

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 9

Amendment 24 – June 2017

1. This letter provides details on Amendment 24; 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/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the Internet at:

<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. Amendment 24 affects abbreviations Chapters 49, 50, 51, 52, 53 & 54. The changes make amendments to
 - Chapter 49 minor amendments to update Appendices 2 & 3.
 - Chapter 50 amendments to the Appendices 1 & 2 and x-ref added to 50015
 - Chapter 51 of DMG memos – 19/16, 3/17, 9/17 & 11/17
 - para. 51020 removed ref to DMG memo 11/17, incorporates DMG memos 9/17 & 11/17 & minor misc amdts
 - para. 51022 removed ref to DMG memo 11/17 and amended para to reflect BSP
 - para. 51044 removed ref to DMG memo 11/17
 - paras. 51080 & 51082 removed ref to DMG memo 3/17 and amended para.
 - para. 51092 removed ref to DMG memo 11/17
 - para. 51210 added references to SIBSS and BSP and renumbered.
 - para. 51232 added BSP para and renumbered following paras (51233 - 246)
 - para. 51278 added note re: 19+ bursary
 - para. 51299 added references to SIBSS
 - para. 51341 added SIBSS
 - paras. 51356-57 added SIBSS paras
 - para. 51360 added references to SIBSS
 - para. 51363 removed reference to SIBSS DMG memo 9/17 and added SIBSS to list
 - para. 51384 removed reference to SIBSS memo
 - para. 51418 added references to SIBSS
 - para. 51598 added references to SIBSS

- para. 51606 removed ref to 9./17 DMG memo and added SIBSS
- para. 51804 removed ref to DMG memo 19/16
- para. 51825 removed ref to DMG memo 19/16
- para. 51901 removed ref to DMG memo 19/16
- paras. 51903-04 added post grad master's degree loan paras.
- paras. 51903 (to 12) renumbered and removed ref to DMG memo 19/16
para. 51913 added example 5
- para. 51919 removed ref to memo 19/16
- paras. 51919 & 51921 – removed memo 19/16 ref and added special support loan para. And renumbered paras 51922-23
- Chapter 52 incorporates DMG memos 9/17 & 11/17 & minor misc amdts
- Chapter 53 incorporates DMG Memo 7/17 and involves some significant renumbering of paragraphs.
- Chapter 54 clarifies the guidance on detention under prescribed mental health.

4. The last two packages for Volume 9 were

Amendment 22 [June 2016]

Amendment 21 [February 2016]

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).

Remove	Insert
Chapter 49	Chapter 49
Appndx 2 & 3 (2 pages)	Appndx 2 & 3 (2 pages)
Chapter 50	Chapter 50
50012 – 50018 (1 page)	50012 – 50018 (1 page)
Appndx 1 – Appndx 2 (3 pages)	Appndx 1 – Appndx 2 (3 pages)
Chapter 51	Chapter 51
Conts 51216 – Conts 51540 (3 pages)	Conts 51216 – Conts 51540 (3 pages)
Conts 51805 – Conts appndx 1 (2 pages)	Conts 51805 – Conts appndx 1 (2 pages)
51022 – 51040 (1 page)	51022 – 51040 (1 page)
51080 – 51096 (2 pages)	51080 – 51096 (2 pages)
21210 – 51220 (2 pages)	21210 – 51220 (2 pages)
51230 – 51246 (3 pages)	51230 – 51246 (4 pages)
51275 – 51282 (1 page)	51275 – 51282 (1 page)
51298 – 51312 (1 page)	51298 – 51312 (1 page)
51351 – 51389 (4 pages)	51351 – 51389 (4 pages)
51413 – 51424 (1 page)	51413 – 51424 (1 page)
51598 – 51610 (2 pages)	51598 – 51610 (2 pages)
51895 – 51942 (6 pages)	51895 – 51942 (7 pages)

Chapter 52	Chapter 52
Conts 52422 – Conts appndx 2 (5 pages)	Conts 52422 – Conts appndx 2 (5 pages)
52410 – 52418 (1 page)	52410 – 52418 (1 page)
52446 – 52483 (5 pages)	52446 – 52483 (5 pages)
52495 – 52519 (4 pages)	52495 – 52519 (4 pages)
52660 – 52719 (3 pages)	52660 – 52719 (3 pages)
52860 – 52874 (2 pages)	52860 – 52874 (2 pages)
Chapter 53	Chapter 53
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53001 – 53004 (1 page)	53001 – 53004 (1 page)
53060 – 53076 (2 pages)	53060 – 53076 (2 pages)
53095 – 53213 (10 pages)	53095 – appndx 2 (18 pages)
Chapter 54	Chapter 54
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Appendix 2

Maximum weekly amount

Payable under section 227 of the Employment Rights Act 1996.

	£
From 1.2.07	310
From 1.2.08	330
From 1.2.09	350
From 1.10.09	380
From 1.2.11	400
From 1.2.12	430
From 1.2.13	450
From 6.4.14	464
From 6.4.15	475
From 6.4.16	479
From 6.4.17	489

Appendix 3

Statutory guarantee payments

Amount payable to employees under section 31 of the Employment Rights Act 1996.

	£
From 1.2.07	19.60 per day
From 1.2.08	20.40 per day
From 1.2.09	21.50 per day
From 1.2.10	21.20 per day
From 1.2.11	22.20 per day
From 1.2.12	23.50 per day
From 1.2.13	24.20 per day
From 6.4.14	25.00 per day
From 6.4.15	26.00 per day
From 6.4.16	26.00 per day
From 6.4.17	27.00 per day

6. where does the person work? Working from home may point towards self-employment.
7. is the person who engages the person for work obliged to provide work? If there is no obligation then this may point towards self-employment.
8. does the person have discretion to the hours of work? The greater the discretion, the more likely that the work is self-employment.

Claims that include self-employed earners

50012 Where the DM is considering whether the claimant and / or partner is a S/E earner then it is important to keep that determination separate from the issue of remunerative work (see DMG Chapter 41).

50013 In order to deal with claims where the question of self-employment arises, DMs should apply the following four questions in this order¹. Is the claimant

1. still employed as a S/E earner i.e. still trading
 - 1.1 if the answer is no then they will not be in employment and earnings from past employment can be disregarded² **or**
 - 1.2 if the answer is yes the DM considers question 2
2. carrying out activities connected to the self-employment or in a period of non-activity which is a normal incident of the cycle of work
 - 2.1 if the answer is no the DM considers question 4
 - 2.2 if the answer is yes the DM considers question 3
3. in remunerative work³
 - 3.1 if the answer is yes the claimant is not entitled to ESA(IR)
 - 3.2 if the answer is no the DM considers question 4
4. in receipt of earnings that are to be taken into account⁴ and in respect of what period are the earnings to be taken into account⁵.

Note 1: See DMG 50023 for guidance on whether the claimant is still trading.

Note 2: A claimant could be in remunerative work if they are carrying out activities or it is a period of non-activity which is a normal incident in the cycle of work so they are treated as engaged in work. See DMG Chapter 41 for guidance on remunerative work.

Note 3: To calculate the assessment period in order to determine the weekly earnings of a S/E earner, see the guidance at DMG 50051 et seq.

1 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R(JSA) 1/09; 2 ESA Regs, Sch 7, para 4; 3 regs 41(1) & 42(1); 4 reg 97(1); 5 reg 92(1)(a) & (b);

- 50014 If the S/E earner has ceased self-employment the DM should with respect to ESA(IR) consider if
1. there are any capital assets from the business **and**
 2. any capital assets from the business should be disregarded (see DMG 50032 and DMG Chapter 52).

Directors of limited companies

- 50015 A limited company is a legal person¹ and is different from a sole trader or partnership because
1. the company belongs to its shareholders, who share in any distributed profits according to the size of their individual holding **and**
 2. the liability of each shareholder is limited to the number of shares taken, or the amount that the shareholder has stood as personal guarantor for. The shareholder is not liable for any amount above the amount unpaid on shares (if any) or the amount guaranteed **and**
 3. if 2. does not apply, liability for debts is limited to the company's capital.

Note: see DMG Chapter 52 when considering the effect of a director's capital

1 R(SB) 57/83

- 50016 A limited company, of whatever size, is separate from its employees, officers and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company² and is an employed earner (see DMG Chapter 49).

1 R(SB) 57/83; 2 McMillan v Guest 1942, AC 561

Earnings of self-employed earners

- 50017 In S/E cases, earnings are the gross receipts (see DMG 50125) of the employment¹.

1 ESA Regs, reg 97(1)

- 50018 S/E earnings do not include¹
1. charges paid to the S/E earner in return for providing BL accommodation (see DMG 50019) **or**
 2. any of the payments in DMG 51255 et seq (fostering allowances and payments for people temporarily in the claimant's care)
 3. any sports award² (see DMG 41499).

1 ESA Regs, reg 97(2);

2 reg 2(1), National Lottery etc. Act 1993, s 23(2)

Appendix 1

Notional deductions for income tax

Main income tax allowances

1. The main income tax allowances are as follows

		10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
		£	£	£	£	£	£	£	£
Additional personal		-	-	-	-	-	-		
Personal	under 65	6,475	7,475	8,105	9,440	10,000	10,600	11,000	11,500
Personal	65 - 74	9,490	9,940	10,500	10,500	10,500	10,600	11,000	11,500
Personal	75 & over	9,640	10,090	10,660	10,660	10,660	10,660	11,000	11,500
Married couple	under 65	-	-	-	-	-	-	-	-
Married couple	65 - 74	-	-	-	-	-	-	-	-
Married couple	75 & over	6,995	7,295	7,705	7,915	8,165	8,355	8,355	8,445

Basic rates of tax

2. Income tax is payable on taxable income

	£	
08/09	1 - 34,800	at basic rate of 20%
09/10	1 - 37,400	at basic rate of 20%
10/11	1 - 37,400	at basic rate of 20%
11/12	1 - 35,000	at basic rate of 20%
12/13	1 - 34,370	at basic rate of 20%
13/14	1 - 32,010	at basic rate of 20%
14/15	1 - 31,865	at basic rate of 20%
15/16	1 - 31,785	at basic rate of 20%
16/17	1 - 32,000	at basic rate of 20%
17/18	1 - 33,500	at basic rate of 20%

Appendix 2

Notional deductions for National Insurance contributions

Class 1 contributions

1. The Class 1 NI contribution for any week or month is based on the percentage rate appropriate to the band in which the estimated gross earnings fall.

Earnings Bands 10/11		Earnings Limits 10/11
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £97
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	Monthly £420
		UEL
		Weekly £844
		Monthly £3656

Primary threshold

No contributions are payable on weekly earnings of £110 or less or monthly earnings of £476 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £110.01 and £844 per week and at 1% for earnings above £844 per week.

Earnings Bands 11/12		Earnings Limits 11/12
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £102
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £442

UEL

Weekly £817

Monthly £3,540

Primary threshold

No contributions are payable on weekly earnings of £139 or less or monthly earnings of £602 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £139.01 and £817 per week and at 2% for earnings above £817 per week.

4. Earnings Bands 12/13 **Earnings Limits 12/13**

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £107
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £464

UEL

Weekly £817

Monthly £3,540

Primary threshold

No contributions are payable on weekly earnings of £146 or less or monthly earnings of £634 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £146.01 and £817 per week and at 2% for earnings above £817 per week.

5. Earnings Bands 13/14 **Earnings Limits 13/14**

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £109
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £472

UEL

Weekly £797

Monthly £3,453

Primary threshold

No contributions are payable on weekly earnings of £149 or less or monthly earnings of £645 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £149.01 and £797 per week and at 2% for earnings above £797 per week.

6. Earnings Bands		Earnings Limits
14/15		14/15
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £111
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £481
		UEL
		Weekly £805
		Monthly £3,488

Primary threshold

No contributions are payable on weekly earnings of £153 or less or monthly earnings of £663 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £153.01 and £805 per week and at 2% for earnings above £805 per week.

7. Earnings Bands		Earnings Limits
15/16		15/16
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £112
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £486
		UEL
		Weekly £815
		Monthly £3,532

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £815 per week and at 2% for earnings above £815 per week.

8.	Earnings Bands 16/17		Earnings Limits 16/17
	Earnings	Percentage rates	LEL
	1. up to LEL	NIL	Weekly £112
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £486
			UEL
			Weekly £827
			Monthly £3584

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £827 per week and at 2% for earnings above £827 per week.

9.	Earnings Bands 17/18		Earnings Limits 17/18
	Earnings	Percentage rates	LEL
	1. up to LEL	NIL	Weekly £113
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £490
			UEL
			Weekly £866
			Monthly £3753

Primary threshold

No contributions are payable on weekly earnings of £157 or less or monthly earnings of £681 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £157.01 and £866 per week and at 2% for earnings above £866 per week.

Class 2 contributions

10. The weekly rate of Class 2 contributions are as follows

	£	£	£	£	£	£	£	£
	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
	£	£	£	£	£	£	£	£
Ordinary Class 2 rate	2.40	2.50	2.65	2.70	2.75	2.80	2.80	2.85
Share fisherman rate	3.05	3.15	3.30	3.35	3.40	3.40	3.45	3.50

Small earnings exception/small profits threshold

11. The rates of the small earnings exception are as follows.

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
	£	£	£	£	£	£	£	£
Earnings limit	5,075	5,315	5,595	5,725	5,885	5,965	5,965	6,025

Class 4 contributions

12. The weekly rates of Class 4 contributions are as follows.

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
	£	£	£	£	£	£	£	£
Lower level	5,715	7,225	7,605	7,755	7,956	8,060	8,060	8,164
Higher level	43,875	42,475	42,475	41,450	41,865	42,358	43,000	45,000
Percent age rate	8% of £5,715 to £43,875 per year, 1% above £43,875	9% of £7,225 to £42,475 per year, 2% above £42,475	9% of £7,605 to £42,475 per year, 2% above £42,475	9% of £7,755 to £41,450 per year, 2% above £41,450	9% of 7,956 to 41,865 per year, 2% above 41,865	9% of 8,060 to 42,358 per year, 2% above 42,358	9% of £8,060 to £43,000 per year, 2% above £43,000	9% of £8,164 to £45,000 per year, 2% above £45,000

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

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Benefits taken fully into account

Bereavement allowance

51022 BA should be taken into account in full. It is restricted to payment for not more than 52 weeks.

Note 1: WP may continue to be paid to widows whose husband died before 9.4.01.

Note 2: The Bereavement Support Payment replaced Bereavement Allowance for people whose spouse or civil partner died on or after 6.4.17¹. The regular monthly BSP payment is income other than earnings in ESA(IR) and is fully disregarded² (see DMG 51232)

1 BSP Regs; 2 ESA Regs, Sch 8, para 68

Carer's allowance

51023 CA should be taken fully into account. It is payable to people who are unable to work because they are caring for a person receiving AA or DLA.

ESA(Cont)

51024 ESA(Cont) received by a partner should be taken fully into account. Where the claimant's partner's ESA(Cont) has been reduced due to a failure to

1. take part in a WFI or a failure to undertake WRA **or**
2. comply with a work-related requirement

then the amount of ESA(Cont) to take into account is the amount before any reduction¹.

1 ESA Regs, reg 104(10)

51025 Where the claimant is a husband or wife by virtue of a polygamous marriage and the other party to the marriage or any spouse additional to the marriage is in receipt of ESA(Cont) which has been reduced due to a failure to

1. take part in a WFI or a failure to undertake WRA **or**
2. comply with a work-related requirement

then the amount of ESA(Cont) to take into account is the amount before any reduction¹.

1 ESA Regs, reg 104(11)

51026 - 51030

Incapacity benefit

51031 IB should be fully taken into account. IB is paid to people who are incapable of work

1. who are not entitled to SSP **or**
2. whose SSP has ended.

51032

Industrial injuries disablement benefit

51033 IIDB should be taken fully into account. The additional allowances

1. REA and

2. US

may also be paid with IIDB. They should be taken fully into account.

Note: US was removed from the scheme on 6.4.87 but may continue in payment to people getting it before that date.

51034 See DMG 51230 for guidance on attendance allowances for the treatment of ESDA and CAA paid with Dis B.

51035 Dis G should be treated as capital. But REA paid with it should be taken fully into account as income.

51036

JSA(Cont)

51037 JSA(Cont) received by a partner should be taken fully into account. It is payable to people who are unemployed and who have paid enough NI contributions¹.

1 JS Act, s 2

Maternity allowance

51038 MA should be taken fully into account. It is payable to women who cannot get SMP.

Retirement pension

51039 RP should be taken fully into account. It is either

1. contributory (Cat A or B) or

2. non-contributory (Cat C or D).

51040 RP may be made up of the following elements

1. a BP

2. an increase of BP for dependant spouses or civil partners, dependant children or women looking after children (but see DMG 51240 if the dependant is not a member of the claimant's family)

3. an AP for people who were in non-contracted out employment

4. GRB earned between 1961 and 1975 under the graduated pension scheme

5. Incs for deferred retirement

6. invalidity and age additions.

Income disregarded in part

Income that has £10 a week disregarded

Types of income that have £10 a week disregarded

51080 Disregard the first £10 a week of¹

1. pensions paid to victims of National Socialist persecution
2. payments of WDisP
3. payments of WWP, WMA and WPA
4. certain payments from the Armed Forces and Reserve Forces Compensation Scheme.

Note: Any remainder is taken fully into account, after any income tax has been disregarded. WWP includes a pension paid to a surviving civil partner.

1 ESA Regs, Sch 8, para 17

Weekly limit to £5, £10 and £20 disregards

51081 In some circumstances the overall weekly disregard should be limited to £20¹ for the family when

1. more than one payment listed in DMG 51080 **or**
2. covenant income **or**
3. a student loan

are taken into account in the same benefit week.

Covenant income has the first £5 disregarded. Student loans have the first £10 disregarded.

Note: This rule does not apply where two payments of the same kind are taken into account in the same benefit week². In these cases each payment has its own disregard.

1 ESA Regs, Sch 8, para 39; 2 Sch 8, para 40

Pensions paid to victims of National Socialist persecution

51082 These pensions have a £10 disregard¹. They are made under special provision of the laws of the relevant country to victims of Hitler's government.

Note: When considering whether a payment qualifies for this disregard could DMs please contact DMA Leeds with full details of the case.

1 ESA Regs, Sch 8, para 17(g)

War disablement pensions

51083 WDisP is paid to former members of

1. the armed forces **or**
2. forces nursing services

because of medical unfitness prior to 6.4.05 caused or aggravated by service but not necessarily the result of combat. See Appendix 1 to this Chapter for details of the law under which WDisP is paid.

Note: For those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05 the War Pension Scheme is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 51087.

51084 WDisP may be made up of¹

1. wounds pension **and**
2. disablement pension **and**
3. retired pay for a disabled officer.

1 R(IS) 3/99

51085 A £10 disregard can be made for¹

1. WDisP **and**
2. a payment to compensate for non payment of WDisP **and**
3. a similar payment made by a foreign government.

1 ESA Regs, Sch 8, para 17(a), (e) & (f)

War widow's or widower's pension

51086 WWP is paid to a widow or widower following a death caused by service or war injury prior to 6.4.05. The DM should disregard £10 from

1. WWP **and**
2. a payment to compensate for non-payment of WWP **and**
3. similar payments from a foreign government¹.

Note 1: DMs should take into account in full pensions paid to war orphans or dependants. See Appendix 1 to this Chapter for details of the law under which WWPs are paid.

Note 2: For deaths occurring on or after 6.4.05 WWP is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 51087.

1 ESA Regs, Sch 8, para 17(b), (e) & (f)

Armed Forces and Reserve Forces Compensation Scheme

51087 The Armed Forces and Reserve Forces Compensation Scheme replaces the War Pensions Scheme for those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05.

Note: The War Pensions Scheme will continue to run parallel to the new scheme for existing beneficiaries and for those who make a new claim for a War Pensions Scheme payment for injury, ill health or a death due to service in the Armed Forces prior to 6.4.05.

Definitions

51088 The Armed Forces and Reserve Forces Compensation Scheme means¹ the scheme established under specified Armed Forces Legislation².

1 ESA Regs, reg 2(1); 2 Armed Forces (Pensions and Compensation) Act 2004, s 1(2)

51089 A guaranteed income payment means¹ a payment made under specified Armed Forces legislation².

1 ESA Regs, reg 2(1); 2 Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, art 14(1)(b) or 21(1)(a)

Payments from the Armed Forces and Reserve Forces Compensation Scheme

51090 A £10 disregard applies to

1. a guaranteed income payment¹
2. a payment to compensate for the non payment of a guaranteed income payment² **and**
3. a similar payment made by a foreign government, which is analogous to a guaranteed income payment³.

1 ESA Regs, Sch 8, para 17(d); 2 Sch 8, para 17(e); 3 Sch 8, para 17(f)

51091 Where

1. a claimant is in receipt of a guaranteed income payment **and**
2. that payment has been reduced to less than £10 a week by abatement due to a pension from the Armed Forces Pension Scheme or a payment under the Armed Forces Early Departure Scheme

the claimant can still have a full £10 disregard on the guaranteed income payment and the pension¹.

Note: The Armed Forces Pension Scheme means either the Armed Forces Pension Scheme of 1975 or of 2005.

1 ESA Regs, Sch 8, para 17(d)

Example

Simon is in receipt of ESA(IR). He also receives a guaranteed income payment of £2.50 per week. This is because the payment has been abated by a pension he receives under the Armed Forces Pension Scheme. The DM disregards the guaranteed income payment of £2.50 and also £7.50 of the pension. This gives a total weekly disregard of £10.

Widowed mother's allowance and widowed parent's allowance

51092 A £10 disregard applies to WMA. For claims from people whose partner died on or after 9.4.01, WMA has been replaced by WPA. It is a new benefit paid to bereaved men and women who care for children. A man with dependant children whose partner has died before 9.4.01 can claim WPA after this date. A £10 disregard is applicable to WPA¹.

