled to SDP.

Sharing the accommodation

44127 People should not be regarded as sharing the accommodation if¹

1. the only shared area is a
 - 1.1 bathroom **or**
 - 1.2 lavatory **or**
 - 1.3 communal area (see DMG 44128) **or**
2. they are separately liable to make payments (see DMG 44129) to the landlord for that accommodation.

Note: A person should still be regarded as sharing the kitchen even if they do not enter or use it where items for the persons use are stored there or their meals are prepared there.

1 ESA Regs, reg 71(6); R(IS) 12/96

44128 A communal area is an area of common access (not a room) including

1. halls
2. stairways **and**
3. rooms of common access in sheltered accommodation¹.

1 ESA Regs, reg 71(7)

Example

Anna is aged 52 and claims ESA and has LCW. She gets DLA middle rate care component and no one gets CA for caring for her. She lives in a self-contained granny flat attached to her daughter's house and pays her daughter rent for the flat. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter's house and the front door of the property is shared. Everything else is separate.

The DM decides that the hall is the only shared area and is a communal area. Anna does not share the accommodation and does not normally reside with her daughter. She has no non-dependants and is awarded SDP.

Meaning of liable to make payments

44129 “Liable to make payments” refers to legal liability. When considering the question of liability, the DM must consider whether

1. the claimant has the contractual capacity to enter into an enforceable contract **and**
2. there was an intention to create legal relations.

44130 If the conditions in DMG 44129 are met, the DM must then establish that¹

1. there is an obligation to make payments derived from a recognized source of law (for example contract law) **and**
2. the obligation to make the payments is for the occupation of the premises and not, for example, for food or clothing **and**
3. the power to bring the licence or lease to an end is referable to a breach of the condition to make the payment under the contractual licence or lease and not to some other matter.

1 R(IS) 11/98

44131 Whether a person has separate liability to a landlord (see DMG 44127 2.) should be determined by reference to the arrangements within the group. But DMs should note that the liability has to be to the same landlord. Reference to some other liability of the person to a third party is not relevant.

Example

Tom claims ESA. He gets DLA highest rate care component and no one gets CA for caring for him. He lives in a privately rented house which he shares with three other people. They all have their own bedroom but share the kitchen and bathroom. Each are liable to pay the landlord rent for their room.

The DM decides that Tom does not normally reside with the other residents of the house. They are all separately liable to make payments to the landlord for their accommodation. Tom has no non-dependants and is awarded SDP.

44132 Where a claimant lives in the parent’s home, the DM should establish

1. the terms on which the claimant lives there **and**
2. what payments are made **and**
3. the purpose of those payments.

The DM must then consider whether there is a contractual liability.

Contractual capacity

44133 In England and Wales, only an infant, or a person of unsound mind, may not have the capacity to incur legal liability. DMs should accept that a claimant has sufficient capacity unless there is very strong evidence to the contrary.

Carer stays overnight

44134 A carer may stay overnight with the person they are looking after. In such a case the DM should consider whether the carer normally resides with that person and should find out

1. whether the carer has a separate address
2. if the carer has a separate address, whether they use it and if so, how often
3. what address the carer uses as a postal address
4. what address the carer is registered at for CT purposes.

Students

44135 In a case where a student lives at a university address during term time and lives at their parents home for some weekends and during the holidays, the DM should have regard to the considerations at DMG 44126 before deciding which address is where they normally reside. Whichever address is chosen will remain the students normal residence even when they spend time at the other address.

Example

A student still retains a bedroom, furniture and some clothing at their parents home, they still get some mail there, are registered with the local dentist and are actually resident for 18 full weeks and most weekends. On this evidence the DM decides that the student normally resides at their parents home and are only temporarily absent from it whilst at university.

Alternatively the DM may decide that because the student has a tenancy agreement for a university address, they have some furniture and clothes there, they live there for 32 weeks of the year and are liable for gas, electricity and a tv licence that they normally reside at the university address and are only temporarily absent from it whilst back living with their parents.

44136 - 44138

People who are not non-dependants

44139 People who normally reside with the claimant and are not non-dependants¹ are

1. any person aged under 18
2. any member of the claimant's family (see DMG Chapter 43)
3. any child or young person who is not treated as a member of the claimant's household (see DMG Chapter 43)
4. a person and their partner who
 - 4.1 lives in, to care for the claimant or partner **and**
 - 4.2 is engaged by a
 - 4.2.a charitable **or**
 - 4.2.b voluntary organizationwhich makes a charge to the claimant or partner for the person's services. A voluntary organization is a non-profit making organization that is not a public authority or LA²
5. any person who is not a close relative (see DMG 44141) of the claimant or partner who
 - 5.1 is liable to make payments on a commercial basis to the claimant or partner for occupation of the dwelling **or**
 - 5.2 the claimant or partner is liable to make payments to on a commercial basis for the occupation of the dwelling **or**
 - 5.3 is separately liable to make payments to the landlord for occupation of the dwelling
6. any person who is not a close relative (see DMG 44141) and who is a member of the household of a person to whom **5.** applies
7. a person or their partner who is not a close relative, except where **8.** applies, who jointly occupies the claimant's dwelling and who is
 - 7.1 a co-owner of the dwelling with the claimant or partner **or**
 - 7.2 jointly liable with the claimant or partner to make payments to the same landlord for the occupation of the dwelling
8. a close relative who satisfies **7.** and the
 - 8.1 claimant or partners co-ownership or joint liability arose
 - 8.1.a before 11.4.88 **or**

8.1.b if later, on or before the date on which the claimant **or** partner first occupied the dwelling³ **or**

9. a person in receipt of
 - 9.1 "AA" **or**
 - 9.2 the middle or highest rate of the care component of DLA
 - 9.3 the daily living component of PIP
 - 9.4 AFIP⁴
10. a person, including a close relative who
 - 10.1 joins the claimant's household for the first time to care for the claimant or partner **and**
 - 10.2 immediately before joining either the claimant or partner satisfied the conditions for SDP⁵
11. a person who is blind or severely sight impaired or treated as such (see DMG 44086)⁶.

Note 1: When considering **7.1** it does not matter if there are other co-owners.

Note 2: **10.** only applies for the first twelve weeks from the date that person first joined the claimant's household⁷.

Note 3: When considering **9.** receipt of the allowance will stop where the person has been a hospital inpatient for a prescribed period, at this point the person will no longer be in receipt of the allowance and can therefore be considered a non dependant of the claimant.

1 ESA Regs, reg 71; Sch 4, para 7(2)(a)(ii) & 7(2)(b)(iii); 2 reg 2(1); 3 reg 71(5); 4 Sch 4, para 6(4)(a); 5 Sch 4, para 6(4)(b); 6 Sch 4, para 6(4)(c); 7 Sch 4, para 6(7)

Commercial basis

44140 For a liability to be on a commercial basis¹ (see DMG 44139 **5.**)

1. there should be a legal liability to make the payment **and**
2. the payment should be broadly in line with what a lodger might pay for similar accommodation and facilities.

Payments for gas, electricity, laundry, food and the provision of care are not payments for facilities. Payments for such items do not confer liability and should be ignored in any comparison.

1 R(IS) 11/98

Meaning of close relative

44141 A close relative is¹

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, **or**
2. if any of the preceding persons is one member of a couple, the other member of that couple **and**
3. similar relationships arising through civil partnerships².

1 ESA Regs, reg 2(1); 2 CP Act 04, s 246

44142 “Brother” and “sister” includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and the brother or sister of any other child of those parents. The adopted 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 on the **legal relationship** not the blood relationship¹.

1 R(SB) 22/87

Admittance to residential care

44143 The following guidance on admittance to temporary or permanent residential care applies only to the award of SDP. See DMG Chapter 61 for guidance on the treatment of “AA” and DLA when a disabled person is admitted to residential care.

Definitions for DMG 44146 - 44155

44144 “Temporary residential care” means any temporary stay in a care home or independent hospital. For example, respite care in a care home.

44145 “Permanent residential care” means permanent residence in a care home or independent hospital.

Single claimant or lone parent

44146 A single claimant or lone parent who does not satisfy the SDP conditions because there is a non-dependant, will not satisfy the SDP conditions while in temporary residential care. As the stay is temporary the claimant continues to normally reside at home¹.

1 ESA Regs, reg 71(1)

Example

Nasreen is a single claimant living with her parents. The conditions for SDP are not satisfied. She goes into temporary residential care. SDP is not payable because she continues to normally reside at home with her parents.

44147 Claimants who live in permanent residential care are normally resident in the home providing that care. Other residents of the home are not non-dependants because they do not normally reside with the claimant as they are separately liable to make payments to a landlord¹ (see DMG 44127 2.). SDP is payable to a person in permanent residential care if all of the conditions are satisfied.

Note: DLA may cease when the person has been in permanent residential care for four weeks.

1 ESA Regs, reg 71(5)

Example

Ivor is a single claimant who lives at home with his parents. He is in receipt of DLA highest rate care component and no one receives CA for caring for him. His parents are non-dependants. The SDP conditions are not satisfied.

Ivor goes into permanent residential care. The DM decides that Ivor is entitled to SDP at the lower rate from the date that he moves into permanent residential care. This is because

1. he is in receipt of DLA **and**
2. the other residents of the home are not non-dependants because they do not normally reside with him **and**
3. no one is in receipt of CA for caring for him.

Entitlement to SDP continues as long as all of the above are satisfied.

Couples

44148 When a member of a couple is in temporary residential care the separation from the partner is also temporary. This means that the couple remain members of the same household¹.

1 ESA Regs, reg 156(1)

44149 A special assessment is necessary where one member is in temporary residential care. The claimant's applicable amount should be¹ whichever is the greater of the

1. normal amount for the couple **or**
2. total of the applicable amounts assessed as if the claimant and partner were each a single claimant or lone parent living in their present accommodation.

1 ESA Regs, Sch 5, para 4

44150 - 44152

44153 For the purposes of the calculation at DMG 44149 **2**.

1. while in temporary residential care the person is still treated as normally residing at home¹ **and**
2. neither partner is regarded as a non-dependant of the other².

1 ESA Regs, reg 156(2); 2 R(IS) 9/02

Example 1

Peter and Louise live in the same household. They are both named as owners of the property. There are no non-dependants. Both get DLA and someone gets CA for Peter. SDP at the lower rate is payable. Louise goes into temporary residential care.

If they are assessed as a couple, SDP at the lower rate is payable because Louise normally resides at home and CA is in payment for Peter.

If they are assessed as if they are single, SDP is not payable for Peter because CA is in payment. SDP is payable to Louise as she gets DLA, CA is not in payment and there are no non-dependants.

Example 2

Malcolm and Wendy are married and live together in the same household. Malcolm is the tenant of the property. Both Malcolm and Wendy get DLA and CA or UC that includes CE is not in payment. There are no non-dependants. Higher rate SDP is in payment. Malcolm goes into temporary residential care.

If they are assessed as a couple, the higher rate SDP is payable. Malcolm normally resides at home and Wendy continues to reside at home.

If they are assessed as if they are single, lower rate SDP is payable for Malcolm who normally resides at home and satisfies the SDP conditions for a single claimant. Wendy is not a non-dependant of Malcolm as she is in receipt of DLA. Lower rate SDP is payable to Wendy who continues to normally reside at home and satisfies the SDP conditions for a single claimant.

Example 3

Alan and Geraldine are married and live together in the same household with a non-dependant daughter. Alan gets DLA and CA is not in payment. SDP is not in payment because there is a non-dependant daughter and Geraldine is not in receipt of DLA. Alan goes into temporary residential care.

If they are assessed as a couple, SDP is not payable because Alan normally resides at home and there are non-dependants.

If they are assessed as if they are single, SDP is not payable to Alan because he normally resides at home and there are non-dependants. SDP is not payable to

Geraldine because she continues to reside at home and does not satisfy the SDP conditions.

Example 4

Kenneth and Susan live together in the same household with a non-dependant son. Both get DLA and CA is not in payment. SDP is not in payment because there is a non-dependant son. Susan goes into temporary residential care.

If they are assessed as a couple, SDP is not payable because Susan normally resides at home and there are non-dependants at home.

If they are assessed as if they are single. SDP is not payable to Susan because she normally resides at home and there are non-dependants at home. SDP is not payable to Kenneth because he continues to normally reside at home and there are non-dependants.

- 44154 A member of a couple admitted to permanent residential care is no longer a member of the same household as the partner¹. Each person may claim benefit as a single claimant or lone parent.

1 ESA Regs, reg 156(1) & (4)(d)

- 44155 If a claimant is admitted to permanent residential care the other residents of the home are not non-dependants. This is because they do not normally reside with the claimant, as they are separately liable to make payments to a landlord (see DMG 44127 2.)¹. SDP is payable to a claimant in permanent residential care if all of the conditions are satisfied.

Note: DLA may cease when the person has been in permanent residential care for four weeks.

1 ESA Regs, reg 71(6)

Example

Irene and Michael are married and live together in the same household. Irene is in receipt of DLA and no one is in receipt of CA or UC that includes CE for caring for her. SDP is not payable because Michael does not get "AA" or DLA. Irene is admitted to permanent residential care.

Irene claims benefit for herself as she is no longer a member of Michael's household. The DM decides that Irene is entitled to SDP at the lower rate because

1. she is in receipt of DLA **and**
2. the other residents of the home are not non-dependants because they do not normally reside with her **and**
3. no one is in receipt of CA or UC that includes CE for caring for her.

Entitlement to SDP continues as long as all of the above are satisfied.

SDP and Carer benefits

44156 There are two carer related benefits

1. Carer's Allowance (CA)
2. The Carer Element (CE) in Universal Credit (UC)

and SDP is not payable if someone is receiving CA or CE for caring for the claimant or partner¹. CA or CE has to actually be in payment before it affects entitlement to SDP. Underlying entitlement to CA does not affect SDP. So both SDP and CP can be paid at the same time if CP is awarded because of underlying entitlement to CA (see DMG 44166 et seq).

1 ESA Regs, Sch 4, para 6(2)(a)(iii) & (2)(b)

44157 DMs should normally treat an award of CA as a proper award until the CA decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting CA **or**
2. the award of CA is in error **or**
3. they know nothing about the CA award **or**
4. the CA claim is fraudulent

the DM should ask the CA unit to investigate whether the CA award is correctly made.

44158 Where the disabled person makes an allegation about the carer's integrity, as described at DMG 44157, the ESA DM can make a decision on the claim or application before the CA DM has decided whether the award of CA should be revised or superseded. However, the ESA decision should include a determination which

1. makes an assumption that the carer is properly in receipt of CA **and**
2. refuses to award SDP.

Arrears of CA

44159 An award of CA may be backdated for a period before the date on which the CA award is first paid. Arrears of CA due in such circumstances do not affect entitlement to SDP¹. SDP is only affected from the date the CA award is paid.

1 ESA Regs, Sch 4, para 6(6)

Example

Karim is a single claimant in receipt of SDP. On 20 November a relative claims CA. CA is awarded on 23 January. It is first paid on 6 March. Arrears are included in the first payment from the date of claim. SDP is affected from 6 March.

44160 If a person stops getting CA because a restriction is applied under the loss of benefit provisions¹ they continue to be treated as being in receipt of CA for the purposes of entitlement to SDP².

1 SS Fraud Act 01, s 7; 2 ESA Regs, Sch 4, para 6(2)(a)(iii), (2)(b) & (8)

44161 - 44162

Shared lives scheme

44163 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PiP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will ignored as non dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the SDP.

Note: The claimant will not be entitled to the SDP if there are people other than the carer, carer's family or other shared lives residents in the dwelling who cannot be ignored, for example where the carer's 23 year old son still lives in the same dwelling.

Example

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of their family having her own bedroom and sharing all the other household facilities. Shirley is disabled and receives DLA. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get HB. The DM decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the SDP.

44164 - 44165

Carer premium

General

44166 CP is paid at one rate. If the conditions for CP are met, CP should be included in the claimant's applicable amount in addition to any other premium.

44167 If the conditions for CP are met by both members of a couple, CP should be included in the claimant's applicable amount for them both.

44168 The conditions for CP are that

1. the claimant **or**
2. the claimant's partner **or**
3. both the claimant and partner

are entitled to a CA.

Note: CP should **not** be awarded where CA is taken into account as notional income (see DMG Chapter 51). This is because there would be no entitlement to CA.

Carer premium extension period

44169 Where a CP has been awarded but the person in respect of

1. whose care the CA has been awarded dies **or**
2. whom the CP was awarded ceases to be entitled or treated as entitled to CA

the qualifying conditions shall be satisfied or treated as satisfied for a period of eight weeks¹ from the relevant date (see DMG 44170).

1 ESA Regs, Sch 4, para 8(2)

The relevant date

44170 The relevant date is¹

1. where the person in respect of whose care the CA has been awarded has died, the
 - 1.1 Sunday following the death of the person **or**
 - 1.2 date of the death, if the death occurred on a Sunday
2. in any other case, the date on which CA ceases.

1 ESA Regs, Sch 4, para 8(3)

Example 1

Daphne is entitled to ESA which includes the CP because her partner is in receipt of CA. Daphne's ESA is paid on Wednesday in arrears. The person she is caring for dies on Friday 21.8.09. CA is paid to Sunday 18.10.09. The relevant date is 23.8.09.

The condition for the award of the CP is satisfied for the period 23.8.09 to 17.10.09. The CP is withdrawn from week commencing 15.10.09.

Example 2

Sheila is entitled to ESA which includes the CP and is paid on Thursday in arrears. The DLA award for the person she provides care is not renewed and ends in August 2009. CA is paid to Sunday 30.8.09. The relevant date is 30.8.09. The condition for the award of the CP is treated as satisfied for the period 30.8.09 to 24.10.09. The CP is withdrawn from week commencing 23.10.09.

Claim to ESA after CA ceases

44171 Where a person ceases to be entitled to CA and subsequently makes a claim for ESA, the CP qualifying condition is treated as satisfied for eight weeks from¹

1. where the person in respect of whose care the CA has been awarded has died, the date of death **or**
2. in any other case, the date on which CA ceased.

1 ESA Regs, Sch 4, para 8(4)

Transitional Protection

44172 Carers who were aged 65 and over on or before 28.10.02 can continue to be entitled to CA even though they are no longer providing care¹, for example after the disabled person has died. Where this protection applies and CA is retained the carer can continue to receive CP.

1 The Regulatory Reform (Carer's Allowance) Order 2002 S.I. 2002/1457, art. 4

44173 - 44176

Admission to hospital - effect on premiums

General

44177 The following paragraphs give guidance on the effects on premiums of admission to hospital. For guidance on the effects of hospital admission on the normal amount payable see DMG Chapter 54.

Enhanced disability premium

44178 Entitlement to an EDP ends when

1. a single claimant has **or**
2. both members of a couple have

been a patient for more than 52 weeks¹.

1 ESA Regs, Sch 4, para 7(2)

Severe disability premium

Claimant in hospital - single claimant

44179 SDP stops when the qualifying benefit ends (usually after four weeks)¹.

1 ESA Regs, Sch 4, para 6(2)(a)(i)

Claimant in hospital - couples and polygamous marriages

44180 The lower rate SDP is payable if¹

1. the conditions for either rate of SDP were satisfied before
 - 1.1 one member of a couple became a patient **or**
 - 1.2 at least one member of a polygamous marriage was not a patient **and**
2. where the conditions for the
 - 2.1 higher rate SDP were satisfied, "AA" or DLA stops because the patient has been in hospital more than 28 days **or**
 - 2.2 lower rate SDP were satisfied, the patient is treated as still being in receipt of "AA" or DLA (see DMG 44181).

The lower rate of SDP is payable from the date "AA" or DLA stops. Normal change of circumstances rules apply.

1 ESA Regs, Sch 4, para 11(2)(b)(i)

Example 1

Brendan is a married man in receipt of ESA. Brendan and his wife Nicky both satisfy the SDP conditions and the higher rate SDP is payable. Brendan goes into hospital on 14 May and the higher rate SDP continues in payment. DLA stops from 12 June because Brendan has been a patient for more than 28 days. SDP is also reduced to the lower rate from 12 June subject to the normal change of circumstances rules.

Example 2

Rhona is married and in receipt of ESA. Rhona is in receipt of DLA middle rate care component and her husband Finlay is in receipt of AA. Their daughter Janet, who lives nearby, receives CA for caring for Finlay. SDP is awarded to the couple at the lower rate (see DMG 44114). Finlay is admitted to hospital on 22 October and his AA is withdrawn from 19 November. Finlay is still treated as being in receipt of AA (see DMG 44181). SDP at the lower rate continues in payment.

Example 3

Steve and Sharron are married. Steve is in receipt of ESA. They both satisfy the SDP conditions and the higher rate SDP is payable. Sharron goes into hospital on 7 January and the higher rate SDP remains in payment. DLA stops from 5 February because Sharron has been a patient for more than 28 days. SDP is also reduced to the lower rate from 5 February subject to the normal change of circumstances rules.

“AA”, DLA and CA on admission to hospital

- 44181 The claimant or partner is treated as being in receipt of “AA”, DLA or PIP where either benefit has been withdrawn only because of the stay in hospital¹. This does not apply to a single claimant or a lone parent.

1 ESA Regs, Sch 4, para 6(5)(a) & (c)

- 44182 A CA recipient is still treated as being in receipt of CA when it is withdrawn only because of the disabled person’s stay in hospital¹. SDP does not become payable on the withdrawal of CA in these circumstances. But SDP entitlement should be considered where CA is withdrawn for any other reason.

1 ESA Regs, Sch 4, para 6(5)(b)

Example

Nick is a married man in receipt of ESA. Both Nick and his wife Meryl are in receipt of DLA. Sheila is in receipt of CA for caring for Meryl. SDP has been awarded at the lower rate. Meryl is admitted to hospital on 22 October. DLA and CA are withdrawn from 19 November. Meryl is still treated as in receipt of DLA. Sheila is still treated as in receipt of CA. SDP at the lower rate continues.

44183 - 44185

Carer premium

General

44186 CP is payable if the carer is entitled to CA (see DMG 44166 et seq). CA can be affected if the

1. carer **or**
2. person being cared for

is a patient.

44187 Breaks in caring can be allowed. Make enquiries of the CA unit to find out the date that entitlement to CA ends.

Single claimant or lone parent

44188 CP stops eight weeks after the carer has ceased to be entitled to CA or where it is as a result of the death of the person for whom they were providing care, 8 weeks after the death of that person.

Breaks in caring

44189 Breaks in caring as a result of hospitalisation can be allowed, normally this will be 12 weeks, but confirmation should be sought from the CA unit of the date that entitlement to CA ends.

Couples or polygamous marriages

44190 CP stops eight weeks after the carer has ceased to be entitled to CA.

1 ESA Regs, Sch 4, para 8(2)

Example 1

Eddie is in receipt of ESA. His wife, Doris, is Eddie's carer. CA is in payment and CP awarded. Eddie's benefit week ends on a Monday. Doris is admitted to hospital on 18 September. The CA DM decides to stop CA from 16 December. CP is withdrawn eight weeks later.

44191 - 44199

Housing costs for ESA(IR)

Introduction

44200 Housing costs may be paid for claimants entitled to ESA(IR). There is no entitlement to housing costs for ESA(Cont).

Basic conditions of entitlement

44201 Claimants are entitled to housing costs if¹

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

1 ESA Regs, Sch 6, para 1(1)

Claimants without housing costs

44202 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is

1. no liability or responsibility for housing costs **and**
2. no entitlement to housing costs.

Rounding of fractions

44203 Where any calculation relating to this guidance results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded¹.

1 ESA Regs, reg 3(a)

44204 - 44206

Definitions

44207 The following paragraphs explain the meaning of terms used throughout this guidance on housing costs.

Close relative

44208 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 ESA Regs, reg 2(1); 2 CP Act 04, s 246

44209 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

44210 [\[See ADM Memo 7/17\]](#) For housing costs purposes, a disabled person is a person who¹

1. in respect of whom the support component is payable to the claimant or to a person living with the claimant **or**
2. would, if they were entitled to IS, receive the DP or HPP **or**
3. is aged 75 or over **or**
4. is disabled or severely disabled for the purposes of specified Tax Credits legislation² **or**
5. would, but for the application of time limiting, be entitled to ESA **or**
6. is entitled to UC that
 - 6.1 includes the LCW or LCWRA element³ **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 element⁴

1 ESA Regs, Sch 6, para 1(3); 2 Tax Credits Act 2002, s 9(6); 3 UC Regs, reg 27(1); 4 reg 29(4);

44211 A disabled person will still be treated as a disabled person even if they are¹

1. disqualified for receiving benefit because they
 - 1.1 have LCW due to their own misconduct **or**
 - 1.2 fail without good cause to follow medical advice **or**
 - 1.3 fail without good cause to observe the rules of behaviour **or**
2. treated as not having LCW because they
 - 2.1 have LCW due to their own misconduct **or**
 - 2.2 fail without good cause to follow medical advice **or**
 - 2.3 fail without good cause to observe the rules of behaviour.

See DMG Chapter 53 for further guidance.

1 ESA Regs, Sch 6, para 1(4)

44212 - 44215

Dwelling occupied as the home

44216 “Dwelling occupied as the home” means¹

1. the dwelling and any
 - 1.1 garage
 - 1.2 garden
 - 1.3 outbuildingsnormally 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 ESA Regs, reg 2(1); 2 R(IS) 5/96

Example

Iain and Sharon 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

44217 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.

Example

Claire lives alone in a flat on which she has a mortgage. She goes to stay with her father while he is recovering from an operation and is away from home for two weeks. While at her father’s house Claire falls ill and claims ESA. The DM decides that Claire normally lives in her own flat. The time she spends at her father’s is exceptional. Housing costs can be considered for her mortgage.

Rooms sublet

44218 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.

Family

44219 Family means¹

1. a couple **or**
2. a couple and any child or young person who is
 - 2.1 a member of the same household **and**
 - 2.2 the responsibility of either or both members of the couple **or**
3. a person who is not a member of a couple (this will usually be a lone parent) and any child or young person who is
 - 3.1 a member of the same household **and**
 - 3.2 the responsibility of that person.

1 ESA Regs, reg 2(1)

Housing costs

44220 Housing costs are¹

1. payments to meet a current liability on loans used to

- 1.1 acquire an interest in the home
- 1.2 make certain repairs and improvements to the home
- 1.3 pay for certain service charges for repairs or improvements to the home
- 1.4 repay loans used to replace loans in 1.1 to 1.3
- 2. rents or ground rents on long tenancies
- 3. service charges
- 4. payments by way of rentcharge
- 5. payments under co-ownership schemes
- 6. payments for tenancies or licences of Crown tenants
- 7. payments for tents and their sites.

1 ESA Regs, Sch 6, para 1(2), 16, 17 & 18

44221 Only those payments in DMG 44220 should be allowed as housing costs. For example, housing costs do not include

- 1. capital repayments on a loan
- 2. insurance premiums on
 - 2.1 life or endowment policies linked to a loan
 - 2.2 buildings insurance¹ (but see DMG 44420)
- 3. rent required by a person who
 - 3.1 is making payments under a shared ownership scheme
 - 3.2 owns jointly with the claimant the property occupied by the claimant **and**
 - 3.3 does not live in that property
- 4. water charges paid via a landlord (for example paid at the same time as service charges).

Note: This list is not exhaustive.

1 R(IS) 19/93

44222 - 44223

Loan

44224 In this Chapter, loan includes money borrowed

- 1. by way of a mortgage **or**
- 2. under a credit agreement **or**
- 3. under a hire purchase agreement for the purpose of
 - 3.1 acquiring an interest in the home **or**

- 3.2** paying off another loan to the to the extent that the other loan would have qualified as one which was for the purpose of acquiring an interest in the home had it not been paid off¹.

Appendix 6 to this Chapter gives details of some of the many types of mortgage and loan arrangements.

1 ESA Regs, Sch 6, para 16(2)

Example

Karen is buying a freehold property by instalments. The purchase price of the property includes one year's interest added to the capital figure. No other interest is charged. The owner of the property lets Karen live in it while she is buying the freehold. But the title deeds will not be transferred to Karen until the full purchase monies have been paid. The arrangement between Karen and the owner of the property is not a loan. It is the payment mechanism agreed in the contract of sale.

