

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 4 Amendment 59 – October 2019

PLEASE NOTE

THIS WILL BE THE LAST AMENDMENT PACKAGE PROVIDED IN THIS FORMAT. FROM 2020 A “SUMMARY OF CHANGES” DOCUMENT WILL BE PRODUCED THAT WILL COVER ALL THE CHANGES MADE IN A DMG AMENDMENT PACKAGE

1. This letter provides details on Amendment 59; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

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

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

3. Amendment 59 affects chapters 20 and 23. The changes:

Chapter 20 – incorporates changes from DMG Memo 7/19 and ADM Memo 10/19 as well as making other minor amends.

Chapter 23 – incorporates DMG Memos JSA/IS 106, JSA/IS 64, 7/19 and ADM Memo 10/19. As a result of the changes to pension age, various references (DMG 23091 et seq) to the pensioner premium (PP) and higher pensioner premium (HPP) being payable to a single claimant are removed. Pensionable age and the qualifying age for SPC are now the same, so there is no longer any entitlement to JSA(IB) or IS once that age is reached (and therefore no entitlement to the premiums). The premiums continue to be payable if the claimant's partner has reached that age. References to the linking rules and breaks in entitlement are also removed, as they were linked to the qualifying age for SPC. DMG 23121 is also amended to remove reference to possible entitlement to HPP. Where there are references in the chapter to a carer's allowance (CA) being in payment, the carer element of UC is now also included.

4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Chapter 20 - JSA and IS - conditions of entitlement

Entitlement to Jobseeker's Allowance and Income Support

General rules on entitlement

Introduction

20001 This Chapter contains guidance on the basic conditions of entitlement for JSA and IS plus detailed guidance on

1. the basic conditions for entitlement for JSA, including joint claims¹
2. people entitled to claim IS
3. remunerative work
4. relevant education
5. housing costs run-on.

Where the rules differ between JSA and IS this is stated in the guidance.

1 JS Act 95, s 1(2B)

20002 JSA and IS each have their own conditions of entitlement but there are some general rules which apply to both

1. a person cannot be entitled to JSA or IS unless a valid claim is made¹
2. a person under the age of 16 can never be entitled to JSA or IS²
3. an eligible child or a relevant child cannot be entitled to JSA(IB) or IS³ unless they fall within DMG 30546 et seq or 30565 et seq.
4. to be entitled to JSA or IS a person must be in GB⁴. This means **lawfully** in GB. A person who
 - 4.1 has entered GB unlawfully **and**
 - 4.2 makes no representations to the UK Border Agency is not entitled to JSA or IS. A person who does make representations to the UK Border Agency could be a PFA.
5. a person, and where relevant their partner, satisfy the NINO provisions⁵ (see DMG Chapter 02).

1 SS A Act 92, s 1(1) & (4); 2 JS Act 95, s 3(1)(f) & 3A(1)(e); SS CB Act 92, s 124(1)(a); 3 Children (Leaving Care) Act 2000, s 6; Children (Leaving Care) Act 2000 (Com No. 2 & Cons prov) Order, Sch 1, para (a) & Sch 4, para (a); JSA Regs, reg 57; IS (Gen) Regs, reg 4ZA; 4 JS Act 95, s 1(2)(i); SS CB Act 92, s 124(1); 5 IS (Gen) Regs, reg 2A(b); JSA Regs, reg 2A(b)

JSA - basic conditions

20003 People are entitled to JSA¹ if they

1. are available for employment and ASE and have a current JSAg but see
 - 1.1 DMG 20007 where a person is in receipt of a training allowance
 - 1.2 DMG Chapter 21 where a person is participating in the first stage or the second stage of any of the EZ programmes **and**
2. are not in remunerative work **and**
3. are not involved in a TD² **and**
4. are capable of work³/do not have LCW **and**
5. are not in relevant education **and**
6. are in GB (except for certain temporary absences abroad) **and**
7. are under pension age (but see note 2 below) **and**
8. satisfy
 - 8.1 the contribution-based conditions for JSA(Cont)⁴ **or**
 - 8.2 the income based conditions for JSA(IB)⁵.

Note 1: Special rules apply to share fishermen (see DMG Chapter 27) and joint claims for JSA. Member of reserve forces can be entitled to JSA whilst attending annual continuous training, which can include training outside of GB⁶.

Note 2: Where DMG 20003 7. would normally exclude a person from entitlement to JSA and that person is part of a mixed-age couple⁷ who is excluded from entitlement to SPC and is restricted from claiming UC, the member of the mixed-age couple who has attained the qualifying age for SPC is treated as satisfying the age-related condition⁸. This allows new claims for JSA to be made and awards to continue.

1 JS Act 95, s 1(2); 2 s 14; 3 ESA (Trans Provs) Regs, reg 5; 4 s 1(2)(d); 5 s 1(2A); 6 JSA Regs, reg 14(1)(v); 7 WR Act 12 (Commencement No. 31 etc) Order 2018, art 2(2)(a); 8 art 8(2)

JSA - joint claims from 28.10.02

20004 Where the context specifies “the claimant,” in the case of joint claims it should be read as a “claimant”. From and including 28.10.02 a joint claim to JSA must be made (other than in the circumstances described in DMG 20006) where one or both members of a couple are

1. born after 28.10.47¹ **and**
2. aged 18 or over **and**
3. there are no children in the household or the assessment **and**
4. neither are working 16 hours or more a week **and**

5. there is an element of JSA(IB) in their assessment.

1 JS Act 95, s 1(4); JSA Regs, reg 3A(1)

Note: See the definition of a claimant in DMG Chapter 22.

20005

Claimant entitled to JSA(IB) on 27.10.02

20006 Where a claimant is entitled to JSA(IB) on 27.10.02 they can continue to receive JSA(IB) **without** having to make a joint claim with their partner (only until the day their partner is required to attend a place specified by an Emp O in a notification given or sent to the partner) if¹

1. they satisfy the conditions of entitlement for JSA(IB)² **and**
2. their partner does not satisfy all the following conditions of entitlement³
 - 2.1 being available
 - 2.2 having a JSAg
 - 2.3 ASE
 - 2.4 not being in remunerative work
 - 2.5 being capable
 - 2.6 not being in relevant education
 - 2.7 being under pension age
 - 2.8 being in GB.