1 ESA Regs, Sch 8, para 17(h) & (i)

51093 - 51096

Income fully disregarded

Types of income fully disregarded

- 51210 When calculating income for ESA(IR) disregard fully
1. any payment from and/or some payments from money that originally came from
 - 1.1 the Macfarlane Trust
 - 1.2 the Macfarlane (Special Payments) Trust
 - 1.3 the Macfarlane (Special Payments) (No. 2) Trust
 - 1.4 the Independent Living Fund (2006) - but see **note 2**
 - 1.5 the Fund
 - 1.6 the Eileen Trust
 - 1.7 the Skipton Fund
 - 1.8 MFET Limited
 - 1.9 the Caxton Foundation
 - 1.10 the Scottish Infected Blood Support Scheme
 2. any payment for a reduction of CT
 3. AAs
 4. AFIP
 5. The Bereavement Support Payment (see DMG 51232)
 6. certain payments due to be paid before the date of claim
 7. CHB
 8. child maintenance
 9. Christmas Bonus
 10. compensation for loss of HB
 11. concessionary payments
 12. cost of conversion of foreign money
 13. CTB
 14. CTC
 15. dependant's or non dependant's contributions to accommodation and living costs
 16. DLA
 17. discretionary housing payments (DHP's)
 18. Education maintenance allowance and 16 - 19 Bursary Fund payments
 19. Employment Retention and Advancement (ERA) Scheme payments

20. EZ, self-employed route
21. GA
22. gallantry awards
23. HB
24. income frozen abroad
25. income in kind
26. income tax refunds
27. income treated as capital
28. increases in SS benefits for absent dependants
29. jurors' or witnesses' court attendance allowance
30. local welfare provision
31. Mobility supplement
32. ND IAP, expenses and top-up payments
33. payments for foster children
34. payment for a person temporarily in the care of the claimant
35. payments from an LA in lieu of Community Care Services
36. payment by an employer of employee's expenses
37. payment of expenses to voluntary workers
38. payment of expenses to service users
39. payments to help disabled people get or keep employment
40. payments from the SF under SS legislation
41. payments from the Supporting People programme
42. certain payments made under employment and training law
43. payments made under the Return to Work Credit Scheme
44. payments made under the Repayment of Teacher's Student Loans Scheme
45. PIP
46. resettlement benefit
47. special educational needs payments and budgets
48. special guardianship payments
49. training premium and expenses
50. travelling expenses for training schemes
51. vouchers including child care cheques
52. war widows/widowers, surviving civil partners supplementary pensions

53. welfare foods, NHS supplies, travelling expenses and assisted prison visits

54. WRA expenses.

Note 1: See DMG 51341 et seq for further guidance on payments listed at 1.1 - 1.10.

Note 2: 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.

51211

Adoption allowance

51212 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

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

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

Adoption allowance paid for members of the family

51213 Any adoption allowance paid for a child or young person who is a member of the family is fully disregarded¹.

1 ESA Regs, Sch 8, para 26(1)(a)

Adoption allowances paid other than for a child who is a member of the family

51214 Disregard any payment¹ made under specific legislation² in respect of

1. a child who is not a member of the family **or**
2. the claimant or partner.

See DMG 51215 for adoption allowances in Scotland and Wales.

1 ESA Regs, Sch 8, para 26 (2); 2 Adoption and Children Act 2002, s 2(6)(b), 3 & 4

Adoption allowances paid in Scotland or Wales for children who are not members of the family

51215 If an adoption allowance is paid in Scotland or Wales for a child or young person who is not treated as a member of the family, for example a child in youth custody, the DM should

1. disregard in full any amount which is spent on the child or young person **and**

2. take into account any amount used by the claimant or partner¹.

1 ESA Regs, reg 107(4)

Residence orders

Northern Ireland Children Order

- 51216 Payments made by an authority¹ under specified legislation² are fully disregarded³.

1 Children (NI) Order 1995, art 2; 2 art 15 and Sch 1, para 17; 3 ESA Regs, Sch 8, para 26(1)(c)

Local authority payments for children subject to a residence order

- 51217 Payments made by a LA under specified legislation¹ are fully disregarded².

1 Children Act 1975, s 34(6) & 50; Children Act 1989, s 15 & Sch 1, para 15;

2 ESA Regs, Sch 8, para 26(1)(b)

Credit insurance policies

- 51218 Claimants may receive payments from credit insurance policies. These are policies designed to cover repayments for debts for

1. credit cards
2. catalogue companies
3. personal loans
4. other types of credit arrangements.

Disregard for credit insurance policies

- 51219 A disregard applies to payments received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on¹

1. a regulated agreement as defined in legislation **or**
2. a hire purchase agreement as defined in legislation **or**
3. a conditional sale agreement as defined in legislation².

Note: The disregard does not apply to insurance policies for qualifying housing costs³. The disregard for these policies is explained at DMG 51150 - 51152.

1 ESA Regs, Sch 8; 2 Sch 8; 3 Sch 8, para 33

- 51220 If an agreement is a regulated agreement under legislation, the creditor is required by law to state this in the agreement¹. The DM may conclude that

1. if the agreement states that it is regulated under the legislation, then DMG 51219 1. is satisfied **and**
2. if the agreement **does not** state that it is regulated under the legislation, then DMG 51219 1. is not satisfied.

Note: The DM may depart from these conclusions where the evidence clearly supports another decision.

1 Consumer Credit (Agreements) Regulations 1983

Benefits fully disregarded

Attendance allowances

51230 Disregard in full¹

1. AA²
2. CAA which is paid with a disablement pension because disablement has been assessed at 100%³
3. ESDA paid because industrial disablement has been assessed at 100%⁴
4. payments for attendance under the Civilian's Personal Injury Scheme⁵ or any similar payment. These payments are made to people who receive a DP because of war injuries suffered as civilians or civil defence volunteers
5. any payment for attendance which is a part of WDisP. This includes severe disablement occupational allowance paid with CAA.

*1 ESA Regs, Sch 8, para 11; 2 SS CB Act 92, s 64; 3 s 104 or 105; 4 s 104 or 105;
5 Personal Injuries (Civilians) Scheme 83, art 14 - 16, 43 or 44*

The meaning of attendance allowance

51231 DMs should recognize the difference between

1. the term attendance allowance which is commonly used to describe one particular benefit (abbreviation AA) **and**
2. "attendance allowance" which is defined in legislation¹ and includes all the benefits in DMG 51230 (abbreviation "AA").

1 ESA Regs, reg 2(1)

Bereavement support payment

51232 The BSP replaces BB for people whose spouse or civil partner dies on or after 6.4.17¹. There are two rates of BSP; the higher rate and the standard rate. The regular monthly BSP payment is treated as income other than earnings² and is disregarded for the period in respect of which it is paid. Any unspent BSP remaining at the end of this month will become capital (with no disregard applied). The regular monthly payment does not include any arrears or the higher or standard rate of BSP that may be payable for the first month of the BSP period³.

Note: See DMG chapter 29 for how BSP affects capital and DMG chapter 59 for more information on BSP.

*1 Pensions Act 14 (Commencement No. 10) Order, art 2(1)(b); BSP Regs, reg 1(2);
2 IS (Gen) Regs, Sch 9, para 80; JSA Regs, Sch 7, para 76; 3 BSP Regs, reg 3(2) & (5)*

Disability living allowance, personal independence payment and armed forces independence payment

51233 The DM should fully disregard

1. DLA
 - 1.1 mobility component¹ **and**
 - 1.2 care component²
2. PIP
 - 2.1 mobility component³ **and**
 - 2.2 daily living component⁴
3. AFIP⁵.

1 ESA Regs, Sch 8, para 8; 2 Sch 8, para 11; 3 Sch 8, para 8; 4 Sch 8, para 11; 5 Sch 8, para 66

CHB, CTC and child dependant increases

51234 The DM should fully disregard any

1. CHB¹
2. CTC²
3. CDIs³ paid with
 - 3.1 CA
 - 3.2 RP
 - 3.3 IB
 - 3.4 SDA
 - 3.5 WMA
 - 3.6 WPA.

1 ESA Regs, Sch 8, para 7(1); 2 Sch 8, para 7(2); 3 Sch 8, para 7(3)

Christmas bonus

51235 Christmas bonus should be disregarded in full¹. It is paid in the week starting with the first Monday in December to people receiving²

1. RP
2. IB
3. WMA, WPA or WP
4. SDA
5. CA

6. IDB
7. AA/DLA
8. US
9. WDisP
10. WWP
11. ESA(Cont)
12. SPC.

1 ESA Regs, Sch 8, para 37; 2 SS CB Act 92, s 148

Compensation for loss of housing benefit

- 51236 The DM should fully disregard any payment made by the Secretary of State to compensate for the total or partial loss of HB¹.

1 ESA Regs, Sch 8, para 42

Council tax benefit

- 51237 The DM should fully disregard any payment of CTB¹. CTB usually reduces the bill sent by LAs but some claimants may receive cash payments.

1 ESA Regs, Sch 8, para 65

Discretionary housing payments

- 51238 LAs may make discretionary housing payments to HB/CTB recipients requiring further financial assistance with their housing costs¹. For ESA purposes discretionary housing payments should be disregarded².

1 Discretionary Financial Assistance Regulations 2001 (S.I. 2001 No. 1167); 2 ESA Regs, Sch 8, para 62

Guardians allowance

- 51239 The DM should fully disregard any GA¹. It is payable to a person who is entitled to CHB for a child

1. whose natural parents are dead **or**
2. where one of the natural parents is dead and the other cannot be traced or is serving a long prison sentence.

1 ESA Regs, Sch 8, para 6

Housing benefit

- 51240 The DM should fully disregard any payments of HB¹ to which the claimant is entitled. HB may be

1. paid direct to the claimant **or**

2. paid direct to the landlord **or**
3. deducted from the rent payable.

HB is paid by LAs to help people on low incomes pay their rent.

Note: See DMG 51104 et seq where the claimant is a landlord and receives HB.

1 ESA Regs, Sch 8, para 64

Increases in Social Security benefits and Service Pensions for absent dependants

51241 The DM should fully disregard any increase in a SS benefit¹ or a service pension² for a

1. husband, wife, civil partner or any other adult dependant **or**
2. child

who is not a member of the family for ESA purposes.

Note: "Service Pension" in this guidance means a pension or allowance paid in respect of disablement or death due to service in the armed forces.

1 ESA Regs, Sch 8, para 50(1); 2 Sch 8, para 50(2) & The Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, Part 2 or 3

51242 Dependency increases can be paid as part of

1. MA
2. SDA
3. RP
4. US paid with Dis B (abolished for new claims in 1987).

Claimants must pay over an amount at least equal to the dependency increase to continue to receive it.

Note: CHB for a child who is not a member of the family should be taken into account in full as the income of the CHB claimant.

Mobility supplement

51243 The DM should fully disregard

1. Mobility supplement **and**
2. War Pensioner's Mobility Supplement **and**
3. The mobility component of DLA¹.

Any payment to compensate for the non-payment of these benefits should also be disregarded in full.

1 ESA Regs, Sch 8, para 8 & 10

Payments from the Social Fund under Social Security legislation

51244 The DM should fully disregard any payment made from the SF¹.

Note: This disregard does not apply to payments from the European Social Fund.

1 ESA Regs, Sch 8, para 35

Concessionary payments

Types of concessionary payments that should be disregarded

51245 The DM should fully disregard concessionary payments¹ of

1. Attendance allowances
2. DLA mobility component
3. DLA care component
4. JSA(IB)
5. IS
6. ESA(IR)
7. UC.

1 ESA Regs, Sch 8, para 9

What are concessionary payments

51246 Concessionary payments¹ are made by the Secretary of State in place of

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

They are made when the policy intention to pay benefit cannot be achieved because of a fault in the law. They should be treated in the same way as the benefit they represent.

1 ESA Regs, reg 2(1)

Other types of income fully disregarded

Certain payments due before the date of claim

- 51275 The DM should fully disregard any payment of income that
1. is due to be paid before the date of claim for ESA **and**
 2. under normal rules would be taken into account in the same benefit week as a payment of the same kind from the same source¹.

1 ESA Regs, Sch 8, para 38

Payments for a reduction in council tax

- 51276 The DM should disregard in full¹ any payment made because of a reduction of CT because of transitional relief² when the tax was introduced.

1 ESA Regs, Sch 8, para 44; 2 LGF Act 92 s 13 or 80;

Dependant's or non-dependant's contributions to accommodation and living costs

- 51277 The DM should fully disregard payments for living and accommodation costs from people who normally live with the claimant who are not
1. boarders **or**
 2. subtenants¹.

1 ESA Regs, Sch 8, para 19

Example

Michael receives ESA(IR). His daughter Katy is a non-dependant in his household. She pays him £25 a week as a contribution towards the household bills.

The DM disregards this payment fully as Katy is not a boarder or subtenant.

Education maintenance allowance and the 16 - 19 Bursary Fund

- 51278 The DM should fully disregard¹ any payment paid under prescribed legislation² that is
1. education maintenance allowance **or**
 2. the same as an education maintenance allowance **or**
 3. from the 16 - 19 Bursary Fund

made to support a young person who remains in non-advanced education after the age of 16. It can be paid for up to two years between the ages of 16 and 19. In

some cases it may continue to be paid for up to three years until the person reaches the age of 20.

Note: The 19+ Bursary, available in most Further Education colleges, falls within the definition of an Access Fund – see DMG 51827.

1 ESA Regs, Sch 8, para 13(1)(a), (b) & (c); 2 Education Act 1996, s 518; Ed (Scot) Act 80, s 49, 73ZA & 73(f); F & HE (Scot) Act 1992, s 12(2)(c); Education Act 2002, s 14 & 181

Other payments to assist with non-advanced education

51279 The DM should fully disregard¹ any payment paid under prescribed legislation² in respect of a course of study attended by a

1. child or young person **or**
2. person who is in receipt of an allowance or other payment as described at DMG 51278 above.

Note: Such payments may include, for example, payments to cover scholarships or school expenses.

1 ESA Regs, Sch 8, para 13(2); 2 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 & 73ZA; F & HE (Scot) Act 92, s 12(2)(c)

Special guardianship payments

51280 The special guardianship scheme is intended to provide more security for a child than long term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Financial support by the LA may be paid to special guardians in certain circumstances. It is expected the support will normally be made as a single payment to meet a one-off cost. However the LA may make payments in instalments or periodically to meet needs that are likely to be ongoing.

51281 Any special guardianship payment made under specific legislation¹ in respect of a child or young person who is a member of the family should be fully disregarded².

1 Children Act 1989, s 14F; 2 ESA Regs, Sch 8, para 26(1)(d)

Repayment of teacher's student loans scheme

51282 The pilot of the repayment of teacher's student loans ran for three years until July 2005 although eligible teachers may continue to receive payments under this scheme. It provided financial incentives to newly qualified teachers working in shortage subject areas. In England and Wales student loan debts were waived by gradually reducing the amount of loan outstanding. However, for those who took out student loans while living in Scotland, Northern Ireland or another EEA country and who took up a post teaching shortage subjects in England and Wales - annual payments were made to the teacher to repay their student loan. There is no time restriction on payments, so as long as the teacher remains eligible, repayments will continue to be made until the loan is repaid.

2. cannot be transferred to the UK

for as long as it is frozen abroad¹. Income will usually be frozen when the foreign country does not allow its currency to be transferred to the UK.

1 ESA Regs, Sch 8, para 24

Income in kind

51298 The DM should fully disregard any income in kind except

1. support provided to a claimant under specific immigration and asylum law **and**
2. notional income¹ **and**
3. payments made to a third party in respect of the claimant which are used by the third party to provide benefits in kind to the claimant².

Note 1: Credits received from participating in a LETS scheme (see DMG Chapter 50) are not income in kind. Credits should be taken into account in the appropriate way.

Note 2: See DMG 51397 for the treatment of concessionary coal.

1 ESA Regs, Sch 8, para 22(1); 2 Sch 8, para 22(4)

Example 1

Karen is entitled to ESA(IR). Her mother works in a shop and the shop owner gives the mother £10 of groceries each week for Karen.

The DM decides the £10 a week is income in kind and should be fully disregarded.

Example 2

The shop owner (in example 1 above) then changes the arrangement and gives Karen's mother £10 a week to buy groceries for Karen.

Karen's mother uses the £10 to buy food each week for Karen.

The DM decides the £10 a week cannot be disregarded as income in kind and it should be taken fully into account as notional income.

51299 The exceptions at DMG 51298 do not apply¹ when the income in kind comes from

1. the Macfarlane Trust
2. the Macfarlane (Special Payments) Trust
3. the Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. the Eileen Trust
6. the Independent Living Fund (2006) – see **note** below
7. MFET Limited
8. the Skipton Fund
9. the Caxton Foundation

10. The Scottish Infected Blood Support Scheme **or**
11. the partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

1 ESA Regs, Sch 8, para 22(2) & (3)

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.

51300 - 51309

Income treated as capital

- 51310 The DM should fully disregard as income any income that is treated as capital¹.

1 ESA Regs, Sch 8, para 36

Jurors or witnesses court attendance allowance

- 51311 The DM should fully disregard any payment to a

1. juror **or**
2. witness

for attending court. But payments for loss of earnings or benefits¹ should not be disregarded.

1 ESA Regs, Sch 8, para 43

Payments in lieu of community care services and payments in lieu of health care

- 51312 The DM should disregard any payments which are made

1. under relevant legislation¹ **and**
2. in lieu of²
 - 2.2 community care services **or**
 - 2.2 health care.

Note: These types of payments are sometimes known as "Direct Payments for Health Care" or "Direct Payments for Community Care".

1 SW (Scot) Act 68, s 12B; Health and Social Care Act 2001, s 57; National Health Service Act 2006, s 12A - 12D; The Care Act 2014, s31-33; 2 ESA Regs, Sch 8, para 53

The London Bombings Relief Charitable Fund

51351 The London Bombings Relief Charitable Fund¹ was set up to relieve the needs of victims, including families or dependants of victims, of the terrorist attacks in London on 7.7.05. Interim payments were made to relieve the immediate needs of victims followed by further lump sum payments. Recipients may receive more than one lump sum payment.

Note: Payments made from the London Bombings Relief Charitable Fund will be payments of capital (See DMG Chapter 52).

1 ESA Regs, reg 2(1)

MFET Limited

51352 MFET Limited¹ is an organisation funded by DH. The purpose of MFET Limited is to make payments to people who have acquired HIV as a result of treatment by the NHS with blood or blood products.

1 ESA Regs, reg 2(1)

Income from MFET Limited

51353 Fully disregard¹

1. any income from MFET Limited **and**
2. any income from capital that was received from MFET Limited.

1 ESA Regs, Sch 8, para 41(1)

The Caxton Foundation

51354 The Caxton Foundation was established on 28.3.11. It administers funds provided by DH for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments¹.

1 ESA Regs, reg 2(1)

Income from the Caxton Foundation

51355 Fully disregard¹

1. any income from the Caxton Foundation **and**
2. any income from capital that was received from the Caxton Foundation.

1 ESA Regs, Sch 8, para 41(1)

The Scottish Infected Blood Support Scheme

51356 The Scottish Infected Blood Support Scheme (SIBSS)¹ became operational from 1.4.17, although no payments were made until 3.4.17. It is administered by NHS National Services Scotland (NSS), legally known as the Common Services Agency.

NSS is an NHS Board accountable to Scottish Ministers. SIBSS combines the existing blood support schemes into one scheme in Scotland.

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

Income from the Scottish Infected Blood Support Scheme

51357 Fully disregard¹

1. any income from the Scottish Infected Blood Support Scheme **and**
2. any income from capital that was received from the Scottish Infected Blood Support Scheme.

1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1) & 39(7)

51358 - 51359

Payments from money which came from the Trusts

Meaning of the Trusts

51360 "The Trusts"¹ is the term that describes

1. the Macfarlane Trusts **and**
2. the Fund **and**
3. the Eileen Trust **and**
4. the Skipton Fund **and**
5. the London Bombings Relief Charitable Fund **and**
6. MFET Limited **and**
7. the Caxton Foundation **and**
8. the Scottish Infected Blood Support Scheme.

1 ESA Regs, Sch 8, para 41(7)

What payments should be disregarded

51361 Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 51362 - 51385. In these cases, the person receiving the income is not the person who qualified for the Trust payment. In any other circumstances, payments of income from a Trust payment should be treated under normal rules.

Person with HIV

51362 In this guidance the term "person with HIV" is used to describe

1. people with haemophilia **or**
2. other people

who qualify for Trust payments.

Qualifying person

51363 In this guidance a qualifying person means¹ a person in respect of whom a payment has been made from

1. the Fund **or**
2. the Eileen Trust **or**
3. the Skipton Fund **or**
4. the London Bombings Relief Charitable Fund **or**
5. MFET Limited **or**
6. the Caxton Foundation **or**
7. the Scottish Infected Blood Support Scheme.

Note: A person in respect of whom a payment has been made from the Macfarlane Trust is not included above but is included in the definition at DMG 51362.

1 ESA Regs, reg 2(1)

Payments by a qualifying person or person with HIV to partners, children and young people

51364 Disregard any payment made by or on behalf of a qualifying person or person with HIV from money from a Trust payment made to or for the benefit of

1. their partner or their former partner if they are **not**
 - 1.1 estranged **or**
 - 1.2 divorced **or**
 - 1.3 former civil partners **or**
 - 1.4 estranged, divorced or had their civil partnership dissolved at the date of death if the qualifying person or person with HIV has died¹ **or**
2. any child or young person who
 - 2.1 is a member of the family of the qualifying person or person with HIV **or**
 - 2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family².

Note: DMG 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(2)(a); 2 Sch 8, para 41(2)(b) & (c)

Payments by the partner or former partner of the qualifying person or person with HIV

51365 Fully disregard any payment from a Trust payment made by or on behalf of a partner or former partner of a qualifying person or person with HIV, providing the qualifying person or person with HIV and partner or former partner are **not**

1. estranged **or**
2. divorced **or**
3. former civil partners **or**
4. estranged, divorced or had their civil partnership dissolved at the date of death of either
 - 4.1 the qualifying person or person with HIV **or**
 - 4.2 the partner or former partner.

51366 This disregard applies if the payment is made to or for the benefit of

1. the qualifying person or person with HIV¹ **or**
2. any child or young person² who
 - 2.1 is a member of the family of the qualifying person or person with HIV **or**
 - 2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family.

Note: DMG 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(3)(a); 2 Sch 8, para 41(3)(b) & (c)

Payments by a qualifying person or person with HIV to parents, step parents or guardians

51367 Fully disregard any payment from a Trust payment by a qualifying person or person with HIV to their

1. parent **or**
2. step parent¹ **or**
3. guardian² if the qualifying person or person with HIV has no parent or step parent and is a
 - 3.1 child **or**
 - 3.2 young person **or**
 - 3.3 student in FTE.

1 ESA Regs, Sch 8, para 41(4)(b)(i); 2 Sch 8, para 41(4)(b)(ii)

- 51368 This disregard applies if the qualifying person or person with HIV
1. has no partner or former partner from whom that person is **not**
 - 1.1 estranged **or**
 - 1.2 divorced **or**
 - 1.3 former civil partners **and**
 2. has no child or young person in the family **and**
 3. has never had a child or young person in their family¹.

Note: DMG 51379 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(4)(a)

51369 - 51374

Payments from the estate of a qualifying person or person with HIV to a parent, step parent or guardian

- 51375 Fully disregard any payment from the estate of a qualifying person or person with HIV to
1. a parent **or**
 2. a step parent¹ **or**
 3. a guardian² if at the date of death the qualifying person or person with HIV had no parent or step parent and was a
 - 3.1 child **or**
 - 3.2 young person **or**
 - 3.3 student in FTE.

