

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 13

Amendment 37 – June 2016

1. This letter provides details on Amendment 37; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

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

3. **3** Amendment 37 affects list of abbreviations & chapters 78. The changes
 - expand the guidance on EASD where one of a couple is in respite care, correct the guidance on loans that may be allowed, gives new guidance on non-dep deductions where the person is on UC and incorporates DMG memo 10/16 covering uprating, 19/15 covering HC Sir changes, 24/15 covering SDP and carer benefits.in chapter 78.
4. The last two amendment packages amending Volume 13 were
Amendment 36 [February 2016]
Amendment 35 [October 2015]
5. 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).

Abbreviations

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Rates from 9.4.12 – 11.4.16 (2 pages)

| | |
|---------|---|
| LCW | Limited capability for work |
| LCWA | Limited capability for work assessment |
| LCWRA | Limited capability for work related activity |
| LEA | Local Education Authority |
| LEC | Local Enterprise Council |
| LEL | Lower Earnings Limit |
| LETS | Local Exchange Trading System |
| LPP | Lone Parent Premium |
| LPRO | Lone Parent run-on |
| LQPM | Legally Qualified Panel Member |
| LRP | Liable Relative Payment |
| LSC | Learning and Skills Council |
| LT | Linking Term |
| LTACP | Living Together as Civil Partners |
| LTAMC | Living Together as Married Couple |
| LTAHAW | Living Together as Husband And Wife |
| | |
| MA | Maternity Allowance |
| MAP | Maternity Allowance Period |
| MB | Maternity Benefit |
| MDB | Miscellaneous Diseases Benefit |
| MG | Maternity Grant |
| MID | Mortgage Interest Direct |
| MIRO | Mortgage Interest run-on |
| MP | Member of Parliament |
| MPP | Maternity Pay Period |
| MSC | Maximum Savings Credit |
| MSP | Member of the Scottish Parliament |
| | |
| NASS | National Asylum Support Service |
| NCET | National Council for Education and Training |
| NCIP | Non-Contributory Invalidity Pension |
| ND | New Deal |
| NDLP | New Deal for Lone Parents |
| NDP | New Deal for Partners |
| NDYP | New Deal for Young People |
| ND18-24 | New Deal for 18-24 year olds |
| ND25+ | New Deal for claimants aged 25 years and over |
| NHS | National Health Service |
| NI | National Insurance |
| NINO | National Insurance Number |
| NMW | National Minimum Wage |

| | |
|------------|---|
| NRP | Non-Resident Parent |
| NVQ | National Vocational Qualification |
| OOT | Own Occupation Test |
| OPB | One Parent Benefit |
| PA | Personal Adviser |
| PAYE | Pay As You Earn |
| PB and MDB | Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme |
| PCA | Personal Capability Assessment |
| PD | Prescribed Disease |
| PETA | Personal Expenses Transitional Addition |
| PFA | Person(s) From Abroad |
| PIE | Period of Interruption of Employment |
| PILON | Pay In Lieu Of Notice |
| PILOR | Pay In Lieu Of Remuneration |
| PIP | Personal Independence Payment |
| PIW | Period of Incapacity for Work |
| PLCW | Period of limited capability for work |
| PLCWA | Period of limited capability for work assessment |
| PO | Post Office |
| POAOB | Payment on Account of Benefit |
| POA | Power of Attorney |
| PP | Pensioner Premium |
| PR | Preserved Right |
| PSIC | Person Subject to Immigration Control |
| P/T | Part-Time |
| PW | Pay-Week |
| PWC | Person With Care |
| PWHL | Permitted Work Higher Limit |
| PWHS | Permitted Work Higher Limit subsequent period |
| PWK | Permitted Work |
| PWLL | Permitted Work Lower Limit |
| PWP | Permitted Work Period |
| QB | Qualifying Benefit |
| QBP | Qualifying Benefit or Pension |
| QD | Qualifying Days |
| QEF | Qualifying earnings factor |
| QI | Qualifying Income |
| QP | Qualifying Period |

