

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 9

Amendment 29 – February 2019

1. This letter provides details on Amendment 29; 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 29 affects chapters 49, 51 and 52. The changes:

Chapter 49 – incorporate paragraph 3 of Memo DMG 07/17 into paragraphs 49149 – 49152.

Chapter 51 – update paragraphs 51934 – 51936 concerning 'Postgraduate Master's Degree Loan'.

Chapter 52 – incorporates Memos DMG 12/18 and 18/18.

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 49

49141 – 49175 (4 pages)

Chapter 51

51022 – 51040 (1 page)

51929 – 51968 (7 pages)

Chapter 52

Conts 52300 – Conts 52419 (1 page)

52351 – 52376 (3 pages)

52513 – 52519 (1 page)

Insert

Chapter 49

49141 – 49175 (4 pages)

Chapter 51

51022 – 51040 (1 page)

51929 – 51968 (6 pages)

Chapter 52

Conts 52300 – Conts 52419 (1 page)

52351 – 52376 (3 pages)

52513 – 52519 (1 page)

Earnings disregards - ESA(IR)

Application to claimant and partner

49141 Net earnings should be taken into account for ESA(IR) less any disregard¹. The amount of disregard will depend on

1. whether the earnings are from PWK and the type of PWK
2. who the earnings belong to.

1 ESA Regs, reg 96(2) & Sch 7

49142 The income of each member of a couple is worked out separately in ESA(IR). It is then treated as belonging to the claimant¹. This means that earnings of the claimant's partner can affect the award of ESA(IR).

1 WR Act 07, Sch 1, para 6(2)

49143 Disregards may apply to the claimant and partner, with an overall maximum limit set for the couple. Where more than one disregard applies, the couple is normally entitled to only one disregard. This will usually be the highest one.

49144 The exception to this rule is where amounts can be disregarded as in DMG 49166 - 49169. In such a case, those amounts may be disregarded in addition to the normal maximum set for the family.

Permitted work - claimant only working

49145 Where the claimant is undertaking PWK or exempt work (see DMG Chapter 41) then the earnings from that work are disregarded for ESA(IR) if the earnings limits for that type of PWK are not exceeded¹. See DMG Chapter 41 for guidance on the types of PWK and the PWK limits.

1 ESA Regs, Sch 7, para 5

Work with weekly earnings of £20 or less

49146 Up to £20 is disregarded for any PWK where the claimant's weekly earnings are £20 or less¹. This is known as PWLL.

1 ESA Regs, Sch 7, para 5; reg 45(2)

Supported permitted work

49147 Earnings of up to 16 x NMW¹ are disregarded for supported permitted work² which is

1. part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution or

2. supervised by a person employed by a public or local authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities.

1 ESA Regs, Sch 7, para 5; 2 reg 45(3)

Permitted work higher limit

49148 Earnings of up to 16 x NMW¹ are disregarded for specified work which is work done under the rules for PWHL (see DMG 41211 et seq) where²

1. the work is for less than 16 hours per week **and**
2. the weekly earnings do not exceed 16 x NMW **and**
3. the work is performed during a 52 week period beginning on the first day on which the work is done, provided that
 - 3.1 the claimant has not previously performed specified work **or**
 - 3.2 since the beginning of the last period of specified work, the claimant has ceased to be entitled to
 - 3.2.a ESA **or**
 - 3.2.b credits on the grounds of LCWfor a continuous period exceeding 12 weeks **or**
- 3.3 52 weeks or more have passed since the claimant previously performed specified work.

1 ESA Regs, Sch 7, para 5; 2 reg 45(4)

Note: Paragraph 3 does not apply to PWK carried out after 3.4.17. See DMG 49149 – 49150 for PWK carried after 3.4.17.

49149 From 3.4.17

1. PWHL and PWK (LCWRA) are combined into one type of PWK, referred to as permitted work (PW)¹ **and**
2. the period of specified work no longer applies

1.SS (EW & HA)(Amdt) Regs. reg 2(a) & 3(a), reg 2(b) & (c) & 3(b) & (c)

- 49150
1. Where a claimant is already serving a period of specified work which ends after 3.4.17, there is no restriction on the period for which they can undertake PW.
 2. Where a claimant has completed a period of specified work, there is no requirement for a break in PW before the claimant can undertake PW again.