Lone Parent

44225 A lone parent is a person who is

1. not a member of a
 - 1.1 couple **or**
 - 1.2 polygamous marriage **and**
2. responsible for a child or young person who is a member of the household¹.

Note: See DMG Chapter 43 for the meanings of child and young person.

1 ESA Regs, reg 2(1)

Qualifying age

44226 The qualifying age for SPC¹ means

1. for a woman - pensionable age **or**
2. for a man - the age which would be pensionable age for a woman born on the same date as the man.

Note: See DMG Chapter 75 for guidance on pensionable age.

1 ESA Regs, reg 2(1)

Water charges

44227 Water charges means¹ any

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

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

1 ESA Regs, reg 2(1); Water Industry Act 1991, Part 5, Ch 1; Local Government etc. (Scotland) Act 1994, Part 2

Steps to follow when deciding housing costs

- 44228 When deciding a claimant's housing costs, the DM should determine
1. if the claimant or partner has a current liability for the housing costs (see DMG 44233)
 2. if the amount spent is on the dwelling occupied as the home (see DMG 44216 and 44241 et seq)
 3. if the housing costs cannot be met (see DMG 44281)
 4. how to apportion the housing costs if
 - 4.1 the dwelling is used for domestic and business use (see DMG 44311)
 - or
 - 4.2 responsibility for the housing costs is shared (see DMG 44234)
 5. the weekly amount of housing costs to be allowed for loans (see DMG 44319)
 6. if the loans exceed the maximum amount (see DMG 44333)
 7. if a restriction should be applied because the housing costs are excessive (see DMG 44356)
 8. if there are any other eligible housing costs that can be allowed (see DMG 44421 et seq)
 9. if a deduction for a non-dependant is necessary (see DMG 44586)
 10. the start date of entitlement to housing costs (see DMG 44471 et seq).

44229 - 44232

Liability for housing costs

- 44233 A person is liable to meet housing costs where the
1. liability falls on them or their partner, 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 or the claimant's partner **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 ESA Regs, Sch 6, para 4(a); R(IS) 4/00; 2 ESA Regs, Sch 6, para 4(b); R(IS) 12/94; R(IS) 8/01;
3 ESA Regs, Sch 6, para 4(c)*

Example

Harry lives with his mother who has a mortgage on their home. Harry's mother dies and her estate becomes liable to meet the mortgage payments. Harry's mother did not leave a will and her estate is not making any payments. The building society cannot transfer the mortgage to Harry until his mother's estate is settled but they agree that if Harry pays the mortgage he can carry on living in the home. It is reasonable to treat Harry as liable for the payment of mortgage interest and housing costs for mortgage interest are allowed.

Responsibility for housing costs

- 44234 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. The maximum amount (see DMG 44333 et seq) should be applied to the housing costs the claimant is responsible for².

1 ESA Regs, Sch 6, para 7(5); R(IS) 4/00; 2 ESA Regs, Sch 6, para 12(6)

Example 1

Mary and her ex-husband Didier buy their home with an endowment mortgage. Under the terms of the mortgage Mary and Didier are jointly liable for the mortgage payments. After the divorce, Didier moves out of the house but continues to accept responsibility for his half of the mortgage. He carries on paying his half of the mortgage interest and Mary pays the other half. Eligible housing costs calculated using the standard interest rate are £260 a month. So Mary's housing costs will be £130 per month. That is the half share for which she is responsible.

Example 2

David has a mortgage in joint names with his daughter, Sarah. They are both liable for the mortgage payments. Sarah has always paid all of the payments due on the mortgage and continues to do so. David, although liable for the housing costs, does not have any responsibility for them and none are awarded to him.

Several months later Sarah stops making the mortgage payments. As David is liable for the costs and no one else is accepting responsibility for them, the DM includes all of the loan interest in David's applicable amount.

44235 - 44240

Treated as occupying a dwelling as the home

Definitions

44241 The following definitions apply only to this guidance on treating a person as occupying a dwelling as the home.

Medically approved

44242 Medically approved means certified by a medical practitioner¹.

1 ESA Regs, Sch 6, para 5(13)

Patient

44243 A patient is a person undergoing

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

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

1 ESA Regs, Sch 6, para 5(13)

Residential accommodation

44244 Residential accommodation means accommodation which is a care home, an Abbeyfield Home or an independent hospital¹ (see DMG Chapter 54).

1 ESA Regs, Sch 6, para 5(13)

Student

44245 A student is a full-time student¹. For further information see the guidance on students in DMG Chapter 51.

1 ESA Regs, reg 2(1)

Training course

44246 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 **or**
4. a government department **or**
5. the Secretary of State.

1 ESA Regs, Sch 6, para 5(13)

44247

Dwelling where claimant normally lives

44248 Unless DMG 44253 - 44263 applies, a claimant should

1. be treated as living in the home where they, or where a claimant is a member of a family, where the claimant and members of their family normally live (see DMG 44217 and DMG 52397) **and**
2. not be treated as occupying any other dwelling as the home¹.

1 ESA Regs, Sch 6, para 5(1)

44249 To decide where a claimant normally lives the DM should

1. consider all homes that the claimant occupies, 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 44256 - 44263 apply **and**
3. where the claimant is responsible for housing costs on more than one property, and DMG 44256 - 44263 does not apply, treat the claimant as living in the home they normally occupy.

1 ESA Regs, Sch 6, para 5(2)

Full-time students and claimants on training courses

Students

44250 Single claimants who are F/T students, 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 make payments in respect of if¹

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

1 ESA Regs, Sch 6, para 5(3); 2 para 5(4)

Example 1

Jessica is studying in Sheffield. She is buying an apartment in Sheffield and has a mortgage to pay. When not studying she lives with her parents in their home in Wetherby. Jessica has no housing costs at her parents' home. Jessica cannot be treated as living in her flat in Sheffield because she is absent from it.

Example 2

Griff, who has no partner, is a mature student studying in Bangor. He is buying a flat in Bangor and has a mortgage to pay. When not studying he lives with his son and daughter in law in their home in Liverpool. He is liable to pay his son for these lodgings during his stay. Rhys cannot be treated as living in his flat in Bangor because he has a liability at both homes.

Training course

44251 Single claimants who are on a training course, may have different homes whilst attending the course and not attending the course. Such a claimant should be treated as occupying the home for which they are liable to make payments in respect of, if¹

1. they are occupying one of the homes because they are
 - 1.1 on a training course **and**
2. they are liable for the payments in respect of the dwelling on either, but not both, of the homes they live in when
 - 2.1 attending the training **or**
 - 2.2 not attending the training.

1 ESA Regs, Sch 6, para 5(3)

44252 - 44253

Example

Jessica is on a training course in Sheffield. She is renting an apartment in Sheffield whilst on the course. When not on the course she lives with her parents in their home in Wetherby. Jessica has no housing costs at her parents' home. Jessica is treated as living in her flat in Sheffield even when she is absent from it in Wetherby.

44254 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 ESA Regs, Sch 6, para 5(4)

Temporary accommodation

44255 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

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

1 ESA Regs, Sch 6, para 5(5)

Liabile for two homes

- 44256 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
 - 1.1 fear of violence in that home **or**
 - 1.2 violence by a former partner or by a close relativeand 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 F/T 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 ESA Regs, Sch 6, para 5(6)(a); 2 Sch 6, para 5(6)(b)

- 44257 The question of reasonableness in DMG 44256 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 ESA(IR).

Example

Kate lives with Jon in a house on which she has a mortgage. She gets ESA(IR) with housing costs for mortgage interest. Jon is violent towards Kate who leaves the house and moves to a rented flat. Kate starts legal proceedings and intends to return to the house as soon as it is safe for her to do so. The DM decides Kate has a liability to make payments for two homes, treats Kate as living in both homes and considers it reasonable to meet housing costs for the house (although the provision allows for payments to meet both liabilities, rent is not an eligible cost).

- 44258 A person can also be treated as living in, and allowed housing costs for, two homes for up to four benefit weeks from the first day of the benefit week in which the move occurs if¹
1. they move to a new home, for a reason other than those in DMG 44255 and 44256 **and**

2. they are liable for housing costs on both homes **and**
3. the liability to make payments for both homes is unavoidable.

1 ESA Regs, Sch 6, para 5(6)(c)

44259 - 44260

44261 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 44256 for the criteria where more than one property could be the dwelling occupied as the home.

44262 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 44233) **and**
 - 1.2 responsible for those costs **and**
 - 1.3 treated as living in the home that these costs are for (see DMG 44256) **and**
2. those costs are allowable.

Treated as living in the home before moving in

44263 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. they had claimed ESA(IR) 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 support component or the WRAC is payable **or**

- 4.2.c the claimant's applicable amount includes PP or SDP **or**
- 4.2.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 **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 ESA Regs, Sch 6, para 5(7); 2 Tax Credits Act 2002, s 9(6)

Temporary absences from home

Trial periods in residential accommodation

44264 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 44271).

1 ESA Regs, Sch 6, para 5(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

44265 Unless DMG 44264 or 44271 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 ESA Regs, Sch 6, para 5(10)

44266 The intention to return to live in the home (see DMG 44265 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.

Example

Julia goes to stay with her father while he is recovering from an operation. She expects to be away from her home for eight weeks. The DM determines that Julia is temporarily absent from her home.

While Julia is away the bank repossesses her home. Julia is prevented by law from returning but she intends to return if the bank withdraws the possession order. Her intention to return is qualified. The DM determines that Julia's absence from her home is permanent. The superseding decision is effective from the date that the property was repossessed.

44267 When considering DMG 44265, 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.

44268 - 44270

Temporary absences up to 52 weeks

44271 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 they occupy as the home **or**
 - 3.1.b approved premises² such as a hostel **or**
 - 3.2 are patients resident in a hospital or similar institution **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 receiving medically approved care in accommodation that is not residential accommodation **or**
 - 3.8 are students to whom DMG 44253 - 44254 and 44256 **2.** do not apply **or**
 - 3.9 are receiving care in residential accommodation other than in DMG 44264 **or**
 - 3.10 have left the home because of fear of violence in that home, or from a former member of the family, and DMG 44256 **1.** does not apply **or**
 - 3.11 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 a claimant has gone into hospital).

1 ESA Regs, Sch 6, para 5(11) & (12); 2 Offender Management Act 2007, s 13

44272 The intention to return to live in the home (see DMG 44271 **1.**) must

1. be unqualified **and**

2. be present from the start of the period of absence **and**
3. not be
 - 3.1 dependant on a contingency **or**
 - 3.2 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.

Example

Frances is admitted to hospital and carries on getting housing costs for her own home. While she is in hospital the bank repossesses her home and Frances is prevented by law from returning there. Frances intends to move back in if she can persuade the bank to withdraw the possession order. Her intention to return is qualified and depends on what the bank decides. She can no longer be treated as living in the home and housing costs are withdrawn from the date the house was repossessed.

- 44273 If DMG 44271 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 ESA Regs, Sch 6, para 5(12)

- 44274 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 ESA Regs, Sch 6, para 5(11)(d)

Example 1

Jon is in receipt of ESA(IR). 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 ESA(IR) and lives alone in her own home for which she has a mortgage. 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 has not been medically approved, housing costs stop from February.

Example 3

Joanne is in receipt of IS and lives alone in her own home for which she has a mortgage. In December 08 Janet is admitted to hospital suffering from an eating disorder. In November 09 the DM advises Joanne 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 Joanne would be discharged from hospital for 1 night just prior to the December expiry. Joanne 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 Joanne's readmission and housing costs continue.

44275 - 44280

Housing costs not met

44281 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 44264 et seq) **or**
3. certain loans taken out in a relevant period, unless one of the exceptions in DMG 44291 et seq applies.

1 ESA Regs, Sch 6, para 6(1)(a); 2 Sch 6, para 6(1)(b)

44282 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 ESA Regs, reg 2(1); 2 HB Regs, reg 12(1); 3 ESA Regs, reg 67(1)(c) & 68(1)(d)

Loans taken out in a relevant period

44283 Apart from certain allowable housing costs (see DMG 44291 et seq) and certain loans for repairs and improvements (see DMG 44402 et seq), interest on a loan

1. taken out in a relevant period **and**
2. used to acquire an interest in the home

will not be eligible during that relevant period if the conditions in DMG 44284 apply¹. This means that borrowing for house purchase cannot normally be increased in a relevant period.

1 ESA Regs, Sch 6, para 6(2)

44284 The conditions¹ are that the loan was taken out

1. after 27.10.08 **or**
2. after 2.5.94 and the loan interest was not eligible in an IS, JSA(IB) or SPC award **or**
3. in the 26 weeks preceding 27.10.08 by a person
 - 3.1 who was not at that time entitled to IS, JSA(IB) or SPC **and**
 - 3.2 who becomes, or whose partner becomes, entitled to IS or JSA(IB) or SPC after 27.10.08 **and**
 - 3.3 whose entitlement, or whose partner's entitlement, is within 26 weeks of an earlier entitlement to IS, JSA(IB) or SPC for the claimant or partner.

1 ESA Regs, Sch 6, para 6(2)

Relevant period

44285 A relevant period is¹ any period during which the person to whom the loan was made

1. is entitled to ESA(IR), SPC, JSA(IB) or IS **or**
2. has a partner who is entitled to ESA(IR), SPC, JSA(IB) or IS **or**
3. is not entitled to ESA(IR) because they or their partner, are on²
 - 3.1 the EO(S/E) **or**
 - 3.2 a waged option on the voluntary sector or environment task force options of NDYP **or**
 - 3.3 the intensive activity period (IAP) for ND 25+ **or**
4. together with any period not exceeding 26 weeks that falls between two periods as in 1., 2. and 3..

Note 1: The effect of DMG 44284 3. is that housing costs will not normally be allowed for loans taken out while a person is on an ND option apart from the S/E employment option of NDYP.

Note 2: Two or more periods as in DMG 44284 1., 2. and 3., and any breaks that do not exceed 26 weeks, count as one relevant period³.

Note 3: The linking rules at DMG 44531 et seq do not apply to the relevant period⁴.

1 ESA Regs, Sch 6, para 6(4); 2 Sch 6, para 6(5); 3 Sch 6, para 6(7)(b); 4 Sch 6, para 6(6)

44286 Any period that the claimant was entitled to IS between 3.4.95 and 1.10.95 should be taken into account when determining when the relevant period starts¹.

1 ESA Regs, Sch 6, para 6(7)(a)

Example 1

Tony was in receipt of IS as a lone parent from 2005 until 29.10.08. On 30.10.08 he made a claim for ESA as he no longer satisfied the conditions of entitlement to IS. He took out a mortgage exchanging contracts on 18.11.08, and bought his own home. Tony does not come into any of the exceptions in DMG 44291. No housing costs are allowable in the ESA award.

Example 2

Andrew is a supply teacher. He is in receipt of JSA until 11.9.08 when he finds work. On 27.9.08 Andrew takes out a mortgage (exchanged contracts) to buy his own home, having previously lived with his parents. He loses his job on 27.12.08 and claims JSA.

The DM determines that as the break between his two claims is less than 26 weeks, Andrew's mortgage was taken out in a relevant period. An award of JSA is made but nothing is allowed for housing costs.

Andrew then claims ESA immediately following his last day of entitlement to JSA. No housing costs are allowed in ESA.

Example 3

Maria lives with her partner. There is a mortgage in joint names taken out on 20.3.89 which she and her partner jointly used to purchase the property. Maria leaves the household on 10.11.08 and goes to live with her parents. Her former partner moves out of the property on 24.11.08 allowing Maria to return to live there on 27.11.08. She claims ESA.

The DM determines that Maria's housing costs have not been incurred in a relevant period. The housing costs were incurred on 20.3.89, the date the loan was taken out.

Example 4

Eric claims IS on 1.11.08 because he is a lone parent. He takes out a mortgage on 20.01.09 to buy his own home. Eric does not come into any of the exceptions so no housing costs are included in the IS award.

On 13.08.09 Eric claims ESA as he now has limited capability for work. His IS award ends on 12.08.09. Eric's loan is taken out in a relevant period. No housing costs are included in the ESA award because none of the exceptions in DMG 44291 apply.

44287 - 44290

Loans that may be allowed

- 44291 An additional amount for housing costs cannot normally be allowed for loans taken out in a relevant period (see DMG 44283 et seq). The exceptions are where
1. the loan is a new loan used to repay an earlier allowable loan or buy a new home (see DMG 44295) **or**
 2. the claimant, or partner, was previously renting accommodation before the purchase of the home (see DMG 44296) **or**
 3. the loan is used to buy accommodation more suited to the needs of a disabled person (see DMG 44301) **or**
 4. the change of dwelling is to provide separate sleeping accommodation for children of different sexes (see DMG 44303) **or**
 5. other housing costs were in payment before the purchase (see DMG 44304).

44292 When considering the amount of housing costs to allow under the exceptions in DMG 44291 **2.** to **5.**, DMs should note that

1. each exception may be subject to its own additional limitations **and**
2. if more than one of the exceptions in DMG 44291 **2.** to **5.** are relevant, the DM should apply the exception that is most favourable to the claimant¹.

1 ESA Regs, Sch 6, para 6(9)

44293 Where appropriate, the maximum amount should be applied and the question of excessive housing costs should be considered (see DMG 44333 and 44356).

44294 If a loan taken out in a relevant period is an allowable housing cost, the DM should decide the date that the housing costs are payable from (see DMG 44471 et seq). Weeks when the claimant has been continuously entitled to ESA(IR), SPC, JSA(IB) or IS will count towards any QP¹.

1 ESA Regs, Sch 6, para 20(1)(c)

New loan to repay earlier allowable loan or buy a new home

44295 If a claimant or claimant's partner takes out a secured or unsecured allowable loan in a relevant period and uses it to

1. repay an earlier loan used to acquire an interest in the home, allowable during the relevant period (perhaps a re-mortgage to obtain better terms) **or**
2. buy the home, and another earlier allowable loan used

2.1 to acquire an interest **in or**

2.2 for repairs and improvements to

the previous property, allowable during the relevant period, is paid off (in whole or in part) with the money received from the sale of that property,

part of the new loan equal to the amount of the earlier loan is allowable¹.

Note: where the loan for repairs and improvements is not redeemed with the sale of the property see DMG 44404.

1 ESA Regs, Sch 6, para 6(8)

Example 1

Christopher takes out a loan of £95,000 in 1999 to buy his home. In November 2008 only £50,000 remains on his mortgage. The mortgage is allowable as a housing cost. In December 2008 Christopher moves house. He has a new mortgage of £57,000, and he pays off his first loan in the process. The eligible part of the later loan is £50,000.

Example 2

Luke lives with his mother who has a mortgage on their home in her sole name. They both get ESA(IR) and housing costs for mortgage interest are paid to Luke's mother. Following her death in March 2009 and settlement of the estate, the building society transfer the mortgage into Luke's name. He is then liable for the payment of interest on the new mortgage.

The DM determines that housing costs for the transferred mortgage are allowable. This is because Luke's new mortgage was used to pay off an earlier loan that qualified as allowable housing costs. The DM also decides that the transferred mortgage is a new housing cost. The transfer is a new loan that was taken out after 27.10.08 while Luke was on ESA. Housing costs will be payable when Luke has been entitled to ESA for a continuous period of 39 weeks.

Previously renting accommodation before purchase of new dwelling

44296 Housing costs will be met if a claimant or a family member

1. acquire, during the relevant period, an interest in a dwelling which they
 - 1.1 then occupy **or**
 - 1.2 continue to occupyas their home¹ **and**
2. were entitled to HB in the week before the purchase².

But the housing costs met cannot initially exceed the amount of HB and any eligible housing costs that the claimant was entitled to immediately before the purchase³.

1 ESA Regs, Sch 6, para 6(10)(a); 2 Sch 6, para 6(10)(b); 3 Sch 6, para 6(10)(i) & (ii)

44297 The housing costs awarded under DMG 44296 can only be increased in line with increases in

1. the standard rate¹ **or**
2. other eligible housing costs (see DMG 44434)

after the date of the purchase².

1 ESA Regs, Sch 6, para 13; 2 Sch 6, para 6(10)

Example

Eve is in receipt of ESA(IR). She lives in a council house and £47 per week HB is paid towards her rent. Eve buys a nearby property using a mortgage. The interest payable on the mortgage using the standard rate is £55 a week. Eve's housing costs are restricted to £47 a week¹.

After the date of the purchase there is an increase in the standard rate which means a £3 increase in her housing costs to £58. The amount actually allowed for housing costs is increased by £3 to £50.

The interest rate decreases and Eve's housing costs are assessed using the standard rate and fall from £58 to £54. Housing costs remain in payment at £50.

The standard rate decreases further and Eve's housing costs fall to £49. The allowable housing costs remain at £50 per week.

Now that the actual housing costs are less than the restricted amount, the restriction ends. Any subsequent increases or decreases in the amount of housing costs payable on Eve's mortgage are assessed in the normal way.

1 R(IS) 8/94

44298 - 44300

Accommodation more suited to needs of a disabled person

44301 Any increase in housing costs should be allowed if a claimant or a member of the family, during a relevant period

1. takes out a new loan **or**
2. increases an existing loan

to buy alternative accommodation more suited to the special needs of a disabled person (see DMG 44210) than the accommodation previously occupied by the claimant¹.

1 ESA Regs, Sch 6, para 6(11)

44302 When determining whether an increase in housing costs may be allowed the DM should note that

1. the new accommodation being more suited to the special needs of the disabled person need only be one of the reasons for buying it. It does not have to be the only or main reason
2. the new accommodation only has to be more suited. There is no test of whether or not it was reasonable to acquire the new accommodation
3. the special needs of the disabled person must be needs stemming from the person's disability. Only needs stemming from
 - 3.1 a specific disease **or**
 - 3.2 a specific bodily or mental disablement **or**
 - 3.3 the effects of ageing for the over 75'scan be special needs of the disabled person

4. the relevant features of the new accommodation could possibly include its running costs such as heating. But the price paid for it or the size of the loan taken out are not relevant
5. the person must be a disabled person (see DMG 44210) at the date the loan is taken out and not from any later date
6. there is no requirement of immediacy linking the time of acquisition, the time the loan is taken out, and the time the claimant moves but there does have to be a link between them¹
7. each case must be decided individually on its own facts.

1 Ahmed v Secretary of State for Work and Pensions [2011] EWCA Civ 1186

Separate sleeping accommodation for children of different sexes

44303 Any increases in housing costs should be allowed where, during a relevant period

1. a claimant or the claimant's partner increases a current loan commitment by
 - 1.1 taking out a new loan **or**
 - 1.2 increasing a current loan
 to buy an alternative home, having sold the previous home **and**
2. the increase in the loan commitment was solely to provide sufficient sleeping accommodation so that two or more persons who are
 - 2.1 members of the claimant's family **and**
 - 2.2 each aged ten or over but aged under 20 when the loan is taken out **and**
 - 2.3 of different sexes
 do not have to share sleeping accommodation¹.

Note 1: When determining whether an increase in housing costs can be allowed under DMG 44303 the DM should focus on the reason for the change of home².

Note 2: The person aged ten or over could be that age within a year.

1 ESA Regs, Sch 6, para 6(12); 2 R(IS) 5/01

Example 1

Hans is in receipt of ESA and lives in his own two bedroomed house with his son Bruno aged ten, and daughter Hilda aged four. There is no outstanding mortgage on the property. Hans decides that the children should have separate bedrooms. He sells their house and takes out a £20,000 mortgage to buy a three bedroomed house. The loan was taken out in a relevant period to provide separate bedrooms for the children. But they will not both be aged ten within a year of when the loan was taken out. Interest on the new mortgage cannot be allowed.

Example 2

Tony is in receipt of ESA. He and his wife, Carmela, live in a 3 bedroomed house and have 7 children, four boys all aged over 10 and three girls, all under 10. Due to the size of the rooms some of the boys and girls have to share a bedroom. Tony increases his mortgage and buys a new 3 bedroomed house but the bedrooms are bigger than in the previous home. As a result it is no longer necessary for any of the girls to share a bedroom with any of the boys. Tony tells the DM that the reason behind the move was to gain more living space. The DM decides that the increase in housing costs cannot be allowed because the sole reason for Tony leaving the old home was not to provide separate sleeping accommodation for the children of different sexes but to gain a more spacious home.

Other housing costs in payment before purchase

44304 Housing costs should be allowed up to the amount in payment before the new purchase where

1. a claimant or a member of the family acquires, during a relevant period, an interest in a dwelling which they occupy as their home **and**
2. in the week before the purchase they were entitled to other housing costs (see DMG 44434) **and**
3. no allowable interest was included in the housing costs¹.

1 ESA Regs, Sch 6, para 6(13)(a) & (b)

44305 Any subsequent increases after the purchase will be made in line with

1. allowable increases in the standard rate **or**
2. any increases in other housing costs¹.

1 ESA Regs, Sch 6, para 6(13)

Example

Gillian is in receipt of ESA. She pays ground rent of £20 a week on her maisonette which she leases without mortgage. The ground rent is met by ESA(IR). Gillian sells up and takes out a mortgage of £50,000 to buy a sheltered flat. The interest on the mortgage is £80 a week. Gillian has to pay service charges of £60 a week related to the adequacy of her new home. The service charge later increases by £5 to £65 a week.

The allowable housing costs are calculated as

1. ground rent before purchase of new home £20
2. mortgage interest before purchase of new home Nil
3. total housing costs on new home (£80 + £60) £140
4. restrict housing costs to £20
5. service charges increase by £5. Housing costs can also be increased by £5 to £25.

44306 - 44310

Apportionment of housing costs

Composite hereditaments

44311 A composite hereditament is¹ a property with both

1. domestic **and**
2. business

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

1 ESA Regs, Sch 6, para 7(1) & (4); Local Government Finance Act 1988, s 41(1); Abolition of Domestic Rates etc. (Scotland) Act 1987, s 26(1)

44312 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. Where appropriate, the maximum amount (see DMG 44333) should be applied to the eligible part of the loan.

44313 The calculation of the portion of housing costs that can be allowed in such a case is¹, where the composite hereditament was created

1. before 1.4.90 (in Scotland 1.4.89)², the amount obtained by using the formula

$$\frac{A}{A+B}$$

where

A is the rateable value of the domestic part of the property (in Scotland the annual value) **and**

B is the rateable value of the business part of the property (in Scotland the annual value)

2. on or after 1.4.90 (in Scotland 1.4.89)³, the amount obtained by using the formula

$$\frac{A}{A+B}$$

A is the current market value of the claimant's interest in the domestic part of the property **and**

B is the current market value of the claimant's interest in the business part of the property.

1 ESA Regs, Sch 6, para 7(2); 2 Sch 6, para 7(1); 3 Sch 6, para 7(3)

Example 1

Deepak owns an off-licence with a flat above that he bought with a mortgage of £170,000. He claims ESA after becoming ill and the business stops trading.

The LA confirm that the property is on the non-domestic rating list as a composite hereditament. The property has been listed as a composite hereditament since 11.7.87.

The rateable value of the domestic part of the property (A) is £300, while the rateable value of the business premises (B) is £600.

(A) (£300) divided by (A) + (B) (£900) = 1/3.

Housing costs can be allowed for 1/3 of the eligible mortgage interest.

Example 2

Gina has a bed and breakfast business in a six-bedroomed house she has bought with a mortgage of £192,000. The business stops trading as she falls ill and she claims ESA. The premises are not registered as a composite hereditament. The DM

1. determines that the whole of Gina's property is the dwelling occupied as the home **and**
2. considers making a restriction because of the size of the home (see DMG 44356 et seq) before allowing housing costs.

44314 - 44318

The calculation for loans

44319 The weekly amount of housing costs to be met for mortgage and loan interest (see DMG 44391 and 44402) should be calculated by using the formula¹

$$\frac{A \times B}{52}$$

where

A is the amount of the eligible portion of the loan for the time being outstanding
and

B is the standard rate.

Note: See DMG 44500 if the claimant was entitled to an “add back” whilst entitled to IS or JSA(IB).

1 ESA Regs, Sch 6, para 11

Outstanding balance

44320 The outstanding balance of the eligible portion of a loan is the amount which remains unpaid on the

1. whole of the loan, where the whole loan is eligible **or**
2. portion of the loan used for an eligible purpose, where the loan was used to meet eligible and ineligible costs.

