

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 4

Amendment 54 – February 2018

1. This letter provides details on Amendment 54; 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

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3. Amendment 54 affects the list of abbreviations, chapter 20 and 21. The changes;
 - incorporate memos 12/16, 22/17, 24/17 & misc amdts in chapter 20
 - Chapter 21 – 21375 amended reference to Social Care Wales
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove abbreviations

Abbreviations (5 pages)

Chapter 20

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Conts 20931 – Appndx 8 (1 page)
20081 – 20109 (2 pages)
20120 – 20199 (7 pages)
20464 – 20469 (1 page)
20477 – 20555 (3 pages)
20961 – 20984 (3 pages)

Chapter 21

21372 – 21376 (1 page)

Insert abbreviations

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Conts 20001 – 20565 (3 pages)
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Chapter 21

21372 – 21376 (1 page)

Abbreviations

AA	Attendance Allowance paid under s 64 of the SS (CB) Act 92
"AA"	Attendance Allowance as defined in IS (Gen) Regs, reg 2(1) or JSA, reg 1(3)
ADC	Actual Date of Confinement
ADF	Adviser Discretion Fund
ADI	Adult Dependency Increase
AFIP	Armed Forces Independence Payment
AIP	Assessed Income Period
AMG	Appropriate Minimum Guarantee
AP	Additional Pension
APP	Adoption Pay Period
Art	Article
ASE	Actively seeking employment
AT	Appeal Tribunal
AWT	All Work Test
BA	Bereavement Allowance
BACS	Bankers Automated Cleaning System
BB	Bereavement Benefits
BL	Board and Lodging
BP	Basic Pension/Bereavement Premium
BPT	Bereavement Payment
BSP	Bereavement support payments
BTEC	Business and Technology Education Council
BWC	Benefit Week Commencing
BWE	Benefit Week Ending
CA	Carer's Allowance
CAA	Constant Attendance Allowance
Cat	Category
CB	Contributory Benefit
CC	Community Charge
CDI	Child Dependency Increase
CECSC	Council of European Social Charter
CHB	Child Benefit
CHB(LP)	Child Benefit for Lone Parents
CJEU	Court of Justice of the European Union
CMB	Child Maintenance Bonus
CMP	Child Maintenance Premium
CP	Carer Premium
CPen	Civil Penalty
CSM	Child Support Maintenance

CT	Council Tax
CTA	Common Travel Area
CTB	Council Tax Benefit
CTC	Child Tax Credit
CTF	Community Task Force
CTM	Contribution to Maintenance
CWP	Cold Weather Payment
CwP	Community work Placements
DCP	Disabled Child Premium
DCT	Direct Credit Transfer
DH	Department of Health
Dis G	Disablement Gratuity
Dis P	Disablement Pension
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMG	Decision Makers Guide
DO	District Office
DP	Disability premium
DPTC	Disabled Persons Tax Credit
DWA	Disability Working Allowance
DWP	Department for Work and Pensions
EC	European Community
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECSMA	European Convention on Social & Medical Assistance
EctHR	European Court of Human Rights
EDP	Enhanced Disability Premium
EEA	European Economic Area
EFC	Earnings factor credits
EFTA	European Free Trade Association
ELDS	Eligible loan deduction scheme
Emp O	Employment Officer
EO	Employment Option of New Deal for young people
EO(E)	Employed Employment Option
EO(S/E)	Self-Employed Employment Option of the New Deal for young people
EPP	Enhanced Pensioner Premium
ERC	Employment Rehabilitation Centre

ERA	Employment Retention and Advancement
ESA	Employment and Support Allowance
ESA(Cont)	Employment and Support Allowance (contributory allowance)
ESA(IR)	Employment and Support Allowance (income-related allowance)
ESA(Y)	Employment and Support Allowance for those with limited capability for work in youth
ESDA	Exceptionally Severe Disablement Allowance
ET	Employment Training
ETFO	Environment Task Force Option of New Deal for young people
EU	European Union
EWG	Expected Week of Confinement
EZ	Employment Zone
FamC	Family Credit
FAS	Financial Assistance Scheme
FND	Flexible New Deal
FP	Family Premium
FP(LP)	Family Premium (Lone Parent Rate)
FRIY	Flat Rate Introduction Year
FRM	Flat Rate Maintenance
F/T	Full-Time
FTE	Full-Time Education
FTET	Full-Time Education and Training Option
FtT	First-tier Tribunal
GA	Guardian's Allowance
GB	Great Britain
GC	Guarantee Credit
GCE	General Certificate of Education
GCSE	General Certificate of Secondary Education
GMP	Guaranteed Minimum Pension
GNVQ	General National Vocational Qualification
GP	General Practitioner
GPoW	Genuine Prospect of Work
GRB	Graduated Retirement Benefit
GRC	Gender Recognition Certificate
GRP	Gender Recognition Panel
HA	Health Authority
HB	Housing Benefit
HBS	Housing Benefit Supplement
HCP	Health care professional
Hep C	Hepatitis C

HIV	Human Immunodeficiency Virus
HM	Her Majesty
HMF	Her Majesty's Forces
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HPP	Higher Pensioner Premium
HRP	Home Responsibilities Protection
IA	Industrial Accident
IAP	Intensive Activity Period for those aged 25 and over and under 50
IAP for 50+	Intensive Activity Period for those aged 50 or over
IB	Incapacity Benefit
IBLT	Long-term Incapacity Benefit
IBS	Infected Blood Scheme
IBST	Short-term Incapacity Benefit
IBST(H)	Higher rate of short-term Incapacity Benefit
IBST(L)	Lower rate of short-term Incapacity Benefit
IB(Y)	Incapacity Benefit for those incapacitated in youth
IC	Intermittent Custody
IDB	Industrial Death Benefit
IFM	Immediate Family Member
IfW	Incapacity for Work
II	Industrial Injury(ies)
IIDB	Industrial Injuries Disablement Benefit
Incs	Increments (of Retirement Pension)
IND	Immigration and Nationality Department
IPC	International Pension Centre
IPPIW	Immediate Past Period of Incapacity for Work
IS	Income Support
IT	Industrial Tribunal (now Employment Tribunal)
IVA	Invalidity Allowance
IVB	Invalidity Benefit
IVP	Invalidity Pension
IVS	Invalid Vehicle Scheme
JSA	Jobseeker's Allowance
JSA 18-21 Pilot Scheme	Jobseeker's Allowance 18-21 Work Skills Pilot Scheme
JSA(Cont)	Contribution based JSA
JSAg	Jobseeker's Agreement
JSA(IB)	Income based JSA
JSD	Jobseeker's Direction
JSP	Jobseeking Period

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

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

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

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

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

Chapter 20 - JSA and IS - conditions of entitlement

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People entitled to Income Support

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

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

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

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

1 R(IS) 10/05

Lone parents

20082 Lone parent means¹ a person who

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

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

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

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

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

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

Note: See Appendix 8 for savings and transitional provisions for certain lone parents following a full-time course and special commencement provisions for existing IS claimants.

