

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 14

Amendment 48 – February 2019

1. This letter provides details on Amendment 48; 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 48 affects chapter 84. The changes:

incorporate DMG Memos 12/18 & 18/18.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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84339 – 84391 (5 pages)
84671 – 84673 (1 page)

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Liability to repay capital

84339 People have a beneficial interest in capital that has been given to them even if it has to be repaid. However, people no longer have a beneficial interest in capital they have been given if they are under a certain and immediate liability to repay it¹. People are no longer the beneficial owners of the capital from the date the certain and immediate liability arises.

1 R(IS)5/99

84340 - 84350

Can the capital be disregarded

The law

84351 There are special rules for

1. what capital is disregarded **and**
2. the length of time that capital is disregarded¹.

1 SPC Act 02, s 15(2) & s 15(6)(b); SPC Regs, reg 15(6) & Sch V

84352 Capital is disregarded

1. for the purpose of calculating income¹ **or**
2. only for the purposes of determining deemed income².

1 SPC Regs, Sch V, Part I; 2 Sch V, Part II

84353 Capital which is disregarded only for the purposes of determining deemed income is

1. the value of the right to receive income
 - 1.1 under a life interest **or**
 - 1.2 from a life rent¹ (see DMG 84409)
2. the value of the right to receive rent but not when a person has a reversionary interest in the property for which the rent is due² (see DMG 84456)
3. the value of the right to receive income from **and** the surrender value of an annuity³ (see DMG 84367)
4. property held on trust⁴ in the circumstances described at DMG 84494.

All other capital that is disregarded is disregarded for the purposes of calculating income.

1 SPC Regs, Sch V, Part II, para 24; 2 Sch V, Part II, para 25; 3 Sch V, Part II, para 26; 4 Sch V, Part II, para 28

Onus of proof

84354 The person who has the capital has to show the capital can be disregarded. Capital is included when working out the amount of deemed weekly income if there is no evidence to show it can be disregarded.

What the DM decides

84355 The DM decides if capital can be disregarded. This is done

1. before the capital is valued as the DM does not have to know the value of the capital to decide if it can be disregarded **and**
2. before working out the amount of deemed weekly income from capital.

The DM also decides how long the capital is disregarded and, for certain disregards, whether it is reasonable to disregard the capital for a longer period.

Period of disregard

- 84356 Capital which can be disregarded is disregarded for¹
1. an indefinite period (DMG 84367 et seq) **or**
 2. up to two years (DMG 84521 et seq) **or**
 3. a year or longer (DMG 84561 et seq) **or**
 4. 26 weeks or longer (DMG 84601 et seq) **or**
 5. the remainder of an award of SPC (DMG 84671 et seq).

1 SPC Regs, Sch V

Capital disregarded indefinitely

Annuities

- 84357 An annuity is
1. a fixed sum payable at specified intervals in return for a premium paid either
 - 1.1 by instalments or
 - 1.2 in a single payment and
 2. normally taken out to provide an income in retirement.

The value of the right to receive income from **and** the surrender value of an annuity are disregarded indefinitely¹.

Note: This disregard applies only for the purposes of determining deemed weekly income.

1 SPC Regs, Sch V, Part II, para 26

Age-related payments

- 84358 One-off age-related payments are payments of capital. DMs should not take them into account for SPC purposes¹.

1 Age-related Payments Act 2004, s 6(b)

- 84359 Ex gratia payments made by the government policy holders who purchased an Equitable Life with profits annuity policy before 01.09.92 and are aged 60 or over are not to be taken into account as capital for SPC purposes under the age-related legislation¹. A payment of £5000 is made to all such policy holders with an additional £5000 being made to those policyholders who are also in receipt of SPC on 01.11.13.