| | |
|--------|---|
| QRW | Qualifying remunerative work |
| QW | Qualifying Week |
| QWfl | Quarterly Work-focused interview |
| RA | Retirement Allowance |
| RBD | Reduced Benefit Direction |
| RCH | Residential Care Home |
| REA | Reduced Earnings Allowance |
| Reg(s) | Regulation(s) |
| Res A | Residential Allowance |
| RISWR | Redundant Iron and Steel Employees re-adaptation scheme |
| RMPS | Redundant Mineworkers Payment scheme |
| RP | Retirement Pension |
| RQC | Relevant Qualifying Condition |
| RVU | Relationship Validation Unit |
| S | Section (of an Act) |
| S2P | State Second Pension |
| SAP | Shared Additional Pension |
| SAYE | Save As You Earn |
| SB | Sickness Benefit |
| SC | Savings Credit |
| Sch | Schedule (as in an Act) |
| SCT | Savings Credit Threshold |
| SDA | Severe Disablement Allowance |
| SDM | Sector Decision Maker |
| SDP | Severe Disability Premium |
| S/E | Self-Employed |
| Sec | Section (of an Act) |
| SED | Scottish Education Department |
| SERPS | State Earnings Related Pension Scheme |
| Sev DP | Severely Disabled Person |
| SF | Social Fund |
| SFFP | Social Fund Funeral Payment(s) |
| SFO | Social Fund Officer |
| SHA | Special Hardship Allowance |
| SI | Statutory Instrument |
| SIR | Standard Interest Rate |
| SJP | Supervised Jobsearch Pilot Scheme |
| SMG | Standard Minimum Guarantee |
| SMP | Statutory Maternity Pay |
| SP | State Pensions |

| | |
|-------------|--|
| SPC | State Pension Credit |
| SpTA | Special Transitional Addition |
| SPW | Supported Permitted Work |
| SRPS | Shipbuilding Redundancy Payment Scheme |
| SS | Social Security |
| SS benefits | Benefits payable under SS(CB) Act 92 |
| SSMG | Sure Start Maternity Grant |
| SSP | Statutory Sick Pay |
| STCP | Skills Training Conditionality Pilot |
| Supp B | Supplementary Benefit |
| SVQ | Scottish Vocational Qualification |
| TA | Transitional Addition |
| TAW | Temporary Allowance for Widow(ers) |
| TBI | Total Benefit Income |
| TD | Trade Dispute |
| TE | Transitional Element |
| TEC | Training and Enterprise Council |
| TFEU | Treaty on the Functioning of the European Union |
| TS | Tribunals Service |
| TU | Trade Union |
| UB | Unemployment Benefit |
| UC | Universal Credit |
| UCP | Urgent Case Payment |
| UEL | Upper Earnings Limit |
| UK | United Kingdom |
| US | Unemployability Supplement |
| UT | Upper Tribunal |
| VAT | Value Added Tax |
| VSO | Voluntary Sector Option of New Deal for young people |
| WA | Widow's Allowance |
| WB | Widow's Benefit |
| WBLA | Work Based Learning for Adults |
| WBLfYP | Work Based Learning for Young People |
| WBTfA | Work Based Training for Adults |
| WBTfYP | Work Based Training for Young People |
| WC | Workmen's Compensation |
| WC(S) | The Workmen's Compensation (Supplementation) Scheme |

| | |
|-----------|---|
| WC (Supp) | Workmen's Compensation (supplementation) scheme |
| WCA | Work capability assessment |
| WDisP | War Disablement Pension |
| WFHRA | Work focused health related assessment |
| Wfi | Work-focused Interview |
| WFP | Winter Fuel Payment |
| WFTC | Working Families Tax Credit |
| WMA | Widowed Mother's Allowance |
| WMA(C) | WMA payable where late husband entitled to Cat C retirement pension |
| WP | Widow's Pension |
| Wp | Work programme |
| WPA | Widowed Parent's Allowance |
| WP(C) | Widow's Pension payable where late husband entitled to Cat C retirement Pension |
| WPT | Widow's Payment |
| WRAC | Work-related activity component |
| WRAG | Work-related activity group |
| WTB | Work and training beneficiary(ies) |
| WTC | Working Tax Credit |
| WtWB | Welfare to Work Beneficiary |
| WWP | War Widow's Pension/War Widower's Pension |
| YT | Youth Training |

Chapter 78 - State pension credit: additional amounts and special groups

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Additional amount for the severely disabled

General

78030 When considering the amount of the AMG, an additional amount is applicable if the claimant is treated as being severely disabled¹.