1 IS (Gen) Regs, Sch 1B, para 1

20084 - 20101

Definition of a child

- 20102 A child means a person under the age of 16¹. A person will no longer be entitled to IS as a lone parent once their child, or youngest child, reaches the age set out in DMG 20083.

1 SS CB Act 92, s 137(1)

Treated as responsible for a child

- 20103 To be a lone parent a person must be treated as responsible for a child (see DMG Chapter 22).

Lone foster parents

- 20104 Single people or lone parents can get IS if they have a child placed with them¹
1. by a LA or voluntary organization² or
 2. in Scotland only, by any order or warrant³.

This only applies until the child reaches the age of 16.

*1 IS (Gen) Regs, Sch 1B, para 2; 2 Children Act 89; Children (Scotland) Act 95;
3 Children's Hearings (Scotland) Act 2011*

Meaning of placed

- 20105 For the purpose of DMG 20104, placed means the claimant must actually have a child living with them or accommodated by them for a continuous period of more than 24 hours. The DM should ensure that they make sufficient enquiries to satisfy themselves that a child is placed within the meaning of the legislation¹.

1 Children Act 89, ss 20, 22, 22A & 22C

Example 1

Person L is single and is a foster carer on call with the local authority to accept placement of new-born babies at short notice. These new-borns are also likely to be removed from the Person L at short notice due to their popularity for adoption. On 9 March, Person L has a two-week old baby placed with her. That child stays with her until 11 March and is then removed. She has no other children placed with her. For that week as she had a child placed with her for more than 24 hours she satisfies

the condition of having a child placed with her and therefore as she is in this category for at least one day in her benefit week, she will be entitled to IS for that week.

Person L then has no further placements for 3 weeks so cannot satisfy the condition of having a child placed with her and as she does not satisfy any of the other prescribed categories, her IS award is terminated.

Example 2

Person M is a lone parent and local authority foster carer. Her own child is now 12 years old. She takes in a 6 year old child for respite day care for 10 hours per day for 2 days per week. She makes a claim for IS, however as the placement is not for a continuous period of more than 24 hours, she does not satisfy the condition of having a child placed with her. Her claim to IS is disallowed.

Residence orders

- 20106 A residence order places parental responsibility on the person to whom it is made and puts them on a similar footing to a parent. A residence allowance may be paid at the LAs discretion to avoid hardship or to assist if the child has special needs, however payment of such an allowance does not mean that the child is looked after by the LA. So in this situation, the person is no longer fostering the child and so could not satisfy the criteria in DMG 20104 above.

Example

Jennifer was fostering her 2 grandchildren aged 9 and 11 and was receiving a fostering allowance. She claimed IS and was able to satisfy the criteria of being a lone foster parent and so was entitled to IS. Six months later, Jennifer is given a residence order for the 2 children and also awarded a residence allowance as the elder child has learning difficulties and requires extra attention. She is no longer fostering the children so she cannot satisfy the conditions for IS as a lone foster parent. As the children are over the relevant age for her to qualify for IS as a lone parent and none of the other prescribed categories are applicable, Jennifer is advised that she must claim either JSA or if she is sick, ESA.

Single person looking after children prior to adoption

- 20107 Where the claimant is a single claimant or a lone parent they can get IS where they have a child placed with them prior to adoption by an adoption agency¹.

1 IS (Gen) Regs, Sch 1B, para 2A; Adoption & Children Act 2002; Adoption and Children (Scotland) Act 2007

20108 - 20109

provided to children. Care involves assistance or supervision directly arising from the disabled person's needs. It includes, but need not be confined to, support for bodily functions. It can also include washing, shopping for food, cooking and other domestic tasks. Activities carried out for the disabled person in the margins of personal assistance, such as shopping for them, can also be taken into account. Travel to and from the disabled person's home does not count as it does not involve providing direct assistance¹. Likewise being on standby at the end of a phone is also too remote an activity.

1 R(IS) 8/02

Awaiting outcome of claim to AA, DLA, AFIP or PIP

20120 Where DMG 20116 2.2 applies the person can get IS until the earlier of¹

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

Note: Where the person is already in receipt of DLA and applies for another component, this is not a new claim so they could not qualify again under this provision.

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

20121 The purpose of DMG 20120 is to help carers where there is a delay in deciding a claim for "AA", DLA, AFIP or PIP.

Recently ceased to care or no longer awaiting outcome of claim to AA, DLA, AFIP or PIP

20122 People who have recently ceased to care or whose claim to AA, DLA, AFIP or PIP has been decided, can also get IS where

1. DMG 20116 applied or
2. they would have applied if a claim to IS had been made

but only for a period of eight weeks from the date DMG 20116 ceased to apply¹.

1 IS (Gen) Regs, Sch 1B, para 5 & 6

20123 Circumstances in which DMG 20122 could apply are when for example a different carer takes over or the person being cared for moves elsewhere or dies.

20124 Where a person had satisfied **any** of the criteria in DMG 20116 or DMG 20120, they can continue to be entitled to IS for a period of 8 weeks from the date those criteria ceased to apply to that person¹.

1 IS (Gen) Regs, Sch 1B, para 5

20125 - 20133

People incapable of work, treated as incapable or entitled to SSP

20134 People can get IS if they are

1. incapable of work¹ (revoked from 30.12.09 but see Appendix 5 for savings provisions) or
2. treated as incapable of work² (revoked from 30.12.09 but see Appendix 5 for savings provisions) or
3. treated as capable of work³ because they
 - 3.1 became incapable of work because of misconduct or
 - 3.2 fail without good cause to submit to treatment or
 - 3.3 fail without good cause to observe any prescribed rules of behaviour or
4. entitled to SSP⁴.

1 IS (Gen) Regs, Sch 1B, para 7(a); SS CB Act 92, Part XXIIA; 2 IS (Gen) Regs, Sch 1B, para 7(b); SS CB Act 92, s 171D; 3 IS (Gen) Regs, Sch 1B, para 7(c); SS CB Act 92, s 171E(1); SS (IW) (Gen) Regs, reg 18(1); 4 IS (Gen) Regs, Sch 1B, para 7(d)

Note: From 27.10.08, all new claims to IS on grounds of being incapable for work will be treated as a claim for ESA unless the linking rules apply. See DMG 45211 - 45213.