1 ESA Regs, Sch 8, para 41(5)(b)(i); 2 Sch 8, para 41(5)(b)(ii)

- 51376 This disregard applies if at the date of death the qualifying person or person with HIV had
1. no partner or former partner from whom that person is **not**
 - 1.1 estranged **or**
 - 1.2 divorced **or**
 - 1.3 former civil partners **or**
 2. no child or young person in the family **and**
 3. at no time had a child or young person in the family¹.

Note: DMG 51380 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(5)(a)

For how long should the payment be disregarded

Payments to a qualifying person or person with HIV and partners

51377 Disregard payments made to or for the benefit of

1. a qualifying person or person with HIV¹ **or**
2. the partner or former partner of a qualifying person or person with HIV²

for the lifetime of the person who received the payment. Breaks in entitlement to ESA(IR) do not alter this disregard.

1 ESA Regs, Sch 8, para 41(3)(a); 2 Sch 8, para 41(2)(a)

Payments to children and young people

51378 Disregard payments made to or for the benefit of a child or young person as long as they remain

1. a child or young person **and**
2. in (or they were in) the family of¹
 - 2.1 the qualifying person or person with HIV **or**
 - 2.2 the partner or former partner of the qualifying person or person with HIV **and**
3. a member of the ESA(IR) claimant's family.

1 ESA Regs, Sch 8, para 41(2)(b) & (c) & 41(3)(b) & (c)

Payments to parents and guardians from a qualifying person or person with HIV

51379 Disregard payments to a

1. parent **or**
2. step parent **or**
3. guardian

from the date the payment is made until the end of two years after the qualifying person or person with HIV dies¹.

Note: In some cases this disregard may last for the length of the ESA claim, because the person with HIV may not die whilst the claimant is on ESA(IR).

1 ESA Regs, Sch 8, para 41(4)

Payments to parents and guardians from the estate of a qualifying person or person with HIV

51380 Disregard¹ payments to a

1. parent **or**
2. step parent **or**
3. guardian

for a period of two years from the date the qualifying person or person with HIV died.

Note: This disregard applies from the date of death not the date the estate makes a payment.

1 ESA Regs, Sch 8, para 41(5)

Deciding if a disregard applies

51381 Once the claimant has declared any payments made from one of the Trusts the DM should decide

1. if the payment qualifies for a disregard **and**
2. the length of any disregard.

51382 Seek further evidence if there is doubt about the

1. source of the payment **or**
2. relationship of the person receiving the payment with the qualifying person or person with HIV **or**
3. extent that money from the Trust has been kept separately.

Trust payments invested with other money

51383 If a Trust payment is invested with other money to produce an income, disregard only the proportion that came from the trust payment¹.

1 ESA Regs, Sch 8, para 41(6)

Example

Michael bought an annuity for £5,000. £4,000 came from the Eileen Trust. The balance came from his own savings.

The annuity produces an income of £50 a month.

The DM decides to disregard £40 a month. £10 a month is taken into account as income.

Qualifying person or person with HIV's relationship with former partners

- 51384 The DM should be satisfied that a former partner or civil partner is not estranged or divorced or had the civil partnership dissolved. Accept the claimant's statement unless it is considered to be improbable or self-contradictory.

Example

Joanne receives a payment of money from the Macfarlane Trust. She is divorced from her former partner Harold, who is a person with HIV.

The DM decides that the payment should not be disregarded.

Social fund funeral payments

- 51385 Trust payments will become part of a person's estate upon death. Any assets of a dead person including

1. payments of income from the trusts including Variant Creutzfeldt–Jakob disease payments **and**
2. payments of income from money that originally came from the Trusts or from Variant Creutzfeldt–Jakob disease payments

are not taken into account as assets of the estate if a claim for a SFFP is made.

Note: See DMG Chapter 39.

51386 - 51389

Regular charitable or voluntary payments

What are regular payments

51413 Regular charitable or voluntary payments are those that are

1. made regularly **or**
2. due to be made regularly, even if they are not actually made.

Note: Voluntary payments should not be confused with payments to volunteers. Guidance on payments to volunteers is given at DMG 49209 - 49211.

51414 Regular payments include those paid or due to be paid at recurring intervals such as

1. weekly
2. monthly
3. annually (for example every Christmas)
4. any other pattern.

When is a payment due to be made

51415 A payment is due to be paid where there is a promise or agreement to make a payment.

Disregard for relevant payments

51416 Fully disregard¹ any relevant payment unless one of the exceptions at DMG 51417 - 51418 apply.

1 ESA Regs, Sch 8, para 16(1)

Relevant payments that should be taken fully into account

51417 The disregard in DMG 51416 does not apply to

1. LRPs¹ **or**
2. maintenance, that is not an LRP for
 - 2.1 a member of the family **or**
 - 2.2 a former partner **or**
 - 2.3 the childrenof the person making the payment² **or**
3. a student's covenant or grant income³.

1 ESA Regs, reg 85; 2 Sch 8, para 16(3)(a); 3 reg 135

Relevant payments paid in kind

51418 Fully disregard relevant payments that are paid in kind¹ unless one of the exceptions at DMG 51298 applies. The exceptions at DMG 51298 do not apply when the income in kind comes from

1. the Macfarlane Trust
2. the Macfarlane (Special Payments) Trust
3. the Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. the Eileen Trust
6. the Independent Living Fund (2006) but see **note**
7. MFET Limited
8. the Skipton Fund **or**
9. the Caxton Foundation **or**
10. the Scottish Infected Blood Support Scheme

as explained at DMG 51299.

1 ESA Regs, Sch 8, para 22

Note: the Independent Living Fund 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 if a claimant receives funding from any of these replacement schemes.

51419 - 51424

2. ordinary clothing or footwear
3. fuel, for the household that the claimant normally occupies
4. accommodation costs covered by ESA(IR)
5. rent for which HB is payable
6. water charges for which the claimant or partner is liable
7. CT for which the claimant or partner is liable.

Ignore any part of the income not used on these items.

Note: If the income paid to the third party in the first instance is a payment in kind it would be excluded from this notional income rule.

1 ESA Regs, reg 107(3)(c)

51598 Disregard the payment to the third party¹

1. whatever it is used for, if it is made from
 - 1.1 the Macfarlane Trusts **or**
 - 1.2 the Eileen Trust **or**
 - 1.3 MFET Limited **or**
 - 1.4 the Fund **or**
 - 1.5 the Independent Living Fund (2006) **or**
 - 1.6 the Skipton Fund **or**
 - 1.7 the Caxton Foundation **or**
 - 1.8 the Scottish Infected Blood Support Scheme
2. if it is for the purchase and supply of concessionary coal under specified legislation². The Department of Energy and Climate Change is now responsible for the purchase and supply of concessionary coal. Coal is purchased through contracts and supplied to ex-coal workers and their families. The payment from the Department of Energy and Climate Change to the contractor is a payment to a third party and is disregarded.

1 ESA Regs, reg 107(5)(a); 2 The Coal Industry Act 94, s 19(1)(a); ESA Regs, reg 107(5)(b)

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.

Meaning of ordinary clothing or footwear

51599 The expression "ordinary clothing or footwear" means¹ clothing or footwear for normal daily use. It does not include

1. school uniforms **or**

2. clothing or footwear used solely for sport, for example football boots.

1 ESA Regs, reg 2(1)

51600 The DM should consider the wide needs of all claimants when applying the test of “for normal daily use”.

Example 1

Geeta receives ESA(IR). She receives a payment from a local charity to buy wellington boots for herself.

The DM decides that as it would be unreasonable for Geeta to wear wellington boots in all weather conditions they are not for normal daily use.

Example 2

Emma receives ESA(IR). She receives a payment for orthopaedic shoes.

The DM decides that orthopaedic shoes may be normal for Emma but are not normal for adults in general. The DM decides that the orthopaedic shoes are not for normal daily use.

Example 3

Rosalind receives ESA(IR). She receives a payment for an ordinary pair of shoes.

The DM decides that the shoes are for normal daily use.

Payments by a third party for care home, Abbeyfield Home or independent hospital charges

51601 Treat payments made by a third party, who is not the claimant or a member of the claimant’s family, towards the cost of charges for a

1. care home **or**
2. Abbeyfield Home **or**
3. independent hospital

for the claimant or partner as the income of the claimant or partner¹.

1 ESA Regs, reg 107(6)

51602 This rule applies when the

1. claimant lives in or is temporarily absent from a care home, Abbeyfield Home or independent hospital **and**
2. payment is made to the care home, Abbeyfield Home or independent hospital.

The DM should calculate the amount of income and treat it as if it was actual income¹.

1 ESA Regs, reg 109

51603

Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance

51604 A payment is disregarded¹ if it is

1. made for
 - 1.1 after-care under specified legislation² **or**
 - 1.2 accommodation or welfare services referred to in specified legislation³
- and**
2. treated as possessed under the notional income rule at DMG 51601⁴.

*1 ESA Regs, Sch 8, para 56; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25;
3 NA Act 48, Part III; SW (Scot) Act 68; The Care Act 2014, part 1; 4 ESA Regs, reg 107(6)*

51605 Payments that satisfy DMG 51604 include payments or reimbursements by a LA for

1. persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**
2. expectant and nursing mothers¹.

1 NHS & CC Act 90, s 42; NA Act 48, s 21(4)

Income paid to the claimant or partner for a third party

51606 Take into account in full any income paid to the claimant or claimant's partner for a third party who is not a member of the family if

1. the income is kept by **or**
2. is not paid over to the third party by

the person who received it. Ignore any income that is paid over to the third party¹.

1 ESA Regs, reg 107(4)

51607 Fully disregard any payment from

1. the Macfarlane Trusts
2. the Eileen Trust
3. MFET Limited
4. the Fund
5. the Independent Living Fund (2006) but see **note**
6. the Skipton Fund
7. the Caxton Foundation
8. the Scottish Infected Blood Support Scheme

regardless of who keeps it or how it is used.

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.

51608 The DM should decide using, available evidence

1. whether **and**
2. how much

income has been kept by the claimant or partner.

51609 Treat income as having been kept when

1. there is no intention of
 - 1.1 paying it over to **or**
 - 1.2 using it for the third party **or**
2. if after having the income for a reasonable period of time the claimant or partner has
 - 2.1 not started paying it over **or**
 - 2.2 not started using it for the third party **or**
 - 2.3 has no plans for paying it over or using it for the third party.

51610 The DM should consider

1. the type of income **and**
2. how often the income is paid **and**
3. why the income is paid

when deciding if a reasonable period of time has passed.

Example 1

Rodney receives ESA(IR)

Rodney receives income for his cousin Roland who is a long-term patient in a local hospital.

The income is paid weekly and Rodney has been receiving it for four weeks.

Rodney has no good reason for not having passed the money to Roland.

The DM decides that in the circumstances four weeks was a reasonable period in which to expect that the money would have been handed over to Roland.

Rodney is treated as having the full amount of income.

- 2.1 UK if
 - 2.1.a the student is settled in the UK **or**
 - 2.1.b the student, their spouse, civil partner or their parent have been granted leave to remain by the HO
- 2.2 EEA if the student, their spouse, or their partner have established migrant worker status **and** their stay is not wholly or mainly to receive FTE.

1 Support Regs, Sch 1, Part 2; SA (Scot) Regs, Sch 1

European Economic Area Nationals

51895 A student, who is an EEA national or the child of an EEA national, may be eligible for a student loan if¹

- 1. the conditions at DMG 51894 2. are satisfied **and**
- 2. the course in
 - 2.1 England and Wales, is provided wholly or partly by an institution in England or Wales **or**
 - 2.2 Scotland, is at a Scottish establishment.

1 Support Regs, Sch 1, SA (Scot) Regs, Sch 1

Refugees

51896 A student may be eligible for a student loan if¹

- 1. they, their spouse, civil partner or parent are granted refugee status **and**
- 2. from the time they are recognised as a refugee they are ordinarily resident in the UK **and**
- 3. they satisfy the conditions at DMG 51894 1..

1 Sch 1

51897 - 51899

Student loans treated as income

51900 Student loans are treated as income¹. Students are treated as possessing a student loan for an academic year where

- 1. a student loan has been paid to them for that year² **or**
- 2. they could acquire a loan in respect of that year by taking reasonable steps to get one³.

Note: If there is a condition of entitlement to a student loan that could not be met by taking reasonable steps the DM should not treat the student as having a student loan. If, exceptionally, the DM needs advice on whether or not a student has taken reasonable steps to acquire a loan, refer the case to DMA Leeds.

1 ESA Regs, reg 137; 2 reg 137(4)(a); 3 reg 137(4)(b)

Amount of loan

51901 The maximum amount that can be advanced to a student depends on

1. where the student is studying **and**
2. whether the student has reached the final year of the course **and**
3. whether the student lives in the parental home.

Where in any academic year a student loan is made to a student, the DM should take into account as income

1. the maximum amount of student loan the student could get by taking all reasonable steps¹ to do so (even if the student applies for less than the maximum loan) **and**
2. unless an exception at DMG 51907 applies², the amount of any contribution whether or not it is paid to the student³.

1 reg 137(5)(a); 2 reg 137(5)(a)(ii); 3 reg 137(5)(a)(i)

51902 Where a student loan has not been made for an academic year, the DM should take into account as income the maximum loan that the student could get if

1. the student took all reasonable steps to obtain the maximum amount¹ **and**
2. no deduction was made from the loan because of a means test².

1 reg 137(5)(b)(i); 2 reg 137(5)(b)(ii)

Postgraduate Master's Degree Loan

51903 A new postgraduate master's degree loan became available for eligible full-time or part-time courses starting in September 2016. Eligible students can apply for a loan of up to £10,000. The loan is only paid in the first and second academic years of a course, regardless of the total course length. For courses lasting two or more academic years (including part-time courses), the maximum amount paid will be up to £5,000 in the first year and the remainder in the second year. The loan is not specifically paid for tuition fees and/ or maintenance costs, it will be paid directly to the student and it will be at the student's discretion what they use it for.

51904 The DM should take into account 30% of the maximum postgraduate master's degree loan¹ as the costs taken into account in the calculation² of ESA (IR). This figure reflects the amount which will typically be available to spend on maintenance costs, taking account of typical master's course tuition fees. If a claimant is eligible for a new postgraduate loan but has failed to take all reasonable steps to acquire it they will usually be treated as if they are in receipt of the maximum postgraduate

master's loan to which they would be entitled³. The purposes of these regulations, the maximum amount will be

1. £10,000 for courses lasting one academic year and
2. £5,000 in each of the first two years for courses lasting two or more academic years.

1 SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016, 2 ESA Regs, reg 137(5A), 3 ESA Regs, reg 137(4)(b) and (4A)

Example 1

Julia is in receipt of ESA(IR) and also receives PIP. On 5.9.16 Julia begins a full-time postgraduate master's degree in Health and Social Care. The course will last for one year and she successfully applies for a new loan of £10,000. Julia remains entitled to ESA(IR) when she begins her full-time course of study. The amount of student income for ESA(IR) purposes is calculated as follows:

Step 1: calculate the annual amount of the loan - £10,000 - £7,000 = £3,000 (30% of the new loan)

Step 2: deduct a fixed amount per academic year for travel costs and the cost of books and equipment (see DMG 51905) - £3000 - £303 - £390 = £2307

Step 3: divide the figure in step 2 equally between the weeks in the period beginning with the first benefit week that begins on or after the start of the academic year, and ending with last benefit week that ends on or before the last day of the course (see DMG 51908). In this example this will be 52 weeks - £2307 ÷ 52 = £44.36

Step 4: deduct the general weekly disregard (see DMG 51913) - £44.36 - £10 = £34.36

This means that for ESA(IR) purposes, Julia will have a weekly student income of £36.36.

Example 2 (part-time course)

Rick is undertaking a postgraduate Sociology course. The course is part-time and will last for three academic years. He has successfully obtained a postgraduate master's degree loan of £9,000. He will receive £5,000 in the first academic year and £4,000 in the second. The amount of student income for each of these two years will be calculated as follows:

Step 1: calculate the amount of the loan: £5,000 - £3,500 = £1500 (30% of the maximum loan available).

Step 2: deduct fixed amount per academic year for travel costs and the cost of books and equipment: £1500 - £303 - £390 = £817

Step 3: divide the figure in step 2 equally between the weeks in the period beginning with the first benefit week that begins on or after the start of the academic year, and ending with last benefit week that ends on or before the last day of the course in the academic year. In this example this will be 40 weeks: £817 ÷ 40 = £20.17

Step 4: deduct the general weekly disregard: £20.17 - £10 = £10.17.

Rick will have a weekly student income of £10.17 for the first and second academic years. Rick will have no student income for the third and final academic year of the course for the purpose of calculating his award of benefit.

Disregards

51905 The amount of student loan to be taken into account under DMG 51901 to DMG 51904 should be reduced by¹ a fixed amount for

1. travel costs **and**
2. the cost of books and equipment

whether or not the student has to meet the cost of those items.

The disregard is £303 for travel costs and £390 for books and equipment.

1 reg 137(6)

Example

Leslie is undertaking a P/T course of study for which she receives a loan of £500. After taking into account the disregards for travelling costs and books and equipment the DM fully disregards the loan.

Disregard for fee loans

51906 Changes to the student support system¹ mean that loans for course fees will be paid directly to the university or college. DMs should disregard² a loan for fees, known as a fee loan or a fee contribution loan paid under specified legislation³.

*1 Support Regs, regs 17-21 & 31-32; 2 ESA Regs, reg 139;
3 Education (Student Support) (N Ireland) Order 1998, Art 3; T & HE Act 98, s 22;
Ed (Scot) Act 80, s 73(f)*

Assessed contribution

51907 The education authority may decide that the student, their spouse, civil partner, parents or parent's partner should contribute to the loan. The contribution is assessed according to the income of the student, their spouse, civil partner, parent or parent's partner. The amount of loan awarded is then cut by the assessed contribution¹.

The amount of contribution assessed by the education authority may not be paid to the student in part or in full. But the full amount of the contribution should still be treated as possessed by the student unless² the student is entitled to DLA.

1 ESA Regs, reg 131(1); 2 reg 137(5)(a)(ii)

Calculation of weekly income

Course duration is for one academic year or less

51908 Where a student loan is made in respect of any academic year and the course is for one academic year or less, the student loan should be divided equally between the weeks in the period beginning with

1. the first benefit week that begins on or after the start of the academic year **or**
2. if the student starts attending the course in August or the course is for less than an academic years duration, the first benefit week that begins on or after the start of the course

and ending with the last benefit week that ends on or before the last day of the course¹.

1 ESA Regs, reg 137(3)(a)

Course duration more than one academic year, any year except final academic year

51909 Where a student loan is made in respect of an academic year that begins other than on 1 September the DM should divide the student loan equally between the period which

1. starts at the beginning of the first benefit week starting on or after the first day of the academic year **and**
2. ends on the last day of the last benefit week which ends on or before the last day of the academic year **and**

excludes any complete benefit weeks which fall entirely within the quarter where, in the opinion of the Secretary of State, the longest holiday period is taken¹.

Note: Quarter means² one of the periods in the academic year from

1. 1 January to 31 March **or**
2. 1 April to 30 June **or**
3. 1 July to 31 August **or**
4. 1 September to 31 December.

1 ESA Regs, reg 137(3)(b); 2 Support Regs, reg 2

51910 Where a student loan is made in respect of an academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the earlier of the first day of the first benefit week

1. in September **or**
2. that begins on or after the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of June¹.

1 ESA Regs, reg 137(3)(e)

Final academic year, other than a course of one academic year or less

51911 Where a student loan is made in respect of a final academic year of a course of more than one year that begins other than on 1 September the DM should divide the student loan equally between the period beginning with

1. the first benefit week that begins on or after the start of the academic year
and
2. ending with the last benefit week that ends on or before the last day of the course¹.

1 ESA Regs, reg 137(3)(d)(i)

51912 Where a student loan is made in respect of a final academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the first benefit week that begins on or after the earlier of

1. 1 September **or**
2. the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of the course¹.

1 ESA Regs, reg 137(3)(d)(ii)

Disregard

51913 When the weekly amount has been calculated the DM should disregard up to £10 a week. This is subject to the overall limit on the disregarded income of students (see DMG 51943).

Example 1

Dilip is attending a course which lasts for less than a year. The course starts on 8.12.08 and ends on 18.4.09. He is a Tuesday BWE. He has a student loan which, after deducting the appropriate disregards, is taken into account from 10.12.08 until 14.4.09.

Example 2

Martha starts the final year of her course on 7.10.09 and ends it on 6.6.10. She is a Thursday BWE. The DM takes her student loan into account from 4.9.09 until 3.6.10 after deducting the appropriate disregards.

Example 3

Ellis is in his second year of a course. The autumn term begins on 14.10.09. Ellis is a Monday BWE. The DM takes his student loan into account, after deducting the appropriate disregards, from 1.9.09 until 28.6.10.

Example 4

Nasser's university course starts on 13.1.09. The main holiday period is between 30.6.09 and 12.10.09. He is a Wednesday BWE. After deducting the appropriate disregards the DM calculates the weekly income by dividing the loan equally between the periods 8.1.09 to 1.7.09 and 27.8.09 and 30.12.09. The DM takes the weekly amount into account from 15.1.09 because Nasser does not become a student until 12.1.09.

Note: A student loan should not be taken into account until the student commences their course of study because prior to this day they are not a student. As the weekly amount is calculated by apportioning the loan to full benefit weeks it should similarly be attributed to full benefit weeks.

Student from Northern Ireland

- 51914 A student from Northern Ireland may be eligible for a student loan under Northern Ireland law¹. The qualifying conditions are the same as in the rest of the UK. Treat any loan for which the student is eligible in the same way.

1 Education (Student Loans) (NI) Order 1990, art 3

Grants

- 51915 A student may receive a grant from a number of different sources. Grants, bursaries or allowances etc may be paid in respect of various types of study such as Nursing and Teacher training. Students who are paid under specific law¹ may be entitled to supplementary grants, as current or old system students

1. for extra costs incurred because they are disabled students²
2. for travel costs³
3. for childcare⁴
4. for living costs⁵
5. for adult dependants⁶
6. for Parents' Learning Allowance⁷.

Note: This list is not exhaustive.

1 Student Support Regs, regs 35-36; 2 reg 39; 3 reg 47; 4 reg 43; 5 reg 37; 6 reg 42; 7 reg 44

Amount of grant income

Initial disregard

- 51916 The DM should disregard from the student's grant income any payment

1. intended to meet tuition or examination fees¹

2. intended to meet additional expense a disabled student has for attending a course²
3. intended to meet additional expenses connected with term time residential study away from the student's educational establishment³
4. on account of the student maintaining a home at a place other than where they live during the course⁴
5. on account of any other person if⁵ that person lives outside the UK and there is no applicable amount for them
6. intended to meet the cost of books and equipment⁶
7. intended to meet travel expenses caused by the student's attendance on the course⁷
8. intended for the maintenance of a child dependant⁸
9. intended for the child care costs of a child dependant⁹.
10. of higher education bursary for care leavers made under specified legislation¹⁰.

