

# Department for Work and Pensions

## DECISION MAKING AND APPEALS

### Decision Makers Guide

#### Volume 8

#### Amendment 27 – February 2019

1. This letter provides details on Amendment 27; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

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

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

3. Amendment 27 affects chapters 41, 42, 44 and 46. The changes:

Chapter 41 – incorporates Memo DMG 21/17 about qualifying young persons in traineeships, and Memo DMG 22/17 about the effect on ESA of continuing care payments as well as making some minor amendments.

Chapter 42 – includes new guidance on determining LCW where an ESA award ends because a UC claim is made.

Chapter 44 – incorporate Memos DMG 14/17 and 20/17 which make changes to non-dependant income disregards at paragraph 44611; incorporate Memo ADM 7/17 which makes changes to the definition of a disabled person for housing cost purposes at paragraph 44210; incorporate Memo DMG 5/18 which covers the new Support for Mortgage Interest (SMI) loans and is incorporated at paragraphs 44200, 44220 et seq - those paragraphs have been updated to remove references, definitions and examples relating to the SMI and housing costs applicable prior to 6.4.18. A new appendix 7 containing guidance on the transitional period for those cases is inserted. Appendices relating to SMI housing costs have been removed and others updated.

Chapter 46 – make amendments in accordance with Memo DMG 11/17, changing BA to BSP at paragraphs 46062, 46072, 46092, 46112 & 46121; make widespread amendments to remove reference to interest on payments and loans in accordance with Memo DMG 05/18 at paragraphs 46142, 46153, 46155, 46161, 46171 - 46195, 46198 - 46200, 46204 & 46207; amends benefit rates in accordance with Memo DMG 04/18 at paragraphs 46223 & 46232.

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

## **Remove**

### **Chapter 41**

Conts 41148 – Conts 41373 (1 page)  
Conts 41568 – Conts 41815 (1 page)  
41025 – 41032 (1 page)  
41107 – 41120 (1 page)  
41141 – 41175 (2 pages)  
41551 – 41567 (2 pages)  
41581 – 41621 (3 pages)  
41647 – 41668 (2 pages)  
41703 – 41718 (2 pages)  
Appendix 5 (1 page)

### **Chapter 42**

Conts 42370 – Conts 42790 (1 page)  
42610 – 42789 (5 pages)

### **Chapter 44**

Conts 44125 – Conts Appx 10 (5 pages)  
44001 – 44018 (2 pages)  
44026 – 44044 (3 pages)  
44156 – 44165 (1 page)  
44200 – 44446 (35 pages)  
44452 – 44530 (9 pages)  
44539 – 44549 (1 page)  
44606 – 44611 (1 page)  
44621 – 44637 (2 pages)  
44647 – 44650 (1 page)  
Appendix 3 – Appendix 10 (27 pages)

### **Chapter 46**

Conts 46153 – Conts Appx 2 (3 pages)  
46051 – 46076 (2 pages)  
46081 – 46210 (10 pages)  
46223 – 46240 (2 pages)

## **Insert**

### **Chapter 41**

Conts 41148 – Conts 41373 (1 page)  
Conts 41568 – Conts 41815 (1 page)  
41025 – 41032 (1 page)  
41107 – 41120 (1 page)  
41141 – 41175 (2 pages)  
41551 – 41567 (2 pages)  
41581 – 41621 (3 pages)  
41647 – 41668 (2 pages)  
41703 – 41718 (2 pages)  
Appendix 5 (1 page)

### **Chapter 42**

Conts 42370 – Conts 42790 (1 page)  
42610 – 42789 (5 pages)

### **Chapter 44**

Conts 44125 – Conts Appx 7 (3 pages)  
44001 – 44018 (2 pages)  
44026 – 44044 (3 pages)  
44156 – 44165 (1 page)  
44200 – 44446 (14 pages)  
44452 – 44530 (3 pages)  
44539 – 44549 (1 page)  
44606 – 44611 (1 page)  
44621 – 44637 (2 pages)  
44647 – 44650 (1 page)  
Appendix 3 – Appendix 7 (14 pages)

### **Chapter 46**

Conts 46153 – Conts Appx 2 (3 pages)  
46051 – 46076 (2 pages)  
46081 – 46210 (8 pages)  
46223 – 46240 (2 pages)

Community service.....	41148
Claimants who do certain categories of work .....	41151
Work as a councillor.....	41152
Member of the FtT.....	41155
Domestic tasks and care of a relative.....	41156
Caring for another person.....	41165
Activities undertaken during an emergency.....	41169
Claimants receiving certain regular treatment .....	41176
Work in the first or last week of LCW.....	41178
Linking rules.....	41179
Night shift workers.....	41180

### **Exempt work**

Categories of exempt work .....	41186
Permitted work .....	41187
Calculation of weekly earnings .....	41189
Permitted work lower limit.....	41196
Supported permitted work.....	41197
Community Interest Companies.....	41201
Permitted work .....	41211
Calculating the hours for permitted work .....	41213
Self-employed test trading .....	41256
Voluntary work.....	41257
Magistrates.....	41259
Work placement .....	41260

### **Remunerative work**

ESA(Cont) .....	41271
ESA(IR) .....	41272
Work done for payment or in expectation of payment .....	41274
Payment to a claimant on termination or interruption of employment .....	41276

## **Effect of work - partner**

<b>Introduction .....</b>	<b>41301</b>
---------------------------	--------------

Do claimants' partners have employment.....	41306
---	-------

<b>Meaning of remunerative work .....</b>	<b>41316</b>
---	--------------

Claimant's partner treated as in or not in remunerative work .....	41317
--	-------

### **Work done for payment or in expectation of payment**

Introduction.....	41326
-------------------	-------

Work for no monetary reward.....	41327
----------------------------------	-------

Payment in kind .....	41328
-----------------------	-------

Expectation of payment.....	41329
-----------------------------	-------

Self-employed earners .....	41330
-----------------------------	-------

Sale of goods .....	41331
---------------------	-------

Business start up .....	41332
-------------------------	-------

Company directors .....	41334
-------------------------	-------

### **Establishing hours of work for a claimant's partner**

Introduction.....	41341
-------------------	-------

Carers and specified occupations.....	41343
---------------------------------------	-------

#### **Counting the hours**

Flexible working schemes.....	41346
-------------------------------	-------

Overtime.....	41347
---------------	-------

Breaks .....	41348
--------------	-------

Night Duty .....	41349
------------------	-------

Evidence of hours .....	41350
-------------------------	-------

Company directors .....	41351
-------------------------	-------

Musicians .....	41352
-----------------	-------

Self-employed .....	41353
---------------------	-------

Teachers .....	41357
----------------	-------

Calculating average hours .....	41371
---------------------------------	-------

Identifying a recognizable cycle .....	41372
--	-------

Permanent or indefinite contract.....	41373
---------------------------------------	-------



Meaning of course.....	41568
Modular courses.....	41570
Meaning of guided learning hours.....	41576
Meaning of terms used in Scotland	
College of further education.....	41579
Further education.....	41580
Higher education.....	41581
Meaning of sandwich course .....	41583
Work-related activity and education.....	41584
Traineeship and education.....	41585
Meaning of full-time	
General .....	41591
Evidence from educational establishment .....	41598
Other evidence.....	41601
Number of hours involved .....	41611
Funded courses .....	41614
Higher education.....	41618
Non funded courses.....	41621
Further education and other courses.....	41622
Meaning of educational establishment.....	41624
Meaning of last day of the course .....	41631
Meaning of abandons.....	41633
Meaning of dismissed .....	41646
Temporary absences .....	41647
Re-enrolment.....	41650
<b>Claimant treated as receiving education .....</b>	<b>41661</b>
Meaning of a qualifying young person .....	41662
Education and training condition.....	41663
16 year olds (15 year olds in Scotland) .....	41665
Extension periods for 16 and 17 year olds .....	41666
Interruptions .....	41669
Reasonable cause .....	41672

School holidays .....	41673
Education received abroad .....	41676
Young person held in custody.....	41677
Cases of doubt .....	41678
Cases of doubt about recognized establishment or education.....	41679
Hours of attendance .....	41686
Evening courses.....	41687
Hours of study in education elsewhere .....	41688
School leavers	
Introduction .....	41701
School leaving dates .....	41702
Person between 16 and 18 .....	41703
Person under 16.....	41704
Terminal dates	
England and Wales .....	41706
Scotland .....	41708
Leaving school .....	41709
When entitlement to ESA(IR) begins .....	41711
External examinations .....	41716
Period up to the terminal date .....	41717
Person starts work or training .....	41718
Age 20 .....	41719
<b>Claimant not treated as receiving education .....</b>	<b>41731</b>
<b>Duration of ESA(Cont)</b>	
<b>Introduction .....</b>	<b>41800</b>
Further awards of ESA(Cont).....	41801
<b>Period of entitlement</b>	
Contribution conditions satisfied .....	41810
Relevant maximum number of days .....	41811
Youth conditions satisfied .....	41815

- 41025 The definition of PLCW in DMG 41024 7. ensures that, when considering whether the contributions conditions in DMG 41029 et seq are satisfied, the relevant benefit year is decided on the basis of the date from which ESA is claimed, provided it falls within the 3 months time limit for claiming ESA.

### **Modification of the meaning of relevant benefit year**

- 41026 Where DMG 41027 applies the meaning of “relevant benefit year” at DMG 41024 4. is modified so that it is any benefit year which includes all or part of the PLCW which includes the relevant benefit week<sup>1</sup>.

*1 ESA Regs, reg 13(1)*

- 41027 The modification in DMG 41026 applies to a claimant who<sup>1</sup>

1. does not satisfy
  - 1.1 the first or second contribution conditions **or**
  - 1.2 both conditions **and**
2. would satisfy the conditions in 1. if that modification applied.

*1 ESA Regs, reg 13(2)*

- 41028 This enables a claimant to become entitled to ESA(Cont) on a further claim in a subsequent benefit year where

1. they now satisfy the contribution conditions **and**
2. an earlier ESA claim was disallowed because they did not satisfy one or both of the contributions conditions when the PLCW began.

### **The first contribution condition**

- 41029 The first contribution condition is satisfied<sup>1</sup> if

1. the claimant has actually paid class 1 or class 2 NI contributions in respect of any one of the last two complete tax years before the beginning of the relevant benefit year **and**
2. those contributions have been paid before the relevant benefit week **and**
3. the claimant's earnings for that year as determined in accordance with DMG 41030 must be at least 26 times the LEL for that year.

*1 WR Act 07, Sch 1, Part 1, para 1(1)*

- 41030 For the purposes of DMG 41029 3. the earnings are the aggregate of the claimant's

1. relevant earnings for that year on which class 1 NI contributions have been paid or treated as paid **and**
2. earnings factors derived from class 2 NI contributions<sup>1</sup>.

*1 WR Act 07, Sch 1, Part 1, para 1(2)*

- 41031 In DMG 41030 1., a claimant's relevant earnings are the amount of earnings at the LEL for the year in which the first contribution condition is satisfied. Earnings which exceed the LEL are disregarded<sup>1</sup>.

*1 WR Act 07, Sch 1, para 1(3): ESA Regs, reg 7A*

### **Relaxation of the first contribution condition**

- 41032 The first contribution condition is taken to be satisfied<sup>1</sup> if

1. the claimant has paid Class 1 or 2 contributions for any one tax year before the relevant benefit week<sup>2</sup> **and**
  2. the claimant has
    - 2.1 earnings at the LEL in that tax year on which Class 1 contributions have been paid or treated as paid which in total, and disregarding any earnings which exceed the LEL for that year, are not less than the LEL multiplied by 26<sup>3</sup> **or**
    - 2.2 earnings factors in that tax year derived from Class 2 contributions multiplied by 26<sup>4</sup> **and**
  3. the claimant
    - 3.1 was entitled to CA in the last complete tax year immediately before the relevant benefit year in which the first day of LCW occurred<sup>5</sup> **or**
    - 3.2 had been engaged in QRW<sup>6</sup> for a period of more than 2 years immediately before the first day of LCW and was entitled to the disability element, or the severe disability element, of WTC throughout that period<sup>7</sup> **or**
    - 3.3 is entitled to be credited with earnings or contributions following release from prison where a conviction is quashed<sup>8</sup>, or would be if an application was made, in respect of any week in any tax year preceding the relevant benefit year<sup>9</sup> **or**
    - 3.4 is entitled to be credited with earnings equal to LEL on the grounds that they
      - 3.4.a. are a spouse or civil partner of a member of HMF **and**
      - 3.4.b. accompanied that member of HMF on an assignment outside the UK or treated as such by the Secretary of State
- in respect of any week during the last complete tax year before the relevant benefit year<sup>10</sup>.

*1 WR Act 07, Sch 1, Part 1, para 1(4)(b); ESA Regs, reg 8; 2 reg 8(1)(a); 3 reg 8(1)(b)(i); 4 reg 8(1)(b)(ii); 5 reg 8(2)(a); 6 reg 2(1), Tax Credit Act 2002, Part 1; 7 ESA Regs, reg 8(2)(b); 8 SS (Credits) Regs, reg 9D; 9 ESA Regs, reg 8(2)(c); 10 reg 8(2)(ca); SS (Credits) Regs, reg 9E*

2. who gives full-pay service (see DMG 41109) as a member of certain named establishments or organizations<sup>2</sup> (see DMG 41107).

*1 ESA Regs, reg 2(1); 2 Sch 1, Part 1*

41107 For the purposes of DMG 41106 2. a member of certain named establishments or organizations means<sup>1</sup> any member of the

1. regular naval, military or air forces of the Crown
2. Royal Fleet Reserve
3. Royal Naval Reserve
4. Royal Marines Reserve
5. Army Reserve
6. Territorial Army
7. Royal Air Force Reserve
8. Royal Auxiliary Air Force
9. Royal Irish Regiment.

*1 ESA Regs, Sch 1, Part 1*

41108 However, a person who is

1. recruited locally overseas in certain circumstances<sup>1</sup> or
2. a deserter<sup>2</sup> or
3. a person to whom DMG 41084 1. or 2. applies<sup>3</sup>

is not a member of HMF.

*1 ESA Regs, Sch 1, Part 2; 2 reg 2(1); 3 Social Security (Benefit) (Members of Forces) Regs 1975, reg 2*

### **Meaning of full-pay service**

41109 A member of the armed forces is giving full-pay service if normal salary continues to be paid from

1. a civilian employer or
2. one of the branches of the armed forces.

41110 A person on unpaid leave or less than normal salary is not giving full-pay service.

### **Linking PLCW**

41111 Claimants do not have to serve waiting days if there is a linking PLCW. There is a linking PLCW when a PLCW is separated from another such period by not more than 12 weeks<sup>1</sup>.

**Note:** A period of NI Credits only is not a PLCW. See also DMG 41841.

*1 ESA Regs, reg 145(1)*

41112 - 41120



## Exceptions to the general rule

- 41141 DMG 41122 gives guidance on the general rule that a claimant is treated as not entitled to ESA in any week in which they work<sup>1</sup>.

*1 ESA Regs, reg 40(1)*

- 41142 However, there are exceptions to the general rule. These exceptions are claimants who

1. do certain categories of work<sup>1</sup> (see DMG 41151 et seq)
2. are receiving certain regular treatment<sup>2</sup> (see DMG 41176 - 41177)
3. do work in the first or last week of LCW<sup>3</sup> (see DMG 41178 - 41180).

*1 ESA Regs, reg 40(2); 2 reg 40(3); 3 reg 40(4)*

- 41143 A claimant who is treated as not entitled to ESA in any week in which they work may be treated as not having LCW<sup>1</sup> (see DMG Chapter 42). DMs should note that this does not apply where the claimant remains entitled to ESA(Cont), but is treated as being in remunerative work for ESA(IR)<sup>2</sup>.

*1 ESA Regs, reg 44(1); 2 reg 44(2)*

## Work

- 41144 Work<sup>1</sup> has the meaning in DMG 41132. It is not employment and there does not have to be a legal contractual relationship.

*1 ESA Regs, reg 40(7)*

### Example

A publican hires James to conduct two quiz nights per week and expects to pay him for doing this. There is no written contract and James does not usually accept payment when it is offered by the publican. This is work not a hobby because it is done for the commercial enterprise of the publican and James feels morally obliged to the publican to fulfil his agreement with him.

- 41145 Negligible work is considered under a general principle that the law is not concerned with trivialities. This principle is called “de minimis”. Negligible amounts of work can be disregarded before the specific rules are applied so that the claimant is not regarded as working on the day or days in question.

- 41146 Whether work on part of a day is negligible depends on its proportion to the normal working hours, the type of work and the effort required in relation to full normal duties<sup>1</sup>. When deciding if work is “de minimis”, the DM should consider the relevant case law.

*1 R(S) 2/61*

- 41147 The question of negligible work can arise in self-employment when a sick person can still attend to some aspects of a business. Work cannot be considered negligible if it contributes materially to the running of the business or involves a significant amount of supervisory or administrative work. For example if the person occasionally does small jobs such as signing cheques, the contribution to the business can be disregarded as negligible<sup>1</sup>.

*1 R(S) 5/51; R(S) 13/52; R(S) 24/52; R(S) 34/52; R(S) 37/52; R(S) 8/55;  
R(S) 2/61; R(S) 2/74; R(S) 10/79*

## **Community service**

- 41148 Community service should not be regarded as work. Courts will take account of a person's limited capability and the type and extent of activities prescribed by the court should be appropriate to the limited capability.

41149 - 41150

## **Claimants who do certain categories of work**

- 41151 The general rule in DMG 41122 does not apply to a claimant who
1. works as a councillor<sup>1</sup> or
  2. undertakes duties on not more than one full day or two half-days a week as<sup>2</sup> a member of the FtT who is eligible for appointment under specified legislation<sup>3</sup> or
  3. undertakes domestic tasks in their own home or takes care of a relative<sup>4</sup> or
  4. undertakes duties in caring for another person who is accommodated with them under arrangements for
    - 4.1 fostering or
    - 4.2 providing respite careand they receive payment for doing so<sup>5</sup> or
  5. undertakes duties in caring for another person who is provided with continuing care by a LA in Scotland, and they receive payment for doing so<sup>6</sup> or
  6. undertakes any activity during an emergency to
    - 6.1 protect another person or
    - 6.2 prevent serious damage to property or livestock<sup>7</sup> or
  7. does work which is exempt work<sup>8</sup> (see DMG 41186 et seq).

*1 ESA Regs, reg 40(2)(a); 2 reg 40(2)(b);*

*3 The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;*

*4 ESA Regs, reg 40(2)(c); 5 reg 40(2)(d) & Sch 8, para 28 & 29; 6 reg 40(2)(da); Children (Scotland) Act 95, s 26A;*

*7 reg 40(2)(e); 8 reg 40(2)(f) & reg 45*



## **Work as a councillor**

41152 Work as a councillor has the meaning<sup>1</sup> in DMG 41133.

*1 ESA Regs, reg 40(7)*

41153 A councillor<sup>1</sup> is

1. in England and Wales a member of
  - 1.1 a London borough council or
  - 1.2 a county council or
  - 1.3 a district council or
  - 1.4 a parish or community council or
  - 1.5 the Common Council of the City of London or
  - 1.6 the Council of the Isles of Scilly or
2. in Scotland a member of a council for a local government area<sup>2</sup>.

*1 ESA Regs, reg 2(1); 2 Local Government (Scotland) Act 1994, s 2*

41154 Guidance on the effect of councillors' allowances for

1. ESA(Cont) is in DMG Chapter 44 and
2. ESA(IR) is in DMG Chapter 49.

## **Member of the FtT**

41155 A claimant who is a member of the FtT who is eligible for appointment under specified legislation<sup>1</sup> (see DMG Chapter 06 for further guidance) will be exempt from the general rule only when they undertake duties on not more than one full day or two half-days a week<sup>2</sup>. If a claimant undertakes such duties for a longer period, they will be treated as not entitled to ESA.

*1 The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;*

*2 ESA Regs, reg 40(2)(b)*

## **Domestic tasks and care of a relative**

41156 To be exempt from the general rule, domestic tasks must be carried out in the claimant's own home. Domestic tasks is not defined but means "of the home, household or family affairs". Examples of domestic tasks are preparing and cooking food, shopping, cleaning, washing clothes or dishes, making beds.

41157 In addition to taking place in the claimant's own home a domestic task must relate to the claimant's home, household or family affairs. Personal care such as attending to bodily functions or supervision or education of children, are domestic tasks if carried out for a member of the family (including a close relative). If carried out for others the tasks do not relate to the home, household or family affairs. This

includes providing accommodation and food to students<sup>1</sup> and other activities carried out in the claimant's home, such as child minding other than of relatives, or tuition.

*1 R(IB) 1/03*

41158 Although child minding may include some tasks which could be said to be domestic, the activity as a whole does not relate to the home, household or family affairs.

41159 Care means to provide for or look after and should be interpreted broadly. It includes personal care, such as bodily functions but can also include domestic tasks such as cooking, shopping, cleaning and supervision of children.

41160 - 41164

### **Caring for another person**

41165 Caring for other people's children or adults comes within the definition of work<sup>1</sup> (see DMG 41132). However, claimants undertaking such caring are exempt from the general rule in DMG 41122<sup>2</sup>.

*1 ESA Regs, reg 40(7); 2 reg 40(2)(d) & (da)*

41166 The types of work will include adult placement schemes and foster parenting. Looking after a child or children other than relatives will include fostering and pre-adoption situations. In these cases the child is living as part of the family and their care will normally consist of domestic tasks in the claimant's home unless the care includes activities which do not relate to the home, household or family affairs.

41167 Placement of difficult, mentally ill or sick children, or children with a learning difficulty will attract an allowance as well as expenses in recognition of the extra supervision, education or care necessary. However, any such placement with a claimant will not prevent that claimant from being exempt from the general rule.

41168 LAs in Scotland have a duty to provide on-going care and assistance to eligible people who are at least 16 years old, and who have ceased to be looked after by the LA. This is known as continuing care<sup>1</sup>. A claimant engaged in caring for a former child under the continuing care arrangements is exempt from the general rule in DMG 41122<sup>2</sup>.

*1 Children (Scotland) Act 95, s 26A; 2 ESA Regs, reg 40(2)(da)*

### **Activities undertaken during an emergency**

41169 The general rule does not apply to any activity undertaken during an emergency to

1. protect another person or
2. prevent serious damage to property or livestock<sup>1</sup>.

*1 ESA Regs, reg 40(e)*

41170 - 41175

# Education

## Introduction

### ESA(Cont)

- 41551 Where a claimant is entitled to ESA(Cont), being in education has no effect on entitlement to benefit. But see DMG 41046 et seq for guidance on how education affects ESA(Cont) for people claiming under the youth rules.

### ESA(IR)

- 41552 Normally a person who is receiving education is not entitled to ESA(IR)<sup>1</sup>. However, the education condition does not apply to a claimant who is

1. in education **and**
2. entitled to
  - 2.1 DLA or
  - 2.2 AFIP or
  - 2.3 PIP<sup>2</sup>.

*1 WR Act 07, Sch 1, Part 2, para 6(1)(g); 2 ESA Regs, reg 18*

### Income

- 41553 The income of a person in education may be taken into account when deciding entitlement to ESA(IR). See DMG Chapter 51 for full guidance.

41554 - 41555



# Definitions

## Meaning of education

41556 For the purposes of ESA(IR) education is a course of study which is being undertaken at an educational establishment<sup>1</sup>. But see DMG 41584 - 41586 for where a course of study is not education.

*1 ESA Regs, reg 14(1)*

41557 A person is regarded as undertaking a course of study<sup>1</sup>, and therefore in education, throughout the period beginning with the day the person starts the course and ending on

1. the last day of the course (see DMG 41631) or
2. such earlier date as the person
  - 2.1 abandons the course (see DMG 41633) or
  - 2.2 is dismissed from the course (see DMG 41646).

*1 ESA Regs, reg 17(1)(b)*

41558 Also, a person undertaking a part of a modular course that would be a course of study for the purposes of DMG 41556, is regarded as undertaking a course of study<sup>1</sup>, and therefore in education, for the period beginning with the day that part of the course starts and ending on

1. the last day he is registered as attending or undertaking that part as a F/T course of study or
2. such earlier date as the student
  - 2.1 abandons the course or
  - 2.2 is dismissed from it.

*1 ESA Regs, reg 17(1)(a)*

41559 The period in DMG 41558 includes any period<sup>1</sup>

1. that a person attends or undertakes the course to retake exams or a module where that person has failed
  - 1.1 examinations or
  - 1.2 to successfully complete a module relating to a period when attending or undertaking a part of the course as a course of study
2. of vacation falling within the period in 1. or immediately following it except where the vacation immediately follows the last day of the final module of the course.

*1 ESA Regs, reg 17(2)*

41560 Where DMG 41559 applies, a modular course means a course of study consisting of two or more modules and a person must complete a specified number of modules before they are considered to have completed the course<sup>1</sup>.

**Note:** See DMG 41570 for further guidance on modular courses.

*1 ESA Regs, reg 17(3)*

41561 - 41565

## Meaning of course of study

### England and Wales

41566 In England and Wales a course of study<sup>1</sup> is

1. a F/T course not wholly or partly funded by the
  - 1.1 Secretary of State in England or
  - 1.2 Chief Executive of Skills Funding or
  - 1.3 Welsh Ministers<sup>2</sup> or
2. a course of study wholly or partly funded by the
  - 2.1 Secretary of State in England or
  - 2.2 Chief Executive of Skills Funding or
  - 2.3 Welsh Ministers

if it involves the person in more than 16 guided learning hours per week, as stated in the person's signed learning agreement in England or, in Wales, a document signed on behalf of the college<sup>3</sup> or

3. a sandwich course<sup>4</sup> (see DMG 41583).