Incapacity tests

20135 There are two incapacity tests: the OOT and the PCA. A person who satisfies the relevant incapacity test is incapable of work. See DMG Chapter 13 for detailed guidance.

Treated as incapable

20136 People may be treated as incapable of work where¹

1. they are in hospital
2. they have a particular medical condition
3. they are terminally ill
4. they are blind
5. they are in receipt of the higher rate care component of DLA
6. they are severely mentally ill
7. they are paraplegic.

1 SS (IW) (Gen) Regs, reg 10

- 20137 People may also be treated as incapable where the PCA applies but it is not yet assessed where they
1. continue to send in medical evidence (see DMG Chapter 13) **and**
 2. have not been found capable of work or treated as capable of work within the preceding six months because they failed to provide information or evidence or failed without good cause to attend a medical examination unless
 - 2.1 it is a different disease or disablement **or**
 - 2.2 it is the same disease or disablement but it has significantly worsened **or**
 - 2.3 in a case where they were found capable of work because they did not provide the information requested, they have now provided it¹.

1 SS (IW) (Gen) Regs, reg 28

Treated as capable

- 20138 Except where DMG 20134 3. applies, people treated as capable of work are not entitled to IS unless they can qualify on other grounds. People will be treated as capable if they
1. fail to attend or agree to a medical examination without good cause¹ **or**
 2. fail without good cause to return the questionnaire within the permitted time² **or**
 3. do work that is not permitted in the regulations³.

Note: In relation to work that is not permitted, if the person states that they are a volunteer the ordinary meaning of the phrase “engaged in voluntary work” should be applied. In one sense all work is voluntary because a person could walk away from a job at any time on giving notice. The fact that an employer cannot afford to pay a proper wage or declares the work to be voluntary does not mean that it is. However, a person could be a volunteer even though the arrangement was a formal one and the voluntary work they were involved in was long-standing and taxing.

1 SS (IW) (Gen) Regs, reg 8(2); 2 reg 7; 3 reg 16

Certain people in receipt of the daily living component of PIP

- 20139 A person will satisfy entitlement conditions for IS where
1. they are in receipt of the daily living component of PIP **and**
 2. immediately before receiving that benefit the person was entitled to and in receipt of IS because they were treated as incapable of work by virtue of

being in receipt of the highest rate care component of DLA¹.

1 IS (Gen) Regs, Sch 1B, para 7A; SS (IfW) Regs, reg 10(2)(a)(i)

20140 - 20151

Disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

- 20152 A disabled worker who satisfies DMG 20496 is treated as **not** engaged in remunerative work and can get IS¹.

1 IS (Gen) Regs, Sch 1B, para 8

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

- 20153 People in employment who satisfy DMG 20504 - 20505 are treated as **not** engaged in remunerative work and can get IS¹.

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

People entitled to Mortgage Interest Run-on

- 20154 People in employment who satisfy DMG 20530 - 20532 are treated as **not** engaged in remunerative work and can get IS¹.

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

Disabled students (revoked from 30.12.09 but see Appendix 5 for savings provisions)

- 20155 F/T students can get IS if they¹
1. qualify for the DP or SDP under DMG Chapter 23 or
 2. have been incapable of work as in DMG 20134 for a continuous period of not less than 196 days.

1 IS (Gen) Regs, Sch 1B, para 10(a) & (b)

- 20156 Two or more separate periods of incapacity, separated by a break of not more than 56 days, are treated as one continuous period¹.

1 IS (Gen) Regs, Sch 1B, para 10(b)

Old student cases

- 20157 Students can also get IS if¹
1. immediately before 1.9.90 they were in receipt of IS under the former definition of disabled student or

2. on or after that date they make a claim for IS and at any time during the previous 18 months they were in receipt of IS because they
 - 2.1 satisfied the former definition of disabled student or
 - 2.2 were severely handicapped and in relevant education.

But this does not apply where IS has ceased for a continuous period of 18 months or more.

1 IS (Gen) Regs, Sch 1B, para 11

Hearing impaired students (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20158 F/T students can get IS if they receive¹

1. a supplementary requirement to their student support under relevant legislation² or
2. an allowance or bursary which includes an amount for expenses incurred under relevant legislation³ or
3. a payment under relevant legislation⁴ or
4. a grant under relevant legislation⁵

because of their impaired hearing.

1 IS (Gen) Regs, Sch 1B, para 12; 2 The Education (Mandatory Awards) Regs 99, Sch 2, para 9; Students Awards Regs, (Northern Ireland) 1999, Sch 6, para 9; 3 Students' Allowances (Scotland) Regs 99, reg 4(1)(d); Education Authority Bursaries (Scotland) Regs 95, reg 4(1)(d); 4 Education Act 62, s 2; Education & Libraries (Northern Ireland) Order 1986, Art 50(3); 5 Education (Student Support) Regs 2000, reg 13; Education (Student Support) Regs, (Northern Ireland) 2000, reg 13

Visually impaired people (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20159 People who are visually impaired can get IS if they are¹

1. registered as blind (not as partially-sighted) in a register compiled by the LA under relevant legislation² or
2. in Scotland, registered as blind (not as partially-sighted) in a register maintained by a regional or islands council.

People continue to be treated as so registered for a period of 28 weeks from the date registration ends.

1 IS (Gen) Regs, Sch 1B, para 13; 2 National Assistance Act 48, s 29

Pregnant women

20160 A woman can get IS if¹

1. she is incapable of work by reason of pregnancy or

2. she is or has been pregnant, but only for the period
 - 2.1 beginning eleven weeks before the EWC **and**
 - 2.2 ending 15 weeks after the date pregnancy ended.

1 IS (Gen) Regs, Sch 1B, para 14

Incapable of work by reason of pregnancy

- 20161 A pregnant woman is incapable of work if her pregnancy has given rise to a medical condition which, on the evidence, has made her incapable of work. Pregnancy itself is not an illness. If a woman claims IS and says she is incapable of work because of her pregnancy the IS DM should ask for medical evidence, usually a medical certificate. This can be obtained from the DM(IB) if the claimant has claimed IB.

Example 1

Lynn, who is carrying twins, miscarries one of them five months into the pregnancy. Her doctor issues a sick note advising her to refrain from work due to pregnancy, until her baby is born. The IS DM accepts that, on the evidence, the woman is incapable of work by reason of pregnancy and awards IS.

