

# Department for Work and Pensions

DECISION MAKING AND APPEALS

## Decision Makers Guide

### Volume 13

### Amendment 42 – February 2019

1. This letter provides details on Amendment 42; 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 42 affects chapters 78 & 79. The changes:

Chapter 78 - incorporate DMG Memos 14/17 & 20/17 which make changes to income from capital at 78542; DMG Memo 08/17 removes any reference in the definition of a disabled person to the WRAC and introduces a new definition at 78186, it also makes clear when a non-dependant deduction is not appropriate (78521); incorporates DMG Memo 05/18 which covers the new SMI loans at 78170 and 78165. A new appendix 9 is also added.

Chapter 79 – amends para 79102 as it was out of date in that it implied that claimants could be entitled to SPC from age 60; amends and removes various paragraphs from 79221 to 79345 which talked about 3rd party payments for mortgage interest – DMG Memo 05/18 refers.

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).

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78068 – 78072 (1 page)  
78120 – 78152 (4 pages)  
78170 – 78466 (37 pages)  
78472 – 78509 (3 pages)  
78521 – 78599 (3 pages)  
78614 – 78649 (1 page)  
Appendix 1 – Appendix 8 (36 pages)

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# Additional amount for the severely disabled

## General

78030 When considering the amount of the AMG, an additional amount is applicable if the claimant is treated as being severely disabled<sup>1</sup>.

*1 SPC Act 02, s 2(3)(b), 2(7) & 17(2)(b); SPC Regs, reg 6(4) & Sch 1, para 1*

78031 An additional amount for the severely disabled is not payable<sup>1</sup> in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

*1 SPC Regs, reg 6(2), (3) & (4)*

78032 If the claimant is a member of a polygamous marriage, see DMG 78610 for guidance on the rules that apply.

78033 The additional amount for the severely disabled is payable at a lower or higher rate<sup>1</sup>. See Appendix 2 to DMG Chapter 77 for details of those rates.

*1 SPC Regs, reg 6(5)*

## Lower rate

### Claimants who have no partner

78034 Claimants with no partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if<sup>1</sup>

1. they are in receipt of
  - 1.1 "AA" or
  - 1.2 the care component of DLA at the highest or middle rate or
  - 1.3 the daily living component of PIP or
  - 1.4 AFIP **and**
2. there are no persons aged 18 or over
  - 2.1 normally residing with the claimant or
  - 2.2 who the claimant normally resides with (see DMG 78065 et seq) **and**
3. no one is entitled to and in receipt of CA, or UC that includes the CE, in respect of caring for them.

*1 SPC Regs, reg 6(5)(a); Sch 1, para 1(1)(a)*

## Transitional protection

78035 Carers who were aged 65 and over before 28.10.02 can continue to be entitled to CA even though they are no longer providing care<sup>1</sup>, for example after the disabled person has died.

*1 The Regulatory Reform (Carer's Allowance) Order 2002, S.I. 2002/1457*

78036 A claimant will not be disqualified under 78034 3., from the extra amount for the severely disabled where the person in receipt of CA is not providing care but retains payment of the CA as a result of transitional protection.

78037 - 78044

## Claimants who have a partner

78045 Claimants who have a partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if<sup>1</sup>

1. both partners are in receipt of
  - 1.1 "AA" or
  - 1.2 the care component of DLA at the highest or middle rate or
  - 1.3 the daily living component of PIP at the standard or enhanced rate or
  - 1.4 AFIP and
2. there are no persons aged 18 or over
  - 2.1 normally residing with the partners or
  - 2.2 who the partners normally reside with (see DMG 78065 et seq) **and**
3. someone is entitled to and in receipt of CA, or UC that includes the CE, in respect of caring for only one of the partners.

*1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b)*

78046 Claimants who have a partner may not satisfy the conditions in DMG 78045. In such a case the lower rate can still be awarded if<sup>1</sup>

1. one of the partners is in receipt of
  - 1.1 "AA" or
  - 1.2 the care component of DLA at the highest or middle rate or
  - 1.3 the daily living component of PIP at the standard or enhanced rate or
  - 1.4 AFIP and
2. the other partner is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired **and**
3. there are no persons aged 18 or over
  - 3.1 normally residing with the partners or
  - 3.2 who the partners normally reside with (see DMG 78065 et seq) **and**

8. whether the person owns or rents any other accommodation
9. whether the person has any liabilities for services/utilities/tv licence.

### **Example**

Agnes has been awarded the care component of DLA at the middle rate and no one gets CA (or UC CE) for caring for her. She owns her own home but for the past two years has slept every night at her son's house. She keeps her clothes and some of her things at her son's house. She goes home for the day two or three days a week, to clean up and do the garden. But she always returns to her son's to sleep. Agnes is responsible for the bills for her home and she and her son still regard Agnes's house as her home. Agnes' house has never been put up for sale.

Agnes normally lives at her son's house because

1. she sleeps at her son's house every night
2. her clothes and some of her things are kept at her son's
3. she only goes back to her own house occasionally and in daylight hours
4. she spends the majority of her time at her son's house.

Agnes is not entitled to an additional amount for the severely disabled. The DM considers whether the value of Agnes' house should be taken into account.

### **Sharing the accommodation**

78068 People should not be regarded as sharing the accommodation if<sup>1</sup>

1. the only shared area is a
  - 1.1 bathroom or
  - 1.2 lavatory or
  - 1.3 communal area or
2. they are separately liable to make payments to the landlord for that accommodation.

**Note:** A person should still be regarded as sharing the kitchen even if they do not enter or use it where items for the persons use are stored there or their meals are prepared there.

*1 SPC Regs, Sch I, para 3(1); R(IS) 12/96*

78069 A communal area is<sup>1</sup> an area of common access (not a room) including

1. halls
2. passageways
3. stairways
4. rooms of common use in sheltered accommodation.

*1 SPC Regs, Sch I, para 3(2)*

### **Example**

Katja gets “AA” and no one gets CA (or UC CE) for caring for her. She lives in a self-contained granny flat attached to her daughter’s house. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter’s house and the front door of the property is shared. Everything else is separate.

The hall is the only shared area and is a communal area. Katja does not share the accommodation and does not normally reside with her daughter.

**Note:** A person should still be regarded as sharing the kitchen even if they do not enter or use it if items for the person’s use are stored there or their meals are prepared there. A kitchen is not shared if a person needs to pass through it to access to their self-contained flat.

### **Students**

78070 In a case where a student lives at a university address during term time and lives at their parents’ home for some weekends and during the holidays, the DM should have regard to the considerations at DMG 78067 before deciding which address is where they normally reside. Whichever address is chosen will remain the student’s normal residence even when they spend time at the other address.

### **Example**

A student still retains a bedroom, furniture and some clothing at their parents’ home, they still get some mail there, are registered with the local dentist and are actually resident for 18 full weeks and most weekends. On this evidence the DM decides that the student normally resides at their parents’ home and are only temporarily absent from it whilst at university.

Alternatively the DM may decide that because the student has a tenancy agreement for a university address, they have some furniture and clothes there, they live there for 32 weeks of the year and are liable for gas, electricity and a tv licence that they normally reside at the university address and are only temporarily absent from it whilst back living with their parents.

78071

### **Meaning of liable to make payments**

78072 “Liable to make payments” refers to legal liability. When considering the question of liability, the DM must consider whether

1. the claimant has the contractual capacity to enter into an enforceable contract  
**and**
2. there was an intention to create legal relations.



# Additional amount for former claimants of IS/JSA(IB)/ESA(IR)

## General

78120 In certain cases an additional amount may be included in the AMG if a claimant transfers from IS, JSA(IB) or ESA(IR) to SPC<sup>1</sup>. This additional amount is known as the transitional amount and it

1. protects the level of a claimant's benefit income
2. is worked out on an individual basis
3. varies depending on the circumstances of each individual case.

*1 SPC Act 02, s 2(3)(b); SPC Regs, reg 6(6)(b) & Sch I, para 6*

78121 DMs should note that a transitional amount is not payable<sup>1</sup> in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

*1 SPC Regs, reg 6(2), (3)(b)*

78122 - 78125

## Qualifying conditions

78126 A claimant is entitled to a transitional amount if<sup>1</sup>

1. the claimant was entitled to IS, JSA(IB) or ESA(IR) in respect of the day before the relevant day **and**
2. on the relevant day, the relevant amount exceeds the provisional amount.

*1 SPC Regs, reg 6(6)(b); Sch I, para 6(1) & (2)*

## The relevant day

78127 The relevant day is the day in respect of which the claimant is first entitled to SPC<sup>1</sup>. That is their first day of entitlement to SPC.

*1 SPC Regs, Sch I, para 6(3)*

## The relevant amount

78128 The relevant amount<sup>1</sup> is the amount which, on the day before the relevant day, was the claimant's applicable amount for IS, JSA(IB) or ESA(IR), **less any**

1. personal allowances for dependants (see DMG 23039)<sup>2</sup>
2. Res A<sup>3</sup>
3. FP (see DMG 23076)<sup>4</sup><sup>6</sup>
4. DCP (see DMG 23242)<sup>5</sup>
5. EDP for dependants (see DMG 23181)<sup>6</sup>.

**Note:** See DMG 78129 if a transitional addition was in payment on the IS/JSA(IB) claim.

*1 SPC Regs, Sch I, para 6(5)(a) & (b); 2 IS (Gen) Regs, Sch 2, para 2; JSA Regs, Sch 1, para 2; SPC Regs, Sch I, para 6(5)(i); 3 IS (Gen) Regs, Sch 2, para 2A; JSA Regs, Sch 1, para 3; SPC Regs, Sch I, para 6(5)(ii); 4 IS (Gen) Regs, Sch 2, para 3; JSA Regs, Sch 1, para 4; SPC Regs, Sch I, para 6(5)(iii); 5 IS (Gen) Regs, Sch 2, para 14; JSA Regs, Sch 1, para 16; SPC Regs, Sch I, para 6(5)(iv); 6 IS (Gen) Regs, Sch 2, para 13A; JSA Regs, Sch 1, para 15A; SPC Regs, Sch I, para 6(5)(v)*

### Example

Sian lives with her twelve year old dependant grandson Tim. She has an IS applicable amount of £108.90 on the day before her first day of entitlement to SPC (the relevant day). That is £54.65 personal allowance for herself, £38.50 dependants allowance for Tim and £15.75 FP.

The relevant amount for Sian is £54.65. That is her IS applicable amount of £108.90 less £38.50 dependants allowance and £15.75 FP.

### Transitional addition in payment

78129 There may be transitional additions in payment on the IS or JSA(IB) claim (see DMG Chapter 36). When working out the relevant amount in such a case, the deductions in DMG 78128 still apply, but the applicable amount should be increased to **include** any transitional additions in payment<sup>1</sup>.

*1 IS (Transitional) Regs 1987, Part II; JSA Regs, reg 87(1); SPC Regs, Sch I, para 6(6)*

### People in hospital

78130 A claimant or partner may be in hospital at or around the point of transfer from IS or JSA(IB) to SPC. In such a case, the relevant amount should be calculated in the normal way **unless** the

1. applicable amount of IS or JSA(IB) is reduced<sup>1</sup> (see DMG 24301 et seq) on the day before the relevant day **and**
2. amount of the SMG does not fall to be reduced<sup>2</sup> (see DMG 78700 et seq) on the relevant day.

In such a case calculate the relevant amount **as if** the applicable amount of IS or JSA(IB) had not been reduced<sup>3</sup>.

*1 IS (Gen) Regs, Sch 7, para 1; JSA Regs, Sch 5, para 5; 2 SPC Regs, Sch III, para 2(2); 3 Sch I, para 6(7)*

78131 - 78133

### The provisional amount

78134 The provisional amount is the amount of the AMG (see DMG 77151) applicable to the claimant on the relevant day, without any transitional amount<sup>1</sup>.