49151 - 49152

Permitted work - claimant's partner also working

49153 Up to £20 of the partner's earnings from work can be disregarded where

1. the claimant is undertaking
 - 1.1 PWLL with weekly earnings less than £20¹ (see DMG 41196) or
 - 1.2 SPW² (see DMG 41197 et seq) or
 - 1.3 PWHL³ (DMG 41211 et seq) or
 - 1.4 PWK⁴ (LCWRA) and
2. the claimant's earnings from the PWK are below the earnings limit for that category of work.

1 ESA Regs, Sch 7, para 6(a); 2 Sch 7, para 6(b); 3 Sch 7, para 6(b); 4 Sch 7, para 6(b)

49154 The amount of the partner's earnings disregarded will depend upon how far below the PWK limits that the claimant's earnings are. The maximum that can be disregarded from the partner's earnings is £20 per week.

Example 1

Jonah is in receipt of ESA(IR). He works 2 hours a week doing some gardening and he is paid £10 a week. These earnings are below the £20 PWK limit. His partner, Susan, works as a classroom assistant and earns £50 a week. The DM disregards £10 of Susan's earnings.

Example 2

Winona is in receipt of ESA(IR). She is undertaking work which is supervised by a voluntary organisation and she earns £60 a week. These earnings are below the PWK limits for that category of work. Her partner, Noah, works in a shop and earns £50 a week. The DM disregards £20 of Noah's earnings.

Other work

49155 A weekly disregard of £20¹ applies where the claimant is undertaking work

1. as a councillor²
2. as a DLA advisory board member or as a member of a FtT with a disability qualification (see DMG 41155 et seq)³
3. during an emergency to protect another person or to prevent serious damage to property or livestock⁴
4. done whilst receiving assistance in pursuing self-employed earner's employment under certain legislation⁵.

1 ESA Regs, Sch 7, para 7(1) & para 7(2); 2 reg 40(2)(a); 3 reg 40(2)(b); 4 reg 40(2)(e); 5 reg, 45(5)

- 49156 A weekly disregard of £20¹ applies where the claimant's partner is performing work
1. as a childminder²
 2. on the self-employment route³
 3. in a special occupation⁴ (see DMG 49121 for what a special occupation is)
 4. as a councillor⁵
 5. as a disabled worker⁶ (see DMG 41511)
 6. whilst
 - 6.1 involved in a trade dispute which prevents entitlement to JSA or
 - 6.2 would otherwise be entitled to IS following a return to work after a trade dispute⁷
 7. and would be entitled to IS as a carer⁸ (see DMG Chapter 20)
 8. whilst
 - 8.1 in employment and
 - 8.2 living in or temporarily absent from a care home, Abbeyfield Home or an independent hospital and
 - 8.3 requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental illness or a terminal illness⁹.

Note: See DMG 51194 for the meaning of independent hospital.

1 ESA Regs, Sch 7, para 7(2); 2 reg 43(1)(a); 3 reg 43(1)(d); 4 reg 43(1)(e); 5 reg 43(1)(f); 6 reg 43(2)(a); 7 reg 43(2)(b); 8 reg 43(2)(c); 9 reg 43(2)(d)

Work as a DLA advisory board or first tier tribunal member and permitted work

- 49157 Where the claimant is working as a DLA advisory board or FtT member and is also performing PWK, up to £20¹ a week can be disregarded from the earnings where that work is
1. below the £20 weekly limit if the work is PWLL (see DMG 49146) or
 2. below the relevant limit if the work is SPW or PWHL (see DMG 49147 - 49148).

The amount of earnings disregarded will depend upon how far below the PWK limits the earnings are. The maximum that can be disregarded each week is £20.

1 ESA Regs, Sch 7, para 7(3)

Example 1

Natalie is a DLA advisory board member and is paid £50 a week. She also earns £10 a week helping in her friend's business. The DM can disregard all of Natalie's earnings from helping her friend and £10 of the earnings from being a DLA advisory board member.

Example 2

Imran is a FtT member earning £70 a week. He also performs PWHL earning £60 a week. The DM can disregard all of the earnings from the PWHL and £20 of the work from being a FtT member.