1 SPC Act 02, s 2(3)(b), 2(7) & 17(2)(b); SPC Regs, reg 6(4) & Sch 1, para 1

78031 An additional amount for the severely disabled is not payable¹ in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

1 SPC Regs, reg 6(2), (3) & (4)

78032 If the claimant is a member of a polygamous marriage, see DMG 78610 for guidance on the rules that apply.

78033 The additional amount for the severely disabled is payable at a lower or higher rate¹. See Appendix 2 to DMG Chapter 77 for details of those rates.

1 SPC Regs, reg 6(5)

Lower rate

Claimants who have no partner

78034 Claimants with no partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if¹

1. they are in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP **or**
 - 1.4 AFIP **and**
2. there are no persons aged 18 or over
 - 2.1 normally residing with the claimant **or**
 - 2.2 who the claimant normally resides with (see DMG 78065 et seq) **and**
3. no one is entitled to and in receipt of CA or a UC Carer Element in respect of caring for them.

1 SPC Regs, reg 6(5)(a); Sch 1, para 1(1)(a)

Transitional protection

78035 Carers who were aged 65 and over 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.

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

78036 A claimant will not be disqualified under 78034 **3.**, from the extra amount for the severely disabled where the person in receipt of CA is not providing care but retains payment of the CA as a result of transitional protection.

78037 - 78044

Claimants who have a partner

78045 Claimants who have a partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if¹

1. both partners are in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. there are no persons aged 18 or over
 - 2.1 normally residing with the partners **or**
 - 2.2 who the partners normally reside with (see DMG 78065 et seq) **and**
3. someone is entitled to and in receipt of CA or a UC Carer Element in respect of caring for only one of the partners.

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b)

78046 Claimants who have a partner may not satisfy the conditions in DMG 78045. In such a case the lower rate can still be awarded if¹

1. one of the partners is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. the other partner is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired **and**
3. there are no persons aged 18 or over
 - 3.1 normally residing with the partners **or**
 - 3.2 who the partners normally reside with (see DMG 78065 et seq) **and**

4. no-one is entitled to and in receipt of CA or a UC Carer Element in respect of caring for the partner who is receiving "AA" or DLA as in 1.

1 SPC Regs, Sch I, para 1(1)(c)

78047 The lower rate of additional amount for the severely disabled can also be awarded to claimants who have a partner if¹

1. one of the partners is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. the other partner would be in receipt of
 - 2.1 "AA" **or**
 - 2.2 the care component of DLA at the highest or middle rate **or**
 - 2.3 the daily living component of PIP at the standard or enhanced rate but for being a patient for over 28 days **and**
3. there are no persons aged 18 or over
 - 3.1 normally residing with the partners **or**
 - 3.2 who the partners normally reside with (see DMG 78065 et seq) **and**
4. no-one is entitled to and in receipt of CA or a UC Carer Element in respect of caring for the partner who is receiving "AA" or DLA as in 1..

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b) & (2)(b)

Higher rate

78048 DMs should note that the higher rate of additional amount for the severely disabled does not apply to claimants who have no partner.

78049 Claimants who have a partner are treated as being severely disabled and are entitled to the higher rate if¹

1. both partners are in receipt of
 - 1.1 "AA" **or**
 - 1.2 the care component of DLA at the highest or middle rate **or**
 - 1.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 1.4 AFIP **and**
2. there are no persons aged 18 or over
 - 2.1 normally residing with the partners **or**
 - 2.2 who the partners normally reside with (see DMG 78065 et seq) **and**

3. no one is entitled to and in receipt of CA or a UC Carer Element in respect of caring for either partner.

1 SPC Regs, reg 6(5)(b); Sch I, para 1(1)(b)

78050 DMs should note that DMG 78049 **1.** is **not** satisfied if either partner is treated as being in receipt of “AA” or DLA or PIP or AFIP as in DMG 78060 **2.**¹. In such a case the lower rate of additional amount should be considered.

1 SPC Regs, reg 6(5)(b)

78051 - 78054

In receipt of “AA”, DLA and CA

78055 Before awarding an additional amount for the severely disabled, the DM needs to know if

1. the claimant or partner is in receipt of “AA” , DLA, PIP or AFIP **and**
2. anyone is in receipt of CA in respect of caring for the claimant or partner.