Example 2

Julia claims IS saying that she cannot go to work as she is pregnant and suffering from morning sickness. The IS DM asks for a medical certificate. Julia says the doctor has not issued her with a sick note but has advised her to drink flat coke and eat dry toast. The IS DM decides that Julia is not incapable of work by reason of pregnancy.

Expected week of confinement

- 20162 The EWC¹ is a period of seven days beginning with midnight between Saturday and Sunday.

1 SS CB Act 92, s 171(1)

Example

The EWC is week beginning 20.5.07. Eleven weeks before that is week beginning 4.3.07. The baby is born on 24.5.07. The woman can claim IS between 4.3.07 and 6.9.07.

Parental leave

- 20163 A person can get IS¹ when they are taking parental leave² if they are
 1. taking care of a child who is a member of their household **and**
 2. entitled to take time off for this purpose **and**
 3. not entitled to payment of any kind from their employer **and**

4. entitled to

4.1 WTC or

4.2 CTC payable at a rate higher than the family element³ which is subject to calculations in prescribed legislation⁴ or

4.3 HB or

4.4 CTB

on the day before that leave begins.

*1 Maternity and Parental Leave etc. Regs, Part III; 2 IS (Gen) Regs, Sch 1B, para 14A; 3 para 14A(1)(c);
4 Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002*

Paternity leave

20164 A person can get IS if they are entitled to and taking paternity leave¹ and are²

1. not entitled to ordinary statutory paternity pay³ or a payment of any kind from their employer in respect of that leave for the period to which the IS claim relates **and/or**

2. entitled to

2.1 WTC or

2.2 CTC payable at a rate higher than the family element⁴ which is subject to calculations in prescribed legislation⁵ or

2.3 HB or

2.4 CTB

on the day before that leave begins.

*1 Employment Rights Act 1996, s 80A & 80B; 2 IS (Gen) Regs, Sch 1B, para 14B; 3 SS CB Act 92, Part 12ZA;
4 IS (Gen) Regs, Sch 1B, para 14B(2)(b); 5 Tax Credits (Income Thresholds and Determination of Rates)
Regulations 2002*

Example 1

Joe is entitled to and takes paternity leave from 9 April. His employer pays him half his weekly wage in respect of the paternity leave period. Joe was in receipt of WTC up to and including 8 April. Joe is entitled to IS for the period of his paternity leave.

Example 2

Tony is entitled to and takes paternity leave from 9 April and claims IS from that date. As a favour to his employer, he delivers some flipchart paper to one of his customers on 14 April. His employer pays him his travelling costs and travel time.

Tony can still get IS. The payment from his employer is not in respect of the paternity leave.

Certain people in relevant education

20165 A qualifying young person in relevant education (see DMG 20558 et seq) can get IS if¹ they are

1. a parent or
2. a disabled person (revoked from 30.12.09 but see Appendix 5 or savings provisions) or
3. a person with limited leave to enter or remain or
4. an orphan and there is no one acting in place of the parents or
5. of necessity living away from the parents and anyone acting in their place because.
 - 5.1 they are estranged from them or
 - 5.2 they are in physical or moral danger or
 - 5.3 there is a serious risk to their physical or mental health or
6. no longer living in accommodation provided by a LA and are of necessity living away from the parents and any person acting in their place or
7. living away from their parents and anyone acting in their place and
 - 7.1 the parents (and anyone acting in their place) are unable to support them financially because they are
 - 7.1.a chronically sick or mentally or physically disabled or
 - 7.1.b detained in custody or imprisoned or
 - 7.1.c prohibited from entering or re-entering GB
8. a refugee learning English².

Note: A person in relevant education shall be treated as satisfying the criteria for being a qualifying young person where they are in one of the categories above³. IS can therefore be paid to the end of the CHB extension period.

See DMG 20630 et seq for further guidance.

1 IS (Gen) Regs, Sch 1B, para 15 & reg 13(2)(a)-(e); 2 reg 13(2)(h); 3 reg 13(1)-(2A)

20166 DMG 20556 gives guidance on what relevant education is and when people who have finished relevant education can be treated as still receiving it.

Second chance learning

20167 This is for young people who remain in education beyond the age of 20/21¹. To satisfy this category

1. the person has enrolled on or been accepted for or is undertaking a course of full-time non-advanced education² **and**
2. the person³
 - 2.1 is under age 21 **or**
 - 2.2 is 21 and became that age while they were undertaking a course of full-time non-advanced education **and**
3. the person⁴
 - 3.1 has no parent or any person acting in place of a parent **or**
 - 3.2 has to live away from their parent and any person acting in place of a parent because
 - 3.2.a they are estranged from their parents and any person acting in place of a parent **or**
 - 3.2.b they are in physical or moral danger **or**
 - 3.2.c there is a serious risk to their physical or mental health **or**
 - 3.3 is living away from their parents and any person acting in place of their parents where their parents or any person acting in place of their parents are unable financially to support them and are
 - 3.3.a chronically sick or mentally or physically disabled **or**
 - 3.3.b detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court **or**
 - 3.3.c prohibited from entering or re-entering GB.

1 IS (Gen) Regs, Sch 1B, para 15A; 2 Sch 1B, para 15A(2); 3 Sch 1B, para 15A(3); 4 Sch 1B, para 15A(4)

20168 For the purposes of second chance learning, the meaning of “course of full-time non-advanced education”¹ means a course of full-time education which is not advanced² and which is not provided as a result of the persons employment or any office held and which is provided

1. at a school or college **or**
2. elsewhere but is approved by the Secretary of State as being such a course.

1 IS (Gen) Regs, Sch 1B, para 15A(6); 2 reg 61(1)

20169 - 20173

Refugee learning English

20174 People can receive IS for up to nine months if¹

1. they are a refugee (see DMG 070800) **and**
2. they are attending a course for more than 15 hours a week in order to

- 2.1 learn English and
- 2.2 subsequently find work and
3. they had been in GB for not more than twelve months on the day the course started.

1 IS (Gen) Regs, Sch 1B, para 18

People who claim asylum on or after 3.4.00

20175 People who

1. claimed asylum on or after 3.4.00 and
2. were granted refugee status on or before 14.6.07

could receive IS for a period when they were waiting for their asylum claim to be determined¹. From 14.6.07 only those people whose refugee status has been determined can receive IS².

1 IS (Gen) Regs, reg 21ZB; Sch 1B, para 18A; 2 HB v SSWP [2015] EWCA Civ 141; [2015] AACR 17

People required to attend court

20176 People can get IS whilst they are required to attend court or tribunal as a¹

1. justice of the peace or
2. party to any proceedings or
3. witness or
4. juror.

