



Department
for Work &
Pensions

Social Fund Budgeting Loan Guide

This guide contains the Secretary of State's directions and guidance. It is intended for use mainly by Decision Makers, Reviewing Officers and Further Reviewing Officers.

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Part 1 – Introduction

Description of the Social Fund

1. The Social Fund (SF) is a scheme to help people with needs which are difficult to meet from regular income. It is made up of two distinct parts:
 - a regulated scheme which provides entitlement to maternity, funeral, cold weather and winter fuel payments for people who satisfy certain qualifying conditions
 - a discretionary scheme under which people may be eligible in certain circumstances for a Budgeting Loan (BL) - to meet, or help to meet, an intermittent expense

This guide deals with discretionary BL payments only.

Discretionary Budgeting Loans – appropriate officers

2. Decisions on such payments are made by officials who, acting under the authority of the Secretary of State, exercise functions of the Secretary of State in relation to discretionary social fund payments. These officials are referred to in this guidance as Decision Makers (DMs). SF DMs are referred to in the Social Security Acts as “appropriate officers” and in this capacity they do not make decisions on the setting of repayment terms.
3. However, decisions on repayment terms are made by officers acting on behalf of the Secretary of State, and the same officer may be authorised to act in both of those capacities.
4. Applicants who are dissatisfied with the decision on their BL application may ask for a review of that decision. This does not apply to decisions on the setting of repayment terms.
5. The Social Security Act 1998 also allows the Secretary of State to nominate an appropriate officer to issue guidance to DMs including notifying DMs of the most recent national baseline figure issued by the Secretary of State to be applied when determining the maximum amount available to each BL applicant.

Section 38 of that Act provides for reviews of social fund BL decisions to be conducted by an “appropriate officer”.
6. The terminology for staff making discretionary social fund BL decisions, to be found throughout this Guide, is as follows:

- "decision maker" (DM) means an appropriate officer acting under the Secretary of State's authority (as described in section 139(1) of the Social Security Contributions and Benefits Act 1992 and section 36(1) of the Social Security Act 1998) who is making determinations under sections 139 and 140 of the Social Security Contributions and Benefits Act 1992
- "area decision maker" (ADM) means a decision maker who has been nominated in accordance with section 36(2) of the Social Security Act 1998 and
- "reviewing officer" (RO) means a decision maker who is authorised to review social fund determinations under section 38 of the Social Security Act 1998.

Under the Social Security Act 1998, DMs are authorised to make decisions about discretionary BL payments from the social fund on behalf of the Secretary of State.

7. Officers (called further reviewing officers) of the Independent Case Examiner (ICE) have been commissioned by the Secretary of State to conduct a further review of decisions made by a RO if an application is made to them in a suitable time and manner. Further reviewing officers (FROs) are independent of DMs (and DMs acting as ROs) and are required to carry out this review in accordance with policies set out by the Secretary of State. See part 5 of this guide.
8. DMs must act in accordance with the law and are required to determine any question in accordance with the Secretary of State's directions and guidance.
9. DMs must also take account of the most recent national baseline figure issued by the Secretary of State to be applied when determining the maximum amount available to each BL applicant.
10. DMs must take particular care to ensure that their decisions are not in any way affected by bias or prejudice on such grounds as age, disability, race (including nationality and ethnic origin), gender re-assignment, marriage and civil partnership, religion/belief, sex and sexual orientation.
11. The DM and RO should ensure that they have all the relevant information to determine the application/review. Where a relevant issue is raised in connection with an application, the DM or RO should seek more information where this is necessary to ensure the relevant issue is fully taken into account in determining the application or review.

Deciding on discretionary budgeting loan payments

Secretary of State's directions and guidance

12. The directions issued by the Secretary of State are shown in full in part 6 of this guide. DMs must follow directions.

All decision making guidance is in parts 2, 3 and 4 of this guide. DMs must have regard to guidance.

Applications

13. The time, form, and manner of the making an initial application are covered in the Social Fund (Budgeting Loans) (Applications and Miscellaneous Provisions) Regulations 2015(SI2015/1411). In such a case they must generally be made on a form approved by the Secretary of State (SF500) or, exceptionally, by other acceptable means in writing. An application can also be made by the completion of an on-line application via GOV.UK

Review Applications

14. The time, form, and manner of making a review application are covered in the Social Fund (Application for Review) Regulations 1988. In summary the regulations provide for the original BL applicant to make a signed review request in writing within 28 days of the first decision. Some-one other than the applicant may make the request (with the applicant's written permission).

Disclosure of Information

15. Staff are reminded of the Data Protection Act 2018 and that personal information about individuals is held in strict confidence. Staff with access to such information are usually prohibited from disclosing personal information unless person concerned has consented

- a court order has been obtained, or
- legislation allows for the disclosure.

Guidance about managing and disclosure of personal information is provided by DWP Legal Group and can be found on their intranet site under heading Data Protection. This contains information about the very limited circumstances in which information can be disclosed.

Civil Partnership and Same Sex Marriage

16. From 5 December 2005 the Civil Partnership Act allows same-sex couples to make a formal, legal commitment to each other by entering into a Civil Partnership (CP) through a statutory civil registration procedure. This means

that same-sex couples can notify their intention to form a CP from this date and be treated in the same way as married couples.

17. Same-sex marriage is now legal in Great Britain. Marriage is a devolved issue in parts of the United Kingdom, and the status of same-sex marriage is different in England and Wales, Scotland.
18. The legislation to allow same-sex marriage in England and Wales was passed by the Parliament of the United Kingdom, and the first same-sex marriages took place on 29 March 2014.
19. Legislation to allow same-sex marriage in Scotland was passed by the Scottish Parliament in February 2014, the first same-sex marriage ceremonies occurred on 16 December 2014 for same-sex couples previously in civil partnerships. The first same-sex marriage ceremonies for couples not in a civil partnership occurred on 31 December 2014.

Part 2 - Budgeting Loans

General

20. Budgeting Loans (BLs) are intended to help those in receipt of Income Support (IS), income-based Jobseekers Allowance (JSA(IB)), Pension Credit (PC), income-related Employment and Support Allowance (ESA(IR)) or payment on account of such benefits to spread the cost of intermittent expenses over a longer period. They represent an interest-free credit facility for those in need of financial assistance to cope with such expenses.

BL awards are subject to an overall cash-limit.

Decisions on whether to award BLs and, if so, how much to award will be based on relevant facts.

21. For BLs, the Social Security Contributions and Benefits Act 1992 (as amended by the Social Security Act 1998) provides for the applicant's personal circumstances, as specified in Directions by the Secretary of State, to be taken into account.

Social Fund Budgeting Loans are not available to customers on Universal Credit (UC) who have access to Budgeting Advances through the UC scheme.

Secretary of State's directions

22. The Secretary of State has issued directions which qualify the power to make BLs by reference to:

- the eligibility of the applicant
- whether the item applied for falls within one of the specified categories
- the applicant's personal circumstances
- the basis on which awards are made
- the effect of capital
- the maximum and minimum amount which can be awarded
- the budget allocation

These directions are binding.

23. BL decisions are based on:

- eligibility criteria:
- whether the applicant meets the qualifying benefit conditions - Direction 8
- qualifying conditions:

- whether the application is in respect of an item of expense for which a BL may be awarded - Direction 2
- Direction 2 is broad enough to encompass most routine periodic expenses and it will be rare to refuse an application on this direction alone
- applicant's personal circumstances - Direction 50
- Whether the applicant is single, has a partner and/or a child/children - Direction 52
- budget
- to have regard to the national loans budget (“the relevant allocation”) by applying the current budgeting loan baseline figure issued by the Secretary of State and notified by the ADM – Direction 40, 41
- taking account of the Secretary of State’s guidance about priorities for the loans budget – Direction 41
- amount of award
- how much should be awarded? - Direction 53
- whether the amount of the applicant's capital affects the amount of the award? - Direction 9
- repayability
- consider the applicant's ability to repay - Directions 5 and 11
- section 139(4) repayment terms as determined by the Secretary of State and agreed with the applicant (the Social Fund (Budgeting Loans) (Applications and Miscellaneous Provisions) Regulations 2015(SI 2015/1411)).

Applications

24. A Budgeting Loan (BL) can be made on the appropriate application form (SF500), though it can also be made in such other manner, in writing, as the Secretary of State accepts is sufficient in a particular case (regulation 2(of the Social Fund (Budgeting Loans) (Applications and Miscellaneous Provisions) Regulations 2015 (SI2015/1411) refers).
25. On 12 December 2016 a digital application process was introduced, this allowed claimant’s to make a claim via a computer, tablet or smartphone. Access is via completion of an on-line application form available on GOV.UK. The processing of the claim however, still uses the Social Fund Computer System (SFCS).
26. On receiving a BL application, check that it has been fully completed. If it has not, obtain the relevant information by phoning the applicant and if this is unsuccessful, write to the applicant to obtain it. The application should not be refused at this stage.

27. When the relevant information is received, the application should be processed without delay.
28. An application may be refused without consideration of the applicant's personal circumstances where the applicant:
 - is not in receipt of Income Support (IS), income-based Jobseekers Allowance (JSA(IB)), Pension Credit (PC) or income-related Employment and Support Allowance (ESA(IR)) or payment on account of such benefits;
 - has not been in receipt of IS, JSA(IB) or ESA(IR) or payment on account of such benefits for 26 weeks; where an applicant is in receipt of Pension Credit, prior entitlement to UC counts as part of the 26 weeks qualifying benefit period.
 - is involved in a trade dispute as described in Direction 8(1)(b);
 - has applied for a category of items that is outside the scope of the scheme; or
 - has sufficient capital over and above the amount allowable (£1,000 or, where the applicant or partner is 63 or over, £2,000) to meet the full amount requested.

Determining an application - Establishing the facts to be taken into account

29. Facts which relate to the applicant's specified personal circumstances (Direction 50) and position under section 140(1)(b)(e) of the Contributions and Benefits Act 1992 must be taken into account. It will be the applicant's responsibility to provide such information on the application form as may be required.
30. In practice, relevant circumstances relating to qualifying benefit records will be retrieved automatically by SFCS when the application is processed. However you should bear in mind that benefit can be administered clerically.

Decision making process

31. Since BL decisions will be based on a limited number of personal circumstances, the processing of decisions will, in practice, be largely automated on SFCS. Check that the applicant's circumstances are reflected correctly and then record the decision accordingly.

Joint Claims for Jobseeker's Allowance

32. Certain childless couples making new or repeat claims for JSA are required to make their claim jointly. The group of claimants who are affected by this requirement are defined by age: at least one of the couple ("joint claim couple") must be over 18 and born on or after 28th October 1947.

