

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 8 Amendment 28 – June 2019

1. This letter provides details on Amendment 28; 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-8-and-9-employment-and-support-allowance-staff-guide>

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

3. Amendment 28 affects chapter 44. The changes:

removes all references to old DMG Memo's; makes clear at 44470 that the qualifying period is now 39 weeks (with some exceptions); references to "new and existing" housing costs removed in 44471; adds examples in paragraphs 44217, 44234, 44250, 44257 and 44459; makes clear in para 44270 that temporary absence also includes those detained in custody; adds at 44586 that there can only be one non-dependant deduction per non-dependant; makes clear at 44622 that only those housing costs which can be determined should be included.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove

Chapter 44

44217 – 44260 (5 pages)
44266 – 44273 (1 page)
44452 – 44530 (3 pages)
44586 – 44595 (1 page)
44621 – 44630 (1 page)

Insert

Chapter 44

44217 – 44260 (5 pages)
44266 – 44273 (1 page)
44452 – 44530 (3 pages)
44586 – 44595 (1 page)
44621 – 44630 (1 page)

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

Normally occupied

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

Example

Julia lives alone in a flat she rents from a private landlord and to whom she pays service charges. She goes to stay with her father while he is recovering from an operation and is away from home for two weeks. While at her father’s house Julia is made redundant and claims JSA. The DM decides that Julia normally lives in her own flat. The time she spends at her father’s is exceptional. Housing costs can be considered for her service charges.

Rooms sublet

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

Family

44219 Family means¹

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

1 ESA Regs, reg 2(1)

Housing costs

44220 Housing costs are¹

1. rents or ground rents on long tenancies
2. service charges

3. payments by way of rent charge
4. payments under co-ownership schemes
5. payments for tenancies or licences of Crown tenants
6. payments for tents and their sites.

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

44221 Only those payments in DMG 44220 should be allowed as housing costs. For example, housing costs do not include

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

Note: This list is not exhaustive.

1 R(IS) 19/93

44222 - 44224

Lone Parent

44225 A lone parent is a person who is

1. not a member of a
 - 1.1 couple **or**
 - 1.2 polygamous marriage **and**
2. responsible for a child or young person who is a member of the household¹.

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

1 ESA Regs, reg 2(1)

Qualifying age

44226 The qualifying age for SPC¹ means

1. for a woman - pensionable age **or**
2. for a man - the age which would be pensionable age for a woman born on the same date as the man.

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

1 ESA Regs, reg 2(1)

Water charges

44227 Water charges means¹ any

1. water charges **and**
2. sewerage charges

in respect of the dwelling which a person occupies as their home.

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

Steps to follow when deciding housing costs

44228 When deciding a claimant's housing costs, the DM should determine

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

44229 - 44232

Liability for housing costs

- 44233 A person is liable to meet housing costs where the
1. liability falls on them or their partner, except where the liability is to another member of the same household¹ **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 costs² **or**
 3. costs are shared with other members of the household who are not close relatives of the claimant or the claimant's partner **and**
 - 3.1 at least one member of the household is liable for those costs **and**
 - 3.2 it is reasonable in the circumstances to treat the claimant as sharing responsibility³.

1 ESA Regs, Sch 6, para 4(a); R(IS) 4/00; 2 ESA Regs, Sch 6, para 4(b); R(IS) 12/94; R(IS) 8/01;

3 ESA Regs, Sch 6, para 4(c)

Responsibility for housing costs

- 44234 A claimant who is liable for a housing cost is responsible for that cost unless someone else has accepted responsibility for it. If responsibility is shared, the claimant is responsible only for their share¹.

1 ESA Regs, Sch 6, para 7(5); R(IS) 4/00;

Example

David has a tenancy in joint names with his daughter, Sarah. They are both liable for the rent and service charge payments. Sarah has always paid all of the payments due and continues to do so. David, although liable for the housing costs, does not have any responsibility for them and none are awarded to him.

Several months later Sarah stops making the payments for the rent and service charges. As David is liable for the costs and no one else is accepting responsibility for them, the DM includes the eligible housing costs in David's applicable amount.

44235 - 44240

Treated as occupying a dwelling as the home

Definitions

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

Medically approved

44242 Medically approved means certified by a medical practitioner¹.

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

Patient

44243 A patient is a person undergoing

1. medical **or**
2. other treatment

as an in-patient in a hospital or similar institution¹.

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

Residential accommodation

44244 Residential accommodation means accommodation which is a care home, an Abbeyfield Home or an independent hospital¹ (see DMG Chapter 54).

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

Student

44245 A student is a full-time student¹. For further information see the guidance on students in DMG Chapter 51.

1 ESA Regs, reg 2(1)

Training course

44246 Training course means a course of training or instruction provided wholly or partly by, or on behalf of, or by arrangement with, or approved by or on behalf of¹

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

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

44247

Dwelling where claimant normally lives

44248 Unless DMG 44253 - 44263 applies, a claimant should

1. be treated as living in the home where they, or where a claimant is a member of a family, where the claimant and members of their family normally live (see DMG 44217 and DMG 52397) **and**
2. not be treated as occupying any other dwelling as the home¹.