1 JSA Regs, reg 3E(2)(l); 2 reg 3E(1)(a); 3 reg 3E(1)(c)

Example

Josh and Meg are both 40 years old. Josh is getting JSA(IB) for himself and Meg and attends the Jobcentre on a Wednesday every fortnight. Meg receives a letter from the Jobcentre asking her to attend an interview on Thursday 14 November to make a joint claim for JSA.

Josh can continue to get JSA(IB) for himself and Meg until Thursday 14 November. From Friday 15 November he will only be able to get JSA(IB) as part of a joint claim couple with Meg.

Persons in receipt of a training allowance

20007 A person who is in receipt of a training allowance, or would be if it was not prevented by legislation¹, is entitled to JSA(IB) without²

1. being available for employment **or**
2. having entered into a JSAg **or**
3. ASE.

But this does not apply to WBLfYP, 'Skillseekers', a qualifying young person or a child³.

*1 Social Security (Breach of Community Order) Regulations 2001, S.I 2001 No. 1395; 2 JSA Regs, reg 170;
3 SS CB Act 92, s 142*

Definition of training allowance

20008 A training allowance is¹ an allowance payable

- 1.** out of public funds by
 - 1.1** a government department **or**
 - 1.2** on behalf of
 - 1.2.a** the Secretary of State for Work and Pensions **or**
 - 1.2.b** Scottish Enterprise **or**
 - 1.2.c** Highlands and Islands Enterprise **or**
 - 1.2.d** Skills Development Scotland **or**
 - 1.2.e** the Young People's Learning Agency for England, the Chief Executive of Skills Funding **or**
 - 1.2.f** Welsh Ministers **and**
- 2.** to people for
 - 2.1** their maintenance **or**
 - 2.2** a member of their family **and**
- 3.** for the period, or part of the period, that they are taking part in a course of training or instruction
 - 3.1** provided by, or under arrangements made with, that department **or**
 - 3.2** approved by that department in relation to the person **or**
 - 3.3** so provided or approved by or on behalf of the
 - 3.3.a** Secretary of State for Work and Pensions **or**
 - 3.3.b** Scottish Enterprise **or**
 - 3.3.c** Highlands and Islands Enterprise **or**
 - 3.3.d** Skills Development Scotland **or**
 - 3.3.e** Welsh Ministers.

Examples of schemes which pay training allowances are Training for Work in Scotland, Work Based Learning - Skills Based in Wales and Employment Rehabilitation.

Note: An allowance paid directly or indirectly by the European Social Fund is paid out of public funds². DMs will have to consider whether **2.** and **3.** are also satisfied.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 R(IS) 10/98

3. not be entitled to SPC or ESA(IR) **and**
4. have at least one member who is over 18 and if only one member is over 18 the other member must
 - 4.1 have a Secretary of State's direction (see DMG 30770 et seq) **or**
 - 4.2 satisfy the conditions at DMG 30597 et seq.

1 JS Act 95, s 3A

20019 Members of a joint claim couple may choose which one of them should receive JSA¹. If the members of a joint claim couple do not make the choice, the DM should decide who should receive JSA².

1 s 3B(1); 2 s 3B(2)

20020 - 20021

IS - basic conditions

20022 To be entitled to IS¹ a person must

1. be in GB (except in certain circumstances) (see DMG 070702) **and**
2. be aged 16 or over **and**
3. be under the qualifying age for SPC (see DMG 77032 and **Note 2** below) **and**
4. have no income or an income which does not exceed the applicable amount **and**
5. not be in remunerative work **and**
6. not have a partner in remunerative work **and**
7. not be in relevant education (unless in special circumstances) (see DMG 20630 et seq) **and**
8. be in a prescribed category (see DMG 20081 et seq) **and**
9. not be entitled to JSA or ESA **and**
10. not have a partner who is entitled to JSA(IB) or ESA(IR) **and**
11. not have a partner who is entitled to SPC.

Note 1: Special rules apply to share fishermen (see DMG Chapter 27).

Note 2: Where DMG 20022 3. would normally exclude a person from entitlement to IS and that person is part of a mixed-age couple² who is excluded from entitlement to SPC and is restricted from claiming UC, the member of the mixed-age couple who has attained the qualifying age for SPC is treated as satisfying the age-related condition³. This allows new claims for IS to be made and awards to continue.

1 SS CB Act 92, s 124; 2 WR Act 12 (Commencement No. 31 etc) Order 2018, art 2(2)(a); 3 art 8(2)

JSA joint claims - exemptions

20023 Certain categories of members of a joint claim couple are not required to satisfy conditions in DMG 20017. These categories¹ are where one of the members **does** satisfy those conditions and the other member is

1. not in remunerative work **and**
2. under pension age **and**
3. a person who is
 - 3.1 a F/T student **or**
 - 3.2 a regular carer **or**
 - 3.3 incapable of work (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**
 - 3.4 treated as capable of work or entitled to SSP **or**
 - 3.5 has LCW **or**
 - 3.6 in employment living in a care home, Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**
 - 3.7 a disabled worker (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**
 - 3.8 a disabled student (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**
 - 3.9 a deaf student (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**
 - 3.10 blind (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**
 - 3.11 a pregnant woman **or**
 - 3.12 over the qualifying age for SPC **or**
 - 3.13 a refugee learning English **or**
 - 3.14 required to attend court or tribunal **or**
 - 3.15 a young person in training **or**
 - 3.16 affected by a TD.

1 JSA Regs, reg 3D(1)(c) & Sch A1

20024 A member that falls into any category in DMG 20023 for one or more days in a benefit week is treated as satisfying that category for the whole of that week¹.