Example 1

Ishaq took out a loan of £140,000. He uses £75,000 to buy his home, all of which is eligible. The other £65,000 is used for business purposes and is not eligible. At the time he claims ESA the outstanding balance of the loan, less unpaid interest and other ineligible items is £95,000. Ishaq receives loan interest based on an outstanding balance of £75,000.

Example 2

Suzie takes out a loan of £80,000. She uses £67,000 to buy her home, all of which is eligible. She uses the other £13,000 to buy a mobile home, which is not eligible. At the time of her claim to ESA the outstanding balance of the loan, less unpaid interest and other ineligible charges is £58,000. Suzie receives loan interest based on an outstanding balance of £58,000.

44321 Claimants who move between ESA, JSA(IB), SPC and IS within a linking period (see DMG 44531 et seq) have a common anniversary date. That is the date the housing costs were first met for whichever of the benefits the claimant or partner was first entitled. That date remains the anniversary date for a claim to ESA¹.

1 ESA Regs, Sch 6, para 8(3) & 9(3)

Example

Lynda is in receipt of IS. The outstanding balance on her mortgage is £60,000 and housing costs are awarded from 22.9.08. On 30.10.08 she claims JSA and is awarded JSA(IB) from that date. The outstanding balance on 30.10.08 is £59,950. Her JSA(IB) applicable amount continues to include housing costs calculated on the original outstanding balance of £60,000.

On 17.11.08, Lynda starts remunerative work and her claim to benefit ends. On 11.1.09 Lynda finishes work and reclaims IS from 12.1.09. The break between her claims is less than 12 weeks. There has been no eligible increase in the outstanding balance. IS is awarded including housing costs based on the original outstanding balance of £60,000.

If Lynda stays on IS or JSA, or switches between them or moves on to ESA, her outstanding balance will be re-determined on 22.9.09 That is the anniversary date on which her housing costs were first met.

Special rules for superseding decisions about loans

44322 This guidance explains the special rules that apply for superseding decisions when there are changes to the balance outstanding on a loan. See DMG Chapter 04 for full guidance on supersession.

Increases in outstanding balance

44323 An increase in borrowing incurred during the course of a claim falls within a relevant period (see DMG 44284 et seq) and can only be allowed if it is for

1. an allowable purpose (see DMG 44291 et seq) **or**
2. an eligible home improvement loan (see DMG 44402 et seq).

44324 The DM should supersede the ESA decision if there is an eligible increase in the outstanding balance. The effective date of the supersession is the date the unpaid amount increases¹.

1 SS CS (D&A) Regs, reg 7(2)(a)

44325 Information may be received showing that a previously reported figure for the eligible outstanding balance was too low. In such a case the DM should consider whether to supersede the decision on the grounds that there has been a mistake as to a material fact (see DMG Chapter 04). In these circumstances there has not been an increase as such but a mistake as to the correct figure.

Example

Jacob is in receipt of ESA. His housing costs are awarded from 3.1.09. The anniversary date is 3.1.10. On 2.10.09 there is an eligible increase in the outstanding balance. The ESA decision is superseded from 2.10.09.

Decreases in outstanding balance

44326 The DM should supersede housing costs if there is a decrease in the outstanding balance. The effective date of the supersession will be¹

1. the first anniversary date, if the decrease in the outstanding balance occurs between the date housing costs are first met and the first anniversary date **or**
2. the next subsequent anniversary date, where the decrease in the outstanding balance occurs after the first anniversary date.

1 SS CS (D&A) reg 7(17E) & 7(17F)

Example

Andre is in receipt of ESA. His housing costs are awarded from 6.2.09. Unless there is an eligible increase in the outstanding balance, the ESA decision is next superseded on 6.2.10.

44327 - 44331

Maximum amount of loans

44332 Except where DMG 44343 applies, the maximum amount of a loan that housing costs can be calculated on is £200,000. Where claimants are treated as occupying two homes the limit applies separately to each home¹.

Note: The £200,000 maximum was introduced under a temporary package of measures to support home owners who made new claims from 5.1.09. In certain circumstances, where there is linking to a claim made prior to 5.1.09, the maximum amount remains at £100,000 [See Memo DMG 43/09].

1 ESA Regs, Sch 6, para 12(3), (4) & (5)

Previous maximum amounts

44333 The maximum amount has not always been £200,000. For periods

1. on or before 1.8.93 there was no maximum amount
2. 2.8.93 to 10.4.94 the maximum amount was £150,000
3. 11.4.94 to 9.4.95 the maximum amount was £125,000
4. after 9.4.95 the maximum amount was £100,000
5. from 5.1.09 the maximum amount is £200,000 for certain new claims that do not link - see memo DMG 43/09

references throughout this chapter to the maximum amount of a loan being £100,000 could also mean £200,000 in appropriate circumstances

Savings provision where the max is £100,000

44334 A savings provision protects previous maximum amounts above the current maximum of £100,000. Claimants retain previous maximum amounts above £100,000 if they remain continuously entitled to JSA(IB) or IS before becoming entitled to ESA(IR)¹.

1 ESA Regs, Sch 6, para 20(2)

44335 Where a loan exceeds the current maximum amount, a claimant will only be treated as continuously in receipt of and entitled to ESA(IR)¹

1. for the purposes of determining the qualifying period (see DMG 44471 et seq)
or
2. where they ceased to be in receipt of ESA(IR) for a period of 104 weeks or less because the claimant or their partner was a work or training beneficiary (see DMG 44550 et seq).

1 ESA Regs, Sch 6, para 15(6)

44336 A higher maximum amount can only be carried over to a later claim if that claim links with the earlier one under the special linking rules for work or training beneficiaries (see DMG 44550 et seq). In all other cases any breaks in entitlement, including one day, mean that claimants will lose their entitlement to a maximum amount above £100,000. The maximum amount of £100,000 will then apply.

Liable for two homes

44337 A person may be treated as occupying two dwellings as their home (see DMG 44256 to 44262). In such a case the maximum amount applies separately to each dwelling¹.

1 ESA Regs, Sch 6, para 12(5)

Composite hereditaments

44338 Where the claimant's home is a composite hereditament (see DMG 44311), the amount of the loan on which housing costs are calculated will be the lower of¹

1. the amount calculated by applying the formula $P \times Q$ where

P is the fraction used to calculate the eligible portion of the housing costs as in DMG 44313 **and**

Q is the amount of the whole loan which is outstanding **or**

2. £100,000 or £200,000 whichever is appropriate.

1 ESA Regs, Sch 6, para 12(6)

44339 - 44340

Shared responsibility for housing costs

44341 Where more than one person has responsibility for a loan, calculate the eligible part of the loan. Then apply the fraction of the housing costs for which the claimant is responsible to the eligible part of the loan to give the amount that can be allowed.

Example

Sarah shares her home with her parents. They are liable for the loan of £180,000 used to buy the home and two home improvement loans of £45,000 and £15,000. Her parents have each taken responsibility for $\frac{1}{4}$ of the loan used to acquire the home and Sarah is responsible for the other $\frac{1}{2}$. Each of the three have taken responsibility for $\frac{1}{3}$ of the two home improvements loans. So the eligible part of each loan for Sarah will be

Loan to purchase the home	$£180,000 \times \frac{1}{2} = £90,000$
Home improvement loan	$£45,000 \times \frac{1}{3} = £15,000$
Home improvement loan	$£15,000 \times \frac{1}{3} = £ 5,000$

The total loans for which the claimant is responsible are restricted to £100,000 by apportionment (see DMG 44344) as follows

Loan 1	$\frac{£100,000 \times £90,000}{£110,000}$	=	£81,818.18
Loan 2	$\frac{£100,000 \times £15,000}{£110,000}$	=	£13,636.36
Loan 3	$\frac{£100,000 \times £5,000}{£110,000}$	=	£4,545.46

Part of loan used for eligible purposes

44342 Where only part of the loan has been used for an eligible purpose, the amount of the loan on which housing costs are to be calculated will be the lower of¹

1. the outstanding amount of the eligible part of the loan **or**
2. £100,000.

1 ESA Regs, Sch 6, para 12(7)

Loans to adapt a dwelling for the needs of a disabled person

44343 Loans may be used in full, or in part, to adapt the existing home for the special needs of a disabled person. The outstanding amount of such loans is exempt from the maximum amount limit¹.

1 ESA Regs, Sch 6, para 12(8)

Example

Roger has two loans

Loan 1 - £160,000 for acquiring an interest in the home. The limit is applied to this loan and only £100,000 is allowed.

Loan 2 - £25,000 to adapt the home for Roger's mother, who lives in his home and who is disabled. This loan is allowed in addition to the £100,000 limit.

The eligible housing costs are	£100,000
	+ £25,000
	<hr/>
	= £125,000
	<hr/>

Adapt a dwelling

44344 In order to qualify as an adaptation the work being undertaken can be in areas other than to the fabric or structure of the dwelling. Furnishing and redecoration is sufficient to qualify as an adaptation where the claimant's disablement needs make it reasonably necessary for the work to be done¹.

1 Mahmoudi R v London Borough of Lewisham & Anor [2014] EWCA Civ 284

Several eligible loans

44345 Where there are several eligible loans which when added together exceed £100,000 the loans should be apportioned using the formula¹

$$R \times \frac{S}{T}$$

where

R is £100,000

S is the amount of the eligible loan which is outstanding

T is the total of all the eligible loans which are outstanding.

1 ESA Regs, Sch 6, para 12(9) & (10)

Example

Andre has three loans which when added together are more than the £100,000 limit. If the three loans are eligible and not used for a purpose that would exempt them from restriction the loans should be apportioned as follows

Loan 1 - £100,000 used to acquire an interest in the home

Loan 2 - £60,000 used to correct unsafe structural defects

Loan 3 - £40,000 used for the provision of damp proofing and insulation, electric lighting, and to repair an existing heating system

$$\begin{array}{rclcl} \text{Loan 1} & \text{£100,000} & \text{X} & \frac{\text{£100,000}}{\text{£200,000}} & = & \text{£50,000} \end{array}$$

$$\begin{array}{rclcl} \text{Loan 2} & \text{£100,000} & \text{X} & \frac{\text{£60,000}}{\text{£200,000}} & = & \text{£30,000} \end{array}$$

$$\begin{array}{rclcl} \text{Loan 3} & \text{£100,000} & \text{X} & \frac{\text{£40,000}}{\text{£200,000}} & = & \text{£20,000} \end{array}$$

44346 - 44350

The standard rate

44351 When ESA was introduced the calculation of the standard rate of interest applied per annum to loans which qualified for housing costs was based on

1. the Bank of England base rate **or**
2. any rate determined by the Treasury under its reserved powers

plus 1.58%.

44352 From 1.10.10 the calculation of the SIR applied to loans which qualify for housing costs is based on the average mortgage rate published monthly by the Bank of England. A change in the SIR is only triggered when the Bank of England's published average mortgage rate differs by 0.5 percentage points¹ or more from the SIR applicable on that day. Any change in the SIR is effective from a date determined by the Secretary of State².

1 ESA Regs, Sch 6, para 13; 2 SI 2014/591

44353 See Appendix 4 to this Chapter for details of the standard interest rates.

44354 - 44355

Excessive housing costs

General

44356 Housing costs should be restricted to the housing costs needed to acquire suitable¹ alternative accommodation² where the

1. claimant's housing costs are excessive³ **and**
2. DM decides, after considering the relevant factors (see DMG 44366), that it is reasonable to expect the claimant to seek alternative cheaper accommodation.

1 R(SB) 7/89; 2 R(IS) 9/91; 3 ESA Regs, Sch 6, para 14(1); R(SB) 6/89

44357 DMs should note, when deciding on excessive housing costs, that

1. housing costs may still be considered to be excessive even if the maximum amount (see DMG 44333) has been imposed **and**
2. no account should be taken of the capital value of the dwelling occupied as the home¹ **and**
3. unless an immediate restriction is appropriate (see DMG 44377), the claimant should be notified in advance that a restriction is likely to take place in the future².

1 ESA Regs, Sch 6, para 14(2); 2 R(SB) 7/89

44358 When calculating the restricted amount the DM should consider the

1. equity in the existing dwelling **and**
2. likely costs involved in buying suitable alternative accommodation¹.

1 R(IS) 9/91

Meaning of excessive housing costs

44359 Housing costs are excessive where¹ the

1. home, excluding any part which is let, is larger than required by
 - 1.1 the claimant **and**
 - 1.2 the claimant's partner **and**
 - 1.3 any person under the age of 20 **and**
 - 1.4 any non-dependants

having regard to suitable alternative accommodation occupied by households of the same size **or**

2. immediate area in which the home is located is more expensive than other areas in which suitable alternative accommodation exists **or**
3. costs are more than those for suitable alternative accommodation in the area.

1 ESA Regs, Sch 6, para 14(1)

Consideration of size of dwelling

44360 All the circumstances should be considered when deciding if the dwelling occupied as the home is too big. For example

1. the accommodation needed by the claimant, partner, person under the age of 20 and any non-dependants having regard to
 - 1.1 ages
 - 1.2 sex **and**
 - 1.3 state of health
2. it should be accepted that there is a need for unoccupied rooms if they are occupied occasionally, for example by a non-dependant working away from home for part of the week
3. the size of suitable alternative accommodation occupied by the same number of people.

These examples are not exhaustive.

Expensive nature of the area

44361 The immediate area¹ should be considered expensive if the houses are of a higher standard or more luxurious than those in the general locality, including luxury accommodation.

1 R(IS) 12/91

44362 - 44365

Is a restriction appropriate

44366 No restriction should be made if, having regard to the relevant factors, it is not reasonable to expect the claimant to seek alternative cheaper accommodation¹. Examples of relevant factors are²

1. the availability of suitable accommodation and the level of housing costs in the area **and**
2. the circumstances of the claimant and those who live with the claimant including

- 2.1 the age and state of health of any of those persons **and**
- 2.2 the employment prospects of the claimant **and**
- 2.3 where a change of home is likely to mean a change of school affecting the education of any person below the age of 20 who lives with the claimant **or**
- 3. where people cannot sell their home or have negative equity (see DMG 44368) **or**
- 4. where a person cannot obtain a loan to buy alternative property (see DMG 44370) **or**
- 5. where rented accommodation is a suitable alternative (see DMG 44371).

Note: This list is not exhaustive³.

1 ESA Regs, Sch 6, para 14(4); 2 Sch 6, para 14(5); 3 Sch 6, para 14(5)(b); R(SB) 6/89; R(SB) 7/89; R(IS) 10/93

Meaning of available

44367 Available means whether suitable properties are being offered for sale or rent in the area¹, not whether the claimant's circumstances permit another property to be obtained.

1 R(IS) 12/91

Cannot sell home or negative equity

44368 Many people are in a situation where they

- 1. cannot sell the home they are living in **or**
- 2. have negative equity, (that is, the value of their home is less than the loans secured on it).

44369 In such a situation the DM should consider whether, in these circumstances, it would be reasonable to expect the claimant to seek alternative accommodation.

Cannot obtain a loan to buy alternative property

44370 A person may be unable to obtain a loan to buy an alternative property. In these circumstances it may be that other accommodation is not available because a loan cannot be raised to buy it. The DM should consider whether it would be reasonable to expect the claimant to seek alternative accommodation.

Rented accommodation as a suitable alternative

44371 Rented accommodation may be considered as a suitable alternative although a move from being an owner-occupier to being a tenant may cause problems. One example may be where the

1. amount of equity in the property would exceed £16,000 **and**
2. claimant would be excluded from receipt of ESA(IR).

The DM should consider whether, in such circumstances, rented accommodation would be a suitable alternative.

Questions for the DM

44372 Before deciding if a claimant should be expected to look for alternative suitable accommodation the DM should consider¹ whether

1. there is alternative accommodation available in the area² which is suitable and cheaper
2. the move would be detrimental, taking into account the health and age of any member of the family
3. the move would seriously jeopardize the claimant's employment prospects
4. any person under the age of 20 living with the claimant would need to change school, and would this affect their education
5. the claimant has shown that it is not possible to buy suitable alternative accommodation. For example, if they have negative equity, are unable to sell the home, or cannot obtain a loan to buy suitable accommodation.

1 R(SB) 6/89; R(SB) 7/89; R(IS) 10/93; 2 R(IS) 12/91

Example 1

Sanjay's home is valued at £175,000, his loan interest is £160 per week. The home is a three bedroomed semi-detached house located on one of a number of similar estates around the town where he lives. Living with him are his wife and two children. Outgoings on suitable alternative accommodation would be £175 per week. Sanjay's housing costs are not excessive.

Example 2

Jack lives on his own in a one-bedroomed flat which is on a luxury riverside development. Jack bought the flat for £125,000. His weekly housing costs are £150. Outgoings on suitable alternative accommodation would be £60 per week. Jack's housing costs are excessive. Both the immediate location of his home and the outgoings on it are more expensive than suitable alternative accommodation.

44373 - 44375

Date of restriction

44376 The date that the restriction takes effect depends on whether the claimant or partner was able to meet the financial commitment when it was entered into. The DM should consider whether¹

1. a loan is a long term commitment. At the time the loan was taken out the claimant or partner should have been able to meet the continuing commitment for the reasonably foreseeable future
2. the time the loan was taken out is the material time. Any changes in the claimant's financial circumstances that occur after the material time that could not reasonably have been foreseen should be ignored
3. the ability to meet the financial commitment should be considered looking only at the facts of the claimant's case. The claimant's view of ability to pay should not be considered
4. the fact that a loan was made available by a lender is not conclusive proof of the claimant's ability to meet the commitment.

1 R(IS) 13/92; Secretary of State for SS v. Julien

Restriction applied immediately

44377 The restriction should be applied immediately¹ where the

1. claimant's housing costs are excessive **and**
2. claimant **was not** able to meet the financial commitments for the home when they were entered into **and**
3. DM considers, having regard to the relevant factors, that it is reasonable to expect the claimant to seek alternative accommodation.

1 ESA Regs, Sch 6, para 14(3)

Restriction not applied immediately

44378 A restriction should not be applied immediately where¹ the

1. claimant's housing costs are excessive **and**
2. claimant **was** able to meet the financial commitments for the home when they were entered into **and**
3. DM considers, having regard to the relevant factors, that it is reasonable to expect the claimant to seek alternative accommodation.

1 ESA Regs, Sch 6, para 14(6)

- 44379 If the restriction is not applied immediately the restriction will not apply¹
1. for the first 26 weeks of any period of entitlement to ESA(IR), SPC, IS or JSA(IB)² **or**
 2. during the 26 weeks from the date of a revision or supersession³ **or**
 3. for the next 26 weeks after 1. or 2. as long as the claimant is using every effort to obtain cheaper accommodation⁴.

Note: The maximum period for which the restriction will not apply is 52 weeks in any period of entitlement.

1 ESA Regs, Sch 6, para 14(6); 2 Sch 6, para 20(1)(c); 3 R(IS) 9/91; R(IS) 7/89; 4 R(IS) 9/91

Calculation of the period of 26 weeks

- 44380 When calculating any of the 26 weeks in DMG 44379, include any periods of entitlement to IS, SPC, JSA(IB) as well as ESA(IR)¹.

1 ESA Regs, Sch 6, para 14(10)

Breaks in entitlement

- 44381 For the purpose of calculating the 26 week period, claimants who are not in receipt of ESA(IR) for twelve weeks or less between two awards are treated as entitled to ESA(IR) during that period¹.

1 ESA Regs, Sch 6, para 14(7)

Revision, supersession or appeal

- 44382 A claimant who
1. has received ESA(IR) **and**
 2. is found on
 - 2.1 appeal **or**
 - 2.2 revision or supersession

not to be entitled to ESA(IR) for that period will be treated as not in receipt of ESA(IR)¹.

1 ESA Regs, Sch 6, para 14(8)

Treated as in receipt of and entitled on another person's claim

- 44383 A person may be treated as being in receipt of, and entitled to ESA(IR) on another person's claim. See DMG 44564 for further guidance.

Calculation of housing costs once restriction has been applied

44384 Once the restriction is applied, the amount¹ of the loan interest is

1. calculated on the amount of the loan needed to purchase suitable alternative accommodation **or**
2. limited to the amount of rent payable on alternative rented accommodation.

Note: If the loan required to buy suitable alternative accommodation is more than the loan outstanding on the claimant's own home, no restriction should be applied.

1 R(SB) 6/89

Example

The value of Dougal's home is £95,000. He has a mortgage of £20,000. After paying costs connected to the sale of the home Dougal would be left with £65,500. Suitable alternative accommodation is available for £76,500. The total cost would be £79,200, with stamp duty, search fees etc. Dougal would need a loan of £13,700. His restricted housing costs should be assessed on a loan of that amount.

44385 - 44390

Loans to acquire an interest in the home

- 44391 Any loan, or any part of a loan, taken out and used to
1. acquire an interest in the dwelling occupied as the home **or**
 2. pay off another loan (but only to the amount the other loan would have been eligible had it not been paid off)
- is a qualifying loan¹.

1 ESA Regs, Sch 6, para 16(1), (2) & (3)

Example 1

Andrea remortgages her home for £80,000. Only £60,000 is used to acquire an interest in the home, the rest is not eligible. When Andrea claims ESA £72,000 is outstanding on the mortgage. The interest is calculated on £60,000.

Example 2

Ted claims ESA. His mortgage is a remortgage for £85,000. Only £77,000 was used to acquire an interest in the home, the rest is not eligible housing costs. At the time of the claim £73,500 is outstanding on the mortgage. The interest is calculated on £73,500.

Costs of acquiring an interest in a dwelling

- 44392 The cost of acquiring an interest in the dwelling occupied as the home include
1. the amount used to buy the home (the purchase price of the property) **and**
 2. any costs necessary to complete the purchase, such as
 - 2.1 search fees
 - 2.2 valuation fees
 - 2.3 land registry fees
 - 2.4 Home Information Packs
 - 2.5 stamp duty
 - 2.6 legal fees
 - 2.7 bank charges
 - 2.8 where the home has been built using a loan, the interest charged on that loan for the land, materials and labour up to the first day of occupation.

Note: This list is not exhaustive.

Meaning of acquiring an interest in a dwelling

44393 Acquiring an interest in the dwelling occupied as the home means¹ buying

1. a freehold **or**
2. a leasehold interest **or**
3. some lesser interest such as the interest of a tenant in common or joint tenant.

Note: This list is not exhaustive.

1 R(IS) 7/93; R(IS) 18/93

44394 Acquiring an interest in the dwelling occupied as the home may include

1. purchase of the freehold by a leaseholder¹
2. buying out a former partner
3. the purchase of either the whole or part of the interest in the dwelling occupied as the home from a trustee in bankruptcy²
4. buying out the rights and interests of a statutory tenant.

1 R(IS) 7/93; 2 R(IS) 6/94

44395 Acquiring an interest in the dwelling occupied as the home does not include

1. the transfer of an interest between the members of a couple where they already jointly own the entire interest¹ **or**
2. payment for the removal of a Class F land charge².

1 R(IS) 1/95; 2 R(IS) 4/95

Example 1

Anne-Marie has claimed ESA. She is a declared bankrupt. She asks if the interest on a loan raised by her partner to acquire an interest in the dwelling occupied as their home from a trustee in bankruptcy can be treated as an eligible housing cost. The interest in the dwelling acquired from the trustee was previously owned by Anne-Marie. The interest is allowed as an eligible housing cost.

Note: A declared bankrupt's possessions become the property of the trustee in bankruptcy. The trustee is a person chosen by the bankrupt's creditors to obtain as much of the money owed to the creditors as possible.

Example 2

Bobby has claimed ESA. He asks if the interest payable on loans on a self-build scheme to build the dwelling now occupied as the home can be treated as eligible housing costs.

The loans were for the purchase of a building plot, materials and labour. Payments for the labour charges were made partly to contractors and partly for Bobby's own wages whilst building the property.

The interest is allowed as an eligible housing cost¹.

1 R(IS) 11/94

Example 3

Tom has a mortgage of £450,000 with the building society and is in financial difficulty. The building society agree to give Tom a mortgage of £85,000 to buy a cheaper house if his old house is sold and the proceeds are used to pay off his debts. But this still leaves a debt to the building society. The building society insist that in addition to the £85,000 mortgage to buy the new property, a further £30,000 should be secured on it because of Tom's outstanding debt.

The extra £30,000 secured on Tom's new house is not a further advance made by the building society. It is an attempt to recoup losses already suffered by them in case the new house increases in value. The £30,000 is not a loan used to acquire an interest in the new home and interest payments on it cannot be allowed as a housing cost¹.

1 R(IS) 2/99

44396 - 44400

Loans for repairs and improvements

- 44401 The rules for allowing interest on loans for repairs and improvements in respect of ESA claimants who were previously entitled to either IS or JSA(IB) have changed in the past. These old rules may still apply to an ESA claimant¹. This will depend on
1. if the date of claim to IS was before 2.10.95 **and**
 2. when the loan was taken out **and**
 3. when the DM made the decision **and**
 4. if the claimant remained continuously in receipt of IS or JSA(IB) before becoming entitled to ESA(IR).

Guidance on the rules that applied before 2.5.94 and from 2.5.94 to 2.10.95 is at Appendix 8 to this Chapter.

1 ESA Regs, Sch 6, para 20(1)(a) & (2)

- 44402 Any loan, or any part of a secured or unsecured loan, taken out and used within six months of the date of receipt, or such further period as is reasonable in the circumstances, to pay
1. for repairs or improvements to the home **or**
 2. service charges for repairs and improvements to the home **or**
 3. off a loan to the amount which would have been allowable under **1.** or **2.**

will be allowable, provided that the repairs and improvements are allowable¹.

Note 1: The loan will only become eligible after the work has been paid for or completed.

Note 2: Each of the 3 measures listed above can be treated as having the same purpose².

1 ESA Regs, Sch 6, para 17(1); 2 R(IS) 5/06

- 44403 Where only part of a loan has been used for a purpose as in DMG 44402, only that portion of the loan that is applied for that purpose can qualify¹.

1 ESA Regs, Sch 6, para 17(3)

- 44404 For interest to be payable on loans as in DMG 44402, the

1. purpose for which the loan is
 - 1.1 taken out **and**
 - 1.2 used

must be the same. A loan taken out for some other purpose which is used instead for the improvement of the home, will not qualify. Make enquiries of the lender if the circumstances are unclear **and**

2. loan must be in respect of the dwelling occupied as the home¹. That is the dwelling currently occupied. Interest is no longer payable if the claimant changes address to another property.

1 R(IS) 5/96

Example 1

Harriet takes out a loan for repairs and improvements to her home, but does not use it for that purpose. The money is paid into a business account held by Harriet's son and his partner. The business account is heavily overdrawn and three days later again becomes overdrawn. The business then goes into liquidation and there is no prospect of the money being repaid to Harriet. The DM determines that interest on the loan cannot be allowed. The loan was taken out for repairs and improvements but it cannot be used for that purpose within a reasonable period of time.

Example 2

Wilford wants to buy his home with the help of a mortgage from a finance company. The property needs a lot of attention and a mortgage is given on the understanding that Wilford will do all the necessary work. But he fails to do so and the property gets worse. It is in such a bad state of repair that the LA threatens to condemn it. Without asking Wilford the finance company carries out building work on the property to remedy the serious defects. The cost of the repairs are then added to the balance outstanding on Wilford's mortgage account. The DM determines that the cost of the repairs are not allowable. Wilford did not take out a loan, did not receive any loan money and did not use such money for repairs and improvements.

Example 3

Vincenzo takes out a loan for repairs and improvements to his home. Interest on the loan is included as a housing cost in his ESA award. Vincenzo then sells that home and moves to a new one. The DM determines that interest on the loan can no longer be allowed as from the date that Vincenzo changes address. This is because Vincenzo no longer occupies the house to which the improvements were made.

Meaning of repairs and improvements

44405 Repairs and improvements are any of a list of measures done to **maintain the fitness of the home for human habitation**, or where the home is part of a building, the fitness of any part of that building¹. Those measures are

1. provision of a bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including hot water not connected to a central heating system
2. repairs to existing heating systems
3. damp proof measures (see DMG 44412)

4. provision of ventilation and natural lighting
5. provision of drainage facilities
6. provision of facilities for preparing and cooking food, but not for storing it²
7. provision of insulation of the dwelling occupied as the home
8. provision of electric lighting and sockets
9. provision of storage facilities for fuel or refuse
10. the repair of unsafe structural defects (see Appendix 7 to this Chapter)
11. the adaptation of the home for the special needs of a disabled person (see DMG 44415)
12. provision of separate sleeping accommodation for two or more persons who are
 - 12.1 living with the claimant and for whom the claimant or partner is responsible **and**
 - 12.2 each aged 10 or over but under the age of 20 when the loan is taken out, or who will be that age within a year **and**
 - 12.3 of different sexes (see DMG 44416).