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

44249 To decide where a claimant normally lives the DM should

1. consider all homes that the claimant occupies, whether or not the homes are in GB¹ **and**
2. not treat the claimant as living in more than one home, unless the circumstances in DMG 44256 - 44263 apply **and**
3. where the claimant is responsible for housing costs on more than one property, and DMG 44256 - 44263 does not apply, treat the claimant as living in the home they normally occupy.

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

Full-time students and claimants on training courses

Students

44250 Single claimants who are F/T students, may have different homes in term time and vacations. Such a claimant should be treated as occupying the home for which they are liable to make payments in respect of if¹

1. they are occupying one of the homes because they are
 - 1.1 a F/T student **and**
2. they are liable for payments in respect of the dwelling on either, but not both, of the homes they live in when
 - 2.1 attending the course of study **or**
 - 2.2 not attending the course of study **and**they are not absent from the home for which they are liable².

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

Example

Paul is a lone parent studying in Exeter. He is renting a flat in Exeter and has rent and service charges to pay. When not studying he lives with his parents in their home in Liverpool. He has no housing costs for this accommodation. Paul cannot be treated as living in his flat in Exeter because he is absent from it.

Training course

44251 Single claimants who are on a training course, may have different homes whilst attending the course and not attending the course. Such a claimant should be treated as occupying the home for which they are liable to make payments in respect of, if¹

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

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

44252 - 44253

Example

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

44254 Students whose main purpose of living in their home is to attend a course of study will not normally be treated as living there for periods of absence outside the period of study. The exception is when the absence is due to admission to hospital for treatment¹.

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

Temporary accommodation

44255 A claimant who

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

must be treated as living in the dwelling for which they have to pay housing costs¹.

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

Liable for two homes

44256 A person who is liable to make payments on two dwellings should be treated as living in, and allowed housing costs for both dwellings where they

1. have left their former home, and remain absent, because of
 - 1.1 fear of violence in that home **or**

1.2 violence by a former partner or by a close relative
and it is reasonable to meet housing costs on both homes¹ **or**

2. are members of a couple or polygamous marriage and have a partner who is a F/T student or on a training course and it is

2.1 unavoidable that they have two homes **and**

2.2 reasonable to meet both housing costs².

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

44257 The question of reasonableness in DMG 44256 should be decided at the date the DM considers the issue and in the light of all the circumstances. These may include

1. the length of the absence
2. whether the claimant could reasonably be expected to take steps to end the liability for the former home
3. whether there is a hope of resuming occupation
4. whether it is practicable to end the liability
5. the claimant's situation and means of support
6. the extent to which the liability was in practice being met other than through ESA(IR).

Example

Kath lives with Dave in a house on which she is liable to pay service charges. She gets IS with housing costs. Dave is violent towards Kath, who leaves the house and moves to a rented flat. Kath starts legal proceedings and intends to return to the house as soon as it is safe for her to do so. The DM decides Kath has a liability to make payments for two homes, treats her as living in both homes and considers it reasonable to meet housing costs for the house (although the provision allows for payment to meet both liabilities rent is not an eligible housing cost).

44258 A person can also be treated as living in, and allowed housing costs for, two homes for up to four benefit weeks from the first day of the benefit week in which the move occurs if¹

1. they move to a new home, for a reason other than those in DMG 44255 and 44256 **and**
2. they are liable for housing costs on both homes **and**
3. the liability to make payments for both homes is unavoidable.

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

44259 - 44260

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

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

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

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

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

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

44268 - 44270

Temporary absences up to 52 weeks

44271 A person should be treated as living in their home for a period of temporary absence of not more than 52 weeks if¹

1. they intend to return to live in the home **and**
2. the part of the home they normally live in has not been let or sublet **and**
3. they
 - 3.1 are detained in custody pending trial or, as a condition of bail, are required to live as a condition of bail, in either
 - 3.1.a a dwelling, other than the dwelling they occupy as the home **or**
 - 3.1.b approved premises² such as a hostel **or**
 - 3.2 are patients resident in a hospital or similar institution **or**
 - 3.3 are, or a member of the family is, undergoing
 - 3.3.a medical treatment **or**
 - 3.3.b medically approved convalescencein the UK or elsewhere in accommodation that is not residential accommodation **or**
 - 3.4 are on a training course in the UK or elsewhere **or**
 - 3.5 are providing medically approved care for another person who is residing in the UK or elsewhere **or**

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

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

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

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

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

44273 If DMG 44271 applies, housing costs may be allowed for up to 52 weeks from the first day of absence¹. But a person may have several periods of temporary absence from home. The absences are treated as temporary if the claimant is not absent from home for more than 52 consecutive weeks.