**Note:** If a student attends more than one course the number of guided learning hours should be aggregated.

*1 ESA Regs, reg 14(2); 2 reg 14(2)(a); 3 reg 14(2)(c); 4 reg 14(2)(e)*

### Scotland

41567 In Scotland a course of study<sup>1</sup> is

1. a F/T course not wholly or partly funded by the Scottish Ministers at a college of further education<sup>2</sup> or
2. a F/T course of higher education wholly or partly funded by the Scottish Ministers<sup>3</sup> or

3. provide instruction for people on a programme mentioned in 1. or 2. who have a learning difficulty or
4. are designed mainly to prepare a person to take part in any programme mentioned in 1. to 3.

*1 F & HE (Scot) Act 92, s 1(3) & 6*

## Higher education

41581 Higher education<sup>1</sup> is education provided by means of a

1. course at higher level in preparation for a higher diploma or certificate
2. first degree course
3. course for the education and training of teachers
4. course of post graduate studies, including a higher degree course
5. course at a higher level in preparation for a qualification from a professional body
6. course at a higher level not within 1. to 5.

*1 ESA Regs, reg 14(3); F & HE (Scot) Act 92, Part 2*

41582 A course is of a higher level<sup>1</sup>, if its standard is higher than courses in preparation for examinations for the

1. GCE of England and Wales or Northern Ireland at advanced level
2. national certificate of the Scottish Qualifications Authority.

*1 F & HE (Scot) Act 92, s 38(3)*

## Meaning of sandwich course

41583 A sandwich course<sup>1</sup> is a course, other than a course of initial teacher training, made up of alternative periods of F/T study in the educational establishment and work experience. The F/T study must be for an average of at least

1. in England and Wales - 18 weeks a year<sup>2</sup>
2. in Scotland and Northern Ireland - 19 weeks a year<sup>3</sup>.

The average is worked out by dividing the total number of weeks attendance by the number of years in the course. For this purpose the course starts with the first period of F/T study and ends with the last period of F/T study.

*1 ESA Reg, reg 14(2)(e); 2 Support Regs, reg 2(9); 3 SL (Scot) Regs, reg 4(2); Education (Student Support) Regulations (Northern Ireland) 2007, reg 2(8)*

## Work-related activity and education

41584 The guidance on course of study at DMG 41566 – 41583 does not apply where the claimant is required to attend a course of study as part of a requirement to undertake WRA<sup>2</sup>. For example, a claimant who is required to attend a training



course of more than 16 hours a week funded by the Skills Funding Agency (or in Wales, the Welsh Ministers and in Scotland, the Scottish Ministers) as part of their WRA is not treated as being in full-time education. [See DMG 53031 et seq](#) for guidance on WRA.

*1 WR Act 07, Sch 1 para 6(1)(g); 2 ESA Regs, reg 14(2A)*

## **Traineeship and education**

41585 Traineeship means<sup>1</sup> a course which

1. is funded (in whole or in part) by, or under arrangements made by the
  - 1.1 Secretary of State under specified legislation<sup>2</sup> or
  - 1.2 Chief Executive of Education and Skills Funding and
2. lasts for no more than 6 months and
3. includes training to help prepare the participant for work and a work experience placement and
4. is open to persons who, on the first day of the course have reached the age of 16 but not the age of 25.

*1 ESA Regs, reg 2(1); 2 Education Act 02, s 14*

41586 The guidance on course of study at DMG 41566 – 41583 does not apply where the claimant is participating in a traineeship, whether on a mandatory or voluntary basis<sup>1</sup>.

*1 ESA Regs, reg 14(2B)*

41587 – 41590

## **Meaning of full-time**

### **General**

41591 The DM has to consider the meaning of F/T when deciding whether a person is in education.

41592 For courses funded by the

- 1.1 Scottish Ministers, except where it is a course of higher education (see DMG 41581) or
- 1.2 Secretary of State in England or
- 1.3 Chief Executive of Skills Funding or
- 1.4 Welsh Ministers

the term F/T is defined by reference to the number and type of hours involved (see DMG 41614 et seq). However, for non funded courses there is no definition.



41593 In courses not funded as in DMG 41592 and in courses of higher education funded by the Scottish Ministers, the term F/T applies to the course itself and not to a person's attendance on it<sup>1</sup>. It is the time spent by a notional reasonable student that is considered. A person who attends a F/T course on a P/T basis is still in education.

*1 R(SB) 40/83; R(SB) 41/83*

41594 Each case must be decided on its facts<sup>1</sup>. The DM must look at the sequence of studies and activities that make up the course itself. The nature of the course is not affected by<sup>2</sup>

1. a person's reasons for attending it or
2. a person's readiness to abandon it or
3. what a particular person happens to be doing.

*1 R(SB) 40/83; R(SB) 41/83; 2 R(SB) 2/91*

41595 In modular courses a sequence of studies is established once a person has decided which modules to take. This sequence can be distinguished from the work that the person is putting in at any given time.

41596 When deciding whether a course is F/T, DMs should note that all of the studies and activities involved in it should be taken into account. This includes both supervised and unsupervised study and activity, whether done on or off college premises. In the case of courses funded by the

- 1.1 Secretary of State in England or
- 1.2 Chief Executive of Skills Funding or
- 1.3 Welsh Ministers or
- 1.4 Scottish Ministers

take no account of private study (see DMG 41611 et seq).

41597 DMs should not compare the total hours involved with what may be regarded as a full working week. One approach is to look at the total time the course might require of an average student. It may take up a substantial part of a week, after allowing for reasonable rest and recreation. The course might then be regarded as F/T.

### **Evidence from educational establishment**

41598 The way educational establishments are funded may mean that they no longer classify courses as

1. F/T or
2. P/T.

- 41599 Educational establishments may still classify courses or may be able to give an opinion on their nature. DMs should accept evidence from the educational establishment as conclusive unless there is strong relevant evidence to the contrary<sup>1</sup>.

*1 R(SB) 40/83; R(SB) 41/83*

- 41600 If educational establishments are unable to classify courses or give an opinion on their nature, unless a course is funded as in DMG 41614 et seq, DMs will need to consider other evidence (see DMG 41601 et seq).

### **Other evidence**

- 41601 If
1. educational establishments are unable or unwilling to say whether a course is F/T or P/T or
  2. a classification is provided which is considered to be implausible or unreliable

DMs will then have to decide whether the course is F/T.

- 41602 The DM should then consider other evidence, including
1. the type of qualification aimed for
  2. the number of hours a week normally required for successful completion of the course, including
    - 2.1 supervised study
    - 2.2 unsupervised study
    - 2.3 homework
    - 2.4 other work carried out on or off the college premises
  3. the claimant's own hours of attendance and recommended hours of private study
  4. the length of time normally required for successful completion of the course (for example three years)
  5. how long the claimant will take to complete the course
  6. how the course is funded
  7. the course classification for other purposes, for example, grant or student loan awards
  8. how the same course has been classified by the college in the past.

**Note:** When considering 7. the DM is not bound to investigate this point where the views of other authorities are not already known.

41603 If the claimant is taking longer than normal to complete the course, it is an indication that the course is P/T<sup>1</sup>.

*1 R(SB) 41/83*

41604 A course may be designed for people to attend as and when they can. With such a course the DM should consider what is actually happening. If the course is F/T it is of no consequence that the person could have attended it P/T.

41605 The course being taken may be new, or the nature of it may have changed. It may then be helpful to compare a similar course, that is F/T, with the claimant's

1. length of study **and**
2. eventual qualification.

41606 DMs should not give weight to the classification of the other course unless it is very similar to the claimant's course. Also, a classification given by the claimant's own college should normally be preferred to that given on similar courses by different colleges.

41607 A list of the more common courses and their qualifications is included at Appendix 4 to this Chapter. DMs should not rely on it as evidence of the nature of a particular course. It is provided for information only.

41608 - 41610

### **Number of hours involved**

41611 The DM must have regard to the hours involved. This includes both time spent

1. receiving instruction or being supervised **and**
2. in private study (unless the course is funded by the Secretary of State in England, the Chief Executive of Skills Funding, the Welsh Ministers or the Scottish Ministers).

41612 The level of a course may affect the number of hours of attendance in supervised instruction or study. For example, a F/T advanced course may involve less attendance than a F/T non advanced course.

41613 In non advanced courses, hours of supervised instruction or study usually form a larger part of the course. F/T advanced courses may involve only a few such hours. Do not consider that in isolation. Students may also have to put in many hours of private study.

### **Funded courses**

41614 Courses of study may be wholly or partly funded by the

1. Secretary of State in England **or**
2. Chief Executive of Skills Funding **or**

3. Welsh Ministers in Wales or
4. Scottish Ministers in Scotland.

- 41615 A course funded as in DMG 41614 1. - 3. is F/T if it involves more than 16 guided learning hours per week (see DMG 41576).
- 41616 In Scotland, the term guided learning hours is not used. Classroom or workshop based programmed learning under the direct guidance of teaching staff is used instead. A course funded by the Scottish Ministers is F/T if, amongst other things, it involves more than 16 such hours.
- 41617 A funded course in Scotland is also F/T if it involves more than 21 hours a week in total made up of
1. 16 or less such hours and
  2. extra hours using structured learning packages, supported by teaching staff.

### **Higher education**

- 41618 In higher education the number of hours of attendance in supervised instruction or study may be low (see DMG 41611), but that should not be considered in isolation. Such courses usually involve many hours of private study. The classification used in an award of grant or student loan can be a useful factor.
- 41619 The DM should be satisfied that there is evidence of
1. a learning agreement for funded courses in England as in DMG 41614 1. or  
2. or
  2. a document for courses funded by
    - 2.1 the Welsh Ministers or
    - 2.2 the Scottish Ministers.
- 41620 The learning agreement or document which must be signed on behalf of the college should also be signed by the claimant and identify the
1. college
  2. student
  3. average number of guided learning hours
  4. course being undertaken
  5. qualification to be achieved, if appropriate.

### **Non funded courses**

- 41621 When considering the question of whether a course is F/T the DM should note the relevant definitions. But for non funded courses the DM may be unable to make a decision based solely on those definitions.

## Temporary absences

41647 A person cannot temporarily abandon a course or be temporarily dismissed from it. They will remain in education if

1. they
  - 1.1 take a break from studies for whatever reason **or**
  - 1.2 have not gone on to the next year of the course because they failed their end of year exams **or**
  - 1.3 have either failed or not taken their final exams **and**
2. either
  - 2.1 they have a guaranteed place on the course at some time in the future **or**
  - 2.2 a place on the course at a future date is available to them
    - 2.2.a if they undertake study at home or at the educational establishment **and**
    - 2.2.b a fresh application under the normal enrolment procedures will not be required **and**
    - 2.2.c the student has not refused to undertake the necessary study **or**
  - 2.3 they have remained continuously registered at the educational establishment **or**
  - 2.4 the educational establishment does not regard them as no longer being a student on the course **or**
  - 2.5 a final and definite decision on their status has not yet been made by the educational establishment.

41648 The fact that a grant may not cover such absences or extensions to the course is not relevant.

### Example

Alberto is a University student in his final year. He failed his final exams in June. He intends to sit them in a year and is still enrolled at the University. He is still a F/T student through the summer vacation and until he has taken his exams in the following academic year.

41649 A person who has completed the last day of the final academic term may have to submit a thesis or complete course work. This may be required before a qualification can be obtained or enhanced. Such a person has passed the last day

of the course. They are not in education during the period after the end of the course when they are expected to complete any course work.

### **Example**

Gemma completed her research working as a post graduate student in a laboratory at the University on 30 September 2008. She is completing a thesis for submission to the University for her PhD. Gemma does not need to attend the University to complete the thesis. She is also applying for jobs at the same time as completing the thesis. However, Gemma breaks both her legs badly and suffers other injuries in a road traffic accident and claims ESA(IR). The DM decides that Gemma is no longer in education as she has completed her course of study. Gemma is entitled to ESA(IR) because she would complete the thesis on a P/T basis while recovering from her accident.

## **Re-enrolment**

- 41650 A person who has completed a course of study may be going on to do further study. For example, a student with a degree may want to do a postgraduate course. Such a person is not a student in the meantime.
- 41651 A fresh period of study begins when the next course starts. The usual rules then apply to the new period of study.

41652 - 41659



## Claimant treated as receiving education

- 41660 Unless DMG 41552 or 41660 applies, a qualifying young person is treated as receiving education<sup>1</sup> and is therefore not entitled to ESA(IR).

*1 ESA Regs, reg 15(1)*

- 41661 A qualifying young person is not treated as receiving education if they are participating in a traineeship<sup>1</sup>. See DMG 41585 for the meaning of traineeship.

*1 ESA Regs, reg 2(1) & 15(2)*

## Meaning of a qualifying young person

- 41662 Where any of the conditions at DMG 41663 to 41671 apply, a person is a qualifying young person and treated as in education. Where more than one of the conditions in DMG 41663 to 41671 apply, a person remains a qualifying young person until the last of them ceases to be satisfied<sup>1</sup>.

*1 CHB (Gen) Regs, reg 2(2)*

## Education and training condition

- 41663 This condition applies to a person who

1. has not reached age 20<sup>1</sup> and
2. is undertaking a course of FTE which is not advanced education or provided by virtue of employment or any office held but which is provided
  - 2.1 at a school or college<sup>2</sup> or
  - 2.2 elsewhere but is approved by HMRC Commissioners and the FTE was being received there when the person was a child<sup>3</sup> or
3. is undertaking approved training that is not provided through a contract of employment<sup>4</sup> or
4. having undertaken a course or approved training in 2. has been accepted or is enrolled on a further course or approved training<sup>5</sup>.

**Note:** For the purposes of 2.2 a child is a person under the age of 16<sup>6</sup>.

*1 CHB (Gen) Regs, reg 3(1); 2 reg 3(2)(a)(i); 3 reg 3(2)(a)(ii) & reg 3(3); 4 reg 3(2)(c); 5 reg 3(2)(b);  
6 SS CB Act 92, s 142(1)*

- 41664 A person aged 19 can only satisfy the conditions in DMG 41663 2. and 3. if

1. the education or training began or
  2. the person was accepted or enrolled on the education or training
- before they were 19<sup>1</sup>.

*1 CHB (Gen) Regs, reg 3(4)*

## **16 year olds (15 year olds in Scotland)**

- 41665 A 16 year old (in Scotland also a 15 year old) who has left education or training will still be a qualifying young person until the 31st August following their 16th birthday<sup>1</sup>.

*1 CHB (Gen) Regs, reg 4*

## **Extension period for 16 and 17 year olds**

- 41666 The extension period<sup>1</sup>

1. begins on the first day of the week after that in which a 16 or 17 year old ceased to be in education or training **and**
2. ends 20 weeks later.

*1 CHB (Gen) Regs, reg 5(3)*

- 41667 The extension period applies to people aged 16 and 17<sup>1</sup>

1. who have ceased to be in education or training **and**
2. who are registered for work, education or training with a qualifying body (see DMG 41668) **and**
3. who are not engaged in remunerative work **and**
4. whose extension period has not expired **and**
5. where the person who is responsible for the 16 or 17 year old
  - 5.1 was entitled to CHB for them immediately before the extension period began **and**
  - 5.2 has made a written request to the HMRC Commissioners within three months of the education or training ceasing for the payment of CHB during the extension period

and so are still a qualifying young person by virtue of being in the CHB extension period.

**Note:** Whilst a person is under age 18, CHB can be extended every time the conditions are satisfied.

*1 CHB (Gen) Regs, reg 5(2)*

- 41668 For the purposes of DMG 41667 2. a qualifying body<sup>1</sup> is

1. the Careers Service or Connexions Service
2. the Ministry of Defence



- 2.1 the Friday before the last Monday in May - where age 16 is reached between 1 March and 30 September inclusive or
- 2.2 the end of the Christmas term - where age 16 is reached between 1 October and the last day in February of the next year inclusive.

*1 Education (School Leaving Dates) Order 97; 2 Education (Scotland) Act 80*

### **Person between 16 and 18**

41703 While a person can leave school at 16, they must do one of the following until they are 18<sup>1</sup>

1. stay in full-time education, for example at a college
2. start an apprenticeship or traineeship
3. spend 20 hours a week or more working or volunteering, while in part-time education or training.

**Note:** If the person is not in education, training or employment, they may still be entitled to ESA(IR). See DMG 41552.

*1 Education and Skills Act 08, s 2(1)*

### **Person under 16**

41704 A person who is under the age of 16 at the

1. date F/T non-advanced education ends **and**
2. terminal date next following the date in 1.

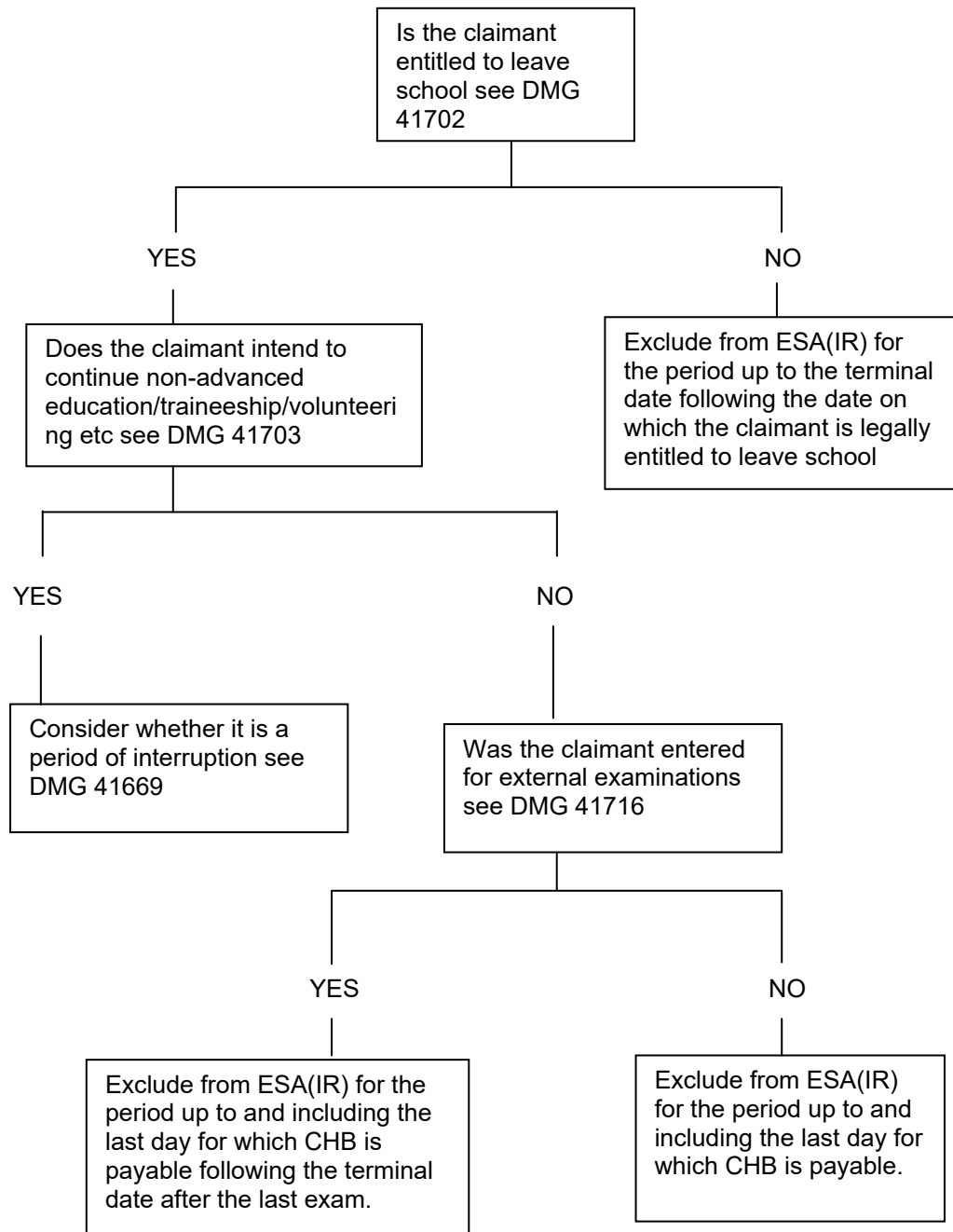
will not be entitled to ESA(IR) until the 16th birthday<sup>1</sup> and then only if the conditions in DMG 41012 and 41091 are satisfied.

*1 CHB (Gen) Regs, reg 7(2) Case 1*

41705

## School leavers aged 16-18

Education received before leaving school exceeds 12 hours a week of supervised study



## Terminal dates

### England and Wales

41706 A person continues to be treated as a qualifying young person and entitled to CHB where they have left education or approved training up to and including

1. the week including the terminal date or
2. if they attain the age of 20 on or before that date, the week including the last Monday before they were 20<sup>1</sup>.

*1 CHB (Gen) Regs, reg 7(2), Case 1.1*

41707 For the purposes of DMG 41706 the terminal dates are

1. the last day in February
2. the last day in May
3. the last day in August
4. the last day in November

whichever occurs first after they have ceased education or approved training<sup>1</sup>.

*1 CHB (Gen) Regs, reg 7(2), Case 1.2*

### Scotland

41708 In Scotland where a person

1. undertakes the Higher Certificate or Advanced Higher Certificate immediately before ceasing education **and**
2. ceases education earlier than they would have done had they taken the comparable examination in England and Wales

the terminal date is calculated by reference to the date that applies had they taken the examination in England and Wales<sup>1</sup>.

**Note:** In England, Wales and Scotland if a person leaves school and reaches 20 before the next terminal date see DMG 41719.

*1 CHB (Gen) Regs, reg 7(2), Case 1.3*

### Leaving school

41709 Leaving school is not necessarily the same as ceasing education. Education can cease when the hours of attendance reduce to twelve hours a week or less (see DMG 41686). In this case the date of leaving school is irrelevant.

41710 See DMG 41669 if a school leaver intends to resume education at the same or another educational establishment.

## When entitlement to ESA(IR) begins

- 41711 Entitlement to ESA(IR) begins on the Monday following the terminal date. From the Monday following the terminal date the person is no longer a qualifying young person for CHB purposes<sup>1</sup> and ceases to be treated as a member of the parent's family.

*1 CHB (Gen) Regs, reg 7(2) Case 1*

41712 - 41715

## External examinations

- 41716 Where a person has ceased to receive education and
1. was entered for external examinations before education ceased **and**
  2. was still entered for those examinations when education ceased **and**
  3. the examinations are in connection with the education received
- treat them as a qualifying young person up to the first terminal date, as described in DMG 41707 and 41708, after the last examination<sup>1</sup>.

*1 CHB (Gen) Regs, reg 7(2), Case 2*

## Period up to the terminal date

- 41717 In the period up to the terminal date young people are not entitled to ESA(IR) because they are treated as
1. a child for CHB purposes<sup>1</sup> **and**
  2. receiving education<sup>2</sup>
- unless they come within the exceptions in DMG 41552<sup>3</sup> or DMG 41661<sup>4</sup>.

*1 CHB (Gen) Regs, reg 7(1); 2 ESA Regs, reg 15(1); 3 reg 18; 4 reg 15(2)*

## Person starts work or training

- 41718 CHB ceases when a young person starts work or WBTfYP but the terminal date still applies. If work or training ends before the terminal date is reached CHB can be reinstated on application.

# Appendix 5

## National Minimum Wage rates

Date	Hourly rate
1.10.10	£5.93
1.10.11	£6.08
1.10.12	£6.19
1.10.13	£6.31
1.10.14	£6.50
1.10.15	£6.70
1.4.16	£7.20
1.4.17	£7.50
1.4.18	£7.83

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



Further claim after determination that claimant does not have LCW	
General .....	42370
Determining LCW.....	42380
Meaning of new or significantly worse health condition.....	42400
Further claim after claimant treated as not having LCW.....	42410
Gap in medical evidence	
Contact with claimant not lost .....	42430
Contact lost with claimant .....	42436
<b>Treated as not having limited capability for work</b>	
General.....	42450
Failure to return the questionnaire .....	42455
The Secretary of State's duty.....	42465
Has the questionnaire been sent .....	42466
Has the correct amount of time passed .....	42470
Good cause.....	42471
Questionnaire returned before good cause considered .....	42472
Failure to attend or submit to a medical examination	
General .....	42480
The Secretary of State's duty.....	42483
Has notice been sent .....	42488
Have seven days passed.....	42489
Has the appointment been cancelled .....	42490
Good cause.....	42491
Failure to submit.....	42492
Good cause.....	42496
Consideration of good cause .....	42500
General considerations .....	42504
Claimant's state of health.....	42505
Nature of claimant's disability .....	42507
Previous WCA attended.....	42509
Repeated failures.....	42510
Good cause - some scenarios .....	42530

Certain claimants to be treated as not having limited capability for work	
Member of Her Majesty's Forces .....	42550
Training course .....	42551
Medical evidence ends.....	42553
Medical evidence ceases before appeal heard - contact with	
claimant lost .....	42570
Appeal allowed.....	42571
Medical evidence ceases before appeal heard - contact with	
claimant not lost .....	42575
Appeal allowed.....	42577
Appeal withdrawn, struck out or dismissed.....	42578
Detention in legal custody.....	42580
Claimants who are treated as not entitled to ESA by reason of working to be treated as not having limited capability for work.....	42600
Date of determination.....	42603
<b>Limited capability for work-related activity</b>	
General.....	42610
Entitlement ends before limited capability for work-related activity is determined .....	42620
Claim for UC.....	42626
Determination of limited capability for work-related activity .....	42670
Certain claimants treated as having limited capability for work-related activity.....	42680
Information required for determining capability for work-related activity.....	42740
Failure to provide information .....	42745
Claimants who may be called for examination.....	42755
Consideration of good cause .....	42760
Determination of whether a person has limited capability for work-related activity.....	42770
Second or subsequent referrals.....	42780
Determining limited capability for work-related activity afresh.....	42785
<b>ESA awarded pending LCW appeal</b>	
Claimant treated as having LCW .....	42790



## Limited capability for work-related activity

### General

- 42610 A determination has to be made whether a claimant who has LCW also has LCWRA at the end of the assessment phase<sup>1</sup>.