Note: Special rules apply to the treatment of “AA”, DLA, PIP, AFIP and CA when a person is admitted to hospital. See DMG 78060 et seq for guidance.

“AA”, DLA and PIP

78056 DMs should note that a person is in receipt of “AA” or DLA or PIP or AFIP only if it is paid because of that person’s own incapacity or disability.

Example 1

Alistair is aged 65 and lives alone. He claims SPC and states that he is in receipt of “AA” due to his poor physical condition. No one gets CA in respect of looking after him. Alistair is in receipt of “AA” and the DM considers an additional amount for the severely disabled.

Example 2

Ruby lives with her grandson Ben who is aged 14. Ben is disabled and is awarded the care component of DLA at the highest rate. But the DLA is paid to Ruby. Ruby is not in receipt of DLA. The DLA is paid because of Ben’s disability and is only paid to Ruby because of Ben’s age. An additional amount for the severely disabled is not applicable.

CA

78057 An additional amount for the severely disabled may not be applicable if someone is receiving CA or a UC Carer Element in respect of caring for the claimant or partner¹. But the benefit/element has to actually be in payment before it affects entitlement to this additional amount.

1 SPC Regs, Sch I, para 1(1)

Example

Agnes has been awarded the care component of DLA at the middle rate and no one gets CA (or UC CE) for caring for her. She 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' house has never been put up for sale.

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 an additional amount for the severely disabled. The DM considers whether the value of Agnes' house should be taken into account.

Sharing the accommodation

78068 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 **or**
2. they are separately liable to make payments 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 SPC Regs, Sch I, para 3(1); R(IS) 12/96

78069 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 SPC Regs, Sch I, para 3(2)

Example

Katja gets “AA” and no one gets CA (or UC CE) for caring for her. She 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.

Note: A person should still be regarded as sharing the kitchen even if they do not enter or use it if items for the person’s use are stored there or their meals are prepared there. A kitchen is not shared if a person needs to pass through it to access to their self-contained flat.

Students

78070 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 78067 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 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.

78071

Meaning of liable to make payments

78072 “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.

78073 If the conditions in DMG 78072 are met, the DM must then establish that¹

1. there is an obligation to make payments derived from a recognised 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

78074 Whether a person has separate liability to a landlord 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 gets “AA” and no one gets CA (or UC CE) 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 is awarded an additional amount for the disabled.

Contractual capacity

78075 In England and Wales, only a minor, 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

78076 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 **and**
2. if the carer has a separate address, whether they use it and if so, how often **and**
3. what address the carer uses as a postal address **and**
4. what address the carer is registered at for CT purposes.

People whose presence is ignored

78077 The DM can ignore the presence of¹

1. any person aged under 18² **or**
2. a person who is in receipt of³
 - 2.1 “AA” **or**
 - 2.2 the care component of DLA at the highest or middle rate **or**
 - 2.3 the daily living component of PIP at the standard or enhanced rate **or**
 - 2.4 AFIP **or**
3. a person who is
 - 3.1 certified as blind or severely sight impaired by a consultant ophthalmologist ⁴ **or**
 - 3.2 treated as blind or severely sight impaired⁵ (see DMG 78008) **or**
4. a person who⁶
 - 4.1 lives with the claimant in order to care for the claimant or partner **and**
 - 4.2 is engaged by a charitable or voluntary organisation (see DMG 78011) which makes a charge to the claimant or partner for that person’s services **or**
5. the partner of a person to whom 4. applies⁷ **or**
6. a person who is a qualifying young person or a child for CHB purposes⁸.

Note: For the definition of a qualifying young person see DMG chapter 20.

*1 SPC Regs, Sch I, para 2(1); 2 Sch I, para 1(1)(a)(ii), (b)(ii) & (c)(iii); 3 Sch I, para 2(2)(a);
4 Sch I, para 2(2)(b); 5 Sch I, para 2(2)(c); 6 Sch I, para 2(2)(d); 7 Sch I, para 2(2)(e);
8 Sch I, para 2(2)(f); SS CB Act 92, Part IX*