1 Age-related Regulations 2013 (2013/2980), reg 5

Arrears of payments to certain war widows or surviving civil partners

- 84360 Payments to certain war widows and surviving civil partners are disregarded when calculating deemed income from capital¹. The disregard applies to arrears of a supplementary pension paid to a widow or surviving civil partner
1. for the disablement or death of service personnel before 1973. This also covers any payment made to a person who is not entitled to a supplementary pension but to whom the Secretary of State for defence has made a similar payment
 2. under the Personal Injuries (Civilians) Scheme
 3. of a person
 - 3.1 whose death was caused by service similar to being in the armed services and

3.2 that service ended before 31.3.73 **and**

3.3 the payment is equal to the amount in 1. above².

1 SPC Regs, Sch V, para 20B; 2 para 20A

Best Start Grants

84361 The Scottish Government introduced Best Start Grants to provide early years assistance to people living in Scotland¹. From 10.12.18 under Best Start Grants, Pregnancy and Baby Grants are being introduced, with other elements introduced at a later date. The Scottish Government will be responsible for deciding on the claims to these grants and for making payments. All elements of Best Start Grant are disregarded indefinitely².

1 The Social Security (Scotland) Act 2018, s. 32; 2 SPC Regs, Sch V, para 20(2)(r)

84362 - 84370

Business assets

The law

84371 The assets of a business are disregarded indefinitely if the person

1. owns all or some of the assets **and**
2. works in the business as a S/E earner¹.

1 SPC Regs, Sch V, Part I, para 9

84372 The assets are disregarded for a reasonable period to allow for them to be sold if the person

1. owns all or some of the assets **and**
2. has stopped working in the business as a S/E earner¹.

Example

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

1 SPC Regs, Sch V, Part I, para 9

84373 The assets of a business are also disregarded indefinitely if the person

1. owns all or some of the assets **and**
2. is not working as a S/E earner in the business because he is
 - 2.1 ill or
 - 2.2 physically or mentally disabled **and**

3. intends to start work or return to work in the business as a S/E earner as soon as he is able¹.

1 SPC Regs, Sch V, Part I, para 9A

Meaning of business assets

- 84374 Business assets include standard items such as machinery, vehicles, fixtures and cash held in the bank (including money held following the sale of assets). They may also include items such as customer lists and contacts, current and future contracts and goodwill.
- 84375 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as “work in hand” may result in an income receipt and so would be appropriate for inclusion in the profit and loss account. Where doubt exists as to whether a particular asset would represent a capital or income receipt upon its sale, the principles of commercial accounting must be applied. That is, the approach that would be taken by an accountant or Her Majesty’s Revenue and Customs to such a receipt or holding.

Meaning of “reasonable period”

- 84376 When determining what represents a reasonable period for the sale or disposal of an asset, the DM should have regard to
1. the date that the duty to dispose of the asset arose
 2. the nature of the asset and the period within which that particular type of asset would normally be expected to be sold or disposed
 3. any legal obligations and restrictions existing that could affect both the sale **and** disposal of any assets. For example, in a partnership situation, the provisions of the partnership deed and the Partnership Act 1890 could place restrictions and subsequent delays on both the sale of assets, and the disposal of any cash assets resulting from the sale.

Meaning of self-employed earner

- 84377 S/E earner means a person
1. who is in gainful employment in GB (see DMG 070702) **and**
 2. whose employment is not the same as that of an employed earner.

A S/E earner includes people employed outside of GB in employment which would be classed as employment as a S/E earner if the employment was in GB. It also includes people undertaking employment as a S/E earner and that employment is disregarded when working out SS contributions¹.

1 SPC Regs, reg 17B; SS Ben (C of E) Regs, reg 2(1)

84378 People can be S/E earners even if they have another job as an employed earner. An employed earner is a person who is gainfully employed in GB

1. under a contract of service or
2. in an office, including an elective office, and the fee or salary the person gets is taxed under the PAYE scheme¹.