Partner performing part-time work

- 49158 A weekly disregard of £20 applies where the claimant's partner is in work which isn't remunerative work (see DMG Chapter 41) and the claimant is not performing PWK¹.

1 ESA Regs, Sch 7, para 7(4)

- 49159 Where DMG 49141 - 49146 applies to a claimant then the disregards can only apply to the claimant's partner if the claimant's earnings are less than £20 a week. The maximum that can be disregarded from the partner's earnings is £20 a week¹.

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

Reservists

- 49160 In addition to the disregard described at DMG 49156, a disregard applies to the partner of an ESA(IR) claimant in respect of their attendance at annual continuous training as a member of the reserve forces. DMG 48073 provides guidance on the period of attribution for these payments.

- 49161 Any earnings in respect of attendance at annual continuous training, in aggregate with any other income that the claimant may have, are disregarded which exceed

1. the claimant's applicable amount **less**
2. ten pence¹.

1 ESA Regs, Sch 7, para 11A(1) & (2)

Example

Jane is entitled to ESA(IR) and her benefit week begins on a Tuesday. On 30.11.12 Jane's partner receives a payment of £532 from the Army in respect of the time he spent away training at camp. Jane's partner was at camp for 15 days from 3.11.12 to 17.11.12. Jane's applicable amount for ESA(IR) is £105.95.

The DM decides that the payment in respect of time spent at camp:

1. is taken into account, subject to the appropriate disregards
2. is to be treated as paid on 27.11.12 because that is the first day of the benefit week in which it is received
3. is attributed for a period of 14 days because it is payment specifically in respect of duties performed at a camp lasting in excess of 14 days. It is therefore taken into account from 27.11.12 to 10.12.12
4. the weekly amount of the payment is determined to be £248.26 ($\text{£}532 \times 7 / 15$)
5. for the weeks ending 3.12.12 and 10.12.12 only £105.85 of the earnings are taken into account. This is because this is the amount of Janet's applicable amount less 10 pence.

Janet's ESA(IR) resumes at its normal rate of £105.95 from 11.12.12.

49162

49163 Members of the territorial or reserve forces (see Appendix 1 to this Chapter) may stop getting ESA(IR) because of that employment. Earnings may then be due for a period when the claimant was not entitled to benefit.

49164 Take any such earnings into account as normal, if the reason ESA(IR) stops is because¹

1. the claimant's earnings were more than the prescribed amount or
2. the claimant's income was more than the applicable amount.

1 ESA Regs, Sch 7, para 12

49165 If ESA(IR) stops for any other reason, disregard any earnings due for the period when the claimant was not entitled¹.

1 ESA Regs, Sch 7, para 12

Earnings paid for employment which has been interrupted

49166 Disregard earnings from employment that has been interrupted¹, for example by a period of sickness. SSP, SMP, Paternity Pay and Statutory Adoption Pay are examples of other payments that might be made. SSP, SMP, Paternity Pay, Shared Parental Pay and Statutory Adoption Pay should be taken into account as income (see DMG Chapter 51).

1 ESA Regs, Sch 7, para 1(1)(b)

49167 This disregard does not include

1. retainers¹ including
 - 1.1 statutory guarantee payments **and**
 - 1.2 payments made where the claimant has been suspended on medical or maternity grounds
2. earnings where the claimant has been suspended from employment.

1 ESA Regs, Sch 7, paras 1 & 2

Earnings payable outside United Kingdom

49168 Earnings may be payable in a country outside the UK. If they cannot be transferred to the UK, disregard them for as long as their transfer is prevented¹.

1 ESA Regs, Sch 7, para 9

Earnings paid in a foreign currency

49169 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments¹.

1 ESA Regs, Sch 7, para 10

49170 - 49175

Benefits taken fully into account

Bereavement allowance

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

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

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

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

Carer's allowance

51023 [\[See DMG Memo 09/18\]](#) CA should be taken fully into account. It is payable to people who are unable to work because they are caring for a person receiving AA or DLA.