*1 SPC Regs, Sch I, para 6(4)*

78135

## Amount payable

- 78136 Where a transitional amount is applicable, the amount payable is the amount by which the relevant amount exceeds the provisional amount<sup>1</sup>.

*1 SPC Regs, Sch I, para 6(1)*

### Example 1

Victor, who lives alone, transfers from IS to SPC. He has an IS applicable amount of £170.90 on the day before the relevant day. That is £54.65 personal allowance, £23.30 DP, £42.95 SDP and £50 housing costs. Victor also has a transitional addition of £13.80. The relevant amount for Victor is £184.70.

The SMG for Victor is £102.10 and an additional amount of £42.95 is applicable because Victor is treated as severely disabled. An additional amount of £50 is also applicable for housing costs. Victor's AMG is £195.05 [£102.10 + £42.95 + £50]. The provisional amount for Victor is £195.05.

A transitional amount is not applicable. This is because the relevant amount [£184.70] does not exceed the provisional amount [£195.05].

### Example 2

Dermot transfers from JSA(IB) to SPC. He has an applicable amount of £142.10 on the day before the relevant day. That is £54.65 personal allowance, £47.45 PP and £40 housing costs. Dermot also has a transitional addition, awarded on a previous conversion so that his total benefit income did not reduce, which amounts to £8.15. The relevant amount for Dermot is £150.25.

The SMG for Dermot is £102.10 and an additional amount of £40 is also applicable for housing costs. Dermot's AMG is £142.10 [£102.10 + £40]. The provisional amount for Dermot is £142.10.

A transitional amount of £8.15 is applicable. This is because the relevant amount [£150.25] exceeds the provisional amount [£142.10] by £8.15.

78137 - 78138

## Recalculation of the transitional amount

- 78139 The transitional amount may have to be recalculated when the rates of SPC are updated, or there is a change of circumstances.

## Reduction of the transitional amount

- 78140 Unless DMG 78153 applies, the transitional amount should be reduced by the amount of any increase in the AMG<sup>1</sup>

*1 SPC Regs, Sch I, para 6(8)(a)*

### Example

Dermot is entitled to GC with an SMG of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving him an AMG of	£150.25 (a)
Dermot has no other income so the amount of GC payable is	£150.25
On uprating his SMG becomes	£105.45
the additional amount for housing costs remains at	£40
and without any reduction to the transitional amount of	£8.15
the AMG would be	£153.60 (b)
Dermot's transitional amount is reduced by £3.35 (b - a) to	£4.80
his AMG is then made up of an SMG of	£105.45
an additional amount for housing costs of	£40
and a transitional amount of	£4.80
leaving the total AMG at	£150.25

### Anniversary date

- 78141 The first SPC anniversary date (which was the date that had applied to the IS/JSA(IB) claim and which has been carried forward to SPC) is a change of circumstances where a transitional amount, or increased transitional amount, may be needed.
- 78142 In such a case, the transitional amount should be calculated or, as the case may be, recalculated, on the basis that the provisional amount on the relevant day
1. included an additional amount for housing costs calculated under the SPC rules that apply from the relevant anniversary date **and**
  2. did not include the amount that was allowed for housing costs in the IS/JSA(IB) claim<sup>1</sup>.
- 1 SPC Regs, Sch 1, para 6(11)*
- 78143 DMs should note that the transitional amount calculated
1. should be applied from the relevant anniversary date<sup>1</sup> **and**
  2. is the amount which would have applied had the provisional amount included the housing costs which applied from the anniversary date rather than those which actually applied in the first SPC week **and**

3. takes into account any erosion that may have taken place between the first week of SPC and the relevant anniversary date (for example as a result of uprating).

*1 SPC Regs, Sch 1, para 6(12)*

### **Withdrawal of the transitional amount**

78144 The transitional amount should be withdrawn from the day on which the

1. transitional amount is reduced to nil<sup>1</sup> following a change of circumstances or uprating or
2. claimant or partner ceases to be entitled to SPC<sup>2</sup>.

*1 SPC Regs, Sch 1, para 6(8)(b)(i); 2 Sch 1, para 6(8)(b)(ii)*

78145 DMs should note that

1. when a transitional amount has been reduced to nil, it cannot be re-applied
2. in some cases the transitional amount may be reinstated on a repeat claim (see DMG 78150 et seq)
3. there is no entitlement to a transitional amount if the claimant becomes<sup>1</sup>
  - 3.1 a prisoner or
  - 3.2 a member of a religious order fully maintained by their order.

*1 SPC Regs, reg 6(2), (3)(b) & (6)*

#### **Example 1**

Bina is entitled to GC with an SMG of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving her an AMG of	£150.25 <b>(a)</b>

On uprating, Bina's SMG increases to	£105.45
the additional amount for housing costs also increases following a change	£45.00
and without any recalculation to the transitional amount of	£8.15
the AMG would be	£158.60 <b>(b)</b>

The AMG has increased by <b>(b) - (a)</b>	£8.35
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This is greater than the transitional amount, which is reduced to nil and permanently withdrawn.

Bina's AMG is then made up of an SMG of	£105.45
with an additional amount for housing costs of	£45.00
and the total amount of GC is	£150.45

## Example 2

Ernest is entitled to GC with an SMG of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving him an AMG of	£150.25 (a)
Following a change of circumstances the additional amount for housing costs increases to	£50
and without any recalculation to the transitional amount of	£8.15
the AMG would be	£160.25 (b)
The AMG has increased by (b) - (a)	£10
This is more than the transitional amount of	£8.15
so Ernest's transitional amount is permanently withdrawn.	
His AMG is then made up of an SMG of	£102.10
and an additional amount for housing costs of	£50
giving a total AMG of	£152.10

78146 - 78149

## Breaks in entitlement

- 78150 A claimant may again be entitled<sup>1</sup> to a transitional amount following a break in entitlement to SPC, where the
1. claimant was entitled to a transitional amount at the end of the previous claim  
**and**
  2. break in entitlement was eight weeks or less.
- 1 SPC Regs, Sch I, para 6(9)(a)*
- 78151 If the break in entitlement to SPC is more than eight weeks, a transitional amount will not be applicable.
- 78152 Where the conditions in DMG 78150 are satisfied, the DM should



# Additional amount for housing costs

## Introduction

78170 **[See ADM Memo 8/18]** When considering the amount of the AMG, an additional amount for housing costs may be applicable<sup>1</sup>. But this additional amount is not normally payable<sup>2</sup> in the case of

1. prisoners **and**
2. members of religious orders who are fully maintained by their order.

*1 SPC Act 02, s 2(3)(b); SPC Regs, reg 6(6)(c) & Sch II; 2 reg 6(2), (3) & (6)*

78171 The exception to this general rule is where a person is a remand prisoner. In such a case an additional amount for housing costs may continue for up to 52 weeks. For further information on remand prisoners see the guidance at DMG 78650 et seq.

78172 DMs should note that the additional amount for housing costs is variable depending on the circumstances of each individual case.

## Basic qualifying conditions

78173 Claimants are entitled to an additional amount for housing costs if<sup>1</sup>

1. the claimant or partner is
  - 1.1 liable for those costs (see DMG 78215) **and**
  - 1.2 responsible for those costs (see DMG 78313) **and**
  - 1.3 treated as living in the home that those costs are for (see DMG 78220 et seq) **and**
2. those costs are allowable (see DMG 78270 et seq).

*1 SPC Regs, Sch II, para 1(1)*

## Claimants without housing costs

78174 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is no

1. liability or responsibility for housing costs **and**
2. entitlement to an additional amount for housing costs.

## Rounding of fractions

78175 Where any calculation relating to housing costs results in a fraction of a penny, it should be rounded up to the next whole penny<sup>1</sup>.

*1 SPC Regs, Sch II, para 15*

## Former claimants of IS/JSA(IB)

- 78176 The rules on housing costs in IS and JSA(IB) were changed in 1995. Savings provisions protected existing claimants so that their benefit income did not reduce because of the new rules (see DMG 23684 et seq).
- 78177 But in SPC the level of a claimant's benefit income can only be protected if the claimant is entitled to a transitional amount (see DMG 78120).
- 78178 Where a claimant
1. transfers from IS or JSA(IB) to SPC **and**
  2. has transitional protection for housing costs in their IS or JSA(IB) claim
- the additional amount for housing costs should be calculated under the rules that apply in SPC.
- 78179 If the claimant is
1. entitled to a transitional amount, any difference in the amount awarded for housing costs will be taken into account in the calculation of the transitional amount (see DMG 78120)
  2. not entitled to a transitional amount, the claimant will lose the transitional protection previously received on the IS or JSA(IB) claim.

78180 - 78184



## Definitions

78185 The following paragraphs explain the meaning of terms used throughout this guidance on housing costs.

### Dwelling occupied as the home

78186 Dwelling occupied as the home means<sup>1</sup>

1. the dwelling and any
  - 1.1 garage **and**
  - 1.2 garden **and**
  - 1.3 outbuildingsnormally occupied by the claimant as the home **and**
2. any buildings or land not occupied as the home which it is impracticable or unreasonable to sell 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 that is no longer occupied as the home<sup>2</sup>.

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

#### Example

Shimon and Rachel live on a plot of land on which there is a caravan, some outbuildings and an old cottage in need of repair. The LA allow them 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 cannot 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. The cottage is occupied to a limited extent as part of that dwelling. Shimon can therefore have an additional amount for 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

78187 The dwelling normally occupied as the home is the home where the claimant and their partner normally live. In this context “normally” means “usually”. Periods of residence, or absence, that are of an exceptional nature should be disregarded.

## Rooms sublet

78188 Rooms that are sublet in a house are normally part of the dwelling occupied as the home. The exception is where it is practicable or reasonable to sell that part of the house separately. In such a case that part of the house is not part of the dwelling occupied as the home.

78189 - 78194

## Housing costs

78195 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. See ADM memo 8/18. Payments for other housing costs, such as service charges, continue. 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, decision makers may wish to contact DMA Leeds.

78196 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 SPC Regs, Sch II, para 1(1), 1(2)(b), & 135*

78197 Only those payments in DMG 78196 should be allowed as housing costs. For example, the following should not be allowed as housing costs

1. rent required by a person who
  - 1.1 owns jointly with the claimant the property occupied by the claimant  
**and**
  - 1.2 does not live in that property
2. water charges paid via a landlord (for example, paid at the same time as service charges).

This list is not exhaustive.

*1 R(IS) 19/93*

## **Water charges**

78198 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.



78199 - 78209



## Steps to follow when deciding housing costs

- 78210 When deciding whether an additional amount for housing costs is applicable and if so, what that amount should be, the DM should determine
1. if the claimant or partner is liable for the housing costs (see DMG 78215)
  2. if the amount spent is on the dwelling occupied as the home (see DMG 78188 and 78220)
  3. if the housing costs cannot be met (see DMG 78270)
  4. how to apportion the housing costs if the dwelling is used for domestic and business use (see DMG 78310)
  5. if there are any other eligible housing costs that can be allowed (see DMG 78440 et seq)
  6. if a deduction for a non-dependant is necessary (see DMG 78500).

78211 - 78214



## Liability for housing costs

- 78215 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 (see DMG 77101) 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 SPC Regs, Sch II, para 3(a); 2 Sch II, para 3(b); R(IS) 12/94; R(IS) 8/01; 3 SPC Regs, Sch II, para 3(c)*

78216 - 78219





# Treated as occupying a dwelling as the home

## Definitions

78220 The following definitions apply only to this guidance on treating a person as occupying a dwelling as the home.

### Medically approved

78221 Medically approved means certified by a medical practitioner<sup>1</sup>.

*1 SPC Regs, Sch II, para 4(13)(a)*

### Training course

78222 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 SPC Regs, Sch II, para 4(13)(b)*

## Dwelling where claimant normally lives

78223 Unless DMG 78225 - 78236 applies, a claimant should

1. be treated as living in the home where they, and any partner, normally live (see DMG 78189 and 84395) **and**
2. not be treated as occupying any other dwelling as the home<sup>1</sup>.