33. Under the Jobseeker's Act 1995 and associated regulations both members of a joint claim couple will be required to meet the JSA entitlement conditions and will each have equal rights and responsibilities. In effect, they will both be claimants.
34. Where one member of the couple does not meet the JSA conditions the "innocent" member of the couple will be able to get JSA at the single person's rate. If the entitlement conditions are met, the couple will receive joint claim JSA (which is JSA(IB)).
35. The couple will have to nominate which of them will receive benefit for them both. In the event of the nominated person being sanctioned, then payment of joint claim JSA will be automatically paid to the member of the couple who is not subject to sanction.
36. In order to ensure that only the person who is being paid JSA(IB) is eligible for a BL a provision has been introduced which defined how "in receipt of" should be interpreted in directions. This provision can be found at the beginning of the Secretary of State's directions in part 6 of this guide. This means that the member of a joint claim couple who is being paid joint claim JSA on behalf of the couple is the only member who can be eligible to apply for a BL.
37. Direction 8(1)(c) will apply to joint claim couples and therefore the total period of any joint claim will benefit both members equally for BL eligibility.
38. DMs must therefore ensure that when dealing with applications from a member of a joint claim couple, they identify that the applicant is the member of the couple who is being paid joint claim JSA.

Direction 8 – Eligibility

Direction 8

39. Receipt of Income Support, income-based Jobseekers Allowance, income-related Employment and Support Allowance or Pension Credit for 26 weeks.
40. The 26 week qualifying period will be satisfied where the applicant has been on Income Support (IS), income-based Jobseekers Allowance (JSA(IB)), Pension Credit (PC) or income-related Employment and Support Allowance ESA(IR) or payment on account of such benefits for a continuous period of 26 weeks or more as at the date of the determination. Any breaks of 28 days or less will be ignored for the purpose of calculating the 26 week qualifying benefit period.
41. The exception to the 28 day rule is in the specific case of where the applicant is transitioning from UC to PC a break of 1 calendar month will be acceptable.
42. Where there is doubt about the benefit information held by Social Fund Computer System (SFCS), for example the period of claim supplied by the

applicant does not match, you should establish whether the discrepancy has resulted from benefit being paid clerically.

43. Where benefit is paid in arrears the applicant should be treated as having been in receipt of IS, JSA(IB), PC or ESA(IR) or payment on account of such benefits for the period covered by the payment.
44. Receipt of IS, JSA(IB), PC or ESA(IR) or payment on account of such benefits in Northern Ireland will count towards the qualifying period.
45. The seven waiting days at the start of a claim for JSA or ESA do not count as days of receipt of a qualifying benefit.
46. An application may be refused without consideration of the applicant's personal circumstances where the applicant does not satisfy the qualifying benefit condition.

Claimants in receipt of Universal Credit who migrate to Pension Credit

47. When a claimant is in receipt of Universal Credit (UC) either through a new claim or after they migrated from IS, JSA(IB) or ESA(IR) they are not entitled to a Social Fund Budgeting Loan. If a UC claimant then migrates to PC they will once again qualify for a Social Fund Budgeting Loan. The 26 week qualifying period will be satisfied where the applicant has been on UC for a continuous period of 26 weeks or more at the date of determination. Any breaks of 1 calendar month or less will be ignored for the purpose of calculating the 26 week qualifying period.

Couples

48. A Budgeting Loan (BL) can only be awarded to the partner who receives IS, JSA(IB), PC or ESA(IR) or payment on account of such benefits. It is possible for the other partner to become the IS or PC claimant or the jobseeker if this is beneficial to the application, e.g. if the applicant does not satisfy the eligibility criteria but their partner does. See the Decision Maker's Guide (DMG) on changing IS claimants or jobseekers within a household. These rules also apply to PC.
49. Eligibility for a BL is based on whether the applicant is at the time of the application getting:
 - IS or Pension Credit as the claimant,
 - JSA(IB),
 - ESA(IR),or
 - Payments on account of such benefits and throughout the qualifying period:
 - has been getting IS or PC as the claimant,

- JSA(IB),
- ESA(IR),or
- Payments on account of such benefits, or
- has been the partner of someone receiving IS, JSA(IB), PC or ESA(IR) or payment on account of such benefits. The partner does not have to be the same partner as at the time of the application. A partnership can continue to exist where one partner is temporarily absent, e.g. in prison.

Jobseekers Allowance disallowances/sanctions

50. BLs are dependent upon receipt of a qualifying benefit. JSA disallowances and sanctions are different in their effects:

- disallowances - occur where the jobseeker has not satisfied a basic condition of entitlement.
- sanctions - these occur where, for example, jobseekers have left their previous work voluntarily or have neglected to avail themselves of a reasonable opportunity of a training scheme. Sanctions are all of a fixed length, depending upon the offence.
- Under a disallowance or sanction normal JSA is not payable for the length of the disallowance or sanction although the jobseeker can apply for JSA at the hardship rate.
- JSA at hardship rate is classed as JSA(IB).
- for people who do not fall within the prescribed vulnerable group (normally single, healthy, childless, people and healthy, childless couples with no caring responsibilities) no JSA (even at hardship rate) will be payable.
- so long as a disallowance applies or,
- for the first two weeks of the sanction.

Trade disputes

51. BLs cannot be awarded if the applicant or partner is involved in a trade dispute as described in Direction 8(1)(b). An application may be rejected without consideration of the applicant's personal circumstances where the applicant or partner is involved in a trade dispute as described in Direction 8(1)(b).

Repeat applications

52. There are no restrictions on repeat applications for BLs.

Exclusions

53. BLs may only be awarded if the application is in respect of one or more of the categories of items specified in Direction 2. They cannot be awarded in respect of any other categories of items.

Direction 2 – Budgeting Loan qualifying conditions

Direction 2

Scope of budgeting loans

54. The following categories of items or expenses, as specified in Direction 2, define the scope of the Budgeting Loan (BL) scheme:
 - Furniture and household equipment
 - Clothing and footwear
 - Rent in advance and/or removal expenses to secure fresh accommodation
 - Improvement, maintenance and security of the home
 - Travelling expenses
 - Expenses associated with seeking or re-entering work
 - Maternity or Funeral expenses
 - HP and other debts (for expenses associated with any of the above)
55. The role of the item categories in the Direction is to specify the types of items or expenses in respect of which BLs may be awarded.
56. The item/expenses categories represent a broad range of types of expense that Income Support (IS), income-based Jobseekers Allowance (JSA(IB)), Pension Credit (PC) or income-related Employment and Support Allowance (ESA(IR)) recipients may have difficulty in budgeting for from their benefit.
57. A breakdown of item/expenses details and their individual amounts under the broad categories is not required. It is not necessary to check the applicant's need for any item(s) applied for, or in the case of maternity or funeral expenses, to check whether there is or has been a claim to a Sure Start maternity grant or a funeral payment.
58. If the applicant indicates on the application form that they need an item or expense that clearly would not fall into the broad categories of items/expenses in this Direction, then a BL cannot be awarded. Such applications may be refused without consideration of the applicant's personal circumstances.
59. Where an applicant specifies an item or expense, then you should where possible, identify the appropriate category to which it belongs and proceed with the application as normal.

Direction 50 - Personal circumstances of applicant

Direction 50

60. All Budgeting Loan (BL) applications are subject to a factual test, as specified in Direction 50 i.e. the composition of the applicant's household.

Members of the applicant's household.

61. On the date of the decision, the applicant, their partner, if any, any child or young person for whom the applicant or their partner is responsible, and any child of that child or young person are to be counted as members of the applicant's household at the date of the determination for the purposes of Direction 50 if they would be under regulation 16 of the Income Support (General Regulations 1987 (for applicants in receipt of income support or pension credit), regulation 78 of the Jobseeker's Allowance Regulations 1996 (for applicants in receipt of jobseeker's allowance) or regulation 156 of the Employment and Support Allowance Regulations 2008 (for applicants in receipt of the Employment and Support Allowance).
62. Normally the applicant would be expected to be receiving Income Support (IS), income-based Jobseekers Allowance (JSA(IB)), Pension Credit (PC) or income-related Employment and Support Allowance ESA(IR) or payment on account of such benefits for their partner. Occasionally, however, where the applicant and their partner have just embarked on a cohabiting arrangement, the benefit position may not yet have come to reflect the nature of the domestic arrangements. In such circumstances, it might be appropriate to consider whether there is other evidence available which would reflect the true nature of the domestic situation; for instance, whether a member of the couple has made an application for a joint benefit payment.
63. The applicant or their partner is likely to be in receipt of benefit in respect of a child or young person for whom they are responsible; however, as long as the child or young person normally resides with the applicant as a member of her/his household that is sufficient. Generally, the test laid down by the relevant regulations is that a person is responsible for a child or young person, who is therefore to be treated as a member of that person's household, if they are receiving child benefit in respect of them. However, where no person is receiving child benefit in respect of them, the person who is to be treated as responsible for that child or young person is the person with whom the child or young person usually lives (see reg 15(2)(a) of the IS Regs; reg 77(3)(a) of the JSA Regs and reg 156(1)(b) of the Employment and Support Allowance Regulations 2008).

Direction 52 - Weightings for personal circumstances

Direction 52

64. The Secretary of State has directed that the maximum amount available to an applicant shall be determined by reference to the composition of the applicant's household.
65. Accordingly, the Secretary of State has specified in Direction 52 that the weighting value to be attached to a household:
 - containing only the applicant shall be one
 - containing only the applicant and a partner shall be one and one third
 - which includes one or more children aged 19 or under shall be two and one third.
66. This means that anyone with dependent children will fall into the third category above and there is no difference in treatment under the test according to the size of the family. For example the third category will apply equally to:
 - a single lone parent applicant with one child
 - a couple with four children.

Direction 53 - What to award

Direction 53

67. The effect of the weightings accorded to applicants' circumstances is to establish, in conjunction with the budgeting loan baseline figure notified by the Area Decision Maker (ADM) under Direction 40, limits on the maximum amount of Budgeting Loan (BL) debt individual applicants may have.
68. ADMs will notify Decision Makers (DMs) of the budgeting loan baseline figure on which the three maxima of loans available for determining the size of the BL award are based. Social Fund Computer System (SFCS) will hold and apply the maximum amounts at the appropriate stage in the decision making process.

Treatment of existing Budgeting Loan debt

69. The extent of access applicants will have to their own limit will depend on whether or not they already have BL debt. To arrive at the maximum amount available to an applicant for a budgeting loan, the baseline figure is multiplied by the appropriate weighting value (this is the "maximum amount"). Subject to directions 9, 11 and 53(3), the award which may be made is the lower of:

- the amount applied for or
- the maximum amount less any outstanding budgeting loan debt owed by the applicant or partner.

Applicant with no existing Budgeting Loan debt

70. If an applicant has no existing BL debt and s/he has applied for an amount that is either less than or equal to, the limit on the amount of BL loan available to the applicant, then a full award may be made (subject to Directions 9, 11 and 53(3)).
71. If the amount requested is above the maximum of the amount of BL loan available to the applicant, then the most that may be awarded is the limit of the amount of BL loan available to the applicant (subject to Directions 9, 11 and 53(3)).

Maximum debt limits – direction 53(3)

72. The DM must try to ensure that no award is made which causes the total loan amount repayable to the social fund by the applicant and his partner to exceed £1,500. This means that on the evidence available to the DM at the time of the decision, DMs should not make awards that bring the total SF debt to over £1500. Therefore any award calculated as per paragraphs 52, 53, 54 above may be subject to further reduction to an amount that is the difference between the current total SF debt of the applicant and partner, and the debt limit of £1,500.