ESA(Cont)

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

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

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

1 ESA Regs, reg 104(10)

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

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

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

1 ESA Regs, reg 104(11)

51026 - 51030

Incapacity benefit

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

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

51032

Industrial injuries disablement benefit

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

1. REA and
2. US

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

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

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

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

51036

JSA(Cont)

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

1 JS Act, s 2

Maternity allowance

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

Retirement pension

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

1. contributory (Cat A or B) or
2. non-contributory (Cat C or D).

51040 RP may be made up of the following elements

1. a BP
2. an increase of BP for dependant spouses or civil partners, dependant children or women looking after children (but see DMG 51240 if the dependant is not a member of the claimant's family)
3. an AP for people who were in non-contracted out employment
4. GRB earned between 1961 and 1975 under the graduated pension scheme
5. Incs for deferred retirement
6. invalidity and age additions.

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

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

European Economic Area Nationals

51929 A student, who is an EEA national or the child of an EEA national, may be eligible for a student loan if¹

- 1. the conditions at DMG 51928 2. are satisfied **and**
- 2. the course in
 - 2.1 England and Wales, is provided wholly or partly by an institution in England or Wales or
 - 2.2 Scotland, is at a Scottish establishment.

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

Refugees

51930 A student may be eligible for a student loan if¹

- 1. they, their spouse, civil partner or parent are granted refugee status **and**
- 2. from the time they are recognised as a refugee they are ordinarily resident in the UK **and**
- 3. they satisfy the conditions at DMG 51928 1..

1 SA (Scot) Regs, Sch 1

Student loans treated as income

51931 Student loans are treated as income¹. Students are treated as possessing a student loan for an academic year where

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

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

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

Amount of loan

51932 The maximum amount that can be advanced to a student depends on

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

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

1. the maximum amount of student loan the student could get by taking all reasonable steps¹ to do so (even if the student applies for less than the maximum loan) **and**
2. unless an exception at DMG 51938 applies², the amount of any contribution whether or not it is paid to the student³.

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

51933 Where a student loan has not been made for an academic year, the DM should take into account as income the maximum loan that the student could get if

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

1 ESA Regs, reg 137(5)(b)(i); 2 reg 137(5)(b)(ii)

Postgraduate Master's Degree Loan

51934 Postgraduate master's degree loans were introduced for eligible full-time or part-time courses starting in September 2016. The loan is not specifically paid for tuition fees and/ or maintenance costs. It is paid directly to the student and it will be at the student's discretion what they use it for. Eligible students can apply for a loan of up to:

£10,000 for courses that began in the 2016/17 academic year

£10,280 for courses that began in the 2017/18 academic year

£10,609 for courses that began in the 2018/19 academic year

Note: for courses that began in the

1. Academic year 2016/17, the loan is only paid in the first and second academic years of a course (£5,000 in each year), regardless of the total course length;
2. Academic year 2017 onwards, the loan will be divided equally across each year of the course (typically in three installments of 33%, 33% and 34% for courses lasting three years for example).

51935 For income purposes, 30%¹ of the maximum postgraduate master's degree loan² will be the amount taken into account in the calculation of IS, ESA (IR) and JSA (IB).

This figure reflects the amount which will typically be available to spend on maintenance costs, taking account of typical master's course tuition fees.

1 SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016;

2 ESA Regs, reg 137(5A)

- 51936 If a claimant is eligible for a new postgraduate loan but has failed to take all reasonable steps to acquire it they will usually be treated as if they are in receipt of the maximum postgraduate master's loan to which they would be entitled to¹ for
1. that academic year or
 2. where the course lasts for two or more academic years, the maximum amount that would be paid in each academic year (see note at DMG 51934).

See DMG 51945 for an example of how to calculate student income for these loans.

1 ESA Regs, reg 137(4)(b) and (4A)

Note: for any other type of student funding not covered by this guidance, please contact DMA Leeds for advice.

Disregards

- 51937 The amount of student loan to be taken into account under DMG 51931 to DMG 51936 should be reduced by¹ a fixed amount for

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

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

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

1 ESA Regs, reg 137(6)

Example

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

Disregard for fee loans

- 51938 Changes to the student support system¹ mean that loans for course fees will be paid directly to the university or college. DMs should disregard² a loan for fees, known as a fee loan or a fee contribution loan paid under specified legislation³.