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

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

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

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

44452 A payment (as in DMG 44451 1.4) is¹ any payment made by a LA (including, in England, a county council) or the Welsh Ministers to the claimant, the claimant's partner, or to another person on their behalf.

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

44453 - 44456

Connected to the adequacy of the accommodation

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

Example 1

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

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

Example 2

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

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

Example 3

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

Example 4

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

Example 5

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

Deductions for repairs and improvements

44458 The charges for other eligible housing costs in DMG 44434 may include an amount for repairs and improvements (see ADM Memo 8/18 paragraph 97)). In such a case the amount for repairs and improvements cannot be allowed and should be deducted¹.

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

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

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.

Contingency funds

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

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

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

Costs payable over 53 weeks or irregularly

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

1. paid for 53 weeks **or**
2. paid irregularly **or**

3. no such costs are payable or collected in certain periods **or**
4. the costs for different periods are different amounts

the weekly amount is the amount payable for the year divided by 52¹.

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

Payment of costs waived

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

1. the claimant or a member of the family pays for reasonable repairs or redecoration to the home **and**
2. that work was not the responsibility of the claimant or any member of the family **and**
3. payment for other housing costs is waived because the work has been done¹.

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

Attribution of service charges

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

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

Example

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

44465 - 44468

Housing costs - starting dates of entitlement

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

44470 For most claims made after 1.4.16 the QP is 39 weeks.

Note: The temporary measures, which introduced a 13 week QP from 5.1.09 to support home owners, will still apply to claimants who are in a waiting period for housing costs up to and including 31.3.16¹.

1 SS (Housing Costs Special Arrangement) (Amdt and Modification) Regs 08 & SS (Housing Costs Special Arrangements) (Amdt) Regs 09

44471 – 44482

Housing costs payable at the start of the claim

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

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

44484 All claimants should be paid housing costs for

1. co-ownership schemes (see DMG 44438)
2. crown tenancies (see DMG 44439)
3. tents and their sites¹ (see DMG 44445)

from the first day of entitlement to ESA.

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

44485

Start date for housing costs

44486 The amount of the award for housing costs is¹

1. nil where claimants have not been continuously entitled to ESA(IR), JSA(IB) or IS for 39 weeks²
2. for claimants who have been entitled to ESA(IR), JSA(IB) or IS for a continuous period of 39 weeks or more or SPC for any period³

2.1 the amount of any

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

2.1.b service charges **and**

2.1.c rentcharges.

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

Starting date of entitlement - waiting days

44487 A claimant is not entitled to ESA when serving waiting days¹ (see DMG 41101 et seq). As a result waiting days do not count towards any housing costs qualifying period.

1 WR Act 07, Sch 2, para 2

44489 - 44530

Non-dependant deductions

Introduction

44586 Where non-dependants live with the claimant, a deduction from the allowable housing costs may be appropriate¹. A deduction should be considered for each non-dependant or group of non-dependants, but only one deduction can be applied to each non-dependant².

1 ESA Regs, Sch 6, para 19; 2 ESA regs, Sch 6, para 19(2A)

Definition of a non-dependant

44587 With the exception of those people mentioned in DMG 44596, non-dependants¹ are people aged 18 or over who

1. normally reside with the claimant **or**
2. the claimant normally resides with.

1 ESA Regs, reg 2(1) & 71

Meaning of normally resides

44588 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.

44589 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 1

Oonagh and her sister Mairead share a flat on which Oonagh has a mortgage. Mairead goes to stay with their father to look after him while he is recovering from a major operation. She is away for three weeks. While Mairead is staying with her father Oonagh falls poorly and claims ESA. The DM decides that Mairead normally lives with Oonagh and is a non-dependant. The time she spends at her father's is exceptional.

Example 2

Donna normally lives alone in her own flat. Her brother Lawrence comes to stay with her for a week at a time every three months. He does not normally live with Donna and is not a non-dependant.

Sharing the accommodation

44590 A person resides with another only if they share any accommodation and in this context, people should be regarded as sharing the accommodation unless¹

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.

1 ESA Regs, reg 71(6); R(IS) 12/96

44591 A communal area is¹ an area of common access (not a room) including

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

1 ESA Regs, reg 71(7)

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.

44592 - 44595

Questions that cannot be decided immediately

44621 Where a DM is

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

the applicable amount should include any housing costs that can be determined immediately on the evidence available¹. Where there is insufficient evidence ESA can be awarded without housing costs.

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

44622 If there are several housing costs on the claim the applicable amount should include only an amount for those that can be determined. The applicable amount should not include any amount for those housing costs where there is insufficient information to make a decision.

44623 The decision may be revised or superseded if further information about any of the claimant's housing costs is received after the ESA claim or question has been decided¹.

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

44524 - 44630