Minimum award

73. A Budgeting Loan of less than £100 may not be awarded.

Direction 9 - Treatment of capital

Direction 9

74. Any capital held by the applicant and partner of below £1,000, (or £2,000 if the applicant or partner is aged 63 or over), will not affect the amount awarded as a Budgeting Loan (BL).
75. If the applicant and partner have capital of more than £1,000, (or £2,000 if the applicant or partner is aged 63 or over), a BL is reduced by the amount of any capital over £1,000, (or £2,000 if the applicant or partner is aged 63 or over).
76. Any capital held by the applicant's children should be disregarded.
77. Check the amount of capital stated on the Social Fund (SF) application against information available from Income Support (IS), Jobseekers Allowance (JSA), Pension Credit (PC) or Employment and Support Allowance (ESA). Further enquiries will be needed only if:

- there is a significant difference; and
- the decision on the application might be affected

78. For BL purposes, the definition of what constitutes capital is the same as that for IS, income-based Jobseekers Allowance (JSA(IB)), Pension Credit (PC) or income-related Employment and Support Allowance ESA(IR).

The main types of capital are:

- current accounts
- savings accounts
- national savings certificates
- fixed term investments
- life insurance or endowment policies
- friendly societies personal deposit accounts
- trust funds
- property other than the applicant's home

This list is not exhaustive. Refer to the Decision Makers Guide (DMG) for:

- a complete list of types of capital
- the procedures for assessing the capital available to the applicant.

79. The IS, JSA(IB), PC or ESA(IR) rules for disregarding capital, relevant to the benefit that the applicant is in receipt of, apply to BLs, except that any payments from the Family Fund and integration loans under The Integration Loans for Refugees and Others Regulations 2007 should also be disregarded.

80. Disregard arrears of, and concessionary payments made to compensate for arrears due to the non-payment of benefits. The disregard that is applied will relate to the qualifying benefit. Refer to the Decision Makers Guide (DMG) for the qualifying benefit to identify the appropriate disregard.

Direction 5 - Repayability

Direction 5

Repayability considerations

See Direction 11 on repayability.

Direction 11 - Ability to repay

Ability to repay

81. The repayment terms of Budgeting Loans (BLs) are determined by officers acting on behalf of the Secretary of State. The award of a BL may depend on its repayment being completed within the recommended 104 weeks.
82. If an applicant has requested an amount that is more than they can afford to repay within 104 weeks, based on standard repayment rates as determined by officers acting on behalf of the Secretary of State, the applicant may be given alternative offers to maximise the award size and enable the applicant to make a choice according to their existing commitments and the weekly repayments available to them within 104 weeks - see paragraphs 73 to 75 below.
83. The applicant may be given more than one offer on the same BL application which may affect the amount of the award. Alternative offers may be made to the applicant if the standard rate of repayment is insufficient to make a full award.
84. An applicant's ability to repay will depend on:
 - their total debt to the Social Fund (SF)
 - any other continuing commitments they may have

In calculating repayments, officers acting on behalf of the Secretary of State must have regard to:

- the recommended maximum repayment period of 104 weeks
 - the likely various rates of repayment
 - the level of multiple debt
85. If an applicant plainly cannot afford a further loan e.g. the applicant is already repaying his loans over a period of 104 weeks and has multiple other debts, it would be inadvisable to award a budgeting loan.
 86. If an applicant has requested an amount that is more than they can afford based on repayment rates as set on behalf of the Secretary of State, the applicant will be given alternative offers to maximise the award size and enable the applicant to make a choice according to their existing commitments. Where the applicant has no current loan and his/her standard rate of repayment is insufficient to enable recovery within 104 weeks, the applicant will be offered a choice of:
 - a reduced amount, repayable at the standard rate;
 - the full amount requested, repayable at a higher rate (subject to a maximum of 20% of available income i.e. Income Support (IS), Pension Credit (PC), Jobseekers Allowance (JSA) or Employment and Support Allowance (ESA) adult personal allowance/premia rates + Child Tax Credit and Child Benefit for any dependent children but excluding housing costs);
or

- an amount in between the two that is the maximum that can be repaid at the higher rate of repayment.

Where the applicant is repaying an existing SF loan with less than 104 weeks outstanding, the applicant will be offered a choice of either:

- an amount that is equal to that which can be repaid at existing repayment rates, between the completion of repayment of the existing loan and the end of the 104 week period;

or where this is less than the amount available to offer:

- the amount available to offer subject to maximum repayment rate not exceeding 20% of the available income and the 104 week ceiling;
- an amount between the two where it is the maximum that can be repaid subject to the 20% and 104 week ceiling; or
- an amount equal to that which can be repaid within 104 weeks by combining the proposed loan and existing social fund debt and setting a higher rate of recovery with the 20% maximum

87. Where the applicant is repaying an existing social fund debt with a full 104 weeks still to run:

- an amount equal to that which can be repaid with 104 weeks by combining the proposed loan and the existing social fund debt and setting a higher repayment rate subject to the 20% maximum (where this could not be done the BL would be refused).

Total debt

88. Total debt means the total amount that an applicant and his partner owe the social fund in loans at any one time. Under no circumstances will a BL knowingly be awarded which takes the amount over £1,500 (see Direction 53(3)).

Part 3 – The Budget

The National Social Fund Budget

General

89. This section describes how the national cash limited Social Fund budget is controlled and managed.

The law

90. The Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 provide for:
- a fund to be set up – i.e. the Social Fund, section 167(1) of the Social Security Administration Act 1992
 - the Secretary of State to allocate amounts in each financial year for Social Fund payments - sections 168(2) to 168(4) of the Social Security Administration Act 1992
 - DMs to have regard to the relevant allocation in deciding whether or not to make a Social Fund payment or how much to award - section 140(1) and (1A) of the Social Security Contributions and Benefits Act 1992

General financial arrangements

91. The annual national discretionary social fund budget is made up of anticipated loan repayments to the Fund during the financial year. It is therefore important that all loans are recovered effectively and each SF Benefit Centre (SF BC) contributes to the national annual recovery target.

The annual budget

92. A single national allocation is made for loans and is monitored and managed nationally.
- The Secretary of State can make additional allocations in year.
 - Decision Makers (DMs) are required to manage the funds allocated. To help DMs do this, the Area Decision Maker (ADM) must provide them with the most recent national baseline figure upon which awards must be based.

Direction 40 - Responsibilities of the Area Decision Maker

Direction 40

93. Area Decision Makers (ADMs) are required by Direction 40 to carry out the function in Direction 40, or to ensure that the function is carried out on their behalf by delegation to a suitably qualified Operations Manager (normally the SF HEO).

The aim of carrying out the function is to support Decision Makers (DMs) in their role in controlling and managing the budget allocation.

Budgeting Loans – maximum amount

94. The ADM must notify DMs of the most recent national baseline figure for determining the maximum amount available to each BL applicant under the national budget. The figure notified to DMs should be the latest figure provided by the national tier.
95. Check that DMs are fully aware of the current BL maximum amounts notified in accordance with Direction 40 and that these are accurately reflected on the Social Fund Computer System.
96. The BL baseline figure takes account of the national level of demand for BLs. The aim is to control and manage the national allocation whilst providing consistency of outcomes for BL applicants wherever they live.

Direction 41 - Responsibilities of Decision Makers

Direction 41

97. The Social Security Contributions and Benefits Act 1992 requires DMs to have regard to the budget when deciding:
- if an award should be made
 - the amount of the award

DMs are to have regard to the loans budget in accordance with Direction 41 by applying the most recent BL baseline figure when determining budgeting loan awards.

98. DMs must apply the latest baseline figure which is provided by the Secretary of State. To do this, DMs should ensure that they know the current maximum amount available to each BL applicant (by reference to the current baseline figure).

Budgetary decision making

99. It is the weighting value given to the application that determines the potential maximum amount available to each budgeting loan applicant; the higher the weighting value the higher the maximum amount will be (subject to capital, ability to repay, existing indebtedness etc).
100. The appropriate weighting value is determined under Direction 52 on the basis of the applicant's personal circumstances as specified in Direction 50. Weighting values for BLs can be found in part 2 of this guide.
101. The weightings to be applied to the baseline figure, as specified in Direction 52, are relevant to arriving at the maximum amount of a BL award. This process has been automated.
102. The figure for the national BL baseline is provided by the Secretary of State and notified to DMs by the ADM. This takes account of the current state of the national loans budget.
103. DMs should use the BL baseline figure to determine the maximum amount appropriate to each applicant's personal circumstances.

Part 4 – Reviews

The review model

104. The law provides a review model and procedural route for all Budgeting Loan (BL) determinations. This procedural route is set out in Directions 32 and 39. This part of the guide covers the review directions in a decision making sequence, each followed by the relevant guidance. When reviewing a determination, it is important that the correct sequence of actions is followed. You must ensure that you have properly carried out all the necessary steps in the correct order when considering any application for review. Failure to do so will mean that the review has not been conducted correctly.

Powers under which reviews are conducted

General

105. There are four separate powers of review to be found in or under section 38 of the Social Security Act 1998, two of which are mandatory and two of which are discretionary.

You must conduct a review if:

- an application for review is properly made - section 38(1)(a)
- one of the circumstances in Direction 31 appear to be the case – section 38(10)(a).

You have the discretion to review in:

- cases of misrepresentation or failure to disclose a material fact to determine that an overpayment is recoverable - section 38(1)(b)
- such other circumstances as the Decision Maker (DM) thinks fit – section 38(1)(c)

Reviewing a determination

106. The application for review is considered by a DM (other than the one who made the decision under review) or reviewing officer (RO) authorised to review such determinations. The reference to a “reviewing officer” in Directions 32 and 39 is to the DM or the RO carrying out the review.
107. In reviewing a determination under section 38(1)(a) or (c), the RO must, under section 38(7) of that Act:
- have regard to such of the applicant's personal circumstances as may be specified in directions issued by the Secretary of State (section 140(1A) of the Social Security Contributions and Benefits Act 1992) together with those matters specified in section 140(1)(b) - (e) of the Social Security Contributions and Benefits Act (SSCBA)1992
 - act in accordance with any general directions and take account of guidance issued by the Secretary of State under section 140 of the SSCBA

- take account of guidance issued by the Area Decision Maker (ADM) under section 36 of the Social Security Act and any general guidance the Secretary of State may issue with regard to reviews **and**
- act in accordance with any general directions under sections 38(7) and (10) of the Social Security Act 1998 issued by the Secretary of State about reviews, including:
 - the circumstances in which a determination is to be reviewed
 - the manner in which a review is to be conducted.

In reviewing the determination, the Reviewing Officer (RO):

- need not consider any issue that is not raised by the application for review under section 38(1)(a)
- need not consider any issue that did not cause the DM to review the original determination under section 38(1)(c)
- Directions made under section 38(10)(b) set out the manner in which reviews are conducted.

Decisions that can and cannot be reviewed

108. Decisions to be reviewed under this process are:

- the amount of an award
- the refusal of an award
- if an award should be paid to some-one other than the applicant
- if payment should be paid by instalments
- overpayments in consequence of a misrepresentation or failure to disclose material facts.

Reviews of overpayment questions are dealt with at paragraphs 135 to 150.