1 Support Regs, regs 17-21 & 31-32; 2 ESA Regs, reg 139;

3 Education (Student Support) (N Ireland) Order 1998, Art 3; T & HE Act 98, s 22;

Ed (Scot) Act 80, s 73(f)

Assessed contribution

- 51939 The education authority may decide that the student, their spouse, civil partner, parents or parent's partner should contribute to the loan. The contribution is assessed according to the income of the student, their spouse, civil partner, parent

or parent's partner. The amount of loan awarded is then cut by the assessed contribution¹.

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

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

Calculation of weekly income

Course duration is for one academic year or less

51940 Where a student loan is made in respect of any academic year and the course is for one academic year or less, the student loan should be divided equally between the weeks in the period beginning with

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

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

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

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

51941 Where a student loan is made in respect of an academic year that begins other than on 1 September the DM should divide the student loan equally between the period which

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

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

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

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

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

51942 Where a student loan is made in respect of an academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the earlier of the first day of the first benefit week

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

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

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

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

51943 Where a student loan is made in respect of a final academic year of a course of more than one year that begins other than on 1 September the DM should divide the student loan equally between the period beginning with

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

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

51944 Where a student loan is made in respect of a final academic year that begins on 1 September the DM should divide the student loan equally between the weeks in the period beginning with the first benefit week that begins on or after the earlier of

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

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

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

Disregard

51945 When the weekly amount has been calculated the DM should disregard up to £10 a week. This is subject to the overall limit on the disregarded income of students (see DMG 51969).

Example 1

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

Example 2

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

Example 3

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

Example 4

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

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

Student from Northern Ireland

- 51946 A student from Northern Ireland may be eligible for a student loan under Northern Ireland law¹. The qualifying conditions are the same as in the rest of the UK. Treat any loan for which the student is eligible in the same way.

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

Grants

- 51947 A student may receive a grant from a number of different sources. Grants, bursaries or allowances etc may be paid in respect of various types of study such as Nursing and Teacher training. Students who are paid under specific law¹ may be entitled to supplementary grants, as current or old system students

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

Note: This list is not exhaustive.

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

Amount of grant income

Initial disregard

- 51948 The DM should disregard from the student's grant income any payment
1. intended to meet tuition or examination fees¹
 2. intended to meet additional expense a disabled student has for attending a course²
 3. intended to meet additional expenses connected with term time residential study away from the student's educational establishment³
 4. on account of the student maintaining a home at a place other than where they live during the course⁴
 5. on account of any other person if⁵ that person lives outside the UK and there is no applicable amount for them
 6. intended to meet the cost of books and equipment⁶
 7. intended to meet travel expenses caused by the student's attendance on the course⁷
 8. intended for the maintenance of a child dependant⁸
 9. intended for the child care costs of a child dependant⁹.
 10. of higher education bursary for care leavers made under specified legislation¹⁰.

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

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

- 51949 Disregard amounts under DMG 51947 only if the grant is specifically intended to be used for one of those purposes.

Higher education grant

- 51950 In England and Wales the Higher Education Grant¹ was introduced in September 2004. A student qualified for this grant if he began the designated course on or after 1.9.04. The grant is to defray the cost of books, equipment, travel or childcare for the purpose of attending that course. DMs should disregard² the amount of Higher Education Grant paid to an existing student. In Scotland these are not specific grants but cover other expenses incurred in taking advantage of educational facilities³.

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

Special support grant

- 51951 In England and Wales the Special Support Grant¹ was introduced from 1.9.06. The grant is to defray the cost of books, equipment, travel or childcare incurred for the

purpose of attending that course. DMs should disregard² the amount of Special Support Grant paid to students from 1.9.06.

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

- 51952 Where a student is in receipt of the maximum Special Support Grant and the Higher Education Establishment charges the full £3,145 tuition fees, then the Higher Education Establishment must pay the student a bursary to at least make up the difference between the Special Support Grant and the £3,145 fee. As this bursary is for tuition fees it should be disregarded¹ in full whatever its value. In addition, a Higher Education Establishment may award other grants and bursaries and these may be disregarded if they fall within the disregards listed at DMG 51947.