1 reg 3D(2)

People entitled to Income Support

- 20081 People can receive IS for the whole of the benefit week provided they satisfy the conditions of entitlement and are in one of the following categories¹ for one or more days in that benefit week
1. lone parents
 2. lone foster parents
 3. single claimant or lone parent looking after a child prior to adoption
 4. people temporarily looking after another person
 5. regular carers
 6. people incapable of work (revoked from 30.12.09 but see Appendix 5 for savings provisions)
 7. certain people in receipt of the daily living component of PIP
 8. disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)
 9. people in work living in a care home, Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)
 10. people entitled to housing costs run-on
 11. disabled students (revoked from 30.12.09 but see Appendix 5 for savings provisions)
 12. deaf students (revoked from 30.12.09 but see Appendix 5 for savings provisions)
 13. blind people (revoked from 30.12.09 but see Appendix 5 for savings provisions)
 14. pregnant women
 15. parental leave
 16. paternity leave
 17. certain people in relevant education
 18. young people in second chance learning
 19. refugees learning English
 20. people who claim asylum on or after 3.4.00 and who is granted refugee status on or before 14.6.07
 21. people required to attend court or a tribunal
 22. people affected by a TD

- 23. certain PFAs
- 24. people in custody
- 25. members of a couple looking after children whilst their partner is temporarily abroad
- 26. people appealing against a decision which embodies a determination of capability for work
- 27. people attending WBLfYP or 'Skillseekers' courses

1 IS (Gen) Regs, reg 4ZA & Sch 1B

Note: Just because the claimant no longer falls into any particular prescribed category, this in itself is not grounds for superseding the decision awarding IS. The DM must be satisfied that the claimant does not fall into any other category. This may mean that further enquiries will have to be made before the DM can be satisfied that no other prescribed category applies¹.

1 R(IS) 10/05

Lone parents

20082 Lone parent means¹ a person who

- 1. has no partner **and**
- 2. is responsible for and a member of the same household as
 - 2.1 a child **or**
 - 2.2 young person.

Note: The claimant's status as a lone parent is not affected by the presence of another adult, for example when the claimant lives with parents.

The DM should accept that a claimant is a lone parent unless there is an indication that the person may have a partner. When members of a couple claim to be estranged while still living at the same address, the DM should consider whether they are members of the same household.

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

20083 To be entitled to IS, where they do not satisfy any other prescribed category, the lone parent will have to be

- 1. responsible for and a member of the same household as
 - 1.1 a single child aged under 5 **or**
 - 1.2 more than one child where the youngest child is aged under 5 **or**
- 2. under the age of 18¹.

People treated as not in remunerative work

Introduction

20464 In certain circumstances, 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 home¹ (IS only) **or**
2. engaged by a charity or voluntary organization or is a volunteer² **or**
3. engaged on a training scheme³ **or**
4. receiving assistance under the S/E route⁴ **or**
5. engaged in specific occupations⁵ **or**
6. performing duties as a councillor⁶ **or**
7. engaged as a foster parent or in providing respite care⁷ **or**
8. engaged in caring for a former child under continuing care arrangements⁸ **or**
9. engaged in an activity which attracts a sports award⁹ **or**
10. engaged on Work Experience employment programme (JSA only)¹⁰ **or**
11. participating in the MWA Scheme (JSA only)¹¹ **or**
12. participating in SAPOE (JSA only)¹².

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

1 IS (Gen) Regs, reg 6(1)(b); 2 JSA Regs, reg 53(a); IS (Gen) Regs, reg 6(1)(c); 3 JSA Regs, reg 53(b); IS (Gen) Regs, reg 6(1)(d); 4 JSA Regs, reg 53(bb); IS (Gen) Regs, reg 6(1)(dd); 5 JSA Regs, reg 53(d); IS (Gen) Regs, reg 6(1)(h); 6 JSA Regs, reg 53(e); IS (Gen) Regs, reg 6(1)(j); 7 JSA Regs, reg 53(f); IS (Gen) Regs, reg 6(1)(k); 8 IS (Gen) Regs, reg 6(1)(ka); JSA Regs, reg 53(fa); 9 JSA Regs, reg 53(i); IS (Gen) Regs, reg 6(1)(m); 10 JSA Regs, reg 53(k); 11 reg 53(l); 12 reg 53(m)

20465 In addition, there are other circumstances 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. disabled¹ (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**
2. affected by a TD² **or**
3. caring for another person³ (IS only) **or**
4. living in a care home, an Abbeyfield Home or an independent hospital⁴ (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**
5. in receipt of IS by way of housing costs run-on⁵.

1 JSA Regs, reg 53(h), IS (Gen) Regs, reg 6(4)(a); 2 JSA Regs, reg 53(g) & 53(gg); IS (Gen) Regs, reg 6(4)(b); 3 IS (Gen) Regs, reg 6(4)(c); Sch 1B, para 4; 4 JSA Regs, reg 53(c); IS (Gen) Regs, reg 6(4)(d); 5 IS (Gen) Regs, reg 6(5) & 6(6)

Example

Trevor is required at home to care for his disabled partner who gets AA. He also works 20 hours a week as a barman. Because he is a carer he is treated as not engaged in remunerative work and none of the hours count, not even those spent in bar work.

Childminders

20466 For IS purposes, 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.

Note: For JSA purposes, **all** work as a childminder will count towards the remunerative work exclusion.

1 IS (Gen) Regs, reg 6(1)(b)

Charity or voluntary workers and volunteers

20467 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 paid

is for expenses incurred **and**

2. they receive no remuneration or profit **and**
3. they are not treated as having notional earnings¹ (see DMG 28389 - 28391).

1 JSA Regs, reg 53(a) & Sch 7, para 2; IS (Gen) Regs, reg 6(1)(c) & Sch 9, para 2

Meaning of voluntary organization

20468 A voluntary organization is a body, other than a public authority or LA, whose activities are not carried out for profit¹.

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

Meaning of volunteer

20469 A volunteer is a person

1. who is engaged in voluntary work for someone who is not a relative **and**

Note 1: See DMG 20117 - 20119 for guidance on deciding whether or not a person is regularly and substantially caring.

Note 2: For JSA purposes, where people are caring for another person the hours spent in caring do not count towards the remunerative work exclusion⁵. However, hours spent by a carer in any other occupation do count (see DMG 20252 et seq).