Note: 4. applies only to the extent that the student's rent is not met by HB.

1 ESA Regs, reg 132(2)(a); 2 reg 132(2)(b); 3 reg 132(2)(c); 4 reg 132(2)(d); 5 reg 132(2)(e); 6 reg 132(2)(f); 7 reg 132(2)(g); 8 reg 132(2)(h); 9 reg 132(2)(i); 10 reg 132(2)(j)

51917 Disregard amounts under DMG 51916 only if the grant is specifically intended to be used for one of those purposes.

Higher education grant

51918 In England and Wales the Higher Education Grant¹ was introduced in September 2004. A student qualified for this grant if he began the designated course on or after 1.9.04. The grant is to defray the cost of books, equipment, travel or childcare for the purpose of attending that course. DMs should disregard² the amount of Higher Education Grant paid to an existing student. In Scotland these are not specific grants but cover other expenses incurred in taking advantage of educational facilities³.

1 Education (Student Support) Regs, 2006, reg 52; 2 ESA Regs, reg 132(2); 3 Student's Allowances (Scotland) Regs, 2007, reg 4(1)

Special support grant

51919 In England and Wales the Special Support Grant¹ was introduced from 1.9.06. The grant is to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course. DMs should disregard² the amount of Special Support Grant paid to students from 1.9.06.

1 Education (Student Support) Regs, 2006, reg 50; 2 ESA Regs, reg 132(2)

51920 Where a student is in receipt of the maximum Special Support Grant and the Higher Education Establishment charges the full £3,145 tuition fees, then the Higher Education Establishment must pay the student a bursary to at least make up the

difference between the Special Support Grant and the £3,145 fee. As this bursary is for tuition fees it should be disregarded¹ in full whatever its value. In addition, a Higher Education Establishment may award other grants and bursaries and these may be disregarded if they fall within the disregards listed at DMG 51916.

1 reg 132(2)(a)

Special Support Loan (England only)

51921 Special Support Grants are intended to meet the cost of books, equipment, travel expenses and childcare, and so can be fully disregarded under existing legislation - DMG 51920 refers. From the beginning of the 2016/17 academic year, Special Support Loans replaced Special Support Grants¹ for new students. Regulations (2-5) amend existing legislation² to provide that the Special Support Loan can also be disregarded.

1 Support Regs 2011, reg 68; 2 ESA Regs, reg 64B

Disregards for students with child care responsibilities

51922 In England and Wales, a Department for Children, Schools and Families Parents Learning Allowance is available to F/T students with child care responsibilities. DMs should disregard this allowance in full¹.

1 reg 132(2)

Extra disregards

51923 Where a student does not have a student loan and is not treated as having a student loan, the DM should disregard from the grant a fixed amount for

1. travelling expenses (£303) **and**
2. books and equipment (£390).

1 reg 132(3)

Example 1

Georgia is a student nurse attending a diploma course. She is not entitled to a student loan. She receives a NHS bursary which includes £200 for travelling expenses but no additional amount for books and equipment. The DM disregards a total, of £893 from Georgia's allowance. This is made up of an amount awarded specifically to meet travelling expenses - £200; extra disregard for travelling costs - £303; extra disregard for books and equipment - £390.

Example 2

Isobella is a student teacher completing her last year of teacher training in a school. She receives a training bursary which does not specifically include any amount for travelling costs or books and equipment. She is not entitled to a student loan. The DM disregards a total of £693 from Isobella's income. This is made up of extra

disregard for travelling costs - £303 plus the extra disregard for books and equipment - £390.

51924 - 51925

Period over which grant income taken into account

51926 The amount of grant income to be taken into account should be spread equally over the relevant period. The length of that period depends on

1. what elements of grant are involved **and**
2. whether the grant is paid for the period of study.

Dependant and lone parent grants

51927 The DM should take these grants into account

1. for the same period as the loan **or**
2. for the period a loan would have been taken into account had the student taken reasonable steps to get one¹.

1 ESA Regs, reg 132(6)

Example

Gregg is a student with two children who started his course in November 2008. He receives a loan for living expenses. He is also entitled to an extra amount for the children and because he is a lone parent, this is a non-repayable grant. The DM takes the extra grant income into account for the same period as the loan.

NHS dependant grants

51928 A grant or bursary paid for dependants, under relevant law¹, to an NHS student should be taken into account equally over

1. 52 weeks **or**
2. 53 weeks, if there are 53 benefit weeks (including part-weeks) in the year².

Note: These grants are apportioned over the number of benefit weeks in the year rather than over the period of study.

1 HS & PH Act 68, s 63(6); 2 ESA Regs, reg 132(5)

Other grant income

51929 Other grant income should be taken into account equally between the weeks in the period

1. of study, where it is paid for the period of study **or**
2. for which it is payable.

Period of study for grant income purposes

51930 Period of study has two different meanings. One for grant income purposes¹ and one for eligibility² (see DMG Chapter 41). DMs should not confuse the two definitions.

1 reg 131; 2 reg 2(1)

51931 For grant income purposes¹, each year of a course has a separate period of study. That period

1. starts with
 - 1.1 the first day of the course, in the first or only year **or**
 - 1.2 the first day of that years course, in any later year **and**
2. ends with
 - 2.1 the last day of the course, in the last or only year **or**
 - 2.2 the day before the summer holiday, where the grant is not for study throughout the whole year **or**
 - 2.3 the day before the start date of the next years course where
 - 2.3.a the grant is for study throughout the year **or**
 - 2.3.b if the student does not have a grant, where a loan would have been assessed as payable throughout the year.

1 reg 131(1)

Example

Jenny is on a standard three year degree course commencing in the Autumn. Her grant is not for study throughout the whole year. She has three periods of study. These are

1. the first year - the first day of the course to the day before the summer holiday separating the first and second years
2. the second year - the first day of that years course to the day before the summer holiday separating the second and third years
3. the third (final) year - the first day of that years course to the last day of the course.

Grant payable for period of study

51932 Grant income may be payable for the period of study. If so the DM should take the income into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period of study and ending with the last benefit week which ends on or before the last day of the period of study¹.

1 ESA Regs, reg 132(4)(a)

Sandwich course

- 51933 Where a student is on a sandwich course, any periods of experience should be excluded from the period of study. Grant income is then spread equally between the weeks in the period beginning with the benefit week that begins on or after the last day of the period of experience and ends with the last benefit week which ends on or before the last day of the period of study¹.

1 reg 132(7)

Grant not payable for period of study

- 51934 Grant income may be awarded for a specific period. In these cases the grant income should be taken into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period for which the grant is payable and ending with the last benefit week which ends on or before the last day of the period for which the grant is payable¹.

1 reg 132(4)(b)

Access funds

- 51935 Students who are in financial difficulties may receive payments from access funds¹ (see DMG 51827). Treatment of these payments depends upon

1. when the payment is made
2. what the payment is intended for **and**
3. whether the payment is a
 - 3.1 regular payment **or**
 - 3.2 single lump sum.

- 51936 The DM should fully disregard an access fund payment where it is made¹

1. before the first day of the course in anticipation of the person becoming a student **or**
2. on or after the earlier of
 - 2.1 1 September **or**
 - 2.2 the first day of the course **and**
 - 2.3 the student loan has not been received **and**
 - 2.4 the payment is intended to help them manage financially until they receive their loan.

1 ESA Regs, reg 131; 2 reg 138(4)

Regular payments

51937 Any access fund payment should be fully disregarded unless it is intended and used for

1. food
2. ordinary clothing or footwear
3. household fuel
4. rent for which HB is payable
5. housing costs met in the applicable amount
6. council tax
7. water charges.

Note: The DM should disregard £20 from any payments that are intended and used for the above items. This is subject to the overall limit on disregarded income¹ (see DMG 51943 et seq).

1 reg 138(3)

Lump sum payments

51938 Any lump sum payment from an access fund should be treated as capital¹. Where a lump sum payment is intended and used for items other than those listed at DMG 51937 the DM should disregard the capital for 52 weeks from the date of payment².

1 ESA Regs, reg 142(2); 2 reg 142(3)

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Meaning of occupational pension

52410 Occupational pension means a

1. pension **or**
2. periodical payment

under an occupational pension scheme. But it does not include discretionary payments made from a fund which is for the relief of hardship in particular cases¹.

1 ESA Regs, reg 2(1)

Health in pregnancy grant

52411 The grant is payable to every woman from the 25th week of pregnancy after they have had appropriate health advice from a health professional. It is a one off non-taxable payment and should be disregarded when calculating the capital of the claimant¹.

1 ESA Reg, Sch 9, para 38A

Payment for attending court

52412 A payment made to a juror or witness for attending court is disregarded indefinitely but not if the payment is compensation for

1. loss of earnings **or**
2. benefit payable under social security law¹.

1 ESA Reg, Sch 9, para 34

Payment for loss of housing benefit

52413 Any payment made by the DM to compensate for the loss of all or some of the HB a person can get is disregarded indefinitely¹.

1 ESA Reg, Sch 9, para 33

52414

Payment for personal injury

The law

52415 The value of

1. a trust if the funds of which it consists come from a payment made because of a personal injury **and**
2. the right to receive payment from that trust

are disregarded indefinitely where the payment is made as a result of an injury to either the claimant or partner¹. For example, the value of a payment made by the Criminal Injuries Compensation Authority is disregarded if held on trust and so is the value of the right to receive payment from the trust. A trust exists

if there is a separation of legal ownership and beneficial ownership of the payment. The disregard can apply even if there is no written trust document.

Note 1: Payments of income from the trust are income from capital and are taken into account as income and not capital. (See DMG Chapter 51 for how to treat such payments.)

Note 2: This disregard does not apply if the injury was to a claimant's deceased partner²

Note 3: A payment made in relation to the costs of care associated with an unwanted child in a "wrongful birth" case is a payment made because of a personal injury, for instance in the case of a failed sterilisation or vasectomy.

1 ESA Regs, Sch 9, para 16; 2 R(IS) 3/03

52416 For payments not held on trust see DMG 52503.

The Children's Memorial Trust

52417 The Children's Memorial Trust was set up as a result of Court action taken by parents of deceased children whose organs were retained by Alder Hey hospital without agreement. Payments are made from the Children's Memorial Trust to the parents in respect of each child. Where people can show that they have received a payment from the Children's Memorial Trust under the "Heads of Agreement" in relation to the Court action, the payment will be made in consequence of a personal injury to **them**. The value of a payment made by the Children's Memorial Trust is disregarded indefinitely if held on trust. The value of the right to receive payment from the Children's Memorial Trust is also disregarded indefinitely.

Payment in kind

52418 A payment in kind is disregarded indefinitely if made by

1. a charity
2. the Macfarlane Trust (see DMG 52455)
3. the Macfarlane (Special Payments) Trust (see DMG 52456)
4. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52457)
5. the Fund (see DMG 52458)
6. the Eileen Trust (see DMG 52459)
7. MFET Limited (see DMG 52460)
8. Skipton Fund (see DMG 52461)
9. Caxton Foundation (see DMG 52462)
10. SIBSS (see DMG 52463)
11. the London Bombings Relief Charitable Fund (see DMG 52464)
12. the Independent Living Fund (2006) (see DMG 52446)¹.

1 ESA Reg, Sch 9, para 31

Meaning of the Independent Living Fund (2006)

52446 The Independent Living Fund (2006) was set up on 10.4.06 between the Secretary of State on the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin on the other part¹.

Note: The Independent Living Fund (2006) closed on 30.6.15 with funding responsibilities transferring to Local Authorities 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 the claimant receives funding from any of these schemes.

1 ESA Regs, reg 2(1)

Payment included with other capital

52447 If the payment is included with other capital the disregard does not apply to the other capital.

52448 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Payments in kind

52449 If payment is made in kind see DMG 52418.

The Macfarlane Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, SIBSS or the London Bombings Relief Charitable Fund

The law

52450 One-off payments made from the Trusts (see DMG 52457) are disregarded indefinitely¹.

Note: If the payments are made regularly they are income and the DM should decide if they can be disregarded before working out the amount of income.

1 ESA Regs, Sch 9, para 27(1)

52451 A payment from money which a person gets from the Trusts is disregarded indefinitely if the payment is made

1. by or on behalf of the person who got the money from the Trusts and that person
 - 1.1 has haemophilia or is a qualifying person **or**
 - 1.2 had haemophilia or was a qualifying person if the person has died **and**

2. to or for the benefit of
 - 2.1 a partner or former partner of the person who got the money from the Trusts and they are not estranged, divorced or part of a dissolved civil partnership or if the person has died, were not estranged, divorced, or part of a dissolved civil partnership at the time of death **or**
 - 2.2 a child or young person who
 - 2.2.a is a member of the family of the person who got the money from the Trusts **or**
 - 2.2.b was a member of that person's family and is a member of the claimant's family¹.

The disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

1 ESA Regs, Sch 9, para 27(2)

- 52452 A payment from money which a partner or former partner gets from the Trusts is disregarded indefinitely if the payment is made
1. by or on behalf of a partner or former partner of a person who
 - 1.1 has haemophilia or is a qualifying person **or**
 - 1.2 had haemophilia or was a qualifying person if the person has died and they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died **and**
 2. to or for the benefit of
 - 2.1 a person who has haemophilia or is a qualifying person **or**
 - 2.2 a child or young person who
 - 2.2.a is a member of the person's at 2.1 family **or**
 - 2.2.b was a member of that person's family and is a member of the claimant's family¹.

This disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

1 ESA Regs, Sch 9, para 27(3)

- 52453 Any capital the person gets from the income or capital of the payment
1. from the Trusts **or**
 2. at DMG 52450
- is disregarded indefinitely¹.

1 ESA Regs, Sch 9, para 27(6)

Example

Georgia is in receipt of ESA(IR). On 5 March she gets a one-off payment of £15,000 from the Fund. She opens a building society account with the money. She has no other capital. The DM decides that the money in the building society account is disregarded. On 1 April Georgia withdraws all the money and the interest it has made and buys some shares. The DM decides that the value of the shares is disregarded indefinitely.

The Trusts

52454 The Trusts means the

1. Macfarlane Trust
2. Macfarlane (Special Payments) Trust
3. Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. Eileen Trust
6. MFET Limited
7. the Independent Living Fund (2006)
8. Skipton Fund
9. Caxton Foundation
10. SIBSS and
11. London Bombings Relief Charitable Fund¹.

1 ESA Regs, Sch 9, para 27(1) & para 27(7)

The Macfarlane Trust

52455 The Macfarlane Trust is the name of a charitable trust set up with part of the money being given by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia¹.

1 ESA Regs, reg 2(1) & Sch 9, para 27(1)

The Macfarlane (Special Payments) Trust

52456 The Macfarlane (Special Payments) Trust is the name of a discretionary trust set up on 29.1.90 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia¹.

1 ESA Regs, reg 2(1)

The Macfarlane (Special Payments) (No. 2) Trust

52457 The Macfarlane (Special Payments) (No. 2) Trust is the name of a discretionary trust set up on 3.5.91 with part of the money being given by the Secretary of State for the

benefit of certain people who are affected by haemophilia and other people¹. The other people are people who

1. have become infected with HIV **or**
2. were at risk of infection

because of contact with haemophiliacs.

1 ESA Regs, reg 2(1)

The Fund

52458 The Fund is money made available from time to time by the Secretary of State for the benefit of people who satisfy the terms of the scheme which was set up in Scotland on 10.4.92 and elsewhere on 24.4.92¹. It benefits non-haemophiliacs who were infected with HIV whilst undergoing treatment by NHS blood or tissue transfer or blood products. It makes one-off payments.

1 ESA Regs, reg 2(1)

The Eileen Trust

52459 The Eileen Trust is the name of a charitable trust set up on 29.3.93 with money given by the Secretary of State for the benefit of persons who satisfy the terms of the trust¹. It further benefits non-haemophiliacs who benefit under the Fund. It makes payment for occasional or continuing need.

1 ESA Regs, reg 2(1)

MFET Limited

52460 The Department of Health funds an organisation called MFET Limited¹ to provide financial help to people who have been infected with HIV as a result of treatment with NHS blood or blood products.

1 ESA Regs, reg 2(1)

The Skipton Fund

52461 The Skipton Fund is the Skipton Fund Limited which was incorporated on 25.3.04 to administer an ex gratia payment scheme for the benefit of people suffering from Hepatitis C and other people eligible for payment in accordance with the scheme's provisions¹. The ex gratia payments will be a

1. lump sum payment of £20,000 to people infected with Hepatitis C **and**
2. further payment of £25,000 to people who develop advanced liver disease.

Note 1: No payments will be made in respect of people who died before 29.8.03 or recover from Hepatitis C naturally.

Note 2: Where a person who is entitled to an ex gratia payment dies on or after 29.8.03 but before a payment can be made, the payment will be made to that person's dependants.

1 ESA Regs, reg 2(1)

The Caxton Foundation

52462 The Caxton Foundation was established on 28.3.11. It administers funds provided by the Secretary of State for Health for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments¹.

1 ESA Regs, reg 2(1)

Scottish Infected Blood Support Scheme

52463 Following a review of the existing infected blood support schemes, the Scottish Government has decided that these services will be combined and administered by a new single scheme administrator for Scotland. SIBSS will be operational from 1.4.17 and will be administered by NHS National Services Scotland (NSS), legally known as the Common Services Agency. NSS is an NHS Board accountable to Scottish Ministers¹.

1 ESA Regs, reg 2(1)

The London Bombings Relief Charitable Fund

52464 The London Bombings Relief Charitable Fund¹ was established on 11.7.05 following the terrorist attacks carried out in London on 7.7.05. People who were bereaved, or who suffered injury, received lump sum payments from the London Bombings Relief Charitable Fund ranging between £3,000 and £25,000.

1 ESA Regs, reg 2(1)

Qualifying person

52465 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, the Skipton Fund, the Caxton Foundation, SIBSS or the London Bombings Relief Charitable Fund¹.

1 ESA Regs, reg 2(1)

Evidence

52466 The Secretary of State has agreed the payments from the

1. Macfarlane Trust
2. Macfarlane (Special Payments) Trust
3. Macfarlane (Special Payments) (No. 2) Trust

4. Fund
5. Eileen Trust
6. Skipton Fund
7. Caxton Foundation
8. SIBSS
9. London Bombings Relief Charitable Fund

do not have to be declared if they are kept separate from any other capital the person has. The person getting the payment is told of this.

52467 Benefit Delivery Specialist Operations Team will get information about payments from those trusts or fund if it is needed. The trustees and DH should not be contacted.

Payment included with other capital

52468 If the payment is included with other capital the disregard does not apply to the other capital.

52469 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Other payments which are disregarded

52470 Other payments are disregarded. If the payment is made

1. in kind, see DMG 52418 **or**
2. to or for the benefit of some other person, see DMG 52485 - 52489.

Payments to persons imprisoned or interned by the Japanese during the Second World War

52471 An ex gratia payment of £10,000 made by the Secretary of State on or after 1.2.01 in consequence of the imprisonment or internment of

1. the claimant **or**
2. the claimant's partner **or**
3. the claimant's deceased spouse or civil partner **or**
4. the claimant's partner's deceased spouse or civil partner

by the Japanese during the Second World War is disregarded indefinitely¹.

1 ESA Regs, Sch 9, para 50

Example

Jim is receiving ESA(IR). His civil partner Albert, has capital of £2,300. Albert receives a payment of £10,000 because he was interned by the Japanese during the Second World War. The DM decides that the payment of £10,000 received by Albert is disregarded indefinitely.

Payments made to sufferers of variant Creutzfeldt-Jakob disease and their partners

Meaning of “the relevant trust”

52472 The relevant trust means the trust established out of funds provided by the Secretary of State in respect of persons who have suffered or are suffering from variant Creutzfeldt-Jakob disease and their families. Trustees have discretion to pay compensation from the fund to those eligible¹.

1 ESA Regs, Sch 9, para 53(6)

Meaning of “diagnosed person”

52473 Diagnosed person means a person who has been diagnosed as suffering from or who after his death, has been diagnosed as having suffered from variant Creutzfeldt-Jakob disease¹.

1 ESA Regs, Sch 9, para 53(6)

52474 Any payments made from the relevant trust to

1. the diagnosed person **or**
2. the partner of the diagnosed person **or**
3. the person who was the diagnosed person’s partner at the date of the diagnosed person’s death

is disregarded from the date on which the payment is made until the date on which that person dies¹.

Note: The reference to the surviving partner of the diagnosed person includes someone who would have been the partner but for the diagnosed person being in a care home on the date they died².

1 ESA Regs, Sch 9, para 53; 2 Sch 9, para 53(5)

Example

Thomas died of variant Creutzfeldt-Jakob disease on 25.11.07. His widow, Helga, makes a claim for ESA. On 5.11.08 she receives a payment of £25,000 from the relevant trust. The DM decides that this payment is disregarded for Helga’s lifetime.

52475 Where a payment is made

1. by a person to whom a payment from the relevant trust has been made or from the estate of such a person **or**
2. to
 - 2.1 the partner of the diagnosed person **or**
 - 2.2 the person who was the diagnosed person's partner on the date the diagnosed person died

the payment is disregarded indefinitely¹.

Note: The disregard only applies to the extent that the total payments made do not exceed the total of any payments made from the relevant trust.

1 ESA Regs, Sch 9, para 53(3)

Example

Melanie is diagnosed as suffering from variant Creutzfeldt-Jakob disease and on 29.8.05 she receives a payment of £30,000 from the relevant trust. Melanie dies on 6.7.06 and her husband, David, inherits the payment which has been invested. On 11.11.08 David claims ESA. He declares that he has capital of £31,210 which is the original payment of £30,000 plus £1,210 interest from investing that money. The DM decides that the £30,000 trust payment is disregarded for David's lifetime but the interest obtained for investing that payment cannot be disregarded.

52476 Trust payments may be made to other relatives of a person diagnosed with variant Creutzfeldt-Jakob disease. See

- DMG 52490 if the payment is made to a parent of the diagnosed person
- DMG 52492 if the payment is made to a dependant child or young person who is a member of the diagnosed person's family.

Second World War compensation payments

52477 The amount of a payment, other than a war pension, to compensate for the fact that during the Second World War the person

1. was a slave labourer or a forced labourer **or**
2. suffered property loss or suffered personal injury **or**
3. was a parent of a child who died

is disregarded indefinitely.

Note: Lump sum gratuities paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 do not fall within the definition of a war pension. Such payments would be disregarded indefinitely.

- 52478 The disregard in DMG 52477 applies where the payment is made in respect of the
1. claimant **or**
 2. claimant's partner **or**
 3. claimant's deceased spouse or civil partner **or**
 4. claimant's partner's deceased spouse or civil partner¹.