1 ESA Regs, reg 132(2)(a)

Special Support Loan (England only)

- 51953 Special Support Grants are intended to meet the cost of books, equipment, travel expenses and childcare, and so can be fully disregarded under existing legislation - DMG 51951 refers. From the beginning of the 2016/17 academic year, Special Support Loans replaced Special Support Grants¹ for new students. Regulations (2-5) amend existing legislation² to provide that the Special Support Loan can also be disregarded.

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

Disregards for students with child care responsibilities

- 51954 In England and Wales, a Department for Children, Schools and Families Parents Learning Allowance is available to F/T students with child care responsibilities. DMs should disregard this allowance in full¹.

1 ESA Regs, reg 132(2)

Extra disregards

- 51955 Where a student does not have a student loan and is not treated as having a student loan, the DM should disregard from the grant a fixed amount for

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

1 ESA Regs, reg 132(3)

Example 1

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

Example 2

Isobella is a student teacher completing her last year of teacher training in a school. She receives a training bursary which does not specifically include any amount for travelling costs or books and equipment. She is not entitled to a student loan. The DM disregards a total of £693 from Isobella's income. This is made up of extra disregard for travelling costs - £303 plus the extra disregard for books and equipment - £390.

Period over which grant income taken into account

51956 The amount of grant income to be taken into account should be spread equally over the relevant period. The length of that period depends on

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

Dependant and lone parent grants

51957 The DM should take these grants into account

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

1 ESA Regs, reg 132(6)

Example

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

NHS dependant grants

51958 A grant or bursary paid for dependants, under relevant law¹, to an NHS student should be taken into account equally over

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

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

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

Other grant income

51959 Other grant income should be taken into account equally between the weeks in the period

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

Period of study for grant income purposes

- 51960 Period of study has two different meanings. One for grant income purposes¹ and one for eligibility² (see DMG Chapter 41). DMs should not confuse the two definitions.

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

- 51961 For grant income purposes¹, each year of a course has a separate period of study. That period

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

1 ESA Regs, reg 131(1)

Example

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

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

Grant payable for period of study

- 51962 Grant income may be payable for the period of study. If so the DM should take the income into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period of study and ending with the last benefit week which ends on or before the last day of the period of study¹.

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

Sandwich course

- 51963 Where a student is on a sandwich course, any periods of experience should be excluded from the period of study. Grant income is then spread equally between the weeks in the period beginning with the benefit week that begins on or after the last day of the period of experience and ends with the last benefit week which ends on or before the last day of the period of study¹.

1 ESA Regs, reg 132(7)

Grant not payable for period of study

- 51964 Grant income may be awarded for a specific period. In these cases the grant income should be taken into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period for which the grant is payable and ending with the last benefit week which ends on or before the last day of the period for which the grant is payable¹.

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

Access funds

- 51965 Students who are in financial difficulties may receive payments from access funds¹ (see DMG 51882). Treatment of these payments depends upon

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

1 ESA Regs, reg 131

- 51966 The DM should fully disregard an access fund payment where it is made¹
1. before the first day of the course in anticipation of the person becoming a student **or**
 2. on or after the earlier of
 - 2.1 1 September **or**
 - 2.2 the first day of the course **and**
 - 2.3 the student loan has not been received **and**
 - 2.4 the payment is intended to help them manage financially until they receive their loan.

1 ESA Regs, reg 138(4)

Regular payments

51967 Any access fund payment should be fully disregarded unless it is intended and used for

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

Note: The DM should disregard £20 from any payments that are intended and used for the above items. This is subject to the overall limit on disregarded income¹ (see DMG 51969 et seq).

1 ESA Regs, reg 138(3)

Lump sum payments

51968 Any lump sum payment from an access fund should be treated as capital¹. Where a lump sum payment is intended and used for items other than those listed at DMG 51967 the DM should disregard the capital for 52 weeks from the date of payment².

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

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Can capital be disregarded

The law

- 52351 The law allows for all capital to be included in the claimant's resources unless it can be disregarded¹.

1 ESA Regs, reg 111 & Sch 9

Onus of proof

- 52352 The claimant has to show that the capital can be disregarded. If there is no evidence to show capital can be disregarded, it is included when working out the amount of capital a claimant has.

What the DM decides

- 52353 The DM decides if capital can be disregarded
1. at the date of claim, revision or supersession **and**
 2. before it is valued.