1 SPC Regs, reg 17A(5)

When people are working in the business

84379 People are working in the business if they do some work in a practical sense. There is no set definition of the type and amount of work that has to be done for the person to be classed as a S/E earner and the DM must decide each case on its merits¹.

1 R(IS) 14/98

84380 A partner in a business managed and worked exclusively by others is not working in the business. Such partners are not S/E earners even if they receive a share of the profits of the business¹.

1 R(IS) 14/98

Capital which is not sterling

84381 Bank charges and commission which are payable when changing capital which is not sterling into sterling are disregarded indefinitely¹. For example, if people get capital of 3,000 Canadian dollars they will have to pay commission when the dollars are changed into British money, so the commission is disregarded.

1 SPC Regs, Sch V, Part I, para 21

Deferral of retirement pension entitlement

84382 Pensioners can choose between increments and a lump sum where they have deferred their entitlement to RP, shared additional pension or graduated retirement benefit. Where someone dies while still deferring their pension, the surviving spouse or civil partner will have the same choice in relation to the "inheritable" increments or lump sum. Deferral has to have been for at least twelve months for a lump sum to be available.

Note: The lump sum option only applies in respect of a deferral from April 2005, so the first lump sum payment would only have been made on or after April 2006.

84383 Where

1. a person elects to be entitled to a lump sum under specified legislation¹ or
2. a person is treated as having made such an election **and**
3. a payment has been made following that election, disregard an amount equal to

3.1 except where **3.2** below applies, the amount of any payment or payments made on account of the lump sum

3.2 the amount of the lump sum

but only for so long as the person does not change their election in favour of an increase in their pension or benefit².

Note: The amount of the lump sum to be disregarded is the gross amount before tax. The disregard will apply to both the personal and “inheritable” lump sums for the person’s lifetime and to each member of a couple where both have deferred and taken a lump sum or have inherited a lump sum as in DMG 84382. The disregard will not continue if the person changes their mind from a lump sum to increments and repays the lump sum. The disregard is not inheritable. See DMG 83060 et seq for the effect on the AIP of removing the disregard if a lump sum is repaid.

1 SS CB Act 1992, Sch 5 & 5A; GRB Regs, Sch 1; 2 SPC Regs, Sch 5, para 23A

Deferral of state pension

84384 Where

1. a person elects to be entitled to a lump sum of SP under specified legislation¹
or
2. fails to make an election **and**
3. a lump sum payment has been made, disregard an amount equal to
 - 3.1** except where **3.2** applies, the amount of any payment or payments made on account of the lump sum **or**
 - 3.2** the amount of the lump sumbut only for as long as the person does not change their election in favour of an increase in their pension².

1 Pensions Act 14, s 8(2) & 10; 2 SPC Regs, Sch 5, para 23AA

84385

Dwelling occupied as the home

The law

84386 The dwelling occupied as the home is disregarded indefinitely. Only one dwelling can be disregarded¹. However, in some circumstances, more than one property can be the dwelling occupied as the home² (see DMG 84395 et seq).

Note: See DMG 85230 et seq for treatment of income from people living in the claimant’s home.

1 Sch V, Part I, para 1A; 2 Secretary of State v. Miah; R(JSA) 9/03

Meaning of dwelling occupied as the home

84387 Dwelling occupied as the home means

1. the place lived in as the home and any
 - 1.1 garage
 - 1.2 garden
 - 1.3 outbuildings **and**
2. any part not lived in as the home which
 - 2.1 cannot be sold separately **or**
 - 2.2 would not be reasonable to sell separately

such as, in Scotland, any croft land on which the place lived in stands¹.

1 SPC Regs, reg 1(2)

Onus of proof

84388 The person owning the property has to show what part of the property is occupied as the home.

84389 The DM has to show

1. what part of the property can be sold separately **and**
2. if it is reasonable for it to be sold separately¹.