*1 SPC Regs, Sch II, para 4(1)*

78224 In deciding whether a dwelling is normally occupied as the claimant's home, the DM should

1. consider all homes that the claimant has, whether or not they are in GB<sup>1</sup> **and**
2. not treat the claimant as living in more than one home, unless the circumstances in DMG 78231 - 78235 apply **and**
3. where the claimant is responsible for housing costs on more than one property, and DMG 78231 et seq does not apply, treat the claimant as living in the home they normally occupy.

*1 SPC Regs, Sch II, para 4(2)*

## Full-time students and claimants on training courses

78225 Single claimants who are F/T students (see DMG 78009) or on a training course (see DMG 78222), 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 pay housing costs if<sup>1</sup>

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

*1 SPC Regs, Sch II, para 4(3); 2 Sch II, para 4(4)*

### Example

Griff, who has no partner, is a mature student studying in Bangor. He is renting a flat in Bangor and has a 52 week contract. When not studying he lives with his son and daughter in law in their home in Liverpool. He is liable to pay his son for these lodgings during his stay. Griff cannot be treated as living in his flat in Bangor because he has a liability at both homes.

78226 A F/T student may live in the home for the purposes of facilitating attendance on the course. If so, the student should not normally be treated as living there for periods of absence that are outside their period of study. The exception is when the student's absence is due to admission to hospital for treatment<sup>1</sup>.

*1 SPC Regs, Sch II, para 4(4)*

78227 - 78229

## Temporary accommodation

78230 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

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

*1 SPC Regs, Sch II, para 4(5)*

## Liable for two homes

- 78231 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
1. they have left their former home, and remain absent, because of fear of violence
    - 1.1 in that home or
    - 1.2 by a close relative or
    - 1.3 by a former partnerand it is reasonable to meet housing costs on both homes<sup>1</sup> or
  2. in the case of partners, one partner is a F/T student or is on a training course and it is
    - 2.1 unavoidable that they should have two homes **and**
    - 2.2 reasonable to meet housing costs on both homes<sup>2</sup>.

**Note:** This does not apply where a person is liable to make payments on more than two dwellings.

*1 SPC Regs, Sch II, para 4(6)(a); 2 Sch II, para 4(6)(b)*

- 78232 The question of reasonableness in DMG 78231 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 SPC.

- 78233 A person can also be treated as living in, and allowed housing costs for, two homes for up to four weeks if<sup>1</sup>
1. they move to a new home, for a reason other than those in DMG 78230 and 78231 **and**
  2. they are liable for housing costs on both homes **and**
  3. the liability to make payments for both homes is unavoidable.

*1 SPC Regs, Sch II, para 4(6)*

- 78234 The four weeks under DMG 78233 is payable from either
1. the first day of the benefit week where the move to the new home takes place on that day or
  2. the first day of the next following benefit week in which the move occurs if it does not<sup>1</sup>.

*1 SPC Regs, Sch II, para 4(6)(c)*

- 78235 Where SPC is payable in arrears the specified period of four weeks commences from the first day of the benefit week in which the move occurs<sup>1</sup>.

*1 SS (Miscellaneous Amendments) (No. 5) Regs, 2006, reg 4(3)*

- 78236 A claimant can be allowed housing costs for two separate properties if he is treated as living in both the houses for which costs are allowed. See DMG 84395 for the criteria to be satisfied when more than one property could be the dwelling occupied as the home<sup>1</sup>.

*1 R(JSA) 9/03*

- 78237 Claimants are entitled to an additional amount for housing costs if

1. the claimant or partner is
  - 1.1 liable for those costs (see DMG 78215) and
  - 1.2 responsible for those costs and
  - 1.3 treated as living in the home that those costs are for (see DMG 84395)
2. those costs are allowable.

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

- 78238 A claimant may be treated as occupying a dwelling as the home for any period of up to four weeks immediately before the date they moved in where

1. they have moved in to the home and were liable to make payments for that home before moving in<sup>1</sup> and
2. they had claimed SPC before moving in<sup>2</sup> and a decision was
  - 2.1 not made on the claim or
  - 2.2 made on the claim but no additional amount for housing costs was included or
  - 2.3 made refusing the claim, but another claim was made within four weeks of the date on which they moved in and
3. the delay in moving in was reasonable and
  - 3.1 necessary because the home was being adapted to meet the disablement needs of
    - 3.1.a the claimant or

- 3.1.b the claimant's partner or
- 3.1.c a person under the age of 20 for whom the claimant or partner is responsible<sup>3</sup> or
- 3.2 the move was delayed pending a decision on a connected social fund claim<sup>4</sup> or
- 3.3 they became liable to pay the housing costs while they were
  - 3.3.a a patient or
  - 3.3.b in a care home<sup>5</sup>.
- 3.4 they were waiting for a decision on a local welfare provision claim

*1 SPC Regs, Sch II, para 4(7)(a); 2 Sch II, para 4(7)(b); 3 Sch II, para 4(7)(c)(i);  
4 Sch II, para 4(7)(c)(ii); 5 Sch II, para 4(7)(c)(iii)*

78239

## Temporary absences from home

### Trial periods in a care home

78240 A person who enters a care home

1. to see whether the accommodation suits their needs **and**
2. with the intention of returning home if the accommodation is unsuitable **and**
3. whose part of the dwelling normally occupied as the home is not let or sub-let to another person

should be treated as living in their home, and have their housing costs allowed, for up to 13 weeks from the day they went into the care home<sup>1</sup>. But DMs should note that the number of weeks for which an absence is treated as temporary is subject to an overall maximum of 52 weeks (see DMG 78254).

*1 SPC Regs, Sch II, para 4(8) & (9)*

### Example

Diarmuid has been in hospital for 43 weeks and gets housing costs for his own home throughout that period. Diarmuid goes into a care home for assessment. He continues to be treated as temporarily absent from his own home and carries on getting housing costs for that home

1. for a further nine weeks or
  2. 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

78241 Unless DMG 78240 or 78254 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 sub-let to another person **and**
3. the period of absence is unlikely to exceed 13 weeks.

*1 SPC Regs, Sch II, para 4(10)*

### Example

Sara goes to stay with her brother while her home is renovated following flood damage. She expects to be away from home for ten weeks. Although Sara is temporarily absent from her home she is still treated as living in that home.

78242 The intention to return to live in the home 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 out of the claimant's control.

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

78243 When considering DMG 78241, an additional amount for housing costs may be allowed for up to 13 weeks from the first day of absence. But where the absence is likely to exceed 13 weeks

1. the absence should be treated as permanent from the first day of the absence **and**
2. an additional amount for housing costs should not be awarded.

78244 - 78253

## Temporary absences up to 52 weeks

78254 A person should be treated as living in their home for any period of temporary absence of not more than 52 weeks if<sup>1</sup>

1. they intend to return to live in the home<sup>2</sup> **and**
2. the part of the home they normally live in has not been let or sub-let to another person<sup>3</sup> **and**
3. they
  - 3.1 are detained in custody on remand pending trial **or**
  - 3.2 are detained pending sentence upon conviction **or**



- 3.3 are required to live as a condition of bail in either
  - 3.3.a a dwelling other than a dwelling he occupies as his home or
  - 3.3.b an approved bail hostel or
  - 3.3.c an approved probation hostel<sup>4</sup> or
- 3.4 are resident in a hospital or similar institution as a patient<sup>5</sup> or
- 3.5 are, or their partner, or a person under the age of 20 for whom the claimant or partner is responsible, is undergoing
  - 3.5.a medical treatment or
  - 3.5.b medically approved convalescence
 in the UK or elsewhere, in accommodation that is not a care home<sup>6</sup> or
- 3.6 are on a training course in the UK or elsewhere<sup>7</sup> or
- 3.7 are providing medically approved care for another person who is living in the UK or elsewhere<sup>8</sup> or
- 3.8 are caring for a person under the age of 20 whose parent or guardian is temporarily absent from their home because they are receiving medically approved care or treatment<sup>9</sup> or
- 3.9 are
  - 3.9.a living in the UK or elsewhere and
  - 3.9.b receiving medically approved care
 in accommodation that is not a care home<sup>10</sup> or independent hospital or
- 3.10 are a F/T student to whom DMG 78225 and 78231 2. do not apply<sup>11</sup> or
- 3.11 are receiving care in a care home or independent hospital, other than as in DMG 78240<sup>12</sup> or
- 3.12 have left the home because of fear of violence
  - 3.12.a in that home or
  - 3.12.b by a former partner or
  - 3.12.c by a close relative
 and DMG 78231 1. does not apply<sup>13</sup> and
- 4. the absence is unlikely to
  - 4.1 exceed 52 weeks or
  - 4.2 substantially exceed 52 weeks in exceptional circumstances<sup>14</sup> (for example where a claimant has gone into hospital or has to live in a hostel as a condition of bail).

*1 SPC Regs, Sch II, para 4(11) & (12); 2 Sch II, para 4(11)(a); 3 Sch II, para 4(11)(b); 4 Sch II, para 4(11)(c)(i); 5 Sch II, para 4(11)(c)(ii); 6 Sch II, para 4(11)(c)(iii); 7 Sch II, para 4(11)(c)(iv); 8 Sch II, para 4(11)(c)(v); 9 Sch II, para 4(11)(c)(vi); 10 para 4(11)(c)(vii); 11 Sch II, para 4(11)(c)(viii); 12 Sch II, para 4(11)(c)(ix); 13 Sch II, para 4(11)(c)(x); 14 Sch II, para 4(11)(d)*

78255 The intention to return to live in the home 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 out of the claimant's control.

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

78256 When considering DMG 78254, an additional amount for 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. Such absences are treated as temporary if the person is not absent from home for more than 52 consecutive weeks.

*1 SPC Regs, Sch II, para 4(12)*

78257 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 SPC Regs, Sch II, para 4(11)(d)*

#### **Example 1**

Jon, who is in receipt of SPC, has to live in a hostel for eight weeks 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 sub-let. Jon is temporarily absent from his home from the date he went to live in the hostel.

#### **Example 2**

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

78258 - 78269



## Housing costs not met

78270 An additional amount for housing costs should not be allowed for

1. HB expenditure<sup>1</sup> or
2. claimants in a care home, unless their absence from the dwelling normally occupied as their home is temporary<sup>2</sup> (see DMG 78240 et seq)

*1 SPC Regs, Sch II, para 5(1)(a); 2 Sch II, para 5(1)(b);*

78271 HB expenditure means<sup>1</sup> any element for which HB may be payable<sup>2</sup>.

**Note:** HB may be payable for such periodical payments as rent, service charges, mooring charges and for the site on which a caravan or mobile home stands, but see DMG 78463 where the claimant is an owner .

*1 SPC Regs, Sch II, para 5(1)(a); 2 HB Regs, reg 12(1)*

78272 - 78309



# Apportionment of housing costs

## Composite hereditaments

78310 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 SPC Regs, Sch II, para 6(4); Local Government Finance Act 1988, s 41(1); Abolition of Domestic Rates Etc. (Scotland) Act 1987, s 26(1)*

78311 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.

## Responsibility for housing costs

78312 A person who is liable for a housing cost (see DMG 78215) is responsible for that cost unless someone else has accepted responsibility for it. If responsibility is shared, the person is responsible only for their share<sup>1</sup>.