This review process does not apply to:

- a decision about the rate of loan repayment - this should be dealt with as an administrative complaint
- decisions about sure start maternity, funeral, cold weather and winter fuel payments.

Summary of review process

109. An applicant who is dissatisfied with a decision about a Budgeting Loan (BL) may apply in writing for it to be reviewed.

A formal review interview is not required (Direction 33 refers), although the applicant must be provided with an explanation of the decision and an opportunity to comment/ask questions where the disputed facts relate to their personal circumstances or receipt of a qualifying benefit. This explanation should usually be provided by telephone, but must be in writing if the applicant:

- cannot be contacted and is difficult to reach by telephone
- is disadvantaged by using the telephone due to communication or other problems, or
- has requested a written explanation.

110. After the review, the case is determined and a decision issued with a letter advising the applicant they can apply for a further review by an officer at the Independent Case Examiner's office (ICE). See Direction 36.

It is possible that, at any stage of the review process, the applicant may decide to withdraw the application for review. See Direction 37.

Time limits and manner of applying for a review

111. Regulations issued under section 38(1)(a) prescribe the time, form and manner for applying for a review. Under the Social Fund (Applications for Review) Regulations 1988, applications:
- must normally be made within 28 days of the date of issue of the decision, although this period may be extended by the Reviewing Officer (RO) if there are special reasons
 - must be in writing and contain reasons for the application
 - if made on behalf of the applicant, unless they are the appointee, must have the applicant's consent, as signified in writing, to the application being made on their behalf
 - must be signed by the person making the application
- A properly made application for review must satisfy all the above conditions. Use part 1 of form SF 602 to show if they are satisfied.

Applications for review

Application outside time limits

112. The RO should extend the 28 day time limit so that the review can take place if s/he decides that there are special reasons to do so such as:
- a stay in hospital
 - recent domestic upheaval
 - bereavement or
 - any other serious difficulty that has prevented an application from being submitted in the normal time limit.
- If the RO decides that there are no special reasons, they must go on to consider whether a review under Direction 31 is appropriate.

Application does not contain reasons

113. The RO:
- is required to decide whether or not the application does contain reasons and therefore is or is not made in accordance with the regulations
 - records the decision and the reasons for it.
- If the RO decides that the application satisfies the regulations, process the review application.
- Before deciding that an application does not satisfy the regulations, the RO must contact the applicant to clarify the reason for the review.

Application made by a third party

114. Regulation 2(6) of the Social Fund (Application for Review) Regulations 1988 states that where an application for review is made on behalf of the applicant, that person should signify in writing his consent to the application being made on his behalf.

The RO:

- considers if the application has been made in accordance with the regulations
- records the decision and the reasons for it.

If the RO decides that the application does not satisfy the regulations, the RO will notify the applicant of his decision.

Direction 39 - Manner in which a review is to be conducted – stage one

Direction 39

Reviewing Officer's action, first stage

115. The first stage is to check whether the decision under review was made correctly. On receipt of the case, the RO should re-examine the application form, decision form and relevant papers to ensure that at the time of the original determination:

- the law (including directions) was interpreted and applied correctly
- proper regard was had to the facts about the applicant's personal circumstances including those circumstances specified in the relevant directions regard was had to the relevant allocation by application of the national baseline figure

the decision was sustainable on the evidence, followed the required procedural steps and did not take irrelevant considerations into account.

Once the determination has been re-examined and any errors in the initial determination identified, see Direction 32.

Direction 32 - Manner in which a review is to be conducted – stage two

Reviewing Officer's action, second stage

116. When you have re-examined the Budgeting Loan (BL) determination under Direction 31(2) to see if it was made properly, reconsider the determination having full regard to:

- the applicant's personal circumstances which applied to him as at the date the original determination was made
- any material facts confirming the applicant's personal circumstances which existed at the time the original determination was made
- any new evidence supporting the material facts which confirm the applicant's personal circumstances existing at the time the original decision was made and which has since been produced

- any other material fact which existed at the time the original determination was made and any new evidence supporting that fact which has since been produced
 - any increase in the amount repayable to the social fund by the applicant or his partner or both since the date of the original determination and, where there has been such an increase, any sums repaid to the social fund since the date of the original determination
 - the national baseline figure issued by the Secretary of State for determining the maximum amount available to each BL applicant under the national budget which is current at the date of the review.
117. Check computer and associated records and seek further information if necessary. The DM and RO should ensure that they have all the relevant information to determine the application/review. Where a relevant issue is raised in connection with an application, the DM or RO should seek more information to ensure the relevant issue is fully taken into account in determining the application or review.
118. Where the decision was properly made in the first instance (Direction 39), and there is no new evidence supporting the relevant (material) facts that existed at the time (Direction 32), the original decision will be confirmed.
119. Where an error is found in the original decision, the case will be re-considered taking into account all the factors in Direction 32, in particular any new evidence supporting relevant (material) facts that existed at the time. The outcome of the decision may still be the same as the outcome of the original decision.
120. Note that new evidence about subsequent changes in personal circumstances since the original decision are never to be taken into account, unless the RO is considering an award/increased award. In this case subsequent:
- increases in the amount of social fund debt; and
 - changes in the Secretary of State's baseline figure must be taken into account.

Decision changed

121. After conducting a full review under Directions 39 and 32, the original decision may be:
- fully confirmed - it was the right outcome for the right reasons (not wholly in applicant's favour)
 - revised - it remains the right outcome but the decision was incorrectly reached and this is now documented by the RO (not wholly in applicant's favour)
 - revised - an award/increased award is made to replace the original decision (wholly in applicant's favour)

The decision should be recorded on form SF602 giving reasons and an explanation as to why the decision can or cannot be changed wholly in the applicant's favour. The applicant should be notified of the review decision and advised that they can ask for a further review by an officer at the ICE's office.

Direction 33 - Decision not wholly in applicant's favour

Direction 33

122. Normally the RO should be able to reach a decision without the need to conduct an interview with the applicant. The RO, however, must contact the applicant and provide an explanation of the decision, preferably by telephone, where the applicant has disputed the key facts, e.g. the personal circumstances taken into account, amount of savings or receipt of a qualifying benefit. The explanation should also provide the applicant with an opportunity to comment and ask questions about the original decision.

Where the applicant:

- cannot be contacted or is difficult to reach by telephone or
- is disadvantaged by using the telephone due to communication or other problems or
- has requested a written explanation
- the RO must provide in writing the above explanation of the decision and respond to any comments or questions raised.

Explanation of the decision

123. It is not necessary to offer the applicant a formal review interview in order to provide him/her with a fair and proportionate review of the original decision. This is because the conditions of entitlement for BLs are formulaic and not open to interpretation.

The applicant should be offered an explanation of the original decision where there is a dispute about the key facts, i.e. the personal circumstances or receipt of a qualifying benefit. The explanation will also provide the applicant with an opportunity to comment and ask questions about the original decision. The RO can correct any factual errors in relation to the applicant's personal circumstances and receipt of a qualifying benefit in the subsequent review decision.

Direction 36 - Action following the review

Direction 36

124. After the review

- reconsider the original decision on the basis of the facts at the time of the original decision, see Directions 39 and 32
- identify and record details of any errors in the original decision
- take account of any new evidence
- complete part 6 of form SF602

- issue a written decision and inform the applicant of the further review process.

Where there are no errors in the original decision or there is no new evidence that affects the original decision, the RO should confirm that decision. Where an error or new evidence has been identified you should make a new decision, whether or not this changes the outcome for the applicant.

Examples of review decisions

125. The following scenarios illustrate Directions 39, 32, 33, and 36 above.

Example: DM incorrectly concluded from the information in the case that the applicant had been in receipt of a QB for 18 weeks. Applicant disputes this fact and RO establishes from the same information in the case that in fact the applicant had received a QB for 21 weeks.

Comment: *there is an error by the DM in establishing the correct length of time in receipt of a QB. The original decision is not sustainable on the evidence (Direction 39).*

The RO should address the error in the review, but the outcome is still the same (nil award).

Example: Mr A is single at the time he completes the SF500 BL application form asking for a loan of £200. At the time of the decision, however, Mr A had notified DWP of a change in circumstances - he now had a partner living with him – and his benefit had been re-assessed. The DM did not identify these relevant facts and decided that the maximum BL award to be £348 less £300 BL debt already owed. This resulted in a refusal (award less than £100).

Comment: *there is an error in the original decision as the facts at the time of the decision were that a partner had joined the household by the time the decision was made. Based on the circumstances at the time, the maximum award is £464 (couple rate). Under Direction 32 the decision that should have been made at the time will apply here: £464 less £300 BL debt already owed by the applicant. The RO's revised decision will produce an award of £164.*

Example: DM correctly concludes that the applicant has been receiving a QB for 24 weeks and refuses the application. Applicant disputes the QB facts in the written review application (by which time he has now been in receipt of a QB for 26 weeks).

Comment: *the RO recognises that the applicant has now been in receipt of a QB for 26 weeks but the decision under review was correctly made at the time and therefore cannot be changed in the applicant's favour. Direction 33 applies –*

the RO should contact the applicant to explain the original decision and if appropriate, advise the applicant to make a further BL application now that he is eligible under Direction 8. The original decision should then be confirmed.

Example: Single woman with no social fund debt applies for a BL of £1,500 and on the application form declares she has recently given birth. The DM awards an amount of £348 for a single person. The Secretary of State's baseline amount for a single person has increased £450 by the time of the review.

Comment: *there is an error in the original decision because the decision to base the award on the amount for a single person is not sustainable on the evidence. Based on the circumstances at the time, the appropriate maximum amount is for a household that includes a child (the baseline amount times two and one third). As per Direction 32, the baseline figure to apply on review is £450, and therefore the revised award is £1,050.*

Example: Single man in receipt for 26 weeks and with no dependants or social fund debt is correctly awarded the maximum loan (for a single person) of £348. Applicant asks for a review a week later, giving the reasons that a partner and child joined his household the day after the original decision was made.

Comment: *the decision was correctly made (Direction 39). There is new evidence about the applicant's personal circumstances but this is not about the relevant facts that applied at the time of the decision. The evidence is about subsequent changes and therefore cannot be taken into account (Direction 32). The original decision should be confirmed.*

Example: DM makes a decision on 15 October awarding the maximum possible loan of £348 to a single pregnant woman who requested a £500 loan. At that time the applicant owed £100 social fund debt, so the final award was £248 after deduction of the £100. Applicant asks for a review and now provides evidence that she had her baby prematurely on 13 October.

Comment: *the original decision was correct based on the evidence at the time. However, new evidence about facts relevant to the applicant's personal circumstances has come to light. At the time of the original decision, the applicant had given birth and the revised maximum loan amount should be £712 (£812 less £100 already owed). The applicant however, asked for £500 on her original application so a revised award of £500 should be made.*

Applicant contacts DWP office about review decision

Applicant telephones or calls at office

126. If the applicant telephones or calls in person to query the RO's decision, a member of the Social Fund staff should explain the reasons for the decision. If the applicant is dissatisfied with the explanation, the applicant should be advised of the further review process including:
- how to request a review (in writing with reasons, within 28 days of the first review decision)
 - where to send the request.