*1 WR Act 07, s 9(1) & (2)*

- 42611 Where it is determined a claimant has LCW the claimant will receive an ESA component during the main phase of ESA entitlement. Which component they receive depends on whether or not they also have LCWRA.

**Note:** See DMG Chapter 44 for guidance on amounts payable.

- 42612 Claimants with the most severe illnesses or disabilities who have LCWRA will receive the support component<sup>1</sup> without conditionality although they may participate in work-related activity on a voluntary basis if they so wish.

*1 WR Act 07, s 2(2) & 4(4)*

- 42613 Claimants who do not have LCWRA will receive the WRAC<sup>1</sup>. These claimants are required to engage in the Wfl and WRA regime in the main phase of their ESA entitlement.

**Note:** For further guidance on Wfls and WRA see DMG Chapter 53.

*1 WR Act 07, s 2(3) & 4(5)*

42614 - 42619

### Entitlement ends before limited capability for work-related activity is determined

- 42620 In cases where an award of ESA ends during the assessment phase, a claimant may request arrears of a component to be paid, even though no determinations about LCW and LCWRA have been made before entitlement ends.

**Note:** But see DMG 42626 - 42627 where the ESA award ends because the person claims UC.

- 42621 Where
1. a claimant's entitlement to ESA ends, for example because they have returned to work, after the 13<sup>th</sup> week of entitlement but before the WCA has been carried out **and**
  2. the claimant asks for arrears of a component to be paid from week 14

the DM should make a decision not to supersede the decision which awarded entitlement, or any later superseding decision, on the grounds that the conditions allowing supersession are not satisfied. See DMG – Chapter 04 for guidance on

making a decision not to supersede. The decision carries the right of appeal to a FtT<sup>1</sup>.

*1 SS Act 98, s 12(1); R(DLA) 1/03*

42622 A claimant cannot normally be awarded a component until the assessment phase has ended<sup>1</sup>, and this is

1. the last day of a period of 13 weeks starting with the date of the award<sup>2</sup> or
2. when a determination about LCW has been made **if later**<sup>3</sup>.

This means that if the LCW determination is not made within the 13 week period, the assessment phase cannot end until it is made. See DMG – Chapter 44 for guidance on ending the assessment phase.

*1 WR Act 07, s 2(2)(a) & (3)(a); s 4(4)(a) & (5)(a); 2 ESA Regs, reg 4(1); 3 reg 4(2)*

42623 If the claimant has LCW, a determination is also required as to whether they have LCWRA<sup>1</sup>. This determines whether the claimant is paid the WRAC or the support group component, and when the main phase begins<sup>2</sup>.

*1 ESA Regs, reg 34; 2 reg 2(1) definition of “main phase”*

42624 These determinations cannot be made without evidence, and the claimant cannot be given the benefit of the doubt. Even if the DM had sufficient evidence, for example from the questionnaire (ESA50), to make the necessary determinations without a medical report, the supersession effective date rules do not permit arrears of the component to be paid from week 14 in such cases. This is because the rule allowing backdating to week 14 only applies where the component is awarded following receipt of a report from a HCP<sup>1</sup>.

*1 SS CS (D&A) Regs, reg 6(2)(r) & 7(38)*

42625 That means that the normal effective date rules for a change of circumstances would apply<sup>1</sup>. The change would be making the determinations, and as this occurred after entitlement to ESA ended it would not be relevant to the decision which awarded entitlement. The DM could not supersede for a relevant change of circumstances to change that outcome, as, in this context, further entitlement following a disallowance requires a claim<sup>2</sup>.

*1 SS CS (D&A) Regs, Sch 3C; 2 SS Act 98, s 8(2)(b)*

## **Claim for UC**

42626 Where

1. an award of ESA ends when a claim is made for UC **and**
2. the ESA assessment phase has not ended **and**
3. it is determined that the claimant has, or is treated as having, LCW or LCWRA for the purposes of UC

the DM should determine whether, using the evidence obtained for the UC WCA outcome, the claimant had LCW and if so, whether they had LCWRA, for the purposes of ESA.

**Note:** The LCW and LCWRA descriptors for UC and ESA are identical, as are most of the conditions for treating a claimant as having LCW or LCWRA. See ADM Chapters G2 and G3 for further details.

- 42627 Where the DM makes determinations about LCW and LCWRA as in DMG 42626, the decision awarding ESA should be superseded<sup>1</sup> and the appropriate component awarded as normal up to the day before the date of the UC claim. See DMG Chapter 04 for detailed guidance on supersession.

**Note:** See DMG Chapter 44 Appendix 10 for guidance on when the WRAC can be included in an award of ESA.

*1 SS CS (D&A) Regs, reg 6(2)(c) & 7(38) or (40)*

42628 - 42669

## **Determination of limited capability for work-related activity**

- 42670 Whether a claimant's capability for work-related activity is limited by the claimant's physical or mental condition and the limitation is such that it is not reasonable to require the claimant to undertake such activity is determined if one or more of the descriptors are met<sup>1</sup>.

*1 ESA Regs, reg 34(1) & Sch 3*

- 42671 A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or on the majority of the occasions on which the claimant carries out or attempts to carry out the activity described by that descriptor<sup>1</sup>.

*1 ESA Regs, reg 34(2)*

- 42672 A claimant will be assessed as if

1. fitted with or wearing any prosthesis with which that claimant is normally fitted or normally wears (such as an artificial limb) or
2. wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used (such as a hearing aid)<sup>1</sup>.

*1 ESA Regs, reg 34(3)*

- 42673 When assessing the extent of the claimant's LCWRA, it is a condition that the claimant's inability to perform<sup>1</sup>

1. physical descriptors<sup>2</sup> arises

- 1.1 from a specific bodily (i.e. physical) disease or disablement or

- 1.2 as a direct result of treatment by a registered medical practitioner for such a condition **and**
- 2. mental descriptors<sup>3</sup> arises
  - 2.1 from a specific mental illness or disablement **or**
  - 2.2 as a direct result of treatment by a registered medical practitioner for such a condition.

*1 ESA Regs, reg 34(6); 2 Sch 3, descriptors 1–8, 15(a) & (b), 16(a) & (b);  
3 Sch 3, descriptors 9–14, 15(c) & (d), 16(c) & (d)*

42674 - 42679

## **Certain claimants treated as having limited capability for work-related activity**

42680 A claimant is treated as having LCWRA if they are<sup>1</sup>

- 1. terminally ill **or**
- 2. is
  - 2.1 receiving **or**
  - 2.2 likely to receive **or**
  - 2.3 recovering from

treatment for cancer by way of chemotherapy or radiotherapy and the DM is satisfied that the claimant should be treated as having LCWRA (see DMG 42050 – 42052 for further guidance) **or**

- 3. in the case of a woman, she is pregnant and there is a serious risk of damage to her health or the health of her unborn child if she does not refrain from work-related activity.

*1 ESA Regs, reg 35(1)*

42681 A claimant who does not have LCWRA is treated as having LCWRA if

- 1. the claimant suffers from some specific disease or bodily or mental disablement **and**
- 2. by reasons of such disease or disablement, there would be a substantial risk (see DMG 42320) to the mental or physical health of any person if that claimant were found not to have LCWRA<sup>1</sup>.

*1 ESA Regs, reg 35(2)*

42682 - 42739

## Information required for determining capability for work-related activity

- 42740 The information required to determine whether a claimant has LCWRA is<sup>1</sup>
1. any information relating to the descriptors that may be requested in the form of a questionnaire **and**
  2. any additional information as may be requested.

*1 ESA Regs, reg 36(1)*

- 42741 Where the DM is satisfied there is sufficient information to determine whether a claimant has LCWRA without the questionnaire that information will not be required<sup>1</sup>. For example the claimant is considered to be in a vulnerable group, i.e. there is a diagnosis of a mental health condition. A decision to treat as not having LCWRA due to non-return of the questionnaire would not be made but the claimant referred for assessment.

*1 ESA Regs, reg 36(2)*

- 42742 Certain claimants who are treated as having LCW (see DMG 42030 et seq) are not required to complete a questionnaire for the purposes of determining LCW but will be required to provide information relating to the descriptors for LCWRA unless they are also treated as having LCWRA (see DMG 42673).

- 42743 Medical services are responsible for gathering any information required to support the WCA process. This includes

1. sending the questionnaire (ESA50A)
2. sending a reminder if the claimant does not reply within 28 days.

**Note:** This could be any such additional information as the DM requires to determine whether a claimant has LCWRA<sup>1</sup>.

*1 ESA Regs, reg 36(1)*

- 42744 It will not be necessary to obtain completion of an ESA50A for LCWRA in every case where the claimant has already provided information on an ESA50 for LCW. The HCP should obtain additional information regarding the descriptors at the medical examination for LCW in order to provide an opinion on LCWRA (see DMG 42771).

**Note:** There will be no need for a medical examination if medical services can confirm on the basis of paper evidence that the claimant is, or is not, in the support group. If both LCW and LCWRA can be assessed from the same piece of evidence then there is no need to obtain further information.



## Failure to provide information

42745 A claimant is treated as not having LCWRA if

1. the questionnaire was sent **and**
2. the claimant was sent a further request to return the questionnaire at least three weeks after the date of the first request<sup>1</sup> **and**
3. at least one week has passed since the further request was sent<sup>2</sup> **and**
4. good cause has not been accepted for the delay beyond the period stated in the 2. and 3. above<sup>3</sup>.

*1 ESA Regs, reg 37(2)(a), 2 reg 37(2)(b), 3 reg 37(1)*

42746 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation<sup>1</sup> to send the questionnaire and the reminder to the claimant. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted.

*1 Inte Act 78, s 7*

42747 If the DM concludes that the Secretary of State has complied with the duty set out in the legislation, they may then go on to consider whether the claimant had good cause for their failure to return the questionnaire<sup>1</sup> (see DMG 42760).

*1 ESA Regs, reg 39*

42748 Any reasons given for the non-return should be judged on the balance of probabilities. Whether the reasons for delay amount to good cause depends upon whether the DM considers, for example,

1. it was reasonable not to return the questionnaire on this occasion **or**
2. if non receipt by the office or claimant was more probable than not.

42749 See DMG 42760et seq for guidance on good cause where a claimant fails to return a questionnaire for a determination of LCWRA. The general principles in DMG 42466 - 42472 to be considered when determining LCW also apply to LCWRA.

**Note:** A claimant who fails to provide information for LCWRA can only be treated as not having LCWRA. A claimant cannot be treated as not having LCW if their failure was to not provide information in respect of the LCWRA part of the WCA.

42750 - 42754

## Claimants who may be called for examination

- 42755 Claimants may be called to attend a medical examination by a HCP approved by the Secretary of State where it has to be determined whether or not they have LCWRA<sup>1</sup>.

*1 ESA Regs, reg 38(1)*

- 42756 Claimants can be treated as not having LCWRA if

1. they fail without good cause to attend or submit to a medical examination<sup>1</sup>  
**and**
2. they
  - 2.1 had at least seven days' written notice of the examination **or**
  - 2.2 agreed to accept a shorter period of notice whether given in writing or otherwise<sup>2</sup>.

*1 ESA Regs, reg 38(2); 2 reg 38(3)*

- 42757 The general principles in DMG 42482 - 42496 to be considered when determining LCW also apply to LCWRA.

**Note:** A claimant who fails to attend or submit for examination for LCWRA can only be treated as not having LCWRA. A claimant cannot be treated as not having LCW if their failure to attend or submit for examination was in respect of the LCWRA part of the WCA.

- 42758 Where a claimant fails without good cause to attend or submit for examination the claimant can be treated as not having LCWRA<sup>1</sup> (see DMG 42756).

*1 ESA Regs, reg 38(2)*

- 42759 If the DM concludes that the Secretary of State has complied with the duty set out in DMG 42756 they may go on to consider whether the claimant had good cause for their failure to attend or submit to a medical examination (see DMG 42760).

## Consideration of good cause

- 42760 When a claimant fails to provide information or to attend or submit to an examination, consideration of good cause includes

1. whether the claimant was outside GB at the relevant time **and**
2. the claimant's state of health at the relevant time **and**
3. the nature of any disability the claimant has<sup>1</sup>.

*1 ESA Regs, reg 39*

- 42761 The list is not exhaustive; the regulations state "include". The onus of proving good cause lies with the claimant who fails to comply. The test of good cause is whether the DM judges the reason for non-attendance or failure to attend or submit to examination to be reasonable and likely on the balance of probabilities. See DMG Chapter 01 for guidance. The DM needs to ascertain the precise facts and apply the concept of "good cause".

42762 See DMG 42504 - 42543 for further guidance on consideration of whether a claimant has good cause. This guidance is general on the principles of good cause and applies to consideration of both LCW and LCWRA.

**Note:** A claimant who fails to return information, attend or submit for an examination for LCWRA can only be treated as not having LCWRA. A claimant cannot be treated as not having LCW if their failure was to not return information, attend or participate in the LCWRA part of the WCA.

42763 Where there is no evidence of good cause or the reasons provided are not accepted as good cause, the DM should determine that the claimant is treated as not having LCWRA.

42764 - 42769

### **Determination of whether a claimant has limited capability for work-related activity**

42770 The DM determines whether a claimant has LCWRA from

1. the questionnaire if one is available **and**
2. a statement from the GP if one is available **and**
3. the medical opinion from the HCP including the personalised summary statement **and**
4. any other relevant evidence.

42771 HCPs should provide relevant information and good justification for their recommendations with regard to LCWRA on a medical report form on either an

1. ESA85 if the claimant has been examined for LCW and the recommendation is that the claimant does not have LCWRA **or**
2. ESA85A if the claimant
  - 2.1 has not been examined **or**
  - 2.2 has been examined for LCW and the recommendation is that the claimant has LCWRA **or**
  - 2.3 is treated as having LCW and has been called for examination for assessment of LCWRA only.

**Note:** For the purposes of 2.2 if LCWRA is identified at examination the DM will get two reports: an ESA85 for LCW and an ESA85A for LCWRA.



42772 In the main, medical reports will be completed electronically. There is no requirement for the report to be signed by the examining HCP<sup>1</sup>. However the report must identify the status of the HCP, i.e. whether he/she is a doctor or a registered nurse.

*1 R(IB 7/05)*

42773 The medical report includes an opinion of a HCP on whether any prescribed exceptional circumstances apply. The DM should consider that opinion when deciding whether a claimant can be treated as having LCWRA if they do not satisfy the test for LCWRA from the descriptors<sup>1</sup> (see DMG 42681).

*1 ESA Regs, reg 35(2)*

42774 The normal principles apply to considering the evidence. Guidance is in DMG Chapter 01.

42775 - 42779

## **Second or subsequent referrals**

42780 The medical report also includes advice on the period of time that should pass before a claimant is reconsidered for the next WCA process. This advice is given in all cases but the DM can determine afresh whether the claimant still has or can be treated as having LCWRA in prescribed circumstances (see DMG 42785). This may be at a different time to the advice given on the medical report.

42781 In second and subsequent referrals medical services will provide a recommendation on whether a claimant has LCWRA.

42782 Not all claimants require a LCWA in subsequent referrals. Medical services will decide if LCW can be assessed on scrutiny of the available evidence however it may be necessary to call the claimant for examination on subsequent referrals to assess LCWRA.

42783 Medical conditions can improve with treatment or they may decline. Depending on the outcome of future assessments claimants who are placed in the WRAG may be removed from that group and placed in the support group and vice versa.

42784

## **Determining limited capability for work-related activity afresh**

42785 Where it has been determined a claimant

1. has LCWRA or
2. is treated as having LCWRA or
3. is treated as not having LCWRA

the DM can determine afresh whether the claimant still has or is to be treated as having LCWRA<sup>1</sup>.

*1 ESA Regs, reg 34(4)*

42786 DMG 42785 applies where<sup>1</sup>

1. the DM wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition or
2. the DM wishes to determine whether the previous determination was made in ignorance of, or based on a mistake as to some material fact or
3. at least three months have passed since the date of the previous determination.

*1 ESA Regs, reg 34(5)*

42787 - 42789

Meaning of normally resides .....	44125
Sharing the accommodation .....	44127
Meaning of liable to make payments .....	44129
Contractual capacity .....	44133
Carer stays overnight.....	44134
Students .....	44135
People who are not non-dependants .....	44139
Commercial basis.....	44140
Meaning of close relative .....	44141
Admittance to residential care.....	44143
Definitions for DMG 44146 - 44155 .....	44144
Single claimant or lone parent .....	44146
Couples .....	44148
SDP and Carer benefits .....	44156
Arrears of CA .....	44159
Shared lives scheme.....	44163
<b>Carer premium</b>	
General.....	44166
Carer premium extension period.....	44169
The relevant date .....	44170
Claim to ESA after CA ceases .....	44171
Transitional Protection .....	44172
<b>Admission to hospital - effect on premiums</b>	
General.....	44177
Enhanced disability premium .....	44178
Severe disability premium	
Claimant in hospital - single claimant .....	44179
Claimant in hospital - couples and polygamous marriages .....	44180
“AA”, DLA and CA on admission to hospital .....	44181
Carer premium	
General .....	44186
Single claimant or lone parent .....	44188
Breaks in caring .....	44189

Couples or polygamous marriages .....	44190
<b>Housing costs for ESA(IR)</b>	
<b>Introduction</b> .....	44200
Basic conditions of entitlement.....	44202
Claimants without housing costs.....	44203
Rounding of fractions .....	44204
<b>Definitions</b> .....	44207
Close relative.....	44208
Disabled person .....	44210
Dwelling occupied as the home .....	44216
Normally occupied.....	44217
Rooms sublet .....	44218
Family .....	44219
Housing costs.....	44220
Lone Parent.....	44225
Qualifying age .....	44226
Water charges .....	44227
Steps to follow when deciding housing costs .....	44228
<b>Liability for housing costs</b> .....	44233
Responsibility for housing costs.....	44234
<b>Treated as occupying a dwelling as the home</b>	
Definitions.....	44241
Medically approved .....	44242
Patient .....	44243
Residential accommodation.....	44244
Student.....	44245
Training course .....	44246
Dwelling where claimant normally lives .....	44248
<b>Full-time students and claimants on training courses</b>	
Students .....	44250

Training course .....	44251
Temporary accommodation .....	44255
Liable for two homes .....	44256
Treated as living in the home before moving in .....	44263
Temporary absences from home	
Trial periods in residential accommodation .....	44264
Temporary absences up to 13 weeks .....	44265
Temporary absences up to 52 weeks .....	44271
<b>Housing costs not met .....</b>	<b>44281</b>
<b>Apportionment of housing costs</b>	
Composite hereditaments .....	44311
<b>Other housing costs</b>	
Definitions .....	44421
Shared ownership schemes .....	44422
Crown tenants .....	44425
Housing association .....	44426
Long tenancy .....	44427
Rentcharge .....	44433
Other eligible housing costs .....	44434
Long tenancies .....	44435
Service charges .....	44436
Rentcharges .....	44437
Co-ownership schemes .....	44438
Crown tenants .....	44439
Reduction for water charges .....	44440
Tents .....	44444
Mobile motor homes .....	44446
Deductions from other eligible housing costs .....	44447
Deductions for fuel charges .....	44448
Deductions for ineligible service charges .....	44450
Connected to the adequacy of the accommodation .....	44457
Deductions for repairs and improvements .....	44458

Contingency funds .....	44460
Costs payable over 53 weeks or irregularly .....	44462
Payment of costs waived .....	44463
Attribution of service charges .....	44464
<b>Housing costs - starting dates of entitlement</b> .....	44469
Housing costs payable at the start of the claim .....	44483
Start date for housing costs .....	44486
Starting date of entitlement - waiting days .....	44487
<b>Linking rules</b>	
Breaks in entitlement .....	44531
Twelve week linking periods .....	44533
26 week linking periods .....	44534
Payments from insurance policies against the loss of employment .....	44535
More than 26 weeks .....	44537
Employment rehabilitation centres and specified training .....	44538
Payments from payment protection insurance .....	44539
52 linking periods .....	44546
Qualifying period for housing costs already served .....	44547
104 week linking periods .....	44550
Work or training beneficiaries .....	44551
New deal options, employment zone and prescribed government schemes .....	44557
Not entitled on revision, supersession or appeal .....	44560
Participation in new deal and employment zone schemes .....	44561
JSA(Cont) .....	44563
Change of claimant .....	44564
Capital exceeds £16,000/income exceeds applicable amount .....	44570
Lone parents and carers .....	44572
Treated as in receipt of and entitled to ESA(IR) on another person's claim	
Claimant previously a member of a couple or polygamous marriage ....	44574
Claimant becomes a member of a couple or polygamous marriage .....	44575
Change of claimant .....	44576

Change of family .....	44577
Previous entitlement to other income-based benefits .....	44578

## **Non-dependant deductions**

Introduction.....	44586
Definition of a non-dependant.....	44587
Meaning of normally resides .....	44588
Sharing the accommodation .....	44590
People who are not non-dependants .....	44596
Amount of deduction .....	44597
Non-dependants who have partners.....	44598
Calculation of income.....	44600
Non-dependant of more than one joint occupier.....	44601
Non-dependant deduction not appropriate .....	44606
Participation in new deal for young people .....	44607
Calculation of a non-dependant's gross weekly income.....	44611

<b>Questions that cannot be decided immediately .....</b>	<b>44621</b>
---	--------------

## **Entitlement to the components**

### **ESA(IR) and ESA(Cont)**

General.....	44631
The support component .....	44634
Entitlement to the support component before the end of the assessment phase .....	44636
Case 1 .....	44637
Case 2 .....	44638
Case 3 .....	44640
Case 4 .....	44642
Treated as having LCWRA .....	44644
IB reassessment: termination of transitional addition .....	44645
Backdating of entitlement to the support component.....	44647
The date to which entitlement to the support component is backdated .....	44650

## **ESA(Cont) and pension payments**

### **Deductions from ESA(Cont) for pension payments**

The guidance on this subject has been moved to Chapter 51 .....44651

## **Statutory Payments**

### **Statutory Payments**

Statutory Sick Pay .....44900

Statutory Maternity Pay and ESA(Cont) .....44902

Statutory Adoption Pay and ESA(Cont) .....44904

Statutory Paternity Pay and ESA(Cont) .....44906

Shared Parental Pay and ESA(Cont).....44909

ESA(IR) Applicable amounts: personal allowances..... **Appendix 1**

The remunerative work rule for non-dependant housing cost  
deductions ..... **Appendix 2**

Housing costs - amount of non-dependant deductions ..... **Appendix 3**

Housing costs - unsafe structural defects ..... **Appendix 4**

Housing costs - leasehold major works ..... **Appendix 5**

Removal of WRAC: savings..... **Appendix 6**

Transitional end day..... **Appendix 7**



# Chapter 44 - Normal amount payable & Components

## Amount payable

### General

#### Scope of this Chapter

44001 This Chapter explains how to calculate the normal amount payable for ESA

44002 Other rules apply where people are

1. in hospital
2. without accommodation
3. members of religious orders
4. prisoners
5. temporarily separated members of a couple or polygamous marriage
6. absent from GB/UK
7. entitled to a mortgage interest run-on
8. from abroad or subject to immigration control.

See DMG Chapter 54 for guidance on these special cases. Guidance on how to calculate the amount payable for a part week is in DMG 46041 et seq.

#### Meaning of benefit week

44003 Benefit week means<sup>1</sup>

1. a period of seven days ending on a day which the DM directs and
2. when calculating the amount of income to take into account a period of seven days ending on
  - 2.1 the day before the first day of the benefit week following the date of claim or
  - 2.2 the last day on which ESA is paid if it is in payment for less than a week.

*1 ESA Regs, reg 2(1)*

## Meaning of claimant

44004 Claimant means<sup>1</sup> a person who has claimed ESA.

*1 WR Act 07, s 24(1)*

## Meaning of terminally ill

44005 A claimant is considered to be terminally ill if they have a progressive disease from which death may reasonably be expected within six months<sup>1</sup>.

*1 ESA Regs, reg 2(1)*

## Meaning of qualifying age for state pension credit

44006 The qualifying age for SPC<sup>1</sup> means

1. in the case of a woman, pensionable age, or
2. in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man.

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

*1 ESA Regs, reg 2(1)*

## Deciding entitlement

44007 The DM cannot decide entitlement to ESA until all of the information for the claim has been received (see DMG Chapter 02). Claimants will indicate when claiming whether they wish to receive

1. ESA(Cont) or
2. ESA(IR).

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

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

44008 If claimants indicate that they wish to receive ESA(IR) the DM should calculate any entitlement to

1. ESA(Cont), (the personal rate) and
2. ESA(IR), (the applicable amount).

The DM must then consider the guidance at DMG 44045 - 44049 to decide the amount of ESA to be paid.

44009 - 44010

# The assessment phase

## Meaning of assessment phase

- 44011 The assessment phase is the period of time during which the initial LCWA takes place. It is generally a fixed period of 13 weeks beginning with the first day of entitlement to ESA<sup>1</sup>. Entitlement will usually commence after the claimant has served seven waiting days<sup>2</sup>. The assessment phase may sometimes be extended in certain circumstances, for example should the WCA not take place within the first 13 weeks<sup>3</sup>.