*1 SPC Regs, Sch II, para 6(5); R(IS) 4/00;*

78313 - 78437



# Other housing costs

## Definitions

78438 The following paragraphs explain the meaning of terms used throughout this guidance on other eligible housing costs.

## Shared ownership schemes

78439 Property can be owned jointly by more than one person or organization (see DMG Chapter 84). This is known as shared ownership and can include many different types of arrangement. But DMs should note that for housing costs purposes, shared ownership does not simply mean co-ownership.

78440 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 someone 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 SPC Regs, Sch II, para 13(6)(a)*

78441 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.

**Note:** In shared ownership schemes (other than co-ownership) all service charges are eligible to be met by HB and therefore not allowed as other housing costs.

78442

## Crown tenant

78443 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. But DMs should note that Greenwich Hospital Estate tenants are Crown tenants.

*1 SPC Regs, Sch II, para 13(6)(b)*

## **Housing association**

78444 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 SPC Regs, Sch II, para 13(6)(c); Housing Associations Act 1985, s 1(1)*

## **Long tenancy**

78445 A long tenancy<sup>1</sup> is one where the lease is made by deed, registered with the Land Registry and

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<sup>2</sup> (unless DMG 78446 applies).

*1 SPC Regs, Sch II, para 13(6)(d); 2 CH 883/2006*

78446 An original lease that is not a long tenancy may have been sub-let for a fixed term. The sub-let should not be treated as a long tenancy even if there is a covenant or obligation for perpetual renewal.

78447 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 1969, s 149(6)*

## **Rent charge**

78448 Rent charges, including chief rents, are rents charged to people under the conditions by which they own the freehold of a property<sup>1</sup>.

*1 Rent Charges Act 1977, s 1*

78449 - 78454

## **Other eligible housing costs**

78455 Subject to the deductions in DMG 78465 and the reduction in DMG 78461, an amount for housing costs can be allowed on payments for<sup>1</sup>

1. rents or ground rents on long tenancies
2. service charges (see DMG 78457)
3. rent charges (see DMG 78458)
4. co-ownership schemes (see DMG 78459)
5. tenancies or licences of Crown tenants (see DMG 78460)
6. tents and their sites (see DMG 78462).

*1 SPC Regs, Sch II, para 13(1)*

## Long tenancies

78456 Rents, and ground rents should be allowed where payments are connected to long tenancies<sup>1</sup>.

■

## Service charges

78457 **[See Memo DMG SPC 53]** Service 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<sup>3</sup> **and**
4. for services provided by a landlord or the agents 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 8.

## Rent charges

78458 Rent charges, including chief rents, should be allowed as other eligible housing costs<sup>1</sup>.

■

## Co-ownership schemes

78459 Payments under co-ownership schemes should be allowed as eligible housing costs<sup>1</sup>. 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.

■

### Example

Helen rents her home through a housing association who let the property to Helen under a co-ownership scheme. If she leaves the scheme, Helen will receive a percentage of the value of the property. Helen 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.

## **Crown tenants**

78460 Payments under or relating to the tenancy or licence of the Crown tenants should be allowed as eligible housing costs<sup>1</sup>.

*1 SPC Regs, Sch II, para 13(1)(e)*

## **Reduction for water charges**

78461 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
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.

*1 SPC Regs, Sch II, para 13(5)*

## **Tents**

78462 Where the dwelling occupied as the home is a tent, housing costs should be allowed for payments in respect of the

1. tent and
2. site on which the tent stands<sup>1</sup>.

*1 SPC Regs, Sch II, para 13(1)(f)*

## **Mooring charges and pitch fees for owners**

78463 Where the claimant is an owner any mooring charges for a houseboat or pitch fees for a caravan or mobile home will not be met by HB<sup>1</sup>. Neither will they be eligible to be met as a housing cost under SPC because they do not fall under any of the other housing costs described at 78455.

*1 HB Regs, reg 12(2)(c)*

78464

## **Deductions from other eligible housing costs**

78465 Deductions should be made from other eligible housing costs<sup>1</sup> where they include an amount for

1. fuel charges or
2. ineligible service charges or
3. repairs and improvements.

*1 SPC Regs, Sch II, para 13(2)*

## **Deductions for fuel charges**

78466 Where any of the charges for other eligible housing costs in DMG 78455 include an amount for fuel charges, the following deductions should be made<sup>1</sup>



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

*1 SPC Regs, Sch II, para 13(2)(b); HB (Gen) Regs, Sch 1, para 1; 2 Sch 1, para 1(a)(i); 3 Sch 1, para 1(a)(ii); 4 Sch 1, para 1(a)(iii); 5 Sch 1, para 1(a)(iv); 6 Sch 1, para 1(a)(v); 7 Sch 1, para 1(b); 8 Sch 1, para 1(c); 9 Sch 1, para 1(d); 10 Sch 1, para 1(e); 11 Sch 1, para 1(f); 12 Sch 1, para 1(g)*

78472 A payment (as in DMG 78471 1.4) is<sup>1</sup> any payment made by a LA to the claimant, the claimant's partner, or to another person on their behalf, relating to

1. welfare services in respect of which the Secretary of State has paid a grant to the LA<sup>2</sup> or
2. welfare services in respect of which the National Assembly for Wales has paid a grant to the LA<sup>3</sup> or
3. housing support services in respect of which Scottish Ministers have paid a grant to the LA<sup>4</sup>.

**Note:** For these purposes a LA includes, in relation to England, a county council.

*1 HB (Gen) Regs, Sch 1, para 7; 2 Local Government Act 2000, s 93(1); 3 s 93(2); 4 Housing (Scotland) Act 2001, s 91(1)*

## Connected to the adequacy of the accommodation

78473 **[See Memo DMG SPC 53]** 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 78457 3.) 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

Josh lives in one of a group of 20 flats set in enclosed gardens. The flats are all linked to a communal area by paths. Service charges are payable for maintenance of the communal areas, gardens and warden, 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.

**Note 1:** In arriving at the eligible amount the DM included only those aspects of the warden costs that related to the adequacy of the accommodation.

**Note 2:** Commissioners have addressed some of the issues encountered when determining the eligible and ineligible aspects of the service charge. The Commissioners have decided that:

the upkeep/maintenance of communal pathways, gardens<sup>1</sup>,  
repair of a lift  
repointing of brickwork

the costs of a car park barrier  
a car park attendant<sup>2</sup>  
the installation of a pergola  
the repair of a clock tower

are all connected with the provision of adequate accommodation.

*1 CIS/1496/95; 2 CIS/2205/00;*

78474 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.

#### **Example 1**

Razak's landlord charges him for the cost of improvements to his driveway. The previous shingle drive has been re-laid using cobbles to enhance the appearance of the property and to avoid loose chippings hitting pedestrians when cars use the driveway. The DM determines that the improvements to the driveway

1. have not been undertaken to maintain the fitness of the home for human habitation **and**
2. are not covered by the list of eligible repairs and improvements.

#### **Example 2**

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. It 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 3**

The landlord arranges the painting of the property 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.

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

78475 The charges for other eligible housing costs in DMG 78455 may include an amount for repairs and improvements (see DMG 78420). In such a case the amount for repairs and improvements cannot be allowed and should be deducted<sup>1</sup>.

*1 SPC Regs, Sch II, para 13(2)(c)*

78476 - 78479

## Contingency funds

78480 **[See Memo DMG SPC 53]** 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.

78481 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.

78482 – 78484

## Costs payable over 53 weeks or irregularly

78485 Where other housing costs are normally 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 SPC Regs, Sch II, para 13(3)*

## Payment of costs waived

78486 Other housing costs should continue to be allowed for up to eight weeks if<sup>1</sup>

1. the claimant or the claimant’s partner pays for reasonable repairs or redecoration to the home **and**
2. that work was not the responsibility of the claimant or their partner **and**
3. payment for other housing costs is waived because the work has been done.

*1 SPC Regs, Sch II, para 13(4)*

## Attribution of service charges

78487 Those housing costs attributed to a fixed 52 week period under DMG 78485 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 SPC includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.04 - 31.3.05. The amount for housing costs is due to end on 31.3.05. In February 2005 the claimant sends in an estimate of service charges for the 2005-06 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 1.4.05 - 31.3.06. On 9.9.05 the claimant receives an invoice for £243.85, being the balance of finalised service charges for the 2004-05 year, and sends it to the DWP. The DM supersedes the decision of February 2005 to award housing costs of £10.87 and £4.69 for the period 9.9.05 - 31.3.06, and £4.69 for the period 1.4.06 - 6.9.06, the balance for the 2004-05 year charges being paid over a 52 week period. If a further estimate for charges for the 2005-06 year is received, the September 2005 decision may be superseded accordingly.

78488 - 78499

# Persons residing with the claimant

## Introduction

78500 Where non-dependants live with the claimant, a deduction from the allowable housing costs may be appropriate<sup>1</sup>. A deduction should be considered for each non-dependant or group of non-dependants.

*1 SPC Regs, Sch II, para 14*

## Definition of a non-dependant

78501 With the exception of those people mentioned in DMG 78510, non-dependants are people aged 18 or over who normally reside with the claimant<sup>1</sup>.

*1 SPC Regs, Sch II, para 1(4) & 14*

## Meaning of normally resides

78502 A person normally resides where they usually live. Periods of residence or absence that are of an exceptional nature should be disregarded. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

78503 When considering where a person normally resides the DM should have regard to

1. the total amount of time spent in a place
2. how often time is spent in a place
3. how permanent the stay is thought to be
4. the person's intentions
5. individual circumstances
6. what degree the accommodation is shared
7. the services provided
8. whether the person owns or rents any other accommodation.

### Example

Mary normally lives alone in her own flat. She is entitled to an additional amount for housing costs. Her brother Steven comes to stay with her for a week at a time every three months. He does not normally live with Mary and is not a non-dependant.

## Sharing the accommodation

78504 People should not be regarded as sharing the accommodation if<sup>1</sup>

1. the only shared area is a
  - 1.1 bathroom or

1.2 lavatory or

1.3 communal area or

2. they are separately liable to make payments to the landlord for that accommodation.

**Note:** A person should still be regarded as sharing the kitchen even if they do not enter or use it where items for the persons use are stored there or their meals are prepared there.

*1 SPC Regs, Sch II, para 1(8); R(IS) 12/96*

78505 A communal area is<sup>1</sup> an area of common access (not a room) including

1. halls
2. passageways
3. stairways
4. rooms of common use in sheltered accommodation.

*1 SPC Regs, Sch II, para 1(9)*

**Example**

Katja lives in a self-contained granny flat attached to her daughter's house. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter's house and the front door of the property is shared. Everything else is separate.

The hall is the only shared area and is a communal area. Katja does not share the accommodation and does not normally reside with her daughter.