Recording details of applicant's phone call or visit

127. Record details of the phone call or visit. Tag the form to the Social Fund papers relating to the decision being questioned.

Direction 37 - Withdrawal of application for review

Direction 37

128. If the applicant does not respond to enquiries you must continue with the review and issue a decision based on the information held. Where the applicant asks for the review application to be withdrawn, you should consider whether this is appropriate. In some circumstances it would not be appropriate to accept the request to withdraw e.g. if the original decision appears to have been based on a mistake of law or was made in ignorance of a material fact, the RO would still have the duty under Direction 31 to conduct a review.

Direction 31 - Circumstances in which a determination is to be reviewed

Direction 31

129. The term 'reviewing officer' (RO) in Directions 32 to 39 means any DM, other than the DM who made the original determination, or a RO who is conducting a review in a particular case. A review of a determination may be initiated other than by an application for review by the applicant made in accordance with the Social Fund (Application for Review) Regulations 1988. Secretary of State's Direction 31 states that the RO must conduct a review where it appears that the decision:
- was based on a mistake as to the law (including directions) ignores or mistakes a material fact.

Such a review is conducted under the powers in section 38(1)(c) of the Social Security Act 1998 and may be as a result of:

- the DM/RO noticing an error of law or fact on a case at any time
- the applicant querying the decision (i.e. without a properly made application for review).

The review should proceed under Directions 32, 39 and 36.

Section 38(1)(c) of the Social Security Act 1998

130. Even if Direction 31 above does not apply, the RO has the discretion to review “in such other circumstances as he thinks fit”. In practice, this would be a rare occurrence.

The question, however, might arise where:

- the applicant applies for a review which ultimately fails the requirements of Social Fund (Application for Review) Regulations 1988 (i.e. pursuant to section 38(1)(c) of the SSA 1998); **and**
- none of the circumstances in Direction 31(1)(a) or (b) apply.

131. The RO should consider if any other circumstances apply which make it reasonable to accept that a review can take place. The RO should arrange for the case to be reviewed if they decide in the applicant’s favour.

The RO should send letter SF 226, if they decide that:

- none of the circumstances in Direction 31(1)(a) or (b) apply **and**
- no other circumstances apply which could justify a review.

Further review at Independent Case Examiner (ICE)

Applicant dissatisfied with Reviewing Officer's (RO's) decision

132. If the applicant is dissatisfied with the RO’s decision, they may apply for a further review by a further reviewing officer (FRO) at ICE.

An application for a further review by a FRO should normally be made:

- within 28 days from the date of issue of the RO’s decision, although the FRO may extend the time limit if there are special reasons even if the 28 days have already passed
- in writing (including by email) and contain reasons for the application
- by sending/delivering it to the ICE office
- by the applicant, their appointee or by any other party with the written consent of the original applicant to make the review application on their behalf.
- If a letter regarding a further review, or expressing dissatisfaction with the reviewing officer's decision is received in Jobcentre Plus, the RO should follow the operational procedural guidance.

Whether an application for further review by ICE is acceptable

133. It is for the FRO to decide if an application for a further review has been made in an appropriate time, form and manner.

If a letter requesting a further review, or expressing dissatisfaction with the RO's decision is received in the DWP office the RO must:

- prepare the papers as described in the operational guidance **and**
- send the papers to the ICE office without delay

See the operational guidance for recommended timescales.

If the application for further review has been made by letter and is unsigned, the RO must still send it immediately to the ICE office with all the appropriate papers. See operational guidance for full details of the forms required.

The FRO will decide whether to accept the application. If the FRO refuses the application, the papers will be returned to the office for filing. If the applicant's signature or necessary consent is obtained, the ICE office will send a copy to the office with a request for the papers.

The ICE Office will send copies of all the papers and information relating to the application to the applicant or their representatives.

If the papers have not been returned to the office within six weeks the RO must contact the ICE office urgently for an explanation.

Once a request for further review has been lodged the RO should not attempt to review the decision being considered by the FRO. Notify the ICE office if :

- applicant dies
- applicant goes into prison
- applicant goes abroad
- applicant moves home
- additional relevant information has come to light about the applicant's circumstances

The RO should notify the ICE office immediately if there is a change in the most recent national baseline figure issued by the Secretary of State (maximum amount for budgeting loans).

The further review

134. The FRO may:

- confirm the decision made by the DM
- make a new decision

It is for the FRO to consider if an application for further review has been made in the correct time and manner.

The FRO will notify the applicant of their decision.

Overpayments

General

135. This section describes the separate review arrangements when considering overpayments of Budgeting Loans (BLs) which were obtained through misrepresentation or failure to disclose material facts.

136. You should note that, with the exception of overpayment questions under this section, all applications for review must be actioned in accordance with the procedure described in paragraphs 1 to 75 above.

The Law

137. Section 71ZA of the Social Security Administration Act 1992 (which was inserted by section 75 of the Social Security Act 1998) enables the Secretary of State to recover discretionary social fund payments which have been overpaid as a consequence of a person's misrepresentation or failure to disclose any material fact where there has been a determination to that effect.

Under section 38(1)(b) of the Social Security Act 1998 Decision Makers (DMs):

- may determine that a BL was overpaid on the grounds that the person who applied for a discretionary social fund payment (including a case where someone applied on behalf of someone else), had obtained the payment by misrepresentation or by a failure to disclose any material fact.
138. In determining whether there has been an overpayment and whether that overpayment is recoverable the DM must, pursuant to section 38(8) of the Social Security Act 1998:-
- act in accordance with any general directions issued by the Secretary of State which may include;
 - the circumstances in which a determination is to be reviewed
 - the manner in which a review is to be conducted **and**
 - take account of any general guidance issued by the Secretary of State.

Direction 43 - Overpayments - misrepresentation etc

Direction 43

139. When considering whether there has been an overpayment and whether that overpayment is recoverable, the DM should decide:
- whether the person who applied for a discretionary social fund payment or a person who applied on their behalf, misrepresented or failed to disclose any material fact
 - whether, as a result of any misrepresentation or failure to disclose any material fact, a payment has been made
 - from whom the overpayment is recoverable; **and**
 - the amount that is recoverable.

It does not matter whether the misrepresentation or failure to disclose any material fact was fraudulent or otherwise.

Where it is claimed that a person is not responsible for the misrepresentation or failure, the DM should consider the following points:

- non-responsibility is limited to those who are blind, illiterate or do not fully understand a particular form they have signed. This may be caused by poor education, illness or inborn incapacity and can be temporary or permanent
- poor education, illness or inborn incapacity alone is not sufficient to show non-responsibility. People are expected to take reasonable steps to understand what they sign
- the burden of proof rests with persons who contend that they are not responsible for the misrepresentation or failure to disclose a material fact.

Knowledge of the material fact

Examples

(1) A relevant officer's decision on behalf of the Secretary of State that a person had obtained a social fund qualifying benefit by misrepresentation or failure to disclose a material fact may itself be sufficient evidence of misrepresentation in relation to the social fund payment.

(2) There may be misrepresentation even though a person is unaware of the true position. For example, if the person's partner conceals from him the fact that she has earnings of her own, which if known, would have led to a cessation of IS or income-based JSA.

(3) There is misrepresentation if the declaration on the application form is not qualified, e.g., Declaration: "the information on this form is true and complete". Whether the applicant knew the material fact is irrelevant.

(4) The only exceptions are where the declaration is qualified, e.g., Declaration: "as far as I know, the information on this form is true and complete" or where the applicant states that they did not know what they were signing.

These examples are not exhaustive

140. Where cashing an Instrument of Payment (IOP) does not involve the signing of a declaration:

- the misrepresentation is the act of presenting the IOP to the bank or building society; **and**
- the person presenting the IOP misrepresents that there is entitlement to receive that payment as the beneficiary or on behalf of the beneficiary.

Examples of evidence which the DM may take into account when deciding whether there has been an overpayment and whether that overpayment is recoverable include:

- a certificate of conviction, which relates to the particular qualifying benefits which the applicant was in receipt of at the time of the social fund determination under review; **or**
- a written admission; **or**

- both a certificate or conviction and a written admission; **or**
- any other evidence that may be available, e.g., the testimony of a handwriting expert or direct evidence from a witness such as a Post Office clerk who witnessed the act of misrepresentation.

Disclosure reasonably to be expected

141. It is not enough that the person who fails to disclose a material fact does so because they genuinely believe it to be immaterial. It must also be shown that a reasonable person would not think the fact to be material. The DM should:

- consider the information, state of knowledge and circumstances of the person at the time the material fact should have been disclosed; **and**
- then decide whether a reasonable person would have concluded:
 - that the fact was not material; **or**
 - that the fact was material but did not have to be disclosed.

The test of the "reasonable person" is objective.

Deciding from whom the overpayment is recoverable

142. An overpayment is recoverable from any person who applied for a discretionary social fund payment or a person who applied on their behalf, who has misrepresented or failed to disclose a material fact. Where a person is acting on the applicant's behalf, the overpayment may be recovered from more than one person.

'Any person' may mean:

- the applicant or
- a person, other than the applicant, i.e. a person acting on the applicant's behalf, whose misrepresentation or failure to disclose caused the overpayment

143. In failure to disclose cases, the applicant's partner may have the same obligation but only if it can be shown that the partner knew:

- the material fact; **and**
- that the applicant had made an application for a social fund payment; **and**
- that the material fact affected their eligibility for the social fund payment; **and**
- that the disclosure was reasonably to be expected.

Direction 44 - Action following the Decision Maker's overpayment determination

Direction 44

144. After reaching the determination:

- the DM should issue the determination with a letter telling the person that if he does not agree with the determination he can ask for the determination to be reviewed by the RO.
- if the person asks for his case to be reconsidered, refer the case to the RO. The RO should continue the review action.

Direction 45 - Reviewing Officer action, first stage

Direction 45

145. In continuing with the review the RO should examine the evidence of misrepresentation and all relevant papers. Re-examine the overpayment determination to ensure that it was made properly, having full regard to whether:
- the law and directions, including the overpayment directions, were followed
 - the Secretary of State's guidance on overpayments was followed
 - the DM acted fairly, followed the required procedural steps and acted without bias

Once the overpayment determination has been re-examined to see if it was made properly, reconsider the overpayment determination, see Direction 46.

Direction 46 - Manner in which a review of an overpayment determination is to be conducted

Review Officer (RO) action, second stage

Direction 46

146. When you have re-examined the overpayment determination to see if it was made properly, reconsider the determination:
- with regard to the facts and circumstances of the misrepresentation or non disclosure
 - with regard to any new evidence or other factors raised by the application for review
 - asking for further information if necessary
 - applying the law and directions and taking account of guidance and bearing in mind the need to correct any errors that may have occurred.

Direction 47 - Action following the Review Officer's review

Direction 47

147. After making a new determination in accordance with Direction 46, issue a written decision and inform the applicant of the further review process.

Withdrawal of application for review

148. If the applicant decides to withdraw the application for review of the overpayment decision, the recovery of the sum overpaid will proceed without further review action.