1 ESA Regs; Sch 9, para 54

Age related payments

- 52479 One-off age-related payments are payments of capital. DMs should not take them into account for ESA(IR) purposes¹.

1 Age-Related Payments Act 2004, s 6(b)

Education maintenance allowance payments

- 52480 Any education maintenance allowance payable under prescribed legislation as
1. education maintenance allowance¹ **or**
 2. the same as education maintenance allowance²
- is disregarded indefinitely².

*1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 and 73(f); Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & Ed (Scot) Act 80, s 73ZA;
2 Education Act 2002, s 14 and 181; ESA Regs, Sch 9, para 52(1)*

16-19 Bursary Fund

- 52481 A new bursary scheme called the 16-19 Bursary Fund was introduced in September 2011. In England, this will replace EMA, however there will be some transitional protection for existing recipients. Any payment from this bursary fund is disregarded indefinitely¹.

1 Education Act 2002, s 14; ESA Regs, Sch 9, para 52

- 52482 In addition to the disregard at DMG 52481 any payment made under prescribed legislation¹ in respect of a course of study attended by a
1. child or young person **or**
 2. person who is receiving an education maintenance allowance as in DMG 52481 above

is also disregarded indefinitely².

1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49; Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & Ed (Scot) Act 80, s 73ZA; 2 ESA Regs, Sch 9, para 52(2)

Local welfare provision

52483 Local welfare provision means¹ occasional financial or other assistance made by an LA, the Welsh Ministers, the Scottish Ministers or an authorised person for the purpose of

1. meeting or helping to meet, an immediate short term need
 - 1.1 arising out of an exceptional event or exceptional circumstances **and**
 - 1.2 that requires to be met to avoid a risk to the well-being of an individual
or
2. enabling individuals to establish or maintain a settled home where those individuals have been or without assistance might otherwise be
 - 2.1 in prison, hospital, a residential care establishment or other institution
or
 - 2.2 homeless or living an unsettled way of life.

Such payments are disregarded indefinitely.

1 ESA Regs, reg 2(1)

Capital disregarded for 52 weeks

Arrears of allowances and benefits

The law

52495 Arrears of certain allowances and benefits are disregarded for 52 weeks from the date the payment of arrears is received¹ (but see DMG 52510 if the arrears and any concessionary payment total £5000 or more). The disregard applies to arrears of

1. AA²
2. CAA which is paid with a disablement pension because disablement has been assessed at 100%³
3. ESDA paid because industrial disablement has been assessed at 100%⁴
4. CAA and ESDA paid because the claimant is entitled to workmen's compensation⁴
5. an attendance allowance paid under the PB and MDB scheme
6. payments for attendance under the Civilian's Personal Injury Scheme⁵ or any similar payment. These payments are made to people who receive a DP because of war injuries suffered as civilians or civil defence volunteers
7. any payment for attendance which is part of a WDisP. This includes severe disablement occupational allowance paid with CAA
8. the care component or the mobility component of DLA
9. the daily living component or the mobility component of PIP
10. Mobility Supplement
11. Mobility Allowance which people could get under repealed social security law⁶
12. CTB
13. DPTC
14. HB
15. WFTC
16. IS, Family Income Supplement and Supp B
17. ESA(IR)
18. JSA(IB)
19. CTC
20. WTC
21. UC
22. BSP.

The disregard also applies to a concessionary payment which is made to compensate for arrears of those benefits or allowances. The disregard applies from the date the concessionary payment is received¹.

1 ESA Regs, Sch 9, para 11(1); 2 SS CB Act 92, s 64; 3 s 104 or 105; 4 Workmen's Compensation Acts 1925 to 1945; 5 Personal Injuries (Civilians) Scheme 1983, Art 14, 15, 16, 43 or 44; 6 Social Security Act 1975, s 37A

Meaning of concessionary payment

52496 Concessionary payment means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to

1. the NI Fund **or**
2. a Departmental Expenditure Vote to which payments of benefit or tax credits are charged¹.

1 WR Act 07; ESA Regs, reg 2(1)

Additional payment of bereavement support payment

52497 Where a claimant in receipt of ESA

1. makes a claim for BSP 12 months or less after their spouse or civil partner died **and**
2. receives the additional payment of BSP for the first month of their BSP period at either the higher (£3,500) or standard (£2,500) rate¹

that first additional payment is disregarded when calculating that person's capital for a period of 52 weeks from the date of receipt².

1 BSP Regs, reg 3(2) & (5); 2 ESA Regs, Sch 9, para 60

Arrears of payments to certain war widows or surviving civil partners

52498 Payments to certain war widows and surviving civil partners are disregarded for 52 weeks from the date the payment of arrears is received. The disregard applies to arrears of

1. a special war widow's or surviving civil partner's payment which is made to persons whose husband, wife or civil partner died from
 - 1.1 injuries **or**
 - 1.2 illnesscaused by military service which ended before 31.3.73
2. a supplementary pension paid to a widow or surviving civil partner for

- 2.1 the disablement **or**
 - 2.2 death
- of service personnel before 1973
- 3. a supplementary pension paid to a widow or surviving civil partner under the Personal Injuries (Civilians) Scheme **and**
 - 4. a supplementary pension paid to the widow or surviving civil partner of a person
 - 4.1 whose death was caused by service similar to being in the armed forces **and**
 - 4.2 that service ended before 31.3.73 **and**
 - 4.3 the payment is equal to the amount in 1. above¹.

1 ESA Reg, Sch 9, para 40

Payment for certain travel costs and NHS charges

52499 Payments and repayments of certain travel costs and NHS charges are disregarded for 52 weeks from the date the payment or repayment is received. The disregard applies to

- 1. a payment or repayment for
 - 1.1 travel costs to and from hospital for treatment as an in-patient or out-patient
 - 1.2 prescription charges
 - 1.3 sight tests
 - 1.4 glasses
 - 1.5 dental treatment
 - 1.6 wigs
 - 1.7 fabric supports
 under NHS law¹ **and**
- 2. a payment or repayment made by the
 - 2.1 Secretary of State for Health **or**
 - 2.2 Scottish Ministers **or**
 - 2.3 Secretary of State for Wales
 which is like those at 1.².

1 National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988, reg 3; 5 & 8; National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003, reg 3, 5 & 11; 2 ESA Regs, Sch 9, para 37

Payment made in place of milk, vitamin tokens or healthy start vouchers

52500 A payment made under welfare food law¹ in place of

1. milk tokens **or**
2. vitamins **or**
3. healthy start vouchers

is disregarded for 52 weeks from the date the payment is received².

1 Welfare Food Regulations 1996, regs 6, 8 & 12; 2 ESA Regs, Sch 9, para 38

Payment to visit a person in custody

52501 A payment made to a person by the

1. Secretary of State for Justice **or**
2. Scottish Ministers

to pay for a visit to see someone who is in custody is disregarded for 52 weeks from the date the payment is received¹.

1 ESA Regs, Sch 9, para 39

Reduction of liability for council tax

52502 A payment made because of the reduction of council tax under local government law¹ is disregarded for 52 weeks from the date the payment is received².

Note: The amount of council tax a person has to pay is normally reduced if the person can get a reduction. The disregard does not apply in that case. It only applies if a payment is made instead.

1 Local Government Finance Act 1992, s 13 & 80; 2 ESA Regs, Sch 9, para 35

Payment for personal injury

52503 Any payment made because of a personal injury to the claimant or partner and not placed in trust is disregarded for a period

1. beginning with the first date of receipt by the claimant or partner of such a payment **and**
2. ending when

2.1 the claimant or partner no longer has any part of the payment remaining (including where the claimant or partner has used any part of the payment to buy an asset) **or**

2.2 52 weeks have elapsed

whichever is the sooner¹.

1 ESA Reg, Sch 9, para 17

52504 This 52 week disregard does not apply to

1. any subsequent payments made as a result of the same injury in DMG 52503 above, whether it is made by the same person or another¹ (but the remainder of the existing 52 week period could still be applied) **or**
2. payments made from a trust where the funds of that trust come from a personal injury payment to the claimant or partner².

1 ESA Regs, Sch 9, para 17(2)(b); 2 Sch 9, para 17(2)(d)

Example

Howard is in receipt of ESA(IR) and on 27.11.08 he receives a payment of £10,000 for an injury to his leg caused when it was crushed in a machine at work some 10 months previously. The DM decides that this amount can be disregarded for 52 weeks, until 25.11.09. On 24.9.09, Howard receives a further payment of £5,000 in respect of the same injury. The DM decides that this payment can only be disregarded for the remainder of the original 52 week period i.e. from 24.9.09 to 25.11.09

Payments made under employment and training law

52505 Certain payments made under employment and training law¹ that are payments of capital are disregarded for a period of 52 weeks beginning on the date of receipt of the payment².

Note: See DMG Chapter 51 for guidance on the types of payments made under employment and training law.

1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2; 2 ESA Regs, Sch 9, para 32

Payments in respect of work related activity

52506 Any payment made to the claimant for travel or other expenses in respect of WRA is disregarded for a period of 52 weeks from the date payment is made¹.

1 ESA Regs, Sch 9, para 32A

Payments to participants in New Deal and Employment Zone programmes

Capital acquired under the self-employment route

- 52507 Any sum by a person who is receiving or has received assistance under the self-employment route is disregarded for a period of 52 weeks from the date that it was acquired. This disregard applies where the capital was required for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received¹.

1 ESA Reg, Sch 9, para 46

Payments made by an Employment Zone contractor

- 52508 Any discretionary payment made by an EZ contractor to a claimant taking part in an EZ programme is disregarded for 52 weeks from the date of receipt¹.

1 ESA Reg, Sch 9, para 48

Payments to participants in the Employment, Skills and Enterprise Scheme and the Mandatory Work Activity Scheme

- 52509 Any payments made in respect of travel or other expenses incurred or to be incurred by a participant in the ESA or MWA Schemes is disregarded for a period of 52 weeks from the date the payment is received¹.

1 ESA Regs, Sch 9, para 1A

- 52510 Any arrears of subsistence allowance paid as a lump sum is disregarded for 52 weeks from the date of receipt¹.

1 ESA Regs, Sch 9, para 49

- 52511 See DMG 14600 for further guidance on the treatment of payments made by an EZ contractor.

Arrears and concessionary payments of £5,000 or more

When the disregard applies

- 52512 The disregard applies where
1. the claimant receives arrears of one of the benefits, allowances or payments listed in DMG 52495 and, if appropriate, any concessionary payment to compensate for the late payment of that benefit **and**

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

1 ESA Reg, Sch 9, para 11(2)(a) & (b)

Period of the disregard

52513 The period of the disregard is

1. 52 weeks from the date the relevant sum is received **or**
2. if the sum is received in its entirety during an award of ESA(IR), for the remaining period of the award of ESA(IR) (see DMG 52512)

whichever is the longer period¹.

1 ESA Reg, Sch 9, para 11(2)

52514 For the purposes of DMG 52511 **2.** the remaining period of the award of ESA(IR) means

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

1 ESA Regs, Sch 9, para 11(3)

Example 1

Winston receives JSA(IB) from 8.8.07 to 8.1.08. He then receives IS from 9.1.08 to 29.1.08. On 30.1.08 he reclaims JSA(IB) which is paid for the period 30.1.08 to 30.10.08. On 17.10.07 Winston received £6,995 arrears of JSA(IB) and on 24.4.08 he receives a concessionary payment of £310 because of an official error. Winston starts remunerative work on 31.10.08 but he loses his job after becoming ill and makes a claim for ESA on 1.4.09. The DM decides that the arrears and the concessionary payment can be disregarded from the date they were received to the end of Winston's previous JSA(IB) claim.

Additionally the concessionary payment received on 24.4.08 can be disregarded for 52 weeks to 22.4.09 because this is a longer period than the remainder of the JSA(IB) award of 30.1.08. The arrears of JSA(IB) fall to be taken into account for the purposes of the ESA claim made from 1.4.09.

Example 2

Hannalore is in receipt of ESA(IR). On 1.2.09 she receives arrears of £4,950 and on 17.3.09 she receives a concessionary payment of £150 because of an official error. The DM decides that the arrears of £4,950 are disregarded for 52 weeks from 1.2.09 to 30.1.10 and from 17.3.09 the concessionary payment and any of the remaining payment of arrears are disregarded for either 52 weeks or the duration of Hannalore's ESA award, whichever is the longer period.

Example 3

Rhys receives JSA(IB) until 31.8.08. On 15.10.08 he receives a concessionary payment of £15,000 because of an official error. Rhys then has an accident and on 3.11.08 claims ESA. The DM decides that the concessionary payment can be disregarded for no more than 52 weeks from 15.10.08.

Example

Veronica lives in a care home and makes a claim for ESA. She has capital of £82,000 which was inherited from her father and is held by the Court of Protection. Veronica's brother, Henry, is her Deputy. Henry states that Veronica's capital has negligible value because of her incapacity. However, the DM decides that Veronica is not entitled to ESA(IR) because the value of her capital exceeds £16,000.

Personal equity plans

52660 A personal equity plan (PEP) was an investment. People could invest up to a certain amount of money in a PEP in each tax year if they were

1. 18 or over **and**
2. liable to pay UK tax (see DMG Chapter 07).

The value of a PEP is what people would get if they withdrew their investment on the date of claim or supersession. Any income which is paid out of a PEP is income from capital.

52661 A PEP mortgage is not a mortgage. It is a PEP and should be valued as such even if people say they are going to use their investment to pay off their mortgage. Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. The mortgage is not likely to be an incumbrance secured on the PEP.

Note: A PEP was replaced by an Individual Savings Account (ISA) in April 1999. From that date people could no longer invest in their PEP or open a new one.

Individual savings account

52662 An individual savings account (ISA) is an investment. People can invest up to a certain amount of money in an ISA in each tax year if they are

1. 16 or over **and**
2. resident or ordinarily resident in the UK for tax purposes.

The value of an ISA is what people would get if they withdrew their investment on the date of claim or supersession. Any income, which is paid out of an ISA, is income from capital.

52663 Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. If someone says they are using an ISA to pay off their mortgage this is not likely to be an incumbrance secured on the ISA. The ISA should be valued as such.

52664 It is a requirement of the ISA regulations that the ISA remain in the beneficial ownership of the investor¹.

Note: If there is evidence that the ISA or PEP was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the ISA or PEP then it may constitute an equitable charge and they should be valued taking that into account.

1 The Individual Savings Account Regulations 1998, reg 4(6)

Lifetime Individual savings account

52665 The Lifetime individual savings account is available for people who are aged 18 to 40 when it is opened. It is similar in many ways to a normal individual savings account with the addition of a government bonus of 25% paid on the contributions made by the saver of up to a limit of £4000 annually. This Lifetime individual savings account should be treated as capital from the outset with a value of

1. 75% of the surrender value where the person is under age 60 **or**
2. 100% of the surrender value where the person is over age 60

taken into account.

Stocks and shares quoted on the London Stock Exchange

Value of stocks and shares

52666 The value of stocks and shares can be obtained from the financial pages in a newspaper which is dated the same date as the date of claim or supersession. A newspaper gives the price for most of the stocks and shares quoted on the London Stock Exchange. A valuation using the price given in a newspaper is not an exact valuation.

52667 To decide if an exact valuation is needed, first work out the value of the stocks and shares using the price given in a newspaper. An exact valuation is always needed if the price of a stock or share is not given in a newspaper.

52668 To work out the value of stocks and shares from the price given in a newspaper

1. find the price of the stock or share in a newspaper which is dated the same date as the date of claim or application for supersession **and**
2. multiply the figure at 1. by the number of that stock or share the person has.

52669 An exact valuation is needed if the value of the stocks or shares are close to the lower or upper capital limits or there is a change to the amount of tariff income when the value is added to any other capital the claimant and partner has¹.

1 R(IS) 18/95

- 52670 To work out the exact value of stocks and shares
1. use the free internet tool Google Finance to find the highest and lowest price for the day before the date of claim or supersession **and**
 2. deduct the lowest price from the highest price **and**
 3. divide the figure at **2.** by four **and**
 4. add the figure at **3.** to the lowest price **and**
 5. multiply the figure at **4.** by the number of that stock or share the person has.

52671 Once the share value has been calculated as in DMG 52669, deduct 10% costs of sale as per DMG 52611, rounding down in the claimant's favour at the last stage in the calculation.

Example

Roy has 250 Marks and Spencer shares. The highest and lowest share prices for the day before the date of claim is £4.1750 and £4.1250 respectively.

Deduct the lowest from the highest price ($£4.1750 - £4.1250$) = £0.05

Divide £0.05 by 4 = £0.0125

Add £0.0125 to the lowest share price ($£0.0125 + £4.1250$) = £4.1375

Multiply £4.1375 by the number of share (250) = £1034.3750

Deduct 10% expense of sale = £930.93.

Incumbrances secured on stocks and shares

52672 Stockbrokers have an incumbrance secured on stocks or shares if the person they have bought the stocks or shares for has not paid

1. the broker for them **or**
2. the broker's commission¹.

The incumbrance is secured only on the stocks and shares which have not been paid for or on which commission has not been paid. The incumbrance is not secured on any other stocks and shares which the stockbroker buys for the person.

1 R(IS) 18/95

52673 The amount of the incumbrance is the amount owed to the stockbroker.

Government securities

52674 Government Securities are stocks issued by the British Government. They are sold in £100 units but re-investments can be for different amounts. Government Securities include

1. consolidated stock
2. conversion loan
3. exchequer stock
4. funding stock
5. Treasury stock
6. 3½% War Loan

52675 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 52665 et seq).

52676 The free internet tool Google Finance will provide DMs with a value provided the stock has not reached the date when the capital invested is repayable. If that date has been reached, the claimant should be advised to write to the Historic Price Service, London Stock Exchange, Old Broad Street, London EC2N 1HP. Any cost imposed by this service would be payable by the claimant. Information can be obtained from the London Stock Exchange website. However, this only holds data from 1999 onwards.

52677 - 52679

Unit trusts

Value of unit trusts

52680 To work out the value of a unit in a unit trust

1. find the bid price for a unit in the trust in a newspaper which is dated the same date as the date of claim or application for supersession **and**
2. multiply the figure at 1. by the number of units a person has.

Note: the value of a unit trust can also be found at:

<http://markets.ft.com/research/Markets/Data-Archive>

Costs of sale

52681 Persons apply to the manager of the trust to withdraw their money so there are no costs of sale. This applies even if persons use an agent, such as a stockbroker.

52682 - 52684

Value of capital in certain cases

Bank and building society accounts

52685 A person who has money in a bank or building society account has a right to capital. The value of the rights to capital is the balance in the account on the date of claim or application for supersession because it is assumed the bank or building society will be able to pay out the money when asked.

52686 An expert valuation of a right to capital is needed if there is something which stops people getting their money out of a bank or building society account, such as the

1. person is the beneficial owner of the money in the account and not the legal owner and the legal owner will not withdraw the money **or**
2. bank or building society has gone into liquidation.

Right to receive income

52687 An expert valuation is needed of the value of the right to receive an income if the income can be signed over to another person.

52688 Income which cannot be signed over to another person is

1. periodical maintenance payments
2. public service pensions, such as a civil service pension
3. SS benefits and allowances, such as CHB.

Shares in a private company

52689 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

52690 The value of the shares is not worked out by dividing the value of all the shares in the company by the number of shares a person has¹. If the company's auditors say what a fair value is the expert valuation cannot be more than this figure and is more likely to be less².

1 R(SB) 18/83; 2 R(IS) 2/90

52691 The expert valuation should take into account

1. anything in the articles of association which restricts the sale of the shares, such as the shares can only be sold
 - 1.1 to the other shareholders and the shareholders will not buy them **or**
 - 1.2 if the directors agree and they do not agree **and**

2. whether the person's shares in the company are a minority, equal or controlling interest.

52692 - 52719

Capital paid to or for a third party

Capital paid to a third party for the claimant or a claimant's partner

- 52860 Except for payments listed at DMG 52862, the law¹ states that a claimant or a claimant's partner is treated as having capital which is paid to a third party if the payment
1. is for that
 - 1.1 claimant **or**
 - 1.2 claimant's partner **and**
 2. is made under social security law² **or is a**
 - 2.1 WDisP³ **or**
 - 2.2 WWP, War Widower's Pension or Surviving Civil Partner's War Pension⁴ **or**
 - 2.3 a pension paid to a forces widow or surviving civil partner under specific provisions⁵ **or**
 - 2.4 another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen⁶
 3. is a payment
 - 3.1 of an occupational pension **or**
 - 3.2 of a pension or other periodical payment made under a personal pension scheme **or**
 - 3.3 made by the board of the PPF⁷ **or**
 4. in any other case⁸, is a payment used by the claimant or a claimant's partner
 - 4.1 for food **or**
 - 4.2 ordinary clothing or footwear **or**
 - 4.3 household fuel **or**
 - 4.4 rent for which housing benefit is payable **or**
 - 4.5 housing costs which are included when working out the claimant's applicable amount **or**
 - 4.6 CT or water charges which the claimant or partner has to pay.

This does not apply if the payment is made to a third party and it is for a member of the third party's family.

Note: "Ordinary clothing or footwear" means clothing or footwear for normal daily use. It does not include school uniforms or clothing or footwear used solely for

sporting activities⁹. Ordinary clothing or footwear for normal daily use is what people in general wear on a daily basis. So it does not include clothing or footwear which

1. people in general do not wear, such as orthopaedic shoes which a disabled person might wear **or**
2. is not worn on a daily basis, such as wellington boots.

*1 ESA Regs, reg 115(3); 2 reg 115(3)(a)(i); JS Act 95; SS CB Act 92; WRA 07, Part 1;
3 ESA Regs, reg 115(3)(a)(iii); 4 reg 115(3)(a)(iii); 5 Armed Forces (Pensions and Compensation) Act 2004;
ESA Regs, reg 115(3)(a)(ii); 6 reg 115(3)(a)(iv); 7 reg 115(3)(b); 8 reg 115(3)(c); 9 reg 2(1)*

Capital paid to a claimant or claimant's partner for a third party

52861 Except for payments listed at DMG 52862, any payment made to the claimant or claimant's partner in respect of a third party has to be treated as being possessed by the claimant or partner to the extent that it is kept or used by the claimant or partner.¹ This does not apply where the third party is a member of the claimant's family other than the claimant's partner.