1 ESA Regs, Sch 6, para 17(2); 2 R(IS) 16/98

44406 Provision of, in this context, applies to measures both to provide and maintain a dwelling in an acceptable state for human habitation, indicating that repair (where the item no longer performs the function for which it was designed) and replacement can also be considered as well as initial installation.

Example 1

Jack buys a cottage lacking basic modern amenities and obtains a loan to carry out extensive improvement work. This involves the building of an extension to house a new kitchen and bathroom. Jack and his partner have two young children and are expecting a third and there is no other way of providing these facilities in the existing structure. Interest on a loan for the extension can be considered under DMG 44405 **1.** and **6.**, as the allowable expenditure is for providing or adapting a room to house the bath, shower etc. or the facilities for cooking and preparing food.

Example 2

Roger lives in a run down property where the windows have been smashed, the DM considers that the installation of new windows falls within the meaning of provision of insulation.

Example 3

Kelly has taken out a home improvement loan for replacement windows. The previous window frames were rotten and they leaked. The DM determines that

interest on the loan cannot be allowed as the windows already provide ventilation, insulation and natural lighting, albeit less effectively, and there is therefore no need to provide it.

Example 4

Warren lives in a property where the broken windows have been replaced by boarding, the DM considers that the installation of new windows would amount to the provision of natural lighting.

44407 - 44410

Fitness for human habitation

44411 Fitness for human habitation is a flexible concept that can change from one generation to another. The measures listed at DMG 44405 are an exclusive list of items currently considered necessary for a dwelling to be fit for human habitation. But this does not mean that all the items in the list must be installed to make the dwelling fit. The DM should exercise discretion as to what is necessary in each particular case.

Example 1

Gina takes out a loan to pay for the installation of a damp proof course in her home. The property is not damp and is not likely to become so. But Gina wants to have the work done anyway. The DM determines that interest on the loan cannot be allowed. The installation of a damp proof course is not necessary to maintain the home's fitness for human habitation.

Example 2

Eric has a loan for various repairs to his home. The work he had done includes insulating the loft, re-wiring, a new bathroom, a new kitchen, and a new central heating boiler and radiators. Eric says that

1. there was no insulation in the loft
2. the upstairs rooms were cold due to heat escaping through the roof
3. the wiring was in good repair but he thought he would have it done
4. the washbasin and toilet were cracked and the bath leaked
5. the kitchen was usable but his wife wanted something more up to date
6. there was central heating but the boiler had broken down and he had 2 of his 10 radiators replaced at the same time.

Allowable amounts are the new bathroom, insulating the loft and the central heating boiler. The rest are not allowable because they are not necessary to maintain the home's fitness for human habitation as adequate facilities were already in place.

Example 3

Blair's central heating system is condemned by the gas company. He takes out a loan to pay for a complete new central heating system. The DM determines that interest on the loan cannot be allowed. The replacement of the old unsafe system with a complete new central heating system is not a repair to an existing heating system.

Damp proof measures

44412 When considering damp proof measures as in DMG 44405 **3.**, DMs should note that a roof

1. keeps out the elements
2. provides security
3. is an important part of the structure of a building
4. prevents water entering a building
5. prevents damp occurring.

44413 A repair or improvement made to a roof is a damp proof measure as in DMG 44405 **3.** if that is its sole or predominant purpose. It is not a damp proof measure if that is merely one part of its function. The renewal of a roof is not a damp proof measure but may be the repair of an unsafe structural defect (see DMG 44405 **10.**).

Home improvements for domestic items

44414 Home improvements for domestic items can only be allowed where the items are fixed and cannot be removed. For example

1. interest on a loan for a cooker that forms part of a fitted or built in kitchen should be allowed if it cannot be removed
2. if cookers are slotted in between fitted units and can be removed the interest on the loan cannot be allowed
3. carpets can be removed and are not an improvement under DMG 44405 **7.**.

Special needs of a disabled person

44415 Housing costs can be allowed for interest on loans that are taken out to adapt the existing dwelling for the special needs of a disabled person. Those special needs must stem from the person's disability and must be in connection with

1. a specific disease **or**
2. a specific bodily disablement **or**

3. a specific mental disablement **or**
4. the effects of ageing for the over 75's.

Adapt a dwelling

44416 The DM should no longer apply the rigid requirement that works must be to the fabric of the dwelling when considering what constitutes adapting a dwelling for the special needs of a disabled person or any member of his family. Instead there needs to be a clear connection between the work undertaken and the claimant's disability needs, the process which the dwelling had undergone was a change that made it more suitable.

Example

Karen suffers from obsessive compulsive disorder and has anxiety problems. Her property is being repainted throughout and she is having all her carpets replaced with tiling so that it is easier for Karen to keep clean. Karen requests help with the further loan she has taken out to pay for these improvements. The DM allows the home improvement loan as there is a direct connection between the work being carried out and her disability and it is reasonably necessary for the works to be carried out in order to prevent Karen from suffering distress.

Separate sleeping accommodation for persons of different sexes

44417 Housing costs can be allowed for interest on loans used to provide sufficient sleeping accommodation so that two or more persons who

1. live with the claimant and for whom the claimant or partner is responsible **and**
2. are each aged ten or over but under the age of 20 when the loan is taken out, or who will be that age within a year **and**
3. are of different sexes

do not have to share sleeping accommodation¹.

1 ESA Regs, Sch 6, para 17(2)(l)

Example

Harry is in receipt of ESA and lives with his partner, his grandson Ben aged ten and granddaughter Hatty aged 14 in his own two bedroomed house. Harry decides that the children should have separate bedrooms. He takes out a home improvement loan to finance the building of an extension to provide a third bedroom.

The loan was taken out and is used to provide separate bedrooms for Ben and Hatty. They were both aged ten or over but under 20 when the loan was taken out. An additional amount for housing costs for the loan interest can be allowed.

44418 - 44420

Other housing costs

Definitions

44421 The following paragraphs explain the meaning of terms used throughout this guidance on other eligible housing costs.

Shared ownership schemes

44422 Property can be owned jointly by more than one person or organization (see DMG Chapter 52). 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.

44423 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 a tenant 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 ESA Regs, reg 2(1)

44424 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.

Example

Brendan buys a 75% interest in his home with a mortgage of £37,000. The other 25% is owned by a housing association who let the property to Brendan. If he leaves the scheme, Brendan will receive 75% of the value of the property. He has to make mortgage payments and also has to make rent payments under the shared ownership scheme. Brendan's mortgage payments are awarded in the normal way, after the relevant qualifying period (see DMG 44485 and 44486). The payments of rent are not eligible housing costs and are not allowed. If Brendan needs help with the rent then he will need to approach the LA.

Crown tenants

44425 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 ESA Regs, Sch 6, para 18(1)(e); reg 2(1)

Housing association

44426 A housing association is a non-profit making voluntary body formed with the aim of providing good quality low cost housing¹.

1 ESA Regs, reg 2(1); Housing Associations Act 1985, s 1(1)

Long tenancy

44427 A long tenancy is¹ one where the lease is

1. granted for a specific number of years, exceeding 21 **or**
2. for a term fixed by law with a covenant or obligation for perpetual renewal (unless DMG 44428 applies).

1 ESA Regs, reg 2(1)

44428 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.

44429 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 1925, s 149(6)

44430 - 44432

Rentcharge

44433 Rentcharges, including chief rents, are rents charged to people under the conditions by which they own the freehold¹.

Note: In cases of doubt DMs should refer cases to DMA Leeds to confirm whether rents fall within the meaning of rentcharge.

1 ESA Regs, Sch 6, para 18(1)(c); Rentcharges Act 1977, s 1

Other eligible housing costs

44434 Other eligible housing costs are payments for¹

1. rents or ground rents on long tenancies (see DMG 44435)

2. service charges (see DMG 44436)
3. rentcharges (see DMG 44437)
4. co-ownership schemes (see DMG 44438)
5. tenancies or licences of Crown tenants (see DMG 44439)
6. tents and their sites (see DMG 44445).

1 ESA Regs, Sch 6, para 18(1)

Long tenancies

44435 Rents and ground rents, should be allowed where payments are connected to long tenancies¹.

1 ESA Regs, Sch 6, para 18(1)(a)

Service charges

44436 Charges should be allowed where they are¹

1. not eligible to be met by HB² **and**
2. payable as a condition of occupancy **and**
3. for
 - 3.1 the home **or**
 - 3.2 the building in which the home is situated **or**
 - 3.3 common areas for a group of homes **and**
4. for services provided by a landlord, or the agent of a landlord.

Note 1: Guidance on the amount of benefit allowed as a housing cost service charge for leasehold residents where their accommodation is modernised under the Decent Homes initiative is at Appendix 9.

Note 2: In shared ownership schemes (other than co-ownership) all service charges are eligible to be met by HB and are therefore not eligible under this provision.

1 ESA Regs, Sch 6, para 18(1)(b); 2 Sch 6, para 6, R(IS) 4/92

Rentcharges

44437 Rentcharges, including chief rents, should be allowed as other eligible housing costs¹.

1 ESA Regs, Sch 6, para 18(1)(c)

Co-ownership schemes

44438 Payments under co-ownership schemes should be treated as other eligible housing costs¹, payable from the start of the claim (see DMG 44484). Payments made under

any other type of shared ownership scheme should be considered in the normal way but only in respect of the portion of the property owned.

1 ESA Regs, Sch 6, para 18(1)(d)

Example

Haydn rents his home through a housing association who are letting the property to Haydn under a co-ownership scheme. If he leaves the scheme, Haydn will receive a percentage of the value of the property. He has to make payments under the co-ownership scheme, for rent, ground rent and service charges. The payments under the co-ownership scheme are allowed as other eligible housing costs and are paid from the start of his claim (see DMG 44484).

Crown tenants

44439 Payments under or relating to the tenancy or licence of a Crown tenant should be allowed as eligible housing costs¹.

1 ESA Regs, Sch 6, para 18(1)(e)

Reduction for water charges

44440 In England and Wales, payments made by Crown tenants may include an amount for water charges. In such a case, the amount to be allowed as eligible housing costs should be reduced¹

1. where the amount payable for water charges is known, by that amount² **or**
2. in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant³.

1 ESA Regs, Sch 6, para 18(5); 2 Sch 6, para 18(5)(a); 3 Sch 6, para 18(5)(b)

44441 - 44443

Tents

44444 Where claimants occupy tents¹ housing costs should be allowed for the

1. tent(s) occupied as the home **and**
2. sites on which the tents stand.

1 ESA Regs, Sch 6, para 18(1)(f)

44445

Mobile motor homes

44446 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and are suited for continuous occupation should be regarded as accommodation, and as such housing costs can be allowed.

Deductions from other eligible housing costs

44447 Deductions should be made from other eligible housing costs¹ where they include an amount for

1. fuel charges **or**
2. ineligible services charges **or**
3. repairs and improvements.

1 ESA Regs, Sch 6, para 18(2)

Deductions for fuel charges

44448 Where any of the charges for other housing costs in DMG 44434 include an amount for fuel charges, the following deductions should be made¹

1. a standard fuel deduction for
 - 1.1 heating (other than for hot water) £25.50
 - 1.2 hot water £2.95
 - 1.3 lighting £2.05
 - 1.4 cooking £2.95 **or**

2. if the claimant provides evidence that the

- 2.1 actual amount **or**
- 2.2 estimated amount

for fuel is different to the standard deductions in 1., the deduction should be varied to the amounts in 2..

Note: The rates in 1. may change during annual uprating.

1 ESA Regs, Sch 6, para 18(2)(a); HB Regs, Sch 1, para 6(2)

44449 When considering deductions under DMG 44448, DMs should note that

1. if the claimant's home is one room, the standard fuel deduction in DMG 44448
 1. will be
 - 1.1 half the amount in DMG 44448 1.1 to 1.3 **but**
 - 1.2 the full amount in DMG 44448 1.4 **and**
2. a deduction for heating (other than hot water) under DMG 44448 1.1 should only be made on the amount for heating the claimant's home. Service charges for heating any communal areas are not excluded.

Deductions for ineligible service charges

44450 Where any of the charges for other eligible housing costs in DMG 44434 include an amount for ineligible service charges, the following deductions should be made¹

1. an amount equal to the amount of the ineligible service charges **or**
2. where the charges in 1. cannot be identified separately from other housing costs, a deduction should be made
 - 2.1 that is fairly attributable to the services in question **and**
 - 2.2 having regard to the costs of comparable services.

1 ESA Regs, Sch 6, para 18(2)(b); HB Regs, Sch 1, para 1

44451 The ineligible service charges that should be deducted from other eligible housing costs¹ are charges for

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 the 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, licence and subscription fees - except radio relay charges and charges in respect of the installation and maintenance of a television broadcasting service **or**
 - 1.4 cleaning of rooms and windows, except cleaning of
 - 1.4.a communal areas **or**
 - 1.4.b the exterior of any windows where the claimant or any member of their household is unable to clean themwhere a payment as in DMG 44452 is not made in respect of such cleaning **or**
 - 1.5 transport **or**
2. the acquisition of furniture or household equipment and the use of such items where the items will become the property of the claimant under an agreement with the landlord **or**

3. the provision of an emergency alarm system **or**
4. medical expenses including the cost of treatment or counselling related to a
 - 4.1 mental disorder
 - 4.2 mental handicap
 - 4.3 physical disablement **or**
 - 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 any other support services, whoever provides those services **or**
7. any services not specified in 1. to 6., which are not connected with the provision of adequate accommodation.

Note: The cleaning of communal areas and the outside of windows (referred to in 1.4) where no member of the household is able to clean them can still be allowed where a payment is **not** made.

1 ESA Regs, Sch 6, para 18(2)(b); HB Regs, Sch 1

44452 A payment (as in DMG 44451 1.4) is¹ any payment made by a LA (including, in England, a county council) or the Welsh Ministers to the claimant, the claimant's partner, or to another person on their behalf.

1 ESA Regs, Sch 6, para 18(2)(b)

44453 - 44456

Connected to the adequacy of the accommodation

44457 Charges for certain services not connected with the provision of adequate accommodation are not eligible. When considering if services are connected to the adequacy of the accommodation (see DMG 44451 7.) the DM should take a common sense view of charges for communal lounges, paths, walkways, gardens etc and not just the individual needs of the claimant.

Example 1

Josh lives in one of a group of 20 flats set in enclosed gardens. The flats are all linked by paths to a communal area. Service charges are payable for maintenance of the communal areas, gardens and warden system, heating and lighting of, and replacement furniture for, the communal areas and administration costs for providing all the services.

The DM determines that the service charges are connected to the adequacy of the accommodation for Josh and that they are eligible.

Example 2

Fred lives in a group of 50 apartments set in enclosed grounds. Service charges are payable for maintenance of the communal gardens and fountains, repainting of all wooden surfaces, replacing all the boundary fencing, repairing the car park, replacing car park barriers and entry gates, the electricity and gas charges for the communal and administration areas.

The DM determines that the charges for garden, fountain maintenance, repainting, electricity, repairing car park, barriers and entry gate and gas charges are all connected to the adequacy of the accommodation and are eligible.

Example 3

Byron, the occupier, employs a painter to paint the outside of his property. The provision of the service, though placing contractual obligations on Byron and the painter, is something he is free to arrange for himself and is not connected with the conditions by which the property is occupied. The charge associated with the provision of the service in this case will not satisfy the definition of a service charge.

Example 4

The painting of the property is arranged by the landlord or agent under the conditions by which the property is occupied. Theresa, the occupier, is obliged to accept the arrangement. In this situation the charges incurred satisfy the definition of a service charge.

Example 5

Luigi, a leaseholder, reimburses the landlord for the payment of insurance premiums, as a condition under which he occupies his home. In the case of damage to the property the premiums ensure the payment of repairs to the property and therefore satisfy the condition of being connected with the adequacy of the accommodation. In this case the insurance premiums can be met as a housing cost.

Deductions for repairs and improvements

44458 The charges for other eligible housing costs in DMG 44434 may include an amount for repairs and improvements (see DMG 44405). In such a case the amount for repairs and improvements cannot be allowed and should be deducted¹. If the claimant raises a loan to pay for the repairs and improvements, housing costs should be considered under DMG 44402 2..

1 ESA Regs, Sch 6, para 18(2)(c)

44459 Where service charges include an amount for repairs and improvements listed in DMG 44405, and are undertaken to maintain the fitness for human habitation, they should not be allowed. If the claimant raises a loan for these repairs or improvements, housing costs should be considered under DMG 44402 **2.** et seq.

Example 1

Tina is charged by her landlord for payment of repairs to the roof of her home. A gable-end had cracked causing the roof to start to collapse. The DM determines that

1. repairs have been undertaken to maintain the fitness of the home for human habitation (see DMG 44405) **and**
2. the damaged roof is an unsafe structural defect (see DMG 44405 **10.**).

The DM refuses payment of the repairs as a service charge.

Example 2

Razak is charged by his landlord for payment of improvements to his driveway. The previous shingle drive has been relaid using cobbles to enhance the appearance of the property and to avoid loose chippings hitting pedestrians when cars use the driveway. The DM determines that the improvements to the driveway

1. have not been undertaken to maintain the fitness of the home for human habitation **and**
2. were not covered by the list of eligible repairs and improvements.

Contingency funds

44460 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.

44461 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.

Costs payable over 53 weeks or irregularly

44462 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 ESA Regs, Sch 6, para 18(3)

Payment of costs waived

44463 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 ESA Regs, Sch 6, para 18(4)

Attribution of service charges

44464 Those housing costs attributed to a fixed 52 week period under DMG 44462 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 ESA includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.08 - 31.3.09. The amount for housing costs is due to end on 31.3.09. In February 2009 the claimant sends in an estimate of service charges for the 2009-10 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 1.4.09 - 31.3.10. On 9.9.09 the claimant receives an invoice for £243.85, being the balance of finalized service charges for the 2008-9 year, and sends it to the DWP. The DM supersedes the decision of February 2009 to award housing costs of £10.87 and £4.69 for the period 9.9.09 - 31.3.10, and £4.69 for the period 1.4.10 - 6.9.10, the balance for the 2008-09 year

charges being paid over a 52 week period. If a further estimate for charges for the 2009-10 year is received, the September 2009 decision may be superseded accordingly.

44465 - 44468

Housing costs - starting dates of entitlement

44469 With the exception of the housing costs payable at the start of a claim (see DMG 44483) all other eligible housing have a QP.

44470 [See Memo DMG 43/09] For most 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

44471 [See Memo DMG 43/09] In cases that do not qualify for the temporary package of measures, usually 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.

Definition of existing and new housing costs

Existing housing costs

44472 [\[See Memo DMG 8/16\]](#) Existing housing costs¹ are costs arising under an agreement entered into

1. before 2.10.95 **or**
2. after 1.10.95 which
 - 2.1 replaces an existing agreement entered into before 2.10.95 **and**
 - 2.2 the person liable to meet the housing costs is party to the agreement in both the existing and the new agreement **and**
 - 2.3 is a loan of the same amount or less than the loan that it replaces, and for this purpose no account will be taken of any amount paid for arranging the new agreement.

Note: Certain new housing costs can be treated as existing housing costs, (see DMG 44476).

1 ESA Regs, Sch 6, para 1(2)

Example 1

Harry has an agreement with the Yorkshire Building Society for £80,000 which he entered into on 2.8.93. When he marries he remortgages to take advantage of a low interest rate on a new loan.

The new agreement is entered into on 10.12.08 and is for £60,000. The new agreement is made between Harry, his wife and the Yorkshire Building Society. The new agreement includes the same person as the original agreement and can be treated as existing housing costs.

44473 It is not unusual for

1. lenders to merge **or**

2. one lender to take over another **or**
3. lenders to buy portfolios of loan accounts from other lenders.

Usual practice is for the new lender to ask existing borrowers to sign a new agreement. Where this happens after 1.10.95, existing housing costs will remain as existing housing costs because there is no new borrowing.

New housing costs

44474 New housing costs¹ are costs arising under an agreement entered into after 1.10.95. This includes loans where on entering into a new agreement after 1.10.95 a previous agreement

1. ends, (except as in DMG 44472 2.) **or**
2. continues independently of the new agreement.

1 ESA Regs, Sch 6, para 1(2)

Example

Joan has a mortgage of which £53,435 is outstanding and a home improvement loan of which £21,560 is outstanding, used for repairs to the structure of the home. Both the loans were taken out in 1994 when she moved into the house. On 12.11.08 Joan enters into an agreement with a different lender and borrows £61,000. The loan is used to repay her mortgage, buy a car and replace three broken windows. The amount included in the new loan for administration is £450.

The new agreement is treated as new borrowing because the new loan is for more than the original loan it replaced.

The part of the new loan used to repay the amount outstanding on the original mortgage and the amount used to pay for the three replacement windows would qualify as new borrowing if a claim for ESA was made. The original home improvement loan of £21,560 is existing borrowing. The loan for the car is not eligible.

Informal contracts

44475 In most cases a loan is made under a formal contract. However there will be loans where an informal contract exists, for example between friends and relatives. In all cases the date that the agreement is entered into will be a matter of fact and should be determined by considering all the available evidence

New housing costs treated as existing housing costs

44476 New housing costs should be treated as existing housing costs for claimants who at the time of the claim for ESA(IR)¹ has been

1. refused payments under an insurance policy²

1.1 because of a pre-existing medical condition which is exempt from payment under the terms of the insurance policy **or**

1.2 as a result of infection by HIV

where the policy was taken out to insure against being unable to make payments on a loan secured on land which forms part of the dwelling occupied as the home, or heritable security in Scotland **or**

2. making the claim for ESA(IR) because of³

2.1 the death of their partner **or**

2.2 being abandoned (see DMG 44477) by that claimant's partner where that claimant's family includes a child

3. carers⁴ (see DMG Chapter 20) **or**

4. detained in custody pending trial or sentence on conviction⁵.

Note 1: For the purpose of **1.**, it is not necessary for the DM to investigate the terms of the insurance policy. The DM has to be satisfied that the payments were refused for the reason stated. It does not matter that refusal of payments under a mortgage protection policy was not contemporaneous with the claim for ESA.

Note 2: Abandoned in the context of **2.** means deserted, involves physical separation and there may be a lack of consent to it on the part of the deserted or abandoned party.

Note 3: **2.** ceases to apply if the claimant subsequently becomes a member of a couple⁶.

1 ESA Regs, Sch 6, para 9(6); 2 Sch 6, para 9(4)(c); 3 Sch 6, para 9(5); 4 Sch 6, para 9(4)(a); 5 Sch 6, para 9(4)(b); 6 Sch 6, para 9(7)

Abandoned by partner

44477 DMs should consider whether abandonment¹ has occurred when a claim is made for ESA(IR) because

1. the claimant declares recent separation from their partner **or**

2. a recent separation has been brought about by their partner's arrest or bail conditions.

1 R(IS) 9/05

44478 - 44480

44481 What is relevant is either direct evidence of an intention on the part of the abandoning party to end the relationship or evidence from which that intention can be inferred. This may arise where

1. the partner's behaviour, and the nature of the offences committed, indicated an inferred intention to end the relationship **or**
2. in committing the offences the person inferred an intention to abandon, and abandonment is completed with the physical separation (at the time of arrest).

Note: The claimant's own intention might not be important given the partner's behaviour.

44482 When considering the facts of each case and the evidence from which intention can be inferred the DM should bear in mind that if the nature and seriousness of the alleged offences are such that the offender is unable to return to the family home or where the alleged offences are such that any reasonable person would consider they were unable to continue with their relationship, the claimant will have probably been abandoned. Such offences may include offences against children, offences of a sexual or violent nature. The list is not exhaustive.

Example 1

Jenny and her husband Pete have three children. Their relationship is such that their only contact consists of arguments. Pete pays the repayments on their joint mortgage but nothing else. Jenny's solicitor writes to Pete explaining that Jenny intends to start divorce proceedings. The solicitor suggests that it would be in the best interests of the children if Pete left the house. Pete agrees to leave and stops paying the mortgage. Jenny claims ESA.

Jenny's mortgage counts as new housing costs. She was not abandoned by Pete. They separated by mutual agreement. Jenny's housing costs cannot therefore be treated as existing housing costs. She cannot get help with her mortgage interest payments for the first 39 weeks of her ESA claim.

Example 2

Katie is a social worker and Christopher is a support worker at the local children's home. They have four children all under ten years. On 11.10.08 Christopher is arrested and charged with offences against a number of the children who live in the home where he works. He is also unable to return to the family home and is not allowed to be in the company of any children under 16 years. On 31.1.09 Katie claims ESA. Katie advises the DM that Christopher was initially suspended with pay and he has been paying the mortgage, the last payment being made on 26.1.09. She has been unable to work since the beginning of November but has been able to manage on her wages and financial support from Christopher, which has now come to an end. She advises she had had to leave her job to care for her children. Katie also states that their separation is temporary and Christopher hopes to return home after his court case, which is due to be heard in April. Due to the nature of and seriousness of the offences the DM does not heed the claimant's intentions because

by committing the offences Christopher inferred his intention to abandon Katie and that the abandonment was complete when he was arrested and charged. The DM decides Katie has been abandoned.

Housing costs payable at the start of the claim

44483 Where a claimant or their partner has reached the qualifying age for SPC (see DMG Chapter 77), all new or existing housing costs are paid in full from the first day of entitlement to ESA(IR)¹.

1 ESA Regs, Sch 6, para 10(1)(a) & (2)(a)

44484 All claimants should be paid housing costs for

1. co-ownership schemes (see DMG 44438)
2. crown tenancies (see DMG 44439)
3. tents and their sites¹ (see DMG 44445)

from the first day of entitlement to ESA.

1 ESA Regs, Sch 6, para 10(1)(b) & (2)(b)

Start date for existing housing costs

44485 **[See Memo DMG 43/09]** The amount of the award for existing housing costs is¹

1. nil where the claimants have been entitled to ESA(IR), JSA(IB) or IS for less than eight weeks² **or**
2. 50% of the amount in **3.** where claimants have been entitled to ESA(IR), JSA(IB) or IS for a continuous period of eight weeks but less than 26 weeks³ **or**
3. for claimants who have been entitled to ESA(IR), JSA(IB) or IS for a continuous period of 26 weeks or more or SPC for any period⁴
 - 3.1 100% of the amount calculated by applying the standard rate to the eligible capital currently owed on eligible loans (see DMG 44319) **and**
 - 3.2 the amount of any
 - 3.2.a rent or ground rent relating to a long tenancy **and**
 - 3.2.b service charges **and**
 - 3.2.c rentcharges.

*1 ESA Regs, Sch 6, para 8(1); 2 Sch 6, para 8(1)(c) & para 20(1)(c);
3 Sch 6, para 8(1)(b) & para 20(1)(c); 4 Sch 6, para 8(1)(a) & para 20(1)(c)*

Start date for new housing costs

44486 **[See Memo DMG 43/09]** The amount of the award for new housing costs is¹

1. nil where claimants have not been continuously entitled to ESA(IR), JSA(IB) or IS for 39 weeks²
2. for claimants who have been entitled to ESA(IR), JSA(IB) or IS for a continuous period of 39 weeks or more or SPC for any period³
 - 2.1 100% of the amount calculated by applying the standard rate to the eligible capital currently owed on eligible loans (see DMG 44319) **and**
 - 2.2 the amount of any
 - 2.2.a rent or ground rent relating to a long tenancy **and**
 - 2.2.b service charges **and**
 - 2.2.c rentcharges.

1 ESA Regs, Sch 6, para 9(1); 2 Sch 6, para 9(1)(b) & para 20(1)(c); 3 Sch 6, para 9(1)(a) & 20(1)(c)

Starting date of entitlement - waiting days

44487 A claimant is not entitled to ESA when serving waiting days¹ (see DMG 41101 et seq). As a result waiting days do not count towards any housing costs qualifying period.