Direction 48 – Further reviewing officer at ICE refers the overpayment matter back to the Reviewing Officer for determination

Direction 48

149. The further reviewing officer (FRO) will indicate why they cannot confirm the RO's decision, e.g. that the law and directions had not been applied properly. The RO should consider whether any more information or evidence should be sought before conducting a fresh overpayment determination.

150. The RO's new determination

- is made in the light of comments from the FRO
- should take full account of the points raised by the FRO

Part 5 - Further reviews

Introduction

151. Section 36 of the Social Security Act 1998 provides for officers of the Secretary of State to act under his authority and exercise functions on his behalf in relation to budgeting loan payments. These officers are:
- Decision MAKERS who make the original budgeting loan determination
 - Decision Makers who carry out the first review of the original determination (referred to in Directions 32 to 39 as Reviewing Officers (ROs))
 - Decision Makers who carry out a further review of the first review determination (Further Reviewing Officers (FROs)).
152. The primary legislation provides for all DMs, ROs and FROs above to determine whether to make a budgeting loan payment and if so, how much. The first review process conducted by the RO is statutory (see Part 4 of this Guide). The further review process, however, is administrative. This part sets out the further review process for FROs.

The further review

When a further review is appropriate

153. A budgeting loan determination may be further reviewed by a FRO at the written request of the applicant. The circumstances are that the request must:
- follow the outcome of a review of the original determination
 - be in writing with reasons
 - be delivered to DWP within 28 days of the date of the previous review decision (although the FRO will have discretion to accept a request made outside of the 28 days if there are special reasons).
154. A FRO can review the determination of a DM, or a further review determination made by himself or any other FRO. There are, however, some decisions that cannot be reviewed under this process. These are the administrative decisions made by an officer acting on behalf of the Secretary of State about arrangements for repayment of the loan award.
- In reviewing a determination the FRO must act in accordance with this policy guidance, and the Secretary of State's directions and guidance which other DMs in DWP are bound by. The FRO must also take account of any guidance issued to DMs by the nominated officer under section 36(2) and section 38 (11) of the Social Security Act 1998.

Scope of the further review

155. Decisions which can be reviewed are those the DM has made about:
- the amount of an award
 - the refusal of an award

- if an award should be paid to some-one other than the applicant
 - if an award should be paid by instalments
156. Overpayments in consequence of a misrepresentation or failure to disclose material facts. Reviews of overpayment questions are dealt with separately (paragraphs 170 to 178).

The FRO can:

- confirm the decision **or**
- substitute their own decision.

The FRO's review should be conducted on the basis of:

- the evidence contained in the papers received from the BC **and**
 - any fresh evidence relating to the circumstances that were in existence at the time of the original application
 - All documentation sent to the FRO should be copied to the applicant if the applicant asks to see it.
157. The FRO may wish to make additional enquiries to clarify or supplement the information in the papers. They may seek information from the applicant or the RO/DM. Any information obtained from the RO/DM should be copied to the applicant.

The applicant has no right to an oral hearing but you might want to consider if an interview to obtain evidence, or other reasonable adjustment, is appropriate if the applicant has difficulty in communicating in writing, for example, as a result of a disability.

How the further review is conducted

First stage

158. The first stage consideration is broadly along the lines of a judicial review test. The focus is on the way the decision was reached (procedure) rather than on the merits of the case. The FRO should consider if the determination under review was both legally sustainable and made in accordance with the correct procedure.

The FRO should have regard to:

- whether the decision maker (DM) applied the law correctly in arriving at this decision, that is:
 - the decision is sustainable on the evidence
 - the DM took all relevant considerations into account and did not take irrelevant considerations into account
 - the DM interpreted the law – including the Secretary of State's directions – correctly
 - whether the DM had regard to the relevant allocation in accordance with Direction 41; and
 - whether the DM acted fairly, followed the required procedural steps and acted without bias.
159. Where one or more significant errors of law or procedure are identified when applying the above tests the FRO should make a new decision even if the overall outcome of the decision is the same.

160. In making the new decision the FRO should base it on the correct facts as they existed at the time of the original decision (i.e. dealing with the significant errors and making the correct decision that should have been made initially).
161. Where a new decision is made under the first stage review the FRO should highlight this and include a brief explanation (for both the DM and the applicant) of the significant error identified and how it has (or could have) adversely impacted the process or the outcome.
Where a new decision is made as above under the first stage, there is no second stage consideration.

Insignificant errors or no errors

162. Where there are errors but these are insignificant in that they have not materially harmed the decision process and the outcome of the decision being reviewed is correct, the case goes onto the second stage.
163. Where there are no errors the case goes into the second stage.

Second stage

164. There is no second stage if a new decision was made at the first stage. Where the FRO is satisfied that the decision was both legally sustainable and made in accordance with the correct procedure (i.e. insignificant errors or no errors, (see paragraph 162 to 163 above), they should then go on and have full regard to:
- the applicant's personal circumstances (as specified in Secretary of State's Direction 50) which applied at the time the original determination was made
 - the material facts confirming the applicant's personal circumstances which existed at the time the original determination was made
 - any new evidence supporting the material facts which confirm the applicant's personal circumstances existing at the time the original determination was made and which has since been produced
 - any other material fact which existed at the time the original determination was made and any new evidence supporting that fact which has since been produced
 - any increase in the amount repayable to the social fund by the applicant or his partner or both since the date of the original determination, and where there has been such an increase, any sums repaid to the social fund since the date of the original determination.
 - In arriving at the maximum amount available to a budgeting loan applicant the FRO is to apply the baseline figure current at the date of his review determination.
165. In relation to the applicant's personal circumstances, the FRO shall only have regard to those circumstances which are applicable to him and which are specified in directions issued by the Secretary of State pursuant to section 140 (1A) of the Social Security Contributions and Benefits Act 1992.
166. The second stage review is about the merits of the case. There is no scope, however, to have regard to subsequent changes in personal circumstances or other material facts arising since the date of the original decision except for increases in the amount of total SF debt of applicant/partner or changes in Secretary of State's baseline figure.

167. In looking at new evidence the FRO must distinguish between new evidence about what the relevant facts were (which he must have regard to) and new evidence about subsequent changes in facts/circumstances (which should be ignored).
- Where the FRO is considering making an award or increasing an award, he must have regard to any increase in total SF debt.
 - Where the FRO concludes that the DM has taken proper account of the correct personal circumstances and other material facts and reached a correct decision, he should normally confirm the decision.

Overpayments out of Social Fund

168. Section 75 of the Social Security Act 1998 (which inserts a new section 71ZA into the Social Security Administration Act 1992) enables the Secretary of State to recover discretionary social fund payments which have been overpaid as a consequence of the recipient's misrepresentation or failure to disclose any material fact where there has been a determination to that effect.
169. The Secretary of State's directions and guidance to DMs provide the basis for determining an overpayment question initially (Direction 43) and then for a subsequent review where the applicant notifies the DM of his disagreement with the DMs overpayment determination within specified time limits (Direction 44).

Further review of overpayment determinations

170. An applicant may seek a further review of an overpayment determination. This review should be carried out by the FRO under the terms of this policy guidance.
- In reviewing an overpayment determination, the FRO must act in accordance with this policy guidance, and the Secretary of State's directions and guidance which DMs in DWP are bound to act in accordance with. Note that the review does not include decisions relating to the method or rate of recovery of overpayments made on behalf of the Secretary of State pursuant to section 71ZA of the Social Security Administration Act 1992 (as inserted by section 75 of the Social Security Act 1998).

The only questions which the FRO needs to consider are whether:

- any person misrepresented or failed to disclose a material fact
- what, if any, amount is recoverable by the Secretary of State as a consequence of the misrepresentation or failure.

The FRO can:

- confirm the DM's decision **or**
- substitute their own decision **or**
- refer the matter back to the DM for determination.

First stage

171. The first stage of the further review is to consider if the decision under review was reached correctly. The factors set out below will help to decide if the overpayment determination was both legally sustainable and made in accordance with the correct procedure.

These are:

- whether the decision maker applied the law correctly in arriving at his decision. In particular:
- that the overpayment decision is sustainable on the evidence that the DM interpreted the law – including the Secretary of State’s directions – correctly
- whether the DM acted fairly, followed the required procedural steps and acted without bias.

172. The second stage of the review should look at the circumstances of the misrepresentation or failure to disclose any material facts.

It does not matter whether the misrepresentation or failure to disclose was fraudulent or otherwise.

Second stage

173. If the FRO is satisfied that the overpayment determination was both legally sustainable and made in accordance with the correct procedure, they should continue with the review, having full regard to the factors below.

These are:

- the material facts and circumstances of misrepresentation or failure to disclose
- any new evidence which has since been produced; and
- whether any, and if so what, amount is recoverable as a consequence of the misrepresentation or failure to disclose any material fact.

174. The FRO should consider if, in taking account all the factors above, the DMs determination is one they agree with. This does not mean that the FRO should reject a determination because it is not exactly the one they would have made. The FRO should, however, before confirming the overpayment determination, be satisfied that it is a determination which can be considered to be legally correct, having regard to all the relevant factors.

175. If the FRO is unable to confirm the DMs determination because it falls at the first or second stage, they will need to decide whether the matter should be dealt with by:

- substituting their own determination or
- referring the case back to the DM to be determined afresh.

FRO substitutes a determination

176. If the FRO decides to substitute their own determination, they should first ensure that all the relevant papers surrounding the misrepresentation or failure to disclose material facts are available to enable a determination to be given. The FRO might decide to substitute a determination if:

- they find that the determination was not impartial, or that there was prejudice or bias
- the required procedural steps were not followed in the determination under review
- the case has been referred to the FRO a second time, the FRO is unable to confirm the re-determination, and considers it expedient that a final decision is given

There may be other reasons for the FRO to substitute a determination.

- If the FRO determines the application, they will do so in accordance with the general directions and guidance issued under section 38(8) of the Social Security Act 1998.
- The FRO in making the determination should have regard to all the facts relating to the misrepresentation or failure to disclose, including any revealed by new evidence.

Case referred back for re-determination

177. If the FRO decides to refer the case back for re-determination, he should give detailed reasons for the decision, identify defects in the DM's decision process and give clear reasons for referring the case.

In referring the case back for re-determination, the FRO might give one or more reasons, e.g.:

- the evidence in the case does not support the decision given
- the decision is based on irrelevant facts
- the law and directions have been interpreted or applied incorrectly
- insufficient weight has been given to relevant facts
- the determination is unreasonable or irrational
- If the applicant remains dissatisfied with the re-determination of the DM, they may again apply to have the determination reviewed by a FRO.

Further redress after the FRO's review (JR)

178. Once the review process has been exhausted, if an applicant is still dissatisfied their next avenue of challenge would be an application for permission of the court to apply for a Judicial Review of the decision.

Grounds for a Judicial Review

179. There are three grounds for Judicial Review:
- illegality – a decision maker fails to give effect to the law that regulates their power to make decisions
 - Irrationality and proportionality – a decision is “so outrageous in its defiance of logic or of accepted moral standards” (such as one which has no evidence to support it) or the decision is not a proportionate means of achieving a legitimate aim
 - procedural impropriety (fairness) – the decision fails to comply with the principles of natural justice or its own rule of procedure.