78506 - 78509

## **Non-dependant deduction not appropriate**

78521 Deductions should not be made if

- 1.** the claimant or any partner
  - 1.1** is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired<sup>1</sup> (see DMG 78008) or
  - 1.2** is receiving in respect of themselves<sup>2</sup>
    - 1.2.a** “AA” or
    - 1.2.b** the care component of DLA or
    - 1.2.c** the daily living component of PIP or
    - 1.2.d** AFIP or
  - 1.3** has a deduction in the calculation of a rent rebate or allowance in respect of the non-dependant<sup>3</sup> or
- 2.** non-dependants are
  - 2.1** living with the claimant but the dwelling normally occupied as the home is elsewhere<sup>4</sup> or
  - 2.2** in receipt of a training allowance in connection with a youth training scheme<sup>5</sup> or
  - 2.3** F/T students<sup>6</sup>
    - 2.3.a** in a period of study or
    - 2.3.b** not in remunerative work during the recognized summer vacation appropriate to their course or
  - 2.4** aged under 25 and in receipt of IS or JSA(IB)<sup>7</sup> or
  - 2.5** aged under 25, in receipt of ESA and is not a member of the work-related activity group or are in receipt of the support component<sup>8</sup> or
  - 2.6** not living with the claimant because<sup>9</sup> they
    - 2.6.a** have been patients for more than 52 weeks (see DMG 78700 et seq) or
    - 2.6.b** are prisoners (see DMG 78651) or
  - 2.7** F/T student and
    - 2.7.a** claimant or partner has reached the age of 65<sup>10</sup> or
  - 2.8** in receipt of SPC<sup>11</sup> or
  - 2.9** entitled to UC and
    - 2.9.a** is aged less than 25 and
    - 2.9.b** does not have any earned income



**Note 1:** When calculating the 52 weeks period in 2.5.a, any periods separated by intervals of not more than 28 days, should 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 SPC Regs, Sch II, para 14(6)(a); 2 Sch II, para 14(6)(b); 3 Sch II para 14(7)(dd);  
4 Sch II, para 14(7)(a); 5 Sch II, para 14(7)(b); E & T Act 73, s 2;  
Enterprise and New Towns (Scotland) Act 1990, s 2; 6 SPC Regs, Sch II, para 14(7)(c);  
7 Sch II, para 14(7)(d); 8 Sch II, para 14(7)(g); 9 Sch II, para 14(7)(e);  
10 Sch II, para 14(7)(cc); 11 Sch II, para 14(7)(f);*

## **Deduction appropriate – UC non-dependants**

78522 Where a non-dependant is entitled to UC and is

1. aged 25 or over or
2. aged less than 25 and has earned income

a deduction at the rate described in Appendix 4 will be appropriate.

78523

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

78524 When calculating the gross weekly income of a non-dependant (see DMG 78515 and Appendix 4 to this Chapter), disregard<sup>1</sup> any

1. "AA"
2. DLA
3. payments 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
  - 3.5 the Eileen Trust
  - 3.6 the Independent Living Fund (2006) (but see note)
  - 3.7 the Skipton fund
  - 3.8 the Caxton Foundation
  - 3.9 MFET Limited
  - 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)



4. payment in kind.

5. PIP

6. AFIP

**Note:** The Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if a claimant receives funding from any of these replacement schemes.

█

78525 - 78529



## Insufficient information to determine housing costs

78530 Where, a DM is

1. deciding a claim to SPC or
2. determining an issue on SPC housing costs

the AMG should include any housing costs that can be determined immediately on the evidence available<sup>1</sup>. Where there is insufficient evidence, SPC can be awarded without any additional amount for housing costs.

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

78531 If there are several housing costs on the claim, the AMG should include only those housing costs where there is sufficient information to make a decision.

78532 The award may be revised or superseded if further evidence is received after the claim or question has been determined<sup>1</sup>. See DMG Chapters 03 and 04 for guidance on revision and supersession.

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

78533 - 78599



## Higher rate

78614 Claimants who are members of a polygamous marriage are entitled to the higher rate of additional amount for the severely disabled if<sup>1</sup>

1. both partners and each additional spouse (whether of the claimant's or of a spouse of the claimant's) are in receipt of
  - 1.1 "AA" or
  - 1.2 the care component of DLA at the highest or middle rate or
  - 1.3 the daily living component of PIP at the standard or enhanced rate or
  - 1.4 AFIP and
2. there are no other persons aged 18 or over
  - 2.1 normally residing with the partners and any additional spouse or
  - 2.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) and
3. no one is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for any member of the polygamous marriage.

*1 SPC Regs, reg 6(5)(b); Sch I, para 1(1)(b); Sch III, para 1(9)*

78615 DMs should note that DMG 78614 1. is **not** satisfied if either partner or any additional spouse is treated as being in receipt of "AA" or DLA or PIP or AFIP as in DMG 78059 2.<sup>1</sup>. In such a case the lower rate of additional amount should be considered.

*1 SPC Regs, reg 6(5)(b)*

78616 - 78619

## Additional amount for carers

78620 The additional amount for carers is paid at one rate. In polygamous marriage cases, that amount is applicable for each partner or additional spouse who satisfies the qualifying conditions in DMG 78105<sup>1</sup>. See Appendix 2 to DMG Chapter 77 for details of the rate.

*1 SPC Regs, reg 6(8); Sch III, para 1(8)*

## Additional amount for former claimants of IS/JSA(IB)

78621 A transitional amount may need to be considered if a claimant who is a member of a polygamous marriage transfers from IS or JSA(IB) to SPC. In such a case the DM should

1. follow the guidance in DMG 78120 et seq and
2. note that when calculating the relevant amount (see DMG 78128), an additional spouse is the equivalent of a partner<sup>1</sup> **not** a dependant.

*1 SPC Regs, Sch III, para 1(8)*

## Additional amount for housing costs

78622 When considering the amount of the AMG, an additional amount for housing costs may be applicable. In polygamous marriage cases, DMs should note that any references to a partner in the guidance at DMG 78170 et seq, also includes a reference to any additional spouse<sup>1</sup>.

*1 SPC Regs, Sch III, para 1(8)*

## Savings credit

78623 **[See Memo DMG 4/16] [See Memo DMG 24/17]** In polygamous marriage cases, an SPC claimant can get a SC if<sup>1</sup>

1. at least one member of the polygamous marriage is at least age 65 **and**
2. the claimant has
  - 2.1 QI that is more than the SCT **and**
  - 2.2 an income which, after the calculation at DMG 77170 et seq, allows amount A to be greater than amount B.

**Note:** From 6.12.18<sup>2</sup> at least one member of the polygamous marriage must be at least pensionable age<sup>3</sup> (see DMG Chapter 75).

*1 SPC Act 02, s 3(2) & 12(3); SPC Regs, Sch III, para 1(2); 2 Pensions Act 07, s 13(3); 3 SPC Act 02, s 3(1)*

78624 DMs should note that in polygamous marriage cases the SCT and the MSC are set at the same rates as for a couple<sup>1</sup>. See Appendix 2 to Chapter 77 for details of the rates.

*1 SPC Act 02, s 3; SPC Regs, reg 7; Sch III, para 1(6) & (7)*

78625 - 78649

# Appendix 1

## 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 improvement 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 2

[See DMG Memo 03/19]

## Housing costs - amount of non-dependant deductions

This appendix provides details of the rates of the non-dependant deductions<sup>1</sup> (see DMG 78500 et seq

*1 SPC Regs, Sch II, para 14(1) & (2)*

### Rates from 8.4.13

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

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**

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**

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**

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £95.45
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**

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 3

## Housing costs - meaning of remunerative work

### Introduction

1 Remunerative work is<sup>1</sup> work for which payment is made, or which is done in expectation of payment and in which the person is engaged for not less than

1. 16 hours a week or
2. 16 hours a week on average where the hours of work fluctuate.

*1 SPC Regs, Sch II, para 2(1)*

### Does the person have employment

2 DMs should decide that a person is not in remunerative work if they do not have any employment and are between jobs. DMs will need to decide whether employment has ended if someone has been engaged in remunerative work.

3 DMs should decide that a person is still in employment and not between jobs if

1. the contract of employment (which can be written or verbal) is still current or
2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because

2.1 there is an express agreement (written or verbal) or

2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

### Off-shore oil workers

4 Off-shore oil workers may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

5 It is a question of fact for the DM whether the work is continuing or not. The DM will need to consider, amongst other things, whether there is a continuing relationship between the person and the employer. Frequent resumption of work with the same employer may be an indication that work is continuing (see paragraph 3 2.2).

### Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognizable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. The DMG

has to decide whether Dennis is in remunerative work at a time when he is not working. On looking at the facts of Dennis' past work for the company, the DM is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The DM decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

### **Treated as in or not in remunerative work**

- 6 A person engaged in remunerative work may be **treated** as **not** being in remunerative work (see paragraph 140 et seq)<sup>1</sup>. Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work<sup>2</sup> (see paragraphs 126 et seq).

**#**

7

## Work done for payment or in expectation of payment

- 8 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The DM should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it or
2. it is done in expectation of payment<sup>1</sup>.

Remunerative does not mean profitable (see para 11).

*1 SPC Regs, Sch II, para 2(1); R(IS) 1/93*

## Payment in kind

- 9 “Payment” includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

### Example 1

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work.

### Example 2

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

## Expectation of payment

- 10 Work “done in expectation of payment” means more than a mere hope that payment will be made at a future date<sup>1</sup>. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

*1 R(IS) 1/93*

## Self-employed earners

- 11 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the time. The DM need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why<sup>1</sup>.

*1 CA, CAO v Ellis (R(IS) 22/95)*

## Sale of goods

- 12 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

**Note:** Also that payment may be derived from takings.

## Business start up

- 13 An allowance payable under certain schemes to assist people to become S/E is not payment for work<sup>1</sup>.

**Note:** That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

*1 CA, CAO v. Smith*

- 14 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

### Example

Annie and her husband run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

## Company directors

- 15 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director<sup>1</sup>. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a S/E earner. In such cases DMG 20234 applies.

*1 R(IS) 5/95*

16 - 20



# Establishing hours of work

## Introduction

- 21 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count. See paragraph 42 for guidance on teachers.

## Counting the hours

### Flexible working schemes

- 22 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

### Overtime

- 23 Overtime for which payment is made or expected counts towards the weekly total.

### Night duty

- 24 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if

1. payment made or expected is less than for normal daytime duties
2. the time on the night duty is spent sleeping.

### Example

Edward makes a claim for SPC. His non-dependant daughter, Michelle, works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than for her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The DM decides that Michelle is in remunerative work.

## Evidence of hours

- 25 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

## **Company directors**

- 26 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a S/E earner follow the guidance at paragraph 28 to establish any additional hours worked.

## **Musicians**

- 27 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

### **Example 1**

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

### **Example 2**

A musician is engaged to perform music. The performances last for twelve hours a week. She practices the performances for ten hours a week. She is engaged in remunerative work.

## **Self-employed**

- 28 Include all the hours necessary to run the business, for example, time spent in
1. trips to wholesalers and retailers
  2. visits to potential customers
  3. advertising or canvassing
  4. cleaning the business premises
  5. cleaning and maintaining items used in the business, for example a taxi or driving school car
  6. providing estimates
  7. book-keeping
  8. research work, for example where the person is a writer.
- 29 Where a S/E person is running a business which is
1. building up or
  2. winding down
- it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

- 30 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

**Example**

Peter, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of ten customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the DM concluded that he worked six hours a day, five days a week, a total of 30 hours a week.

- 31 If a S/E person has been doing undisclosed work or working more hours than is claimed, the DM must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.

32 - 41

**Teachers**

- 42 The conditions of employment of most LA schoolteachers, except headteachers, are laid down in an Order<sup>1</sup> or Agreement<sup>2</sup>. They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables
2. assessing and reporting on pupils
3. helping to administer and organize the school
4. advising pupils and ensuring their discipline, health and safety
5. discussing pupils' progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the DM is unsure whether a teacher is obliged to do a particular activity, consult the Order or Agreement.

*1 Education (School Teachers Pay and Conditions of Service) Order; 2 Scottish Joint Negotiating Committee for Teaching Staff in School Education Conditions of Service Agreement*

- 43 Before either the Order or Agreement came into force, teachers were generally required by their contracts to carry out the duties now laid down<sup>1</sup>. Members of the teaching profession not covered by the Order or Agreement (for example higher education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work or
2. any such work is included in the hours of work laid down in the contract.

*1 Sim v Rotherham Metropolitan Borough Council [1986] 3WLR 851; R(U) 5/88*

44 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person's own evidence if it seems reasonable. If a person states that the time spent on non-teaching duties is anything up to one third of the time spent teaching, accept this without question.