1 IS (Gen) Regs, Sch 1B, para 19

People affected by a trade dispute

20177 People can get IS if they are¹

1. affected by a TD or
2. returning to work for the first 15 days following a TD.

See DMG Chapter 32 for further guidance on TDs.

1 IS (Gen) Regs, Sch 1B, para 20

Certain persons subject to immigration control

20178 Certain PSICs can get IS¹. (See DMG 24509).

1 IS (Gen) Regs, Sch 1B, para 21

People in custody

- 20179 People in custody can get IS, but only to help with housing costs, where they are in custody pending trial or sentencing¹. This does not apply to prisoners serving a custodial sentence.

1 IS (Gen) Regs, Sch 1B, para 22

- 20180 People on a

1. home detention curfew or
2. court-ordered curfew or
3. restriction of liberty order or
4. mandatory probation service programme

are not detained in custody.

Member of a couple looking after children whilst partner temporarily abroad

- 20181 People can get IS where they are¹

1. a member of a couple and the other member is temporarily absent from the UK and
2. treated as responsible for a child who is a member of the household.

1 IS Gen Regs, Sch 1B, para 23

People appealing against a decision because of capability for work

- 20182 People can get IS if

1. they are found to be not incapable of work
 - 1.1 under the OOT and their GP continues to provide evidence of incapacity for work¹ or
 - 1.2 under the PCA² and
2. they have made and are pursuing an appeal against the decision that they are not incapable of work.

IS can be paid until the appeal is determined, which includes appeals to the UT where the claimant has been unsuccessful at the tribunal. It does not matter if the claim to IS was made after the incapacity determination. See DMG Chapter 24 for guidance on the amount payable.

1 IS Gen Regs, Sch 1B, para 24; 2 Sch 1B, para 25

- 20183

20184 When dealing with such cases DMs should consider the following

1. a person who falls within a prescribed category for any day in a benefit week shall fall within that category for the whole of that week¹
2. backdating of a new IS claim can be considered where the claimant claims IS as soon as is practical after being notified of the decision that their entitlement to IB has ceased²
3. where an existing IS award can be revised³ the date of the revision shall be the date that the IB DM terminated the award of IB.

1 IS (Gen) Regs, reg 4ZA(4); 2 SS (C&P) Regs, reg 19(6) & (7)(d); 3 SS CS (D&A) Regs, reg 3(7B) & (7C)

20185

20186 IS cannot be paid under DMG 20182 where people are treated as capable of work, for example where they have failed to return the incapacity questionnaire. Where a claimant in these circumstances appeals against an FtT decision, IS cannot be paid until the appeal is determined by the UT.

20187 For the purposes of DMG 20182 the continued medical evidence of incapacity should be dated later than the date of the decision based upon the incapacity determination which the claimant has appealed against.

20188 See DMG Chapter 3 for guidance on the revision of IS decisions when incapacity decisions are appealed.

Young person in training

20189 A person, who is not a qualifying young person or a child¹ can get IS where they are attending a course of youth training provided by, or through²

1. in England, Young People's Learning Agency for England, the Chief Executive of Skills Funding or
2. in Wales, a National Council for education and training or
3. in Scotland, a local enterprise company.

People under 18 are eligible for WBLfYP and 'Skillseekers' courses. 18 to 24 year olds may also be eligible. Training courses may be known by other names.

1 SS CB Act 92, s 142; 2 IS (Gen) Regs, Sch 1B, para 28

20190 - 20199

People treated as not in remunerative work

Introduction

- 20464 In certain circumstances, a person who is in remunerative work should be treated as not being in remunerative work. These are where the person is
1. engaged in childminding in the childminder's home¹ (IS only) or
 2. engaged by a charity or voluntary organization or is a volunteer² or
 3. engaged on a training scheme³ or
 4. receiving assistance under the S/E route⁴ or
 5. engaged in specific occupations⁵ or
 6. performing duties as a councillor⁶ or
 7. engaged as a foster parent or in providing respite care⁷ or
 8. engaged in caring for a former child under continuing care arrangements⁸ or
 9. engaged in an activity which attracts a sports award⁹ or
 10. engaged on Work Experience employment programme (JSA only)¹⁰ or
 11. participating in the MWA Scheme (JSA only)¹¹ or
 12. participating in SAPOE (JSA only)¹².

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

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

- 20465 In addition, there are other circumstances where a person should be treated as not being in remunerative work, **regardless** of the type of work undertaken. These are where the person is
1. disabled¹ (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) or
 2. affected by a TD² or
 3. caring for another person³ (IS only) or
 4. living in a care home, an Abbeyfield Home or an independent hospital⁴ (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) or
 5. in receipt of IS by way of MIRO⁵.

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

Example

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

Childminders

- 20466 For IS purposes, people who are childminders are treated as not being in remunerative work as long as the childminding is done in their home¹. If the childminding is done in the employer's home the hours worked will count towards the remunerative work exclusion.

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

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

Charity or voluntary workers and volunteers

- 20467 People are treated as not being in remunerative work where they are engaged by a charity or voluntary organization or are volunteers **and**

1. the only payment
 - 1.1 received **or**
 - 1.2 due to be paid

is for expenses incurred **and**

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

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

Meaning of voluntary organization

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

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

Meaning of volunteer

- 20469 A volunteer is a person

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

20477 In Scotland a councillor is a member of

1. a regional council or
2. an islands council or
3. a district council¹.

1 SS CB Act 92, s 171F(2)(b)

Foster parents, people providing respite care and continuing care

Foster parents

20478 People who receive payments from

1. a LA or
2. a voluntary organization or
3. in Scotland, a care authority

for fostering a child or young person are treated as not being in remunerative work¹.

Note: See DMG 28380 for guidance on the income disregard of these payments.

1 JSA Regs, reg 53(f) & Sch 7, para 27; IS (Gen) Regs, reg 6(1)(k) & Sch 9, para 26

People providing respite care

20479 People who provide respite care are treated as not being in remunerative work¹ if

1. the person requiring care is being cared for in the claimant's home **and**
2. the person requiring care is not normally a member of the claimant's household **and**
3. the only payments received are specified payments² from a
 - 3.1 HA or
 - 3.2 LA or
 - 3.3 voluntary organization or
 - 3.4 a primary care trust or
 - 3.5 the person concerned under specified legislation³.

Note: See DMG 28384 - 28385 for guidance on the income disregard of these payments.