**Note:** DMG Chapter 41 provides guidance on waiting days.

*1 WR Act 07, s 24(2); 2 Sch 2, para 2; 3 ESA Regs, reg 4(2)*

- 44012 The assessment phase is calculated differently for those claimants who
1. have previously claimed ESA and the PLCW links to an earlier PLCW (see DMG 44019) or
  2. are appealing a decision embodying an adverse determination on LCW (see DMG 44022) or
  3. claim ESA immediately following an award of JSA EPS (see DMG Chapter 20).

- 44013 The normal amount of ESA payable will depend on whether the claimant is in the assessment phase. Unless the claimant is within a prescribed group (see DMG 44636) then during the assessment phase
1. the support component is not payable<sup>1</sup>
  2. the personal allowance<sup>2</sup> for ESA(IR) (see DMG 44056) and the personal rate for ESA(Cont) are age related<sup>3</sup> (see DMG 44027).

**Note:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

*1 WR Act 07, s 2(2), s 2(3), s 4(4) & s 4(5); 2 ESA Regs, reg 67(1); 3 reg 67(2)*

- 44014 In cases where the assessment phase has lasted for a period longer than 13 weeks payment of the support component may be backdated to the first day after the 13th week (see DMG 44647)<sup>1</sup>.

*1 WR Act 07, s 2(4)(b), s 4(6)(b); SSCS (D&A) Regs, reg 6(2)(r) and 7(38) & (40)*

## Ending of the assessment phase – new claimants

- 44015 The assessment phase ends on
1. the last day of the relevant period<sup>1</sup> (see DMG 44016) or
  2. the date of the determination in DMG 44017 if later<sup>2</sup>.

*1 ESA Regs, reg 4(1) & (3); 2 reg 4(2)*

## Meaning of relevant period

44016 The relevant period is the period of 13 weeks beginning with

1. the first day of the assessment phase (that is, the first day of ESA entitlement)<sup>1</sup> or
2. where the first day of ESA entitlement immediately follows an award of JSA EPS, the first day of the EPS<sup>2</sup>.

*1 WR Act 07, s 24(2)(a); ESA Regs, reg (4)(a); 2 reg 4(b) & (5); JSA Regs, reg 55ZA; JSA Regs 13, reg 46A*

### Example

Pat is entitled to JSA, and sends in fit notes when he has flu and develops a chest infection. He starts an EPS on 10.6.15. Pat has serious injuries after a road traffic accident on 9.7.15, and is admitted to hospital. He claims ESA from 9.7.15, and on 1.9.15 the DM determines that Pat is treated as having LCW. The relevant period begins on 10.6.15, the first day of the EPS, and ends on 9.9.15.

44017 Where a LCW determination has not been made within the relevant period in DMG 44016<sup>1</sup>, the assessment phase will end once it has been determined that the claimant has LCW<sup>2</sup> either by

1. a LCWA being carried out (see DMG Chapter 42)<sup>3</sup> or
2. the claimant being treated as having LCW (see DMG Chapter 42)<sup>4</sup>.

*1 ESA Regs, reg 4(4); 2 reg 4(2); 3 reg 4(3)(a), 19 & Sch 2; 4 reg 4(3)(b), 20, 25, 26, 29 or 33(2)*

### Example

After serving waiting days for the period 25-31 May, Claudia has been entitled to ESA since 1 June on the basis of medical evidence supplied by her GP. A LCWA is not carried out until 10 September. On 12 September the DM determines that Claudia has LCW. Claudia's assessment phase ends on 12 September.

44018 Where

1. a claimant's entitlement to ESA ends, for example because they have returned to work, after the 13th week of entitlement but before the WCA has been carried out **and**
2. the claimant asks for arrears of a component to be paid from week 14

the DM should make a decision refusing to supersede the decision which awarded entitlement, or any later superseding decision, on the grounds that the conditions allowing supersession are not satisfied. See [DMG 04019 - 04020](#) for guidance on making a decision not to supersede. The decision carries the right of appeal to the FtT<sup>1</sup>.

*1 SS Act 98, s 12(1); R(DLA) 1/03*

## The main phase

44026 The main phase of ESA begins where there is entitlement to the support component (see **DMG 44631 for guidance on entitlement to the component**)<sup>1</sup>. The assessment phase must usually have been completed before a claimant enters the main phase (see DMG 44011 - 44024).

**Note:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

*1 ESA Regs, reg 2(1)*

44027 The prescribed amount payable during the main phase of ESA may be increased depending on

1. the claimant's age **and**
2. if the claimant is a member of a couple, their circumstances.

Guidance later in this chapter provides more details.

44028



## ESA(Cont)

44029 ESA(Cont) is paid for the claimant only. There are no increases for any partner or dependants. The amount for each benefit week is calculated by<sup>1</sup>

1. deciding the personal rate appropriate to the claimant<sup>2</sup> **and**
2. adding the amount of the support component if the claimant is entitled to this<sup>3</sup> **and**
3. deducting<sup>4</sup>
  - 3.1 any pension payments<sup>5</sup> **and**
  - 3.2 any PPF periodic payments<sup>6</sup> **and**
  - 3.3 any councillors' allowances<sup>7</sup>.

**Note 1:** Where the calculation results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded<sup>8</sup>.

**Note 2:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

*1 WR Act 07, s 2; 2 s 2(1)(a); ESA Regs, reg 67(2); 3 s 2(1)(b); 4 WR Act 07, s 2(1)(c); 5 s 3(1)(a); 6 s 3(1)(b); 7 s 3(1)(c); 8 ESA Regs, reg 3(a)*

44030 In the assessment phase only, ESA(Cont) has two separate personal rates. They are for claimants aged

1. less than 25 **or**
2. 25 and over<sup>1</sup>.

In the main phase all ESA(Cont) claimants, regardless of their age, are entitled to the 25 and over rate<sup>2</sup>.

*1 WR Act 07, s 2(1)(a); ESA Regs, reg 67(2) & Sch 4, para 1(1)(b) & (c); 2 reg 67(2) & Sch 4, para 1(1)(a)*

44031 - 44034





# ESA(IR)

## Amount of ESA(IR) payable

44035 One of the conditions of entitlement for ESA(IR) is that the claimant should have

1. no income or
2. income that does not exceed the applicable amount<sup>1</sup>.

*1 WR Act 07, Sch 1, para 6(1)(a)*

44036 The amount of ESA(IR) payable is

1. the applicable amount if the claimant has no income or
2. the difference between the income and the applicable amount if the claimant has income that does not exceed the applicable amount<sup>1</sup>.

*1 WR Act 07, s 4(1)*

## Applicable amount

44037 ESA(IR) is paid for the claimant and any partner or partners<sup>1</sup>. There is no amount for dependants. The applicable amount includes<sup>2</sup>

1. the claimant's personal allowance. This may include an amount for any partner or, in the case of a polygamous marriage, partners<sup>3</sup> (see DMG 44061). During the assessment phase the personal allowance is age related (see DMG 44058) and
2. if appropriate
  - 2.1 premiums
  - 2.2 certain housing costs and
3. if appropriate the support component<sup>4</sup>.

**Note 1:** In special circumstances a claimant may have an applicable amount of nil<sup>5</sup>. An applicable amount may also be reduced in certain circumstances or may be limited to allowable housing costs only (see DMG Chapter 54).

**Note 2:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

*1 ESA Regs, reg 67(1)(a); 2 reg 67(1); 3 reg 68; 4 WR Act 07, s 4(2)(b); 5 s 4(3)*

44038 When deciding ESA(IR) amount payable the applicable amount may be awarded without

1. housing costs<sup>1</sup> or
2. SDP<sup>2</sup>

if there is not enough evidence to include these elements.

*1 SS CS (D&A) Regs, reg 13(1); 2 reg 13(2)*

44039 The applicable amount may be revised or superseded if further information about SDP or housing costs is received after the claim or question has been decided<sup>1</sup>.

*1 SS CS (D&A) Regs, reg 3 & 6*

44040 - 44044

## **SDP and Carer benefits**

44156 There are two carer related benefits

1. Carer's Allowance (CA)
2. The Carer Element (CE) in Universal Credit (UC)

and SDP is not payable if someone is receiving CA or CE for caring for the claimant or partner<sup>1</sup>. CA or CE has to actually be in payment before it affects entitlement to SDP. Underlying entitlement to CA does not affect SDP. So both SDP and CP can be paid at the same time if CP is awarded because of underlying entitlement to CA (see DMG 44166 et seq).

*1 ESA Regs, Sch 4, para 6(2)(a)(iii) & (2)(b)*

44157 DMs should normally treat an award of CA as a proper award until the CA decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting CA or
2. the award of CA is in error or
3. they know nothing about the CA award or
4. the CA claim is fraudulent

the DM should ask the CA unit to investigate whether the CA award is correctly made.

44158 Where the disabled person makes an allegation about the carer's integrity, as described at DMG 44157, the ESA DM can make a decision on the claim or application before the CA DM has decided whether the award of CA should be revised or superseded. However, the ESA decision should include a determination which

1. makes an assumption that the carer is properly in receipt of CA and
2. refuses to award SDP.

### **Arrears of CA**

44159 An award of CA may be backdated for a period before the date on which the CA award is first paid. Arrears of CA due in such circumstances do not affect entitlement to SDP<sup>1</sup>. SDP is only affected from the date the CA award is paid.

*1 ESA Regs, Sch 4, para 6(6)*

### **Example**

Karim is a single claimant in receipt of SDP. On 20 November a relative claims CA. CA is awarded on 23 January. It is first paid on 6 March. Arrears are included in the first payment from the date of claim. SDP is affected from 6 March.

- 44160 If a person stops getting CA because a restriction is applied under the loss of benefit provisions<sup>1</sup> they continue to be treated as being in receipt of CA for the purposes of entitlement to SDP<sup>2</sup>.

*1 SS Fraud Act 01, s 7; 2 ESA Regs, Sch 4, para 6(2)(a)(iii), (2)(b) & (8)*

44161 - 44162

### **Shared lives scheme**

- 44163 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PiP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will be ignored as non dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the SDP.

**Note:** The claimant will not be entitled to the SDP if there are people other than the carer, carer's family or other shared lives residents in the dwelling who cannot be ignored, for example where the carer's 23 year old son still lives in the same dwelling.

### **Example**

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of their family having her own bedroom and sharing all the other household facilities. Shirley is disabled and receives DLA. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get HB. The DM decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the SDP.

44164 - 44165

# Housing costs for ESA(IR)

## Introduction

44200 Until 6.4.18 help for owner occupier payments was included in a claimant's award of an income related benefit (also referred to as support for mortgage interest (SMI)). From 6.4.18 SMI was changed from a benefit to a loan secured by a charge on the property.<sup>1</sup> See ADM Memo 8/18. For guidance on the transition from SMI housing costs to SMI loans, see Appendix 7. For advice on Support for Mortgage interest prior to 6.4.18, DMs may wish to contact DMA Leeds.

*1 LMI Regs 2017*

44201 Housing costs may be paid for claimants entitled to ESA(IR). There is no entitlement to housing costs for ESA(Cont).

## Basic conditions of entitlement

44202 Claimants are entitled to housing costs if<sup>1</sup>

1. they or their partner are liable for those costs **and**
2. they or their partner are responsible for those costs **and**
3. they or their partner are treated as living in the home those costs are for **and**
4. those costs are allowable.

*1 ESA Regs, Sch 6, para 1(1)*

## Claimants without housing costs

44203 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is

1. no liability or responsibility for housing costs **and**
2. no entitlement to housing costs.

## Rounding of fractions

44204 Where any calculation relating to this guidance results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded<sup>1</sup>.

*1 ESA Regs, reg 3(a)*

44205 - 44206



## Definitions

44207 The following paragraphs explain the meaning of terms used throughout this guidance on housing costs.

### Close relative

44208 A close relative is<sup>1</sup>

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-son-in-law, step-daughter, step-daughter-in-law, brother, brother-in-law, sister, sister-in-law **and**
2. similar relationships arising through civil partnerships<sup>2</sup>.

*1 ESA Regs, reg 2(1); 2 CP Act 04, s 246*

44209 Brother and sister includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and becomes the brother or sister of any other child of those parents. The child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends upon the legal relationship and not the blood relationship<sup>1</sup>.

*1 R(SB) 22/87*

### Disabled person

44210 For housing costs purposes, a disabled person is a person who<sup>1</sup>

1. in respect of whom main phase ESA is payable to the claimant or to a person living with the claimant **or**
2. would, if they were entitled to IS, receive the DP or HPP **or**
3. is aged 75 or over **or**
4. is disabled or severely disabled for the purposes of specified Tax Credits legislation<sup>2</sup> **or**
5. is a claimant or a person living with the claimant who would, but for the application of time limiting, be entitled to ESA<sup>3</sup> **or**
6. is entitled to UC and has LCW or LCWRA<sup>4</sup>

*1 ESA Regs, Sch 6, para 1(3); 2 Tax Credits Act 2002, s 9(6); 3 ESA Regs, Sch 6, para 1(3)(a)(ii);*

*4 ESA Regs, Sch 6, para 1(3)(a)(ii); UC Regs, reg 39 & 40;*

44211 A disabled person will still be treated as a disabled person even if they are<sup>1</sup>

1. disqualified for receiving benefit because they
  - 1.1 have LCW due to their own misconduct **or**
  - 1.2 fail without good cause to follow medical advice **or**
  - 1.3 fail without good cause to observe the rules of behaviour **or**
2. treated as not having LCW because they
  - 2.1 have LCW due to their own misconduct **or**
  - 2.2 fail without good cause to follow medical advice **or**
  - 2.3 fail without good cause to observe the rules of behaviour.

See DMG Chapter 53 for further guidance.

*1 ESA Regs, Sch 6, para 1(4)*

44212 - 44215

## **Dwelling occupied as the home**

44216 “Dwelling occupied as the home” means<sup>1</sup>

1. the dwelling and any
  - 1.1 garage
  - 1.2 garden
  - 1.3 outbuildingsnormally occupied by the claimant as the home **and**
2. any buildings or land not occupied as the home where it is not practicable or reasonable to sell them separately **and**
3. in Scotland, any croft land on which the dwelling is situated.

**Note:** This means only the dwelling currently occupied as the home. It does not include any dwelling which is no longer occupied as the home<sup>2</sup>.

*1 ESA Regs, reg 2(1); 2 R(IS) 5/96*

### **Example**

Iain and Sharon live on a plot of land on which there is a caravan, some outbuildings and an old cottage in need of repair. They are allowed to use the caravan as a temporary residence while the cottage is being repaired. They sleep in the caravan but have things stored in the outbuildings and cottage. The caravan has a fixed mains water supply and is linked directly to the electricity mains. There are no mains supplies to the cottage. The land could not be divided into two, with the caravan and site being owned or used separately from the cottage and site.



The DM decides that the dwelling includes the caravan, outbuildings and land and the cottage is occupied to a limited extent as part of that dwelling. John can therefore have housing costs assessed on the basis that the whole of the landholding, cottage, caravan and outbuildings are to be treated as the dwelling normally occupied by him.

### **Normally occupied**

- 44217 The dwelling normally occupied as the home is the home where the claimant and their family normally live. In this context “normally” means “usually”. Periods of residence, or absence, that are of an exceptional nature should be disregarded.

### **Rooms sublet**

- 44218 Rooms that are sublet in a house are part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

### **Family**

- 44219 Family means<sup>1</sup>
1. a couple or
  2. a couple and any child or young person who is
    - 2.1 a member of the same household **and**
    - 2.2 the responsibility of either or both members of the couple **or**
  3. a person who is not a member of a couple (this will usually be a lone parent) and any child or young person who is
    - 3.1 a member of the same household **and**
    - 3.2 the responsibility of that person.

*1 ESA Regs, reg 2(1)*

### **Housing costs**

- 44220 Housing costs are<sup>1</sup>
1. rents or ground rents on long tenancies
  2. service charges
  3. payments by way of rent charge
  4. payments under co-ownership schemes
  5. payments for tenancies or licences of Crown tenants
  6. payments for tents and their sites.

*1 ESA Regs, Sch 6, para 1(2), 16, 17 & 18*

- 44221 Only those payments in DMG 44220 should be allowed as housing costs. For example, housing costs do not include
1. rent required by a person who
    - 1.1 is making payments under a shared ownership scheme
    - 1.2 owns jointly with the claimant the property occupied by the claimant **and**
    - 1.3 does not live in that property
  2. water charges paid via a landlord (for example paid at the same time as service charges).

**Note:** This list is not exhaustive.

*1 R(IS) 19/93*

44222 - 44224

## **Lone Parent**

- 44225 A lone parent is a person who is
1. not a member of a
    - 1.1 couple **or**
    - 1.2 polygamous marriage **and**
  2. responsible for a child or young person who is a member of the household<sup>1</sup>.

**Note:** See DMG Chapter 43 for the meanings of child and young person.

*1 ESA Regs, reg 2(1)*

## **Qualifying age**

- 44226 The qualifying age for SPC<sup>1</sup> means
1. for a woman - pensionable age **or**
  2. for a man - the age which would be pensionable age for a woman born on the same date as the man.

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

*1 ESA Regs, reg 2(1)*

## **Water charges**

- 44227 Water charges means<sup>1</sup> any
1. water charges **and**
  2. sewerage charges
- in respect of the dwelling which a person occupies as their home.

*1 ESA Regs, reg 2(1); Water Industry Act 1991, Part 5, Ch 1; Local Government etc. (Scotland) Act 1994, Part 2*

## **Steps to follow when deciding housing costs**

- 44228 When deciding a claimant's housing costs, the DM should determine
1. if the claimant or partner has a current liability for the housing costs (see DMG 44233)
  2. if the amount spent is on the dwelling occupied as the home (see DMG 44216 and 44241 et seq)
  3. if the housing costs cannot be met (see DMG 44281)
  4. how to apportion the housing costs if
    - 4.1 the dwelling is used for domestic and business use (see DMG 44311)
    - or
    - 4.2 responsibility for the housing costs is shared (see DMG 44234)
  5. if there are any other eligible housing costs that can be allowed (see DMG 44421 et seq)
  6. if a deduction for a non-dependant is necessary (see DMG 44586)
  7. the start date of entitlement to housing costs (see DMG 44471 et seq).

44229 - 44232



## Liability for housing costs

- 44233 A person is liable to meet housing costs where the
1. liability falls on them or their partner, except where the liability is to another member of the same household<sup>1</sup> or
  2. person liable for those costs is not meeting them **and**
    - 2.1 the claimant has to meet the costs to keep on living in the home **and**
    - 2.2 it is reasonable in all the circumstances to treat the claimant as liable for the costs<sup>2</sup> or
  3. costs are shared with other members of the household who are not close relatives of the claimant or the claimant's partner **and**
    - 3.1 at least one member of the household is liable for those costs **and**
    - 3.2 it is reasonable in the circumstances to treat the claimant as sharing responsibility<sup>3</sup>.
- 1 ESA Regs, Sch 6, para 4(a); R(IS) 4/00; 2 ESA Regs, Sch 6, para 4(b); R(IS) 12/94; R(IS) 8/01;  
3 ESA Regs, Sch 6, para 4(c)*

## Responsibility for housing costs

- 44234 A claimant who is liable for a housing cost is responsible for that cost unless someone else has accepted responsibility for it. If responsibility is shared, the claimant is responsible only for their share<sup>1</sup>.
- 1 ESA Regs, Sch 6, para 7(5); R(IS) 4/00;*

44235 - 44240



# Treated as occupying a dwelling as the home

## Definitions

- 44241 The following definitions apply only to this guidance on treating a person as occupying a dwelling as the home.

## Medically approved

- 44242 Medically approved means certified by a medical practitioner<sup>1</sup>.

*1 ESA Regs, Sch 6, para 5(13)*

## Patient

- 44243 A patient is a person undergoing

1. medical or
2. other treatment

as an in-patient in a hospital or similar institution<sup>1</sup>.

*1 ESA Regs, Sch 6, para 5(13)*

## Residential accommodation

- 44244 Residential accommodation means accommodation which is a care home, an Abbeyfield Home or an independent hospital<sup>1</sup> (see DMG Chapter 54).

*1 ESA Regs, Sch 6, para 5(13)*

## Student

- 44245 A student is a full-time student<sup>1</sup>. For further information see the guidance on students in DMG Chapter 51.

*1 ESA Regs, reg 2(1)*

## Training course

- 44246 Training course means a course of training or instruction provided wholly or partly by, or on behalf of, or by arrangement with, or approved by or on behalf of<sup>1</sup>

1. Scottish Enterprise or
2. Highlands and Islands Enterprise or
3. Skills Development Scotland or
4. a government department or
5. the Secretary of State.

*1 ESA Regs, Sch 6, para 5(13)*

44247

## Dwelling where claimant normally lives

44248 Unless DMG 44253 - 44263 applies, a claimant should

1. be treated as living in the home where they, or where a claimant is a member of a family, where the claimant and members of their family normally live (see DMG 44217 and DMG 52397) **and**
2. not be treated as occupying any other dwelling as the home<sup>1</sup>.

*1 ESA Regs, Sch 6, para 5(1)*

44249 To decide where a claimant normally lives the DM should

1. consider all homes that the claimant occupies, whether or not the homes are in GB<sup>1</sup> **and**
2. not treat the claimant as living in more than one home, unless the circumstances in DMG 44256 - 44263 apply **and**
3. where the claimant is responsible for housing costs on more than one property, and DMG 44256 - 44263 does not apply, treat the claimant as living in the home they normally occupy.

*1 ESA Regs, Sch 6, para 5(2)*

## Full-time students and claimants on training courses

### Students

44250 Single claimants who are F/T students, may have different homes in term time and vacations. Such a claimant should be treated as occupying the home for which they are liable to make payments in respect of if<sup>1</sup>

1. they are occupying one of the homes because they are
  - 1.1 a F/T student **and**
2. they are liable for payments in respect of the dwelling on either, but not both, of the homes they live in when
  - 2.1 attending the course of study **or**
  - 2.2 not attending the course of study **and**they are not absent from the home for which they are liable<sup>2</sup>.

*1 ESA Regs, Sch 6, para 5(3); 2 para 5(4)*



## Training course

44251 Single claimants who are on a training course, may have different homes whilst attending the course and not attending the course. Such a claimant should be treated as occupying the home for which they are liable to make payments in respect of, if<sup>1</sup>

1. they are occupying one of the homes because they are
  - 1.1 on a training course **and**
2. they are liable for the payments in respect of the dwelling on either, but not both, of the homes they live in when
  - 2.1 attending the training **or**
  - 2.2 not attending the training.

*1 ESA Regs, Sch 6, para 5(3)*

44252 - 44253

### Example

Jessica is on a training course in Sheffield. She is renting an apartment in Sheffield whilst on the course. When not on the course she lives with her parents in their home in Wetherby. Jessica has no housing costs at her parents' home. Jessica is treated as living in her flat in Sheffield even when she is absent from it in Wetherby.

44254 Students whose main purpose of living in their home is to attend a course of study will not normally be treated as living there for periods of absence outside the period of study. The exception is when the absence is due to admission to hospital for treatment<sup>1</sup>.

*1 ESA Regs, Sch 6, para 5(4)*

## Temporary accommodation

44255 A claimant who

1. has to move into temporary accommodation so that essential repairs can be carried out to their home **and**
2. is liable to pay housing costs for either, but not both the home or temporary accommodation

must be treated as living in the dwelling for which they have to pay housing costs<sup>1</sup>.

*1 ESA Regs, Sch 6, para 5(5)*

## Liable for two homes

- 44256 A person who is liable to make payments on two dwellings should be treated as living in, and allowed housing costs for both dwellings where they
1. have left their former home, and remain absent, because of
    - 1.1 fear of violence in that home **or**
    - 1.2 violence by a former partner or by a close relativeand it is reasonable to meet housing costs on both homes<sup>1</sup> **or**
  2. are members of a couple or polygamous marriage and have a partner who is a F/T student or on a training course and it is
    - 2.1 unavoidable that they have two homes **and**
    - 2.2 reasonable to meet both housing costs<sup>2</sup>.

*1 ESA Regs, Sch 6, para 5(6)(a); 2 Sch 6, para 5(6)(b)*

- 44257 The question of reasonableness in DMG 44256 should be decided at the date the DM considers the issue and in the light of all the circumstances. These may include
1. the length of the absence
  2. whether the claimant could reasonably be expected to take steps to end the liability for the former home
  3. whether there is a hope of resuming occupation
  4. whether it is practicable to end the liability
  5. the claimant's situation and means of support
  6. the extent to which the liability was in practice being met other than through ESA(IR).

- 44258 A person can also be treated as living in, and allowed housing costs for, two homes for up to four benefit weeks from the first day of the benefit week in which the move occurs if<sup>1</sup>
1. they move to a new home, for a reason other than those in DMG 44255 and 44256 **and**
  2. they are liable for housing costs on both homes **and**
  3. the liability to make payments for both homes is unavoidable.

*1 ESA Regs, Sch 6, para 5(6)(c)*

44259 - 44260

44261 A claimant can be allowed housing costs for two separate properties if he is treated as living in both dwellings as the home. See DMG 44256 for the criteria where more than one property could be the dwelling occupied as the home.

44262 Claimants are entitled to an additional amount for these housing costs if

1. the claimant or partner is
  - 1.1 liable for those costs (see DMG 44233) **and**
  - 1.2 responsible for those costs **and**
  - 1.3 treated as living in the home that these costs are for (see DMG 44256) **and**
2. those costs are allowable.