Annex 1 to Part 5 – illustrative examples of first and second stage further review

Further review – first stage

Whether the decision was reached correctly (errors not significant)

Example 1:

The Decision Maker (DM) decides Direction 8 is not satisfied as the applicant has been receiving a qualifying benefit for 12 weeks. The applicant disputes this fact and further information is sought on the further review. The information shows that the applicant has received benefit for 20 weeks at the time of the original decision.

The decision was not reached correctly but the error is not significant because correcting the error would not have led to a different decision at that stage. The applicant is still ineligible for a budgeting loan because Direction 8 is not satisfied.

Whether the decision was reached correctly (significant error in application of law)

Example 2:

In his decision the reviewing DM states that the applicant has been in receipt of the qualifying benefit of Income Support for 25 weeks at the date of the original decision. The DM therefore decides that Direction 8 is not met and applicant was not eligible for a loan. The evidence in the case shows that this is incorrect, and applicant had been getting the qualifying benefit for 27 weeks and Direction 8 is satisfied.

The decision was not reached correctly – it is not sustainable on the evidence.

Example 3:

A single woman is awarded a budgeting loan on the basis that she is single with no children. There is evidence in the case, including on the application form, to show that the applicant had recently had a baby.

The decision was not reached correctly – it is not sustainable on the evidence

Example 4:

The DM decided the applicant did not satisfy Direction 8 as he had not been in receipt of a qualifying benefit for the required 26 weeks, because there was a gap of 3 weeks in which the applicant had found temporary work. The direction, however, provides for gaps to be treated as part of a continuous period in specified circumstances.

The decision was not reached correctly – the Decision Maker had not interpreted the law correctly.

Whether the decision was reached correctly (significant error in procedure)

Example 5:

The DM correctly refuses a budgeting loan on the grounds that the applicant has not been in receipt of a qualifying benefit for 26 weeks. The applicant has been in receipt of qualifying JSA (income based) for only 3 months. Prior to this, he was getting JSA (contributory) for 6 months.

The applicant believes the whole period of JSA counts and asks for a review disputing the information upon which the Direction 8 eligibility decision was based.

The decision is confirmed on review without contacting the applicant.

The decision was not reached correctly – the DM did not act fairly. Under Direction 33, there is a duty to contact the applicant to explain the decision and give the applicant the opportunity to comment. This could have prevented an unnecessary application for further review and provided applicant with the realistic expectation of when he might be eligible in the future.

Making a new decision at the first stage

Example 6:

Mr B is single with no children and applies for a budgeting loan of £300 on 1 October. At the date of the DM's decision, 10 October, he has been receiving income-based Employment and Support Allowance and following this, income-based Jobseeker's Allowance; the combined length of these claims reached 26 weeks on 9 October. Also at 10 October, he already has a budgeting loan debt of £100 and the Secretary of State's maximum award figure for a single person is £348.

The DM miscalculates and incorrectly finds that Mr B had not been receiving a qualifying benefit for 26 weeks, refusing a budgeting loan under Direction 8. Mr B asks for a review on 12 October, disputing the qualifying benefit period. On 20 November, the Reviewing Officer makes the same miscalculation and confirms the DM's decision, without contacting the applicant (Direction 33).

Mr B asks for a further review on 23 November at which date the Secretary of State's maximum award figure for a single person is £398. It is not

In this case there is an important error: the finding that Direction 8 is not met is not sustainable on the evidence. In addition, the applicant is not given the opportunity under Direction 33 to state his case. This lead to the wrong outcome. Instead of a refusal, there should have been an offer of a budgeting loan of £248 (the baseline amount of £348 less his budgeting loan debt of £100).

An award can be made on further review of £248 – which is the correct decision that should have been made in the first place.

There is no second stage review consideration.

Further review – second stage

When a new decision is appropriate

Scenario 1

Ms A lives alone and applies for a budgeting loan of £250 for furniture on 10 October. She has received income-related Employment and Support allowance for more than 6 months. The DM makes his decision on 15 October at which time Ms A has outstanding budgeting loan debt of £300, and no other Social Fund debt. The Secretary of State's maximum amount figure for a single person with no children is £348. The DM decides that Ms A's maximum possible loan is £348, and deducts her outstanding budgeting loan debt of £300 from this. As the remaining £48 is below the minimum award of £100, no budgeting loan can be awarded (Direction 53).

Ms A asks for a review, saying that she was desperate for a loan. On 20 October the reviewing DM confirms the original decision.

Ms A asked for a further review, saying she was desperate for a loan adding that she *had given birth prematurely on 13 October*. At the time of the further review on 5 November, Ms A's outstanding budgeting loan debt had fallen to £283. The Secretary of State's baseline figure had fallen to £300.

Further review decision

In this case the reviewing DM reached his decision correctly, on the evidence before him on 20 October. However, in going on to the **second stage review**, there is new evidence to take into account about Ms A's personal circumstances at the time of the original decision, i.e. her household now includes a child. As a consequence the appropriate maximum amount of budgeting loan is £700 ($£300 \times 2\frac{1}{3}$).

The amount of budgeting loan debt outstanding at the date of the original decision (£300) is now deducted, giving a figure of £400. (The second stage review only permits repayment against outstanding budgeting loan debt to be updated where no further loan debt has been incurred in the meantime).

As the amount Ms A requested is £250, this is the most that can be awarded (Direction 53).

Under the second stage review, because of the new evidence about the facts that existed at the time of the award, the original decision to refuse can be replaced with an award.

When a new decision is not appropriate

Scenario 2

Mr B lives alone and applies for a budgeting loan of £600. At the date of the DM's decision on 1 June, Mr B has outstanding budgeting loan debt of £248, and no other debts. The Secretary of State's baseline figure for a person without a partner or child is £348. The DM decides the maximum possible loan is £348, from which the outstanding budgeting loan debt of £248 had to be deducted (Direction 53). The DM awards a budgeting loan of £100.

Mr B asks for a review on 25 June. He says that his girlfriend moved in with him on 5 June, and they claim income-related Jobseeker's allowance jointly. The RO notes the change in circumstances but confirms the original decision. Mr B applies for a further review.

Further review decision

There is new evidence about Mr B's personal circumstances (he now has a partner), but these circumstances do not relate to the time of the original DM's decision so the change cannot be taken into account. The reviewing DM's decision has been reached correctly and was the right decision based on the circumstances at the time. The maximum possible loan still has to be based on Mr B having neither a partner nor a child. The FRO should confirm the RO's decision.

Part 6 – The Directions

The Directions issued by the Secretary of State for Work and Pensions

The Directions issued by the Secretary of State for Work and Pensions under sections 138(1)(b) and (5), 140(1A), (2), (3) and (4) of the Social Security Contributions and Benefits Act 1992, section 38 (7) - (10) of the Social Security Act 1998 and section 168(5) of the Social Security Administration Act 1992

General

General
For the purposes of these Directions: (1) a person is in receipt of a benefit if: (a) it has been paid in respect of that person; and (b) it is paid - (i) to him; or (ii) a person appointed to act on his behalf. (2) a partner means, where the applicant is a member of a couple: (a) who are married; (b) in a civil partnership; or (c) living together as if they are married or in a civil partnership, the other member of that couple

Direction 1 – Needs which may be met by social fund payments

1. The needs which may be met by Social Fund payments awarded under section 138(1)(b) of the Social Security Contributions and Benefits Act 1992 are those set out in direction 2.
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Direction 2 – Budgeting Loan qualifying conditions

2. (1) Subject to direction 8, a budgeting loan may be awarded to assist an applicant meet any of the following intermittent expenses the need for which occurs in the United Kingdom:

- (a) Furniture and household equipment
- (b) Clothing and footwear
- (c) Rent in advance and/or removal expenses to secure fresh accommodation
- (d) Improvement, maintenance and security of the home
- (e) Travelling expenses
- (f) Expenses associated with seeking or re-entering work
- (fa) Maternity or Funeral expenses
- (g) HP and other debts (for expenses associated with paragraphs (a) to (fa) above)

(2) Paragraph (1)(fa) applies to an application for a budgeting loan made on or after 8 May 2012.

Direction 5 - Repayability

5. Any award within direction 2 shall include a determination that it is repayable; an award within direction 2 is referred to in these directions as a budgeting loan.

Direction 8 – Budgeting Loan eligibility

8. (1) A social fund payment under direction 2 shall only be awarded to an applicant if at the date of the determination of the application –

- (a) he is in receipt of:
 - (i) a qualifying benefit, which, for the purposes of this direction means unless otherwise specified
 - (aa) income support;
 - (bb) income-based jobseeker's allowance;
 - (cc) state pension credit; or
 - (dd) income-related employment and support allowance; or
 - (ii) payments on account of a qualifying benefit such as may be made by the Secretary of State under Part 2 of the Social Security (Payments on Account of Benefit) Regulations 2013)
- (b) neither he nor his partner is disentitled from receiving a jobseeker's allowance pursuant to section 14 of the Jobseekers Act 1995 (trade

disputes) nor would they be so disentitled if otherwise entitled to that allowance, and

(c) for each week of the 26 weeks immediately preceding the date of determination of the application, he has been in receipt of a qualifying benefit or of a payment on account of such a benefit or the partner of a person in receipt of a qualifying benefit or of a payment on account of such a benefit.

(2) For the purposes of paragraph (1)(c), where the applicant or, as the case may be, his partner, has been in receipt of a qualifying benefit, or of payments on account of such a benefit, for two or more periods, the last of which includes the date of the determination of the application the interval between any two such periods shall be treated as part of a continuous period of a qualifying benefit or of payments on account of such a benefit providing that its duration does not exceed:

(a) one month, where immediately preceding the interval the qualifying benefit is Universal Credit

(b) in all other cases 28 days

Is not a period

.

(3) For the purposes of paragraph (1)(c), (1A) and (2), the period of seven waiting days prescribed in respect of an applicant or his partner by:

(a) regulation 46(2) of the Jobseeker's Allowance Regulations 1996:

(b) regulation 144(1) of the Employment and Support Allowance Regulations 2008 or]

(c) regulation 19A of the Universal Credit

Is not a period of receipt of a qualifying benefit or of a payment on account of such a benefit

Direction 9 – Treatment of capital

9. (1) Where –

(a) the applicant, or his partner, is aged 63 or over and the total capital resources of the applicant and his partner exceed £2000; or

(b) the applicant is, or if he has a partner, both are aged under 63 and the total capital resources of the applicant and his partner exceed £1000

any budgeting loan which would but for this direction be awarded shall be awarded only if, and to the extent that, the amount of the award is more than the excess.

(2) Subject to paragraph (3) in this direction, 'total capital resources' shall be calculated in accordance with –

- (a) where the applicant or his partner is in receipt of income support, Chapter VI (capital) of Part V of, and Schedule 10 to, the Income Support (General) Regulations 1987;
 - (b) where the applicant or his partner is in receipt of income-based jobseeker's allowance, Chapter VI (capital) of Part VIII of, and Schedule 8 to, the Jobseeker's Allowance Regulations 1996;
 - (c) where the applicant or his partner is in receipt of state pension credit, Part III (income and capital) and Schedule V to the State Pension Credit Regulations 2002.
 - (d) where the applicant or his partner is in receipt of income-related employment and support Allowance, Part 10, Chapters 1 and 7 and Schedule 9 to, the Employment and Support Allowance Regulations 2008.
- (3). For the purposes of paragraph (2), the following shall be disregarded in calculating the total capital resources –
- (a) any payments made from the Family Fund to the applicant, his partner or children; and
 - (b) any integration loan granted to the applicant or his partner under The Integration Loans for Refugees and Others Regulations 2007 (S.I. 2007 No 1598) as they have effect at 11 June 2007.