78078 The DM can also ignore the presence of a person who

1. joins the claimant’s household for the first time¹
 - 1.1 to care for the claimant or partner **and**
 - 1.2 if, immediately before joining, the claimant or partner satisfied the conditions for an additional amount for the severely disabled **or**
2. is not a close relative (see DMG 77010) of the claimant or partner and who²
 - 2.1 is liable to make payments on a commercial basis to the claimant or partner for their occupation of the dwelling **or**
 - 2.2 the claimant or partner is liable to make payments to on a commercial basis for their occupation of that person’s dwelling **or**
 - 2.3 is a member of the household of a person in 2.1 or 2.2 **or**

3. is not a close relative (except where 5. applies) who jointly occupies the claimant's dwelling and who is³
 - 3.1 a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners) **or**
 - 3.2 jointly liable with the claimant or the claimant's partner to make payments to the same landlord for their occupation of the dwelling **or**
4. is the partner of a person to whom 3. applies⁴ **or**
5. is a close relative who satisfies 3. or 4., if⁵ the claimant or partner's co-ownership or joint liability arose
 - 5.1 before 11.4.88 **or**
 - 5.2 if later, on or before the date on which the claimant or partner first occupied the dwelling in question.

Note: 1. only applies for the first twelve weeks following the date on which the person first joins the claimant's household⁶.

*1 SPC Regs, Sch I, para 2(3); 2 Sch I, para 2(5); 3 Sch I, para 2(6);
4 Sch I, para 2(7); 5 Sch I, para 3(3); 6 Sch I, para 2(4)*

Commercial basis

78079 For a liability to be on a commercial basis¹ (see DMG 78078 2.)

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.

1 R(IS) 11/98

Shared lives scheme

78080 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 EASD.

Note: The claimant will not be entitled to the EASD 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 EASD.

78081 - 78083

Temporary residence in a care home

Claimants who have no partner

78084 An additional amount for the severely disabled may not be applicable if a claimant who has no partner does not normally live alone¹. Such a claimant will not satisfy the conditions for this additional amount while they are temporarily in a care home (see DMG 77007). This is because their stay is temporary and they continue to normally reside at home.

1 SPC Regs, Sch I, para 1(1)

Example

Nasreen has no partner and lives with her son. The conditions for the award of an additional amount for the disabled are not satisfied. Nasreen goes into a care home temporarily. An additional amount for the severely disabled is not applicable because she continues to normally reside at home with her son.

Claimants who have a partner

78085 When a member of a couple is temporarily in a care home the separation from the partner is also temporary. In such a case the

1. couple remain members of the same household¹ **and**
2. absent partner is treated as still normally residing at home **and**
3. amount of SPC payable to them is unaffected.

1 SPC Regs, reg 5(2)

78086 The SPC and the additional amount for severe disability will have to be reviewed where the person is in temporary residential care beyond 28 days and the payability of DLA ceases.

Example

Malcolm and Wendy are married and live together in the same household. Both Malcolm and Wendy get DLA and CA is not in payment (nor is UC that includes the CE). There are no non-dependants. Higher rate EASD is in payment. Malcolm goes into temporary residential care for 6 weeks.

They are assessed as a couple and the higher rate EASD continues in payment however after 4 weeks Malcolm's DLA payments cease and the EASD is withdrawn

Note: The lower rate EASD is not appropriate as there is no facility to treat DLA as in payment for these periods of respite care.

Permanent residence in a care home

78087 Claimants who are permanently in a care home are normally resident in that care home. Other residents of the home do not normally reside with the claimant, as they are separately liable to make payments to a landlord.

Claimants who have no partner (including self funders)

78088 An additional amount for the severely disabled is applicable to a person who is permanently in a care home if all the conditions are satisfied¹.

Note: This will normally be self funding claimants, but DMs should be aware that it will also include residents where the payment of "AA" or DLA/PIP continues for the first four weeks after admission.

1 SPC Regs, reg 5(1)(b) & Sch I, para 1(1)(a)

Example

Shafaq has no partner and lives at home with his sisters. He is in receipt of the care component of DLA at the middle rate and no one receives CA (or UC CE) for caring for him. The conditions for the award of an additional amount for the disabled are not satisfied. Shafaq goes into a care home on a permanent basis. The DM decides that Shafaq is entitled to an additional amount for the disabled at the lower rate from the date that he moves into the care home. This is because

1. he is in receipt of the care component of DLA at the middle rate **and**
2. the other residents of the home do not normally reside with him **and**
3. no one is in receipt of CA (or UC CE) for caring for him.