*1 IS (Gen) Regs, reg 6(4)(c) & 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; 5 JSA Regs, reg 51(3)(c)*

20503 Where DMG 20502 **1.2** applies people are treated as not in remunerative work until the earlier of¹

1. the date the claim for “AA”, DLA, PIP or AFIP is decided **or**
2. 26 weeks from the date of claim for “AA”, DLA, PIP or AFIP.

1 IS (Gen) Regs, Sch 1B, para 4(a)(ii) & (iii)

People living in a care home, Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

20504 People who

1. are in employment **and**
 2. live in certain types of accommodation
- are treated as not being in remunerative work¹.

1 JSA Regs, reg 53(c); IS (Gen) Regs, reg 6(4)(d)

20505 DMG 20504 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

See DMG Chapter 24 for guidance on the treatment of people in a care home, Abbeyfield Home or an independent hospital.

20506 - 20529

Housing costs run-on

20530 People may be entitled to IS in respect of housing costs for a limited period after they start remunerative work if the

1. remunerative work is expected to last for not less than five weeks **and**
2. people were, for a continuous period of 26 weeks immediately before the day on which they started this work, entitled to and in receipt of JSA(IB), IS or ESA **and**
3. people had, on the day before starting this work, included in the applicable amount, an amount in respect of housing costs **and**
4. people remain liable to make payments in respect of those housing costs¹.

For IS only, people who satisfy these conditions are treated as not being in remunerative work for the first four weeks of that work².

1 IS (Gen) Regs, reg 6(5); 2 reg 6(6)(a)

20531 When determining the length of time benefit has been in payment, any periods of housing costs run on will not be treated as part of the 26 week qualifying period¹.

1 JSA (Gen) Regs, reg 6(7)

20532 See DMG 26009 for guidance on earnings disregard, DMG 28351 for income disregard, DMG 29605 for capital disregards, DMG 24391 for applicable amount, DMG 33349 for payment of housing costs run on and DMG 02009 for claims.

20533 - 20555

Participation and signing

Introduction

- 20909 The guidance on participation and signing applies only to JSA and not to IS.
- 20910 Where a claimant fails to participate in an interview, one of 4 outcomes is possible.
JSA entitlement
1. ends¹ (DMG 20915) **or**
 2. does not end and continues to be paid at full rate².

Note: Where one member of a joint claim couple is awarded an exemption the Emp O will not require that person to attend.

1 JSA Regs, reg 25; 2 reg 27

Signing a declaration

A declaration

20915 If the Secretary of State asks them¹, claimants have to provide signed declarations (usually on form ES24) to the effect that since making a claim for JSA or since they last provided such a signed declaration

1. they have been
 - 1.1 available **or**
 - 1.2 satisfying the conditions necessary to be treated as available except for any period they have already told the Secretary of State about **and**
2. they have been
 - 2.1 ASE to the extent needed to give them their best chance of getting employment **or**
 - 2.2 satisfying the conditions necessary to be treated as ASE except for any period they have already told the Secretary of State about **and**
3. there has been no change to their circumstances which might affect entitlement to JSA or the amount of JSA payable, except for anything they have already told the Secretary of State about.

1 JS Act 95, s 8(1)(b) and 8(1A)(a to d); JSA Regs, reg 24(6)

20916 The declarations have to be provided on the day on which claimants are told in a notification to participate (see DMG 20911), or on any other day as the Secretary of State may say¹. Usually claimants will only need to sign declarations on the days they are required to regularly participate as instructed by form ES40, or, if they are postal claimants, on the days they are told on form ES40 to sign their declarations.

1 JS Act 95, reg 24(10)

20917 References to the Secretary of State can also include a reference to people designated as Emp Os¹. Appendix 4 gives details of the people the Secretary of State has authorized as Emp Os in relation to providing evidence and information.

1 JS Act 95, reg 24(11)

20918

Chapter 23 - Normal amount payable

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Chapter 23 - Normal amount payable

Amount payable

General

Scope of this Chapter

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

JSA

Meaning of claimant

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

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

Deciding entitlement

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

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

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

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

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

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

Dependant's personal allowances

23039 With the introduction of Child Tax Credits (CTC) in April 2003 the intention was that from 6.4.04 no new awards of IS/JSA child elements would be made. This was delayed and as a consequence child elements of IS/JSA were awarded up to 8.9.05. However, the migration of these claims to CTC has been delayed a number of times and will not now take place.

23040 Where the claimant's applicable amount has included, for a continuous period from 6.4.04, any amount in respect of a child, their applicable amount should include an amount for any

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

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

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

23041 A personal allowance can be awarded for a child born after 6.4.17, but only where

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

1 The Social Security (Restrictions on amounts for Children and Qualifying Young Persons)

Amendment Regulations 2017 reg 5 & 6

Structure of allowances

23042 From 10.4.00 there are two rates of personal allowances for children and young persons¹. These are from

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

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

23043 When a dependant reaches age 16 the personal allowance does not increase until the first Monday in the September which follows the sixteenth birthday. Although because both categories are paid at the same rate there will be no material change.

23044 - 23045

Example

Kate, a lone parent getting FP(LP), moves in with a new partner and gives up IS from 27.5.98. Ten weeks later she splits up with her partner but does not re-claim immediately because she has started a F/T job. She gives up the job and re-claims four weeks later. The claims do not link and transitional protection is lost because the total period without FP(LP) entitlement exceeds twelve weeks.

23084 IS and JSA(IB) claims are interchangeable for this purpose. A person can move from IS to JSA(IB) or vice versa and still benefit from the linking rules¹.

1 JSA Regs, Sch 1, para 4(6); IS (Gen) Regs, Sch 2, para 3(6)

23085 FP(LP) is also payable if¹

1. the claimant is a member of a couple **and**
2. the claimant has transitional protection **and**
3. the family includes at least one child or young person **and**
4. the partner has been absent from the UK for more than
 - 4.1 four weeks **or**
 - 4.2 eight weeks, if taking a child abroad for treatment **and**
5. the claimant is treated as a lone parent.

See DMG 071940 et seq.