1 WR Act 07, Sch 2, para 2

New and existing housing costs - general provisions

44488 Where

1. a person enters into a new agreement on or after 2.10.95 **and**
2. that agreement is for a home **and**
3. another agreement entered into before 2.10.95 continues independently of the new agreement

the housing costs for the new agreement are new housing costs. The housing costs for the earlier agreement are existing housing costs. The total housing costs are the two amounts added together¹.

1 ESA Regs, Sch 6, para 12(1)

44489 - 44495

Transitional protection

Loans that are not qualifying loans after 1.10.95

44496 Claimants

1. who transfer from IS to ESA(IR) **and**
2. whose IS housing costs include an amount for interest on a loan in DMG 44497 that is protected by the saving provision¹

will be entitled to interest on that loan as long as the conditions of the savings provision are still satisfied¹. Appendix 3 contains the guidance that was available on loans that were eligible before 2.10.95 but not eligible after that date.

1 ESA Regs, Sch 6, para 20(2)

Conditions of saving provision

44497 From 2.10.95 the following loans, or parts of loans that would have been eligible before that date, are not qualifying loans. These are loans for¹

1. interest accruing on certain deferred interest loans²
2. interest accruing in the first sixteen weeks of claims due to
 - 2.1 only 50% housing costs being paid **or**
 - 2.2 no housing costs being paid as the claimant did not qualify for IS when only entitled to 50% housing costs
3. home improvements and repairs that were eligible before 2.10.95 but are not now eligible (see DMG 44405)
4. an item other than acquiring an interest in the home or repaying a loan used to acquire an interest in the home that
 - 4.1 is secured on the home **and**
 - 4.2 has been taken out solely by or jointly with a former partner **and**
 - 4.3 the former partner will not or cannot pay the interest on **and**
 - 4.4 the claimant has to pay the interest on to remain in the home.

1 ESA Regs, Sch 6, para 20(2); 2 R(IS) 14/01

44498 The savings provision allows the loans or parts of loans in DMG 44497 eligible before 2.10.95 to be qualifying loans after that date¹.

1 ESA Regs, Sch 6, para 20(2)

- 44499 A loan will be a qualifying loan if¹
1. the IS claim was made before 2.10.95 **and**
 2. in the benefit week including 1.10.95 the applicable amount included interest on a loan as in DMG 44497 **and**
 3. the claimant continued to be
 - 3.1 in receipt of either JSA(IB) or IS **or**
 - 3.2 treated as in receipt of JSA(IB) or IS because of the following linking rules
 - 3.2.a breaks in entitlement to JSA(IB) or IS (see DMG 44531) **or**
 - 3.2.b claimant previously a member of a couple or polygamous marriage (see DMG 44574) **or**
 - 3.2.c change of claimant within a couple or polygamous marriage (see DMG 44576).

Note: The claimant must also continue to satisfy any conditions that relate to the loan, had the former rules remained in force¹.

1 ESA Regs, Sch 6, para 20(2)

Add back

- 44500 IS claimants in receipt of loan interest on 2.10.95 would have had those costs reassessed using the standard interest rate. Those claimants whose housing costs reduced because of the reassessment were entitled to an add back¹.

1 IS (Gen) Regs, Sch 3, para 7(1)

- 44501 ESA claimants

1. who transfer from IS or JSA(IB) **and**
2. whose IS or JSA(IB) housing costs included an add back

have the amount of the add back included in their ESA(IR) housing costs. The ESA(IR) add back is subject to the same conditions as the IS or JSA(IB) add back¹.

1 ESA Regs, Sch 6, para 20(1)(b)

44502 - 44505

Calculation of add back

- 44506 Where the amount of interest on a loan payable in the IS benefit week that included 1.10.95 ("the first benefit week") is more than the amount of housing costs payable in the next benefit week ("the second benefit week") an addition called an add back was made¹.

1 IS (Gen) Regs, Sch 3, para 7(1)

- 44507 The add back¹ is the difference between the amount of loan interest payable in the
1. first benefit week **and**
 2. second benefit week.

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

More than one loan

- 44508 The add back is calculated separately for each loan¹. Reduction of the add back on one loan does not affect the add back on another loan.

1 IS (Gen) Regs, Sch 3, para 7(9)

Erosion of add back

- 44509 The add back will be eroded by the amount of any increase in the amount of housing costs compared with those costs on the previous week¹.

1 IS (Gen) Regs, Sch 3, para 7(4A)

Add back reduced to nil

- 44510 When an add back is reduced to nil it cannot be re-applied¹.

1 IS (Gen) Regs, Sch 3, para 7(4)

Breaks in entitlement to ESA, JSA and IS

- 44511 Separate periods of entitlement to ESA, IS or JSA may link. The normal rule is that where a claimant or their partner

1. is entitled to ESA(IR), JSA(IB) or IS **and**
2. is entitled to an add back **and**
3. ceases to be entitled to ESA(IR), JSA(IB) or IS for a continuous period of **twelve weeks or less**

they will continue to qualify for an add back on the new claim for ESA, JSA or IS¹.

1 ESA Regs, Sch 6, para 20(1)(b)

- 44512 If the break in entitlement to ESA(IR), JSA(IB) or IS is more than twelve weeks an add back is not normally payable on the new claim¹. The exception is where an IS claimant or the partner of an IS or JSA(IB) claimant is a WtWB. See DMG 44513 for guidance in such cases.

1 ESA Regs, Sch 6, para 20(1)(b)

Welfare to work beneficiaries - linking period

44513 The normal linking period for separate periods of entitlement to ESA, IS or JSA is twelve weeks (see DMG 44511). But where the claimant or the partner of a claimant

1. is a WtWB **and**
2. is entitled to IS or JSA(IB) **and**
3. is entitled to an add back **and**
4. ceases to be entitled to IS or JSA(IB) for a continuous period of **104 weeks or less**

they will continue to qualify for an add back on the new claim for IS or JSA¹.

1 IS (Gen) Regs, Sch 3, para 7(5) & (10); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

44514 - 44518

Claimant no longer responsible for loan that has an add back

44519 When claimants are no longer responsible for a loan they lose any add back connected to it. Claimants do not regain the add back if they become liable for that or another loan¹.

1 IS (Gen) Regs, Sch 3, para 7(6); ESA Regs, Sch 6, para 20(1)(b)

Partner previously responsible for a loan that had an add back

44520 The partner of a person to whom DMG 44500 applies may make a claim for ESA. The normal rule is that where

1. the applicable amount includes an amount for existing housing costs **and**
2. those housing costs had previously been met in the partner's claim **and**
3. the claim was made not more than **twelve weeks** after the last day the partner was entitled to those costs

the housing costs should be determined as though the claimant was responsible for them immediately before 2.10.95¹.

1 IS (Gen) Regs, Sch 3, para 7(7); ESA Regs, Sch 6, para 20(1)(b)

44521 The exception is where the claimant or their partner is a WtWB. See DMG 44522 for guidance in such cases.

Welfare to work beneficiaries

44522 Where the partner of a person to whom DMG 44500 applies makes a claim for ESA **and**

1. the claimant or their partner is a WtWB **and**
2. the applicable amount includes an amount for existing housing costs **and**
3. those housing costs had previously been met in the partner's claim **and**
4. the claim was made not more than **104 weeks** after the last day the partner was entitled to those costs

the housing costs should be determined as though the claimant was responsible for them immediately before 2.10.95¹.

1 IS (Gen) Regs, Sch 3, para 7(7) & (10); ESA Regs, Sch 6, para 20(1)(b)

50% housing costs in “first benefit week”

44523 Where in the “first benefit week” housing costs were being paid at 50% of the allowable amount of interest because the claimant had not been in receipt of IS for 16 weeks, that amount continued to be paid until 100% housing costs would have been payable.

44524 The add back was calculated as though 100% housing costs were payable in the “second benefit week” and awarded from the benefit week that 100% loan interest became payable¹.

1 IS (Gen) Regs, Sch 3, para 7(8); ESA Regs, Sch 6, para 20(1)(b)

Example

On a claim made in July 1995 Sally is receiving 50% eligible loan interest of £41 per week. When her housing costs are reassessed using the standard interest rate they are £76 per week.

If Sally had been receiving 100% housing costs an add back of £6 per week would have been payable (£82 - £76 = £6). £41 per week continues to be paid until the date in November when Sally qualifies for 100% loan interest. At this date the new housing costs calculated using the standard interest rate become payable along with the add back (£76 + £6), £82 per week.

44525 - 44530

Linking rules

Breaks in entitlement

- 44531 Breaks in entitlement can affect the claimant's housing costs. This is because most eligible housing costs have a QP (see DMG 44471 et seq). But there are special rules under which claimants can be treated as entitled to ESA(IR), JSA(IB), IS or SPC in certain circumstances.
- 44532 If there are breaks in entitlement, claimants can be treated as entitled to ESA(IR), JSA(IB), IS or SPC for periods¹ of
1. twelve weeks or less (see DMG 44533)
 2. 26 weeks or less, in certain circumstances (see DMG 44534)
 3. more than 26 weeks, in certain circumstances (see DMG 44537)
 4. 52 weeks or less (see DMG 44546)
 5. 104 weeks or less (see DMG 44550).

1 ESA Regs, Sch 6, para 15

Twelve week linking periods

- 44533 Where there are breaks in entitlement to ESA(IR), JSA(IB), IS or SPC claimants are treated as being continuously in receipt of, and entitled to ESA(IR) 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 ESA(IR), JSA(IB), IS or SPC **and**
 - 2.2 that period is immediately between two periods when
 - 2.2.a they were in receipt of ESA(IR), JSA(IB), IS or SPC **or**
 - 2.2.b they were treated as in receipt of ESA(IR), JSA(IB), IS or SPC **or**
 - 2.2.c they are treated as entitled to ESA(IR), JSA(IB), IS or SPC for certain reasons because their capital exceeds £16,000 or their income exceeds the applicable amount (see DMG 44570 - 44573) **or**
 - 2.2.d entitlement to ESA(IR), JSA(IB), IS or SPC is decided on revision, supersession or appeal¹.

1 ESA Regs, Sch 6, para 15(1)(a) & 15(5)

26 week linking periods

44534 Claimants can be treated as entitled to ESA(IR), JSA(IB), IS or SPC 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 44535).

Payments from insurance policies against the loss of employment

- 44535 Claims should be linked together and the weeks between them ignored where¹ the
1. claimant or partner 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 ESA(IR), JSA(IB), IS or SPC which included housing costs **and**
 2. previous award stopped not more than 26 weeks before the date the new claim was made.

1 ESA Regs, Sch 6, para 15(13) & (14)

44536

More than 26 weeks

- 44537 Claimants can be treated as entitled to ESA(IR), JSA(IB), IS or SPC 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 44538) **or**
 2. they have income from mortgage payment protection insurance (see DMG 44539).

Employment rehabilitation centres and specified training

- 44538 A claimant should be treated as continuously in receipt of, and entitled to, ESA(IR), JSA(IB), IS or SPC for any period that they¹
1. are not (or no longer) entitled to ESA(IR), JSA(IB), IS or SPC **and**
 2. are not entitled because they or their partner are
 - 2.1 participating in arrangements for specified training **or**
 - 2.2 attending a course at an employment rehabilitation centre.

1 ESA Regs, Sch 6, para 15(3) & (5); E & T Act 73, s 2

Payments from mortgage payment protection insurance

44539 Claimants who

1. are treated as entitled to ESA(IR), JSA(IB), IS or SPC solely because their income exceeds their applicable amount (see DMG 44570 et seq) **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 interest

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

1 ESA Regs, Sch 6, para 15(12)

44540 - 44541

52 week linking periods

44542 A claimant can be treated as entitled to ESA(IR), JSA(IB), IS or SPC for periods of up to 52 weeks¹ where the claimant or their partner

1. had already qualified for housing costs before losing entitlement to ESA(IR), JSA(IB), IS or SPC² because either partner had
 - 1.1 started remunerative work
 - 1.2 started self employment
 - 1.3 an income from employment that exceeded their applicable amount (see DMG 44545) **or**
2. is participating in an ND option, an EZ scheme, or a prescribed government scheme³ (see DMG 44557).

1 ESA Regs, Sch 6, para 15(16); 2 para 15(18); 3 para 15(17)

Qualifying period for housing costs already served

44543 Most eligible housing costs have a QP (see DMG 44471 et seq). Such a QP may have to be served again following a break in entitlement to ESA(IR), JSA(IB), IS or SPC. But there is a linking rule for cases where the QP has already been served when entitlement to ESA(IR), JSA(IB), IS or SPC ends.

44544 The linking rule applies if¹, immediately before entitlement ended, housing costs

1. were payable on the previous award (in full or in part) **or**
2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 44586 et seq).

1 ESA Regs, Sch 6, para 15(18)

44545 In such a case, treat the claimant as continuously in receipt of ESA(IR), JSA(IB), IS or SPC 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**
 - 1.3 was taking active steps to become employed or S/E under a prescribed government scheme **and**
2. the claimant or partner
 - 2.1 is in remunerative work **or**
 - 2.2 has income that is equal to or exceeds the applicable amount.

1 ESA Regs, Sch 6, para 15(17)

44546 Entitlement to ESA(IR), JSA(IB), IS or SPC may end when a claimant or their partner starts on an ND option, an employment zone programme or a prescribed government scheme¹. This is because

1. the person may be in remunerative work **or**
2. their income may be equal to or exceed the applicable amount.

1 ESA Regs, Sch 6, para 15(17)(c)

44547 There is a linking rule to ensure that the benefit position of such a person is protected if they return to ESA(IR), JSA(IB), IS or SPC. The linking rule applies if¹ 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)

immediately before entitlement ended.

1 ESA Regs, Sch 6, para 15(18)

44548 In such a case, treat the claimant as continuously in receipt of ESA(IR), JSA(IB), IS or SPC for any period of 52 weeks or less¹ during which they were not entitled because the claimant or partner is

1. participating in²
 - 1.1 an ND option (apart from the employed employment option of NDYP)
 - 1.2 an employment zone programme **or**
 - 1.3 the EO(S/E) **or**
 - 1.4 the intensive activity period (IAP) of ND25+³.

1 ESA Regs, Sch 6, para 15(16)(a) & (17); 2 Sch 6, para 15(17)(c); 3 JSA Regs, reg 75(1)(a)(iv)

44549

104 week linking periods

44550 A claimant can be treated as entitled to ESA(IR), JSA(IB), IS or SPC for periods of up to 104 weeks¹ where the claimant is a work or training beneficiary (see DMG 44551).

1 ESA Regs, Sch 6, para 15(15)

Work or training beneficiaries

44551 Entitlement to ESA(IR), JSA(IB), IS or SPC may end when a claimant moves into work following a period of limited capability for work. This is because

1. their income may exceed the applicable amount **or**
2. the person may be in remunerative work.

44552 Special linking rules exist to ensure that the benefit position of such a person is protected if they return to benefit on the grounds of limited capability. To qualify for the special linking rules, a claimant has to

1. be a work or training beneficiary (see DMG Chapter 42)¹ **and**
2. again become a person with LCW².

1 ESA Regs, Sch 6, para 1(3A); 2 WR Act 07, s 8

44553 In such a case, treat the claimant as continuously in receipt of, and entitled to, ESA(IR), JSA(IB), IS or SPC for any period of 104 weeks or less¹

1. during which they were not in receipt of ESA(IR), JSA(IB), IS or SPC **and**
2. that is immediately between two periods when
 - 2.1 they were in receipt of ESA(IR), JSA(IB), IS or SPC **or**
 - 2.2 they were treated as in receipt of ESA(IR), JSA(IB), IS or SPC **or**
 - 2.3 they are treated as entitled to ESA(IR) for certain reasons (see DMG 44570 - 44573) **or**
 - 2.4 entitlement to ESA(IR), JSA(IB), IS or SPC is decided on appeal or revision.

1 ESA Regs, Sch 6, para 15(1)(a) & (15)

44554 This means that work or training beneficiaries 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 44533).

44555 - 44556

New deal options, employment zone and prescribed government schemes

44557 Entitlement to ESA(IR), JSA(IB), IS or SPC may end when a claimant or their partner starts on an ND option, an EZ programme or a prescribed government scheme. This is because

1. the person may be in remunerative work **or**
2. their income may be equal to or exceed the applicable amount.

44558 There is a linking rule to ensure that the benefit position of such a person is protected if they return to ESA(IR), JSA(IB), IS or SPC. The linking rule applies if¹ 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 44586 et seq)

immediately before entitlement ended.

1 ESA Regs, Sch 6, para 15(18)

44559 In such a case, treat the claimant as continuously in receipt of ESA(IR), JSA(IB), IS or SPC for any period of 52 weeks or less¹ during which they were not entitled because the claimant or partner is

1. participating in²
 - 1.1 an ND option (apart from the employed employment option of NDYP)
 - 1.2 an employment zone programme **or**
 - 1.3 the EO(S/E) **or**
 - 1.4 the intensive activity period (IAP) of ND25+³.

1 ESA Regs, Sch 6, para 15(16) & (17); 2 Sch 6, para 15(17)(c); JSA Regs, Sch 2, para 13(14)(c) & 18(1)(c); 3 reg 75(1)(a)(iv)

Not entitled on revision, supersession or appeal

44560 A claimant is treated as not in receipt of ESA(IR), JSA(IB), IS or SPC for any period that entitlement is found not to exist on revision, supersession or appeal¹ unless that period falls in a period in DMG 44533 2.²

1 ESA Regs, Sch 6, para 15(1)(b); 2 Sch 6, para 15(5)

Participation in new deal and employment zone schemes

44561 Claimants should be treated as continuously in receipt of and entitled to ESA(IR), JSA(IB), IS or SPC for any period that they¹

1. are not (or no longer) entitled to ESA(IR), JSA(IB), IS or SPC **and**

2. are not entitled because they or their partner 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.

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

1 ESA Regs, Sch 6, para 15(4) & (5)

44562 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 ESA(IR), JSA(IB), IS or SPC within twelve weeks of leaving that option or scheme (see DMG 44533)¹.

1 ESA Regs, Sch 6, para 15(1)(a) & (5)

JSA(Cont)

44563 A person may have been getting JSA(Cont) immediately before going on an ND option or EZ scheme. Such a person may then be entitled to ESA(IR) at the end of that option or scheme. In such a case treat the claimant as entitled to ESA(IR) for the

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

1 ESA Regs, Sch 6, para 15(7); 2 para 15(4) & (5)

Change of claimant

44564 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 ESA(IR) 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, the claimant's partner was in receipt of ESA(IR) 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 ESA Regs, Sch 6, para 15(1)(f)

44565 - 44569

Capital exceeds £16,000/income exceeds applicable amount

44570 Claimants who are not entitled to ESA(IR) only because

1. their capital exceeds £16,000 **or**
2. their income or ESA(Cont) is equal to or exceeds their applicable amount **or**
3. both 1. and 2. apply

should be treated as entitled to ESA(IR) throughout any continuous period of not more than 39 weeks provided that the further conditions in DMG 44571 are satisfied.

Note 1: The period of not more than 39 weeks can fall between periods of entitlement to JSA(IB), SPC and IS².

Note 2: It is not necessary for a claim to have been made for a person to benefit from this provision.

1 ESA Regs, Sch 6, para 15(8) & (9); 2 Sch 6, para 20(1)(c)

44571 The further conditions are that during the period of not more than 39 weeks claimants are

1. entitled to ESA(Cont), JSA(Cont), SSP or IB **or**
2. registering for work or submitting medical certificates and are entitled to credits

on a day to day basis¹.

1 ESA Regs, Sch 6, para 15(8), (9) & 20(1)(c)

Lone parents and carers

44572 Lone parents and carers may not be entitled to ESA(IR) because¹

1. their capital exceeds £16,000 **or**
2. their income is equal to or exceeds the applicable amount **or**
3. both 1. and 2. apply.

Note: For the meaning of carer see DMG 20116 - 20123.

1 ESA Regs, Sch 6, para 15(8)

44573 In such a case treat the claimant as entitled to ESA(IR) throughout any continuous period of not more than 39 weeks¹

1. following the refusal of a claim for ESA(IR) 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 in receipt of DLA (except where they would be entitled to IS) **or**
- 2.4 a F/T student in receipt of PIP
- 2.5 a F/T student in receipt of AFIP
- 2.6 absent from GB, except on a temporary basis (see DMG 071940 and 072132 et seq).

1 ESA Regs, Sch 6, para 15(10) & (11)

Treated as in receipt of and entitled to ESA(IR) on another person's claim

Claimant previously a member of a couple or polygamous marriage

44574 A claimant should be treated as being in receipt of and entitled to ESA(IR) 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 ESA(IR), IS, JSA(IB) or SPC for them both for a past period **and**
 - 3. is no longer a member of the couple or polygamous marriage **and**
 - 4. claims ESA(IR) within
 - 4.1 twelve weeks **or**
 - 4.2 in the circumstances set out in DMG 44547 et seq, 52 weeks
- of ceasing to be a member of that couple or polygamous marriage¹.

1 ESA Regs, Sch 6, para 15(1)(c), 15(15) to 15(18)

Claimant becomes a member of a couple or polygamous marriage

44575 A claimant should be treated as having been in receipt of and entitled to ESA(IR) for the same period as their partner if¹

- 1. the claimant's partner has for a past period been paid IS as a
 - 1.1 single claimant **or**
 - 1.2 lone parent **and**
- 2. the claimant claims ESA(IR) within
 - 2.1 twelve weeks **or**
 - 2.2 in the circumstances set out in DMG 44547 et seq, 52 weeks

of becoming a member of a couple or polygamous marriage.

1 ESA Regs, Sch 6, para 15(1)(d)

Change of claimant

- 44576 A claimant should be treated as being in receipt of and entitled to ESA(IR) 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 ESA(IR), IS, JSA(IB) or SPC 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 44564 if the change of claimant happens when a ND programme or EZ scheme ends.

1 ESA Regs, Sch 6, para 15(1)(e)

Change of family

- 44577 A claimant **X** should be treated as being in receipt of and entitled to ESA(IR) 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 ESA(IR), IS, JSA(IB) or SPC 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 ESA(IR) within
 - 4.1 twelve weeks **or**
 - 4.2 in the circumstances set out in DMG 44547 et seq, 52 weeksof **Y** ceasing to be a entitled to ESA(IR), IS, JSA(IB) or SPC.

1 ESA Regs, Sch 6, para 15(1)(g) & 15(15) to (18)

Previous entitlement to other income-based benefits

- 44578 Where a claimant or partner was previously entitled to either IS, JSA(IB) or SPC **and**
1. the previous award of the other income-based benefit included an amount in respect of housing costs **and**
 2. there has been no change in circumstance since those housing costs were calculated **and**

3. it is

3.1 12 weeks or less since entitlement to the other income-based benefit ended **or**

3.2 26 weeks or less where DMG 44534 or 44535 applies

the amount of housing costs which should be awarded for ESA(IR) should be the same as for the previous award of the other income-based benefit¹.

1 ESA Regs, Sch 6, para 3(1) & 3(2)

44579 If there has been a change of circumstances since the previous award of the income-based benefits **and**

1. the change would mean that housing costs will either reduce or increase **and**

2. there has not been a reduction in the amount of the outstanding loan

housing costs for ESA(IR) should take into account that change¹.

1 ESA Regs, Sch 6, para 3(3)

44580 - 44585

Non-dependant deductions

Introduction

44586 Where non-dependants live with the claimant, a deduction from the allowable housing costs may be appropriate¹. A deduction should be considered for each non-dependant or group of non-dependants.

1 ESA Regs, Sch 6, para 19

Definition of a non-dependant

44587 With the exception of those people mentioned in DMG 44596, non-dependants¹ are people aged 18 or over who

1. normally reside with the claimant **or**
2. the claimant normally resides with.

1 ESA Regs, reg 2(1) & 71

Meaning of normally resides

44588 A person normally resides where they usually live. Periods of residence or absence that are of an exceptional nature should be disregarded. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

44589 When considering where a person normally resides the DM should have regard to

1. the total amount of time spent in a place
2. how often time is spent in a place
3. how permanent the stay is thought to be
4. the person's intentions
5. individual circumstances
6. what degree the accommodation is shared
7. the services provided
8. whether the person owns or rents any other accommodation.

Example 1

Oonagh and her sister Mairead share a flat on which Oonagh has a mortgage. Mairead goes to stay with their father to look after him while he is recovering from a major operation. She is away for three weeks. While Mairead is staying with her father Oonagh falls poorly and claims ESA. The DM decides that Mairead normally lives with Oonagh and is a non-dependant. The time she spends at her father's is exceptional.

Example 2

Donna normally lives alone in her own flat. Her brother Lawrence comes to stay with her for a week at a time every three months. He does not normally live with Donna and is not a non-dependant.

Sharing the accommodation

44590 A person resides with another only if they share any accommodation and in this context, people should be regarded as sharing the accommodation unless¹

1. the only shared area is a
 - 1.1 bathroom **or**
 - 1.2 lavatory **or**
 - 1.3 communal area **or**
2. they are separately liable to make payments to the landlord for that accommodation.

1 ESA Regs, reg 71(6); R(IS) 12/96

44591 A communal area is¹ an area of common access (not a room) including

1. halls
2. passageways
3. stairways
4. rooms of common use in sheltered accommodation.

1 ESA Regs, reg 71(7)

Example

Katja lives in a self-contained granny flat attached to her daughter's house. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter's house and the front door of the property is shared. Everything else is separate.

The hall is the only shared area and is a communal area. Katja does not share the accommodation and does not normally reside with her daughter.

44592 - 44595

People who are not non-dependants

44596 People who normally reside with the claimant, or who the claimant normally resides with, and who are not non-dependants are

1. any person aged under 18¹
2. any member of the claimant's family²
3. any child or young person who is living with the claimant but who is not a member of the claimant's household³ (see DMG Chapter 43)
4. a person or their partner who

4.1 lives in, to care for the claimant or partner **and**

4.2 is engaged by a

4.2.a charitable **or**

4.2.b voluntary organization

which makes a charge to the claimant or partner for the person's services. A voluntary organization is a non-profit making organization that is not a public authority or LA⁴

5. any person who is not a close relative (see DMG 44208) of the claimant or partner, who

5.1 is liable to make payments on a commercial basis to the claimant or partner (see DMG 44140) for occupation of the dwelling⁵ **or**

5.2 the claimant or partner is liable to make payments to on a commercial basis (see DMG 44140) for the occupation of the dwelling⁶

6. any person who is not a close relative, who is a member of the household of a person to whom **5.** applies⁷

7. a person, or their partner (not a close relative except where **8.** applies), who jointly occupies the claimant's dwelling and who is

7.1 a co-owner of the dwelling with the claimant or partner **or**

7.2 jointly liable with the claimant or partner to make payments to a landlord for the occupation of the dwelling⁸

8. a close relative who satisfies **7.** and the claimant's or partner's co-ownership or joint liability arose

8.1 before 11.4.88 **or**

8.2 if later than 11.4.88, on or before the date on which the claimant or partner first occupied the dwelling⁹.

Note: When considering **7.1** it does not matter if there are other co-owners.

1 ESA Regs, Sch 6, para 19(1) & (2); *2* reg 71(2)(a); *3* reg 71(2)(b);
4 reg 71(2)(c) & (d); *5* reg 71(3)(a); *6* reg 71(3)(b); *7* reg 71(3)(c); *8* reg 71(4); *9* reg 71(5)

Amount of deduction

44597 The amount of deductions for non-dependants aged 18 or over depends on the

1. circumstances of the non-dependant **and**
2. amount of the non-dependant's gross weekly income¹.

See Appendix 5 to this Chapter for the rates of non-dependant deductions. See Appendix 2 for the meaning of remunerative work².

1 ESA Regs, Sch 6, para 19(1) & (2); 2 Sch 6, para 2

Non-dependants who have partners

44598 A non-dependant may be a member of a couple or polygamous marriage. In such a case

1. only one deduction should be made **and**
2. where different amounts would apply to each partner or additional spouse, the higher of those deductions should be applied¹.

1 ESA Regs, Sch 6, para 19(3)

44599 If any one of a couple or polygamous marriage is aged 18 or over a deduction should be made unless a deduction is not appropriate (see DMG 44606).