1 ESA Reg, reg 115(4)

52862 DMG 52860 and DMG 52861 do not apply¹ to payments of capital made from

1. Macfarlane Trust (see DMG 52457) **or**
2. Macfarlane (Special Payments) Trust (see DMG 52458) **or**
3. Macfarlane (Special Payments) (No. 2) Trust (see DMG 52459) **or**
4. the Fund (see DMG 52460) **or**
5. Eileen Trust (see DMG 52461) **or**
6. MFET Limited (see DMG 52462) **or**
7. Independent Living Fund (2006) (see DMG 52448) **or**
8. Skipton Fund (see DMG 52463) **or**
9. Caxton Foundation (see DMG 52464)
10. SIBSS (see DMG 52463) **or**
11. London Bombings Relief Charitable Fund² (DMG 52464) **or**
12. a payment under relevant legislation³ in respect of participation in
 - 12.1 a specified employment programme⁴ **or**
 - 12.2 a specified training scheme⁵ **or**
 - 12.3 the Intensive Activity Period⁶ **or**
 - 12.4 a specified employment-related course⁷ **or**
 - 12.5 the MWA Scheme⁸ **or**
 - 12.6 the ESE Scheme⁹ **or**

- 13.** a payment under an
- 13.1** an occupational pension scheme **or**
- 13.2** a personal pension scheme **or**
- 13.3** a payment made by the Pension Protection Fund where the payment is made
- 13.3.a** for a person in respect of whom a bankruptcy order has been made **or** where in Scotland, the estate of that person is subject to sequestration or has a judicial factor appointed on it **and**
- 13.3.b** it is paid to a trustee in bankruptcy or any other person acting on behalf of the creditors **and**
- 13.3.c** neither the person in respect of whom the payment has been made nor that person's partner has actual or notional capital apart from that payment¹⁰.

1 ESA Regs, reg 115(5); 2 reg 115(5)(a); 3 E & T Act 73, s 2; 4 ESA Regs, reg 115(5)(b)(i); 5 reg 115(5)(b)(ii); 6 reg 115(5)(b)(iii); 7 reg 115(5)(b)(iv); 8 reg 107(5)(ca); 9 reg 115(5)(ba); 10 reg 115(5)(c)

52863 - 52864

Third party

52865 Third party includes a public body, such as a LA.

52866 - 52867

What the DM decides

52868 The DM decides

- 1.** whether a claimant or claimant's partner should be treated as having capital which has been paid to or for a third party **and**
- 2.** if so the amount of capital that claimant or claimant's partner is treated as having **and**
- 3.** DMG 52860 - 52861 does **not** apply when payments are made to a third party rather than the claimant at the claimant's own request.

Note: See DMG 52428 for the definition of "personal pension scheme".

52869 - 52874

Chapter 53 – ESA - Wfl, WRA, Sanctions and Hardship, Disqualification and Advance awards

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Chapter 53 – ESA - Wfl, WRA, Sanctions and Hardship, Disqualification and Advance awards

Scope of this Chapter

- 53001 This Chapter contains guidance on
1. the requirement for certain ESA claimants to
 - 1.1 take part in a Wfl
 - 1.2 undertake WRA
 2. reduction of ESA (sanctions)
 3. hardship for ESA claimants
 4. disqualification for misconduct and imprisonment
 5. advance awards of ESA(IR).

53002 - 53004

Reduction of Employment and Support Allowance (Sanctions)

53060 Where the DM has determined that a claimant has failed to attend or participate in a Wfl or undertake WRA without good cause (“a failure determination”) then where the claimant is entitled to the WRAC the amount of ESA payable to the claimant will be reduced by 100% of the prescribed amount for a single claimant in the ESA main phase¹. See DMG [Chapter 44](#) for guidance on prescribed amounts.

Note: A reduction of benefit is commonly referred to as a sanction. Throughout this Chapter reduction and sanction have the same meaning. Payment of benefit is reduced for a fixed period.

1 ESA Regs, reg 63(1) & (2); Sch 4, Part 1, para (1)(a)

Example 1

Eric is entitled to ESA(IR) of £139.60 a week, including the WRAC, for himself and his partner Julia. Eric fails without good cause to attend a Wfl. His award of ESA is reduced by £71.00 a week, leaving £68.60 in payment.

Example 2

Mavis is entitled to ESA(Cont) of £99.15 weekly, including the WRAC. She has an occupational pension of £95 a week, and £5.00 is deducted from her ESA award leaving £94.15 in payment each week. Mavis fails without good cause to undertake WRA. Her award of ESA is reduced by £71.00 a week, leaving £23.15 in payment.

53061 In any benefit week the amount of ESA payable should not be reduced below 10p or by more than 100% of the amount of the prescribed amount for a single claimant in the ESA main phase¹ by virtue of the claimant failing to attend a Wfl or to undertake WRA. Only one failure determination relating to a Wfl or WRA can be in place at the same time². However, should the claimant’s partner fail to attend a Wfl then benefit can be reduced by more than 100% of the prescribed amount for a single claimant in the ESA main phase³. Benefit is reduced by an amount equal to 20% of the IS applicable amount for a single claimant aged 25 or over as at the date the reduction begins. See DMG Chapter 05 for further guidance. Benefit cannot be reduced to a sum that is less than 10 pence a week⁴.

1 ESA Regs, reg 63(3)(a) & (c); 2 reg 63(3)(b); 3 SS (JPIfP) Regs, reg 11(2) & (3); 4 reg 11(4)

53062 Where a claimant is entitled to both ESA(Cont) and ESA(IR) then any reduction must be applied first to ESA(Cont). Only if there is any amount outstanding is it to be applied to ESA(IR)¹.

1 ESA Regs, reg 63(4)

53063 For the purposes of determining the amount of any ESA(IR) payable, a claimant is to be treated as receiving the amount of ESA(Cont), including new style ESA¹, which would have been payable but for any reduction made².

1 ESA Regs, reg 2(1); 2 reg 63(5); WR Act 07, s 11J

Example 1

Nathan is in receipt of ESA(Cont) of £84.50. He fails, without good cause, to attend a Wfl. After 4 weeks his benefit is reduced to £60.50. No ESA(IR) is payable because £84.50 would be payable but for the reduction.

Example 2

Clark is entitled to ESA(IR). He is joined by his partner Lois, who is entitled to new style ESA including the WRAC. Her award of £100.15 a week is taken into account as income when calculating Clark's award of ESA(IR).

Lois fails with no good reason to attend a Wfl on 21.8.13. She contacts the adviser on 28.8.13 and agrees to attend a Wfl on 10.9.13. Her award of new style ESA is reduced for a total of 14 days (7 days + 7 day fixed period). The daily reduction rate is £10.20, and her award of ESA is reduced by £71.40 a week to £28.75 for two weeks. The full amount of £100.15 is taken into account as income for the purpose of calculating Clark's ESA(IR) entitlement.

53064 – 53069

Period of reduction

Meaning of compliance condition

53070 Where the claimant has failed to take part in a Wfl, "compliance condition" means

1. taking part in a Wfl **or**
2. agreeing with the S of S to take part in a Wfl at an agreed date¹.

1 ESA Regs, reg 63(11)(a)

53071 Where the claimant has failed to undertake WRA, "compliance condition" means

1. undertaking the WRA specified in the action plan **or**
2. undertaking an alternative activity where notified to do so by the S of S **or**
3. agreeing with the S of S to undertake the WRA in the action plan or the alternative activity at an agreed date¹.

1 ESA Regs, reg 63(11)(b)

Meaning of current failure

53072 Current failure means a failure to

1. take part in a Wfl **or**

2. undertake WRA

which may lead to a reduction as in DMG 53060, but where the DM has yet to determine whether the amount of ESA should be reduced¹.

1 ESA Regs, reg 63(11)

Period of the reduction

53073 The period of the reduction is¹

1. one week for each 7 day period during which the claimant fails to meet a compliance condition (see DMG 53070 – 53071) **and**
2. a further fixed period of 1, 2 or 4 weeks (see DMG 53075).

But see DMG 53074 for when 1. does not apply.

1 ESA Regs, reg 63(6)

53074 DMG 53073 1. does **not** apply where

1. a failure determination is made **and**
2. the claimant meets a compliance condition (see DMG 53070 – 53071) within one week after the date of the failure.

The claimant's ESA award is only subject to the fixed period reduction.

Note: Where the claimant recompiles before a sanction determination is made, the open ended period of the sanction has not started so there is nothing to lift and only the fixed period sanction can apply (see example 2).

Example 1

Fadi fails to attend an initial Wfl on 18.1.13. He contacts the DWP on 21.1.13 to say he forgot, and agrees to attend a Wfl on 23.1.13, the next available appointment. Fadi takes part in the Wfl on 23.1.13. ESA has been paid to 24.1.13. The DM determines on 30.1.13 that Fadi had no good cause for his failure to attend on 18.1.13. but as he met the compliance condition within one week after the date of the failure on 18.1.13, his ESA award is reduced only for the one week fixed period from 25.1.13.

Example 2

Kylie fails to attend a Work Programme appointment on 18.7.13. She recompiles and attends a rearranged appointment with her provider on 31.7.13. ESA has been paid to 3.9.13 and the DM is making a sanction determination on 10.9.13. The DM determines Kylie had no good cause for the failure to attend the appointment on 18.7.13 and imposes a one week fixed period sanction from 4.9.13.

Kylie had complied with the requirement on 31.7.13 before the DM made the sanction determination on 10.9.13 so no open ended sanction applies. It cannot be

determined that she failed to meet the compliance condition up to the date the DM made the determination.

Length of fixed period

53075 The fixed period is

1. one week, where there has been no failure that falls within DMG 53076¹ **or**
2. two weeks, where there has been one failure that falls within DMG 53076² **or**
3. four weeks, where there have been two or more failures (whether or not they fall within DMG 53076), and the most recent of those failures
 - 3.1 falls within DMG 53076 **and**
 - 3.2 resulted in a reduction for two or four weeks, or would have done but for the maximum reduction rules in DMG 53061³.

Note: The fixed reduction periods that apply are provided for in a table⁴. The circumstances of the failure are described in the first column of each table and has effect for the period in the second column.

*1 ESA Regs, reg 63(7)(a); 2 reg 63(7)(b); 3 reg 63(7)(c) & (8)(a) & (b);
4 WR Act 2007 s 11J, 12 & 13, ESA Regs, reg 63(7)*

53076 A failure falls within this paragraph if it is a failure¹

1. for which a reduction
 - 1.1 was imposed **or**
 - 1.2 would have been imposed but for the fact that the maximum reduction rules in DMG 53061 apply² **and**
2. which occurred on or after 3.12.12 **and**
3. which is within 52 weeks but not two weeks of the current failure.

1 ESA Regs, reg 63(8); 2 reg 63(3)

Example 1

Jeanette was placed into the ESA WRAG in January 2013. Her ESA award had been subject to a one week reduction in March 2013 for failing to attend an initial Wfl. She fails to attend a further Wfl on 2.5.13, and is notified of this failure by post on the same day. On 14.5.13 the DM determines that Jeanette had no good cause for the failure to attend the Wfl on 2.5.13. Jeanette's last ESA payment was made on 1.5.13. Her award of ESA is reduced from 9.5.13.

Jeanette phones on 20.5.13 to re-arrange her appointment, but cannot be seen until 23.5.13. She attends the Wfl on 23.5.13. The period of reduction includes a two week fixed period reduction, as she has had a previous one week reduction within the last 52 weeks. The reduction ends on 29.5.13.

Hardship

Introduction

53095 Hardship payments are payments of reduced rate ESA(IR) made to ESA claimants

1. whose ESA has been reduced as in DMG 53072 **and**
2. who satisfy the conditions in DMG 53102¹.

Note: See DMG 53146 et seq for guidance on hardship where a claimant is disqualified from receiving ESA through misconduct.

1 ESA Regs, reg 2(1)

53096 Hardship is not defined in the law. It should therefore be given its normal everyday meaning¹ of “severe suffering or privation”. Privation means a lack of the necessities of life.

Note: The test for hardship is not related to the WCA which is the functional assessment to determine eligibility for ESA. A claimant is judged to be in hardship if they have insufficient funds to meet their immediate, essential and basic necessities of life, i.e. accommodation, food, heating and lighting, clothing and hygiene requirements.

1 R(SB) 19/82

53097 When deciding if hardship will occur the DM should consider all the circumstances of the claimant or members of the claimant’s family. There are certain factors that the DM must consider (see DMG 53111 – 53115). DMs should bear in mind that they are deciding the likelihood that hardship will occur if the full amount of ESA is not paid.

Note: For the meaning of family¹ see DMG 43004.

1 ESA Regs, reg 2(1).

53098 - 53099

Record of the DM’s decision

53100 DMs should record

1. the reasons why hardship will or will not occur **and**
2. the factors and evidence considered

as part of the decision on hardship payments.

53101 DMs must record their reasons for

1. rejecting any evidence **or**
2. deciding what evidence to accept if faced with conflicting evidence.

When a hardship payment is made

- 53102 A hardship payment is made where **all** the following conditions are satisfied¹:
1. the DM is satisfied that the claimant is or will be in hardship unless hardship payments are made (but see DMG 53110) **and**
 2. the claimant's ESA has been reduced as in DMG 53072² **and**
 3. the claimant meets the conditions of entitlement to ESA(IR) – see [DMG Chapter 41](#) **and**
 4. the claimant completes and submits a form approved or accepted by the DM in such manner as the DM determines **and**
 5. the claimant provides such information or evidence as the DM requires, in such manner as the DM determines.

1 ESA Regs, reg 64A; 2 reg 63

53103 - 53109

When is a claimant treated as being in hardship

- 53110 For the purposes of DMG 53102 1., a claimant is treated as being in hardship if
1. their partner **or**
 2. a child or qualifying young person for whom they or their partner are responsible

is or will be in hardship unless a hardship payment is made¹.

1 ESA Regs, reg 64B

Matters taken into account when determining hardship

- 53111 The DM must take the following into account when determining whether a person is or will be in hardship¹:
1. whether the claimant's partner or a person in the claimant's family satisfies the requirements for
 - 1.1 the SDP or EDP² **or**
 - 1.2 an element of CTC for a disabled or severely disabled child or young person³
 2. the resources which are likely to be available to the household without a hardship payment
 - 2.1 including resources from people who are not members of the household⁴ **and**
 - 2.2 excluding payments in DMG 53112⁵

3. the difference between the likely resources and the amount of a hardship payment that the claimant would receive
4. whether there is substantial risk that without a hardship payment the household
 - 4.1 will not have access to essential items (including food, clothing, heating and accommodation) **or**
 - 4.2 will have access to such essential items at considerably reduced levels
5. the length of time that the factors at 1. – 4. are likely to continue.

Note: See DMG Chapter 43 for guidance on membership of household, and DMG Chapter 44 for guidance on ESA amounts, including the SDP and EDP.

*1 ESA Regs, reg 64C(1); 2 Sch 4, Part 2, para 6 & 7;
3 Child Tax Credits Regs 02, reg 8; 4 ESA Regs, reg 156; 5 reg 64C(2)*

53112 When considering resources, the DM should disregard payments of

1. CTC¹ **or**
2. CHB²

paid to the claimant or partner in respect of a child or young person who is a member of their household or family³.

1 ESA Regs, Sch 8, para 7(1); 2 para 7(2); 3 reg 64C(2)

53113

Example

Sean is entitled to ESA at a reduced rate from 6th February because of a failure to attend a Wfl. He and his partner Sarah have a 17 year old child Molly and foster a ten year old child Evie for whom they receive a weekly allowance from the LA.

When considering whether Sean is a person in hardship the DM disregards the CHB and CTC that Sean receives for Molly. The DM takes into account the allowance Sean receives from the LA for Evie, even though she is not a member of the household.

Resources

53114 “Resources” is not defined in the law. The word should be given its normal everyday meaning¹ of the means available or a stock or supply that can be drawn upon. See DMG 3 Chapter 35 for further guidance on resources.

1 R(SB) 19/82

Example

Danny is entitled to ESA(Cont) of £99.15 weekly, including the WRAC. He has an occupational pension of £56.45 a week. Danny fails without good cause to undertake WRA. His award of ESA is reduced by £71.00 a week, leaving £28.15 in payment.

Danny applies for hardship. The DM decides that hardship is not appropriate. Although Danny would meet the conditions for ESA(IR), the DM considers that his available resources of £84.60 weekly (ESA of £28.15 + occupational pension of £56.45) are sufficient to meet his need for essential items without awarding the hardship amount of £42.60.

Essential items

53115 For full guidance on essential items, see [DMG](#) Chapter 35.

Example

Carolyn is a lone parent with two children aged 2 and 7. Carolyn's heating is electric, and she pays for her electricity by pre-paid meter which is partly reducing an earlier fuel debt. From 20.1.13 her award of ESA of £99.15 is reduced to £28.15 weekly after she fails without good cause to undertake WRA. Carolyn applies for a hardship payment. The DM establishes that Carolyn has no resources apart from the reduced rate ESA, as well as CHB and CTC which are disregarded. The DM determines that Carolyn's children would be at substantial risk due to inadequate heating, and awards £42.60 in addition to the £28.15 in payment.

53116 - 53119

Amount of hardship payments

53120 Once an ESA claimant is determined to be in hardship, the amount of hardship payable is

1. 80% of the prescribed amount for a single claimant in the main phase where the claimant
 - 1.1 has an award of ESA which does not include the WRAC **and**
 - 1.2 or any other member of their family, is pregnant or seriously ill **or**
2. in any other case, 60% of the prescribed amount for a single claimant in the main phase¹.

Note 1: These rates only apply to people put into the WRAG on or after 3.4.17 who no longer receive the additional work related component. Prior to 3.4.17 the amount of hardship payable is 60% of the prescribed amount for a single claimant in the main phase.

Note 2: See **Memo DMG 6/17** for guidance on when the WRAC is not included in ESA awards.

Note 3: For the meaning of family² see DMG 43004.

Note 4: See Appendix 1 for an illustration of the decision making process for determining ESA hardship amounts.

1 ESA Regs, reg 64D(1); Sch 4, para (1)(a); 2 ESA Regs, reg 2(1)

53121 Where the amount in DMG 53120 is

1. not a multiple of 5p, it is rounded to the nearest multiple of 5p **or**
2. a multiple of 2.5p but not 5p, it is rounded to the next lower multiple of 5p¹.

1 ESA Regs, reg 64D(2)

Pregnancy

53122 The DM should establish whether a claimant, or a member of their family, is pregnant, before applying the hardship amount at 80%.

53123 If the DM has any doubts that the claimant, or a member of their family, is pregnant, the claimant should be requested to produce further evidence such as a certificate of the expected date of confinement.

Note: See DMG 53134 for further guidance on evidence.

Meaning of ‘seriously ill’ for hardship purposes

53124 ‘Seriously ill’ is not defined in legislation. For the purposes of determining the rate of ESA hardship payable, the consideration of ‘seriously ill’ is whether the claimant is able to demonstrate that

1. they **or**
2. a member of their family

will incur additional day to day living costs due to a medical condition in order to receive 80% instead of 60% of the basic ESA rate.

53125 Within the hardship context, ‘seriously ill’ is not a test of whether a particular medical condition is serious or not. It is a test of whether, due to a medical condition, additional day to day costs are incurred.

Note: It is acknowledged that the claimant, or a member of their family, may have more complex and expensive needs that require additional costs for essential items such as heating, hygiene, dietary needs or travel costs that means without the 80% higher rate of hardship payment to meet those extra costs their health would be impacted. For example, a person with a severe mobility problem may need more

heating, or a person with severe diabetes may have more complex and more expensive needs to provide certain foods or a person with psoriasis may need to change and wash bedding and clothing more frequently than normal.

53126 Each case should be considered carefully on its own facts and circumstances. DMs should bear in mind that

1. additional costs that are not necessary for one individual may be necessary for another **and**
2. what is regarded as a reasonable additional cost may well vary
 - 2.1 in each individual case
 - 2.2 over time **and**
 - 2.3 depending on other factors, for example symptoms may be worse at certain times of the year due to seasonal weather or allergens (also see 53129).

53127 It is important that the DM gathers the appropriate and relevant information to be able to determine the rate of hardship to be paid at the face to face hardship interview to avoid any delay in payment. The claimant has to demonstrate on their application for hardship

1. the relevant medical condition **and**
2. how or why the medical condition incurs additional costs.

Note 1: Care should be taken with claimants who have mental health conditions who might lack the insight to appreciate the extra costs that might be associated with their illness, or that of a member of their family.

Note 2: See guidance at DMG 53134 regarding evidence that may show additional costs will be incurred.

53128 The claimant should be the expert of

1. their own, or the relevant member of their family's, medical condition,
2. how it affects them **and**
3. how it incurs additional costs.

However, if it is unclear, improbable or self contradictory the DM can ask the claimant to provide additional information on why and how a certain medical condition incurs extra costs.

Note: The DM should not require the claimant to incur any costs to provide further evidence, see DMG 53134.

53129 The DM also has to consider all relevant facts and circumstances that may impact the medical condition and contribute to the claimant having to incur additional costs. Certain symptoms, for example, may vary in response to the season, i.e. may be worse in cold, damp weather or exposure to allergic reactors such as pollen, dust or animal fur. If the application is made during the summer months or a period of warm weather it may be difficult for the claimant to justify their assertion that they will incur additional heating costs unless the claimant or a member of their family has a serious respiratory illness or a condition that seriously restricts their mobility or the condition of the dwelling is such that the claimant, or a member of their family, are more likely to suffer an impact on their health from a lack of heating despite prevailing weather conditions.

Note: See further guidance at DMG 53134 regarding evidence and the illustrative examples at DMG 53139.

53130 Guidance on the effects of some common medical conditions that may result in additional costs being incurred is given in Appendix 2 to this Chapter. This is not an exhaustive or prescribed list of conditions that will qualify a claimant to receive the 80% rate of ESA hardship automatically. The DM should consider all the facts and circumstances of the individual case.

Note: The DM can also find information regarding medical conditions in the Customer Case Management disability guidance.

Prescribed medication or treatment

53131 It is essential that the claimant and members of their family

1. have sufficient supplies of any prescribed medication (see **Note 1.**) and
2. continue any course of treatment arranged by a recognized health professional which requires attendance at a health establishment (see **Note 2.**).

Note 1: Claimants in receipt of ESA(IR) should be able to obtain free NHS prescriptions under the Low Income Scheme but the DM should establish if, where free prescriptions are not available to the claimant, that the claimant and members of their family have an adequate supply of any prescribed medication when considering what additional costs may be incurred.

Note 2: If a claimant, or member of their family, is currently undergoing a systematic course of treatment needing attendance at a treatment centre twice or more times a week, it is important to continue that treatment for their recovery and prevent any decline of their condition, or indeed they may live remotely with no reliable or regular public transport and as such they may incur additional or more expensive transport costs (e.g. using taxis) – see Example 4 at DMG 53139.

53132 Illnesses such as colds or coughs are not normally serious on their own, but the DM should decide if for the claimant, or a member of their family, any illness

1. has any impact on any other existing health conditions or personal circumstances **and**
2. will mean additional daily living costs will be incurred.

For example, the effect of a common cold on someone who suffers with a respiratory disease such as asthma or chronic obstructive pulmonary disease can have a serious impact on their general health and could mean additional costs for heating are incurred.

Note: For common minor ailments such as coughs and colds, sufferers often buy treatments over the counter rather than requesting prescriptions. This should be taken into account when considering what additional costs may be incurred.