### **Treated as living in the home before moving in**

44263 A claimant may be treated as living in their home for up to four weeks before the date they moved in where<sup>1</sup>

1. they have moved in to the home and were liable to make payments for that home before moving in **and**
2. they had claimed ESA(IR) before moving in **and**
3. a decision was
  - 3.1 not made on the claim **or**
  - 3.2 made on the claim but no housing costs were included **or**
  - 3.3 made refusing the claim, but another claim was made within four weeks of moving in **and**
4. the delay in moving in was reasonable because
  - 4.1 the home was being adapted to meet the needs of a disabled member of the family **or**
  - 4.2 they were waiting for a decision on a connected SF claim and either
    - 4.2.a a member of the family is aged five or under **or**
    - 4.2.b the support component or the WRAC is payable **or**
    - 4.2.c the claimant's applicable amount includes PP or SDP **or**
    - 4.2.d a CTC is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation<sup>2</sup> **or**
  - 4.3 when they became liable to pay the housing costs they were
    - 4.3.a a patient **or**

**4.3.b** in residential accommodation.

**4.4** they were waiting for a decision on a local welfare provision claim and either

**4.4.a** a member of the family is aged five or under or

**4.4.b** the support component or the WRAC is payable or

**4.4.c** the claimant's applicable amount includes PP or SDP or

**4.4.d** a CTC is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation<sup>2</sup>

*1 ESA Regs, Sch 6, para 5(7); 2 Tax Credits Act 2002, s 9(6)*

## **Temporary absences from home**

### **Trial periods in residential accommodation**

44264 Claimants who enter residential accommodation

1. to see whether the accommodation is suitable for their needs **and**
2. with the intention of returning home if the accommodation is unsuitable **and**
3. whose part of the home normally occupied has not been let or sublet

should be treated as living in their home and have their housing costs allowed for up to 13 weeks from the day of entry. The number of weeks for which the absence is treated as temporary is subject to an overall maximum of 52 weeks<sup>1</sup> (see DMG 44271).

*1 ESA Regs, Sch 6, para 5(8) & (9)*

#### **Example**

Nigel has been in hospital for 43 weeks. He receives housing costs for his own home throughout that period. Nigel goes into residential accommodation for assessment. Nigel continues to be treated as temporarily absent from his own home and paid housing costs for that home for a further nine weeks or until a decision is made that he will not return to live in his own home, whichever is the sooner.

### **Temporary absences up to 13 weeks**

44265 Unless DMG 44264 or 44271 applies, a person should be treated as living in their home for any period of temporary absence of not more than 13 weeks if<sup>1</sup>

1. they intend to return to live in the home **and**
2. the part of the home they normally live in has not been let or sublet to another person **and**

3. the period of absence is unlikely to exceed 13 weeks.

*1 ESA Regs, Sch 6, para 5(10)*

44266 The intention to return to live in the home (see DMG 44265 1.) must

1. be unqualified **and**
2. be present from the start of the period of absence **and**
3. not be conditional on a future event.

**Note:** An intention to return to live in the home formed after the start of the period of absence would not be enough.

44267 When considering DMG 44265, housing costs may be allowed for up to 13 weeks from the first day of absence. Where the absence is likely to exceed 13 weeks the absence should be treated as permanent from the first day of absence, and housing costs should not be awarded.

44268 - 44270

### **Temporary absences up to 52 weeks**

44271 A person should be treated as living in their home for a period of temporary absence of not more than 52 weeks if<sup>1</sup>

1. they intend to return to live in the home **and**
2. the part of the home they normally live in has not been let or sublet **and**
3. they
  - 3.1 are required to live as a condition of bail, in either
    - 3.1.a a dwelling, other than the dwelling they occupy as the home **or**
    - 3.1.b approved premises<sup>2</sup> such as a hostel **or**
  - 3.2 are patients resident in a hospital or similar institution **or**
  - 3.3 are, or a member of the family is, undergoing
    - 3.3.a medical treatment **or**
    - 3.3.b medically approved convalescencein the UK or elsewhere in accommodation that is not residential accommodation **or**
- 3.4 are on a training course in the UK or elsewhere **or**
- 3.5 are providing medically approved care for another person who is residing in the UK or elsewhere **or**

- 3.6 are caring for a child whose parent or guardian is temporarily absent from the dwelling that they normally occupy because they are receiving medically approved care or treatment **or**
- 3.7 are
  - 3.7.a residing in the UK or elsewhere **and**
  - 3.7.b receiving medically approved care in accommodation that is not residential accommodation **or**
- 3.8 are students to whom DMG 44253 - 44254 and 44256 2. do not apply **or**
- 3.9 are receiving care in residential accommodation other than in DMG 44264 **or**
- 3.10 have left the home because of fear of violence in that home, or from a former member of the family, and DMG 44256 1. does not apply **or**
- 3.11 are detained in custody on remand pending trial or pending sentence upon conviction **and**
- 4. the absence is unlikely to
  - 4.1 exceed 52 weeks **or**
  - 4.2 substantially exceed 52 weeks in exceptional circumstances (for example, where a claimant has gone into hospital).

*1 ESA Regs, Sch 6, para 5(11) & (12); 2 Offender Management Act 2007, s 13*

44272 The intention to return to live in the home (see DMG 44271 1.) must

- 1. be unqualified **and**
- 2. be present from the start of the period of absence **and**
- 3. not be
  - 3.1 dependant on a contingency **or**
  - 3.2 conditional on a future event.

**Note:** An intention to return to live in the home formed after the start of the period of absence would not be enough.

44273 If DMG 44271 applies, housing costs may be allowed for up to 52 weeks from the first day of absence<sup>1</sup>. But a person may have several periods of temporary absence from home. The absences are treated as temporary if the claimant is not absent from home for more than 52 consecutive weeks.

*1 ESA Regs, Sch 6, para 5(12)*



44274 The absence should be treated as permanent from the day that it is known that the absence

1. will exceed 52 weeks or

2. is likely to

2.1 exceed 52 weeks or

2.2 substantially exceed 52 weeks in exceptional circumstances<sup>1</sup>.

*1 ESA Regs, Sch 6, para 5(11)(d)*

#### **Example 1**

Jon is in receipt of ESA(IR). He has to live in a hostel as a condition of bail. He intends to return to live in his own home when he leaves the hostel. His home has not been let or sublet. He has to live in the hostel for eight weeks. The DM determines that Jon is temporarily absent from his home from the date he went to live in the hostel.

#### **Example 2**

Christina is in receipt of ESA(IR) and lives alone in her own. In February Christina decides to go and care for her mother who lives in the next town. She expects to be away from her home until August. The DM determines that Christina is not temporarily absent from home because the care has not been medically approved, housing costs stop from February.

#### **Example 3**

Joanne is in receipt of IS and lives alone in her own. In December 08 Janet is admitted to hospital suffering from an eating disorder. In November 09 the DM advises Joanne that her housing costs are to be removed in the next few weeks because she will have been temporarily absent from her home for 52 weeks. The hospital social worker responded advising that Joanne would be discharged from hospital for 1 night just prior to the December expiry. Joanne returned home for 1 night and was readmitted to hospital the following day. A further 52 week period of temporary absence could be considered from the date of Joanne's readmission and housing costs continue.

44275 - 44280





## Housing costs not met

44281 Housing costs should not be allowed for

1. HB expenditure<sup>1</sup> **or**
2. claimants in care homes, Abbeyfield Home or independent hospitals, unless their absence from the home that they normally live in is temporary<sup>2</sup> (see DMG 44264 et seq) **or**
3. certain loans taken out in a relevant period, unless one of the exceptions in DMG 44291 et seq applies.

*1 ESA Regs, Sch 6, para 6(1)(a); 2 Sch 6, para 6(1)(b)*

44282 HB expenditure means<sup>1</sup>

1. any element for which HB may be payable<sup>2</sup> **and**
2. which are not allowable as housing costs in the claimant's applicable amount<sup>3</sup>.

*1 ESA Regs, reg 2(1); 2 HB Regs, reg 12(1); 3 ESA Regs, reg 67(1)(c) & 68(1)(d)*

44283 - 44310



# Apportionment of housing costs

## Composite hereditaments

44311 A composite hereditament is<sup>1</sup> a property with both

1. domestic and

2. business

premises, for example, a shop with a flat above.

*1 ESA Regs, Sch 6, para 7(1) & (4); Local Government Finance Act 1988, s 41(1); Abolition of Domestic Rates etc. (Scotland) Act 1987, s 26(1)*

44312 If a claimant occupies a composite hereditament, housing costs should be awarded for the part of the property used by the claimant for their own domestic use.

44313 - 44420



## Other housing costs

### Definitions

44421 The following paragraphs explain the meaning of terms used throughout this guidance on other eligible housing costs.

### Shared ownership schemes

44422 Property can be owned jointly by more than one person or organization (see DMG Chapter 52). This is known as shared ownership and can include many different types of arrangement. DMs should note that for housing costs purposes, shared ownership does not simply mean co-ownership.

44423 A co-ownership scheme in this context is<sup>1</sup> a specific type of scheme under which the

1. home is let by a housing association **and**
2. money payable to a tenant ceasing to be a member of the scheme is based directly or indirectly on the value of the property.

**Note:** Such a scheme does not involve the purchase of a share of the property so no house purchase loan is involved.

*1 ESA Regs, reg 2(1)*

44424 A shared ownership scheme is more likely to involve the claimant

1. buying a share in the property **and**
2. paying rent for the remaining share.

### Crown tenants

44425 Crown tenants<sup>1</sup> are tenants or licensees of homes which

1. belong to or
2. are held on trust for

the Crown or a government department. They do not include tenants in homes managed by the Crown Estates Commission or tenants of the Duchies of Cornwall or Lancaster.

**Note:** Greenwich Hospital Estate tenants are Crown tenants.

*1 ESA Regs, Sch 6, para 18(1)(e); reg 2(1)*

## Housing association

- 44426 A housing association is a non-profit making voluntary body formed with the aim of providing good quality low cost housing<sup>1</sup>.

*1 ESA Regs, reg 2(1); Housing Associations Act 1985, s 1(1)*

## Long tenancy

- 44427 A long tenancy is<sup>1</sup> one where the lease is
1. granted for a specific number of years, exceeding 21 or
  2. for a term fixed by law with a covenant or obligation for perpetual renewal (unless DMG 44428 applies).

*1 ESA Regs, reg 2(1)*

- 44428 An original lease that is not a long tenancy may have been sublet for a fixed term. Even if there is a covenant or obligation for perpetual renewal it should not be treated as a long tenancy.

- 44429 In some cases a lease may be granted for life rather than for a set number of years. The law provides<sup>1</sup> for life tenancies to be converted to 90 year leases. Such a tenancy for life should be treated as a long tenancy.

*1 Law of Property Act 1925, s 149(6)*

44430 - 44432

## Rentcharge

- 44433 Rentcharges, including chief rents, are rents charged to people under the conditions by which they own the freehold<sup>1</sup>.

**Note:** In cases of doubt DMs should refer cases to DMA Leeds to confirm whether rents fall within the meaning of rentcharge.

*1 ESA Regs, Sch 6, para 18(1)(c); Rentcharges Act 1977, s 1*

## Other eligible housing costs

- 44434 Other eligible housing costs are payments for<sup>1</sup>
1. rents or ground rents on long tenancies (see DMG 44435)
  2. service charges (see DMG 44436)
  3. rentcharges (see DMG 44437)
  4. co-ownership schemes (see DMG 44438)

5. tenancies or licences of Crown tenants (see DMG 44439)
6. tents and their sites (see DMG 44445).

*1 ESA Regs, Sch 6, para 18(1)*

## Long tenancies

- 44435 Rents and ground rents, should be allowed where payments are connected to long tenancies<sup>1</sup>.

*1 ESA Regs, Sch 6, para 18(1)(a)*

## Service charges

- 44436 Charges should be allowed where they are<sup>1</sup>

1. not eligible to be met by HB<sup>2</sup> **and**
2. payable as a condition of occupancy **and**
3. for
  - 3.1 the home **or**
  - 3.2 the building in which the home is situated **or**
  - 3.3 common areas for a group of homes **and**
4. for services provided by a landlord, or the agent of a landlord.

**Note 1:** Guidance on the amount of benefit allowed as a housing cost service charge for leasehold residents where their accommodation is modernised under the Decent Homes initiative is at Appendix 5.

**Note 2:** In shared ownership schemes (other than co-ownership) all service charges are eligible to be met by HB and are therefore not eligible under this provision.

*1 ESA Regs, Sch 6, para 18(1)(b); 2 Sch 6, para 6, R(IS) 4/92*

## Rentcharges

- 44437 Rentcharges, including chief rents, should be allowed as other eligible housing costs<sup>1</sup>.

*1 ESA Regs, Sch 6, para 18(1)(c)*

## Co-ownership schemes

- 44438 Payments under co-ownership schemes should be treated as other eligible housing costs<sup>1</sup>, payable from the start of the claim (see DMG 44484). Payments made under any other type of shared ownership scheme should be considered in the normal way but only in respect of the portion of the property owned.

*1 ESA Regs, Sch 6, para 18(1)(d)*

### Example

Haydn rents his home through a housing association who are letting the property to Haydn under a co-ownership scheme. If he leaves the scheme, Haydn will receive a percentage of the value of the property. He has to make payments under the co-ownership scheme, for rent, ground rent and service charges. The payments under the co-ownership scheme are allowed as other eligible housing costs and are paid from the start of his claim (see DMG 44484).

### Crown tenants

- 44439 Payments under or relating to the tenancy or licence of a Crown tenant should be allowed as eligible housing costs<sup>1</sup>.

*1 ESA Regs, Sch 6, para 18(1)(e)*

### Reduction for water charges

- 44440 In England and Wales, payments made by Crown tenants may include an amount for water charges. In such a case, the amount to be allowed as eligible housing costs should be reduced<sup>1</sup>

1. where the amount payable for water charges is known, by that amount<sup>2</sup> or
2. in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant<sup>3</sup>.

*1 ESA Regs, Sch 6, para 18(5); 2 Sch 6, para 18(5)(a); 3 Sch 6, para 18(5)(b)*

44441 - 44443

### Tents

- 44444 Where claimants occupy tents<sup>1</sup> housing costs should be allowed for the

1. tent(s) occupied as the home and
2. sites on which the tents stand.

*1 ESA Regs, Sch 6, para 18(1)(f)*

44445

### Mobile motor homes

- 44446 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and are suited for continuous occupation should be regarded as accommodation, and as such housing costs can be allowed.



3. the provision of an emergency alarm system or
4. medical expenses including the cost of treatment or counselling related to a
  - 4.1 mental disorder
  - 4.2 mental handicap
  - 4.3 physical disablement or
  - 4.4 past or present alcohol or drug dependence or
5. nursing or personal care, including assistance
  - 5.1 at meal times or
  - 5.2 with personal appearance or hygiene or
6. general counselling or any other support services, whoever provides those services or
7. any services not specified in 1. to 6., which are not connected with the provision of adequate accommodation.

**Note:** The cleaning of communal areas and the outside of windows (referred to in 1.4) where no member of the household is able to clean them can still be allowed where a payment is **not** made.

*1 ESA Regs, Sch 6, para 18(2)(b); HB Regs, Sch 1*

- 44452 A payment (as in DMG 44451 1.4) is<sup>1</sup> any payment made by a LA (including, in England, a county council) or the Welsh Ministers to the claimant, the claimant's partner, or to another person on their behalf.

*1 ESA Regs, Sch 6, para 18(2)(b)*

44453 - 44456

### **Connected to the adequacy of the accommodation**

- 44457 Charges for certain services not connected with the provision of adequate accommodation are not eligible. When considering if services are connected to the adequacy of the accommodation (see DMG 44451 7.) the DM should take a common sense view of charges for communal lounges, paths, walkways, gardens etc and not just the individual needs of the claimant.

#### **Example 1**

Josh lives in one of a group of 20 flats set in enclosed gardens. The flats are all linked by paths to a communal area. Service charges are payable for maintenance of the communal areas, gardens and warden system, heating and lighting of, and replacement furniture for, the communal areas and administration costs for providing all the services.

The DM determines that the service charges are connected to the adequacy of the accommodation for Josh and that they are eligible.

#### **Example 2**

Fred lives in a group of 50 apartments set in enclosed grounds. Service charges are payable for maintenance of the communal gardens and fountains, repainting of all wooden surfaces, replacing all the boundary fencing, repairing the car park, replacing car park barriers and entry gates, the electricity and gas charges for the communal and administration areas.

The DM determines that the charges for garden, fountain maintenance, repainting, electricity, repairing car park, barriers and entry gate and gas charges are all connected to the adequacy of the accommodation and are eligible.

#### **Example 3**

Byron, the occupier, employs a painter to paint the outside of his property. The provision of the service, though placing contractual obligations on Byron and the painter, is something he is free to arrange for himself and is not connected with the conditions by which the property is occupied. The charge associated with the provision of the service in this case will not satisfy the definition of a service charge.

#### **Example 4**

The painting of the property is arranged by the landlord or agent under the conditions by which the property is occupied. Theresa, the occupier, is obliged to accept the arrangement. In this situation the charges incurred satisfy the definition of a service charge.

#### **Example 5**

Luigi, a leaseholder, reimburses the landlord for the payment of insurance premiums, as a condition under which he occupies his home. In the case of damage to the property the premiums ensure the payment of repairs to the property and therefore satisfy the condition of being connected with the adequacy of the accommodation. In this case the insurance premiums can be met as a housing cost.

### **Deductions for repairs and improvements**

- 44458 The charges for other eligible housing costs in DMG 44434 may include an amount for repairs and improvements (see ADM Memo 8/18 paragraph 97)). In such a case the amount for repairs and improvements cannot be allowed and should be deducted<sup>1</sup>.

*1 ESA Regs, Sch 6, para 18(2)(c)*

- 44459 Where service charges include an amount for repairs and improvements listed in ADM Memo 8/18, paragraph 97, and are undertaken to maintain the fitness for human habitation, they should not be allowed.

### **Contingency funds**

- 44460 Service charges may contain an element that is paid into some kind of fund or reserve. These are most commonly referred to as

1. contingency funds or
2. reserve funds or
3. sinking funds.

- 44461 Payments made into such a fund are “for” the general purposes of the fund, whether or not there has been any expenditure in the year in question. If those purposes include both allowable and non-allowable elements, make a corresponding apportionment of the relevant annual payment to determine how much can be allowed.

### **Costs payable over 53 weeks or irregularly**

- 44462 Where other housing costs are payable for 52 weeks **but**

1. paid for 53 weeks or
2. paid irregularly or
3. no such costs are payable or collected in certain periods or
4. the costs for different periods are different amounts

the weekly amount is the amount payable for the year divided by 52<sup>1</sup>.

*1 ESA Regs, Sch 6, para 18(3)*

### **Payment of costs waived**

- 44463 Other housing costs should continue to be allowed for up to eight weeks if

1. the claimant or a member of the family pays for reasonable repairs or redecoration to the home **and**
2. that work was not the responsibility of the claimant or any member of the family **and**
3. payment for other housing costs is waived because the work has been done<sup>1</sup>.

*1 ESA Regs, Sch 6, para 18(4)*

## Attribution of service charges

44464 Those housing costs attributed to a fixed 52 week period under DMG 44462 are payable from the date the liability arose.

**Note:** At any one time, a claimant's award of housing costs for service charges may therefore be made up of housing costs arising from different liabilities notified at different times.

### Example

The claimant's award of ESA includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.08 - 31.3.09. The amount for housing costs is due to end on 31.3.09. In February 2009 the claimant sends in an estimate of service charges for the 2009-10 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.09 - 31.3.10. On 9.9.09 the claimant receives an invoice for £243.85, being the balance of finalized service charges for the 2008-9 year, and sends it to the DWP. The DM supersedes the decision of February 2009 to award housing costs of £10.87 and £4.69 for the period 9.9.09 - 31.3.10, and £4.69 for the period 1.4.10 - 6.9.10, the balance for the 2008-09 year charges being paid over a 52 week period. If a further estimate for charges for the 2009-10 year is received, the September 2009 decision may be superseded accordingly.

44465 - 44468

## Housing costs - starting dates of entitlement

44469 With the exception of the housing costs payable at the start of a claim (see DMG 44483) all other eligible housing have a QP.

44470 [See Memo DMG 43/09] For most claims made after 5.1.09 the QP IS 13 weeks.

**Note:** The 13 week QP was introduced under a temporary package of measures to support home owners, the temporary measures will remain until 31.3.16

44471 [See Memo DMG 43/09] In cases that do not qualify for the temporary package of measures, usually those where the claim links to an earlier award, the length of the QP depends on whether the housing costs are new or existing housing costs.

44472 - 44482

## Housing costs payable at the start of the claim

44483 Where a claimant or their partner has reached the qualifying age for SPC (see DMG Chapter 77), all new or existing housing costs are paid in full from the first day of entitlement to ESA(IR)<sup>1</sup>.

*1 ESA Regs, Sch 6, para 10(1)(a) & (2)(a)*

44484 All claimants should be paid housing costs for

1. co-ownership schemes (see DMG 44438)
2. crown tenancies (see DMG 44439)
3. tents and their sites<sup>1</sup> (see DMG 44445)

from the first day of entitlement to ESA.

*1 ESA Regs, Sch 6, para 10(1)(b) & (2)(b)*

44485

## Start date for housing costs

44486 **[See Memo DMG 43/09]** The amount of the award for housing costs is<sup>1</sup>

1. nil where claimants have not been continuously entitled to ESA(IR), JSA(IB) or IS for 39 weeks<sup>2</sup>
2. for claimants who have been entitled to ESA(IR), JSA(IB) or IS for a continuous period of 39 weeks or more or SPC for any period<sup>3</sup>

2.1 the amount of any

2.1.a rent or ground rent relating to a long tenancy and

2.1.b service charges and

2.1.c rentcharges.

*1 ESA Regs, Sch 6, para 9(1); 2 Sch 6, para 9(1)(b) & para 20(1)(c); 3 Sch 6, para 9(1)(a) & 20(1)(c)*

## **Starting date of entitlement - waiting days**

44487 A claimant is not entitled to ESA when serving waiting days<sup>1</sup> (see DMG 41101 et seq). As a result waiting days do not count towards any housing costs qualifying period.

*1 WR Act 07, Sch 2, para 2*

44489 - 44530



## **Payments from payment protection insurance**

44539 Claimants who

1. are treated as entitled to ESA(IR), JSA(IB), IS or SPC solely because their income exceeds their applicable amount (see DMG 44570 et seq) **and**
2. have included in their income payments from an insurance policy taken out to insure against the risk of being unable to meet eligible housing costs

should be treated as entitled throughout any period that payments are made under the terms of the policy<sup>1</sup>.

*1 ESA Regs, Sch 6, para 15(12)*

44540 - 44541

## **52 week linking periods**

44542 A claimant can be treated as entitled to ESA(IR), JSA(IB), IS or SPC for periods of up to 52 weeks<sup>1</sup> where the claimant or their partner

1. had already qualified for housing costs before losing entitlement to ESA(IR), JSA(IB), IS or SPC<sup>2</sup> because either partner had
  - 1.1 started remunerative work
  - 1.2 started self employment
  - 1.3 an income from employment that exceeded their applicable amount (see DMG 44545) or
2. is participating in an ND option, an EZ scheme, or a prescribed government scheme<sup>3</sup> (see DMG 44557).

*1 ESA Regs, Sch 6, para 15(16); 2 para 15(18); 3 para 15(17)*

## **Qualifying period for housing costs already served**

44543 Most eligible housing costs have a QP (see DMG 44471 et seq). Such a QP may have to be served again following a break in entitlement to ESA(IR), JSA(IB), IS or SPC. But there is a linking rule for cases where the QP has already been served when entitlement to ESA(IR), JSA(IB), IS or SPC ends.

44544 The linking rule applies if<sup>1</sup>, immediately before entitlement ended, housing costs

1. were payable on the previous award (in full or in part) **or**
2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 44586 et seq).

*1 ESA Regs, Sch 6, para 15(18)*

44545 In such a case, treat the claimant as continuously in receipt of ESA(IR), JSA(IB), IS or SPC for any period of 52 weeks or less<sup>1</sup> during which they were not entitled because

1. the claimant or partner
  - 1.1 had started employment as an employed or S/E earner or
  - 1.2 had increased their hours in such employment or
  - 1.3 was taking active steps to become employed or S/E under a prescribed government scheme and
2. the claimant or partner
  - 2.1 is in remunerative work or
  - 2.2 has income that is equal to or exceeds the applicable amount.

*1 ESA Regs, Sch 6, para 15(17)*

44546 Entitlement to ESA(IR), JSA(IB), IS or SPC may end when a claimant or their partner starts on an ND option, an employment zone programme or a prescribed government scheme<sup>1</sup>. This is because

1. the person may be in remunerative work or
2. their income may be equal to or exceed the applicable amount.

*1 ESA Regs, Sch 6, para 15(17)(c)*

44547 There is a linking rule to ensure that the benefit position of such a person is protected if they return to ESA(IR), JSA(IB), IS or SPC. The linking rule applies if<sup>1</sup> housing costs

1. were payable on the previous claim (in full or in part) or
2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 23756 et seq)

immediately before entitlement ended.

*1 ESA Regs, Sch 6, para 15(18)*

44548 In such a case, treat the claimant as continuously in receipt of ESA(IR), JSA(IB), IS or SPC for any period of 52 weeks or less<sup>1</sup> during which they were not entitled because the claimant or partner is

1. participating in<sup>2</sup>
  - 1.1 an ND option (apart from the employed employment option of NDYP)
  - 1.2 an employment zone programme or
  - 1.3 the EO(S/E) or
  - 1.4 the intensive activity period (IAP) of ND25+<sup>3</sup>.