Calculation of income

44600 The joint income of members of a couple or polygamous marriage should be considered¹.

1 ESA Regs, Sch 6, para 19(4)

Non-dependant of more than one joint occupier

44601 Where people are non-dependants of more than one joint occupier, deductions should be apportioned between the joint occupiers, taking account of the

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

Note 1: When apportioning the deduction, DMs should note that the amount to be apportioned should be rounded to the nearest penny.

Note 2: All members of a couple or polygamous marriage should be regarded as one joint occupier.

1 ESA Regs, Sch 6, para 19(5)

44602 - 44605

Non-dependant deduction not appropriate

44606 [\[See DMG Memo 6/17\]](#) Deductions should not be made if

1. the claimant or any partner is¹
 - 1.1 **certified by a consultant ophthalmologist as blind or severely sight impaired or**
 - 1.2 **within 28 weeks of ceasing to be so certified or**
 - 1.3 **receiving for themselves or their partner**
 - 1.3.a **“AA” or**
 - 1.3.b **the care component of DLA or**
 - 1.3.c **the daily living component of PIP or**
 - 1.3.d **AFIP or**
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 IS or**
 - 2.5 **in receipt of an award of ESA(IR) which does not include a component or**
 - 2.6 **people for whom claimants have a deduction made in the calculation of any rent rebates or allowances in HB 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**
 - 2.8.a **have been patients for more than 52 weeks (see DMG Chapter 54) or**

2.8.b are prisoners (see DMG Chapter 54)

2.9 in receipt of SPC.

2.10 entitled to UC **and**

2.10.a is aged less than 25 **and**

2.10.b does not have any earned income⁴

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.

1 ESA Regs, Sch 6, para 19(6); 2 Sch 6, para 19(7); 3 Sch 6, para 19(7)(i); E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 1990, s 2; 4 Sch 6, para 19(7)(ha)

Participation in new deal for young people

44607 If a non-dependant goes on to NDYP a deduction from allowable housing costs should be considered as normal.

44608 - 44610

Calculation of a non-dependant's gross weekly income

44611 **[See Memo DMG 14/17]** [\[See Memo DMG 20/17\]](#) 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 51), 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 (see DMG 51343)
 - 3.5 the Eileen Trust
 - 3.6 the Independent Living Fund (2006)
 - 3.7 MFET Limited
 - 3.8 the Skipton Fund
 - 3.9 the Caxton Foundation.

4. PIP

5. AFIP

Note: 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 ESA Regs, Sch 6, para 19(8)

44612 The DM is entitled to request evidence from claimants regarding the gross weekly income of a non-dependant and that, in the absence of that evidence, an adverse assumption may be made. However, any assumption with regards to the gross weekly income must be realistic and take into account the circumstances of the case.

Example

Henry is in receipt of ESA(IR). He shares his home with his adult daughter, Ginny, who works 20 hours a week in a clothes shop. Ginny refuses to let Henry know how much she earns. As a result Henry can't provide a figure for the DM to calculate the appropriate non-dependant deduction. The DM decides that the appropriate non-dependant deduction should be based on what a shop worker would earn for a 20 hour week.

44613 - 44620

Questions that cannot be decided immediately

44621 Where a DM is

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

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

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

44622 If there are several housing costs on the claim the applicable amount should include only those housing costs where there is sufficient information to make a decision.

Example

Rose has two loans, one to buy her home and one for home improvements. There is also a service charge that includes several items. Sufficient information is available for the DM to determine housing costs on part of the loan used for home improvements and some, but not all, of the individual items within the service charge.

The DM can decide the ESA claim. The applicable amount includes an amount for those housing costs that can be decided. No account is taken of the housing costs on which there is insufficient information.

44623 The decision may be revised or superseded if further information about any of the claimant's housing costs is received after the ESA claim or question has been decided¹.

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

44524 - 44630

Entitlement to the components

ESA(IR) and ESA(Cont)

General

44631 Both ESA(Cont) and ESA(IR) attract entitlement to the support component¹.

Note: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

Example

Cindy, who is 23, claims and is entitled to ESA from 21.4.17 at the assessment phase rate for claimants aged under 25. Following application of the WCA, Cindy is found to have LCW and is placed in the WRAG. Cindy's award of ESA is superseded to increase the applicable amount to the main phase rate from 28.7.17. The WRAC is not included.

1 WR Act 07, s 2(1)(b); s 4(2)(b)

44632 The support component is based on the claimant's entitlement. There is no couple rate and the circumstances of any partner are not relevant to the claimant's entitlement to the support component¹.

1 ESA Regs, reg 67(3) & Sch 4, paras 12 & 13

44633 Except for prescribed circumstances, there is no entitlement to the support component during the assessment phase. Once entitlement to the component is established and it is in payment then the claimant is on main phase ESA¹.

1 ESA Regs, reg 2(1)

The support component

44634 The conditions of entitlement to the support component¹ are that

1. the assessment phase has ended² unless the circumstances in DMG 44636 applies
2. the claimant has LCWRA³ (see DMG Chapter 42) **and**
3. any other conditions as may be prescribed⁴.

Note 1: For the purposes of **2.** no component is payable after a continuous period of more than 52 weeks as a patient (see DMG 54109).

Note 2: For the purposes of **3.** no conditions have yet been prescribed.

1 WR Act 07, s 2(2) & s 4(4); 2 s 2(2)(a) & s 4(4)(a); 3 s 2(2)(b) & s 4(4)(b); 4 s 2(2)(c) & s 4(4)(c)

44635

Entitlement to the support component before the end of the assessment phase

44636 The condition that the assessment phase must end before the support component can be paid does not apply in a relevant linked case¹. A relevant linked case is a case where²

1. on a repeat claim, the PLCWs link³ **and**
2. the conditions in paragraph DMG 44637, 44638, 44640 or 44642 apply.

1 ESA Regs, reg 7(1)(b); 2 reg 7(1A); 3 reg 145(1)

Note: A relevant linked case does not happen where the PLCW arises as a result of the application of reg 147A(2)¹.

1 ESA Regs, reg 7(2)

Case 1

44637 Where

1. in the previous PLCW, the claimant was entitled to ESA including the support component **and**
2. that entitlement ended other than following application of the WCA
3. a repeat claim is made where the PLCW links with the previous entitlement

the claimant is entitled to the support component from the first day of entitlement to ESA on the new claim, even though the WCA has not been carried out¹. See DMG 44644 for guidance on the LCWRA determination.

1 ESA Regs, reg 7(1B)(a)

Example 1

Constance is entitled to ESA(IR) including the support component. On 23.11.12 she is joined by her partner Oliver, who is in full-time work, and her ESA entitlement is terminated. She remains entitled to NI credits on the basis that she would have LCW if she were entitled to ESA. On 18.1.13 the relationship breaks down and Oliver leaves the household. Constance makes a repeat claim for ESA. The DM treats her as having LCW, and awards her ESA including the support component from 19.1.13, and refers her for the WCA.

Example 2

Gabriel has been entitled to ESA, including the support component, since 14.6.10. He is referred for a further routine WCA. The award is terminated from 7.6.12 after the DM determines that Gabriel failed without good cause to return the questionnaire, and is treated as not having LCW. Gabriel makes a further claim for ESA on 25.7.12 which is accompanied by evidence of LCW and the questionnaire.

The DM awards him ESA including the support component from 25.7.12. Gabriel is referred for a medical examination as part of the normal WCA process.

Case 2

44638 Where

1. the claimant was entitled to ESA for 13 weeks or longer **and**
 2. that entitlement ended because the claimant was
 - 2.1 found not to have LCW **or**
 - 2.2 was treated as not having LCW **and**
 3. a repeat claim is made where the PLCW links with the previous entitlement
- the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, LCW and LCWRA¹. This does not include being treated as having LCW pending the WCA².

1 ESA Regs, reg 7(1B)(b), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(b)(iv) & 30

44639 If it is determined that the claimant has, or is treated as having, LCW and LCWRA, the decision awarding ESA is revised to pay the support component from the first day of entitlement¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

1 SS CS (D&A) Regs, reg 3(5F)

Example 1

Miriam's award of ESA began on 25.1.12. It is terminated from 5.6.12 when the DM finds that she does not have LCW following application of the WCA. On 27.6.12 Miriam makes a further claim for ESA, which includes evidence of a new health condition. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Miriam has LCW, but does not have LCWRA. Miriam is placed in the WRAG, but the decision awarding ESA is not revised¹ as she is not entitled to the support component.

Example 2

Tom has been entitled to ESA since January 2012. He starts work on 21.5.12. The DM determines that the work is not exempt work, and treats Tom as not having LCW, terminating the ESA award. Tom gives up the job and claims ESA from 11.8.12. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Tom has LCW and LCWRA. The decision awarding ESA is revised to pay the support component from 11.8.12.

Case 3

44640 Where

1. the claimant was entitled to ESA for 13 weeks or longer **and**
2. that entitlement ended before it was determined whether the claimant had, or was treated as having had, LCW (other than being treated as having LCW pending the WCA) **and**
3. a repeat claim is made where the PLCW links with the previous entitlement

the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, LCW and LCWRA¹. This does not include being treated as having LCW pending the WCA².

1 ESA Regs, reg 7(1B)(c), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(c)(iv) & 30

44641 If it is determined that the claimant has, or is treated as having, LCW and LCWRA, the decision awarding ESA is revised to pay the support component from the first day of entitlement¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

1 SS CS (D&A) Regs, reg 3(5F)

Example 1

Paul's entitlement to ESA began on 7.11.11, and terminates when he returns to work on 14.5.12. The WCA had not been completed by the time his award ended. On 26.7.12 Paul makes a further claim to ESA following an accident at work. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Paul has LCW and LCWRA. The decision awarding ESA is revised to pay the support component from 26.7.12.

Example 2

Gavin has been entitled to ESA since 13.4.17, and is in the assessment phase. His award is terminated from 20.6.17 after he notifies that he is going to New Zealand from 23.5.17 to stay with his daughter. He does not expect to return for about six months.

On 5.9.17 Gavin claims ESA again, after returning to GB earlier than planned. He provides evidence of LCW, and is referred for the WCA. The DM determines that Gavin has LCW, but does not have LCWRA. Gavin's award is not changed as the conditions of entitlement to the support component are not satisfied.

Case 4

44642 Where

1. in the previous PLCW, the claimant was entitled to ESA including the support component **and**
 2. that entitlement ended because the claimant was
 - 2.1 found not to have LCW **or**
 - 2.2 treated as not having LCW **and**
 3. a repeat claim is made where the PLCW links with the previous entitlement
- the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, LCW¹. This does not include being treated as having LCW pending the WCA².

1 ESA Regs, reg 7(1B)(d), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(d)(iii) & 30

44643 If it is determined that the claimant has, or is treated as having, LCW and LCWRA, the decision awarding ESA is revised to pay the support component from the first day of entitlement¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

1 SS CS (D&A) Regs, reg 3(5F)

Example

Lydia's award of ESA included the support component. She was referred for a further routine WCA, and the DM finds that Lydia does not have LCW. The award of ESA is terminated from 22.5.12. Lydia makes a new claim from 7.8.12 and provides evidence of a new health condition. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Lydia has LCW and LCWRA. The DM revises the decision awarding ESA to include the support component from 7.8.12.

Treated as having LCWRA

44644 Where a claimant

1. was previously entitled to ESA including the support component¹ **and**
 2. makes a further claim where the PLCWs link² **and**
 3. is not required to serve the assessment phase³ as in DMG 44637
- they are treated as having LCWRA⁴.

1 WR Act 07, s 2(2) or 4(4); 2 ESA Regs, reg 145(1); 3 reg 7(1B)(a); 4 reg 35A

IB Reassessment: termination of transitional addition

44645 DMG 45846 gives guidance on treating the TA as suspended rather than terminated where

1. an award of ESA made following conversion from an existing award **and**
2. a repeat claim for ESA is made **and**
3. the PLCWs link¹.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 21(3), (4) & (5)

44646 In 12 week linking cases, the TA is treated as suspended¹ where

1. the circumstances in paragraph DMG 44645 apply **and**
2. the previous award was terminated
 - 2.1 other than where the DM determined that the claimant did not have, or was treated as not having, LCW² **or**
 - 2.2 where the DM determined that the claimant did not have, or was treated as not having, LCW, and on the repeat claim it is determined that the claimant has, or is treated as having, LCW, other than pending the WCA³.

*1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 21(3) & (4); 2 reg 21(5)(c)(i);
3 reg 21(5)(c)(ii); ESA Regs, reg 30*

Example 1

Leo's award of IS was converted to ESA(IR). The award includes the support component and a TA. His entitlement is terminated from 14.6.12 when he is joined by his partner Yvette, who is in full-time remunerative work. Leo continues to be entitled to NI credits. The relationship breaks down, and Yvette leaves the household. Leo makes another claim for ESA(IR) on 25.7.12. The DM awards him ESA(IR) including the support component and the TA from 25.7.12.

Example 2

Clifford's award of IS was converted to ESA(IR) including the support component and a TA. Following a routine application of the WCA, the DM determines that Clifford does not have LCW. The award of ESA is terminated from 17.4.12. Clifford makes a new claim for ESA from 26.6.12, providing evidence that his health condition has deteriorated. The DM awards ESA at the assessment phase rate from 26.6.12 pending application of the WCA. Following application of the WCA, the DM determines that Clifford has LCW and LCWRA. The DM revises the awarding decision to pay the support component and the TA from 26.6.12.

Backdating of entitlement to the support component

44647 Where the assessment phase has lasted for a period greater than 13 weeks then entitlement to the support component may be backdated¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

Note: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

1 WR Act 07, s 2(4)(b) & s 4(6)(b)

44648 Once a determination has been made as to whether the claimant has

1. LCW and LCWRA **or**
2. LCW but does not have LCWRA

the DM should award the support component¹ where **1.** applies. For both **1.** and **2.**, the assessment phase has now ended². The claimant is now entitled to main phase ESA³.

1 WR Act 07, s 2(2) & 4(4); 2 ESA Regs, reg 4; 3 reg 2(1)

44649 The DM awards¹

1. the support component if DMG 44648.1 applies **or**
2. no component if DMG 44648.2 applies.

1 SS CS (D&A) Regs, reg 6(2)(r) & ESA Regs, reg 67(3)

The date to which entitlement to the support component is backdated

44650 The backdating of the support component is to the day which would have been the first day of the main phase if the claimant's assessment phase had actually lasted 13 weeks. This means that the award of the component will take effect from the 92 day of entitlement to ESA¹. This also applies where the assessment phase is made up of linked periods.

1 SS CS (D&A) Regs, reg 7(38)

Example 1

Toby's award of ESA begins on 1 May. There is a delay in carrying out the WCA and Toby isn't finally assessed until 16 August. Following the assessment the DM decides that Toby is entitled to the support component and this is backdated to 31 July. This is because this is the day that would have been the first day of the main phase for Toby if the assessment phase had actually lasted 13 weeks.

Example 2

Sara's award of ESA began on 1 May before coming to an end on 15 May. Sara then reclaims ESA from 1 June. The WCA isn't carried out until 7 September. Following the assessment, the DM decides that Sara is entitled to the support component and this is backdated to 17 August. This is because this is the day that would have been the first day of the main phase for Sara following a 13 week assessment phase running from 1 May to 14 May and then 1 June to 16 August.

ESA(Cont) and pension payments

Deductions from ESA(Cont) for pension payments

44651 The guidance on this subject has been moved to Chapter 51

44652 - 44899

Statutory Payments

Statutory Payments

Statutory Sick Pay

44900 A claimant is not entitled¹ to ESA in respect of a day if, for the purposes of SSP, that day

1. is a day of incapacity for work in relation to employed earners' employment²,
and
2. falls within a period of entitlement to SSP³.

1 WR Act 07, s 20(1); 2 s 20(1)(a); 3 s 20(1)(b)

44901 A partner's entitlement to SSP does not prevent entitlement for the claimant. See Chapter 51 for the effect of a partner's SSP on a claimant's entitlement to ESA(IR).

Statutory Maternity Pay and ESA(Cont)

44902 A woman is not entitled¹ to ESA(Cont) for any day within the MPP where she is entitled to SMP unless

1. on the day immediately before the first day in the MPP² she is in a PLCW³,
and
2. she satisfies the contribution conditions for ESA(Cont)⁴, **and**
3. on any day during the MPP she is in a PLCW⁵, **and**
4. that day is not a day where she is treated as not having LCW⁶.

*1 WR Act 07, s 20(2); 2 ESA Regs reg 80(1)(a); 3 reg 80(1)(a)(i); 4 reg 80(1)(a)(ii);
5 reg 80(1)(b)(i); 6 reg 80(1)(b)(ii)*

44903 Where DMG 44902 applies the woman is entitled to ESA(Cont) for any day in the MPP where ESA(Cont) is payable¹. The amount of ESA(Cont) which is payable is reduced by the amount of SMP to which she is entitled. The balance, if any, of ESA(Cont) is payable for the week or part-week².

1 ESA Regs, reg 80(2); 2 reg 80(3)

Statutory Adoption Pay and ESA(Cont)

44904 A claimant is not entitled¹ to ESA(Cont) for any day within the APP unless on the day immediately before the first day of the APP²

1. that claimant is in a PLCW³ **and**
2. satisfies the contribution conditions for ESA(Cont)⁴.

1 WR Act 07, s 20(4); 2 ESA Regs, reg 81(1); 3 reg 81(1)(a); 4 reg 81(1)(b)

44905 Where DMG 44904 applies the claimant is entitled to ESA(Cont) for any day in the adoption pay period where ESA(Cont) is payable¹. The amount of ESA(Cont) which is payable is reduced by the amount of SAP to which the claimant is entitled. The balance, if any, of ESA(Cont) is payable for the week or part-week².

1 ESA Regs, reg 81(2); 2 reg 81(3)

Statutory Paternity Pay and ESA(Cont)

44906 A claimant is not entitled¹ to ESA(Cont) for any day within the additional paternity pay period unless

1. on the day immediately before the first day of the additional paternity pay period² that claimant is treated as being in a period of LCW³ **and**
2. satisfies the contribution conditions for ESA(Cont)⁴ **and**
3. on any day during the additional statutory paternity pay period the claimant is in a PLCW⁵, **and**
4. that day is not a day where that claimant is treated as not having LCW⁶.

*1 WR Act 07, s 20(6); 2 ESA Regs, reg 82(1)(a); 3 reg 82(1)(a)(i);
4 reg 82(1)(a)(ii); 5 reg 82(1)(b)(i); 6 reg 82(1)(b)(ii)*

44907 Where DMG 44906 applies the claimant is entitled to ESA(Cont) for any day in the additional paternity pay period where ESA(Cont) is payable¹. The amount of ESA(Cont) which is payable is reduced by the amount of Additional Statutory Paternity Pay to which the claimant is entitled. The balance, if any, of ESA(Cont) is payable for the week or part-week².

1 ESA Regs, reg 82(2); 2 reg 82(3)

44908

Shared Parental Pay and ESA(Cont)

44909 A claimant is not entitled¹ to ESA(Cont) for any day within the shared parental pay period unless

1. on the day immediately before the first day of the shared parental pay period² that claimant is treated as being in a period of LCW³ **and**
2. satisfies the contribution conditions for ESA(Cont)⁴ **and**
3. on any day during the shared parental pay period the claimant is in a PLCW⁵, **and**
4. that day is not a day where that claimant is treated as not having LCW⁶.

*1 WR Act 07, s 20(6); 2 ESA Regs, reg 82A(1)(a); 3 reg 82A(1)(a)(i);
4 reg 82A(1)(a)(ii); 5 reg 82A(1)(b)(i); 6 reg 82A(1)(b)(ii)*

44910 Where DMG 44909 applies the claimant is entitled to ESA(Cont) for any day in the Shared Parental Pay period where ESA(Cont) is payable¹. The amount of ESA(Cont) which is payable is reduced by the amount of Shared Parental Pay to which the claimant is entitled. The balance, if any, of ESA(Cont) is payable for the week or part-week².

1 ESA Regs, reg 82A(2); 2 reg 82A(3)

Note: Statutory shared parental pay period means the weeks in respect of which statutory shared parental pay is payable to a person under prescribed legislation¹.

1 SS C & B Act 1992, s 171ZY(2)

44911 - 44999

Appendix 1

ESA(IR) Applicable amounts: personal allowances

Introduction

- 1 The rate of personal allowance payable in ESA(IR) depends upon
1. whether the claimant is single or is a member of a couple
 2. the age of the claimant and any partner
 3. whether any special circumstances apply to the couple
 4. whether the claimant is in the assessment phase or the main phase.

Assessment Phase

Personal allowances for single claimants (not lone parents)

- 2 The rate of the personal allowance paid to a single person who is not a lone parent in the assessment phase depends on the person's age. A single person may be entitled to the
1. aged less than 25 years old personal allowance for a single claimant¹ or
 2. aged 25 years or older personal allowance for a single claimant².

1 ESA Regs, Sch 4, para 1(1)(c); 2 Sch 4, para 1(1)(b)

Aged less than 25 years old

- 3 A single claimant aged less than 25 is entitled to this personal allowance¹.

1 ESA Regs, Sch 4, para 1(1)(c)

Aged 25 years or older

- 4 A single claimant aged 25 years or older is entitled to this personal allowance¹.

1 ESA Regs, Sch 4, para 1(1)(b)

Personal allowances for lone parents (not single claimants)

5 The rate of the personal allowance paid to a lone parent in the assessment phase depends on the lone parent's age. A lone parent may be entitled to the

1. aged less than 18 years old personal allowance for a lone parent¹ **or**
2. aged 18 years or older personal allowance for a lone parent².

1 ESA Regs, Sch 4, para 1(2)(c); 2 Sch 4, para 1(2)(b)

Aged less than 18 years old

6 A lone parent aged less than 18 years old is entitled to this personal allowance¹.

1 ESA Regs, Sch 4, para 1(2)(c)

Aged 18 years or older

7 A lone parent aged 18 years or older is entitled to this personal allowance¹.

1 ESA Regs, Sch 4, para 1(2)(b)

Personal allowances for couples and members of a polygamous marriage

Members of couples

8 The personal allowance for couples in the assessment phase where both members are not yet 18 or, one of the couple is aged 18 or over depends on the couple's circumstances. A couple may be entitled to a

1. couple's allowance (see para 12 and para 13) **or**
2. single person's allowance (see paras 14, 15 and 16).

Members of polygamous marriages

9 Claimants who are members of a polygamous marriage should be treated in the same way as those claimants who are members of a couple. The DM should not allow an amount for a partner who is not yet 18 years old unless that partner¹

1. is treated as responsible for a child **or**
2. would, as a single person, be entitled to ESA(IR) **or**
3. would be entitled to JSA(IB) for any period in DMG 30514 **or**
4. is the subject of a Secretary of State's direction.

1 ESA Regs, reg 68(2)

- 10 The DM should decide the appropriate personal allowance for the claimant and one partner. The partner chosen for this decision should be
1. any partner aged 18 or over **or**
 2. if 1. does not apply, any partner who satisfies para 6 **or**
 3. if 1. or 2. does not apply, any partner.
- 11 The applicable amount should include¹
1. personal allowances for the claimant and the partner chosen as in para 10 **and**
 2. personal allowances for each other partner that is the difference between
 - 2.1 the higher rate for a couple **and**
 - 2.2 the rate for a single claimant aged 25 or over **and**
 3. any premium, housing costs or TE.

1 ESA Regs, reg 68(1)

Couple entitled to personal allowance for a couple where both members are aged less than 18

- 12 A claimant is entitled to this personal allowance in the assessment phase if the claimant is a member of a couple where both members are aged less than 18 and¹
1. one of the couple is treated as responsible for a child **or**
 2. had they not been members of a couple each member would qualify for ESA(IR) **or**
 3. had they not been members of a couple the claimant's partner would be entitled to IS **or**
 4. the claimant's partner would be entitled to JSA(IB)
 - 4.1 for any period in DMG 30514 **or**
 - 4.2 because the partner is the subject of a Secretary of State JSA severe hardship direction.

1 ESA Regs, Sch 4, para 1(3)(d)

Couple entitled to personal allowance normally paid to couples where both aged 18 or over

- 13 A claimant is entitled to this personal allowance in the assessment phase if one member of the couple is aged 18 or over and the other member is aged less than 18 who¹
1. if not a member of a couple would be entitled to IS **or**

2. if not a member of a couple would be entitled to ESA(IR) **or**
3. would be entitled to JSA(IB) for any period in DMG 30514 **or**
4. is the subject of a Secretary of State JSA severe hardship direction.

1 ESA Regs, Sch 4, para 1(3)(b)

Couple entitled to the single person aged 25 or over personal allowance

14 A claimant is entitled to this personal allowance in the assessment phase if

1. the claimant is aged 25 or over **and**
2. the claimant's partner is aged less than 18¹ **and**
 - 2.1 would not, if a single person, be entitled to ESA(IR)
 - 2.2 would not, if a single person, be entitled to IS **and**
 - 2.3 would not be entitled to JSA(IB) as a young person **and**
 - 2.4 is not the subject of a Secretary of State JSA severe hardship direction.

1 ESA Regs, Sch 4, para 1(3)(e)

Couple entitled to an aged less than 25 year old personal allowance

15 A claimant is entitled to this personal allowance in the assessment phase if the claimant is aged 18 to 24 and the claimant's partner is aged less than 18 and the claimant's partner¹

1. would not, if a single person, be entitled to IS **and**
2. would not be entitled to JSA(IB) as a young person **and**
3. is not the subject of a Secretary of State JSA severe hardship direction.

1 ESA Regs, Sch 4, para 1(3)(h)

16 A claimant is entitled to this personal allowance in the assessment phase if both members of the couple are aged less than 18 and para 12 does not apply¹.

1 ESA Regs, Sch 4, para 1(3)(i)

Both members aged 18 or older

17 A couple in the assessment phase where both members are aged 18 or more are entitled to this allowance¹.

1 ESA Regs, Sch 4, para 1(3)(a)

Main Phase

Personal allowances for single claimants (not lone parents)

18 The rate of the personal allowance paid to a single claimant who is not a lone parent in the main phase is a standard rate¹. It does not depend

1. on any special circumstances **or**
2. the claimant's age.

1 ESA Regs, Sch 4, para 1(1)(a)

Personal allowances for lone parents (not single claimants)

19 The rate of the personal allowance paid to a lone parent in the main phase is a standard rate¹. It does not depend

1. on any special circumstances **or**
2. the claimant's age.

1 ESA Regs, Sch 4, para 1(2)(a)

Members of couples

20 The personal allowance for couples in the main phase where both members are not yet 18 or, one of the couple is aged 18 or over, depends on the couple's circumstances. A couple may be entitled to a

1. couple's allowance (see para 22 and para 23) **or**
2. single person's allowance (see paras 24 and 25).

21 The guidance on polygamous marriages at paras 9 - 11 also applies in the main phase.

Couple entitled to personal allowance for couples where both are aged 18 or over

22 A claimant is entitled to this personal allowance in the main phase if both members of the couple are aged 18 or over¹.

1 ESA Regs, Sch 4, para 1(3)(a)

Couple entitled to personal allowance for a couple where both members are aged less than 18

23 A claimant is entitled to this personal allowance in the main phase if the claimant is a member of a couple where both members are aged less than 18 and¹

1. one of the couple is treated as responsible for a child **or**
2. had they not been members of a couple each member would qualify for ESA(IR) **or**
3. had they not been members of a couple the claimant's partner would be entitled to IS **or**
4. the claimant's partner would be entitled to JSA(IB)
 - 4.1 for any period in DMG 30514 **or**
 - 4.2 because the partner is the subject of a Secretary of State JSA severe hardship direction.

1 ESA Regs, Sch 4, para 1(3)(c)

Couple entitled to the single person aged 25 or over personal allowance

24 A claimant is entitled to this personal allowance in the main phase if

1. the claimant's partner is aged less than 18¹ **and**
2. would not, if a single person be entitled to ESA(IR) **and**
3. would not, if a single person, be entitled to IS **and**
4. would not be entitled to JSA(IB) as a young person **and**
5. is not the subject of a Secretary of State JSA severe hardship direction.

1 ESA Regs, Sch 4, para 1(3)(f)

25 A claimant is entitled to this personal allowance in the main phase if

1. both members of the couple are aged less than 18 **and**
2. paragraph 23 does not apply¹.