When is 'seriously ill' test satisfied

53133 The DM must determine if the 'seriously ill' test is satisfied at the date

1. entitlement to hardship payments begins **or**
2. a request for revision of the amount of hardship payments is made.

Note 1: The DM should not determine if additional costs are likely to occur in the future. The claimant can apply for increased hardship payments if a medical condition deteriorates (for example they suffer a flare up of a fluctuating condition) and/or circumstances change such that it means they will incur additional day to day living costs (see Example 8 at DMG 53139).

Note 2: This is not a revision of the claimant's entitlement to ESA or of the determination of whether the claimant is in hardship. This is a revision of the amount of hardship payable and whether a claimant is able to demonstrate at a later point that they incur additional day to day living costs as a result of a change that means they may qualify to receive 80% from that point (also see Example 11 at DMG 53139).

Evidence

53134 The DM will determine the amount of hardship based on the claimant's statement on their application for hardship (see DMG 53127). The DM should not request further evidence unless

1. there is contradictory or conflicting evidence that puts the claimant's statement in doubt **or**
2. it is inherently improbable **or**

3. there is insufficient evidence to make a decision

in line with the normal rules on evidence (see DMG Chapter 01 – Principles of decision making and evidence).

Note: Decisions should normally be based on the evidence that is provided on the hardship application. DMs should bear in mind that the claimant's direct evidence should be accepted unless the conditions at **1.**, **2.** or **3.** apply.

53135 If the DM has doubts that the claimant, or member of their family, is 'seriously ill' for hardship purposes, the claimant may be asked to provide further evidence about how the relevant medical condition incurs additional costs. For example, they may be able to provide a letter already in their possession from a doctor, health care professional or case worker that confirms the medical condition and how it is likely to incur additional costs.

Note 1: The DM should not expect the claimant to incur any costs to provide further evidence. See DMG 53138 for examples of evidence the claimant may be able to provide.

Note 2: The DM should not delay payment of hardship to await further evidence (also see DMG 53137).

53136 Any evidence should be contemporaneous with the application for hardship and it will be for the DM to decide what

1. evidence is required **and**
2. is reasonable and practicable for the claimant to provide

taking into account any incurred costs that may be involved to provide any evidence and whether evidence will be available in a particular case.

Note 1: A DM may want to confirm, for example, that incontinence pads or gluten free products are, or are not, available on prescription in a certain area as provision of such products can vary geographically. This may be easily resolved by telephoning the local surgery or NHS services for general information regarding the availability of certain products without talking to the surgery about a specific claimant.

Note 2: See Appendix 2 for further examples of some conditions that may incur additional costs.

53137 If in exceptional circumstances the DM

1. needs to confirm evidence **or**
2. requires some further evidence

payment of hardship should not be delayed to await that evidence and hardship should be put into payment at 60% until such time as the evidence is provided regarding the additional costs incurred and the amount payable can be adjusted to 80% if and as appropriate when any further evidence has been provided and evaluated.

Examples of evidence to support 'seriously ill' test for hardship

53138 Examples of evidence the claimant, or member of their family, may have in their possession that confirms the relevant medical condition which could be provided to show the 'seriously ill' test is satisfied, if required, are

1. the ESA claim form
2. the statement of circumstances form for hardship payments (i.e. the ESA hardship application)
3. any letters or written statements regarding the claimant, or member of their family's, medical condition
4. any records of interviews with the claimant, or member of their family, with the relevant medical condition
5. records held by the DM about relevant incapacity test results or recent DLA, AA, IIDB or SDA claims
6. any medical certificates or statements from any of the doctors treating the claimant, or member of their family, with the condition
7. any medical reports from people treating the medical condition, together with any interpretation from a Medical services HCP
8. any reports from a Medical services HCP about the condition and its likely effects
9. evidence from the Disability Employment Advisor if the claimant is on a Disability Employment Advisor's case load.

Note 1: This is not an exhaustive list and some of the sources of evidence may not be available in a particular case. The DM should make a decision based on the evidence that is available.

Note 2: The DM should not expect the claimant to incur costs to obtain further evidence.

Illustrative examples

53139 The following are examples for illustrative purposes only in consideration of the amount of ESA hardship to be paid.

Note 1: For the purposes of these examples the claimant has an award of ESA which does not include the WRAC, has had a sanction imposed and qualifies for a hardship payment.

Note 2: Also see the guidance in Appendix 2 for further examples of medical conditions that may incur additional costs.

Example 1

Pauline is 45 years old and suffers from depression and rheumatoid arthritis. She says she needs to have her heating on constantly because she lives in a draughty old house and even in the summer months any damp or cold can exacerbate and cause a worsening of her arthritis.

Pauline provides a letter from the occupational health services verifying she needs a constant and comfortable temperature even in the summer months due to her severe rheumatoid arthritis.

The DM considers Pauline can demonstrate she will have additional day to day heating costs due to her medical condition and will receive 80% of the ESA rate.

Example 2

Dev is 29 years old and suffers from depression. He lives in a flat with his older sister and qualifies for hardship payments. He applies for ESA hardship in August following a sanction being imposed.

The flat has gas central heating and Dev says he has no money to put in the gas meter. The flat has an electric hob, microwave and kettle.

The DM considers that the lack of heating in August for a single man aged 29 years with no mobility restrictions or respiratory problems would not impact on Dev's medical condition and he has alternative cooking facilities available to cook a meal.

Although his GP has advised him to lose weight to help with his general health, Dev does not follow a special diet that would require additional costs.

The DM determines Dev will receive 60% of the ESA rate.

Example 3

Flavia is a 40 year old lady who suffers from anxiety and coeliac disease. She says that she has additional costs in order to be able to buy gluten free food products which are more expensive than similar non-gluten free products.

Flavia says she risks a deterioration in her health if she does not eat gluten free food. She says only gluten free biscuits and flour are available free from her local NHS services which alone do not meet her dietary needs.

The DM considers that Flavia will have additional costs for food because of her medical condition.

The DM determines Flavia will receive 80% of the ESA rate.

Example 4

Dorian suffered a spinal injury and has severe mobility problems. He lives in a remote village with a sporadic bus service and no supermarket. He says the nearest supermarket to shop for food is seven miles away and he normally uses a taxi to do his shopping and also to attend regular physiotherapy appointments at the clinic in the nearest town three times a week. He cannot walk to the nearest bus stop without severe difficulties and there is not a regular bus service. He does not own a car and lives alone.

The DM considers due to his medical condition it is reasonable for Dorian to use taxis to go to the supermarket and the clinic for his appointments and that this will be at an additional day to day cost to pay for taxis.

The DM determines Dorian will receive 80% of the ESA rate.

Example 5

Shirley suffers from Detrusor Instability (Urge Incontinence) and depression. She says she needs to use the toilet frequently, at least 15 to 20 times per day, and often has 'accidents' which means she frequently has to wash and change her clothing, wash soiled bedding and underwear/clothes and clean up after 'accidents'. Her condition causes her to feel depressed and her depression would get worse if she cannot follow her normal hygiene routine.

Shirley takes a prescribed mild anti-depressant for her depression and has an adequate supply.

Shirley says her local NHS services do not provide free incontinence pads which the DM confirms by phone call to Shirley's local surgery.

The DM considers Shirley has additional costs due to her medical condition as she needs to buy incontinence pads and wash her clothes and bedding more frequently.

The DM considers Shirley will incur additional day to day costs to buy essential cleaning products, e.g. soap, toilet paper and washing detergent as well as incontinence pads and without those products her health could deteriorate.

The DM determines Shirley will receive 80% of the ESA rate.

Example 6

Aarif suffers from epilepsy. He has prescribed medication for the condition. He has no other known medical conditions and lives with his parents.

Due to his epilepsy Aarif qualifies for free prescriptions so he will not suffer any additional day to day costs due to his illness and his medical condition will not deteriorate as he has access to his normal medication.

The DM determines Aarif will receive 60% of the ESA rate.

Example 7

Ryan suffers from sciatica. He lives with his partner and his young daughter. His daughter suffers from diabetes and has to follow a special diet and eat consistently and regularly to control her blood sugars.

To provide a special diet would incur additional costs and if not followed could have an adverse impact on Ryan's daughter's health.

The DM considers Ryan will incur additional day to day costs to pay for his daughter's specialist diet and determines he will receive 80% of the ESA rate.

Example 8

Emma has crohns disease and depression. She has recurrent episodes of diarrhoea and abdominal pain during a flare up of her condition. Although relatively symptom free from her crohns disease at present, her symptoms tend to flare up every three to six months and during those episodes she has to shower several times a day and use pads for minor leakage.

The DM considers that Emma may incur additional water heating and laundry costs during a flare up of her condition and that if she were unable to shower and change this might result in a worsening of her depression. She says incontinence pads are not provided free by her local NHS services. Emma lives alone and has an adequate supply of her prescribed medication.

The DM considers at present Emma would not incur additional day to day costs and determines she will receive 60% of the ESA rate.

However, should Emma suffer a flare up of her symptoms such that it means she will incur additional day to day living costs for laundry and incontinence pads, Emma can apply for increased hardship payments at the 80% rate.

Example 9

Mel is 33 years old and suffers from spondylosis of the neck. He lives with his partner and baby son.

Mel says his son has been medically diagnosed with lactose intolerance and soya baby milk is much more expensive than ordinary baby milk. The DM confirms that Mel should be entitled to free soya milk for his baby son on NHS prescriptions.

The DM considers Mel would not incur additional day to day costs and will receive 60% of the ESA rate.

Example 10

John is a 50 year old man with OCD who has obsessions and associated ritual compulsive activity relating to contamination and dirt. He says that he has to shower several times a day and use freshly laundered towels on each occasion.

The DM considers that he has additional water heating and laundry costs and that if he were unable to shower frequently this would result in an increase in his anxiety and a worsening of his OCD.

The DM considers John will incur additional day to day costs because of his medical condition and will receive 80% of the ESA rate.

Example 11

Sonny suffers from sciatica. He lives with his partner. There is no evidence provided that Sonny or his partner has a medical condition that will mean he will incur additional day to day costs.

The DM determines Sonny will receive 60% of the ESA rate.

Four weeks later Sonny has still not complied with the compliance condition to end the sanction and contacts the office to say his partner is pregnant and provides a certificate of the expected date of confinement.

The DM determines that Sonny will receive 80% of the ESA rate from the date of the change of circumstances.

When a hardship payment begins

- 53140 Hardship payments can begin from the date the claimant becomes a person in hardship by satisfying **all** the conditions in DMG 53102.

When a hardship payment ends

- 53141 Entitlement to a hardship payment ends when the period of the reduction ends.

53142 - 53145

Disqualification for misconduct

- 53146 Claimants entitled to ESA are disqualified for receiving it for a period decided by the DM up to a maximum of six weeks if they¹
1. have LCW through their own misconduct (except in a case where LCW is due to pregnancy or a sexually transmitted disease) **or**
 2. fail without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant's capability for work **or**
 3. fail without good cause to refrain from behaviour calculated to retard recovery **or**
 4. are absent without good cause from their place of residence without leaving word where they may be found².

1 ESA Regs, reg 157(2) & (1)

- 53147 Guidance on misconduct may be relevant if the misconduct being considered would have resulted in dismissal from employment and disqualification for receiving JSA. Conduct which is blameworthy, reprehensible, wrong or wilful should be distinguished from involuntary behaviour due to other factors¹.

1 R(S) 2/64

- 53148 Alcoholism is one example of behaviour which may be misconduct if a claimant has LCW as a result of excessive drinking on one occasion. But the mental and physical effects of alcoholism can be a condition requiring long spells of treatment, including psychiatric help.
- 53149 If a claimant has LCW as a result of an accident which occurred while intoxicated but which could have happened if the claimant was sober, LCW would not be due to misconduct.
- 53150 Drug addiction is similar to alcoholism in that the uncontrolled use of addictive drugs leads to a progressive deterioration in physical or mental condition which can be incapacitating.
- 53151 Disqualification should be applied to the exceptional cases where there is clear evidence that temporary LCW or the addiction resulted from a deliberate decision by a healthy person to experiment with drug taking.
- 53152 When deciding whether to disqualify for receiving ESA the DM should judge how far the claimant's actions have been deliberate and unreasonable rather than thoughtless.

53153 Someone who is injured or contracts a disease while committing an illegal act for which they are convicted by a court of law, is subject to being treated as not having LCW.

Treatment

53154 Treatment as at DMG 53146 **2.** has to be for the cause of LCW¹. Medical treatment means medical, surgical or rehabilitative treatment (including any course or diet or other regimen)².

1 R(S) 3/57; 2 ESA Regs, reg 2(1)

53155 The claimant has to prove

1. good cause **and**
2. that a refusal of treatment was reasonable in the circumstances.

53156 If the objection to treatment is on religious grounds, evidence of a firm personal belief is needed to support good cause¹.

1 R(S) 9/51

Rules of behaviour

53157 One example of behaviour considered under both these rules was a person with influenzal bronchitis, who drove 60 miles from home to business and was not well enough to return for several days. It was decided that the person had

1. undertaken a journey calculated to delay recovery **and**
2. also been absent from home without leaving word.

In view of certain circumstances the period of treating as capable of work was limited to two weeks¹.

1 R(S) 21/52

53158 In DMG 53146 **3.** the word “calculated” does not mean that the claimant deliberately intends to delay recovery. The question is whether the delayed recovery is likely to result from the behaviour¹.

1 R(I) 26/51

53159 Good cause for the behaviour was not proved by a person who had dermatitis of the hands and was whitewashing the kitchen, because the doctor had advised against getting wet¹. Ignorance of the rules of behaviour is not good cause².

1 R(I) 26/51; 2 R(S) 21/72

Absence

53160 DMG 53146 **4.** does not apply unless the claimant has somewhere to live. Once the relevant facts are established the claimant has to prove good cause such as a genuine difficulty in leaving a message¹.

1 R(S) 7/83, R(S) 6/55

Period of disqualification

53161 The length of the period of disqualification can be from one day to six weeks. The length of the disqualification depends on the circumstances of the case. The DM has to give reasons for the choice of period¹.

1 R(U) 8/74, R(S) 1/87, R(U) 4/87

53162 For misconduct the period of disqualification can begin on

1. the day following the date of the act of misconduct **or**
2. from the date of the decision if benefit has continued in payment¹.

If the misconduct is repeated, a fresh period of disqualification may be imposed.

1 R(U) 12/59, R(S) 4/61

53163 The period of disqualification for failure to observe the rules of behaviour depends upon the number of times, and the period over which the failure has occurred. Any extenuating circumstances can be taken into account even though good cause has not been proved¹.

1 R(S) 21/52

53164 If, during the period of disqualification, a claimant

1. submits a closed doctor's statement **and**
2. then makes a further claim

any disqualification continues for the outstanding part of the original period, unless the determination has been set aside on supersession or appeal.

53165 Disqualification does not apply if the person is a "person in hardship" or is disqualified for receiving ESA under certain legislation¹ (loss of benefit provisions).

1 ESA Regs, reg 157(3) & Social Security Fraud Act 2001, s 7

Person in hardship

- 53166 A claimant is a “person in hardship”¹ if they have informed the DM of the circumstances on which they rely to establish that fact and
1. the claimant is pregnant **or**
 2. a member of the claimant's family is pregnant **or**
 3. the claimant is a single person aged less than 18 **or**
 4. the claimant is a member of a couple and both members are aged less than 18 **or**
 5. the claimant or their partner is responsible for a child or young person who is a member of the claimant's household **or**
 6. the claimant or their partner has been awarded
 - 6.1 an “AA” **or**
 - 6.2 DLA care component (higher or middle rate)² **or**
 - 6.3 AFIP **or**
 - 6.4 PIP **or**
 7. the claimant or their partner has claimed either
 - 7.1 “AA” **or**
 - 7.2 DLA **or**
 - 7.3 AFIP **or**
 - 7.4 PIPand the claim has not yet been determined (see DMG 53167) **or**
 8. the claimant or their partner devotes a considerable portion of each week caring for another person who has been awarded
 - 8.1 “AA” **or**
 - 8.2 the higher or middle rate care component of DLA **or**
 - 8.3 AFIP **or**
 - 8.4 PIP
 9. the claimant or their partner devotes a considerable portion of each week caring for another person who has claimed
 - 9.1 “AA” **or**
 - 9.2 DLA **or**
 - 9.3 AFIP **or**
 - 9.4 PIP

and the claim has not been determined (see DMG 53167) **or**

10. the claimant or their partner has reached the qualifying age for SPC (see DMG Chapter 77).

Note 1: For a definition of “AA” see DMG Chapter 44.

Note 2: The guidance at 9. applies from 6.4.10. Before that date the claimant or their partner has to be aged 60 or more.

1 ESA Regs, reg 158(2) & (3); 2 reg 158(7)

53167 A claimant who is a “person in hardship” **only** because they or their partner

1. have claimed any of the benefits in DMG 53166 7. and the claim has not yet been determined **or**
2. devote a considerable portion of each week caring for another person who has claimed any of the benefits in DMG 53166 9. and the claim has not been determined

can only be a “person in hardship” for a maximum of 26 weeks from the date of the claim¹.

1 ESA Regs, reg 158(4)

53168 A claimant is also considered to be a “person in hardship” if the DM, having regard to all the circumstances and in particular those at DMG 53169, is satisfied that the claimant or a member of the claimant's family will suffer hardship unless ESA is paid¹.

1 ESA Regs, reg 158(5)

53169 The circumstances referred to in DMG 53168 are

1. the resources which are likely to be available to the claimant and their family and the length of time for which they might be available **and**
2. whether there is a substantial risk that essential items such as food, clothing and heating will
 - 2.1 cease to be available to the claimant or a member of the claimant's family **or**
 - 2.2 only be available at considerably reduced levels **and** the length of time that this might be so¹.

1 ESA Regs, reg 158(6)

53170 The amount of ESA payable in hardship cases is reduced by 20% of the claimant's applicable amount¹.

1 ESA Regs, Sch 5, para 14

Disqualification for imprisonment - ESA(Cont)

Introduction

53171 A claimant is disqualified for receiving ESA(Cont) for any period during which they are undergoing imprisonment or detention in legal custody

1. in connection with a charge brought or intended to be brought in criminal proceedings **and**
2. pursuant to any sentence **or**
3. pursuant to any order of detention.

Note: See DMG Chapter 54 for guidance on how imprisonment affects ESA(IR).

1 WR Act 07, s 18(4)(b)

53172 Payment of ESA(Cont) is suspended from the first day of imprisonment or detention in legal custody. If a decision is subsequently made to disqualify the claimant for receiving ESA(Cont), that decision will apply from the first day of imprisonment or detention in legal custody.

Treating a claimant as not having limited capability for work

53173 The claimant is to be treated as not having LCW if they are disqualified for receiving ESA(Cont) during a period of imprisonment or detention in legal custody if that disqualification is for more than 6 weeks¹ (see DMG Chapter 42).

1 ESA Regs, reg 159(1)

Exceptions to the disqualification provisions

53174 There are exceptions to the provisions disqualifying ESA(Cont) on imprisonment or detention in legal custody¹. These are where

1. no penalty is imposed (DMG 53175) **or**
2. the person is suffering from mental disorder (DMG 53169).

1 ESA Regs, reg 160(2) & (3)

No penalty imposed

53175 There is no disqualification for receiving ESA(Cont) for imprisonment or detention in legal custody unless at the end of criminal proceedings the court imposes

1. a penalty **or**
2. a penalty for fine default¹.

1 ESA Regs, reg 160(2)

Meaning of court

53176 Court means¹ any

1. Court in
 - 1.1 UK
 - 1.2 Channel Islands
 - 1.3 Isle of Man
 - 1.4 any place to which certain legislation applies² **or**
2. Court-Martial within the meaning of certain legislation³ **or**
3. Courts-Martial Appeal Court.

1 ESA Regs, reg 160(5)(a); 2 Colonial Prisoners Removal Act 1884; 3 Courts-Martial (Appeals) Act 1968

Meaning of penalty

53177 Penalty¹ is

1. a sentence of imprisonment
2. detention in a young offenders institution
3. an order for detention in a young offenders institution
4. detention in GB as a result of any order made under certain legislation².

1 ESA Regs, reg 160(5)(c); 2 reg 160(5)(d); Colonial Prisoners Removal Act 1884

53178 The term penalty includes a suspended sentence of imprisonment at the end of criminal proceedings, even if it has not taken effect¹.

Note: A suspended sentence does not disqualify a claimant who is not in prison or detained in legal custody.

1 R(S) 1/71

53179 The following are not penalties and so no disqualification is imposed for the period before the end of criminal proceedings during which the person is remanded in custody when

1. a fine is imposed (see DMG 53182)
2. the charge is withdrawn
3. there is a conditional or absolute discharge or acquittal
4. the claimant is detained in hospital by court order following conviction
5. an order putting a person under guardianship is made
6. a Community Rehabilitation order is made.

Note: This list is not exhaustive

Penalty cancelled

53180 Where a penalty has been imposed, a Higher Court can later

1. quash the conviction **or**
2. substitute another penalty

with an order which is not a penalty. The effect is as though no penalty had been imposed.

53181 Disqualification will therefore be removed for any relevant period of imprisonment or detention in legal custody. See DMG Chapter 04 for further guidance on supersession for a relevant change of circumstances and when the decision takes effect.

Imprisonment for non-payment of fines

53182 Imprisonment for non-payment of a fine can be the result of civil proceedings. The DM should consider the nature of the original offence if a person is imprisoned for non-payment of a fine. If the original offence was a criminal action, the DM should

1. regard the imprisonment as a criminal offence **and**
2. disqualify from benefit.

1 ESA Regs, reg 160(2)(b)

Mentally disordered persons detained in legal custody

53183 Subject to the exceptions in DMG 53186 disqualification does not apply¹ for any period during which a person is detained in legal custody at the end of criminal proceedings, if it is a period during which that person is liable to be detained in a hospital or similar institution as a person suffering from a mental disorder.

1 ESA Regs, reg 160(3)

53184 Hospital or similar institution means¹ any place in which people suffering from mental disorder may receive care or treatment but not at or in a

1. prison
2. young offenders institution
3. secure training centre
4. secure accommodation in a children's home
5. remand centre.

1 ESA Regs, reg 160(5)(b)

53185 If a person is found to be insane during criminal proceedings so that they cannot be tried or their trial cannot proceed, those proceedings will be treated as completed¹. There will be no disqualification.

1 ESA Regs, reg 160(5)(e)

53186 The exceptions referred to in DMG 53183 are where the person is

1. detained¹ (or liable to be detained) under specific legislation² which allows a court, which has imposed a term of imprisonment, to direct that the offender be detained in a hospital or similar institution instead of a prison where that offender suffers from a psychopathic disorder.
2. serving³ a sentence of imprisonment and is then detained in a mental hospital under specific legislation⁴ which allows the Secretary of State for Justice or Scottish Ministers to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital.