1 JSA Regs, reg 53(f); IS (Gen) Regs, reg 6(1)(k); 2 JSA Regs, Sch 7, para 28; IS (Gen) Regs, Sch 9, para 27;

3 NA Act, s 26(3A)

People providing continuing care

- 20480 LAs in Scotland have a duty to provide on-going care and assistance to eligible people who have ceased to be looked after by the LA. This is known as continuing care¹. A claimant who is engaged in caring for a former child under the continuing care arrangements is treated as not being in remunerative work for IS and JSA purposes².

1 Children (Scotland) Act 1995, s 26A; 2 IS (Gen) Regs, reg 6(1); JSA Regs, reg 53

Sports awards

- 20481 People are treated as not being in remunerative work¹ if
1. they are engaged in an activity for which a sports award has been or is to be made² and
 2. no other payment is made or expected to be made to them in respect of the activity³.

1 JSA Regs, reg 53(i); IS (Gen) Regs, reg 6(1)(m); 2 JSA Regs, reg 53(i)(i); IS (Gen) Regs, reg 6(1)(m)(i)

3 JSA Regs, reg 53(i)(ii); IS (Gen) Regs, reg 6(1)(m)(ii)

Meaning of sports award

- 20482 A sports award¹ is an award made by one of the Sports Councils named in National Lottery law² and out of sums allocated under that law.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 National Lottery etc. Act 1993, s 23(2)

Work experience

- 20483 Work experience is an opportunity for JSA claimants aged 18 and over to gain experience in the workplace for between two and eight weeks¹.

1 E & T Act 73, s 2

Mandatory work activity scheme

- 20484 The MWA Scheme is designed to provide work or work-related activity for up to 30 hours per week over a period of four consecutive weeks to improve a claimant's prospects of employment¹. To be selected for participation the claimant must be at least 18 years of age and they are required to satisfy jobseeking conditions².

1 JSA (MWA) Regs 2011, reg 2(1); 2 reg 3

20485 - 20495

Disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

- 20496 People are treated as not being in remunerative work where they are mentally or physically disabled¹ and as a result of that disability
1. earn 75 per cent or less of what a person without that disability working the same number of hours would reasonably be expected to earn² or
 2. work 75 per cent or less of the hours that a person without that disability would reasonably be expected to do in the same work or in a similar job in the area³.
- 1 JSA Regs, reg 53(h); IS (Gen) Regs, reg 6(4)(a); 2 JSA Regs, reg 53(h)(i); IS (Gen) Regs, reg 6(4)(a)(i);
3 JSA Regs, reg 53(h)(ii); IS (Gen) Regs, reg 6(4)(a)(ii)*
- 20497 The person's own evidence of reduced earnings or hours should normally be accepted. However, if necessary, DMs should obtain further evidence for comparison purposes. This may include information from private employment agencies, social services departments or charities for the disabled.
- 20498 See Appendix 2 to this Chapter for guidance on protection for people adversely affected by the change in the law from 7.10.91.

People affected by a trade dispute

JSA(IB)

- 20499 Where
1. the claimant's partner is involved in a TD **and**
 2. the seven day exclusion period (see DMG 20394)
 - 2.1 does not apply **or**
 - 2.2 no longer applies
- the claimant's partner is treated as not being in remunerative work¹.
- 1 JSA Regs, reg 53(g)*
- 20500 Claimants should be treated as not being in remunerative work¹ where
1. they are
 - 1.1 a member of a joint-claim couple **and**
 - 1.2 involved in a TD **and**
 2. the seven day exclusion period (see DMG 20393)
 - 2.1 does not apply **or**
 - 2.2 no longer applies.

1 JSA Regs, reg 53(gg)

IS

20501 Where the claimant or partner is involved in a TD and they are treated as not being in remunerative work because

1. the seven day exclusion period (see DMG 20396)
 - 1.1 does not apply **or**
 - 1.2 no longer applies **and**
 2. certain payments¹ are not or no longer taken into account
- they are treated as not being in remunerative work².

1 IS (Gen) Regs, reg 35(1)(b), (c), (d) & (i); 2 reg 6(4)(b)

Caring for another person

20502 For IS purposes, people are treated as not being in remunerative work where they are¹

1. regularly and substantially engaged in caring for another person and that person
 - 1.1 is in receipt of "AA", the care component of DLA at the highest or middle rate, the daily living component of PIP at the standard or enhanced rate or AFIP² **or**
 - 1.2 has claimed "AA", DLA, PIP or AFIP **or**
 - 1.3 has
 - 1.3.a made an advance claim for **and**
 - 1.3.b an award of **and**
 - 1.3.c not completed the qualifying period for"AA", the care component of DLA at the highest or middle rate, the daily living component of PIP at the standard or enhanced rate or AFIP³ **or**
 - 1.4 has
 - 1.4.a made an advance claim for **and**
 - 1.4.b an award of **and**
 - 1.4.c completed the qualifying period for"AA", the care component of DLA at the highest or middle rate, the daily living component of PIP at the standard or enhanced rate or AFIP and the award is in payment **or**
2. both entitled to and in receipt of CA⁴ and caring for another person.

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

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

*1 IS (Gen) Regs, reg 6(4)(c) & Sch 1B, para 4; 2 SS CB Act 92, s 72(3); 3 s 65(6)(a); SS (C&P) Regs, reg 13A;
4 SS CB Act 92, s 70; 5 JSA Regs, reg 51(3)(c)*

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

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

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

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

20504 People who

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

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

20505 DMG 20504 applies only to a person who

1. lives in (whether permanently or temporarily) or is temporarily absent from
 - 1.1 a care home or
 - 1.2 an Abbeyfield Home or
 - 1.3 an independent hospital and
2. requires personal care because of
 - 2.1 old age or
 - 2.2 disablement or
 - 2.3 past or present dependence on alcohol or drugs or
 - 2.4 past or present mental disorder or
 - 2.5 a terminal illness

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

20506 - 20529

Mortgage interest run-on

20530 People may be entitled to IS in respect of mortgage or loan interest MIRO after they start remunerative work if the

1. remunerative work is expected to last for not less than five weeks **and**
2. people were, for a continuous period of 26 weeks immediately before the day on which they started this work, entitled to and in receipt of JSA(IB), IS or ESA **and**
3. people had, on the day before starting this work, included in the applicable amount, an amount in respect of mortgage or loan interest or other housing costs such as ground rent or service charge **and**
4. people remain liable to make payments on the loan¹.