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

Claimants who have a partner

78089 A member of a couple who is permanently in a care home is no longer a member of the same household as their partner. In such a case each person may claim SPC as a claimant who has no partner.

78090 - 78099

Example 1

Mark has been in receipt of IS since 1993 and transfers to SPC on 6.10.03. On 18.11.03 he takes out a mortgage (exchanges contracts) to buy his own home. Mark does not come within any of the exceptions in DMG 78280 et seq. An additional amount for housing costs is not allowable in the SPC award.

Example 2

Aniza is a retired teacher who is in receipt of IS until 11.8.03 when she returns to work. On 27.8.03, Aniza takes out a mortgage to buy her own home, having previously lived with her brother. She loses her job on 27.9.03 and claims IS.

The break between Aniza's two IS claims is less than 26 weeks and so her mortgage was taken out in a relevant period. An award of IS is made but nothing is allowed for housing costs.

Aniza transfers to SPC on 6.10.03. An additional amount for housing costs is not allowed in the SPC award.

Example 3

Maria lives with her partner Alberto who gets JSA(IB) for them. Housing costs are included for a mortgage in joint names taken out on 20.3.89, which Maria and Alberto jointly used to purchase the property. Maria leaves the household on 10.10.03 and goes to live with her son. Alberto moves out of the property on 24.11.03 allowing Maria to return to live there on 5.12.03. Maria reaches age 60 on 10.12.03 and claims SPC.

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. An additional amount for housing costs is allowed in the SPC award.

78277 - 78279

Loans that may be allowed

- 78280 An additional amount for housing costs cannot normally be allowed for loans taken out in a relevant period (see DMG 78270 et seq). The exceptions are where
1. the loan is a new loan used to repay an earlier allowable loan and buy a new home (see DMG 78283) **or**
 2. the claimant, or partner, was previously renting accommodation before the purchase of the home (see DMG 78287) **or**
 3. the loan is used to buy accommodation more suited to the needs of a disabled person (see DMG 78289) **or**
 4. the change of dwelling is to provide separate sleeping accommodation for persons of different sexes aged ten or over but under 20 (see DMG 78295) **or**
 5. other housing costs were in payment before the purchase (see DMG 78296).

78281 When considering the amount of housing costs to allow under the exceptions in DMG 78280 **2.** to **5.**, DMs should note that

1. each exception may be subject to its own additional limitations¹ **and**
2. if more than one of the exceptions in DMG 78280 **2.** to **5.** are relevant, the DM should apply the exception that is most favourable to the claimant².

1 SPC Regs, Sch II, para 5(8)(a); 2 Sch II, para 5(8)(b)

78282 Where appropriate, the maximum amount should be applied and the question of excessive housing costs should be considered (see DMG 78345 and 78370).

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

78283 If a claimant, or their partner, takes out a secured or unsecured allowable loan in a relevant period and uses it to

1. buy the home, and repay an earlier loan used to acquire an interest in the home, allowable during the relevant period¹ **or**
2. repay another earlier allowable loan used
 - 2.1 to acquire an interest in **or**
 - 2.2 for repairs and improvements tothe previous property, allowable during the relevant period, which is paid off (in whole or in part) with the money received¹ from the sale of that other property²

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

Note: See DMG 78417 where the loan for repairs and improvements is not redeemed with the sale of the other property.

1 SPC Regs, Sch II, para 5(7)(a); 2 Sch II, para 5(7)(b)

Example 1

Harry takes out a loan of £95,000 in 1995 to buy his own home. In October 2003 only £50,000 remains on the mortgage. The mortgage is allowable as a housing cost. In November 2003 Harry 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

Lasse lives with his sister who has a mortgage on their home in her sole name. They both get SPC and an additional amount for housing costs for mortgage interest is paid to Lasse's sister. Following her death and settlement of the estate, the building society transfers the mortgage into Lasse's name. He is then liable for the payment of interest on the new mortgage.

The standard rate

78360 Prior to 28.11.04 the standard interest rate was based on the weighted average of basic rates charged by the main building societies. This figure was published monthly by the Office for National Statistics in Financial Statistic Table 7.1L. Changes to the standard rate were triggered by moves of 0.25% or more in the published figures.

78361 From 5.12.04 the calculation of the standard rate of interest applied 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%.