1 ESA Regs, reg 160(3)(a); 2 MH Act 83, s 45A; Criminal Procedure (Scotland) Act 95 s 59A

3 ESA Regs, reg 160(3)(b) & (c); 4 MH Act 83, s 47

53187 Where there is a hospital direction as in DMG 53186 **1.** or where the person is transferred from prison to a mental hospital as in DMG 53186 **2.** the person will be disqualified for receiving ESA(Cont)¹.

1 ESA Regs, reg 160(3)(a), (b) & (c)

53188 A person who is transferred to a mental hospital as in DMG 53186 may recover and be sent back to prison; the normal rules disqualifying prisoners from receiving benefits will apply.

53189 Where a person has been disqualified and is transferred to

1. a hospital **or**
2. similar institution

the disqualification will apply up to the date when the person is expected to be released, had the transfer not been made¹.

1 ESA Regs, reg 160(4)

53190 Where a prisoner is transferred to a mental hospital and detained under certain legislation¹ the disqualification as in DMG 53187 will continue until the date when they would have been released.

1 MH Act 83, s 45A; s 47; Criminal Procedures (Scotland) Act 1995, s 59A;

MH (C & T) (Scot) Act 03 s 136

53191 In England and Wales, where applicable, the earliest date on which the prisoner would have been expected to be discharged from prison will be notified in a certificate. Where the prisoner was sentenced to life imprisonment the certificate issued is not endorsed with a release date.

53192 In Scotland certificates are not issued on any case because the terms of the prisoner's transfer to mental hospital cease at the point that their sentence would have ended¹. Any further detention would require a fresh order which would not be made under the relevant legislation².

1 CSS/239/07; MH (C & T) (Scot) Act 03 s 136; s 217; 2 s 136

53193 In DMG 53191 - 53192 it is enough to know under what legislation the prisoner is being held in mental hospital. They will be disqualified if it is under the relevant legislation and there is no certificate.

Technical Lifers - England and Wales only

53194 A High Court judgment¹ dealt with the issue of whether there was unequal treatment under Human Rights legislation between those persons

1. sent to hospital for treatment² without having been given a prison sentence and who **are** eligible for benefit **and**
2. those given a prison sentence and are either –
 - 2.1 sent directly to hospital for treatment³
 - 2.2 transferred to hospital from prison⁴

who are **not** eligible for benefit.

1 Regina (EM and others) v Secretary of State for Work and Pensions [2009] EWHC 454 (Admin);

2 MH Act 83, s 37 & 41; 3 s 45A; 4 s 47

53195 The Court found that the difference in treatment of those persons termed 'technical lifers' could not be justified.

53196 A 'technical lifer' is an administrative classification. It involves the Secretary of State for Justice accepting 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, if, for example, a suitable bed had been available.

53197 The effect of this is that a person given the status of a 'technical lifer' should be treated, for the purposes of benefit entitlement, as though they had been sent to hospital for treatment without having been given a prison sentence (see DMG 53194 1. above).

Note: The practice of awarding 'technical lifer' status to eligible prisoners was abandoned in 2005.

Imprisonment or detention in legal custody abroad

53198 When a person is imprisoned or detained in legal custody abroad¹, the same benefit rules apply for

1. disqualification
2. exception from disqualification.

Note: UK benefit rules apply only for imprisonment for a criminal offence. The DM should decide whether the offence for which the claimant is convicted in the other country would be a criminal offence in the UK. A person detained abroad without trial is not disqualified for receiving benefit but see DMG 53199 if they are detained abroad pending trial.

1 R(S) 2/81; ESA Regs, reg 160(6)

Suspension of payment of ESA(Cont) during imprisonment

53199 The payment of ESA(Cont) to those claimants who are not disqualified for receiving it whilst undergoing imprisonment or detention in legal custody as a consequence of DMG 53174 or DMG 53198 is suspended¹. The suspension covers the period of imprisonment or detention in legal custody and any benefit payable during that period even if it is not in respect of that period.

1 ESA Regs, reg 161(1)

53200 ESA(Cont) is not suspended while the claimant is detained in a hospital or similar institution as a person suffering a mental illness unless DMG 53186 applies¹.

1 ESA Regs, reg 161(2)

53201 If ESA(Cont) is suspended for any period, the period of suspension is not to be taken into account in calculating any period in respect of the extinguishment of the right to sums payable which are not obtained within the prescribed time¹.

1 ESA Regs, reg 161(3) & SS (C&P) Regs, reg 38

53202 Where a person who is held in custody on remand is given a prison sentence which is less than the time already spent in custody (and is immediately released) they are disqualified for the entirety of the time spent in custody. No benefit is refunded to the value of the extra time spent in prison¹.

Example

Kenneth is detained in legal custody on 1.2.10. The DM suspends payment of his ESA(Cont). On 1.4.10 the DM is notified that Kenneth was given a custodial sentence. Therefore, the DM decides that Kenneth should be disqualified for receiving ESA(Cont) from 1.2.10.

1 WR Act s 18(4)(b)

Advance awards of ESA(IR)

General

53203 DMs may make advance awards of ESA(IR) when certain conditions are met. These advance awards are unique to ESA(IR)¹. DMs should not confuse them with other advance claims and awards², including other advance awards of ESA(IR) (see DMG Chapter 02 for full guidance).

1 WR Act 07, s 5; ESA Regs, reg 146; 2 SS (C&P) Regs, reg 13

When to make an advance award of ESA(IR)

53204 DMs may make an advance award of ESA(IR)¹ when the claimant

1. is not entitled to ESA(IR) because income exceeds the applicable amount **and**
2. would be entitled to ESA(IR) if there was entitlement to
 - 2.1 the support component **or**
 - 2.2 the WRAC **and**
3. is not entitled to ESA(Cont).

1 WR Act 07, s 5(1)

53205 Where DMG 53204 applies and DMG 53207 is satisfied

1. the claim is treated as made for a period from the relevant day¹ (see DMG 53208) **and**
2. the DM may award ESA(IR) from the relevant day².

1 ESA Regs, reg 146(1)(a); 2 reg 146(1)(b)

53206 Where DMG 53205 applies the DM should make a decision on the original claim. That decision will be that the claimant

1. is not entitled to ESA from the date of claim **and**
2. is entitled to ESA(IR) from the relevant day.

When making that decision the DM will not be able to specify the amount of the claimant's ESA(IR) entitlement. However, the DM does not need to make another decision in order for the claimant to receive payment under the award from the relevant day.

53207 For an advance award of ESA(IR) to be made

1. the DM must be of the opinion that unless there is a change of circumstances the claimant satisfies
 - 1.1 the basic conditions except having LCW **and**
 - 1.2 the additional conditions for ESA(IR)when ESA(IR) becomes payable under the award¹ **and**
2. claimants must be treated as having LCW because they
 - 2.1 are terminally ill **or**
 - 2.2 receive treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy or are recovering from that treatment **or**
 - 2.3 suffer from a specific disease **or**
 - 2.4 are a carrier or have been in contact with a person suffering from a relevant disease **or**
 - 2.5 are pregnant and satisfy certain conditions **or**
 - 2.6 are a hospital in-patient **or**
 - 2.7 receive regular treatment **or**
 - 2.8 are treated as having LCW until a determination about LCW has been made **or**
 - 2.9 may have entitlement to ESA(IR) while in education because they receive DLA

for the period before ESA(IR) becomes payable under the award².

Note 1: See DMG Chapter 41 for guidance on the basic conditions and the additional conditions for ESA(IR).

Note 2: See DMG Chapter 42 for guidance on being treated as having LCW.

Note 3: Claimants are terminally ill if they are suffering from a progressive disease and their death in consequence of that disease can reasonably be expected within six months³.

1 ESA Regs, reg 146(3)(a); 2 reg 146(3)(b); 3 reg 2(1)

Example 1

Tanya makes a claim for ESA. She is not entitled to ESA(Cont). She receives a LRP which exceeds her applicable amount. However, the DM is satisfied that Tanya would be entitled to ESA(IR) if she had entitlement to the support component or the WRAC. She is also treated as having LCW before the period ESA(IR) would become payable. The DM makes an advance award of ESA(IR).

Example 2

Paul makes a claim for ESA. He is not entitled to ESA(Cont). His partner Alison works part-time. The amount of Alison's earnings that are taken into account exceed Paul's applicable amount. The DM is not satisfied that Paul would be entitled to ESA(IR) if he had entitlement to the WRAC. However, the DM is satisfied that Paul would be entitled to ESA(IR) if he had entitlement to the support component. Paul is also treated as having LCW before the period ESA(IR) would become payable. The DM makes an advance award of ESA(IR).

Example 3

Samantha makes a claim for ESA on 1.12.08. She is not entitled to ESA(Cont). Her civil partner Ella works part-time. The amount of Ella's earnings that are taken into account is £135.00. They exceed Samantha's applicable amount of £94.95 and would still do so even if Samantha had entitlement to the support component of £29.00 or the WRAC of £24.00. The DM does not make an advance award.

Meaning of relevant day

53208 The relevant day is the day after the end of a period of 13 weeks beginning on the first day on which the claimant would be entitled to ESA(IR) if the claimant did not have income which exceeded the applicable amount¹.

1 ESA Regs, reg 146(2)

Example

Sergio makes a claim for ESA(IR) on 24.11.08. His wife Marta has part-time earnings which exceed his applicable amount until either the support component or the WRAC becomes payable. The DM decides that the relevant day for Sergio's advance award is 26.2.09.

Applicable amount when ESA(IR) becomes payable under an advance award

53209 When ESA(IR) becomes payable under an advance award, claimants do not have to serve another assessment phase as it will have been served already. Instead, they will enter the main phase when the award of ESA(IR) becomes payable. That is the date on which the claimant would have been entitled to main phase if income had not exceeded the applicable amount before the relevant day¹.

Note: See DMG Chapter 44 for full guidance on the assessment phase and the main phase.

1 ESA Regs, reg 146(4)

Changes of circumstances

53210 Except for income exceeding the applicable amount, claimants have to continue to satisfy the conditions of entitlement for ESA(IR) until the relevant day (see DMG 53208). If there is a change of circumstances which means that the claimant no longer satisfies one of those conditions of entitlement, the DM should supersede the advance award (see DMG Chapter 04 for full guidance).

Note: See also DMG Chapter 03 for guidance on revision.

53211 Also, if there is a change of circumstances which means that the claimant's income no longer exceeds the applicable amount, the DM should

1. supersede the advance award **and**
2. decide entitlement to ESA(IR) in the normal way (see DMG Chapter 04 for full guidance).

However, DMs should note that the assessment phase does not start again. Instead, claimants receive the assessment phase rate of ESA(IR) until the day before the relevant day.

Example

Cecilia makes a claim for ESA(IR) on 15.12.08. Her civil partner Alison has an income from a credit insurance policy which necessitates an advance award. The DM decides that the relevant day is 19.3.09. On 2.2.09 Cecilia reports that Alison received the final payment from the credit insurance policy on 31.1.09. Cecilia's entitlement to ESA(IR) at the assessment phase rate begins the day after the final payment from the credit insurance policy is taken into account under the attribution rules (see DMG Chapter 48) and ends on 18.03.09.

Waiting days

53212 Where a claimant has to serve waiting days, there is no entitlement to ESA for the first three days of a PLCW¹ (see DMG Chapter 41). When an advance award of ESA(IR) is made, the period before the relevant day (see DMG 53208) is a PLCW. Therefore, claimants do not have to serve waiting days when ESA(IR) becomes payable under the advance award.

1 WR Act 07, Sch 2, para 2; ESA Regs, reg 144(1)

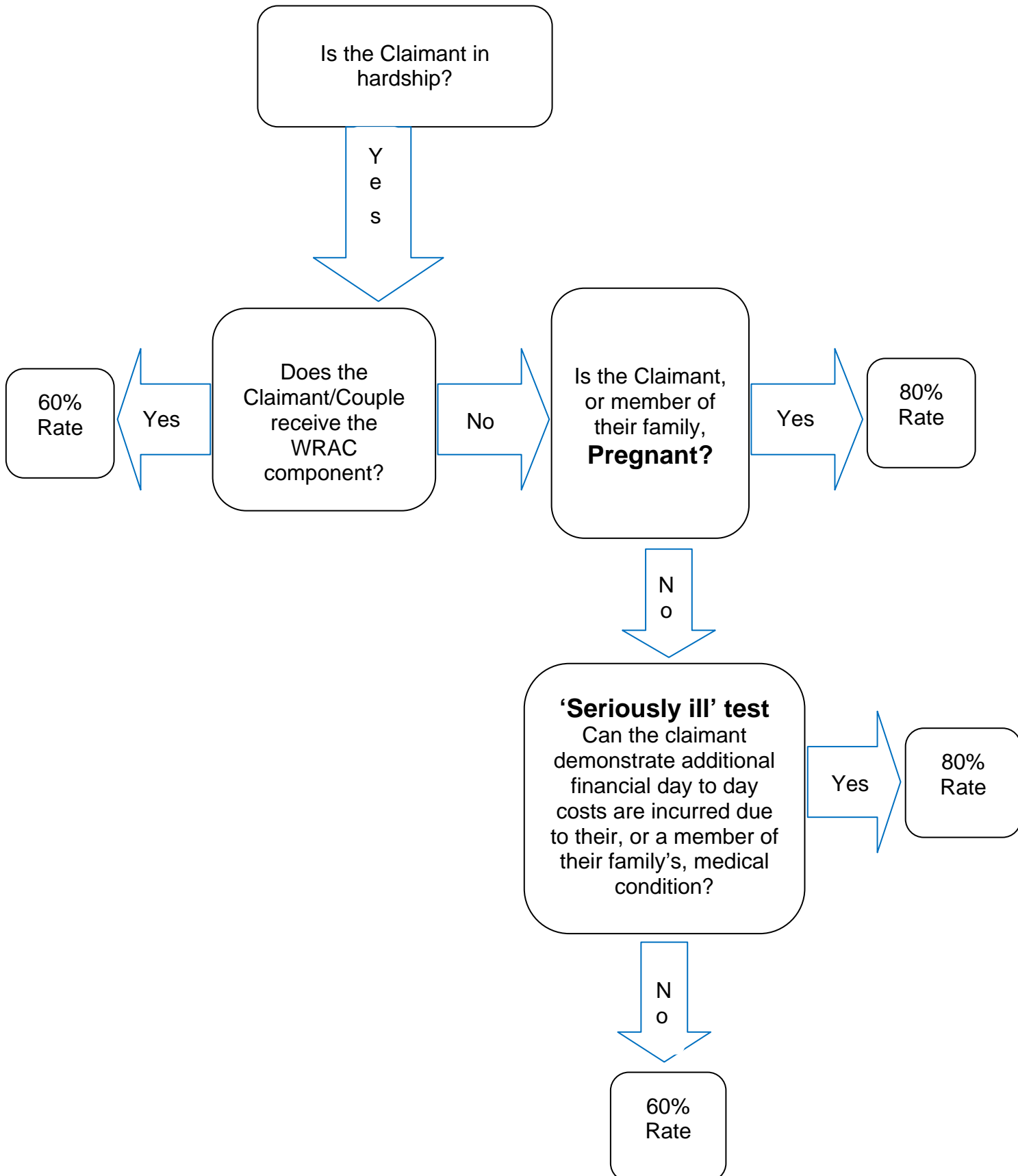
Linking

53213 DMG Chapter 41 gives guidance on linking rules. These rules also apply to advance awards of ESA(IR) under DMG 53204.

53214 – 53999

APPENDIX 1

DETERMINING THE AMOUNT OF ESA HARDSHIP PAYABLE



APPENDIX 2

COMMON EXAMPLES OF MEDICAL CONDITIONS THAT MAY INCUR ADDITIONAL COSTS

Some more common factors to be considered when deciding if additional day to day costs may be incurred due to an illness in addition to the illustrative examples at DMG 53139.

This list of medical conditions and examples is not exhaustive, the DM should consider all the facts and circumstances of each individual case when considering the 'serious illness' test to qualify for the 80% rate of hardship.

The test is whether the medical condition incurs additional costs (see DMG 53124).

Diet

Full health depends upon a regular and varied intake of food containing sufficient calories and essential nutrients. The financial costs of a special diet may well be more than those of an average healthy diet and incur additional costs, but some special foodstuffs are available on NHS prescription, for example, gluten-free flour and biscuits.

There are certain medical conditions that require keeping to a strict diet, most commonly

1. diabetes mellitus
2. low protein diet for renal failure
3. gluten free diet for coeliac disease
4. low fat diet for hyperlipidaemia
5. soft diet for conditions causing difficulty in swallowing
6. high fibre diet for diverticular disease
7. cow's milk free diet for lactose intolerance
8. weight reducing diets for obesity may be desirable but it may depend on whether they are being followed due to medical advice from a GP or NHS dietician because of a health condition such as high blood pressure, heart disease etc.

A telephone call to local NHS services may confirm whether or not certain free products are available in a particular geographical area.

Accommodation

1. The impact of loss of
 - shelter

- access to cooking facilities
- fuel
- clean water and
- sewage disposal

may need to be considered in terms of their effect on a medical condition. The test is whether day to day additional costs to secure those facilities are incurred.

2. Stable housing is needed for some medical treatments, for example:
 - suitable accommodation is needed for people using a kidney machine for dialysis at home which may incur extra electricity operating costs to run
 - allergic conditions such as asthma triggered by house dust require clean accommodation where dust control measures may be applied which may incur additional cleaning costs, extra products or special products which are more expensive
 - a refrigerator may be required even in winter months for the storage of certain drugs, e.g. insulin, and therefore maintenance of the electric supply would be essential.
3. A plentiful supply of clean fresh water is necessary for good health but a person may have a medical condition requiring higher than average fluid intake, for example, renal stones.
4. The need for adequate cooking facilities is associated with some of the dietary measures outlined above, for example, baking gluten free foods, which may incur additional fuel costs.
5. The usual method of payment for gas, electricity and water may need to be considered if there is a risk that heating, water or cooking facilities may be lost and it is essential for the claimant or a member of the claimant's family.

Heating

The time of year must be considered as lack of heating is only likely to cause health problems at certain times of year for most people. However those with rheumatic or mobility conditions are likely to suffer an increase in the severity and frequency of symptoms in cold or damp weather and may therefore incur additional costs for heating.

Exposure to extremes of temperature presents a risk to all people but certain medical conditions may deteriorate without an ability to control the ambient temperature, such as

1. angina pectoris
2. chronic respiratory conditions such as asthma, chronic bronchitis or emphysema
3. Raynaud's disease
4. peripheral vascular disease
5. rheumatoid arthritis

and so even in summer months may incur additional heating costs to keep an ambient temperature.

Laundry and personal hygiene

Some medical conditions require a level of hygiene greater than normal or may result in a substantially greater quantity of laundry and the use of incontinence aids or sanitary towels and reliance on a constant supply of hot water for extra showers.

DMs may have to consider the medical need for regular baths or showers and extra laundry that will incur additional costs for water, electric, laundry detergents, soap, incontinence pads etc.

Examples of conditions that may lead to extra washing or laundry are

1. incontinence
2. exudative skin conditions such as eczema or psoriasis which may need bath additives
3. stoma patients
4. bleeding haemorrhoids
5. discharging fistulae or sinuses.

Transport

Some medical conditions will produce long term problems in the ability to walk. People in hardship may need to travel to shop, attend appointments or for other essential reasons and may incur additional costs for taxis or extra journeys.

For example if a claimant is currently undergoing a systematic course of treatment needing attendance at a treatment centre twice or more times a week it is important to continue that treatment for their recovery and prevent a deterioration of their condition or indeed they may live remotely with no reliable or regular public transport and as such they may incur additional or more expensive transport costs (e.g. using taxis).

The following medical conditions produce a long term restriction in the ability to walk

1. cardio-respiratory disorders causing breathlessness
2. angina causing chest pain
3. neurological disorders affecting the gait
4. arthritis of a weight bearing joint causing pain and possibly a limping gait
5. spinal injuries or back, joint and muscle disorders where the use of the lower limbs in walking or climbing may be affected.

Any course of treatment arranged by a recognized health professional which requires attendance at a health establishment should be considered as essential to prevent a decline

in health. DMs should consider if a person with a chronic medical condition would still be able to attend for treatment if ESA hardship is not paid at the higher rate of 80% due to additional costs incurred.

However DMs should bear in mind that refunds of all, or part of, necessary travel costs to and from hospitals for NHS treatment are normally available to people getting ESA(IR).

See DMG 53131 for guidance regarding prescription charges.

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

Patients - applicable amounts

Effect of hospital admission on premiums

54091 See DMG Chapter 44 for guidance on the effect of hospital admission on premiums.

Housing costs

54092 If the claimant is treated as continuing to occupy a dwelling as the home, the DM should consider housing costs (see DMG Chapter 44).

54093 - 54096

Membership of the family

54097 The DM should consider the guidance in DMG Chapter 43 to decide whether a patient is still a member of a family if the patient is a

1. member of a couple **or**
2. member of a polygamous marriage.

If an ESA(IR) claimant is no longer a member of a family, the DM should revise or supersede benefit on the basis of the new circumstances.

Example

Rocco and Candy are married. Rocco is in receipt of ESA(IR) at the couple rate. Candy is knocked down by a car and is admitted to hospital. She is still in hospital after 52 weeks and there is no sign of recovery. The DM decides that Candy is likely to be substantially absent from Rocco for more than 52 weeks and consequently supersedes the award of ESA(IR) with the effect that Rocco receives the single claimant rate of ESA(IR).

54098 - 54105

ESA(Cont) cases – 52 week cases

54106 The personal rate of an ESA(Cont) claimant is not affected if the claimant is in hospital. However, no component is payable¹ after the claimant has been a patient for a continuous period of more than 52 weeks.

1 ESA Regs, reg 67(2) & (3) & 69 & Sch 5 para 13

ESA(IR) cases - detention under prescribed mental health legislation

- 54107 The DM should establish the legislation used to admit a claimant to hospital. A person admitted
1. under prescribed mental health legislation¹ is a special case and a patient for ESA purposes that has an applicable amount of nil **or**
 2. under prescribed mental health legislation² other than that in **1.** above is a patient for ESA purposes and has entitlement to their full applicable amount.

1 ESA Regs, Sch 5, para 12; 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

ESA(IR) cases - 52 weeks cases

- 54108 Where a single claimant has been a patient for a continuous period of more than 52 weeks then the applicable amount should include only the normal personal allowance for the claimant plus, if appropriate, any TA¹ plus any housing costs. No premiums or components will be payable².

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 2: 2 ESA Regs, reg 69(1) & Sch 5, para 13

- 54109 Where both members of a couple have been a patient for a continuous period of 52 weeks then the applicable amount should include only the normal couple allowance plus any housing costs. No premiums or components will be payable¹.

1 ESA Regs, reg 69(1) & Sch 5, para 13

54110 - 54155