Example

Jack makes a claim for SPC. He lives with his civil partner, Kevin, in a house with a garden and paddock. The paddock can be sold separately but Jack says it is not reasonable for it to be sold separately. He provides medical evidence that Kevin suffers from depression and walking in the paddock is a therapeutic benefit for him. The DM therefore decides that the paddock is part of the dwelling occupied as the home because it is not reasonable for it to be sold separately.

1 R(SB) 27/84

84390 The DM may need expert advice, for example from a surveyor, to show the part can be sold separately.

84391 The DM does not need to get expert advice if

1. there is evidence which shows the part cannot be sold separately even if it has a separate value, for example if the deeds of the property say it has to be sold as one unit the part would be the dwelling occupied as the home **or**
2. the DM decides it is not reasonable for the part to be sold separately.

Capital disregarded for the remainder of an award of SPC

Arrears and concessionary payments of £5000 or more

When the disregard applies

84671 This disregard applies where

1. a person receives arrears of one of the
 - 1.1 benefits or
 - 1.2 allowances or
 - 1.3 paymentslisted in DMG 84567 and, if appropriate, any concessionary payment to compensate for the late payment of that benefit **and**
2. the total of the arrears and any concessionary payment is £5000 or more **and**
3. the total of arrears and any concessionary payment is paid to rectify or compensate for an
 - 3.1 official error (see DMG 03256) or
 - 3.2 error of law (see DMG 04280) **and**
4. the total of arrears and any concessionary payment is received in full by the person
 - 4.1 on or after the day on which entitlement to SPC began¹ or
 - 4.2 in respect of a payment disregarded for the purposes of
 - 4.2.a IS
 - 4.2.b JSA
 - 4.2.c HB
 - 4.2.d CTB
 - 4.2.e ESA

where that payment was disregarded immediately before the person became entitled to SPC².

1 SPC Regs, Sch V, Part I, para 20A(1); 2 Sch V, Part I, para 20A(2)

Period of the disregard

84672 The period of the disregard of arrears and concessionary payments of £5000 or more is the remainder of a person's award of SPC¹.

1 Sch V, Part I, para 20A(3)

Meaning of award of SPC

84673 For the purposes of DMG 84672, award of SPC means¹

1. the award of SPC in which the
 - 1.1 arrears and any concessionary payment are received **or**
 - 1.2 the first part of the arrears and any concessionary payment is received if it is paid in more than one instalment **and**
2. any further award of SPC (or until the end of the last such further award) if
 - 2.1 the further award follows the award at 1. **and**
 - 2.2 the further award begins immediately after the end of the previous award **and**
 - 2.3 the claimant
 - 2.3.a is the person who received the arrears and any concessionary payment **or**
 - 2.3.b is the partner of the person who received the arrears and any concessionary payment **or**
 - 2.3.c was the partner at the date of death of the person who received the arrears and any concessionary payment.

Example 1

Winston is in receipt of SPC. On 17 June he receives arrears of IS of £6,995. Winston dies on 20 June and his widow, Cynthia, makes a claim for SPC on 21 June. The DM decides that the arrears received by Winston are disregarded until the end of Cynthia's AIP.

Example 2

Hannalore was in receipt of IS and she transferred to SPC on 6.10.06. She received AA which was disregarded for the purposes of her IS claim. On 3.2.07 she receives arrears of AA of £4,950 and on 17.3.07 she receives a concessionary payment of £150 because of an official error. The DM decides that from 3.2.07 the arrears of £4,950 are disregarded to the end of her AIP (being a longer period than one year) and from 17.3.07 the concessionary payment and any of the remaining payment of arrears are disregarded for the remainder of Hannalore's award of SPC.

Example 3

Rhys receives SPC until 2.4.07. On 17.5.07 he receives a concessionary payment of £15,000 because of an official error. Rhys then makes another claim to SPC on 4.6.07. The DM decides that the concessionary payment can be disregarded for no more than one year from 17.5.07 (see DMG 84561 et seq).