The DM does not have to know the value of capital to decide if it can be disregarded.

- 52354 The DM decides all of the disregards which apply to each item of capital. This is because income from capital is taken into account as income and not capital if certain disregards apply. DMs should note that this also applies if the capital is worth nothing.

- 52355 For certain disregards the DM has to decide if it is reasonable to disregard capital for a longer period. Capital is disregarded¹
1. indefinitely **or**
 2. up to two years **or**
 3. 52 weeks **or**
 4. 26 weeks or more if it is reasonable **or**
 5. 26 weeks **or**
 6. for a prescribed period.

1 ESA Regs, reg 111 & Sch 9

- 52356 The length of the disregard¹ depends on
1. the type of capital **and**
 2. the circumstances of the claimant.

1 ESA Regs Sch 9

52357 - 52358

Capital disregarded indefinitely

Adoption allowance

52359 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

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

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

52360 Payments of adoption allowances made under specific legislation¹ are disregarded indefinitely².

1 Adoption and Children Act 2002, s 2(6)(b) 3 or 4; 2 ESA Regs, Sch 9, para 57

Special guardianship payments

52361 Special guardianship payments are made in England and Wales to provide more security for a child than long-term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Any special guardianship payment made to the claimant under specific legislation¹ is fully disregarded indefinitely². In order to find out if the payments are made under the specified legislation, the DM can make enquiries of the paying body.

1 Children Act 1989, s 14F; 2 ESA Regs, Sch 9, para 58

Annuities

52362 An annuity is a fixed sum payable at specified intervals in return for a premium paid either by instalments or in a single payment. An annuity is normally taken out to provide an income in retirement. Both the right to receive income from an annuity and the surrender value of the annuity are disregarded indefinitely¹. Payments made under an annuity are capital which is treated as income².

1 ESA Regs, Sch 9, para 15; 2 reg 105(2)

Best Start Grants

52363 The Scottish Government introduced Best Start Grants to provide early years assistance to people living in Scotland¹. From 10.12.18 under Best Start Grants, Pregnancy and Baby Grants are being introduced, with other elements introduced at a later date. The Scottish Government will be responsible for deciding on the claims to these grants and for making payments. All elements of Best Start Grant are disregarded indefinitely².

1 The Social Security (Scotland) Act 2018, s. 32; 2 ESA Regs, Sch 9, para 63

Business assets

The law

- 52364 The assets of a business are disregarded indefinitely if
1. the person owns all or some of the business assets and is engaged in the business as a S/E earner¹ or
 2. the business assets have been acquired by a person receiving assistance under the S/E Employment Option of the ND (see DMG 14132) for the purpose of establishing or carrying on the commercial activity for which the assistance is being received².

1 ESA Regs, Sch 9, para 10(1); 2 Sch 9, para 10(3)

- 52365 The assets of a business are disregarded for a reasonable period to allow them to be sold or otherwise disposed of if the person
1. owns all or some of the business assets and has stopped working in the business as a S/E earner¹ or
 2. was receiving assistance under the S/E Employment Option of the ND (see DMG 14132) and has ceased carrying on the commercial activity in respect of which such assistance was being received².

1 ESA Regs, Sch 9, para 10(1); 2 Sch 9, para 10(4)

Example

John owns an amusement arcade in Bournemouth. He stopped working in the arcade as a S/E earner on 31 October and claimed ESA on 3 November. The assets of the business are a lease on the building, gaming machines and tools used to repair the machines. John states the value of these assets is £45,000. John also states that he is not going to sell the assets because he needs them when he opens the arcade again in the following April. The DM decides that the assets of the business cannot be disregarded.

Note: A different disregard applies if persons are not able to work in the business because they are ill or physically or mentally disabled and are going to start or return to work in the business (see DMG 52520 - 52523).

Meaning of business assets

- 52366 Business assets include standard items such as machinery, vehicles, fixtures and cash held in the bank (including money held following the sale of assets). They may also include items such as customer lists and contacts, current and future contracts and goodwill.

- 52367 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as “work in hand” may result in an income receipt and so would be appropriate for inclusion in the profit and loss account. Where doubt exists as to whether a particular asset would represent a capital or income receipt upon its sale, the principles of commercial accounting must be applied i.e. the approach that would be taken by an accountant or HMRC to such a receipt or holding.