1 JSA Regs, reg 85(1), Sch 5, para 10 & 11; IS (Gen) Regs, reg 21(1), Sch 7, para 11 & 11A

23086 - 23090

Pensioner premium

General

- 23091 Before awarding PP the DM should consider whether HPP conditions are satisfied. If appropriate HPP should be awarded instead of PP.
- 23092 Age is the only qualifying condition for PP. This condition for JSA(IB) and IS has different definitions, but is fundamentally the same (see Note). The multiple premium rules apply to PP (see DMG 23052).

Note: The qualifying condition for an award of a PP in JSA(IB) is that the claimant is under pensionable age, and for IS, that the claimant has not attained the qualifying age for SPC. Since 6.12.18, pensionable age for a man or a woman is the same, and the qualifying age for SPC is defined as pensionable age. From that date there is therefore no longer any difference in the qualifying conditions for a PP in IS or JSA(IB) and no longer any entitlement to any PP if a claimant has reached the qualifying age for SPC or pensionable age. (but see DMG 23096.)

JSA(IB)

- 23093 PP is payable if the claimant is a member of a couple or polygamous marriage and
1. the claimant's partner has attained the qualifying age for SPC but not the age of 75¹ or
 2. a member of a joint-claim couple has attained the qualifying age for SPC but not the age of 75².

1 JSA Regs, Sch 1 para 10 & 20(2)(c); 2 para 20E & 20(M)(1)

IS

- 23094 PP is payable where the claimant is less than the qualifying age for SPC and the claimant's partner is not less than the qualifying age for SPC but less than 75¹.

1 IS (Gen) Regs, Sch 2, para 9

Mixed age couple

- 23095 When a claimant reaches pensionable age, they will no longer satisfy the basic conditions for an award and will no longer be entitled to JSA(IB) or IS¹ If the other member of the couple has not reached pensionable age, they will be unable to claim SPC (a mixed-age couple)². (See DMG Chapter 77.)

1 WR Act 12 s 1(3)(c); 2 WR Act 2012 (Commencement No. 31 etc) Order 2019 art 2(2)(a).

- 23096 If they are also restricted from claiming UC¹ (ADM Chapter M5), the claimant is treated as satisfying the age-related condition of entitlement for JSA(IB)/IS² and a PP will continue to be paid.

1 UC(TP) Regs, reg 4 & 4A, WR Act 12 (Commencement No. 32 etc.) Order 2019 art 4(11);

2 WR Act 2012 (Commencement No. 31 etc.) Order Art 8(4)

Example

Flo has LCWRA and is entitled to ESA(IR) and HB for herself and her partner George. Her ESA award includes the higher rate SDP. Flo reaches pensionable age, and entitlement to ESA(IR) and HB would normally terminate as she does not satisfy the age-related conditions of entitlement. As George is under pensionable age, the couple cannot be entitled to SPC. Flo and George are also prevented from claiming UC due to the SDP entitlement. George does not have LCW, so cannot claim ESA(IR) instead of Flo. Flo is treated as satisfying the age-related conditions of entitlement, and as not having reached the qualifying age for SPC, so remains entitled to ESA(IR) and HB, and a PP will be payable.

- 23097 Once the younger member of the couple reaches the qualifying age for SPC, they cease to be a mixed-age couple, the claimant will no longer be treated as satisfying the age-related condition of entitlement and the award of ESA will end.

Enhanced pensioner premium

General

- 23098 Before awarding EPP the DM should consider whether HPP conditions are satisfied. If appropriate HPP should be awarded instead of EPP.
- 23099 Age is the only qualifying condition for EPP. The multiple premium rules apply to EPP (see DMG 23052).

JSA(IB)

- 23100 EPP is payable if the claimant has a partner who has attained the age of 75 but not the age of 80¹. There is only one rate of EPP.

1 JSA Regs, Sch 1, para 11

IS

- 23101 EPP is payable if the claimant has a partner who has attained the age of 75 but not the age of 80¹. There is only one rate of EPP.

1 IS (Gen) Regs, Sch 2, para 9A

Higher pensioner premium

General

23102 HPP is paid at two rates. The qualifying conditions for the HPP for JSA(IB) and IS have different definitions, but are fundamentally the same (see Note to DMG 23092), The linking rules are the same. The multiple premium rules apply to HPP (see DMG 23052).

JSA(IB)

23103 HPP is paid to a claimant who is a member of a couple or polygamous marriage if the

1. partner is aged 80 or over¹ **or**
2. partner or one member of a joint-claim couple² is not less than the qualifying age for SPC but less than 80 **and**
 - 2.1 is in receipt of
 - 2.1.a the disability element, or the severe disability element, of WTC3 **or**
 - 2.1.b Mobility Supplement³ (see DMG 23074) **or**
 - 2.1.c "AA"⁴ (see DMG 23071) **or**
 - 2.1.d DLA (including any DLA paid direct to Motability Finance)³ **or**
 - 2.1.e PIP⁵ **or**
 - 2.1.f AFIP⁶ **or**
 - 2.2 is provided with, or a grant towards, an invalid carriage by
 - 2.2.a the NHS in GB **or**
 - 2.2.b the Department of Health and Social Services in Northern Ireland⁷ **or**
 - 2.3. is entitled to the mobility component of DLA or PIP but that component is not payable because of DMG 23104⁸ **or**
 - 2.4. is certified as severely sight impaired or blind by a consultant ophthalmologist⁹ (see DMG 23072) **or**
 - 2.5 is in receipt of
 - 2.5.a SDA¹⁰ **or**
 - 2.5.b IBLT (including IBST paid at an equal rate to IBLT because the partner is terminally ill)¹¹ **or**