45 It may be reasonable to accept a larger proportion than a third depending on the

1. teacher's experience
2. subjects being taught
3. method of teaching
4. amount of homework to be marked
5. number of pupils.

In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

46 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

### **Paid breaks**

47 Paid breaks do not count when establishing the hours of remunerative work.

48 - 57

### **Calculating average hours**

58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours<sup>1</sup>.

*1 SPC Regs, Sch II, para 2(2)*

### **Identifying a recognizable cycle**

59 See if there is any pattern of work over a period of time. This is known as a recognizable cycle<sup>1</sup>. A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

**Example 1**

week 1      X hours  
week 2      Y hours  
week 3      X hours  
week 4      X hours  
week 5      Y hours  
week 6      X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

**Example 2**

month 1     A hours  
month 2     B hours  
month 3     A hours  
month 4     B hours

There is a recognizable cycle of two months.

**Example 3**

week 1      X hours  
week 2      X hours  
week 3      Y hours  
week 4      W hours  
week 5      V hours

There is no recognizable cycle.

**Note:** A cycle may include weeks in which no work is done<sup>2</sup>.

**Permanent or indefinite contract**

60      A recognizable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

**Example**

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. The DM decides that Julia's contract establishes a cycle from its outset.

## Fixed term contracts and casual workers

- 61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)<sup>1</sup>. DMs should decide each case on its facts. The DM will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. DMs should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

*1 R(JSA) 5/02*

### Example

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He does not work for the Christmas holiday but says that he has been asked to return to work after the holidays. Bill tells the DM that he expects to return to work as he did the previous January. The DM decides that Bill has established a recognizable cycle of work and that it has not been broken. Bill is in remunerative work because on average he works 16 hours or more a week.

### Extra work

- 62 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle<sup>1</sup>.

*1 R(JSA) 5/02*

### Example

Celeste is employed as a shop assistant by a students union. The terms of her employment contract are "Monday to Friday, 8.15 am to 1.15 pm term time only". Celeste agrees to do extra work stocktaking during the first week of the summer holidays. The DM is asked to decide whether she is in remunerative work on the day after she finishes the extra work. The DM decides that Celeste's contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

### Probation

- 63 A recognizable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

### Example

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a six month probationary period, specifies that he is expected to work during term times and not



during school holidays. The DM decides that he is in a recognizable cycle from the outset of the contract and, on average, works 16 hours or more a week. He is in remunerative work.

64 - 69

## **Recognizable cycle established**

- 70 Where there is a recognizable cycle calculate the average hours over one complete cycle<sup>1</sup>. Include, where the cycle involves periods when the person does no work, those periods, but disregard any other absences.

*1 SPC Regs, Sch II, para 2(2)(a)*

## **Periods when a person does not work**

- 71 Periods when a person does not work can fall into the following categories:

1. periods of absence because of sickness, maternity leave, paternity leave, shared parental leave or adoption leave
2. periods of unauthorised absence “without good cause”
3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer
4. periods during which someone can be properly regarded as on holiday.

**Note:** For periods during which someone is not working because they are between jobs they are not in remunerative work, see paragraphs 2 - 5.

## **Sickness, maternity leave, paternity leave, shared parental leave, adoption leave and periods of unauthorised absence**

- 72 When someone is absent from work due to sickness, maternity leave, paternity leave, shared parental leave or adoption leave (see paragraph 141) the DM should decide that they are not in remunerative work during such absences<sup>1</sup>. When someone has a period of absence without good cause the DM should treat such an absence in the same way as proper holidays<sup>2</sup> (see paragraph 79).

*1 SPC Regs, Sch II, para 2(7); 2 para 2(5)*

## **Holidays or periods of no work**

- 73 The DM should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid<sup>1</sup>. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

1. spread over a year in equal instalments **and**
2. enhanced to take account of a lack of holiday entitlement

should not be taken into account when deciding whether someone has paid holidays.

*1 R(JSA) 5/03*

- 74 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99<sup>1</sup>.

*1 Working Time Regulations 1998 No. 1833*

## **Calculating the number of hours for which a person is engaged in work**

- 75 If the DM has decided that a person is still in employment (see paragraphs 2 - 5) (and they are not absent from work due to sickness, maternity leave, paternity leave or adoptive leave) they will need to calculate the number of hours for which the person is engaged in work.
- 76 If the person works the same number of hours each week when not on holiday, that is the number of hours worked in each week.
- 77 If the person's hours of work fluctuate, the DM should take an average
1. as per paragraph 90 if there is no cycle of work or
  2. as per paragraph 79 if there is a cycle of work.

78

## **Calculating the average hours**

- 79 Legislation<sup>1</sup> requires that in cycle cases where the hours of work fluctuate the average should be calculated by taking into account periods in which the person does not work but disregarding other absences. DMs should only deduct periods of holiday, absences without good cause, sickness, maternity leave, paternity leave and adoption leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle. Periods of no work should not be deducted. Put another way, it is only periods of holiday absences without good cause, sickness, maternity leave, paternity leave and adoption leave which are "other absences to be disregarded".

*1 SPC Regs, Sch II, para 2(2)(a)*

80



## Yearly cycle with school holidays or similar vacations

81 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, whether or not payment is made for any part of the holidays, there is a recognizable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, exclude from the calculation of average hours any periods

1. of school holidays or similar vacations when that person does no work **and**
2. not part of school holidays or similar vacations, when the person is not required to work<sup>1</sup>.

*1 SPC Regs, Sch II, para 2(3); R(IS) 15/01*

### Example

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2003 for 15.5 hours of work a week during academic terms. There is no entitlement to paid holiday, but the contract states “your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday pay” The academic terms cover 38 weeks, but Megan receives her pay over the calendar year in twelve equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 2002/2003 academic year she has four other such contracts:

1. seven and a half hours a week for twelve weeks in the autumn term
2. eight and half hours a week for ten weeks in the spring term
3. seven and half hours a week for four weeks in the summer term
4. five hours a week for six weeks in the summer term.

In June 2004 Megan starts her summer vacation, and the DM is asked to decide whether or not she is in remunerative work.

Megan is not entitled to holiday pay. The fact that she receives her pay spread over the year in equal instalments does not affect this, nor does the fact that she receives an enhanced rate of pay.

The periods of school holiday are excluded from the calculation of average hours.

Total number of hours is 824. Divided by 38 equals 21.7 (i.e. over 16). Megan is in remunerative work.

## Ancillary school workers

82 Ancillary school workers are members of the non-teaching staff of schools and other educational establishments. Where such workers have a yearly cycle of work during term-time only follow the guidance at paragraph 81. Examples of ancillary school workers include

1. school meals services employees
2. domestic staff
3. clerical staff (such as secretaries and clerks)
4. laboratory workers
5. nursing assistants
6. school bus drivers.

83 - 87

## No recognizable cycle established

### Estimating future hours

88 Where

1. a person has just started work or is about to start work or
2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work or
3. because of absences from work a recognizable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week<sup>1</sup>.

*1 SPC Regs, Sch II, para 2(4)*

89 Average the estimated hours over a period long enough to cover the expected pattern of work<sup>1</sup>. Consider the case where there is sufficient evidence to average the actual hours worked.

*1 R(IS) 8/95*

### Averaging past hours

90 Where the person has been in work before the date of claim and a recognizable cycle has not been established calculate average weekly hours over

1. the five weeks immediately before the date of claim<sup>1</sup> or
2. a longer or shorter period immediately before the date of claim if the five week period in 1. does not give a fair average.

“Immediately before” in this context means the end of the last complete week before the date of claim.

*1 SPC Regs, Sch II, para 2(2)(b)*

91 Include in the calculation at paragraph 90 any periods of non-working within the normal pattern of employment (rest periods)<sup>1</sup>.

*1 R(IS) 12/95*

92 Examples of circumstances in which it may not be appropriate to use the five week period in paragraph 90 1. are where the

1. five weeks contain a period of absence which distorts the average or
2. five weeks do not show the person's normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business or
3. person is paid at intervals of longer than a week.

In either of the circumstances in 1. or 2. a period of less than five weeks as in paragraph 90 2. might give a fairer result. Extending the period beyond the last five weeks would still include the distortions so in these circumstances estimate future hours as in paragraph 88.

93 If the DM bases a weekly average of hours over a period of more or less than five weeks, as in paragraph 90 2., the alternative period must still be a period immediately before the date of claim.

It should be either

1. more than the five week period in paragraph 90 1., in which case it will include those five weeks or
2. less than the five week period in paragraph 90 1., in which case it will be a part of those five weeks immediately before the date of claim.

94 The approaches outlined in paragraph 88 and paragraph 90 are alternatives. There is no provision for the DM to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

### **Short-time workers**

95 Employers experiencing a fall in business may put their employees on short-time working. This can be

1. a reduction in hours worked each day or
2. no work on certain days of the week or
3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in paragraphs 88 - 89 and estimate future hours<sup>1</sup> at the start of short-time working until average hours over a past period can be calculated<sup>2</sup>.

Periods of no work should be included in the average.

*1 SPC Regs, Sch II, para 2(4); R(IS) 8/95; 2 SPC Regs, Sch II, para 2(2)(a) & (b)*

## Changes to the normal hours

107 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary or
2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period or
3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather and the DM decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over
  - 3.1 the cycle of work if there is now a recognizable cycle<sup>1</sup> or
  - 3.2 the five week period or other more suitable period immediately before the date of application for supersession<sup>2</sup>.

*1 SPC Regs, Sch II, para 2(2)(a); 2 Sch II, para 2(2)(b)*

## Seasonal workers

108 The normal remunerative work rules apply to S/E seasonal workers except where the business ceases to operate during the off-season. If it does, the person is no longer S/E and cannot be in remunerative work. Accept that a business has ceased to operate where no activities in connection with the business are undertaken during the off-season (see DMG Chapter 27).

### Business ceases during off-season

109 A person is not in remunerative work once the business has ceased to operate.

### Business continues during the off-season

110 Where the business continues during the off-season a person will be treated as engaged in remunerative work throughout the year if the hours, or average hours, are 16 or more a week<sup>1</sup> for the person.

*1 SPC Regs, Sch II, para 2(1); R(JSA) 1/03*

## Averaging the hours

111 Calculate average hours over

1. if there is a recognizable cycle - one complete cycle of work (this will usually be one year where a business continues to operate throughout the year).

Include periods in which the person does no work, but exclude other absences such as holidays or sickness<sup>1</sup> or

2. if there is no recognizable cycle - over the five week period, or other more suitable period, immediately before the date of claim, the date of decision or the date of application for supersession<sup>2</sup>.

Include in the calculation time spent on all activities connected with the business.

*1 SPC Regs, Sch II, para 2(2)(a); 2 Sch II, para 2(2)(b)*

## **Agency and casual workers**

- 112 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.
- 113 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.
- 114 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

See DMG Chapter 26 for guidance on when employment ends. If the question of non dependants arises after employment is terminated, the person will not be in remunerative work.

115 - 125



# People treated as in remunerative work

## Introduction

126 People can be treated as in remunerative work even though they are absent from remunerative work<sup>1</sup>. However see paragraph 141 for details of when this rule does not apply<sup>2</sup>.

*1 SPC Regs, Sch II, para 2(5); 2 Sch II, para 2(7)*

127 Treat people as in remunerative work for any period during which they are<sup>1</sup>

1. absent without good cause or
2. absent by reason of a recognized, customary or other holiday.

*1 SPC Regs, Sch II, para 2(5)*

## Absent without good cause

128 “Good cause” is for the DM to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorized the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause. Examples of good cause include where the absence is due to

1. bereavement or sudden serious illness in the family or
2. a disaster at home or
3. suspension from work, whether or not on full pay or
4. a requirement to attend court.