[Direction 10 – revoked from 4 July 2011 but see Direction 53 (3)]

Direction 11 – Budgeting Loans, ability to repay

11. No budgeting loan may be awarded in excess of the amount which the applicant is likely to be able to repay.

Direction 31 – Circumstances in which a determination is to be reviewed

31. (1) A determination made by a decision maker must be reviewed where it appears that the determination concerned:
- (a) was based on a mistake as to the law (including the Directions) or
 - (b) was given in ignorance of, or was based on a mistake as to, some material fact.
- (2) Reviews referred to in paragraph (1) above shall be undertaken by a decision maker (other than the one who made the determination being reviewed) or by a reviewing officer authorised for the purpose of carrying out social fund reviews.
- (3) A reference in directions 32 to 39 to a “reviewing officer” is to a decision maker or reviewing officer carrying out a review.

Direction 32 – Manner in which a review is to be conducted

32. (1) In reviewing a budgeting loan determination the reviewing officer having first considered the matters specified in direction 39, must, have full regard to:

- (a) the applicant's personal circumstances as they existed at the time the original determination was made;
- (b) the material facts confirming the applicant's personal circumstances which existed at the time the original determination was made;
- (c) any new evidence, supporting the material facts which confirm the applicant's personal circumstances existing at the time the original determination was made and which has since been produced;
- (d) any other material fact which existed at the time the original determination was made and any new evidence supporting that fact which has since been produced;
- (e)... [provision removed from 1 April 2009]
- (f) any increase in the amount repayable to the social fund by the applicant or his partner or both since the date of the original determination and, where there has been such an increase, any sums repaid to the social fund since the date of the original determination.

(2) For the purposes of paragraph 1(a) to (c), in relation to the applicant's personal circumstances, the reviewing officer shall only have regard to those circumstances which are both applicable to him and which are specified in directions issued by the Secretary of State pursuant to section 140(1A) of the Social Security Contributions and Benefits Act 1992.

(3) In arriving at the maximum amount available to a budgeting loan applicant the reviewing officer shall apply the baseline figure current on the day the review determination is made (see direction 40 and direction 41).

Direction 33 – Decision not wholly in applicant’s favour

33. (1) Where a reviewing officer is minded not to revise a budgeting loan determination wholly in the applicant’s favour the reviewing officer must follow paragraphs (2) to (4) below.

- (2) A reviewing officer must comply with paragraph (3) if:
 - (a) he is minded not to revise the determination of a budgeting loan wholly in the applicant’s favour, and
 - (b) the applicant has expressly disputed information, upon which the determination was based, about:
 - (i) his personal circumstances, i.e. the composition of his household (direction 50 refers); or
 - (ii) receipt of a relevant qualifying benefit (direction 8).
- (3) The reviewing officer must contact the applicant to:
 - (a) explain the determination;
 - (b) give the applicant an opportunity to comment, and;
 - (c) if necessary, ask questions to ascertain relevant facts.
- (4) Under paragraph (3), the reviewing officer must normally contact the applicant by telephone, but where the applicant:
 - (a) cannot be contacted or is difficult to reach by telephone; or
 - (b) is disadvantaged by using the telephone due to communication or other problems; or
 - (c) has requested a written explanation,he must write to the applicant instead.
- (5) All representations made by the applicant under (3) must be accurately recorded and agreed with the applicant.

Direction 36 – Action following the review

36. The reviewing officer, having decided whether or not to revise the determination concerned, shall inform the applicant of his decision in writing and that written notification shall advise the applicant about the further review process.

Direction 37 – Withdrawal of application for review

37. If an applicant indicates in writing that he does not wish to proceed with his application the reviewing officer should take no further action unless satisfied that he should conduct a review in accordance with direction 31 (circumstances in which a determination is to be reviewed).

Direction 39 – Review action, first stage

39. In reviewing a budgeting loan determination the reviewing officer must have full regard initially to:

- (a) whether the decision maker applied the law correctly in arriving at his decision. In particular:
 - (i) that the decision is sustainable on the evidence;
 - (ii) that the decision maker took all relevant considerations into account and did not take irrelevant considerations into account;
 - (iii) that the decision maker interpreted the law - including Secretary of State directions - correctly;
- (b) whether the decision maker had regard to the relevant allocation in accordance with direction 41;
- (c) whether the decision maker acted fairly, followed the required procedural steps and acted without bias .

Direction 40 – Responsibilities of the Area Decision Maker

40. The nominated Area Decision Maker must notify the relevant decision makers of the most recent national baseline figure issued by the Secretary of State to be applied when determining the maximum amount available to each budgeting loan applicant under direction 52 (in order to manage spending of the national loans budget).

Direction 41 – Budget responsibilities of Decision Makers

41. (1) In determining an application for a loan, Decision Makers must have regard to the national loans budget (which is the “relevant allocation”) by applying the current budgeting loan baseline figure issued by the Secretary of State for the purpose of determining budgeting loans.

(2) In having regard to the national loans budget, Decision Makers should note that:

- (a) the annual national budget for budgeting loan payments is arrived at by forecasting an amount for loan recoveries for the year;
- (b) the baseline figure referred to in direction 40 and directions 32 and 52 is set at the start of the budget allocation period, and varied as appropriate during that period, with the aim of spending the annual budget in full; variations in the baseline figure are kept to a minimum so as to provide maximum consistency of budgeting loan award amounts available throughout the year;
- (c) the baseline figure reflects the budgetary position of the loans budget as it is arrived at by taking account of the amount of the budget spent and loans recovered so far, and the forecast demand and recoveries for the rest of the year.

Direction 43 – Overpayments – misrepresentation

43. If any question arises as to whether, in consequence of a misrepresentation or failure to disclose any material fact by any person who applied for a discretionary social fund payment, an amount of a budgeting loan has been overpaid and is recoverable:

- (a) the determination may be reviewed by a decision maker;
- (b) the questions which shall be determined on that review are whether any misrepresentation or failure to disclose a material fact has occurred and if so, whether any and if so, what amount(s) has been overpaid and is recoverable in consequence of the misrepresentation or failure to disclose.

Direction 44 – Action following the Decision Maker's overpayment determination

44. (1) Where following a review under direction 43, the decision maker has determined that a person has obtained a budgeting loan in consequence of a misrepresentation or failure to disclose any material fact and as a result of that misrepresentation or failure, an amount has been overpaid and is recoverable, he shall notify the person in writing of his determination.

(2) The written notification referred to in paragraph (1) above shall advise the person that if he does not agree with the determination made under direction 43, he must so notify the decision maker within the time specified in the decision maker's written notification, whereupon that determination will be reviewed by another decision maker (referred to in this direction and in directions 45 to 48 as the "reviewing officer").

(3) Where the person to whom the determination made under direction 43 relates, informs the decision maker that he does not agree with that determination, the decision maker must pass all the papers relevant to that determination to a reviewing officer, who will freshly determine the question referred to in direction 43 (making a written record of his determination) and that determination will supersede that of the decision maker.

Direction 45 – Reviewing officer action, first stage

45. In reviewing an overpayment determination pursuant to direction 44, the reviewing officer must have full regard initially to:

- (a) whether the DM applied the law correctly in arriving at his decision. In particular:
 - (i) that the overpayment determination is sustainable on the evidence,
 - (ii) that the DM interpreted the law - including Secretary of State directions correctly;

(b) whether the DM acted fairly, followed the required procedural steps and acted without bias.

Direction 46 – Manner in which a review of an overpayment determination is to be conducted

46. Having first considered the matters specified in direction 45, the reviewing officer in reviewing the overpayment determination concerned must have full regard to:

- (a) the material facts and circumstances of any misrepresentation or failure to disclose;
- (b) any new evidence which has since been produced; and
- (c) whether any, and if so what, amount is recoverable as a consequence of the misrepresentation or failure to disclose any material fact.

Direction 47 – Action following the Reviewing Officer’s review

47. The reviewing officer, after determining whether any, and if so what, amount of budgeting loan is recoverable shall inform the applicant of his decision in writing and shall also advise him about the further review process.

Direction 48 – Further reviewing officer refers the matter back to the reviewing officer for determination

48. A reviewing officer shall consider carefully any case referred by a further reviewing officer for re-determination. He shall take into account any reasons given by the further reviewing officer in reaching his decision to refer the matter to him, remedy any defects drawn attention to by the further reviewing officer and note that he has done so when determining the case afresh.

Direction 50 - Personal circumstances of applicant

50. (1) In determining whether to make an award of a budgeting loan to the applicant or the amount to be awarded, the decision maker shall have regard to the persons who are members of the applicant’s household at the date of the determination.

(2) Whether a person is a member of the applicant’s household at the date of the determination for the purposes of this direction shall be determined in accordance with –

- (a) regulation 16 of the Income Support (General) Regulations 1987 where the applicant or his partner is in receipt of income support, or payments on account of income support, at the date of the determination;
- (b) regulation 78 of the Jobseeker's Allowance Regulations 1996 where the applicant or his partner is in receipt of income-related jobseeker's allowance, or payments on account of income-related jobseeker's allowance, at the date of the determination; or
- (c) regulation 16 of the Income Support (General) Regulations 1987 where the applicant or his partner is in receipt of state pension credit, or payments on account of state pension credit, at the date of the determination;
- (d) regulation 156 of the Employment and Support Allowance Regulations 2008 where the applicant or his partner is in receipt of income-related employment and support allowance.

Direction 52 – Weightings for personal circumstances

52. The weighting values referred to in direction 53 which are to be applied to the baseline figure referred to in direction 40 and direction 41 in arriving at the maximum amount available by way of a budgeting loan, are as follows:
- (a) the weighting value to be attached to a household containing only the applicant is one;
 - (b) where the applicant has a partner, the weighting value to be attached to the household is one and one third;
 - (c) where there is one or more children aged 19 or under in the applicant's household, the weighting value to be attached to the household is two and one third.

Direction 53 – What to award

53. (1) Having identified the applicant's personal circumstances in accordance with direction 50, and the weighting values which apply to those personal circumstances as specified in direction 52, the decision maker shall determine the maximum amount available by way of a budgeting loan to the applicant by applying the appropriate weighting value to the baseline figure issued by the Secretary of State.

(2) Subject to paragraph (3) and directions 9 and 11, the highest award which may be made on any application shall be the lesser of:

(a) the amount applied for; or

(b) the maximum amount, less any budgeting loan debt owed by the applicant and his partner.

(3) The decision maker must try to ensure that no award is made which causes the sum repayable to the social fund by the applicant and his partner (by way of crisis loan and budgeting loan) to exceed £1500.

(4) The minimum amount that may be awarded as a budgeting loan is £100.