- 2.6 was in receipt of IBLT immediately before attaining pensionable age **and**
 - 2.6.a that partner is still alive **and**
 - 2.6.b HPP or DP had been payable to the claimant or partner before IBLT ceased¹² **or**
- 2.7 was entitled to
 - 2.7.a "AA", DLA or PIP which has ceased or is abated because the partner has been in hospital for more than 28 days **and**
 - 2.7.b HPP or DP was awarded to the claimant or partner immediately before "AA", DLA or PIP ceased or was abated¹³ **or**
- 3. member of a joint-claim couple is not less than the qualifying age for SPC but less than 80 **and**
 - 3.1 is entitled to SSP (see DMG 23133) **or**
 - 3.2 is incapable or treated as incapable of work (see DMG 23135) **or**
 - 3.3 has limited capability for work **or** is treated as having limited capability for work

for a continuous period of not less than 196 days if the claimant is terminally ill, or 364 days in any other case¹⁴. DP is applicable from the 197th or 365th day respectively (see DMG 23143 to 23145 for linking rules

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

1 JSA Regs, Sch 1, para 12(1)(b)(i); 2 Sch 1, para 20F(1)(a); 3 Sch 1, para 14(1)(a); 4 reg 1(3); 5 Sch 1, para 1(ca); 6 Sch 1, para 14(1)(cb); 7 Sch 1, para 14(1)(e); 8 Sch 1 para 14(1)(f); 9 Sch 1, para 14(1)(h); 10 Sch 1, para 14(1)(b) & 20H(1)(b); 11 Sch 1, para 14(1)(d), 20H(1)(d) & 20H(1)(e); 12 Sch 1, para 14(1)(g)(i) & 20H(1)(h)(i); 13 Sch 1, para 14(1)(g)(ii) & 20H(1)(h)(ii); 14 Sch 1, para 20F(1)(a) & para 20H(1)(e) & (ee)

Mobility component of DLA not payable

- 23104 Mobility component of DLA or PIP is not payable for any period that the person
- 1. is provided with an invalid carriage or other vehicle by the NHS in GB¹, unless
 - 1.1 the person²
 - 1.1.a has notified the DM that the invalid carriage or other vehicle is no longer required **and**
 - 1.1.b has signed a statement saying that the invalid carriage or other vehicle will not be used before it is collected **or**
 - 1.2 the DM has issued a certificate because the person³
 - 1.2.a has, or intends to, take out a hire purchase agreement or buy a car **and**

- 1.2.b** intends to keep the car for at least six months **and**
 - 1.2.c** intends to learn to drive the car **and**
 - 1.2.d** will use, in whole or in part, the mobility component of DLA towards meeting the expense of acquiring the car **or**
- 2.** is in receipt of⁴
- 2.1** a grant towards the costs of running a private car **or**
 - 2.2** Mobility Supplement **or**
 - 2.3** a payment paid out of public funds similar to **2.1** or **2.2**.

Note: If any payment in DMG 23103 **2.** is less than the amount of the mobility component of DLA, the mobility component will be paid less the amount of the payment received⁵.

1 SS (C&P) Regs, reg 42(1)(a); 2 reg 42(2); 3 reg 42(4); 4 reg 42(1)(b); 5 reg 42(3)

Pensionable age

23105 Pensionable¹ age is

- 1.** 65 years for a man born before 6.12.53 **or**
- 2.** 60 years for a woman born before 6.4.50 **or**
- 3.** the date in Chapter 20, Appendix 1, for a woman born between 6.4.50 and 5.10.54 **or**
the 66th birthday for a person born after 5.10.54 but before 6.4.60 **or**
- 4.** the 67th birthday for a person born after 5.3.61 but before 6.4.77 **or**
- 5.** the 68th birthday for a person born after 5.4.78.

Note 1: See Appendix 1 to Chapter 20 for pensionable age for a woman born from 6.4.53 to 5.12.53 inclusive, Appendix 2 for pensionable age for a person born 6.12.53 to 5.10.54 inclusive, Appendix 3 for pensionable age for a person born 6.4.60 to 5.3.61 inclusive (DMs should note that pensionable age for such a person is linked to their date of birth and there is no common pensionable age for those born within a specified period). See Appendix 4 to Chapter 20 for pensionable age for a person born 6.4.77 to 5.4.78 inclusive.

Note 2: A person is over pensionable age if they have reached that age; otherwise they are under pensionable age².

*1 Pensions Act 14, s 22(1); SS CB Act 92, s 122(1); Pensions Act 1995, Sch 4, Part I, para 1(3) – (10);
2 Pensions Act 14, s 22(1)*

IS

- 23106 HPP is paid to a claimant who is a member of a couple or polygamous marriage where
1. a partner is aged 80 or over¹ **or**
 2. one or more of the partners is not less than the qualifying age for SPC but less than 80 and any partner
 - 2.1 is in receipt of any of the following benefits
 - 2.1.a “AA” (see DMG 23071) **or**
 - 2.1.b DLA **or**
 - 2.1.c the disability element, or the severe disability element, of WTC **or**
 - 2.1.d Mobility supplement (see DMG 23074) **or**
 - 2.1.e IBLT (including IBST treated as IBLT, see DMG 23129) **or**
 - 2.1.f SDA **or**
 - 2.1.g PIP **or**
 - 2.1.h AFIP **or**
 - 2.2 is provided with, or a grant towards, an invalid carriage by the NHS² **or**
 - 2.3 is certified as severely sight impaired or blind by a consultant ophthalmologist³ (see DMG 23072) **or**
 3. any partner is not less than the qualifying age for SPC but less than 80 and was in receipt of IBLT which ceased because RP⁴ became payable if
 - 3.1 that partner is still alive **and**
 - 3.2 HPP or DP was applicable to the claimant or partner before IBLT ceased⁵ (but see DMG 23111).

Note: In DMG 23106 2., any IBLT or SDA paid to a partner must be paid because of the partner’s own incapacity or disability (see DMG 23055).

1 IS (Gen) Regs, Sch 2, para 10(1)(a); 2 IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; Sch 2, para 12(1)(a)(ii); 3 IS (Gen) Regs, Sch 2, para 12(1)(a)(iii); 4 Pension Act 2014, Pt 1; 5 Sch 2, para 12(1)(c)

Mixed age couple

- 23107 When a claimant reaches pensionable age (or has attained the qualifying age for SPC), (see DMG 23105) they will no longer satisfy the basic conditions for an award and will no longer be entitled to JSA(IB)¹ or IS² (see DMG Chapter 20). If the other member of the couple has not reached pensionable age, they will be unable to claim SPC (a mixed-age couple)³. (See DMG Chapter 77.)