## Recognised, customary or other holiday

129 A person should be treated as in remunerative work for any period of absence because of a recognized, customary or other holiday<sup>1</sup>. This is the case even if there is no permanent contract of employment. But this will not apply where the

1. absence is not a holiday (see paragraph 73) or
2. work is not remunerative as in paragraph 1 et seq or
3. person goes on holiday after employment ends.

See DMG Chapter 20 for guidance on what is a recognized, customary or other holiday.

*1 SPC Regs, Sch II, para 2(5)*

# People treated as not in remunerative work

## IS and JSA(IB)

140 A person on

1. IS for more than three days in any IS benefit week<sup>1</sup> or
2. JSA(IB) for more than three days in any JSA benefit week<sup>2</sup>

shall be treated as not being in remunerative work in that week<sup>3</sup>.

*1 IS (Gen) Regs, reg 2(1); 2 JSA Regs, reg 1(3); 3 SPC Regs, Sch II, para 2(6)*

## Leave or absence from work

141 A person shall be treated as not being in remunerative work<sup>1</sup> on any day on which they are

1. on maternity leave or
2. on paternity leave or
3. on adoption leave or
4. absent from work because of illness.

*1 SPC Regs, Sch II, para 2(7)*

## Meaning of paternity leave

142 Paternity leave means<sup>1</sup> a period of absence from work on leave in accordance with legislation<sup>2</sup>.

*1 SPC Regs, reg 1(2); 2 ER Act 96, s 80A or 80B*

## Meaning of adoption leave

143 Adoption leave means<sup>1</sup> a period of absence from work on ordinary or additional adoption leave in accordance with legislation<sup>2</sup>.

*1 SPC Regs, reg 1(2); 2 ER Act 96, s 75A or 75B*

## Sports awards

144 People engaged in an activity for which a sports award has been made, or is to be made, to them should be treated as not engaged in remunerative work if no other payment is made or expected to be made to them in respect of the activity<sup>1</sup>.

*1 SPC Regs, Sch II, para 2(8)*

145 A sports award means<sup>1</sup> an award made by one of the Sports Councils named in the National Lottery legislation<sup>2</sup> out of sums allocated under that legislation.

*1 SPC Regs, Sch II, para 2(8); 2 National Lottery etc. Act 1993, s 23(2)*





# Appendix 4

## Examples of calculations for special groups

This Appendix contains examples of how the amount of SPC payable is worked out where people are

- members of polygamous marriages (see DMG 78600)
- prisoners (see DMG 78650)
- members of religious orders (see DMG 78680).

DMs should note that these examples are

- for illustrative purposes only **and**
- based on the rates and percentages applicable as from 6.04.04.

See Appendix 4 to DMG Chapter 77 for examples of how the amount of SPC payable is worked out in normal circumstances.

### Polygamous marriages

**Example 1** No additional amounts

**Example 2** Additional amount for the severely disabled

**Example 3** Additional amount for carers

### Prisoners

**Example 4** Single remand prisoner

**Example 5** Partner becomes a prisoner

### Members of religious orders

**Example 6** Claimant not fully maintained by the religious order

## Example 1 - No additional amounts

Sanjay, who is aged 65, is a member of a polygamous marriage and is married to Gita and Bina. Sanjay is entitled to RP of £127.25 a week and has no other income. Sanjay does not qualify for any additional amounts.

### Calculation of GC:

SMG for Sanjay and his eldest wife Gita	£160.95
SMG for additional spouse Bina	£55.50
Additional amounts	nil
AMG	£216.45
Less income	£127.25
<b>Amount of GC</b>	<b>£89.20</b>

### Calculation of SC:

SCT	£127.25
QI	£127.25
<b>Amount of SC</b>	<b>Nil</b>
<b>Total SPC payable</b>	<b>£89.20</b>

### Calculation of total weekly income:

RP	£127.25
SPC	£89.20
<b>Total weekly income is</b>	<b>£216.45</b>

## Example 2 - Additional amount for the severely disabled

Nisha is aged 66 and a member of a polygamous marriage. Her husband Ishaq has another wife Sunetra and all three live together as members of the same household. Nisha is entitled to RP of £79.60 a week and her husband Ishaq gets RP of £127.25 a week. All three receive "AA" and no one else lives in the household. But someone gets CA in respect of caring for Sunetra. Nisha qualifies for an additional amount of £44.15 a week because she is treated as being severely disabled (see DMG 78611).

### Calculation of GC:

SMG for Nisha and her husband Ishaq	£160.95
SMG for additional spouse Sunetra	£55.50
Additional amounts	£44.15
AMG	£260.60
Less income (£79.60 + £127.25)	£206.85
<b>Amount of GC</b>	<b>£53.75</b>

### Calculation of SC:

SCT	£127.25
QI	£206.85
QI exceeds SCT by	£79.60
60% x £79.60	£47.76
MSC	£20.22
Amount A	£47.76
Amount B (income does not exceed AMG)	Nil
<b>Amount of SC (the MSC)</b>	<b>£20.22</b>
<b>Total SPC payable</b>	<b>£73.97</b>

### Calculation of total weekly income:

Total RP	£206.85
SPC	£73.97
<b>Total weekly income is</b>	<b>£280.82</b>

### Example 3 - Additional amount for carers

Sanjay, who is aged 65, is a member of a polygamous marriage and is married to Gita and Bina. Sanjay is entitled to RP of £127.25 a week and Bina gets RP of £79.60 a week. Both Gita and Bina are entitled to CA and each satisfy the conditions for the award of an additional amount for carers.

#### Calculation of GC:

SMG for Sanjay and his eldest wife Gita	£160.95
SMG for additional spouse Bina	£55.50
Additional amounts (£25.55 x 2)	£51.10
AMG	£267.55
Less income (£79.60 + £127.25)	£206.85
<b>Amount of GC</b>	<b>£60.70</b>

#### Calculation of SC:

SCT	£127.25
QI	£206.85
QI exceeds SCT by	£79.60
60% x £79.60	£47.76
MSC	£20.22
Amount A	£47.76
Amount B (income does not exceed AMG)	Nil
<b>Amount of SC (the MSC)</b>	<b>£20.22</b>
<b>Total SPC payable</b>	<b>£80.92</b>

#### Calculation of total weekly income:

Total RP	£206.85
SPC	£80.92
<b>Total weekly income is</b>	<b>£287.77</b>

## Example 4 - Single remand prisoner

Fred, who is aged 69, lives alone in a flat on which he has eligible housing costs of £60 a week. He is arrested and charged with a serious criminal offence. Fred is then held on remand (see DMG 78668) while he is awaiting trial and because he is in prison is disqualified from receiving any RP. He has no other income and claims SPC.

### Calculation of GC:

SMG	Nil
Additional amount for housing costs (for a period of up to 52 weeks)	£60
AMG	£60
Less income	Nil
<b>Amount of GC</b>	<b>£60</b>

### Calculation of SC:

MSC	Nil
<b>Amount of SC</b>	<b>Nil</b>
<b>Total SPC payable</b>	<b>£60</b>

### Calculation of total weekly income:

SPC	£60
<b>Total weekly income is</b>	<b>£60</b>

## Example 5 - Partner becomes a prisoner

Bernard is aged 68 and lives with his partner Agnes. He is entitled to RP of £127.25 and occupational pension of £32 a week. He does not qualify for any additional amounts and is not entitled to GC but gets SC of £20.22 a week. So his total weekly income is £179.45. Agnes is detained in custody and as a result Bernard's RP reduces to £79.60. The DM revises the SPC award to remove Agnes from the calculation.

### Calculation of GC:

SMG (claimant with no partner)	£105.45
Additional amounts	Nil
AMG	£105.45
Less income (£79.60 + £32)	£111.60
<b>Amount of GC</b>	<b>Nil</b>

### Calculation of SC:

SCT (claimant with no partner)	£79.60
QI	£111.60
QI exceeds SCT by	£32
60% x £32	£19.20
MSC	£
Amount A	£15.51
Income exceeds AMG by	£6.25
Amount A (£15.51) – Amount B (£2.50)	£13.01
<b>Amount of SC</b>	<b>£13.01</b>
<b>Total SPC payable</b>	<b>£13.01</b>

### Calculation of total weekly income:

RP	£79.60
Occupational pension	£32
SPC	£13.01
<b>Total weekly income is</b>	<b>£124.61</b>

## Example 6 - Claimant not fully maintained by the religious order

Marie is a 65 year-old nun who has been a member of, and fully maintained by, a religious order for many years. Marie leaves the order's premises to nurse her brother while he is recovering from a serious road traffic accident. The order does not maintain Marie while she is at her brother's house and she has no income. She does not qualify for any additional amounts.

### Calculation of GC

SMG	£105.45
Additional amounts	Nil
AMG	£105.45
Less income	Nil
<b>Amount of GC</b>	<b>£105.45</b>

### Calculation of SC

SCT	£79.60
QI	Nil
<b>Amount of SC</b>	<b>Nil</b>
<b>Total SPC payable</b>	<b>£105.45</b>

### Calculation of total weekly income

SPC	£105.45
<b>Total weekly income</b>	<b>£105.45.</b>





# Appendix 5

## Hospital cases - rates of reduction and examples of calculations

This Appendix contains

1. details of the rates of reduction that apply where a claimant's GC falls to be reduced because of hospital admission (see DMG 78805 et seq) **and**
2. some examples of how the amount of SPC payable is worked out in cases involving people in hospital (see DMG 78700 et seq).

**Note:** The examples in this Appendix are for illustrative purposes only and are based on the rates applicable as from 6.10.03.

### Examples of calculations for hospital cases

**Example 1** Single - additional amount for the severely disabled

**Example 2** Single - additional amount for carers

**Example 3** Couple - additional amount for the severely disabled

**Example 4** Couple - additional amount for carers

## Example 1: Single - additional amount for the severely disabled

Ulrika is aged 66 and lives alone. She is entitled to RP of £77.45 a week and an occupational pension of £40. Ulrika qualifies for an additional amount of £42.95 because she is severely disabled and the SMG for her is £102.10.

Under the **normal calculation** of SPC, Ulrika is entitled to

AMG [£102.10 + £42.95]		£145.05
DLA [disregarded]		
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		£27.60
SC [£40x60% restricted to MSC]		<u>£14.79</u>
Total SPC payable		£42.39

After **four weeks** in hospital, payment of DLA is withdrawn and the additional amount for the severely disabled is also withdrawn (see DMG 78806). Ulrika is then entitled to SC only, calculated as follows;

AMG [£102.10]		£102.10
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		nil
SC [£14.79 MSC] – £6.14 [£15.35 x 40%]		<u>£8.65</u>
Total SPC payable		£8.65

## Example 2: Single - additional amount for carers

Tony is aged 67 and lives alone. He is entitled to RP of £77.45 a week and an occupational pension of £40. Tony has underlying entitlement to CA, which overlaps with his RP. He satisfies the conditions for the award of an additional amount for carers of £25.10 and the SMG for him is £102.10.

Under the **normal calculation** of SPC, Tony is entitled to

AMG [£102.10 + £25.10]		£127.20
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		£9.75
SC [£40x60% restricted to MSC]		<u>£14.79</u>
Total SPC payable		£24.54

The disabled person who Tony looks after is admitted to hospital and their AA is withdrawn after four weeks. But Tony's underlying entitlement to CA continues for a further eight weeks (see DMG 78107 et seq). After the person Tony looks after has been in hospital for **twelve weeks**, underlying entitlement to CA ends and the additional amount for carers is withdrawn. Tony is then entitled to SC only, calculated as follows;

AMG [£102.10 SMG]		£102.10
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		nil
SC [£14.79 MSC] – £6.14 [£15.35 x 40%]		<u>£8.65</u>
Total SPC payable		£8.65

SPC remains payable at this rate without any further adjustment. This is because it is the disabled person who Tony looked after that is in hospital and **not** Tony.