78362 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 points² or more from the SIR applicable on that day. Any change in the SIR is effective from a date determined by the Secretary of State¹.

1 SPC Regs, Sch II, para 9; 2 SI 2014/591

78363 See Appendix 2 to this Chapter for details of the standard interest rates.

78364 - 78369

Non-dependant deduction not appropriate

78521 Deductions should not be made if

1. the claimant or any partner
 - 1.1 is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired¹ (see DMG 78008) **or**
 - 1.2 is receiving in respect of themselves²
 - 1.2.a "AA" **or**
 - 1.2.b the care component of DLA **or**
 - 1.2.c the daily living component of PIP **or**
 - 1.2.d AFIP **or**
 - 1.3 has a deduction in the calculation of a rent rebate or allowance in respect of the non-dependant³ **or**
2. non-dependants are
 - 2.1 living with the claimant but the dwelling normally occupied as the home is elsewhere⁴ **or**
 - 2.2 in receipt of a training allowance in connection with a youth training scheme⁵ **or**
 - 2.3 F/T students⁶
 - 2.3.a in a period of study **or**
 - 2.3.b not in remunerative work during the recognized summer vacation appropriate to their course **or**
 - 2.4 aged under 25 and in receipt of IS or JSA(IB)⁷ **or**
 - 2.5 in receipt of an award of ESA(IR) which does not include a component⁸ **or**
 - 2.6 not living with the claimant because⁹ they
 - 2.6.a have been patients for more than 52 weeks (see DMG 78700 et seq) **or**
 - 2.6.b are prisoners (see DMG 78651) **or**
 - 2.7 F/T student **and**
 - 2.7.a claimant or partner has reached the age of 65¹⁰ **or**
 - 2.8 in receipt of SPC¹¹ **or**
 - 2.9 entitled to UC **and**
 - 2.9.a is aged less than 25 **and**
 - 2.9.b does not have any earned income

Note 1: When calculating the 52 weeks period in **2.5.a**, any periods separated by intervals of not more than 28 days, should 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 SPC Regs, Sch II, para 14(6)(a); 2 Sch II, para 14(6)(b); 3 Sch II para 14(7)(dd);
4 Sch II, para 14(7)(a); 5 Sch II, para 14(7)(b); E & T Act 73, s 2;
Enterprise and New Towns (Scotland) Act 1990, s 2; 6 SPC Regs, Sch II, para 14(7)(c);
7 Sch II, para 14(7)(d); 8 Sch II, para 14(7)(g); 9 Sch II, para 14(7)(e);
10 Sch II, para 14(7)(cc); 11 Sch II, para 14(7)(f);*

Deduction appropriate – UC non-dependants

78522 Where a non-dependant is entitled to UC and is

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

a deduction at the rate described in Appendix 4 will be appropriate.

78523

Calculation of a non-dependant's gross weekly income

78524 When calculating the gross weekly income of a non-dependant (see DMG 78515 and Appendix 4 to this Chapter), disregard¹ any

1. "AA"
2. DLA
3. payments made under, or derived from
 - 3.1 the Macfarlane Trust
 - 3.2 the Macfarlane (Special Payments) Trust
 - 3.3 the Macfarlane (Special Payments) (No. 2) Trust
 - 3.4 the Fund
 - 3.5 the Eileen Trust
 - 3.6 the Independent Living Fund (2006) (but see note)
 - 3.7 the Skipton fund
 - 3.8 the Caxton Foundation
 - 3.9 MFET Limited
4. payment in kind.
5. PIP
6. 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 SPC Regs, Sch II, para 14(8)

78525 - 78529

Pre-release schemes

78657 Shortly before release, prisoners may be allowed short periods of release on temporary licence to help them get used to life outside prison again. They may find work outside prison to support themselves and spend short periods at home. Such people

1. are still serving a sentence of imprisonment **and**
2. continue to be prisoners until the time of their release¹.

1 R(I) 9/75

Release on licence

78658 Release on licence means release on parole after completion of a specified part of the original sentence. A person released on licence¹ is no longer detained in legal custody and is no longer a prisoner.