1 JS Act 95 s 1(2)(h); 2 SS (C&B) Act 92, s 124(1)(aa); 3 WR Act 2012 (Commencement No. 31 etc) Order 2019 art 2(2)(a)

23108 If they are also restricted from claiming UC¹ (ADM Chapter M5), the claimant is treated as satisfying the age-related condition of entitlement for JSA(IB) or IS² and a PP/HPP will continue to be paid.

1 UC(TP) Regs, reg 4 & 4A, WR Act 12 (Commencement No. 32 etc.) Order 2019 art 4(11);

2 WR Act 2012(Commencement No. 31 etc.) Order 2019 art 8(4)

Example

Jon is married to Maggie and is entitled to JSA(IB) which includes the SDP. Maggie is in receipt of IBLT. Jon reaches pensionable age, and entitlement to JSA(IB) would normally terminate as he does not satisfy the age-related conditions of entitlement. As Maggie is under pensionable age, the couple cannot be entitled to SPC. They are also prevented from claiming UC due to the SDP entitlement.

Jon is treated as satisfying the age-related conditions of entitlement to JSA(IB) so remains entitled to JSA(IB), and a PP or HPP will be payable.

23109 Once the younger member of the couple reaches the qualifying age for SPC, they cease to be a mixed-age couple, the claimant will no longer be treated as satisfying the age-related condition of entitlement and the award of ESA will end.

23110 - 23120

Disability premium

General

- 23121 DP is paid at two rates. The qualifying conditions for JSA(IB) and IS are different. The multiple premiums rule applies to DP (see DMG 23052).

JSA(IB)

Lower rate

- 23122 The lower rate DP is paid to a single claimant or lone parent who is aged less than the qualifying age for SPC¹ and is

1. in receipt of
 - 1.1 the disability element, or the severe disability element, of WTC² **or**
 - 1.2 Mobility Supplement³ (see DMG 23074) **or**
 - 1.3 "AA" (see DMG 23071) **or**
 - 1.4 DLA (including any DLA paid direct to Motability Finance)⁴ **or**
 - 1.5 PIP **or**
 - 1.6 AFIP⁵ **or**
2. provided with, or a grant towards, an invalid carriage by the
 - 2.1 NHS in GB **or**
 - 2.2 Department of Health and Social Services in Northern Ireland⁶ **or**
3. entitled to the mobility component of DLA or PIP but that component is not payable because of DMG 23104⁷ **or**
4. certified as severely sight impaired or blind by a consultant ophthalmologist or treated as severely sight impaired or blind⁸ (see DMG 23072).

1 JSA Regs, Sch 1, para 13(a); 2 Sch 1, para 14(1)(a); Working Tax Credits (Ent & Max rate) Regs 2002, reg 20(1)(b) & (f); 3 JSA Regs, Sch 1, para 14(1)(a); 4 Sch 1, para 14(1)(c); 5 Sch 1, para 14(1)(cd); 6 Sch 1, para 14(1)(e); 7 Sch 1 para 14(1)(f); 8 Sch 1, para 14(1)(h) & (2)

Higher rate

- 23123 The higher rate DP is paid to a claimant who is a member of a couple or polygamous marriage where

1. the claimant
 - 1.1 is aged less than the qualifying age for SPC **and**
 - 1.2 satisfies any of the conditions at DMG 23122¹ **or**

2. the partner, or a member of a joint-claim couple, is aged less than the qualifying age for SPC **and**
 - 2.1 satisfies any of the conditions in DMG 23122² **or**
 - 2.2 is in receipt of
 - 2.2.a SDA³ **or**
 - 2.2.b IBLT (including IBST paid at an equal rate to IBLT because the claimant or partner is terminally ill)⁴ **or**
 - 2.3 is in receipt of
 - 2.3.a “AA”, DLA or PIP which has ceased or is abated solely because the partner, or either member of the joint-claim couple, has been in hospital for more than 28 days **and**
 - 2.3.b DP was awarded to the claimant or partner immediately before “AA”, DLA or PIP ceased or was abated⁵ **or**
3. the member of a joint-claim couple is aged less than the qualifying age for SPC **and**
 - 3.1 is entitled to SSP (see DMG 23133) **or**
 - 3.2 is incapable or treated as incapable of work (see DMG 23135) **or**
 - 3.3 has limited capability for work or is treated as having limited capability for work

for a continuous period of not less than 196 days if the claimant is terminally ill, or 364 days in any other case⁶. DP is applicable from the 197th or 365th day respectively (see DMG 23143 to 23145 for linking rules).

*1 JSA Regs, Sch 1, para 13(b) & 20G; 2 Sch 1, para 13(c) & 20G; 3 Sch 1, para 14(1)(b) & 20H(1)(b);
4 Sch 1, para 14(1)(d) & 20H(1)(d); 5 Sch 1, para 14(1)(g)(ii) & 20H(1)(h)(ii);
6 Sch 1, para 20G(1) & para 20H(1)(e) & (ee)*

23124 - 23126

IS

Lower rate

- 23127 The lower rate DP is paid to a single claimant or lone parent¹ who is aged less than the qualifying age for SPC² **and**
1. in receipt of any of the following benefits
 - 1.1 “AA” (see DMG 23071)
 - 1.2 DLA
 - 1.3 the disability element, or the severe disability element, of WTC
 - 1.4 Mobility Supplement (see DMG 23074)
 - 1.5 IBLT including IBST treated as IBLT (see DMG 23129)

Non-dependants

23208 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 23209).

That is, share the accommodation (see DMG 23212). Certain people who normally reside with the claimant are not regarded as non-dependants (see DMG 23220).

1 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1); R(IS) 12/96

Meaning of normally resides

23209 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.

23210 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 IS. She has been awarded DLA and no one gets CA or UC that includes the carer element 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.

Students

23211 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 23210 before deciding which address is where they normally reside. Whichever address is chosen will remain the student's normal residence even when they spend time at the other home.

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.

Sharing the accommodation

23212 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 23213) **or**
2. they are separately liable to make payments (see DMG 23214) to the landlord for that accommodation.