*1 ESA Regs, Sch 6, para 15(16)(a) & (17); 2 Sch 6, para 15(17)(c); 3 JSA Regs, reg 75(1)(a)(iv)*

44549



## Non-dependant deduction not appropriate

44606 Deductions should not be made if

1. the claimant or any partner is<sup>1</sup>
  - 1.1 **certified by a consultant ophthalmologist as blind or severely sight impaired or**
  - 1.2 **within 28 weeks of ceasing to be so certified or**
  - 1.3 **receiving for themselves or their partner**
    - 1.3.a **“AA” or**
    - 1.3.b **the care component of DLA or**
    - 1.3.c **the daily living component of PIP or**
    - 1.3.d **AFIP or**
2. non-dependants are<sup>2</sup>
  - 2.1 **living with the claimant but the dwelling normally occupied as the home is elsewhere or**
  - 2.2 **in receipt of a training allowance in connection with a youth training scheme<sup>3</sup> or**
  - 2.3 **F/T students**
    - 2.3.a **in a period of study or**
    - 2.3.b **not in remunerative work during the recognized summer vacation relevant to their course or**
  - 2.4 **under 25 and in receipt of JSA(IB) or IS or**
  - 2.5 **from 3.4.17, under 25, in receipt of ESA and their assessment phase has not ended<sup>4</sup> or**
  - 2.6 **people for whom claimants have a deduction made in the calculation of any rent rebates or allowances in HB or**
  - 2.7 **people who jointly occupy the claimant's home and are**
    - 2.7.a **co-owners with the claimant or the claimant's partner or**
    - 2.7.b **jointly liable with the claimant or partner to make payments to a landlord****regardless of when the co-ownership or joint liability started or**
  - 2.8 **not living with the claimant because they**
    - 2.8.a **have been patients for more than 52 weeks (see DMG Chapter 54) or**
    - 2.8.b **are prisoners (see DMG Chapter 54)**

**2.9** in receipt of SPC.

**2.10** entitled to UC and

**2.10.a** is aged less than 25 and

**2.10.b** does not have any earned income<sup>5</sup>

**Note 1:** For non-dependant purposes in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period.

**Note 2:** Where a person under 1.2 has been an inpatient for a sufficient period of time they will no longer be receiving AA or DLA and as such the non-dependant will no longer be exempt from attracting a non-dependant deduction.

*1 ESA Regs, Sch 6, para 19(6); 2 Sch 6, para 19(7); 3 Sch 6, para 19(7)(i); E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 1990, s 2; 4 ESA Regs, Sch 6, para 19(7)(d); 5 Sch 6, para 19(7)(ha)*

## **Participation in new deal for young people**

44607 If a non-dependant goes on to NDYP a deduction from allowable housing costs should be considered as normal.

44608 - 44610

## **Calculation of a non-dependant's gross weekly income**

44611 When calculating the gross weekly income of a non-dependant disregard<sup>1</sup> any

1. AA
2. DLA
3. payments, including payments in kind (see DMG Chapter 51), made under, or derived from
  - 3.1 the Macfarlane Trust
  - 3.2 the Macfarlane (Special Payments) Trust
  - 3.3 the Macfarlane (Special Payments) (No. 2) Trust
  - 3.4 the Fund (see DMG 51343)
  - 3.5 the Eileen Trust
  - 3.6 the Independent Living Fund (2006)
  - 3.7 MFET Limited
  - 3.8 the Skipton Fund
  - 3.9 the Caxton Foundation.
  - 3.10 any income from capital received from the London Emergencies Trust (LET) and the We Love Manchester Emergency Fund (WLMEF)
  - 3.11 any income from capital received from Infected Blood Schemes (IBS)

## Questions that cannot be decided immediately

44621 Where a DM is

1. deciding an ESA claim or
2. determining an issue on ESA housing costs

the applicable amount should include any housing costs that can be determined immediately on the evidence available<sup>1</sup>. Where there is insufficient evidence ESA can be awarded without housing costs.

*1 SS CS (D&A) Regs, reg 13(1)*

44622 If there are several housing costs on the claim the applicable amount should include only those housing costs where there is sufficient information to make a decision.

44623 The decision may be revised or superseded if further information about any of the claimant's housing costs is received after the ESA claim or question has been decided<sup>1</sup>.

*1 SS CS (D&A) Regs, regs 3 & 6*

44524 - 44630



# Entitlement to the components

## ESA(IR) and ESA(Cont)

### General

44631 Both ESA(Cont) and ESA(IR) attract entitlement to the support component<sup>1</sup>.

**Note:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

#### Example

Cindy, who is 23, claims and is entitled to ESA from 21.4.17 at the assessment phase rate for claimants aged under 25. Following application of the WCA, Cindy is found to have LCW and is placed in the WRAG. Cindy's award of ESA is superseded to increase the applicable amount to the main phase rate from 28.7.17. The WRAC is not included.

*1 WR Act 07, s 2(1)(b); s 4(2)(b)*

44632 The support component is based on the claimant's entitlement. There is no couple rate and the circumstances of any partner are not relevant to the claimant's entitlement to the support component<sup>1</sup>.

*1 ESA Regs, reg 67(3) & Sch 4, paras 12 & 13*

44633 Except for prescribed circumstances, there is no entitlement to the support component during the assessment phase. Once entitlement to the component is established and it is in payment then the claimant is on main phase ESA<sup>1</sup>.

*1 ESA Regs, reg 2(1)*

### The support component

44634 The conditions of entitlement to the support component<sup>1</sup> are that

1. the assessment phase has ended<sup>2</sup> unless the circumstances in DMG 44636 applies
2. the claimant has LCWRA<sup>3</sup> (see DMG Chapter 42) **and**
3. any other conditions as may be prescribed<sup>4</sup>.

**Note 1:** For the purposes of 2. no component is payable after a continuous period of more than 52 weeks as a patient (see DMG 54109).

**Note 2:** For the purposes of 3. no conditions have yet been prescribed.

*1 WR Act 07, s 2(2) & s 4(4); 2 s 2(2)(a) & s 4(4)(a); 3 s 2(2)(b) & s 4(4)(b); 4 s 2(2)(c) & s 4(4)(c)*

44635

## Entitlement to the support component before the end of the assessment phase

44636 The condition that the assessment phase must end before the support component can be paid does not apply in a relevant linked case<sup>1</sup>. A relevant linked case is a case where<sup>2</sup>

1. on a repeat claim, the PLCWs link<sup>3</sup> and
2. the conditions in paragraph DMG 44637, 44638, 44640 or 44642 apply.

*1 ESA Regs, reg 7(1)(b); 2 reg 7(1A); 3 reg 145(1)*

**Note:** A relevant linked case does not happen where the PLCW arises as a result of the application of reg 147A(2)<sup>1</sup>.

*1 ESA Regs, reg 7(2)*

### Case 1

44637 Where

1. in the previous PLCW, the claimant was entitled to ESA including the support component and
2. that entitlement ended other than following application of the WCA
3. a repeat claim is made where the PLCW links with the previous entitlement

the claimant is entitled to the support component from the first day of entitlement to ESA on the new claim, even though the WCA has not been carried out<sup>1</sup>. See DMG 44644 for guidance on the LCWRA determination.

*1 ESA Regs, reg 7(1B)(a)*

### Example 1

Constance is entitled to ESA(IR) including the support component. On 23.11.12 she is joined by her partner Oliver, who is in full-time work, and her ESA entitlement is terminated. She remains entitled to NI credits on the basis that she would have LCW if she were entitled to ESA. On 18.1.13 the relationship breaks down and Oliver leaves the household. Constance makes a repeat claim for ESA. The DM treats her as having LCW, and awards her ESA including the support component from 19.1.13, and refers her for the WCA.

### Example 2

Gabriel has been entitled to ESA, including the support component, since 14.6.10. He is referred for a further routine WCA. The award is terminated from 7.6.12 after the DM determines that Gabriel failed without good cause to return the questionnaire, and is treated as not having LCW. Gabriel makes a further claim for ESA on 25.7.12 which is accompanied by evidence of LCW and the questionnaire.

## Backdating of entitlement to the support component

44647 Where the assessment phase has lasted for a period greater than 13 weeks then entitlement to the support component may be backdated<sup>1</sup>. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

**Note:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

*1 WR Act 07, s 2(4)(b) & s 4(6)(b)*

44648 Once a determination has been made as to whether the claimant has

1. LCW and LCWRA or
2. LCW but does not have LCWRA

the DM should award the support component<sup>1</sup> where 1. applies. For both 1. and 2., the assessment phase has now ended<sup>2</sup>. The claimant is now entitled to main phase ESA<sup>3</sup>.

*1 WR Act 07, s 2(2) & 4(4); 2 ESA Regs, reg 4; 3 reg 2(1)*

44649 The DM awards<sup>1</sup>

1. the support component if DMG 44648.1 applies or
2. no component if DMG 44648.2 applies.

*1 SS CS (D&A) Regs, reg 6(2)(r) & ESA Regs, reg 67(3)*

### The date to which entitlement to the support component is backdated

44650 The backdating of the support component is to the day which would have been the first day of the main phase if the claimant's assessment phase had actually lasted 13 weeks. This means that the award of the component will take effect from the 92 day of entitlement to ESA<sup>1</sup>. This also applies where the assessment phase is made up of linked periods.

*1 SS CS (D&A) Regs, reg 7(38)*

#### Example 1

Toby's award of ESA begins on 1 May. There is a delay in carrying out the WCA and Toby isn't finally assessed until 16 August. Following the assessment the DM decides that Toby is entitled to the support component and this is backdated to 31 July. This is because this is the day that would have been the first day of the main phase for Toby if the assessment phase had actually lasted 13 weeks.

## **Example 2**

Sara's award of ESA began on 1 May before coming to an end on 15 May. Sara then reclaims ESA from 1 June. The WCA isn't carried out until 7 September. Following the assessment, the DM decides that Sara is entitled to the support component and this is backdated to 17 August. This is because this is the day that would have been the first day of the main phase for Sara following a 13 week assessment phase running from 1 May to 14 May and then 1 June to 16 August.



# Appendix 3

[See DMG Memo 03/19]

## Housing costs - amount of non-dependant deductions

- 1 This appendix provides the rates of the non-dependant deductions<sup>1</sup>. See Appendix 2 for guidance on remunerative work.

*1 ESA Regs, Sch 6, para 19(1) & (2)*

### Rates from 8.4.13

- 2 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £87.75
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
  - 2.1 Less than £126.00 £13.60
  - 2.2 £126.00 to £185.99 £31.25
  - 2.3 £186.00 to £241.99 £42.90
  - 2.4 £242.00 to £321.99 £70.20
  - 2.5 £322.00 to £400.99 £79.95
  - 2.6 £401.00 or more £87.75
3. any other non-dependant aged 18 or over for whom deductions are relevant - £13.60

### Rates from 7.4.14

- 3 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £91.15
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
  - 2.1 Less than £128.00 £14.15
  - 2.2 £128.00 to £187.99 £32.45
  - 2.3 £188.00 to £244.99 £44.55
  - 2.4 £245.00 to £325.99 £72.95
  - 2.5 £326.00 to £405.99 £83.05
  - 2.6 £406.00 or more £91.15
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.15.

## **Rates from 6.4.15**

### **4 Deductions apply where**

1. non-dependants aged 18 or over are in remunerative work - £93.80
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
  - 2.1 Less than £129.00 £14.55
  - 2.2 £129.00 to £188.99 £33.40
  - 2.3 £189.00 to £245.99 £45.85
  - 2.4 £246.00 to £327.99 £75.05
  - 2.5 £328.00 to £407.99 £85.45
  - 2.6 £408.00 or more £93.80
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.55.

## **Rates from 11.4.16**

### **5 Deductions apply where**

1. non-dependants aged 18 or over are in remunerative work - £94.50
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
  - 2.1 Less than £133.00 £14.65
  - 2.2 £133.00 to £194.99 £33.65
  - 2.3 £195.00 to £252.99 £46.20
  - 2.4 £253.00 to £337.99 £75.60
  - 2.5 £338.00 to £419.99 £86.10
  - 2.6 £420.00 or more £94.50
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.65.

## **Rates from 10.4.17**

### **6 Deductions apply where**

1. non-dependants aged 18 or over are in remunerative work - £94.50

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
  - 2.1 Less than £136.00 £14.80
  - 2.2 £136.00 to £199.99 £34.00
  - 2.3 £200.00 to £258.99 £46.65
  - 2.4 £259.00 to £345.99 £76.35
  - 2.5 £346.00 to £429.99 £86.95
  - 2.6 £430.00 or more £95.45
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.80.

### **Rates from 6.4.18**

#### **7 Deductions apply where**

1. non-dependants aged 18 or over are in remunerative work - £98.30
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
  - 2.1 Less than £139.00 £15.25
  - 2.2 £139.00 to £203.99 £35.00
  - 2.3 £204.00 to £264.99 £48.05
  - 2.4 £265.00 to £353.99 £78.65
  - 2.5 £354.00 to £438.99 £89.55
  - 2.6 £439.00 or more £98.30
3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.25.



# Appendix 4

## Housing costs - unsafe structural defects

This Appendix contains a list of structural elements that are considered to come within the meaning of unsafe structural defects. But DMs should note that

1. all work connected with items on the list is not automatically entitled to help as an unsafe structural defect, however help may be available under a different repairs and improvements provision.
2. the list is not exhaustive - other work could come within the meaning of the repair of an unsafe structural defect when considered on its merits
3. the costs of survey work reasonably necessary or incidental to the carrying out of actual physical remedial work should be included.

### Relevant structural elements

- Foundations, including damp proof courses.
- External load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door.
- Party floors, excluding any applied finish, bedding or floorboards.
- Load bearing roof components, including ceiling joists.
- Private balcony floors, excluding any applied finish or bedding.
- Communal balconies, excluding handrails, balustrades and any applied finish or fittings.
- Communal staircases, excluding handrails, balustrades and any applied finish or fittings.
- Internal load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door.
- Parapet walls.
- Chimney stacks.
- Structures on the structure, such as motor rooms and water tank enclosures.
- Roof coverings where the section of the roof affected, or the nature of the defect, is such as to require the replacement of all or a significant part of the roof.
- Door frames, but not external or internal doors.
- Window frames, but not sashes or glass to windows which may qualify under a different provision.
- Lift shafts.



# Appendix 5

## Housing costs - leasehold major works

### Introduction

- 1 The following guidance explains about the amount of benefit allowed as a housing cost for leasehold residents where their accommodation is modernised under the Decent Homes initiative.

### Background

- 2 The Decent Homes initiative was extended by the Public Service Agreement in response to a challenge from the government to increase the number of households in the private sector living in decent homes. This includes homes of former LA tenants who have purchased their property under the right to buy scheme.
- 3 In order to be decent a home should meet the current statutory minimum standard for housing, be in a reasonable state of repair and have reasonably modern facilities and services.
- 4 The building components that should be in a reasonable state of repair include external walls, roof structure and coverings, windows and doors, heating systems, plumbing and electrics. Modern facilities are indicated by kitchens less than 20 years old and bathrooms less than 30 years old and, for blocks of flats, there should be adequate size and layout of common areas.
- 5 Landlords are achieving the Decent Homes standard by a programme of regeneration and refurbishment with building works carried out on their leasehold housing stock.

### Costs

- 6 The cost of the structural work and refurbishments will be charged to leaseholders through service charges. A service charge is, as decided in R(IS) 4/91, a charge which the claimant is obliged to pay in terms of their occupancy agreement for services rendered in terms of that agreement.
- 7 Some residents may choose to meet their service charge costs by obtaining a home improvement loan. From 6.4.18 these loans can no longer be considered as housing costs (see ADM Memo 8/18).

### Service Charge

- 8 To determine what part of the service charge is eligible to be met as a housing cost the claimant will provide the annual service charge account which should include an

itemised breakdown of the total expenditure including the reason that each item or structure has been replaced or refurbished. For example:

Items	Major building works	Costs	Unit cost/ dwelling	Reason for work
Electrical installations	Replace mains distribution board, rising and lateral mains cables	£13,040	£1,630	Updating old systems and wiring
Rainwater goods	Replace guttering and down pipes	£2,400	£300	Leaking, broken and in disrepair

**Note:** To be representative of different sized dwellings the unit cost may be presented on the annual account as a fraction or a percentage of the total cost.

- 9 Having identified the amount charged for a year the DM should convert the total costs for the claimant's portion of the refurbishment works into a weekly amount (dividing by 52) and then from that weekly total deduct any ineligible costs. The resulting sum represents the weekly amount of eligible service charge.

### Ineligible costs

- 10 Ineligible costs<sup>1</sup> which should be deducted from the weekly amount arise in three circumstances. These are
1. where the costs are inclusive of any items mentioned in paragraph 6(2) of Schedule 1 to the Housing Benefit Regulations 2006 (payments in respect of fuel charges)
  2. where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit Regulations 2006 (ineligible service charges) the amount attributable to those ineligible service charges
  3. any amount for repairs and improvements.

*1 JSA Regs, Sch 2, para 16(2); IS (Gen) Regs, Sch 3, para 17(2); ESA Regs, Sch 6, para 18(2); SPC Regs, Sch 2, para 13(2)*

- 11 The ineligible charges<sup>1</sup> mentioned in paragraph 10 1. above concern payments in respect of fuel charges and are unlikely to arise under the Decent Homes improvements.

*1 HB Regs 06, Sch 1, para 6(2)*



- 12 There are several ineligible service charges<sup>1</sup>, mentioned in paragraph 10 2. above, which includes any charges that are not connected with the provision of adequate accommodation, however these are unlikely to arise under the Decent Homes improvements.

*1 HB Regs 06, Sch 1, para 1*

- 13 “Repairs and improvements”, mentioned in paragraph 10 3. above, means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—
1. Provision of a fixed bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
  2. Repairs to existing heating systems;
  3. Damp proof measures;
  4. Provision of ventilation and natural lighting;
  5. Provision of drainage facilities;
  6. Provision of facilities for preparing and cooking food;
  7. Provision of insulation of the dwelling occupied as a home;
  8. Provision of electric lighting and sockets;
  9. Provision of storage facilities for fuel or refuse;
  10. Repairs of unsafe structural defects;
  11. Adapting a dwelling for the special needs of a disabled person; or
  12. Provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 20 who is part of the same family as the claimant.
- 14 Commissioners have addressed some of the issues encountered when determining the eligible and ineligible aspects of the service charge. The Commissioners have decided that:
1. The upkeep/maintenance of communal pathways, gardens<sup>1</sup>, repair of a lift and repointing of brickwork are all connected with the provision of adequate accommodation. The costs of a car park barrier, a car park attendant<sup>2</sup>, the installation of a pergola and the repair of a clock tower are all connected with the provision of adequate accommodation.

2. Works which are to be funded out of the service charge can be for the avoidance of the need for the repair of unsafe structural defects. For example, timely replacement of slackening roofing tiles will prevent the roof timbers becoming rotted to the point of collapse through water penetration<sup>3</sup>.
3. Where there are windows there is natural light already and no need to provide it<sup>3</sup>.
4. Provision is something not already in existence or the replacement of something which no longer functions<sup>3</sup>.
5. Re-pointing is not a damp proof measure, redecoration is not a repair or improvement and so their associated costs are not deducted from the service charge<sup>4</sup>.
6. By preventing the entry of rainwater a roof may prevent damp, damp proofing may not be the predominant purpose of a roof and although a roof repair might have the predominant purpose of preventing damp a roof renewal would not<sup>5</sup>.

*1 CIS/1496/95; 2 CIS/2205/00; 3 R(IS) 2/07; 4 CIS/667/02; 5 CIS/2132/98*

- 15 The final weekly amount of the service charge is then attributed to a 52 week period from the date the liability arose<sup>1</sup>.

**Note:** The attribution period for this service charge is independent of any prior service charge that is already in payment so the dates are unlikely to be the same.

*1 JSA Regs, Sch 2, para 16(3); IS (Gen) Regs, Sch 3, para 17(3); ESA Regs, Sch 6, para 18(3); SPC Regs, Sch 2, para 13(3)*

### **Example**

The leasehold residents of a 2 storey flat complex have had their building modernised under the Decent Homes programme at a cost of £90,400, the work involved the prudent renewal of the communal electrical wiring, windows and doors, the lift, replacing all the roof tiles, external redecoration, the perimeter fencing and the upgrading of the roof space insulation. The costs are levied as a service charge and each of the 8 residents are required to contribute an appropriate share of the costs. In this case each persons share of the costs amounted to £11,300 which comprised of £1,100 for wiring, £2,800 for windows and doors, £2,000 for lift renewal, £3,200 for roof tiles, £500 towards redecoration, £900 for fencing and £800 towards insulation.

Resident 1, Juliet, is liable for the service charge (she does not obtain a loan to meet the service charge). The DM decides that the £11,300 is a service charge<sup>1</sup> and that this converts to a weekly amount of £217.31 a week (£11,300 divided by 52). From the weekly amount there should be deducted the costs of any works considered to be, not connected with the provision of adequate accommodation or a repair or improvement. The DM considers that, all the works are connected with the provision

of adequate accommodation (therefore there is nothing to deduct as described by paragraph 10 **2.** above). The DM considers the roof renewal is not a damp proof measure<sup>2</sup> and therefore not a repair or improvement, the rewiring is not the provision of electrical lighting or sockets<sup>3</sup> and not a repair or improvement, the replacement of windows and doors is not the provision of natural lighting or ventilation<sup>4</sup>, the upgrading of roof space insulation with better rated material is not the provision of insulation and neither redecoration<sup>5</sup>, the lift replacement, nor fencing are included in the exhaustive list of potential repair or improvements. As there is nothing in the works to indicate that what is contemplated is anything more than the prudent renewal of protective decoration or the replacement of potentially unserviceable items with similar items, then there is nothing that is a repair or improvement (as described by paragraph 10 **3.** above) and therefore nothing to deduct. The cost of the building works is met in full giving a housing cost service charge of £217.31 a week.

*1 R(IS) 4/91; 2 CIS/2132/1998; 3 CSJSA/160/98; 4 CIS/2901/04; 5 CSJSA/106/98*

## **Typical Repairs**

- 16 The following table contains a list of some of the typical building repair and refurbishments carried out on leasehold accommodation under the Decent Homes initiative including corresponding columns highlighting eligibility where the costs are met by either a loan or a service charge.

Typical repairs					Service charge
Roof	a.	Major Repair	-	-	No
	b.	Renewal	-	-	Yes
	c.	Replacement	-	-	Yes
	d.	Chimney stack repairs	-	-	Yes
Roof safety		This may include fitting roof safety rails, or roof safety harness's, allowing regular inspection and maintenance			Yes
Insulation	a.	Roof insulation	}		Yes if not provision
	b.	Wall insulation			
Building frame repairs		Cladding to the exterior of the building to prevent damage to the structure, insulates protects building from the elements			Yes
Concrete repairs		This may include cleaning, painting and protective coating, or repairs (including the concrete frame)			Yes
External walls	a.	Brickwork cleaning			Yes
	b.	Repairs to brickwork, pointing, repairs to rendered surfaces			Yes
	c.	Replace wall ties			Yes
Balconies walkways	a.	Repairs to balcony balustrades and handrails			Yes
	b.	Repairs to common walkways and balconies			Yes

<b>Windows</b>	a.	Replacement			Yes
	b.	Replacement of single glaze with double glaze			Yes
<b>Communal doors</b>		Repair and replacement of communal doors, ensuring compliance with fire regulations			Yes
<b>External redecoration</b>		Carry out the redecoration to all external elements of the existing fabric of the building, including use of anti-graffiti paint where appropriate			Yes
<b>Communal area repairs &amp; decoration</b>	a.	Carry out redecoration of all communal internal areas including corridors and stairways, using fire retardant and/or anti-graffiti paint where appropriate			Yes
	b.	Replacement of communal flooring			Yes
<b>Rainwater goods</b>		Repair/replace guttering and down pipes			Yes if not provision
<b>Drains</b>	a.	Rod and Jetting wash through all existing drainage and inspection chambers			Yes
	b.	Replace communal waste/soil pipes	}		Yes if not provision
	c.	Major repair or replacement			
<b>Electrical Installations</b>	a.	Replace mains distribution board			Yes
	b.	Replace rising and lateral mains cables			Yes

	c.	Replace bulk head lighting to communal staircases & balcony soffits	}		Yes if not provision
	d.	Replace communal corridor lighting			
<b>TV Aerial</b>	a.	Replace analogue aerial with digital, may include replacing cabling serving all units			Yes
	b.	Installation of satellite dish to receive additional channels			Yes
<b>Ventilation</b>	a.	Maintenance and cleaning of communal shafts & flues			Yes
	b.	Replace communal extractor fans			Yes if not provision
<b>Entry Systems and Access</b>	a.	Installation or renewal of entry systems, which may include cabling and handsets in each property			Yes
	b.	Works to comply with Disability Discrimination Act			Yes
<b>Damp works</b>		All methods of damp proofing, which may include:			
	a.	Insertion of chemical damp proof course			No
	b.	Laying a waterproof membrane on the basement floor			No
<b>Refuse/ recycling systems</b>		Replacement or repair of refuse/recycling systems and or hopper heads			Yes if not provision
<b>Bin chambers</b>		Repairs to communal bin chambers			Yes
<b>Lifts</b>	a.	Replacement of lift car, control panel and components			Yes

	b.	Replace lift motor room equipment			Yes
	c.	Major overhaul			Yes
	d.	Installing lifts and shafts			Yes
<b>Dry rot works</b>	May include:				
	a.	Chemical treatment of problem areas			Yes
	b.	Replacement of structural timbers such as joists			No
<b>Water pumps</b>	May include:				
	a.	Installation of pumps due to reduced water mains pressure			Yes
	b.	Replacement of an existing pump			Yes
<b>Water supply</b>	a.	Replacement of the water main serving the building			Yes
	b.	Replacement of communal water tanks			Yes
<b>Fire safety</b>	a.	Install, repair or replace communal fire detection systems			No
	b.	Installation or renewal of smoke detectors			No
	c.	Replacement of dry risers to tower blocks (essential part of fire fighting)			Yes
	d.	Install, repair or replace fire escapes			Yes
<b>Lightning protection</b>		Installation or replacement of lightning conductor			Yes
<b>Asbestos removal</b>		Removal of asbestos under controlled conditions			Yes

<b>Communal Heating</b>	a.	Major overhaul or replacement of communal heating systems or individual elements			No
	b.	Installation of communal heating systems			Yes
<b>Estate works</b>	a.	Estate lighting			Yes if not provision
	b.	Controlled access and security			Yes
	c.	Repairs to estate roads or paths			Yes
	d.	Provision and refurbishment of recreational areas			Yes
	e.	Landscaping			Yes
	f.	Boundary walls and fences			Yes
<b>Associated costs</b>	Costs essential to the works, which may include:				
	a.	Surveys	}		Yes
	b.	Preliminaries e.g. site set up costs			Yes
	c.	Fees			Yes
	d.	Access equipment e.g. scaffolding			Yes
	e.	Health and safety			Yes



# Appendix 6

## Removal of WRAC: savings

- 1 From 3.4.17, the WRAC can no longer be included in an award of ESA for claims made on or after that date. This means that, where an ESA claimant

1. is found to have, or is treated as having, LCW **and**
2. does not have, or is not treated as having, LCWRA **and**
3. enters the main phase

no component is included in the ESA award<sup>1</sup>.