1 Criminal Justice Act 1991, s 32 to 37A

Curfews

78659 Some prisoners sentenced to less than four years can be released on a curfew licence up to 60 days before their automatic release date. Under the curfew licence they have to wear an electronic tag and remain at home during agreed periods of the day¹. These conditions apply from the date of early release to the day they would have been eligible for release under licence.

1 Criminal Justice Act 1991, s 34A & 37A

78660 Although subject to a curfew condition, the person is released on licence and is no longer a prisoner¹.

1 Criminal Justice Act 1991, s 32 to 37A

Period of detention in custody

78661 When working out the period for which a person is detained in custody

1. **count** the day on which the detention starts **and**
2. **do not count** the day of release from detention
as a day on which the person is detained in custody.

78662 A period of detention in custody therefore

1. starts on the day on which the person is detained **and**
2. ends on the day before the person is released from detention.

Prisoner admitted to hospital

78663 The DM should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation¹ is not a patient for SPC purposes and has an applicable amount of nil **or**
2. under prescribed mental health legislation² other than that in **1.** above is a patient for SPC purposes and has entitlement to their full applicable amount

1 SPC Regs, reg 1(2), Sch III, para 2, MH Act 83 s 47, s 45A; MH (C & T) (Scot) Act 03 s 136, s 130; Criminal Procedure (Scotland) Act 1995; 2 MH Act 83

Claimant is a Technical Lifer - England and Wales only

78664 The status of technical lifer¹ is an administrative classification which was given to certain prisoners with a life sentence. It was given when the Secretary of State for Justice accepted that the criminal court that heard the individual's case would have given an order for hospital treatment rather than impose a sentence of imprisonment.

1 Regina (EM and others) v SoS for Work and Pensions [2009] EWHC 454 (Admin)

78665 A technical lifer should be treated, for the purposes of entitlement to SPC, as though they had been given a hospital order¹ with no term of imprisonment. This means that a person with technical lifer status is eligible for SPC as an ordinary hospital in-patient.

Note: The practice of treating prisoners as technical lifers was abandoned in 2005.

1 MH Act 83, s 37

Guarantee credit for prisoners

78666 GC is not normally payable to prisoners. This is because the rate of both the

1. SMG and
2. additional amount applicable

for prisoners is nil¹. The exception to this rule is where a person is a remand prisoner.

1 SPC Act 02, s 2(3) & (9); SPC Regs, reg 6(2)(a) & (3)

Guarantee credit for remand prisoners

Meaning of remand prisoner

78667 A remand prisoner¹ is a person who, for a period of not more than 52 weeks, has been

Appendix 2

Housing costs - amount of the standard interest rate

This appendix provides details of the standard interest rate (see DMG 78360 et seq).

Changes in the standard interest rate

The date that claims are affected by any change in the standard interest rate depends on how they are paid.

SPC is normally paid in advance. But some claimants may be paid in arrears under the transitional provisions (see DMG Chapter 80).

Paid in advance

Cases paid in advance are affected from the first day of the first benefit week commencing after the "effective date".

Paid in arrears

Cases paid in arrears, are affected

1. from the first day of the benefit week that includes the "effective date" **or**
2. if the claim is for a period beginning after the "effective date", from the first day of the first benefit week commencing after the date that the standard interest rate changed.

Amount of the standard interest rate

| Date | Standard interest rate | Effective from |
|-------------|-------------------------------|-----------------------|
| 06.10.03 | 5.34% | 06.10.03 |
| 16.11.03 | 5.07% | 23.11.03 |
| 21.03.04 | 5.33% | 28.03.04 |
| 18.07.04 | 5.59% | 25.07.04 |
| 19.09.04 | 5.88% | 26.09.04 |
| 05.12.04 | 6.33% | 05.12.04 |
| 11.09.05 | 6.08% | 11.09.05 |
| 03.08.06 | 6.33% | 10.09.06 |
| 09.11.06 | 6.58% | 17.12.06 |
| 11.1.07 | 6.83% | 18.2.07 |
| 10.5.07 | 7.08% | 17.6.07 |
| 5.7.07 | 7.33% | 12.8.07 |
| 6.12.07 | 7.08% | 13.1.08 |
| 2.2.08 | 6.83% | 16.3.08 |
| 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 |
| 1.10.10 | 3.63% | SI 3195/08 |
| 1.6.15 | 3.12% | 1.10.10 |
| | | SoS determined |

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

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

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

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

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

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.