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

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

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

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

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

20533 - 20555

Treated as capable/not having limited capability for work

Short periods of sickness

20961 · Claimants can be treated as capable of work/not having LCW for up to two weeks if

1. they have been awarded JSA¹ **and**
2. they prove to the DM that they are unable to work because of some specific disease or disablement (see DMG 20967 - 20968)² **and**
3. they would satisfy the requirements for entitlement to JSA (other than availability, ASE, capability and not having LCW) if it was not for their disease or disablement (see DMG 20963)³ **and**
4. they **have not** stated in writing that they
 - 4.1 intend to claim **or**
 - 4.2 have claimedIB, ESA, UC, SDA or IS⁴ **and**
5. they have not already been treated as capable/not having LCW twice in the JSP or year (see DMG 20975)⁵ **and**
6. the first day they are unable to work **does not** fall within eight weeks beginning with the day the person ceased to be entitled to SSP⁶ **and**
7. they are not temporarily absent from GB due to receiving hospital treatment outside GB⁷ **and**
8. they are not already in an extended period of sickness⁸ (see DMG 20972 below) **and**
9. the first day of the short period of sickness does not begin immediately after the last day of the extended period of sickness⁹ (see DMG 20977 below). .

1 JSA Regs, reg 55(1)(a); 2 reg 55(1)(b); 3 reg 55(1)(c); 4 reg 55(1); 5 reg 55(3); 6 reg 55(4); 7 reg 55(5); 8 reg 55(6)(a); 9 reg 55(6)(b)

Example

Freda is entitled to IB from Monday 4.9.06 until Sunday 10.12.06. She starts work on Monday 11.12.06, but is made redundant on Friday 5.1.07. Freda claims and is entitled to JSA from and including Saturday 6.1.07. On Tuesday 6.2.07, the day she is due to attend the Jobcentre Plus office, she phones to say that she has flu and cannot come in. She attends the Jobcentre Plus office on Friday 9.2.07, and fills in a written declaration that she was unable to work because of flu from Saturday 3.2.07 until and including Thursday 8.2.07.

Freda cannot be treated as capable of work. Although she satisfies the conditions at DMG 20961 1. to 4. and 6., the first day she was unable to work (3.2.07) falls within

eight weeks of entitlement to IB (10.12.06), so DMG 20961 5. is not satisfied. If Freda had first been unable to work on Sunday 4.2.07 she would have satisfied all the conditions, and could have been treated as capable.

Meaning of week

20962 Week means a period of seven days¹ starting on any day.

1 JSA Regs, reg 1(3)

Entitlement to JSA

20963 The following claimants will satisfy the requirement in DMG 20961 3 and DMG 20976 4..

1. Claimants to whom JSA would not be payable because of a sanction¹ under relevant legislation²
2. Claimants to whom JSA would not be payable because their pension becomes more than the prescribed amount³
3. Claimants to whom JSA would not be payable because they are share fishermen and have not satisfied the additional conditions to receive JSA⁴.

1 JSA Regs, reg 55(1)(c) & reg 55A(1)(d); 2 JS Act 95, s 19(5) & (6), 20A(2); 3 s 4(1); JSA Regs, reg 81; 4 reg 161

Example

Grace is awarded JSA (Cont) at a reduced rate because she gets an occupational pension. She gets flu and is unable to work. In the same week her pension increases above the level at which she gets paid JSA (Cont). Although JSA is no longer payable to her because her pension is more than the prescribed amount, Grace would be entitled to JSA were it not for her sickness so she can be treated as capable for two weeks.

20964 - 20966

Unable to work because of some specific disease or disablement

20967 See DMG Chapter 13 for guidance on “some specific disease or disablement”.

20968 Claimants can prove that they are unable to work because of some specific disease or disablement by providing written declarations that they have been unfit for work from a certain date or for a period¹. These written declarations have to be made on a form approved by the Secretary of State, and can only be made for a past period.

1 JSA Regs, reg 55(2) & reg 55A(2)

20969

Already treated as capable/not having limited capability for work twice or more in the jobseeking period or year

- 20970 A claimant can only be treated as capable/not having LCW on two occasions in any one JSP. The two occasions must be separated by at least one day to be separate periods. But if the JSP lasts for more than a year, then the claimant can be treated as capable/not having LCW twice in every year. Years are calculated from the first day of the JSP¹.

1 JSA Regs, reg 55(3)

Example

The JSP begins on Monday 4.1.10 and ends on Friday 3.2.12. The claimant can be treated as capable twice in the year from Monday 4.1.10 to Tuesday 3.1.11, twice in the year from Wednesday 4.1.11 to Tuesday 3.1.12 and twice in the year from Wednesday 4.1.12.

- 20971 When calculating the two occasions when the short period of sickness can apply, any occasion where the claimant initially satisfies the conditions for the short period of sickness, but the sickness continues beyond 2 weeks so that they satisfy conditions for the extended period of sickness, (see DMG 20972 et seq) shall be disregarded as a short period of sickness¹.

1 JSA Regs, reg 55 (7)

Extended period of sickness

- 20972 In addition to the two short periods of sickness (see DMG 20961), a claimant can also be treated as capable of work/not having LCW for an extended period of sickness of up to 13 weeks.

- 20973 This extended period of sickness applies to a person who¹

1. has been awarded JSA
2. proves to the DM that they are unable to work because of some specific disease or disablement **and**
3. either
 - 3.1 declares that they have been unable to work or expects to be unable to work for more than 2 weeks but does not expect to be unable to work because of that disease or disablement for more than 13 weeks **or**
 - 3.2 is a person who has already had 2 short periods of sickness within the current JSP or 12 months where the JSP exceeds 12 months
4. during this period, satisfies the requirements for entitlement to JSA other than those to be available for and actively seeking employment and capable of work or not having LCW **and**

5. has not stated in writing that they propose to claim or have claimed ESA or UC for that period.

1 JSA Regs, reg 55ZA(1)

20974 The evidence required where

1. DMG 20973 3.1 applies¹ is a doctors statement or other evidence for IfW or LCW purposes² and any other additional information as the Secretary of State requires or
2. where paragraph DMG 20973 3.2 applies³, is a written declaration in a form approved by the Secretary of State (JSA28) that they have been unfit for work from a certain date or for a specified period.

1 JSA Regs, reg 55ZA(2); 2 SS (Med Ev) Regs; 3 JSA Regs, reg 55ZA(3)

20975 Where a claimant satisfies the criteria in paragraph DMG 20974-74 above, they shall be treated as capable of work/not having LCW for a continuous period beginning on the first day on which the claimant is unable to work and ending on

1. the last day he is unable to work or
2. if that period of sickness exceeds 13 weeks, the day which is 13 weeks after the first day on which the claimant is unable to work¹.