1 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4); R(IS) 12/96

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. A kitchen is not shared if a person needs to pass through it to gain access to their self contained flat.

- 23213 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 JSA Regs, reg 2(7); IS (Gen) Regs, reg 3(5)

Meaning of “liable to make payments”

- 23214 “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.
- 23215 If the conditions in DMG 23214 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

- 23216 Whether a person has separate liability to a landlord (see DMG 23212 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 JSA. He gets DLA and no one gets CA or UC that includes the carer element 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.

23217 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

23218 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

23219 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.

People who are not non-dependants

23220 People who normally reside with the claimant but who are not non-dependants¹ are

1. any person aged under 18
2. any member of the claimant's family (see DMG Chapter 22)
3. any child or young person who is not treated as a member of the claimant's household (see DMG Chapter 22)
4. a person and their partner who

23223 “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

Changes to people who are not non-dependants

23224 Since IS started there have been some changes to the groups of people who are not non-dependants. The group has mainly stayed as outlined in DMG 23220. But the major changes are highlighted in Appendix 3 to this Chapter.

Shared lives

23225 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 be 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 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.

Admittance to residential care

23226 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” when a disabled person is admitted to residential care.

Definitions for DMG 23229 - 23235

23227 Temporary residential care means any temporary stay in a care home or independent hospital. For example, respite care in a care home.

23228 Permanent residential care means permanent residence in a care home or independent hospital.

Single claimant or lone parent

23229 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 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(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.

23230 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 23211 **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 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4)

Example

Ivor is a single claimant who lives at home with his parents. He is in receipt of DLA and no one receives CA, or UC that includes the carer element, 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, or UC that includes the carer element, for caring for him.

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

Couples

23231 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 JSA Regs, reg 78(1); IS (Gen) Regs, reg 16(1)

23232 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 JSA Regs, Sch 5, para 5; IS (Gen) Regs, Sch 7, para 9

23233 For the purposes of the calculation at DMG 23232 **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 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1); 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 the carer element, 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, or UC that includes the carer element, 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, or UC that includes the carer element, 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.

- 23234 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 JSA or IS as a single claimant or lone parent.

1 JSA Regs, reg 78(1) & (3)(d); IS (Gen) Regs, reg 16(1) & (3)(e)

- 23235 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 23212 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 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4)

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 the carer element, 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 the carer element, for caring for her.

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

SDP and CA or UC's carer element

23236 SDP is not payable if someone is receiving CA, or UC that includes the carer element, for caring for

1. the claimant in a single person claim **or**
2. in couple cases, both the claimant and their partner¹(or all of their partners in the case of polygamous marriage)

CA or UC that includes the carer element has to actually be in payment before it affects entitlement to SDP unless DMG 23239 applies. Underlying entitlement to CA does not affect SDP.

Note: A claimant can be awarded SDP and CP at the same time, including where CP is awarded to the claimant because of underlying entitlement to CA (see DMG 23245 et seq).

1 JSA Regs, Sch 1, para 15(1)(c), (2)(d) & 20(1)(d); IS (Gen) Regs, Sch 2, para 13(2)(a)(iii) & (2)(b)

23237 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.

23238 Where the disabled person makes an allegation about the carer's integrity, as described at DMG 23237, the IS/JSA 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 IS/JSA 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.

- 23239 An award of CA may be backdated for a period before the date on which the CA award is made. 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 JSA Regs, Sch 1, para 15(7) and 20I(6); IS (Gen) Regs, Sch 2, para 13(3ZA)

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.

- 23240 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 2001, s 7; 2 IS (Gen) Regs, Sch 2, para 13(2)(a)(iii), (2)(b) & (5); JSA Regs, Sch 1, para 15(1)(c), (2)(d), & (9) and 20I(1)(d) & (7)

IS - single claimant or lone parent

23289 SDP stop when the qualifying benefit ends (usually after four weeks)¹.

1 IS (Gen) Regs, Sch 2, para 13(2)(a)(i)

IS - couples and polygamous marriages

23290 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", DLA or PIP 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", DLA or PIP (see DMG 23292).

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

1 IS (Gen) Regs, Sch 2, para 15(5)(b)(i)

Example 1

Brendan is a married man in receipt of IS. Brendan and his wife Sharon 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 IS. Both Rhona and her husband Finlay are 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 23203). Rhona is admitted to hospital on 22 October and her AA is withdrawn from 19 November. Rhona is still treated as being in receipt of AA (see DMG 23292). SDP at the lower rate continues in payment.

23291 SDP is not affected by a continuous period as a patient.

1 IS (Gen) Regs, Sch 2, para 13

Example

Roy and Denise are married. Roy is in receipt of IS. They both satisfy the SDP conditions and the higher rate SDP is payable. Denise goes into hospital on 7 January and the higher rate SDP remains in payment. DLA stops from 5 February because Denise 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.

JSA(IB) and IS - “AA”, DLA and CA or UC that includes the carer element on admission to hospital

- 23292 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 JSA Regs, para 15(5)(a) and 20I(4)(a); IS (Gen) Regs, Sch 2, para 13(3A)(a)

- 23293 A CA/UC recipient is still treated as being in receipt of CA, or UC that includes the carer element, when it is withdrawn only because of the disabled person's stay in hospital¹. SDP does not become payable on the withdrawal of CA, or UC that includes the carer element, in these circumstances. But SDP entitlement should be considered where CA, or UC that includes the carer element is withdrawn for any other reason.

1 JSA Regs, Sch 1, para 15(5)(b) and 20I(4)(b); IS (Gen) Regs, Sch 2, para 13(3A)(b)

Example

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

23294

Disabled child premium

JSA(IB) and IS

- 23295 DCP continues throughout the stay in hospital when the
1. disabled child or young person remains a member of the claimant's family
and
 2. qualifying benefit
 - 2.1 is in payment **or**
 - 2.2 has been withdrawn only because the child or young person is a patient¹.

Note: This applies even if the claimant may also be a patient.

1 JSA Regs, Sch 1, para 16(b); IS (Gen) Regs, Sch 2, para 14(b)