1 ESA Regs, Sch 4, para 1(3)(g)

Appendix 2

The remunerative work rule for non-dependant housing cost deductions

- 1 This guidance sets out the remunerative work rule as it applies for non-dependant deductions when calculating the amount of housing costs in ESA(IR)¹.

1 ESA Regs, Sch 6, para 2

Introduction

- 2 Remunerative work is¹ work for which payment is made, or which is done

1. in expectation of payment **and**
2. in which the person is engaged for not less than
 - 2.1 16 hours a week **or**
 - 2.2 16 hours a week on average where the hours of work fluctuate.

1 ESA Regs, Sch 6, para 2(1)

Does the person have employment

- 3 DMs should decide that a person is not in remunerative work if they do not have any employment and are between jobs. DMs will need to decide whether employment has ended if someone has been engaged in remunerative work.

- 4 DMs should decide that a person is still in employment and not between jobs if

1. the contract of employment (which can be written or verbal) is still current **or**
2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because
 - 2.1 there is an express agreement (written or verbal) **or**
 - 2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

Off-shore oil workers

- 5 Off-shore oil workers may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

- 6 It is a question of fact for the DM whether the work is continuing or not. The DM will need to consider, amongst other things, whether there is a continuing relationship between the person and the employer. Frequent resumption of work with the same employer may be an indication that work is continuing (see paragraph 4 **2.2**).

Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognizable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. The DM has to decide whether Dennis is in remunerative work at a time when he is not working. On looking at the facts of Dennis' past work for the company, the DM is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The DM decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

Treated as in or not in remunerative work

- 7 A person engaged in remunerative work may be **treated** as **not** being in remunerative work (see paragraph 141 et seq)¹. Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work² (see paragraphs 126 et seq).

1 ESA Regs, Sch 6, para 2(5); 2 Sch 6, para 2(4)

Work done for payment or in expectation of payment

8 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The DM should look at all the relevant facts in each case.

Regard work as remunerative if

1. payment is made for it **or**
2. it is done in expectation of payment¹.

Remunerative does not mean profitable (see para 11).

1 ESA Regs, Sch 6, para 2(1); R(IS) 1/93

Payment in kind

9 “Payment” includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

Example 1

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work.

Example 2

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

Expectation of payment

10 Work “done in expectation of payment” means more than a mere hope that payment will be made at a future date¹. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

Self-employed earners

- 11 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the time. The DM need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why¹.

1 CA, CAO v Ellis (R(IS) 22/95)

Sale of goods

- 12 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

Note: Also that payment may be derived from takings.

Business start up

- 13 An allowance payable under certain schemes to assist people to become S/E is not payment for work¹.

Note: That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

1 CA, CAO v. Smith

- 14 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

Example

Annie and her husband run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

Company directors

- 15 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director¹. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a S/E earner.

1 R(IS) 5/95

16 - 20

Establishing hours of work

Introduction

- 21 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count. See paragraph 42 for guidance on teachers.

Counting the hours

Flexible working schemes

- 22 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

Overtime

- 23 Overtime for which payment is made or expected counts towards the weekly total.

Night duty

- 24 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if
1. payment made or expected is less than for normal daytime duties
 2. the time on the night duty is spent sleeping.

Example

Michelle works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than for her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The DM decides that Michelle is in remunerative work.

Evidence of hours

- 25 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

- 26 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a S/E earner follow the guidance at paragraph 28 to establish any additional hours worked.

Musicians

- 27 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

Example 1

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

Example 2

A musician is engaged to perform music. The performances last for twelve hours a week. She practices the performances for ten hours a week. She is engaged in remunerative work.

Self-employed

- 28 Include all the hours necessary to run the business, for example, time spent in
1. trips to wholesalers and retailers
 2. visits to potential customers
 3. advertising or canvassing
 4. cleaning the business premises
 5. cleaning and maintaining items used in the business, for example a taxi or driving school car
 6. providing estimates

7. book-keeping
8. research work, for example where the person is a writer.

29 Where a S/E person is running a business which is

1. building up **or**
2. winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

30 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

Example

Peter, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of ten customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the DM concluded that he worked six hours a day, five days a week, a total of 30 hours a week.

31 If a S/E person has been doing undisclosed work or working more hours than is claimed, the DM must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.

32 - 41

Teachers

42 The conditions of employment of most LA schoolteachers, except headteachers, are laid down in an Order¹ or Agreement². They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables
2. assessing and reporting on pupils
3. helping to administer and organize the school
4. advising pupils and ensuring their discipline, health and safety
5. discussing pupils' progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the DM is unsure whether a teacher is obliged to do a particular activity, consult the Order or Agreement.

1 Education (School Teachers Pay and Conditions of Service) Order; 2 Scottish Negotiating Committee for Teachers Conditions of Service Agreement

43 Before either the Order or Agreement came into force, teachers were generally required by their contracts to carry out the duties now laid down¹. Members of the teaching profession not covered by the Order or Agreement (for example higher education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work **or**
2. any such work is included in the hours of work laid down in the contract.

1 Sim v Rotherham Metropolitan Borough Council [1986] 3WLR 851; R(U) 5/88

44 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person's own evidence if it seems reasonable. If a person states that the time spent on non-teaching duties is anything up to one third of the time spent teaching, accept this without question.

45 It may be reasonable to accept a larger proportion than a third depending on the

1. teacher's experience
2. subjects being taught
3. method of teaching
4. amount of homework to be marked
5. number of pupils.

In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

46 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

Paid breaks

47 Paid breaks do count when establishing the hours of remunerative work. If an employer pays a person earnings in respect of a meal or refreshment break then those hours count towards the weekly remunerative work limit¹.

1 ESA Regs, Sch 6, para 2(7)

Calculating average hours

- 58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours¹.

1 ESA Regs, Sch 6, para 2(2)

Identifying a recognizable cycle

- 59 See if there is any pattern of work over a period of time. This is known as a recognizable cycle¹. A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

Example 1

week 1	X hours
week 2	Y hours
week 3	X hours
week 4	X hours
week 5	Y hours
week 6	X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

Example 2

month 1	A hours
month 2	B hours
month 3	A hours
month 4	B hours

There is a recognizable cycle of two months.

Example 3

week 1	X hours
week 2	X hours
week 3	Y hours
week 4	W hours
week 5	V hours

There is no recognizable cycle.

Note: A cycle may include weeks in which no work is done².

1 ESA Regs, Sch 6, para 2(2)(a); 2 Sch 6, para 2(2)(a)(i)

Permanent or indefinite contract

- 60 A recognizable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

Example

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. The DM decides that Julia's contract establishes a cycle from its outset.

Fixed term contracts and casual workers

- 61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)¹. DMs should decide each case on its facts. The DM will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. DMs should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

Example

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He does not work for the Christmas holiday but says that he has been asked to return to work after the holidays. Bill tells the DM that he expects to return to work as he did the previous January. The DM decides that Bill has established a recognizable cycle of work and that it has not been broken. Bill is in remunerative work because on average he works 16 hours or more a week.

Extra work

- 62 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle¹.

1 R(JSA) 5/02

Example

Celeste is employed as a shop assistant by a students union. The terms of her employment contract are “Monday to Friday, 8.15 am to 1.15 pm term time only”. Celeste agrees to do extra work stocktaking during the first week of the summer holidays. The DM is asked to decide whether she is in remunerative work on the day after she finishes the extra work. The DM decides that Celeste’s contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

Probation

- 63 A recognizable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

Example

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a six month probationary period, specifies that he is expected to work during term times and not during school holidays. The DM decides that he is in a recognizable cycle from the outset of the contract and, on average, works 16 hours or more a week. He is in remunerative work.

64 - 69

Recognizable cycle established

- 70 Where there is a recognizable cycle calculate the average hours over one complete cycle¹. Include, where the cycle involves periods when the person does no work, those periods, but disregard any other absences.

1 ESA Regs, Sch 6, para 2(2)(a)

Periods when a person does not work

- 71 Periods when a person does not work can fall into the following categories
1. periods of absence because of sickness, maternity leave, ordinary paternity leave or adoption leave
 2. periods of unauthorised absence “without good cause”
 3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer
 4. periods during which someone can be properly regarded as on holiday.

Note: For periods during which someone is not working because they are between jobs they are not in remunerative work, see paragraphs 2 - 5.

Sickness, maternity leave, ordinary paternity leave, adoption leave, shared parental leave and periods of unauthorised absence

- 72 When someone is absent from work due to sickness, maternity leave, ordinary paternity leave, shared parental leave or adoption leave (see paragraph 141) the DM should decide that they are not in remunerative work during such absences¹. When someone has a period of absence without good cause the DM should treat such an absence in the same way as proper holidays² (see paragraph 79).
- 1 ESA Regs, Sch 6, para 2(5); 2 para 2(4)*

Holidays or periods of no work

- 73 The DM should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid¹. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is
1. spread over a year in equal instalments **and**
 2. enhanced to take account of a lack of holiday entitlement
- should not be taken into account when deciding whether someone has paid holidays.

1 R(JSA) 5/03

- 74 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99¹.

1 Working Time Regulations 1998 No. 1833

Calculating the number of hours for which a person is engaged in work

- 75 If the DM has decided that a person is still in employment (see paragraphs 2 - 5) (and they are not absent from work due to sickness, maternity leave, ordinary paternity leave or adoptive leave) they will need to calculate the number of hours for which the person is engaged in work.
- 76 If the person works the same number of hours each week when not on holiday, that is the number of hours worked in each week.

77 If the person's hours of work fluctuate, the DM should take an average

1. as per paragraph 90 if there is no cycle of work **or**
2. as per paragraph 79 if there is a cycle of work.

78

Calculating the average hours

79 Legislation¹ requires that in cycle cases where the hours of work fluctuate the average should be calculated by taking into account periods in which the person does not work but disregarding other absences. DMs should only deduct periods of holiday, absences without good cause, sickness, maternity leave, ordinary paternity leave and adoption leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle. Periods of no work should not be deducted. Put another way, it is only periods of holiday, absences without good cause, sickness, maternity leave, ordinary paternity leave, shared parental leave and adoption leave which are "other absences to be disregarded".

1 ESA Regs, Sch 6, para 2(2)(a)

80 - 87

No recognizable cycle established

Estimating future hours

88 Where

1. a person has just started work or is about to start work **or**
2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work **or**
3. because of absences from work a recognizable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week¹.

1 ESA Regs, Sch 6, para 2(3)

89 Average the estimated hours over a period long enough to cover the expected pattern of work¹. Consider the case where there is sufficient evidence to average the actual hours worked.

1 R(IS) 8/95

Averaging past hours

90 Where the person has been in work before the date of claim and a recognizable cycle has not been established calculate average weekly hours over

1. the five weeks immediately before the date of claim¹ **or**
2. a longer or shorter period immediately before the date of claim if the five week period in 1. does not give a fair average.

“Immediately before” in this context means the end of the last complete week before the date of claim.

1 ESA Regs, Sch 6, para 2(2)(b)

91 Include in the calculation at paragraph 90 any periods of non-working within the normal pattern of employment (rest periods)¹.

1 R(IS) 12/95

92 Examples of circumstances in which it may not be appropriate to use the five week period in paragraph 90 1. are where the

1. five weeks contain a period of absence which distorts the average **or**
2. five weeks do not show the person’s normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**
3. person is paid at intervals of longer than a week.

In either of the circumstances in 1. or 2. a period of less than five weeks as in paragraph 90 2. might give a fairer result. Extending the period beyond the last five weeks would still include the distortions so in these circumstances estimate future hours as in paragraph 88.

93 If the DM bases a weekly average of hours over a period of more or less than five weeks, as in paragraph 90 2., the alternative period must still be a period immediately before the date of claim.

It should be either

1. more than the five week period in paragraph 90 1., in which case it will include those five weeks **or**
2. less than the five week period in paragraph 90 1., in which case it will be a part of those five weeks immediately before the date of claim.

94 The approaches outlined in paragraph 88 and paragraph 90 are alternatives. There is no provision for the DM to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

Short-time workers

95 Employers experiencing a fall in business may put their employees on short-time working. This can be

1. a reduction in hours worked each day **or**
2. no work on certain days of the week **or**
3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in paragraphs 88 - 89 and estimate future hours¹ at the start of short-time working until average hours over a past period can be calculated².

Periods of no work should be included in the average.

1 ESA Regs, Sch 6, para 2(3); R(IS) 8/95; 2 ESA Regs, Sch 6, para 2(2)(a) & (b)

96 - 106

Changes to the normal hours

107 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**
2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**
3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather and the DM decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over
 - 3.1 the cycle of work if there is now a recognizable cycle¹ **or**
 - 3.2 the five week period or other more suitable period immediately before the date of application for supersession².

1 ESA Regs, Sch 6, para 2(2)(a); 2 para 2(2)(b)

Seasonal workers

108 The normal remunerative work rules apply to S/E seasonal workers except where the business ceases to operate during the off-season. If it does, the person is no longer S/E and cannot be in remunerative work. Accept that a business has ceased to operate where no activities in connection with the business are undertaken during the off-season (see DMG Chapter 50).

Business ceases during off-season

109 A person is not in remunerative work once the business has ceased to operate.

Business continues during the off-season

110 Where the business continues during the off-season a person will be treated as engaged in remunerative work throughout the year if the hours, or average hours, are 16 or more a week¹ for the person.

1 ESA Regs, Sch 6, para 2(1)

Averaging the hours

111 Calculate average hours over

1. if there is a recognizable cycle - one complete cycle of work (this will usually be one year where a business continues to operate throughout the year). Include periods in which the person does no work, but exclude other absences such as holidays or sickness¹ **or**
2. if there is no recognizable cycle - over the five week period, or other more suitable period, immediately before the date of claim².

Include in the calculation time spent on all activities connected with the business.

1 ESA Regs, Sch 6, para 2(2)(a); 2 Sch 6, para 2(2)(b)

Agency and casual workers

112 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

113 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

114 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

See DMG Chapter 49 for guidance on when employment ends. If the question of non dependants arises after employment is terminated, the person will not be in remunerative work.

115 - 125

People treated as in remunerative work

Introduction

126 People can be treated as in remunerative work even though they are absent from remunerative work¹. However see paragraph 141 for details of when this rule does not apply².

1 ESA Regs, Sch 6, para 2(4); 2 Sch 6, para 2(5)

127 Treat people as in remunerative work for any period during which they are¹

1. absent without good cause **or**
2. absent by reason of a recognized, customary or other holiday.

1 ESA Regs, Sch 6, para 2(4)

Absent without good cause

128 “Good cause” is for the DM to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorized the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause. Examples of good cause include where the absence is due to

1. bereavement or sudden serious illness in the family **or**
2. a disaster at home **or**
3. suspension from work, whether or not on full pay **or**
4. a requirement to attend court.

Recognized, customary or other holiday

129 A person should be treated as in remunerative work for any period of absence because of a recognized, customary or other holiday¹. This is the case even if there is no permanent contract of employment. But this will not apply where the

1. absence is not a holiday (see paragraph 73) **or**
2. work is not remunerative as in paragraph 1 et seq **or**
3. person goes on holiday after employment ends.

See DMG Chapter 41 for guidance on what is a recognized, customary or other holiday.

1 ESA Regs, Sch 6, para 2(4)

People treated as not in remunerative work

Leave or absence from work

141 A person shall be treated as not being in remunerative work¹ on any day on which they are

1. on maternity leave **or**
2. on ordinary paternity leave **or**
3. on adoption leave **or**
4. on shared parental leave **or**
5. absent from work because of illness.

1 ESA Regs, Sch 6, para 2(5)

142

Meaning of adoption leave

143 Adoption leave means¹ a period of absence from work on ordinary or additional adoption leave in accordance with legislation².

1 ESA Regs, reg 2(1); 2 Employment Rights Act 1996, s 75A or 75B

Categories of people at work but treated as not in remunerative work

144 In certain circumstances¹ a person who is in remunerative work should be treated as not being in remunerative work. These are where the person is

1. engaged in childminding in the childminder's home² **or**
2. engaged by a charity or voluntary organization or is a volunteer³ **or**
3. engaged on a training scheme⁴ **or**
4. receiving assistance under the S/E route⁵ **or**
5. engaged in specific occupations⁶ **or**
6. performing duties as a councillor⁷ **or**
7. engaged as a foster parent or in providing respite care⁸ **or**
8. engaged in an activity which attracts a sports award⁹.

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

1 ESA Regs, Sch 6, para 2(6); 2 reg 43(1)(a); 3 reg 43(1)(b); 4 reg 43(1)(c); 5 reg 43(1)(d); 6 reg 43(1)(e); 7 reg 43(1)(f); 8 reg 43(1)(g); 9 reg 43(1)(h)

145 In addition, there are other circumstances¹ where a person should be treated as not being in remunerative work, **regardless** of the type of work undertaken. These are where the person is

1. disabled² **or**
2. affected by a TD³ **or**
3. caring for another person⁴ **or**
4. living in a care home, an Abbeyfield Home or an independent hospital⁵.

*1 ESA Regs, Sch 6, para 2(8); 2 reg 43(2)(a); 3 reg 43(2)(b);
4 reg 43(2)(c); IS (Gen) Regs, Sch 1B, para 4; 5 ESA Regs, reg 43(2)(d)*

Childminders

146 People who are childminders are treated as not being in remunerative work as long as the childminding is done in their home¹. If the childminding is done in the employer's home the hours worked will count towards the remunerative work exclusion.

1 ESA Regs, reg 43(1)(a)

Charity or voluntary workers and volunteers

147 People are treated as not being in remunerative work where they are engaged by a charity or voluntary organization or are volunteers **and**

1. the only payment
 - 1.1 received **or**
 - 1.2 due to be paidis for expenses incurred **and**
2. they receive no remuneration or profit **and**
3. they are not treated as having notional earnings¹ (see DMG 49180 et seq).

1 ESA Regs, reg 43(1)(b) & Sch 8, para 2

Meaning of voluntary organization

148 A voluntary organization is a body, other than a public authority or LA, whose activities are not carried out for profit¹.

1 ESA Regs, reg 2(1)

Meaning of volunteer

149 A volunteer is a person who is engaged in voluntary work otherwise than for a relative where the only payment

1. received **or**
2. due to be paid

to that person is in respect of any expenses reasonably incurred in connection with the work¹.

1 ESA Regs, reg 43(4)

Engaged on a training scheme

- 150 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance is being paid (this includes WBLA where payments are treated as training allowances)¹.

1 ESA Regs, reg 43(1)(c)

Note: For people in the S/E route of the ND for lone parents see DMG 14410.

People receiving assistance under the self-employed route

- 151 People are treated as not being in remunerative work where they are receiving assistance under the S/E route¹ (see DMG 14001).

1 ESA Regs, reg 43(1)(d)

Meaning of self-employed route

- 152 For the meaning of S/E route see DMG 14000.

Engaged in specific occupations

- 153 People are treated as not being in remunerative work where they are

1. A P/T member of a fire brigade¹ who
 - 1.1 in Scotland is a part-time fire-fighter employed by a fire and rescue authority or a joint fire and rescue board as specified under certain legislation² **and**
 - 1.2 in England, and Wales a P/T firefighter employed by a fire and rescue authority **or**
2. auxiliary coastguards for coastal rescue activities³ **or**
3. working P/T in the manning or launching of a lifeboat⁴ **or**
4. members of a territorial or reserve force⁵.

*1 ESA Regs, reg 43(1)(e)(i); 2 Fire (Scotland) Act 2005;
3 ESA Regs, reg 43(1)(e)(iv); 4 reg 43(1)(e)(v); 5 reg 43(1)(e)(vi)*

Councillors

- 154 People who perform duties as a councillor are treated as not being in remunerative work¹.

1 ESA Regs, reg 43(1)(f)

Meaning of councillor

- 155 In England and Wales a councillor is a member of

1. a London Borough council **or**
2. a county or county borough council **or**
3. a district council **or**
4. a parish or community council **or**
5. the Common Council of the City of London **or**
6. the Council of the Isles of Scilly¹.

In Scotland, a member of a council for a local government area².

1 ESA Regs, reg 2(1); 2 Local Government etc (Scotland) Act 1994, s 2

156

Foster parents and people providing respite care

Foster parents

- 157 People who receive payments from

1. a LA **or**
2. a voluntary organization

for fostering a child or young person are treated as not being in remunerative work¹.

1 ESA Regs, reg 43(1)(g) & Sch 8, para 28

158

People providing respite care

- 159 People who provide respite care are treated as not being in remunerative work¹ if

1. the person requiring care is being cared for in the claimant's home **and**
2. the person requiring care is not normally a member of the claimant's household **and**
3. the only payments received are specified payments² from a
3.1 HA or

- 3.2 LA **or**
- 3.3 voluntary organization **or**
- 3.4 a primary care trust **or**
- 3.5 the person concerned under specified legislation³.

1 ESA Regs, reg 43(1)(g); 2 Sch 8, para 29; 3 NA Act, s 26(3A)

Sports awards

- 160 People are treated as not being in remunerative work¹ if
1. they are engaged in an activity for which a sports award has been or is to be made² **and**
 2. no other payment is made or expected to be made to them in respect of the activity³.

1 ESA Regs, reg 43(1)(h); 2 reg 43(1)(h)(i); 3 reg 43(1)(h)(ii)

Meaning of sports award

- 161 A sports award¹ is an award made by one of the Sports Councils named in National Lottery law² and out of sums allocated under that law.

1 ESA Regs, reg 2(1); 2 National Lottery etc. Act 1993, s 23(2)

Disabled workers

- 162 People are treated as not being in remunerative work where they are mentally or physically disabled¹ and as a result of that disability
1. earn 75 per cent or less of what a person without that disability working the same number of hours would reasonably be expected to earn² **or**
 2. work 75 per cent or less of the hours that a person without that disability would reasonably be expected to do in the same work or in a similar job in the area³.

1 ESA Regs, reg 43(2)(a); 2 reg 43(2)(a)(i); 3 reg 43(2)(a)(ii)

- 163 The person's own evidence of reduced earnings or hours should normally be accepted. However, if necessary, DMs should obtain further evidence for comparison purposes. This may include information from private employment agencies, social services departments or charities for the disabled.

People affected by a trade dispute

- 164 Where the person is involved in a TD and they are treated as not being in remunerative work unless the payments listed at DMG 41263 are being taken into account¹.

1 ESA Regs, reg 43(2)(b)

Caring for another person

- 165 People are treated as not being in remunerative work where they are¹

1. regularly and substantially engaged in caring for another person and that person
 - 1.1 is in receipt of "AA" or the care component of DLA at the highest or middle rate² **or**
 - 1.2 has claimed "AA" or DLA **or**
 - 1.3 has
 - 1.3.a made an advance claim for **and**
 - 1.3.b an award of **and**
 - 1.3.c not completed the qualifying period for "AA" or the care component of DLA at the highest or middle rate³ **or**
 - 1.4 has
 - 1.4.a made an advance claim for **and**
 - 1.4.b an award of **and**
 - 1.4.c completed the qualifying period for "AA" or the care component of DLA at the highest or middle rate and the award is in payment **or**
2. both entitled to and in receipt of CA⁴ and caring for another person.

Note: See DMG Chapter 41 for guidance on deciding whether or not a person is regularly and substantially caring.

1 ESA Regs, reg 43(2)(c) & IS (Gen) Regs, Sch 1B, para 4; 2 SS CB Act 92, s 72(3); 3 s 65(6)(a); SS (C&P) Regs, reg 13A; 4 SS CB Act 92, s 70

- 166 Where DMG 165 1.2 applies people are treated as not in remunerative work until the earlier of¹

1. the date the claim for "AA" or DLA is decided **or**
2. 26 weeks from the date of claim for "AA" or DLA.

1 IS (Gen) Regs, Sch 1B, para 4(a)(ii) & (iii)

People living in a care home, Abbeyfield Home or an independent hospital

- 167 People who
1. are in employment **and**
 2. live in certain types of accommodation
- are treated as not being in remunerative work¹.

1 ESA Regs, reg 43(2)(d)

- 168 Paragraph 167 applies only to a person who
1. lives in (whether permanently or temporarily) or is temporarily absent from
 - 1.1 a care home **or**
 - 1.2 an Abbeyfield Home **or**
 - 1.3 an independent hospital **and**
 2. requires personal care because of
 - 2.1 old age **or**
 - 2.2 disablement **or**
 - 2.3 past or present dependence on alcohol or drugs **or**
 - 2.4 past or present mental disorder **or**
 - 2.5 a terminal illness.

Appendix 3 (See DMG Memo 03/19)

Housing costs - loans that are not eligible from 2.10.95 but are saved by a saving provision

- 1 This Appendix contains the guidance that was available on loans that were eligible before 2.10.95 but not eligible after that date. The interest payable on these loans is protected by a saving provision¹ (see DMG 44496).

1 ESA Regs, Sch 6, para 20(2)

- 2 This guidance applies to

1. IS claims **and**
2. JSA claims where the claimant was in receipt of IS on 1.10.95

where the claimant has been continuously in receipt of either of those benefits since 2.10.95.

Interest on deferred interest loans

- 3 Interest payable on arrears of interest should be met as a housing cost where unpaid interest has accrued under a deferred interest mortgage scheme.

- 4 It must have been a term or condition of the loan that, for a minimum period of two years, a portion of the interest charged to the loan account will not be payable¹.

1 IS (Gen) Regs, Sch 3, para 7(6)(c)

- 5 Interest will be payable on the deferred amount from the date the interest is charged by the lender¹.

1 IS (Gen) Regs, Sch 3, para 7(6)(c)

Interest accruing in the first 16 weeks of the claim

Qualifying conditions before 2.10.95

- 6 The amount of eligible interest to be allowed as a housing cost is
1. where the claimant or any partner is aged 60 or over 100% of the eligible interest¹ **or**
 2. where the claimant and any partner is aged under 60 **and**
 - 2.1 have received IS continuously for 16 weeks or more 100% of the eligible interest² **or**

- 2.2 have not received IS continuously for 16 weeks or more 50% of the eligible interest³.

1 IS (Gen) Regs, Sch 3, para 7(1)(a); 2 para 7(1)(b)(i); 3 para 7(1)(b)(ii)

Arrears accumulating because 50% of eligible interest payable

- 7 Where arrears accumulate because only 50% of the claimant's loan interest is met during the first 16 weeks of a claim, any interest charged on the arrears of interest should be met as a housing cost. This applies whether or not those arrears are added to the capital outstanding¹.

1 IS (Gen) Regs, Sch 3, para 7(6)(a)

- 8 The interest should only be met to the extent that the arrears do not exceed 50% of the eligible interest that would otherwise have been payable for the 16 week period. The maximum amount should be used when calculating the interest.

- 9 The interest will be payable from the

1. day after the end of the 16th week **or**
2. date from which it is charged by the lender, if this is later.

Income exceeds applicable amount because 50% of eligible interest payable

- 10 Interest payable on arrears of interest should be met as a housing cost where the arrears accumulated over a period of up to 20 weeks where

1. IS was refused because 100% of eligible interest was not allowed **and**
2. the claimant's income exceeded the applicable amount¹.

1 IS (Gen) Regs, Sch 3, para 7(6)(a)

- 11 Interest payable on arrears of interest should also be met as a housing cost where an award is terminated solely due to the claimant's income exceeding the applicable amount because 50% of the eligible interest is allowed as a housing cost.

- 12 For the purpose of 11., the claimant or partner must make a further claim not later than 20 weeks after the date of the original claim¹.

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

Note: such interest should only be met to the extent that the arrears do not exceed 50% of the eligible interest that would otherwise have been payable up to the 20th week.

13

Former partner not meeting interest

- 14 The interest on loans other than those taken out for the purpose of
1. acquiring an interest in the dwelling occupied as the home **or**
 2. paying off another loan but only to the extent that interest on that other loan would have been eligible interest under **1.**

will be allowable as a housing cost if all the conditions in **15.** are met¹.

Note: Some of the uses for the loans may have been to buy a car, pay for a holiday or to run a business.

1 IS (Gen) Regs, Sch 3, para 7(7)

- 15 Where all of the following conditions are satisfied the interest on the loan will be eligible interest
1. loan is secured on the dwelling occupied by the claimant as the home
 2. the loan was taken out jointly with or solely by a former partner
 3. the former partner has left the dwelling and cannot or will not pay the interest on the loan
 4. the claimant has to pay the interest on the loan in order to continue to live in the dwelling occupied as the home.