Meaning of “reasonable period”

- 52368 When determining what represents a reasonable period for the sale or disposal of an asset, the DM should have regard to

1. the date that the duty to dispose of the asset arose
2. the nature of the asset and the period within which that particular type of asset would normally be expected to be sold or disposed
3. any legal obligations and restrictions existing that could affect both the sale and disposal of any assets (e.g. in a partnership situation, the provisions of the partnership deed and the Partnership Act 1890. These provisions could place restrictions and subsequent delays on both the sale of assets, and the disposal of any cash assets resulting from the sale).

Meaning of self-employed earner

- 52369 S/E earner means a person

1. who is gainfully employed in GB (see DMG 070702) and
2. whose employment is not the same as that of an employed earner¹

1 ESA Regs, reg 2(1); SS CB Act 92, s 2(1)(b)

- 52370 People can be S/E earners even if they have another job as an employed earner. An employed earner is a person who is gainfully employed in GB

1. under a contract of service or
2. in an office, including an elective office, with general earnings¹.

1 ESA Regs, reg 2(1); SS CB Act 92, s 2(1)(a)

When people are working in the business as a self-employed earner

- 52371 People are working in the business if they do some work for the business in a practical sense. There is no set definition of the type and amount of work that has to be done for the person to be classed as a S/E earner and the DM must decide each case on its merits¹.

1 R(IS) 14/98

- 52372 A partner in a business managed and worked exclusively by others is not working in the business as a self-employed earner. Even if that person receives a share of the profits of the business he is not a S/E earner¹.

1 R(IS) 14/98

Capital administered by the court

- 52373 Certain capital is disregarded indefinitely if it is administered on behalf of a person by

1. in England and Wales, under certain rules the High Court, County Court or the Court¹ of Protection (see DMG 52277) and any such sum can only be disposed of by order or direction

1.1 of any such court or

1.2 where the person concerned is under age 18, prior to that person reaching age 18 or

2. in Scotland, the Court of Session or Sheriff Court under certain rules².

1 Civil Procedure Rules 1998, rule 21.11(1); 2 Children (Scotland) Act 1995, s 13

- 52374 The disregard in DMG 52375 applies to capital which is being administered by a court or can only be disposed of with a court's permission (including in relation to a child under 18) derived from

1. an award of damages for personal injury to the person whose capital is being administered by the court¹ or
2. compensation for the death of one or both parents where the person concerned is under the age of 18².

Note: The disregard in DMG 52376 2. ceases to apply when the person concerned reaches the age of 18.

1 ESA Regs, Sch 9, para 43(1)(a), 43(1)(b), 43(2)(a) & 44(a); 2 Sch 9, para 43(1)(c), 43(2)(b) & 44(b)

Capital paid by instalments

- 52375 The value of the right to receive any outstanding instalments is disregarded indefinitely if capital is due to be paid by instalments¹.

Note: Depending on the circumstances payments of instalments can be taken into account as capital or income (see DMG 52380).

1 ESA Regs, Sch 9, para 21

Capital which is not sterling

- 52376 Bank charges and commission which are payable when changing capital which is not paid as sterling into sterling are disregarded indefinitely¹. For example, if people get capital of 3,000 Canadian dollars they will have to pay commission when the dollars are changed into British money, so the commission is disregarded.

1 ESA Regs, Sch 9, para 26

2. the total of the arrears and any concessionary payment (“the relevant sum”) is £5,000 or more **and**
3. the relevant sum is paid to rectify or compensate for
 - 3.1 an official error (see DMG 03256) **or**
 - 3.2 an error of law (see DMG 04280) **and**
4. the relevant sum is received in full by the claimant on or after 14.10.01¹.

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

Period of the disregard

52513 The period of the disregard is

1. 52 weeks from the date the relevant sum is received **or**
2. if the sum is received in its entirety during an award of ESA(IR), for the remaining period of the award of ESA(IR) (see DMG 52514)

whichever is the longer period¹.

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

52514 For the purposes of DMG 52513 2. the remaining period of the award of ESA(IR) means

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

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

Example 1

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

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

Example 2

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

Example 3

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

52515 - 52519