### Example 3: Couple - additional amount for the severely disabled

Ishaq, who is aged 68, lives with his wife Fatima. Ishaq is entitled to RP of £123.80 a week and an occupational pension of £40. Both Ishaq and Fatima are in receipt of AA, no one else lives with them and no one gets CA in respect of caring for either of them. The conditions for the award of an additional amount for the severely disabled at the higher rate of £85.90 are satisfied (see DMG 78049) and the SMG for the couple is £155.80.

Under the **normal calculation** of SPC, Ishaq is entitled to

AMG [£155.80 + £85.90]		£241.70
AA [disregarded]	[£76.60]	
RP	£123.80	
Occupational pension	<u>£40</u>	<u>£163.80</u>
GC		£77.90
SC [£40x60% restricted to MSC]		<u>£19.20</u>
Total SPC payable		£97.10

Ishaq is admitted to hospital and after he has been in hospital for **four weeks**, his AA is withdrawn. The couple retain entitlement to the additional amount for the severely disabled, but at the lower rate (see DMG 78047). Ishaq is then entitled to SPC calculated as follows;

AMG [£155.80 + £42.95]		£198.75
AA [disregarded]	[£38.80]	
RP	£123.80	
Occupational pension	<u>£40</u>	<u>£163.80</u>
GC		£34.95
SC [£40x60% restricted to MSC]		<u>£19.20</u>
Total SPC payable		£54.15

When Ishaq has been in hospital for **52 weeks**, he stops being a member of the same household as Fatima. Fatima is invited to make a claim and Ishaq's claim is revised to that of a single person.

## Example 4: Couple - additional amount for carers

Charlie, who is aged 65, lives with his partner Hazel. Charlie is entitled to RP of £77.45 a week and an occupational pension of £40. Hazel is entitled to CA and she satisfies the conditions for the award of an additional amount for carers of £25.10. The couple do not qualify for any other additional amounts and the SMG for them is £155.80.

Under the **normal calculation** of SPC, Charlie is entitled to

AMG [£155.80 + £25.10]		£180.90
CA	£43.15	
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£160.60</u>
GC		£20.30
SC [£36.80 x 60% restricted to MSC]		<u>£19.20</u>
Total SPC payable		£39.50

The disabled person who Hazel looks after is admitted to hospital and their AA is withdrawn after four weeks. But Hazel's entitlement to CA continues for a further eight weeks (see DMG 78107 et seq). After the person that Hazel looks after has been in hospital for **twelve weeks**, Hazel's entitlement to CA ends and the additional amount for carers is withdrawn. Entitlement to SC is then extinguished and Charlie becomes entitled to GC only, calculated as follows

AMG [£155.80 + nil]		£155.80
RP	£77.45	
Occupational pension	<u>£40</u>	<u>£117.45</u>
GC		£38.35
SC [QI no longer exceeds SCT]		<u>nil</u>
Total SPC payable		£38.35

SPC remains payable at this rate without any further adjustment. This is because it is the disabled person who Hazel looked after that is in hospital and **not** Charlie or Hazel.



# Appendix 6

## 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.



## **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 a service charge.

Typical repairs				service charge
<b>Roof</b>	a.	Major Repair	-	No
	b.	Renewal	-	Yes
	c.	Replacement	-	Yes
	d.	Chimney stack repairs	-	Yes
<b>Roof safety</b>	This may include fitting roof safety rails, or roof safety harness's, allowing regular inspection and maintenance		-	Yes
<b>Insulation</b>	a.	Roof insulation	}	Yes if not provision
	b.	Wall insulation		
<b>Building frame repairs</b>		Cladding to the exterior of the building to prevent damage to the structure, insulates protects building from the elements	-	Yes
<b>Concrete repairs</b>	This may include cleaning, painting and protective coating, or repairs (including the concrete frame)		-	Yes
<b>External walls</b>	a.	Brickwork cleaning	-	Yes
	b.	Repairs to brickwork, pointing, repairs to rendered surfaces	-	Yes
	c.	Replace wall ties	-	Yes
<b>Balconies walkways</b>	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	No	
<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 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>1</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 12.2the 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 DMs 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**

# Chapter 79 - Payment questions

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# Part-week payments

## Part-week payments - general

### Introduction

79100 This section gives guidance on how to calculate part-week payments<sup>1</sup> in SPC claims. The term “part-week” payment has a specific meaning in SPC. Part-week payments must not be confused with payments of SPC which may be made for less than a full week<sup>2</sup> in other circumstances. Guidance on part-week payments is at DMG 79101 et seq. Guidance on payments of SPC for periods of less than a full week in other circumstances is at DMG 79106 et seq.

*1 SPC Act 02, Sch 1, para 13; 2 SS CS (D&A) Regs, Sch 3B, para 4(b)*

### When part-week payments are appropriate

79101 In SPC, part-week payments can only be made where existing IS, ESA(IR), JSA(IB) or UC claimants become entitled to the GC<sup>1</sup>. Part-week payments should **not** be made in any other circumstances.

*1 SPC Regs, reg 13A*

79102 Existing IS, ESA(IR), JSA(IB) or UC claimants, whose entitlement ends because they reach pensionable age<sup>1</sup> may decide to claim SPC. Where the IS/ESA(IR)/JSA(IB)/UC was paid in arrears, there will be a gap between the date on which the claimant ceases to be entitled to IS/ESA(IR)/JSA(IB)/UC and the first SPC benefit week.

*1 SPC Act, s 17(1)*

79103 A payment of the GC for the days between the end of the claimant’s entitlement to IS/ESA(IR)/JSA(IB)/UC and the first day of the SPC benefit week can be made where

1. the claimant was entitled to IS, ESA(IR), JSA(IB) or UC immediately before the first day on which the conditions of entitlement to the GC were satisfied **and**
2. the claimant is likely to continue to be entitled to the GC throughout the first full benefit week which follows the part-week<sup>1</sup>.

*1 SPC Regs, reg 13A(1)*

## Treatment of income for the purpose of making part-week payments

79104 Income is taken into account for the purposes of calculating part-week payments of the GC<sup>1</sup> (see DMG 79105).

*1 SPC Act 02, s 2; SPC Regs, reg 13A*

## Amount of part-week payments

79105 Where a part-week payment is appropriate, the DM should<sup>1</sup>

1. calculate the weekly rate of the GC taking into account any income received for that week **and**
2. divide the amount calculated at 1. by 7 **and**
3. multiply the result by the number of days in the part-week **and**
4. round any fraction of a penny
  - 4.1 up if its half a penny or more **or**
  - 4.2 down if its less than half a penny<sup>2</sup>.

The resulting amount is the amount of GC which is payable in respect of the part-week from the end of the IS, ESA(IR) or JSA(IB) award up to and including the day before the first SPC pay day.

*1 SPC Regs, reg 13A(3); 2 SS (C&P) Regs, reg 28(1)*

### Example

George is in receipt of IS and reaches the qualifying age for SPC on 6.5.10. He ceases to be entitled to IS on 5.5.10. His first full SPC benefit week begins on Monday 10.5.10. George has an occupational pension of £50.00 per week. He has no savings. The DM decides that George's SPC from 10.5.10 will be £82.60 per week (GC of £132.60 less income of £50.00).

The DM decides that George is entitled to GC for the part-week from 6.5.10 to 9.5.10. For the part-week, the DM calculates that 4/7ths of £82.60 (his weekly amount of SPC taking into account his occupational pension) is payable for the period 6.5.10 to 9.5.10. The total amount paid to George for this period is £47.20.

## Payments of SPC for less than a full week in other circumstances

79106 Payments of SPC may be made for a period of less than a full week where<sup>1</sup>

1. a claimant in receipt of SPC is awarded another social security benefit **and**

## Maximum amount for payment of debts (arrears only)

79221 There is a maximum amount<sup>1</sup> for payment of **arrears** to third parties. That is 3 x 5% of the IS personal allowance for a single claimant aged 25 or over which would have been payable to the claimant had the claimant been entitled to IS and not SPC, (see DMG Chapter 23) less any housing costs. Arrears deductions include

1. arrears of
  - 1.1 housing costs
  - 1.2 rent (which includes arrears of hostel charges)
  - 1.3 fuel
  - 1.4 water **and**
2. CT (but not CC) **and**
3. fines **and**
4. ELDS.

*1 SS (C&P) Regs, Sch 9, para 8(1) & para 7C(12)*

## Consent required

79222 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. eligible loans
6. integration loans

where the total deduction for that item, or any combination of those items, exceeds 25% of the AMG (not including any housing costs) which may be appropriate.

*1 SS (C & P) Regs, Sch 9, para 8(2) & para 7C(12)*

79223 From 2.10.06 the amount of CTC and CHB entitlement should be added<sup>1</sup> to the AMG when deciding if deductions exceed 25% of the total.

*1 SS (C&P) Regs, Sch 9, para 8(4)*

79224 - 79226

## Consent not required

79227 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. current housing costs **or**
4. hostel charges not included in HB **or**
5. CSM under the old scheme

makes the total amount deducted exceed 25% of the AMG<sup>1</sup>.

*1 SS (C&P) Regs, Sch 9, para 8(2) & (4)*

## **Priority between debts**

79228 The claimant may satisfy the criteria for third party deductions for 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*

79229 The order of priority is

1. housing costs
2. miscellaneous accommodation costs
3. hostel payments
4. rent arrears and service charges for fuel
5. fuel costs
6. water and sewerage charges
7. CC or CT arrears
8. unpaid fines or compensation orders
9. CSM under the old scheme (see DMG 79920 - 79928)
10. integration loans<sup>1</sup>
11. eligible loans.

*1 SS (C&P) Regs, Sch 9, para 9(1B)(ga)*

79230 - 79299

# Third party deductions for housing costs

## When third party deductions can be made

79300 Housing costs for which the claimant has a liability may be deducted from SPC and paid direct where<sup>1</sup>

1. the claimant or partner is in debt for a housing cost that is included in the AMG **and**
2. it is in the interests of the family to do so.

*1 SS (C&P) Regs, Sch 9, para 3(1)*

79301 Third party deductions of 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)*

79302 Third party deductions should be considered for housing costs if the debt is at least half the amount due yearly<sup>1</sup>.

*1 SS (C&P) Regs, Sch 9, para 3(4)*

79303 - 79333

## Interests of the family

79334 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.

79335 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

79336 For third party deduction purposes housing costs are<sup>1</sup>

1. rent, or ground rent connected to long tenancies

**Note:** Ground rent should only be paid direct when paid with service charges.

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.

*1 SS (C&P) Regs, Sch 9, para 1*

79337 - 79338

### **Service charges**

79339 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.

79340 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 79550).

*1 SS (C&P) Regs, Sch 9, para 1 & 3; SPC Regs, Sch 2, para 1(a)*

79341 A service charge for fuel paid with rent is also not a housing cost for the purposes of deductions (see DMG 79337 3.)<sup>1</sup>. Deductions for water and fuel charges paid with rent are covered by separate provisions (see DMG 79550 et seq)<sup>2</sup>.

*1 SS (C&P) Regs, Sch 9, para 1 & 3; SPC Regs, Sch 2, para 13(2); 2 SS (C&P) Regs, Sch 9, para 5*

### **Amount of benefit to be left for claimant**

79342 The DM determines

1. whether there is enough benefit in payment to make a deduction **and**
2. the specified amount to be deducted.

79343 The amount deducted for housing costs may leave the claimant with less than the minimum amount (see DMG 79220). The amount of the deduction should then be adjusted so that at least 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**

79344 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 IS 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*

79345 - 79399