1 JSA Regs, reg 55ZA(4)

20976 A claimant can only have one extended period of sickness in any period of 12 months starting on the first day on which the claimant is unable to work as described in paragraph DMG 20975¹.

1 JSA Regs, reg 55ZA(5)

How the two types of sickness can be used

20977 The claimant will be able to make use of both the short period of sickness and the extended period of sickness so that they can have two periods of up to two weeks and one period of up to 13 weeks in any JSP/12 month period. Where a claimant's sickness begins as a short period of sickness not exceeding 2 weeks but the sickness continues beyond 2 weeks, then the claimant can make use of the extended period of sickness up to the maximum period of 13 weeks. A claimant cannot start a short period of sickness immediately after the last day on which an extended period of sickness applied¹.

1 JSA Regs, reg 55(6)(b)

Example 1

Person L is in receipt of JSA and on 16 April she provides a medical certificate to say she is unable to work due to influenza for a period of 2 weeks. She is treated as capable of work for the period 16 - 29 April and as satisfying the conditions for the short period of sickness.

During this 2 week period, person L contracts pneumonia and she provides a medical certificate for a further 8 weeks. She is then able to satisfy the conditions for the extended period of sickness for the whole period of sickness from 16 April to 24 June (10 weeks).

Person L has now used her extended period of sickness and could only now use the two short periods of sickness if she has any further sickness in her current JSP/12 month period.

Example 2

Person P is in receipt of JSA and on 12 June he provides a medical certificate to say he is unable to work due to a fractured leg for a period of 13 weeks. He is treated as capable of work for the period 12 June to 10 September and as satisfying the conditions for the extended period of sickness.

He is due to return to normal jobseeking activity on 11 September. However he gets an ear infection which leaves him feeling dizzy and unable to sit or stand for anything other than short periods. His doctor prescribes antibiotics and recommends bed rest for 2 weeks. Although he still has 2 short periods of sickness available to use, as this short period would begin directly after the extended period of sickness ends and he has used the full 13 weeks allowable period of sickness on the extended period of sickness then he cannot remain on JSA and is advised to make a claim for ESA from 11 September.

- 20978 Where the extended period of sickness applies to a claimant, the short period of sickness cannot apply during that same period¹.

1 JSA Regs, reg 55(6)(a)

Sickness type

- 20979 Where during an extended period of sickness, the type of disease or disablement that the claimant is suffering from changes, the claimant can still continue to satisfy the conditions for the extended period of sickness up to the maximum period of 13 weeks¹.

1 JSA Regs, reg 55ZA(1)

Medical evidence

- 20980 Where the period for which a person is sick extends beyond two weeks and the person satisfies the other conditions for the extended period of sickness, the claimant will have to provide a doctors statement or other evidence for IfW or LCW purposes and any other additional information as the Secretary of State requires¹.

1 JSA Regs, reg 55ZA(3A)

When the extended period of sickness will not apply

- 20981 The extended period of sickness will not apply to a claimant where¹
1. the first day they are unable to work falls within 8 weeks beginning with the day the claimant ceased to be entitled to SSP **or**
 2. the claimant is temporarily absent from GB for the purpose of receiving NHS treatment abroad.

1 JSA Regs, reg 55ZA(6)

NHS treatment abroad

- 20982 In England and Wales claimants can be treated as capable of work/not having LCW if
1. they have been awarded JSA or a joint-claim JSA¹ **and**
 2. they are temporarily absent from GB for the purpose of receiving NHS treatment abroad² (see DMG Chapter 07) **and**
 3. they prove to the DM that they are unable to work because of some specific disease or disablement³ (see DMG 20967 - 20968) **and**
 4. they would satisfy the requirements for entitlement to JSA (other than availability, ASE, capability and not having LCW) if it was not for their disease or disablement⁴ **and**
 5. they **have not** stated in writing, before a period of temporary absence abroad begins, that they have claimed ESA immediately before the beginning of the period of absence⁵.

Note: This legislation only applies in England and Wales and there is no equivalent for Scotland.

1 JSA Regs, reg 55A(1)(a); 2 reg 55A(1)(b); 3 reg 55A(1)(c); 4 reg 55A(1)(d); 5 reg 55A(1)

20983 - 20984

Example 1

Abdul and Gita are married. Gita threatens Abdul with a kitchen knife during an argument after Abdul tells her that he wishes to give up work and return to education. She doesn't actually use the knife but it is intended to frighten Abdul. This is an example of coercive behaviour.

Example 2

Susan is married to Jim. Jim does not allow Susan to contact her parents or other members of her family. Jim tells Susan that she cannot communicate with them in any way unless he gives her permission. This is an example of controlling behaviour because Jim is isolating Susan from a source of support.

Family member

21372 Family member means¹ the following members of the victim's family, victim's partner's family or victim's former partner's family

1. grandparent
2. grandchild
3. parent
4. parent-in-law
5. son
6. son-in-law
7. daughter
8. daughter-in-law
9. step-parent
10. step-son
11. step-daughter
12. brother
13. brother-in-law
14. sister
15. sister-in-law.

If any of the above is a member of a couple, the other member of that couple also is included within the meaning of "family member".

Note: For the purposes of this guidance, a step-sibling should also be treated as a "family member".

1 JSA Regs, reg 14A(10)

Health care professional

- 21373 A HCP in this guidance means¹ a person who is a member of a profession regulated under relevant legislation².

1 JSA Regs, reg 14A(10); 2 National Health Service Reform and Health Care Professionals Act 2002, s 25(3)

Person acting in an official capacity

- 21374 A person acting in an official capacity means¹

1. a HCP
2. a police officer
3. a registered social worker
4. the victim's employer or representative of their trade union
5. any public, voluntary or charitable body which has had direct contact with the victim in connection with domestic violence.

1 JSA Regs, reg 14A(10)

Registered social worker

- 21375 Registered social worker means¹ a person registered as a social worker on a register maintained by the

1. Health and Care Professions Council
2. Social Care Wales
3. Scottish Social Services Council
4. Northern Ireland Social Care Council.

1 JSA Regs, reg 14A(10)

Relevant evidence

- 21376 Relevant evidence means¹ written evidence from a person acting in an official capacity showing that

1. the victim's circumstances are consistent with having had domestic violence
 - 1.1 inflicted on or
 - 1.2 threatened against themduring the period of 26 weeks ending on the date of notification or
2. the victim has made contact with a person acting in an official capacity with regard to an incident of domestic violence which occurred during the period of 26 weeks ending on the date of the notification.

1 JSA Regs, reg 14A(10)