- 16 All cases where the claimant or claimant's partner was formerly one of a couple should be considered. Imprisonment or any other circumstances under which the former partner is no longer treated as a member of a couple¹ are cases where the interest on these loans may be paid.

1 IS (Gen) Regs, reg 16

- 17 Where a partner has died¹ and the conditions in **15.1.**, **15.2.** and **15.4.** are met, interest may be met on loans covered in **14.**

1 IS (Gen) Regs, Sch 3, para 7(7)(b)

Appendix 4

Housing costs - changes in the standard interest rate

This appendix provides details of the changes in the SIR.

Changes take effect from the first day of the

1. benefit week that includes the “effective date” or
2. first BWC after the date that the SIR changed if the claim is for a period beginning after the “effective date”.

Date SIR changed	Rate of SIR	Effective from
10.4.08	6.58%	18.5.08
8.10.08	6.08%	16.11.08
14.12.08	4.58%	Not implemented
5.1.09	6.08%	Amount prescribed SI 3195/08
1.10.10	3.63%	1.10.10
June 15	3.12%	Determined by SoS

Appendix 5

Housing costs - amount of non-dependant deductions

[\[See DMG Memo 5/17\]](#)

- 1 This appendix provides the rates of the non-dependant deductions¹. See Appendix 2 for guidance on remunerative work.

1 ESA Regs, Sch 6, para 19(1) & (2)

Rates from 27.10.08

- 2 Deductions which apply are where
1. non-dependants aged 18 or over are in any remunerative work (see Appendix 2) - £47.75
 2. non-dependants aged 18 or over not in remunerative work - (see Appendix 2) - £7.40
 3. where the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £116.00 £7.40
 - 2.2 £116.00 to £171.99 £17.00
 - 2.3 £172.00 to £222.99 £23.35
 - 2.4 £223.00 to £295.99 £38.20
 - 2.5 £296.00 to £368.99 £43.50
 - 2.6 £369.00 or more £47.75.

Rates from 6.4.09

- 3 Deductions apply where
1. non-dependants in remunerative work - £47.75
 2. where the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £120.00	£7.40
2.2	£120.00 to £177.99	£17.00
2.3	£178.00 to £230.99	£23.35
2.4	£231.00 to £305.99	£38.20
2.5	£306.00 to £381.99	£43.50
2.6	£382.00 or more	£47.75.

Rates from 12.4.10

4 Deductions apply where (note for this year the bandwidths and the rates of deduction have not changed)

1. non-dependants are in remunerative work - £47.75
2. where the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £120.00	£7.40
2.2	£120.00 to £177.99	£17.00
2.3	£178.00 to £230.99	£23.35
2.4	£231.00 to £305.99	£38.20
2.5	£306.00 to £381.99	£43.50
2.6	£382.00 or more	£47.75.

Rates from 11.4.11

5 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £60.60
2. where the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £122.00	£9.40
2.2	£122.00 to £179.99	£21.55
2.3	£180.00 to £233.99	£29.60
2.4	£234.00 to £309.99	£48.45
2.5	£310.00 to £386.99	£55.20
2.6	£387.00 or more	£60.60

3. any other non-dependant aged 18 or over for whom deductions are relevant - £9.40.

Rates from 9.4.12

6 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £73.85
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £124.00 £11.45

2.2 £124.00 to £182.99 £26.25

2.3 £183.00 to £237.99 £36.10

2.4 £238.00 to £315.99 £59.05

2.5 £316.00 to £393.99 £67.25

2.6 £394.00 or more £73.85

3. any other non-dependant aged 18 or over for whom deductions are relevant - £11.45

Rates from 8.4.13

7 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

8 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

9 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

10 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

11 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 £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.

Appendix 6

Types of mortgage and loan arrangements

There are many types of mortgage and loan agreements offered by building societies, banks and other financial institutions. This Appendix gives details of some that are available and explains briefly how they work.

1 **Repayment mortgage**

With this type of mortgage, the borrower pays both interest and capital over the whole term of the loan agreement.

2 **Endowment mortgage**

The borrower pays only interest on this type of mortgage. Separate payments are made on an endowment insurance policy. When the policy matures at the end of the loan, the money from the policy is used to repay the capital outstanding on the loan.

3 **Fixed rate loan**

The principle of a fixed rate loan is that the lender offers a loan at a fixed interest rate. While other interest rates may go up or down, the interest on this type of loan stays the same. The period for which the fixed rate agreement lasts may vary. It may be for the first few years of the loan or for the whole of the repayment period.

4 **Equity release mortgage**

An equity release mortgage is a remortgage on the home to release capital from the equity in the property. They are sometimes called “roll up” or “60+” schemes. Under such a scheme, interest is charged to the loan account in the normal way. But the borrower does not have to actually pay any interest, the arrangement entered into is a voluntary one so effectively there is no liability to pay interest.

5 **Deferred interest loan**

There are many different types of deferred interest loans. But the common principle is that during part of the loan the borrower pays less interest than is charged to the loan account¹. This is usually done by the borrower paying

1. only a percentage of the interest charged **or**
2. at a lower interest rate than the lender charges.

1 R(IS) 14/01

6 **Low start loan**

A low start mortgage is similar to a deferred interest loan. It is a financial product under which part of the interest payments are effectively deferred from the first years of the mortgage to later years. A low start mortgage is made up of a subsidiary agreement linked to the main loan where the

1. main loan is an ordinary repayment mortgage secured on the property and repayable in the usual way **and**
2. subsidiary agreement is a deferred interest credit agreement (within the terms of the Consumer Credit Act 1974).

The subsidiary agreement is repayable with interest over the same period as the mortgage loan. But payments under it do not start until a future date (usually a number of years later). Until then, the interest charged on the subsidiary loan is capitalised and added to the outstanding loan.

7 **Foreign currency loan**

A loan or mortgage may be taken out in a foreign currency. In such a case the amount outstanding should be converted into sterling using current exchange rates. As exchange rates vary this means that the amount outstanding, once converted into sterling, may also vary. If there is an increase due to a change in the exchange rate, use the amount of the loan that is currently outstanding.

8 **APR and credit loans**

These loans are given over a fixed term (for example five years) and usually at a fixed interest rate. When the loan is arranged the interest due is worked out and added to the loan. The whole amount owed is then divided by the number of months over which the loan has to be repaid. This gives a fixed monthly payment.

9 **Stabilizer and flexible payment schemes**

This type of mortgage operates in a fairly random way but usually falls within the definition of a deferred interest loan. The borrower is given or may choose a payment rate that may be more or less than the rate charged to the account.

10 **Loans from family and friends**

A loan from family or friends must be for a purpose for which eligible housing costs may be considered. If it is used for such a purpose, any interest payable on it may be considered. If the loan is interest free no housing costs will be payable.

11 **Overdraft facilities**

An overdraft is an arrangement under which a person is allowed to withdraw more money than they have in their bank account. But a person does not have to make use of any such arrangement. An overdraft may simply be a facility that is available if needed and the granting of it is not a loan. But the use of an overdraft facility may be a loan that can be allowed for housing costs purposes if¹ the overdraft is

1. specifically arranged in advance for an eligible purpose **and**
2. used for that eligible purpose.

1 R(IS) 22/98

12 **Flexible mortgage**

This type of mortgage combines mortgage borrowing with savings and/or a current account. Flexible mortgage accounts and the type of statements issued by lenders vary. But basically all income is paid into the account and regular spending is taken from it. Such accounts may also include a “drawdown” facility. This can be used to provide extra loan monies to the borrower when and if required with the minimum of inconvenience. When considering a flexible mortgage the DM should

1. find out what the true capital balance outstanding is at the outset **and**
2. revisit that amount on the anniversary date (unless there is an eligible increase in the outstanding balance) **and**
3. apply normal rules when considering whether housing costs can be allowed on loan monies used from a “drawdown” facility.

Note: The amount of any drawdown facility should not be treated as part of the outstanding balance as in 1.. This is because although such a facility is available automatically, there is no compulsion on the borrower to take it up.

13 **Mortgage Rescue Scheme**

The mortgage rescue scheme has two separate parts - a mortgage to rent scheme and a shared equity scheme.

Under the mortgage to rent scheme, a housing association buys the home and allows the claimant to carry on living there as a tenant. The claimant will no longer own the home and will not be entitled to housing costs.

Under the shared equity scheme, a housing association will give the claimant a loan (based on the equity they have in the property) which will be paid to the main mortgage lender and will be used to lower the monthly mortgage payments to that lender. The claimant will be entitled to housing costs in respect of both the interest on the housing loan as well as the interest to the main mortgage lender.

Appendix 7

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 improvements 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 8

Housing costs - loans for repairs and improvements - previous rules and guidance

- 1 This appendix reproduces the guidance on the previous rules that may still apply to an ESA claimant depending on previous entitlement to either IS or JSA(IB).
- 2 Those IS and JSA(IB) claimants who had loan interest calculated using the previous rules will continue to receive the interest if they transfer to ESA(IR)¹.

1 ESA Regs, Sch 6, para 20(1)(a) & (2)

AO's decision before 2.5.94

- 3 If the IS claim was made before 2.5.94 and a loan for repairs and improvements was taken out before that date the AO should have applied the rules in paragraphs 4 to 10.
- 4 If
1. the current ESA claim was made after an IS claim which was made before 2.5.94 **and**
 2. there was no break in entitlement
- the AO should have applied the rules in paragraphs 4 to 10 on any loan for repairs and improvements taken out before 2.5.94.
- 5 The decision made in paragraph 3 and 4 will still apply as long as the claimant has remained continuously in receipt of JSA(IB) or IS since the decision was made.
- 6 The interest on a loan taken out for the purpose of repairs or improvements to
1. the dwelling occupied as the home **or**
 2. any part of the building where the home forms part of the building
- should be allowed as a housing cost subject to the maximum amount in force. Loans used to adapt a home for the use of a disabled person were not subject to the maximum amount.
- 7 The loan¹ can be taken out by freeholders and tenants and has to be used within six months of receipt, or such further period as is reasonable, for
1. major repairs that are necessary to maintain the fabric of the dwelling occupied as the home, or where the home forms part of a building, any part of that building, for example, structural work, stabilising foundations, replacing floors and staircases **or**

2. any of the following home improvements²
 - 2.1 installation of a bath, shower, wash basin, sink or lavatory and any necessary associated plumbing
 - 2.2 damp-proofing measures
 - 2.3 provision or improvement of ventilation and natural lighting
 - 2.4 provision of electric lighting and sockets
 - 2.5 provision or improvement of drainage facilities
 - 2.6 improvements to the structural condition of the dwelling occupied as the home
 - 2.7 improvements to the facilities for storage, preparing and cooking food
 - 2.8 provision of heating including central heating
 - 2.9 provision of storage facilities for fuel and refuse
 - 2.10 improvements to the insulation of the home
 - 2.11 other improvements which are reasonable in the circumstances (see paragraph 9).

Note: This paragraph also applies to the interest on loans taken out to pay off such loans to the extent that interest on the original loan would have been met if it had not been paid off.

1 IS (Gen) Regs, Sch 3, para 8(1); 2 Sch 3, para 8(3) [pre 2.5.94]

- 8 Improvements made under paragraph 7 2. 2.7 and 7 2. 2.11 for domestic items can be allowed where those items are fixed and cannot be removed.

Note 1: Interest on loans for cookers, fridges, dishwashers and other kitchen items that form part of a fitted or built-in kitchen should be allowed if these items cannot be removed.

Note 2: If the items are slotted in between fitted units and can be removed the interest on the loan should not be allowed.

Note 3: Carpets can be removed and are not an improvement under paragraph 7 2.

- 9 For the purposes of paragraph 7 2. 2.11 any improvements that are consistent with the needs of those occupying the dwelling are treated as reasonable in the circumstances. Two tests have to be applied when loans were considered under this heading. These are

1. objective - has the work improved the home's fitness for occupation?
2. subjective - is the improvement reasonable in the circumstances?

- 2.1 reasonable is not defined in legislation. The AO should decide if the improvement is reasonable taking into account the facilities offered by the dwelling and the needs of the occupants
- 2.2 the circumstances to be considered are those at the time the improvements were undertaken
- 2.3 the needs of non-dependants and other occupants should be considered as well as those of the claimant and the claimant's family. The AO should consider the adequacy of the accommodation. The claimant's ability to meet the cost of financing the loan may be one consideration but not the only one.

Example

It would not be unreasonable to convert a loft in to a study or additional storage space where

- 1. there is insufficient space in the dwelling **and**
- 2. it is consistent with the needs of the occupants.

10 Leaseholders may be entitled to help with the interest on loans taken out to meet freeholders' demands for a sum for the cost of repairs of the type listed in **6**.

AOs or DMs decision after 2.5.94

11 Interest will be payable on a loan

- 1. taken out after 2.5.94 **and**
- 2. not taken out in a relevant period if the loan was used for any of the purposes in **7**.¹

1 IS (Gen) Regs, Sch 3, para 5A

12 Interest will be payable on a loan taken out in a relevant period after 2.5.94¹ if the loan was used for any of the purposes in **15**.

1 IS (Gen) Regs, Sch 3, para 5A(1)(a)

13 A relevant period is any period after 2.5.94 during which a person is¹

- 1. entitled to IS **or**
- 2. living as a member of a family, one of whom is entitled to IS **or**
- 3. in a period not exceeding 26 weeks between two periods of entitlement as in **1**. and **2**.

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

- 14 Loans for major home repairs and improvements may be allowed if
- 1 the claimant was already entitled to housing costs for a loan at the time the new loan was taken out **and**
 2. subject to the maximum limit (at the time £125,000) **and**
 3. subject to excessive housing costs provisions.
- 15 Loans for the following home improvements can be allowed in a relevant period if the conditions in 14. are satisfied
1. installation of a bath, shower, wash basin, sink or lavatory and any necessary associated plumbing
 2. damp-proofing measures
 3. provision or improvement of ventilation and natural lighting
 4. provision of electric lighting and sockets
 5. provision or improvement of drainage facilities
 6. improvements to the structural condition of the dwelling occupied as the home
 7. improvements to the facilities for storage, preparing and cooking food
 8. provision of heating including central heating
 9. provision of storage facilities for fuel and refuse
 10. improvements to the insulation of the home
 11. provision of separate sleeping accommodation so that children who are
 - 11.1 aged 10 or over **and**
 - 11.2 of different sexes **and**
 - 11.3 who are members of the same familydo not have to share sleeping accommodation¹.
- 1 IS (Gen) Regs, Sch 3, para 5A(5)*
- 16 Because of the changes from 2.10.95 claimants may ask for a revision or supersession of a decision where they
1. took out a loan for home improvements after 2.5.94 **and**
 2. were refused interest on the loan as a housing cost because they were not entitled to housing costs when they took out the loan.
- 17 A saving provision provides protection for a loan that was for home improvements and repairs that were eligible before 2.10.95 but are not eligible after 2.10.95 (see DMG 23642, and Appendix 5).

- 18 Although not part of the changes to home improvements loans, the DM should be aware that from 2.5.94¹ interest on loans used to adapt the home for needs of a disabled person could be allowed if taken out in a relevant period.

1 IS (Gen) Regs, Sch 3, para 5A

Appendix 9

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.

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 installation	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 HB Regs 06, 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/2205/00; 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

Home Improvement Loan

- 16 A claimant who obtains a home improvement loan to meet the service charge costs should provide evidence of the purpose of the loan, this should include an itemised breakdown of the costs and reason that each item has been replaced or refurbished. The home improvement loan will be eligible to the extent that the works are considered to be for repairs or improvements¹.

1 JSA Regs, Sch 2, para 15(2); IS (Gen) Regs, Sch 3, para 16(2); ESA Regs, Sch 6, para 17(2); SPC Regs, Sch 2, para 12(2)

- 17 Commissioners have addressed some of the issues encountered when determining whether certain structural works and refurbishments are a repair or an improvement. The Commissioners have decided that:

1. 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 not¹.
2. Re-pointing is not a damp proof measure¹.
3. Installation of a new central heating system is not a repair².
4. Insulation is limited to such things as the installation of loft or cavity wall insulation³.
5. Provision is something not already in existence or the replacement of something which no longer functions³. Where there are windows there is natural light already and no need to provide it.

6. Accommodation includes all the grounds and buildings available to the claimant as of right under the lease, such as dining rooms, the laundry, communal areas, gardens, car parks, walkways or any other part of the complex which are used by the claimant for purposes for which he would normally use part of his dwelling if he were not in leasehold accommodation⁴.

1 CIS/2132/98; 2 CIS/514/97; 3 R(IS) 2/07; 4 CIS/1460/95

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 refurbishment or replacement of the communal electrical wiring, windows and doors, the lift, replacing all the roof tiles, external redecoration, the perimeter fencing and the upgrading of 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 2, George, obtains a home improvement loan to pay off his £11,300 service charge. The DM considers if each of the refurbishments is a repair or an improvement (as described on the exhaustive list at paragraph 13 above), he decides that the roof renewal is not a damp proof measure¹ nor the repair of an unsafe structural defect and therefore not a repair or improvement, the rewiring is not the provision of electrical lighting or sockets² and not a repair or improvement, the replacement of windows and doors is not the provision of natural lighting or ventilation³ nor is it the provision of insulation, the upgrading of roof space insulation with better rated material is not the provision of insulation and neither redecoration⁴, the lift replacement nor fencing are listed as a potential repair or improvement. None of the works are considered to be a repair or improvement and as such the DM cannot award any amount as a housing cost in respect of the home improvement loan.

1 CIS/2132/98; 2 CSJSA/160/98; 3 CIS/2901/04; 4 CSJSA/106/98

Typical Repairs

- 18 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 including corresponding columns highlighting eligibility where the costs are met by either a loan or a service charge.

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

Windows	a.	Replacement	No	Yes
	b.	Replacement of single glaze with double glaze	No	Yes
Communal doors		Repair and replacement of communal doors, ensuring compliance with fire regulations	No	Yes
External redecoration		Carry out the redecoration to all external elements of the existing fabric of the building, including use of anti-graffiti paint where appropriate	No	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	No	Yes
	b.	Replacement of communal flooring	No	Yes
Rainwater goods		Repair/replace guttering and down pipes	Yes but only if provision	Yes if not provision
Drains	a.	Rod and Jetting wash through all existing drainage and inspection chambers	No	Yes
	b.	Replace communal waste/soil pipes	Yes if provision	Yes if not provision
	c.	Major repair or replacement		
Electrical Installations	a.	Replace mains distribution board	No	Yes
	b.	Replace rising and lateral mains cables	No	Yes

	c. Replace bulk head lighting to communal staircases & balcony soffits	}	Yes if provision	Yes if not provision
	d. Replace communal corridor lighting			
TV Aerial	a. Replace analogue aerial with digital, may include replacing cabling serving all units		No	Yes
	b. Installation of satellite dish to receive additional channels		No	Yes
Ventilation	a. Maintenance and cleaning of communal shafts & flues		No	Yes
	b. Replace communal extractor fans		Yes if provision	Yes if not provision
Entry Systems and Access	a. Installation or renewal of entry systems, which may include cabling and handsets in each property		No	Yes
	b. Works to comply with Disability Discrimination Act		No	Yes
Damp works	All methods of damp proofing, which may include:			
	a. Insertion of chemical damp proof course		Yes	No
	b. Laying a waterproof membrane on the basement floor		Yes	No
Refuse/ recycling systems	Replacement or repair of refuse/recycling systems and or hopper heads		Yes if provision	Yes if not provision
Bin chambers	Repairs to communal bin chambers		No	Yes
Lifts	a. Replacement of lift car, control panel and components		No	Yes

	b. Replace lift motor room equipment	No	Yes
	c. Major overhaul	No	Yes
	d. Installing lifts and shafts	No	Yes
Dry rot works	May include:		
	a. Chemical treatment of problem areas	No	Yes
	b. Replacement of structural timbers such as joists	Yes	No
Water pumps	May include:		
	a. Installation of pumps due to reduced water mains pressure	No	Yes
	b. Replacement of an existing pump	No	Yes
Water supply	a. Replacement of the water main serving the building	No	Yes
	b. Replacement of communal water tanks	No	Yes
Fire safety	a. Install, repair or replace communal fire detection systems	No	No
	b. Installation or renewal of smoke detectors	No	No
	c. Replacement of dry risers to tower blocks (essential part of fire fighting)	No	Yes
	d. Install, repair or replace fire escapes	No	Yes
Lightning protection	Installation or replacement of lightning conductor	No	Yes
Asbestos removal	Removal of asbestos under controlled conditions	No	Yes

Communal Heating	a.	Major overhaul or replacement of communal heating systems or individual elements	Yes	No
	b.	Installation of communal heating systems	No	Yes
Estate works	a.	Estate lighting	Yes if provision	Yes if not provision
	b.	Controlled access and security	No	Yes
	c.	Repairs to estate roads or paths	No	Yes
	d.	Provision and refurbishment of recreational areas	No	Yes
	e.	Landscaping	No	Yes
	f.	Boundary walls and fences	No	Yes
Associated costs		Costs essential to the works, which may include:		
	a.	Surveys	Yes if associated with an eligible item	Yes
	b.	Preliminaries e.g. site set up costs		Yes
	c.	Fees		Yes
	d.	Access equipment e.g. scaffolding		Yes
	e.	Health and safety		Yes

Appendix 10

Removal of WRAC: savings

1 From 3.4.17, the WRAC can no longer be included in an award of ESA for claims made on or after that date. This means that, where an ESA claimant

1. is found to have, or is treated as having, LCW **and**
2. does not have, or is not treated as having, LCWRA **and**
3. enters the main phase

no component is included in the ESA award¹.

1 ESA Regs, reg 67(3) & Sch 4, para 1 & 12

2 The removal of the WRAC does not apply where any of the circumstances in paragraphs 3 - 12 apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 1(1)

Meaning of claim

3 A claim means making a claim for ESA in accordance with specified provisions¹. See DMG Chapter 02 for detailed guidance on making a claim for ESA.

1 SS (C&P) Regs, reg 4ZC, 4G, 4H & 4I

4 DMs should note that an award of ESA made pending the outcome of an appeal against a decision embodying a determination that the claimant does not have LCW is made without the need to make a claim¹. However, the claimant may be protected from the removal of the WRAC as in paragraphs 8 or 11.

1 SS (C&P) Regs, reg 3(j)

Example

Lionel's award of ESA is terminated from 29.3.17 after he is found not to have LCW. The DM refuses to revise the disallowance following a mandatory reconsideration, and Lionel appeals to the FtT. He is awarded ESA from 27.4.17 pending the outcome of the appeal. On 5.9.17 Lionel's appeal succeeds, and the FtT places him in the WRAG. The FtT decision is implemented to award ESA with the WRAC up to 26.4.17, and the DM revises the decision awarding ESA from 27.4.17 to include the WRAC from the same date.

Claim made before 3.4.17

5 Where

1. the claimant has made or is treated as having made a claim for ESA before 3.4.17 **and**
2. that claim results in an award of ESA

the removal of the WRAC does not apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 2

6 The guidance at paragraph 5 applies whether the award of ESA is made

1. immediately following that claim **or**
2. following mandatory reconsideration **or**
3. on appeal.

Example 1

Catherine claims ESA on 28.3.17. She is awarded ESA from 4.4.17. On 26.7.17 following the WCA, the DM determines that Catherine has LCW, but does not have LCWRA. Catherine's award of ESA is superseded to include the WRAC from 4.7.17.

Example 2

Brian claims ESA and is awarded from 5.8.16 at the assessment phase rate. He is treated as not having LCW from 18.4.17 when the DM determines that Brian does not have good cause for a failure to attend the medical examination. Brian applies for a mandatory reconsideration, and when the decision is not revised, lodges an appeal to the FtT. The FtT allows the appeal, and Brian's award of ESA is reinstated when he sends in backdated fit notes again. Following the WCA, Brian is found to have LCW, and the decision awarding ESA is superseded to award the WRAC from 4.11.16.

7 The guidance at paragraph 6 also applies where it is determined that the claimant has, or is treated as having, LCW and LCWRA, and later following a repeat WCA, it is determined that the claimant has LCW, but no longer has LCWRA.

Example

Shani's award of ESA from 2016 includes the support component. Following a routine repeat WCA, on 20.4.17 the DM determines that Shani has LCW but no longer has LCWRA. Shani's award is superseded from 20.4.17 to remove the support component, and include the WRAC.

Claimants previously found to have LCW before 3.4.17

8 Where a claimant

1. is awarded ESA on or after 3.4.17 and has, or is treated as having, LCW **and**
2. a previous award of ESA ended within 12 weeks of the current PLCW **and**
3. the combined PLCW began before 3.4.17

the removal of the WRAC does not apply¹.

Note: PLCWs for awards of ESA paid pending the outcome of an appeal which is disallowed are disregarded when considering whether PLCWs link. See DMG 44636 and DMG Chapter 42 for further details.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 3; ESA Regs, reg 145

Example 1

Edmund has been entitled to ESA since November 2016 at the assessment phase rate. His award is terminated on 30.3.17 after he is found not to have LCW. He makes a further claim for ESA on 5.6.17 after developing a new health condition. After the WCA, Edmund is found to have LCW, but not LCWRA. As the PLCWs link, Edmund's award includes the WRAC from 5.6.17.

Example 2

Anne's award of ESA is terminated on 30.3.17 when she starts work. Anne finds the work too difficult because of her health condition, and she makes a further claim for ESA on 5.6.17. Following the WCA, Anne is found to have LCW but not LCWRA. As the PLCWs link, Anne's award of ESA includes the WRAC.

IB Reassessment cases

9 Where

1. the claimant is entitled to IB, SDA or IS on the grounds of disability **and**
2. the conversion process begins (whether before or after 3.4.17) **and**
3. the claimant is found to have, or is treated as having, LCW or LCWRA (whether for old style or new style ESA)

the removal of the WRAC does not apply¹.

Note: See DMG Chapter 45 for detailed guidance on IB Reassessment and the conversion process.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 4; ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 4

Example 1

Richard is entitled to IB, and on 15.3.17 is notified that the conversion process has begun. Following the WCA, Richard is found to have LCW and LCWRA, and his

award is converted to ESA(Cont) including the support component. Later, Richard's health condition improves, and after a repeat WCA, on 26.10.17 he is found to have LCW but not LCWRA. Richard's award is superseded to remove the support component and include the WRAC.

Example 2

Bridget is entitled to SDA and IS, and on 6.4.17 she is notified that the conversion process has begun. Following the WCA, on the DM determines Bridget has LCW, and her award is converted to an award of ESA with the WRAC from 12.7.17.

Claim made within the prescribed time for claiming before 3.4.17

10 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the claim is made within the prescribed time for claiming from a date before 3.4.17

the removal of the WRAC does not apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 5; SS (C&P) Regs, reg 19(1) & Sch 4, para 16

Example

Eoin claims ESA on 10.4.17, and provides a fit note to say he is not fit for work from 11.1.17. He is awarded ESA from 18.1.17. Following application of the WCA, the DM determines that Eoin has LCW, and supersedes the awarding decision to add the WRAC from 26.4.17.

Assessment phase begins before 3.4.17

11 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the assessment phase begins before 3.4.17 under specified legislation¹

the removal of the WRAC does not apply².

1 ESA Regs, reg 5; 2 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 6

Example

George is entitled to JSA, and begins a JSA EPS on 21.1.17. His condition does not improve as expected, and on 6.4.17 he claims ESA. George is found to have LCW but not LCWRA. The period of JSA EPS is treated as a period of ESA entitlement, and George's assessment phase begins on 21.1.17. His award of ESA from 6.4.17 includes the WRAC from 22.4.17.

Previously entitled to maternity allowance

12 Where

1. the claimant has been entitled to MA¹ and the end of that award is no longer than 12 weeks before a new claim for ESA **and**
2. immediately before the award of MA began, the claimant was previously entitled to ESA before 3.4.17

the removal of the WRAC does not apply².

Note: See DMG Chapter 62 for guidance on MA.

1 SS CB Act 92, s 35; 2 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 7

Example

Adele is entitled to MA from 5.9.16. She was entitled to ESA(IR) immediately before that date. However, she is not entitled to ESA(IR) while she is entitled to MA. Her entitlement to MA ends on 4.6.17. Adele makes a further claim for ESA on 19.6.17. Her award of ESA includes the WRAC.

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