*1 ESA Regs, reg 67(3) & Sch 4, para 1 & 12*

- 2 The removal of the WRAC does not apply where any of the circumstances in paragraphs 3 - 12 apply<sup>1</sup>.

*1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 1(1)*

## Meaning of claim

- 3 A claim means making a claim for ESA in accordance with specified provisions<sup>1</sup>. See DMG Chapter 02 for detailed guidance on making a claim for ESA.

*1 SS (C&P) Regs, reg 4ZC, 4G, 4H & 4I*

- 4 DMs should note that an award of ESA made pending the outcome of an appeal against a decision embodying a determination that the claimant does not have LCW is made without the need to make a claim<sup>1</sup>. However, the claimant may be protected from the removal of the WRAC as in paragraphs 8 or 11.

*1 SS (C&P) Regs, reg 3(j)*

## Example

Lionel's award of ESA is terminated from 29.3.17 after he is found not to have LCW. The DM refuses to revise the disallowance following a mandatory reconsideration, and Lionel appeals to the FtT. He is awarded ESA from 27.4.17 pending the outcome of the appeal. On 5.9.17 Lionel's appeal succeeds, and the FtT places him in the WRAG. The FtT decision is implemented to award ESA with the WRAC up to 26.4.17, and the DM revises the decision awarding ESA from 27.4.17 to include the WRAC from the same date.

## Claim made before 3.4.17

5 Where

1. the claimant has made or is treated as having made a claim for ESA before 3.4.17 and

2. that claim results in an award of ESA

the removal of the WRAC does not apply<sup>1</sup>.

*1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 2*

6 The guidance at paragraph 5 applies whether the award of ESA is made

1. immediately following that claim or

2. following mandatory reconsideration or

3. on appeal.

### Example 1

Catherine claims ESA on 28.3.17. She is awarded ESA from 4.4.17. On 26.7.17 following the WCA, the DM determines that Catherine has LCW, but does not have LCWRA. Catherine's award of ESA is superseded to include the WRAC from 4.7.17.

### Example 2

Brian claims ESA and is awarded from 5.8.16 at the assessment phase rate. He is treated as not having LCW from 18.4.17 when the DM determines that Brian does not have good cause for a failure to attend the medical examination. Brian applies for a mandatory reconsideration, and when the decision is not revised, lodges an appeal to the FtT. The FtT allows the appeal, and Brian's award of ESA is reinstated when he sends in backdated fit notes again. Following the WCA, Brian is found to have LCW, and the decision awarding ESA is superseded to award the WRAC from 4.11.16.

7 The guidance at paragraph 6 also applies where it is determined that the claimant has, or is treated as having, LCW and LCWRA, and later following a repeat WCA, it is determined that the claimant has LCW, but no longer has LCWRA.

### Example

Shani's award of ESA from 2016 includes the support component. Following a routine repeat WCA, on 20.4.17 the DM determines that Shani has LCW but no longer has LCWRA. Shani's award is superseded from 20.4.17 to remove the support component, and include the WRAC.

## Claimants previously found to have LCW before 3.4.17

8 Where a claimant

1. is awarded ESA on or after 3.4.17 and has, or is treated as having, LCW **and**
2. a previous award of ESA ended within 12 weeks of the current PLCW **and**
3. the combined PLCW began before 3.4.17

the removal of the WRAC does not apply<sup>1</sup>.

**Note:** PLCWs for awards of ESA paid pending the outcome of an appeal which is disallowed are disregarded when considering whether PLCWs link. See DMG 44636 and DMG Chapter 42 for further details.

*1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 3; ESA Regs, reg 145*

### Example 1

Edmund has been entitled to ESA since November 2016 at the assessment phase rate. His award is terminated on 30.3.17 after he is found not to have LCW. He makes a further claim for ESA on 5.6.17 after developing a new health condition. After the WCA, Edmund is found to have LCW, but not LCWRA. As the PLCWs link, Edmund's award includes the WRAC from 5.6.17.

### Example 2

Anne's award of ESA is terminated on 30.3.17 when she starts work. Anne finds the work too difficult because of her health condition, and she makes a further claim for ESA on 5.6.17. Following the WCA, Anne is found to have LCW but not LCWRA. As the PLCWs link, Anne's award of ESA includes the WRAC.

## IB Reassessment cases

9 Where

1. the claimant is entitled to IB, SDA or IS on the grounds of disability **and**
2. the conversion process begins (whether before or after 3.4.17) **and**
3. the claimant is found to have, or is treated as having, LCW or LCWRA (whether for old style or new style ESA)

the removal of the WRAC does not apply<sup>1</sup>.

**Note:** See DMG Chapter 45 for detailed guidance on IB Reassessment and the conversion process.

*1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 4; ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 4*

### Example 1

Richard is entitled to IB, and on 15.3.17 is notified that the conversion process has begun. Following the WCA, Richard is found to have LCW and LCWRA, and his

award is converted to ESA(Cont) including the support component. Later, Richard's health condition improves, and after a repeat WCA, on 26.10.17 he is found to have LCW but not LCWRA. Richard's award is superseded to remove the support component and include the WRAC.

### **Example 2**

Bridget is entitled to SDA and IS, and on 6.4.17 she is notified that the conversion process has begun. Following the WCA, on the DM determines Bridget has LCW, and her award is converted to an award of ESA with the WRAC from 12.7.17.

## **Claim made within the prescribed time for claiming before 3.4.17**

10 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the claim is made within the prescribed time for claiming from a date before 3.4.17

the removal of the WRAC does not apply<sup>1</sup>.

*1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 5; SS (C&P) Regs, reg 19(1) & Sch 4, para 16*

### **Example**

Eoin claims ESA on 10.4.17, and provides a fit note to say he is not fit for work from 11.1.17. He is awarded ESA from 18.1.17. Following application of the WCA, the DM determines that Eoin has LCW, and supersedes the awarding decision to add the WRAC from 26.4.17.

## **Assessment phase begins before 3.4.17**

11 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the assessment phase begins before 3.4.17 under specified legislation<sup>1</sup>

the removal of the WRAC does not apply<sup>2</sup>.

*1 ESA Regs, reg 5; 2 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 6*

### **Example**

George is entitled to JSA, and begins a JSA EPS on 21.1.17. His condition does not improve as expected, and on 6.4.17 he claims ESA. George is found to have LCW but not LCWRA. The period of JSA EPS is treated as a period of ESA entitlement, and George's assessment phase begins on 21.1.17. His award of ESA from 6.4.17 includes the WRAC from 22.4.17.

## Previously entitled to maternity allowance

12 Where

1. the claimant has been entitled to MA<sup>1</sup> and the end of that award is no longer than 12 weeks before a new claim for ESA **and**
2. immediately before the award of MA began, the claimant was previously entitled to ESA before 3.4.17

the removal of the WRAC does not apply<sup>2</sup>.

**Note:** See DMG Chapter 62 for guidance on MA.

*1 SS CB Act 92, s 35; 2 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 7*

### Example

Adele is entitled to MA from 5.9.16. She was entitled to ESA(IR) immediately before that date. However, she is not entitled to ESA(IR) while she is entitled to MA. Her entitlement to MA ends on 4.6.17. Adele makes a further claim for ESA on 19.6.17. Her award of ESA includes the WRAC.



## Appendix 7

### Transitional End Day

1. From 6.4.18 the regulations which provide for entitlement to payments in respect of loans and loans for repairs and improvements<sup>1</sup> within the IS, JSA(IB), ESA(IR) and SPC regulations are omitted<sup>2</sup>. As a result these SMI payments will no longer be met through those benefits. Payment towards other housing costs, for example, service charges, will continue. Certain transitional arrangements are in place for existing claimants whose housing costs can continue to be met (beyond 6.4.18) but only until the transitional end day<sup>3</sup>.

*1 IS Gen Regs, reg 17(e) & 18(1)(f); JSA Regs, reg 83(f) & 84(1)(g) & 86A; ESA Regs, reg 67(1)(c) & 68(1)(d); SPC Regs, Sch II, Para 1(1)(b) & 1(2)(c) & 8, 9, 11, 12; 2 LMI Regs, reg 18; 3 reg 19*

#### Loan offer made before 6.4.18

2. Where the loan offer is made before 6.4.18 the transitional end day will be the earlier of
  1. the day described at paragraph 3 below or
  2. the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>.

**Note:** The following paragraphs contain detailed options. DMs should be vigilant when establishing the transitional end day.

*1 LMI Regs, reg 19(1)*

3. For the purposes of paragraph 2.1 the day referred to is the later of
  1. for claimants of IS, JSA(IB), ESA(IR) or SPC, where 6.4.18 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after 6.4.18 or
  2. the day immediately following the day which is the earliest<sup>1</sup> to occur of the following
    - 2.1 the day the DM receives notification that the claimant does not wish to accept the offer of loan payments or
    - 2.2 where the DM
      - 2.2.a receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 9 below or

**2.2.b** has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

**Note:** The loan payments offer date is the day on which the loan agreement is sent to the claimant<sup>3</sup>.

*1 LMI Regs, reg 19(2); 2 reg 19(3); 3 reg 2(1)*

**Example:**

William is in receipt of IS that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6.4.18). From this date William is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

- 4 For the purposes of paragraph 3.2.2.a the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received<sup>1</sup>.

*1 LMI Regs, reg 19(3)(b)*

**Loan offer made on or after 6.4.18**

- 5 Where the loan offer does not occur before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 6 below or
2. the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>
3. the day immediately following the day the DM receives notification that the claimant does not wish to receive loan payments<sup>1</sup>.

*1 LMI Regs, reg 19A(1)*

- 6 For the purposes of paragraph 5.1 the day referred to is

1. 7.5.18<sup>1</sup> or
2. where the loan payments offer date is before 7.5.18 and
  - 2.1 the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received or



- 2.2 the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

**Note:** Where the day described in paragraph 2.1 or 2.2 above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date<sup>2</sup>

*1 LMI Regs, reg 19A(2)(a); 2 reg 19A (2)(b)*

- 7 For claimants of IS, JSA(IB), ESA(IR) or SPC, where 7.5.18 or the day described at paragraph 5.3 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day<sup>1</sup>

**Note:** The loan payments offer date is the day on which the loan agreement is sent to the claimant.

*1 LMI Regs, reg 19A(3)*

- 8 Where

1. before 19.3.18 the DM has asked the claimant to provide information needed to
    - 1.1 establish whether the claimant wishes to receive an offer of a loan payment or
    - 1.2 be able to send the loan agreement and associated documents and
  2. the claimant has not provided that information
- then the preceding paragraphs 5 to 7 do not apply and the support for mortgage interest regulations are removed, subject to paragraph 9, from 6.4.18<sup>1</sup>.

*1 LMI Regs, reg 19A(4)*

- 9 Where paragraph 8 applies (and this is not because the claimant lacks capacity) and the 6.4.18 is not the first day of the claimants benefit week then the removal of the owner occupier payments from benefit entitlement is effective from the first day of the first benefit week that begins after that date<sup>1</sup>.

*1 LMI Regs, reg 19A(5)*

### **Persons who lack capacity – identified before 6.4.18**

- 10 Where, before 6.4.18 the DM

1. is satisfied that the claimant lacks capacity to make some or all the decisions about entering into the loan agreement. or
2. suspects that the claimant may lack such capacity

then claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below<sup>1</sup>.

*1 LMI Regs, reg 20(1)*

11 The date referred to in paragraph 10 falls on the day that is the earlier of

1. the day described in paragraph 12 or paragraph 14 or
2. the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>.

*1 LMI Regs, reg 20(2)*

12 For the purposes of paragraph 11.1 that day is the later of

1. 5.11.18 or
2. where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5.11.18 the DM's suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the DM formed that belief<sup>1</sup> or
3. where an application for a decision of a type described in the Note below is made before the later of
  - 3.1 5.11.18 or
  - 3.2 the day prescribed in paragraph 12.2

the relevant day is the day immediately following<sup>2</sup>

- 3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision or
- 3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn<sup>3</sup>.

*1 LMI Regs, reg 20(3)(b); 2 reg 20(3)(c); 3 reg 20(4)*

**Note:** In England and Wales the relevant person is the Court of Protection or Public Guardian and the decision they need to determine would concern registering a lasting power of attorney, appointing a deputy or making an order in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement. In Scotland the relevant person is the Sheriff or Court of Session and the decision they need to determine would concern the making of an intervention order, the appointment of a guardian or the appointment of a judicial factor in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement<sup>1</sup>.

*1 LMI Regs, reg 20(7); Adults with Incapacity(Scotland) Act 2000, s 53; Judicial Factors Act 1849; Mental Capacity Act 2005; s 16(2);*

### Example 1

Bert receives SPC which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5.11.18, the later of the dates outlined in paragraph 12.3, which is the earlier of the dates in paragraph 11. Owner occupier payments will continue until that date.

### Example 2

Ernest receives SPC which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Financial Deputy. Owner occupier payments continue. On 30.10.18 Jim advises the DM that he has been appointed. The transitional end date for Ernest is 6 weeks after that determination which in this particular case is 11.12.18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

- 13 Where more than one application for a decision (as described in the Note to paragraph 12) is made within the intervening period cited at 12.3 then the periods described in paragraph 12.3 do not start to run until the relevant person has decided the last application or that all the applications are withdrawn<sup>1</sup>. Similarly where there is one application for a decision referred to in the **Note** but it is made within the intervening period to more than one relevant person then the day will be the later of the days<sup>2</sup>.

*1 LMI Regs, reg 20(5); 2 reg 20(6)*

- 14 Where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5 November the DM's suspicion becomes a belief that the claimant does not in fact lack capacity then the relevant day is the day immediately following the earlier of
1. the day described in paragraph 15 or
  2. the day on which the DM is notified that the claimant does not wish to receive loan payments<sup>1</sup>.

*1 LMI Regs, reg 20(8)*

- 15 For the purposes of paragraph 14.1 the relevant day is the earlier of
1. where the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where

that period begins on the day the fully completed loan agreement and associated documents are received or

2. where the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

**Note:** Where the day described in paragraph 1. or 2. above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date<sup>2</sup>.

*1 LMI Regs, reg 20(9)*

- 16 For claimants of IS, JSA(IB), ESA(IR) or SPC, where 5.11.18 or the day described at paragraph 14.2 or paragraph 15 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day<sup>1</sup>.

*1 LMI Regs, reg 20(10)*

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

Maximum amount for payment of debts (arrears only) ESA(IR) and ESA(Cont) where underlying entitlement to ESA(IR) .....	46153
ESA(Cont) .....	46154
Consent required .....	46155
Consent not required .....	46161
Priority between debts .....	46162
Part-week payments .....	46165
<b>Third party deductions for housing costs .....</b>	<b>46171</b>
Interests of the family .....	46196
Definition of housing costs .....	46198
Service charges .....	46201
Amount of benefit to be left for claimant .....	46204
Housing costs payments in arrears .....	46206
<b>Third party deductions for miscellaneous accommodation costs</b>	
Meaning of miscellaneous accommodation costs .....	46211
Rules for third party deductions .....	46212
Polish homes and homes run by voluntary organizations .....	46216
Amount deducted - complete weeks .....	46221
Personal expenses .....	46223
Amount deducted - part-weeks .....	46231
Amount of benefit to be left for claimant .....	46234
<b>Third party deductions for hostel service charges</b>	
Meaning of hostel .....	46241
Rules for third party deductions .....	46245
Current charges .....	46246
Arrears of hostel charges .....	46250
<b>Third party deductions for rent and service charges for fuel</b>	
Definitions .....	46261
Rules for third party deductions .....	46263
Interests of the family .....	46271
Amount deducted for arrears .....	46281
Amount deducted for current charges .....	46282
Joint tenants .....	46286

Superseding the third party deduction decision .....	46290
--	-------

### **Third party deductions for fuel costs**

Green Deal .....	46296
Definition of fuel item .....	46300
Rules for third party deductions .....	46301
Interests of the family .....	46304
Amount to be deducted and paid direct .....	46310
Exception to general rules .....	46311
Amount of benefit left for claimant .....	46312
Arrears of fuel - original debt.....	46321
Fuel - current consumption .....	46325
Original debt recovered .....	46330
Joint tenants .....	46341
Priority between fuel debts.....	46343
Consent of claimant required .....	46351
Superseding the third party deduction decision .....	46352

### **Third party deductions for water charges - England and Wales**

Meaning of water charges.....	46361
Methods of charging.....	46362
Rules for third party deductions .....	46363
Interests of the family .....	46365
Amount to be deducted and paid direct .....	46368
Amount of benefit to be left for claimant .....	46370
The original debt.....	46376
Unmetered water	
Original debt.....	46377
Consumption .....	46379
Annual increases.....	46380
Metered water	
Original debt.....	46382
Consumption .....	46384
Original debt recovered .....	46389

Joint tenants .....	46391
Priority between debts for water charges.....	46393
Consent of claimant required .....	46395
Superseding the third party deduction decision .....	46397
 <b>Third party deductions for water charges - Scotland</b>	
Meaning of water charges.....	46399
Rules for third party deductions .....	46402
Water debt only .....	46405
 <b>Deductions from benefit – FRM or CMD</b>	
Child support maintenance .....	46408
Meaning of Fee .....	46411
Meaning of specified benefit .....	46412
Meaning of beneficiary .....	46413
Meaning of maintenance .....	46414
Meaning of person with care .....	46415
Deductions from specified benefit.....	46416
Prevention of duplicate deductions.....	46421
Amount of ESA to be left after deduction of FRM or CMD .....	46422
Arrears – FRM deductions only .....	46423
Apportionment .....	46427
Claimant and partner both liable to pay maintenance	
FRM deductions .....	46428
CMD .....	46430
Claimant or partner liable to pay maintenance	
FRM deductions .....	46432
CMD .....	46433
Polygamous marriages .....	46434
Cases exempt from CMD or FRM.....	46435
Notice .....	46437
 <b>Third party deductions for payments in place of payments of child support maintenance – CTM deductions</b>	
Introduction.....	46438

## Deductions

Sufficient specified benefit in payment .....	46442
Number of deductions .....	46443
DMs action .....	46445
The fixed amount.....	46447
Specific deductions .....	46448
Exception to general rule .....	46449
Maximum amount of deduction .....	46451
Deductions from ESA(Cont).....	46452
Rules for deduction of CSM .....	46453
Amount deducted .....	46454
Maximum amount of deduction .....	46455
Order of priority .....	46456

## Third party deductions for Council Tax

Introduction.....	46461
Application for deductions .....	46462
Contents of application .....	46464
DMs action .....	46465
Can a deduction be made	
ESA(IR) .....	46471
ESA(Cont) - underlying entitlement to ESA(IR) .....	46472
ESA(Cont) .....	46473
Amount of deduction .....	46474
Other deductions .....	46475
Maximum amount of deduction .....	46476
More than one application.....	46478

## Third party deductions for Community Charge

Introduction.....	46481
Application for deductions .....	46483
Contents of application .....	46485
DMs action .....	46486



#### Can a deduction be made

ESA(IR) .....	46496
ESA(Cont) - underlying entitlement to ESA(IR) .....	46497
ESA(Cont) .....	46498
Amount deducted - single debtor .....	46499
Amount deducted - couples .....	46500
Maximum amount of deduction .....	46511
Order of priority .....	46513
More than one application .....	46514

#### **Third party deductions for fines**

Introduction .....	46521
Application for deductions .....	46522
Contents of application .....	46530
DMs action .....	46531

#### Can a deduction be made

ESA(IR) .....	46533
ESA(Cont) - underlying entitlement to ESA(IR) .....	46534
ESA(Cont) .....	46535
Amount of deduction .....	46536
Maximum amount of deduction .....	46537
Order of priority .....	46539
Further applications .....	46561

#### **Third party deductions for eligible loan deduction scheme**

Introduction .....	46571
Definitions	
Borrower .....	46575
Eligible benefit .....	46576
Eligible lender .....	46577
Eligible loan .....	46578
Loan agreement .....	46579
Deductions from benefit .....	46581
Prevention of duplicate deductions .....	46584

Deductions - priority order.....	46585
Amount of the deduction .....	46601
Notification .....	46602
Circumstances in which deductions will cease .....	46603
Payments of amounts deducted .....	46611
Maximum amount of deductions .....	46613
Consent of claimant required .....	46614
Priority between debts.....	46615
 <b>Third party deductions for integration loan scheme</b>	
Introduction.....	46621
Definitions	
Integration loan .....	46625
Specified benefit.....	46626
Deductions from benefit .....	46631
Amount of the deduction .....	46632
Consent.....	46635
Priority between debts .....	46636
Payments or awards .....	<b>Appendix 1</b>
Payments or awards which may affect liability for FRM or CMD .....	<b>Appendix 2</b>

## Part-week payments at the beginning of an award

### Period covered

- 46051 A part-week payment will be made at the beginning of an award if
1. the day when entitlement begins is not the first day of the claimant's benefit week or
  2. benefit is awarded for a fixed definite period of less than a week.

Where 1. applies the part-week payment begins on the first day of entitlement and ends on the day before the start of the first complete benefit week.

Where 2. applies the part-week payment covers the period of the award.

### The relevant week

- 46052 For part-week payments at the beginning of a claim, the relevant week is the period of seven days **ending** on the last day of the part-week period<sup>1</sup>.

*1 ESA Regs, reg 166(1)(a)*

#### Example 1

Noel's entitlement to ESA begins on Monday 24 November. His benefit week runs from Friday to Thursday. A part-week payment is needed for the period Monday 24 to Thursday 27. The relevant week is Friday 21 to Thursday 27.

#### Example 2

ESA is awarded to Harry for the definite period Monday 10 November to Saturday 15 November. A part-week payment is needed for that period. The relevant week is Sunday 9 to Saturday 15.

### Personal rate in the relevant week - ESA(Cont)

- 46053 Calculate the claimant's personal rate in the relevant week in the normal way.
- 46054 Where the applicable amount includes a fraction of a penny treat that fraction as a penny<sup>1</sup>.

*1 ESA Regs, reg 3(b)*

### Applicable amount in the relevant week - ESA (IR)

- 46055 Calculate the claimant's applicable amount in the relevant week in the normal way (see DMG Chapter 44).

46056 Where the applicable amount includes a fraction of a penny treat that fraction as a penny<sup>1</sup>.

*1 ESA Regs, reg 3(b)*

46057 - 46060

## **Income in the relevant week**

46061 Calculate the claimant's income in the normal way **but**

1. treat any income due to be paid in the relevant week as paid on the first day of that week<sup>1</sup> **and**
2. when only part of the weekly income is taken into account in the relevant week, disregard the balance<sup>2</sup>.

*1 ESA Regs, reg 167(a); 2 reg 167(f)*

46062 In addition, to decide the amount of

1. ESA (Cont) payable, disregard in full any

1.1 WB

1.2 CA

1.3 TA

1.4 US

1.5 WPA

1.6 BSP

payable in the relevant week but not for any day in the part-week<sup>1</sup>

2. ESA (IR) payable, disregard in full any

2.1 JSA

2.2 IS

2.3 MA

2.4 IB

2.5 SDA

2.6 ESA

2.7 UC

payable to the claimant or member of the family in the relevant week, but not for any day in the part-week<sup>2</sup>.

**Note:** If JSA, ESA, IS, MA, IB, SDA or UC is payable for any day in the part-week it should be taken into account when calculating the part-week payment (see DMG 46074).

*1 ESA Regs, reg 167(d); 2 reg 167(b)*

### Example

George is entitled to ESA(IR). He needs a part-week payment for two days as his entitlement begins earlier than the first day of his benefit week. His first complete benefit week runs from Thursday 6 November to Wednesday 12 November. He is entitled to ESA(IR) from Tuesday 4. A part-week payment is due for Tuesday 4 to Wednesday 5. The relevant week is Thursday 30 October to Wednesday 5 November. His wife receives IB in the relevant week (2nd to 3rd), but the payment does not cover any days in the part-week. The IB is disregarded in full when calculating income.

46063 Disregard the amount of any

1. ESA
2. JSA
3. IS
4. MA
5. IB
6. SDA
7. UC

payable to the claimant or partner in respect of any day in the part-week<sup>1</sup>.

*1 ESA Regs, reg 167(c)*

46064 - 46070

## The part-week payment

46071 There are different rules to calculate the amount of a part-week payment depending on whether ESA(Cont) or ESA(IR) is involved.

### ESA(Cont)

46072 The part-week payment is the claimant's notional entitlement in the relevant week multiplied by the number of days in the part-week divided by seven **less** any

1. WB
2. CA
3. TA
4. US
5. WPA
6. BSP

payable for any day in the part-week<sup>1</sup>.

*1 ESA Regs, reg 165(3)*

### Example

Ruth is entitled to ESA(Cont). Her notional entitlement in the relevant week is £50.35. She needs a part-week payment for two days. WB is payable for both of those days. The weekly rate of WB is £28.00. Her part-week payment is

$$\frac{£50.35 \times 2}{7} = £14.386 \quad \text{less} \quad \frac{£28 \times 2}{7} = £8.00$$

$$£14.386 - £8.00 = £6.386$$

the part-week payment is £6.39 (rounded up to the nearest penny).

- 46073 Where the part-week payment includes a fraction of a penny treat that fraction as a penny<sup>1</sup>.

*1 ESA Regs, reg 3(b)*

### ESA(IR)

- 46074 The part-week payment is

1. the claimant's notional entitlement for the relevant week multiplied by the number of days in the part-week and divided by seven (carry forward any fraction of a penny) **less**
2. any JSA, ESA, IS, MA, IB or SDA payable to the claimant or partner for any day in the part-week<sup>1</sup>.

*1 ESA Regs, reg 165(2)*

- 46075 The amount deducted under DMG 46074 2. depends on whether the payment of JSA, ESA, IS, MA, IB or SDA is payable

1. solely for days in the part-week **or**
2. for a different period, but including all or part of the part-week period.

- 46076 Where DMG 46074 1. applies the amount deducted is the actual amount payable. Where DMG 46074 2. applies the amount deducted is<sup>1</sup> in the case of a payment of JSA, ESA, IS, IB, MA or SDA the weekly benefit rate multiplied by the number of days in the part-week actually covered by the payment and divided by seven.

*1 ESA Regs, reg 165*

## Part-week payments at the end of a claim

### Period covered

46081 A part-week payment is needed at the end of a claim if

1. the day when entitlement ends is not the last day of the claimant's benefit week **or**
2. benefit is awarded for a definite period of a week or more which ends on a day other than the last day of the claimant's benefit week.

The part-week payment begins on the day after the last complete benefit week and ends on the last day of entitlement.

### The relevant week

46082 For part-week payments at the end of a claim the relevant week is the period of seven days **beginning** on the first day of the part-week period<sup>1</sup>.

*1 ESA Regs, reg 166(1)(b)*

#### Example

Katja's entitlement to ESA ends on Saturday 15 November. Her benefit week runs from Thursday to Wednesday. A part-week payment is needed for the period Thursday 13 to Saturday 15. The relevant week is Thursday 13 to Wednesday 19.

### Personal rate in the relevant week - ESA(Cont)

46083 Calculate the claimant's personal rate in the relevant week in the normal way.

### Applicable amount in the relevant week - ESA(IR)

46084 Calculate the claimant's applicable amount in the relevant week as in DMG 46054 - 46055.

46085 - 46090

### Income in the relevant week

46091 Calculate the claimant's income in the relevant week in the normal way **but**

1. treat any income due to be paid in the relevant week as paid on the first day of that week<sup>1</sup> **and**
2. disregard in full
  - 2.1 any new income first payable in the relevant week but not in the part-week<sup>2</sup> **and**
  - 2.2 any change to an existing income which occurs in the relevant week but not in the part-week<sup>3</sup>.

*1 ESA Regs, reg 167(a); 2 reg 167(e)(i); 3 reg 167(e)(ii)*

### Example

David's last day of entitlement to ESA(IR) is Thursday 4 December. His benefit week runs from Tuesday to Monday. He therefore needs a part-week payment for Tuesday 2 to Thursday 4. The relevant week is Tuesday 2 to Monday 8. He will receive his first payment of RP on Monday 8. As this new income is payable in the relevant week but not in the part-week it is disregarded in full.

46092 In addition, to decide the amount of

1. ESA(Cont) payable, disregard in full any

1.1 WB

1.2 CA

1.3 TA

1.4 US

1.5 WPA

1.6 BSP

payable in the relevant week, but not for any day in the part-week<sup>1</sup>.

2. ESA(IR) payable, disregard in full any

2.1 JSA

2.2 IS

2.3 MA

2.4 IB

2.5 SDA

2.6 ESA

2.7 UC

payable to the claimant or member of the family in the relevant week but not for any day in the part-week<sup>2</sup>.

**Note:** If JSA, IS, MA, IB, SDA, ESA or UC is payable for any day in the part-week it should be taken into account when calculating the part-week payment (see DMG 46074).

*1 ESA Regs, reg 167(d); 2 reg 167(b)*

### The part-week payment

46093 Calculate the part-week payments for both ESA(Cont) and ESA(IR) as in DMG 46072 - 46076.

46094 - 46100



## **Part-week payments on change of benefit week**

### **Reasons for change**

- 46101 A change of ESA benefit week is needed when the DM directs that the benefit week should change during an award.

### **Period covered**

- 46102 A part-week payment is made to cover the period beginning on the day after the last complete old benefit week and ending on the day before the first complete new benefit week<sup>1</sup>.

*1 ESA Regs, reg 166(1)*

### **The relevant week**

- 46103 For part-week payments on a change of benefit week in ESA, the relevant week is the period of seven days beginning on the day after the last complete benefit week<sup>1</sup>.

*1 ESA Regs, reg 166(2)*

### **Example**

Graham's benefit week runs from Tuesday to Monday. The DM directs that the benefit week should change to run from Saturday to Friday, with effect from Saturday 21 December. A part-week payment is due for the period Tuesday 17 to Friday 20. The relevant week is Tuesday 17 to Monday 23.

### **Personal rate in the relevant week - ESA(Cont)**

- 46104 Calculate the claimant's personal rate in the relevant week in the normal way.

### **Applicable amount in the relevant week - ESA(IR)**

- 46105 Calculate the claimant's applicable amount in the relevant week in the normal way.
- 46106 Any change in the applicable amount because of any change of circumstances (for example death or marriage), which takes place between the end of the last complete old benefit week and the beginning of the first complete new benefit week will take effect from the first day of the relevant week.

46107 - 46110

## Income in the relevant week

- 46111 Calculate the claimant's income in the relevant week in the normal way **but**
1. treat any income due to be paid in the relevant week as paid on the first day of that week<sup>1</sup> **and**
  2. when only part of the weekly income is taken into account in the relevant week, disregard the balance<sup>2</sup>.

*1 ESA Regs, reg 167(a); 2 reg 167(f)*

- 46112 In addition, to decide the amount of
1. ESA(Cont) payable, disregard in full any
    - 1.1 WB
    - 1.2 CA
    - 1.3 TA
    - 1.4 US
    - 1.5 WPA
    - 1.6 BSP

payable in the relevant week, but not for any day in the part-week<sup>1</sup>

2. ESA(IR) payable, disregard in full any
  - 2.1 JSA
  - 2.2 IS
  - 2.3 MA
  - 2.4 IB
  - 2.5 SDA
  - 2.6 ESA
  - 2.7 UC

payable to the claimant or member of the family in the relevant week but not for any day in the part-week<sup>2</sup>.

**Note:** If a payment of JSA, IS, MA, IB, SDA, ESA or UC is payable for any day in the part-week take it into account when calculating the part-week payment (see DMG 46121 - 46126).

*1 ESA Regs, reg 167(d); 2 reg 167(b)*

46113 - 46120

## The part-week payment

### ESA(Cont)

46121 The part-week payment is the claimant's notional entitlement for the relevant week multiplied by the number of days in the part-week divided by seven **less** any

1. WB
2. CA
3. TA
4. US
5. WPA
6. BSP

payable for any day in the part-week<sup>1</sup>.

*1 ESA Regs, reg 165(3)*

46122 Where the part-week payment includes a fraction of a penny treat that fraction as a penny<sup>1</sup>.

*1 ESA Regs, reg 3(b)*

### ESA(IR)

46123 The part-week payment is the claimant's notional entitlement for the relevant week multiplied by the number of days in the part-week and divided by seven **less** any

1. JSA
2. IS
3. MA
4. IB
5. SDA **or**
6. ESA

payable to any member of the claimant's family for any day in the part-week<sup>1</sup>.

*1 ESA Regs, reg 165(2)*

46124 The amount deducted under DMG 46123 depends on whether the payment of JSA, IS, MA, IB, SDA or ESA was payable

1. solely within the part-week **or**
2. for a period different from, but including all or part of, the part-week period.

46125 Where DMG 46123 **1.** applies the amount deducted is the amount actually payable.  
Where DMG 46124 **2.** applies the amount deducted is<sup>1</sup> in the case of a payment of  
JSA, IS, IB, MA, SDA or ESA the weekly benefit rate multiplied by the number of  
days in the part-week actually covered by the payment and divided by seven.

**Note:** See **Example** at DMG 46075.

*1 ESA Regs, reg 169*

46126 Where the part-week payment includes a fraction of a penny treat that fraction as a  
penny<sup>1</sup>.

*1 ESA Regs, reg 3(b)*

46127 - 46130

# Third party deductions

## Third party deductions - general

### Payment to discharge claimant's liabilities

- 46131 The DM has discretion to make deductions from benefit, under the third party deduction scheme, which are paid directly to third parties<sup>1</sup>.

*1 SS (C&P) Regs, reg 35(1)*

- 46132 Deductions and payments to third parties can be made under the third party deduction scheme if the claimant or partner is liable to pay<sup>1</sup>

1. housing costs
2. miscellaneous accommodation costs
3. hostel payments
4. rent arrears and service charges for fuel and water
5. fuel costs
6. water charges
7. CSM (under CTM scheme only)
8. Integrated Loan Scheme<sup>2</sup>
9. ELDS<sup>3</sup>.

*1 SS (C&P) Regs, Sch 9, para 2(1); 2 para 7D; 3 para 7C*

**Note:** Deductions for CSM can be made under CTM (see DMG 46438 – 46460) or FRM/CMD (See DMG 46408 – 46437) schemes. CTM deductions fall within the third party deductions scheme. However deductions for FRM or CMD fall outside the scheme and do not sit within the priority list (see DMG 46163).

- 46133 ESA can also be paid direct for arrears of CC and CT payable by a claimant or partner (see DMG 46481 and DMG 46461), or for a claimant only for fines or compensation orders (see DMG 46521).

**Note:** Deductions cannot be made for a partner's or dependant's fine.

- 46134 When a decision is made to

1. start or
2. stop or
3. change

a third party deduction, this will be by way of a supersession of an earlier decision (see DMG Chapter 04).

46135

## Liability for debt

- 46136 Deductions and payments to third parties can only be made if the claimant or partner is liable to pay the debt<sup>1</sup>. A claimant or partner will normally be liable for a debt if named on the bill.

*1 SS (C&P) Regs, Sch 9, para 2(1)*

- 46137 A debt may be disputed by the claimant or partner. This is a factor for the DM to consider when deciding whether they are liable to pay the debt. Although the Department cannot get involved in the dispute, enquiries should be made of the third party.
- 46138 Give the claimant the opportunity to provide evidence to support any claim that the debt is not liable to be paid.
- 46139 Deductions should only be made where there is evidence that the claimant or partner is liable to pay the debt.

## Meaning of specified benefit

- 46140 Specified benefit means<sup>1</sup>

1. ESA(IR) or
2. ESA(Cont) where
  - 2.1 both ESA(IR) and ESA(Cont) are in payment and the ESA(IR) is insufficient for the purposes of making such deductions or
  - 2.2 if there was no entitlement to ESA(Cont) there would be entitlement to ESA(IR) at the same rate.

*1 SS (C&P) Regs, Sch 9, para 1(1) & 1(3); Criminal Justice Act 91, s 24*

## ESA(IR)

- 46141 The full range of third party deductions is available in ESA(IR).

## ESA(Cont) - underlying entitlement to ESA(IR)

- 46142 The full range of third party deductions is available where, if there was no entitlement to ESA(Cont), there would be entitlement to ESA(IR) of at least the same rate.

## ESA(Cont)

- 46143 Where ESA(IR) is not an issue, only three categories of third party deductions are available. These are
1. CC/CT arrears

2. fines
3. arrears of CSM under the old scheme (see DMG 46436 - 46455).

46144 - 46150

## **Amount of benefit to be left for claimant**

### **Specified benefit**

- 46151 The claimant should be left with at least 10p **specified benefit** after third party deductions have been made<sup>1</sup>. No deduction should be made if it would leave the claimant with less than 10p. But see DMG 46205 and DMG 46235 for when the deduction may be adjusted instead of not being made.

*1 SS (C&P) Regs, Sch 9, para 2(2); Council Tax (Deductions from IS) Regs 93, reg 5(1)(b); Community Charges (Deductions from IS) (No. 2) Regs 90, reg 3(1); Fines (Deductions from IS) Regulations 1992, reg 4(1)(b)*

### **ESA(Cont)**

- 46152 Where ESA(IR) is not an issue, the claimant need not be left with any ESA(Cont) after a deduction has been made. A deduction can be made if the amount of ESA(Cont) payable before the deduction is at least one third of the appropriate age-related amount. This is so even where the claimant would be left with nothing<sup>1</sup>.

*1 SS (C&P) Regs, Sch 9, para 7B; Council Tax (Deductions from IS) Regs 93, reg 5(2); Community Charges (Deductions from IS) (No. 2) Regs 90, reg 3(2); Fines (Deductions from IS) Regs 92, reg 4(2)*

## **Maximum amount for payment of debts (arrears only) ESA(IR) and ESA(Cont) where underlying entitlement to ESA(IR)**

- 46153 There is a maximum amount<sup>1</sup> for payment of **arrears** to third parties. That is 3 x 5% of the personal allowance for a single claimant aged 25 or over (see DMG Chapter 44). The total amount deducted for arrears should not exceed this amount. Arrears deductions include

1. arrears of
  - 1.1 housing costs
  - 1.2 rent
  - 1.3 fuel
  - 1.4 water and
2. CT (but not CC) and
3. fines and
4. CSM under the old scheme (see DMG 46436 - 46455) and

5. Integrated Loan Scheme
6. ELDS.

**Note:** CC arrears do not count towards the 3 x 5% maximum.

*1 SS (C&P) Regs, Sch 9, para 8(1)*

## **ESA(Cont)**

46154 Where ESA(Cont) is in payment and ESA(IR) is not an issue (see DMG 46143), the maximum total amount deducted for

1. CC/CT arrears or
2. fines or
3. arrears of CSM under the old scheme (see DMG 46436 - 46455)

cannot exceed one third of the appropriate age related amount payable.

## **Consent required**

46155 Unless the claimant consents<sup>1</sup>, third party deductions cannot be made for

1. housing costs arrears
2. rent arrears and service charges for fuel and water
3. fuel costs (including arrears)
4. water charges (including arrears)
5. Integrated Loan Scheme<sup>2</sup>
6. ELDS

where the total deduction for that item, or any combination of those items, exceeds 25% of the family's applicable amount.

**Note:** Any housing costs included in the applicable amount should not be taken into consideration when deciding whether third party deductions exceed 25% of the family's applicable amount<sup>3</sup>.

*1 SS (C&P) Regs, Sch 9, para 8(2); 2 para 7C(12)(b);  
3 para 8 (4)(a)(iv); ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 4, para 1*

46156 The amount of CTC and CHB entitlement should be added to the applicable amount when deciding if deductions exceed 25% of the total.

46157 - 46160

## **Consent not required**

46161 The claimant's consent is not required if a deduction, or a combination of deductions, for



1. CC or CT arrears or
2. fines or
3. CSM under the old scheme or
4. current housing costs or
5. care home or independent hospital charges or
6. hostel charges not included in HB

makes the total amount deducted exceed 25% of the applicable amount for the family<sup>1</sup>.

**Note:** For definition of independent hospital see guidance at DMG 33327.

*1 SS (C&P) Regs, Sch 9, para 8*

## Priority between debts

- 46162 The claimant may satisfy the criteria for third party deduction of more than one debt. But the amount of benefit may not be enough to meet all those liabilities. The deductions should then be given a particular order of priority<sup>1</sup>.

*1 SS (C&P) Regs, Sch 9, para 9*

- 46163 For ESA(IR) and ESA(Cont) with underlying entitlement to ESA(IR), the order of priority is<sup>1</sup>

1. housing costs
2. miscellaneous accommodation costs
3. hostel payments
4. rent arrears and service charges for fuel
5. fuel costs
6. water charges
7. CC or CT arrears
8. fines
9. CSM under the old scheme (see DMG 46436 - 46455).
10. Integrated Loan Scheme
11. ELDS.

*1 SS (C&P) Regs, Sch 9, para 9(1B)*

- 46164 Where ESA(Cont) is in payment and ESA(IR) is not an issue the order of priority is

1. CC/CT arrears
2. fines
3. arrears of CSM under the old scheme (see DMG 46436 - 46455).

## Part-week payments

46165 Third party deductions from part week payments of specified benefit can be made for

1. hostel payments<sup>1</sup> (see DMG 46241) and
2. miscellaneous housing costs<sup>2</sup> (see DMG 46211).

*1 SS (C&P) Regs, Sch 9, para 4A(6); 2 Sch 9, para 4(3)*

46166 Third party deductions to discharge any other liability cannot be made from part-week payments.

46167 - 46170

## Third party deductions housing costs

- 46171 Housing costs for which the claimant has a liability may be deducted from the specified benefit and paid direct where<sup>1</sup>
1. the claimant or partner is in debt for a housing cost that is included in the applicable amount **and**
  2. it is in the interests of the family to do so.
- 1 SS (C&P) Regs, Sch 9, para 3(1)*
- 46172 Third party deductions for housing costs can include<sup>1</sup>
1. a deduction for current housing costs **and**
  2. an arrears deduction.
- 1 SS (C&P) Regs, Sch 9, para 3(2)*
- 46173 Third party deductions should be considered for housing costs if the debt is at least half the amount due yearly<sup>1</sup>
- Note:** Third party deductions should be considered earlier if it is in the interests of the claimant or their family.
- 1 SS (C&P) Regs, Sch 9, para 3(4)*

46174 - 46195

### Interests of the family

- 46196 It will normally be in the interests of the claimant or their family to introduce third party deductions if there is
1. a history of persistent mis-spending **and**
  2. a threat of eviction or repossession **and**
  3. no other suitable method of dealing with the debt.
- 46197 Third party deductions will not normally be in the interests of the claimant or their family if they
1. show evidence of determination to clear the debt **or**
  2. undertake to clear the debt themselves.

## Definition of housing costs

46198 For third party deductions purposes housing costs are<sup>1</sup>

1. rent or ground rent connected to long tenancies
2. service charges
3. rent charges, but only when paid with service charges
4. payments under co-ownership schemes
5. payments relating to a tenancy or licence of a Crown tenant.

**Note:** Ground rent should only be paid direct when paid with service charges.

*1 SS (C&P) Regs, Sch 9, para 1(1)*

46199 – 46200

## Service charges

46201 Service charges can be made for many items including fuel and water. But not all such charges are housing costs for the purposes of third party deductions.

46202 A service charge for communal water charges is a housing cost for these purposes<sup>1</sup>. For example a charge to cover the communal supply of water for central heating. But water charges for the claimant's home which are paid with rent are not housing costs for these purposes. They are covered by separate provisions (see DMG 46261).

*1 SS (C&P) Regs, Sch 9, para 1 & 3; ESA Regs, Sch 6, para 1(1)*

46203 A service charge for fuel paid with rent is also not a housing cost for the purposes of deductions (see 46198 3.)<sup>1</sup>. Deductions for water and fuel charges paid with rent are covered by separate provisions (see DMG 46261 et seq)<sup>2</sup>.

*1 SS (C&P) Regs, Sch 9, para 1 & 3; ESA Regs, Sch 6, para 18(2);*

*2 SS (C&P) Regs, Sch 9, para 5*

## Amount of benefit to be left for claimant

46204 The DM determines

1. whether there is enough benefit in payment to make a deduction **and**
2. the specified amount to be deducted.

46205 The amount deducted for housing costs may leave the claimant with less than the minimum amount (see DMG 46151). The amount of the deduction should then be adjusted so that 10p of the award is payable to the claimant<sup>1</sup>.

*1 SS (C&P) Regs, Sch 9, para 3(3)*

## **Housing costs payments in arrears**

- 46206 If claimants are in arrears with their housing costs payments, a standard deduction should be made and paid direct with the housing costs. The standard deduction is 5% of the personal allowance for a single person aged not less than 25<sup>1</sup>. But deductions should only be made where the DM is satisfied that there are in fact arrears<sup>2</sup> of housing costs. In cases of dispute the DM should give the claimant the opportunity to provide evidence to support any claim that they are not in arrears.

*1 SS (C&P) Regs, Sch 9, para 3(2); 2 R(IS) 14/95*

46207 - 46210



## Personal expenses

46223 [See Memo DMG 03/19] The amount in respect of personal expenses<sup>1</sup>, referred to in DMG 46221 is, for a

1. single person £25.00
2. couple where both members are in such accommodation, £25.00 each
3. polygamous marriage where more than one member is in such accommodation, £25.00 for each member who is in such accommodation.

*1 SS (C&P) Regs, Sch 9, para 4(2A)*

### Example 1

Dorothy lives in a care home, has an applicable amount of £106.65 and has no income.

She must be left with the amount of personal expenses at the personal rate (£25.00). The amount to be paid direct is £81.65 (£106.65 - £25.00).

### Example 2

William lives in a care home, has an applicable amount of £106.65 and net income of £6.00. The amount to be paid direct is

applicable amount	£106.65
less William's income	£6.00
ESA award	£100.65
less payment to William (personal expenses minus income)	£19.00
amount to be paid direct	£81.65

William is left with £25.00 (£6.00 + £19.00), which is the amount of his personal expenses.

### Example 3

Simon lives in a care home provided, owned and managed by the LA, and has an income of £6.00 per week. He receives ESA of £100.65 (applicable amount £106.65 less income of £6.00). £75.65 is deducted and paid direct to the third party (ESA of £100.65 - £25.00 personal expenses). Simon retains £25.00 of his ESA for personal expenses.

46224 - 46230

## Amount deducted - part-weeks

46231 Third party deductions for part-weeks (see DMG 46041 - 46125) can be made for miscellaneous accommodation costs<sup>1</sup>. The amount deducted and paid direct for a part-week depends upon

1. whether the accommodation in which the claimant lives is described at DMG 46221 1. or 2. and
2. whether the claimant has any income.

*1 SS (C&P) Regs, Sch 9, para 4(3)*

46232 In order to calculate the amount to pay direct to the third party for a part-week, the DM should calculate the amount of ESA due for the part-week and deduct<sup>1</sup>

1. an amount which equals the appropriate proportion of the personal expenses or
2. an amount equal to the difference between the appropriate proportion of the claimant's income if any and an appropriate proportion of the amount allowed for personal expenses.

This will result in the claimant retaining a proportion of the weekly personal expenses amount.

*1 SS (C&P) Regs, Sch 9, para 4(3A)*

### Example 1

Dilys lives in a care home. Her ESA is £106.65 and she has an income of £11.50 per week. She is due a part-week payment for 6 days.

The DM first calculates the part-week payment as follows:

ESA £106.65 less £11.50 = £95.15 divided by 7 and multiplied by 6 = £81.56 due for the part week.

The amount of the third party deduction is then calculated as follows:

£81.56 (the ESA due for the part-week) - £111.57 (the difference between 6/7ths of £11.50 and 6/7ths of £25.00) = £69.99. This is the amount paid to the third party.

Personal expenses of £11.57 are paid to the claimant.



### **Example 2**

Morris lives in a care home which is provided, owned and managed by the LA. His ESA is £106.65 and he has a weekly income of £15.00. A part-week payment of 4 days is due.

The DM first calculates the amount of ESA due for the part-week:

ESA £106.65 less £15.00 = £91.65, divided by 7 and multiplied by 4 (the number of days in the part-week) = £52.37 ESA due for the part-week.

The DM then calculates the amount to pay to the third party as follows:

£52.37 (the amount of ESA due for the part-week) - £14.29 (4/7ths of £25.00) = £38.08 is the amount paid to the third party. Morris retains personal expenses of £14.29.

- 46233 No deduction will be made for a part-week period if the DM certifies that it would be impracticable to do so. See DMG 46041 for full guidance on part-week payments.

### **Amount of benefit to be left for claimant**

- 46234 It may be that if the full amount is deducted for miscellaneous accommodation costs the claimant would be left with less than 10p. This can happen where the deduction is being taken for a complete week or for a part-week and the claimant has income equal to or greater than the weekly personal expenses amount.
- 46235 Under the normal rules (see DMG 46151) no deduction should then be taken. But there is a special rule that applies in such circumstances. The amount of the deduction can be adjusted so that 10p of the award is payable to the claimant<sup>1</sup>.

*1 SS (C&P) Regs, Sch 9, para 4(4)*

46236 - 46240

