DMG Chapter 51: Income other than earnings

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Scope of this chapter

51000 This Chapter deals with the calculation of income other than earnings for ESA(IR) & (Cont) as well as student's income. With the exception of payments made to a person carrying out public or local functions, pension protection fund periodic payments, occupational and personal pension payments[1], income other than earnings does not affect the calculation of ESA(Cont).

1 WR Act 07, s 3

Meaning of claimant

51001 Claimant means[1] a person who has claimed ESA.

1 WR Act 07, s 24(1)

What is income

51002 Income is not defined in law. It can normally be separated from capital because a payment of income

1. forms part of a series of payments, whether or not they are made regularly **or**

2. is made for a period of time **or**

3. satisfies both the conditions in **1.** and **2.**.

Note: Where capital[1] is being paid by instalments each payment will be capital unless DMG 51425 et seq applies.

1 Lillystone v. Supplementary Benefits Commission (1982) FLR;
Morrell v. Secretary of State for Work and Pensions [2003] EWCA Civ 526

How much income should be taken into account

51003 The DM should take into account the gross amount of any income[1]. References in this Chapter to income means income other than earnings. When calculating gross income disregard the sums in DMG 51006 - 51008 and DMG 51080 et seq. No disregards should be made for any other expenses or deductions.

1 ESA Regs, reg 104(1)

Deductions from benefits

51004 Where a payment of SS benefit has a deduction for benefit recovery, the DM should take into account the gross amount of benefit[1].

1 ESA Regs, reg 104(3)

Reduction due to a failure to attend a work focused interview or work-related activity

51005 Where IB, SDA or ESA(Cont) paid to a claimant's partner has been reduced because the partner has failed to attend a WfI, or undertake WRA, the amount of IB, SDA or ESA(Cont) to be taken into account as income is the full amount that would have been payable before the reduction[1] (see DMG 05380).

1 SS (JPI) Regs 02, reg 12(11) & ESA Regs, reg 63(5)

Overpayment recovery from other income

51006 Except where DMG 51004 applies, when income paid to a claimant is reduced because the paying authority is enforcing recovery of an overpayment, the DM should take into account the net amount. This is the amount actually received by the claimant, unless the circumstances in DMG 51007 apply.

Example

Ted is in receipt of ESA(IR). His partner, Libby, works and is in receipt of WTC. HMRC has awarded WTC

at a rate of £50 per week. However, due to the recovery of an overpayment which occurred on a previous award of WTC, the amount Libby actually receives is £28 per week. When determining the amount of WTC to take into account on Ted's award of ESA(IR), the DM takes into account Libby's WTC of £28 per week.

51007 If the claimant volunteers to repay an overpayment by offering to have deductions made from his income, the DM should consider whether the claimant has deprived himself of that income (see DMG 51469 et seq).

Deduction of income tax

51008 Any tax actually paid, or due to be paid[1], should be deducted when calculating any income that is to be

1. taken fully into account **or**

2. disregarded in part[2].

Note 1: Where the amount of tax due to be paid has been assessed under the HMRC Tax Self Assessment process then DMs should consider revision action if it is shown that there is a tax liability or the actual tax liability differs from the forecast provided by the claimant. DMG Chapter 03 provides guidance on revision.

Note 2: From 2016 Scotland has been able to set its own Income Tax rates. Please see Appendix 1 of DMG Chapter 50 for more information.

1 R(IS) 4/05; 2 ESA Regs, Sch 8, para 1

Example

Jack makes a claim for ESA on 5 June and becomes entitled to ESA(IR). His partner has been receiving RP of £106.50 a week since April. Jack provides a forecast tax liability which estimates that his partner will be liable for £79.00 tax under the HMRC Tax Self Assessment process on this year's RP paid to her.

The DM calculates the amount of RP to be taken into account as:

£106.50 a week RP being paid less £1.52 a week tax [£79 ÷ 52] = £104.98. The DM takes £104.98 RP a week into account.

Questions on the treatment of income

51009 The DM should direct further enquiries if there is any doubt whether income fits into any of the definitions in this Chapter. Enquiries will usually be to the paying authority and should be made before any decision is given.

51010 After deciding whether any disregards apply, the DM should calculate

1. the period over which the income should be taken into account **and**

2. the weekly rate at which the income should be taken into account.

51011 - 51019

Income taken fully into account 51020 - 51079

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Types of income taken fully into account 51020 - 51021

51020 When calculating income other than earnings for ESA(IR)[1] DMs should take

1. Annuity income

2. BA

3. CA

4. Cash in lieu of concessionary coal

5. Ministry of Justice ex gratia incapacity allowances (previously paid by the HO)

6. IB

7. IIDB

8. ESA(Cont)

9. JSA(Cont)

10. MA

11. Personal pensions

12. RP

13. SDA

14. War orphan's pension

15. WTC

16. WP

17. Workmen's compensation

fully into account. These are the most common types of income that DMs deal with, although there are other types too. Detailed guidance is given in DMG 51022 et seq.

1 ESA Regs, reg 104(1)

51021 Normally the DM should take into account in full

1. income from certain disregarded capital (see DMG 51073)

2. income from insurance policies (see DMG 51064)

3. income from certain sub-lets (see DMG 51070)

4. occupational pensions (see DMG 51050)

5. payments for people attending court (see DMG 51071 and DMG 51229).

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Bereavement allowance

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

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

Note 2: The Bereavement Support Payment replaced Bereavement Allowance for people whose spouse or civil partner died on or after 6.4.17[1]. The regular monthly BSP payment is income other than earnings in ESA(IR) and is fully disregarded[2] (see DMG 51232).

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

Carer's allowance

51023 CA should be taken fully into account. It is payable to people who are unable to work because they

are caring for a person receiving AA or DLA.

Note: The Scottish carer's allowance supplement[1] , paid by the Scottish Government to those recipients of CA living in Scotland, is not the same as CA and is fully disregarded for income purposes.

1 The Scotland Act 2018, s47

ESA(Cont)

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

1. take part in a WFI or a failure to undertake WRA **or**

2. comply with a work-related requirement

then the amount of ESA(Cont) to take into account is the amount before any reduction[1].

1 ESA Regs, reg 104(10)

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

1. take part in a WFI or a failure to undertake WRA **or**

2. comply with a work-related requirement

then the amount of ESA(Cont) to take into account is the amount before any reduction[1].

1 ESA Regs, reg 104(11)

51026 - 51030

Incapacity benefit

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

1. who are not entitled to SSP **or**

2. whose SSP has ended.

51032

Industrial injuries disablement benefit

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

1. REA **and**

2. US

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

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

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

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

51036

JSA(Cont)

51037 JSA(Cont) received by a partner should be taken fully into account. It is payable to people who are unemployed and who have paid enough NI contributions[1].

1 JS Act, s 2

Maternity allowance

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

Retirement pension

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

1. contributory (Cat A or B) **or**

2. non-contributory (Cat C or D).

51040 RP may be made up of the following elements

1. a BP

2. an increase of BP for dependant spouses or civil partners, dependant children or women looking after children (but see DMG 51240 if the dependant is not a member of the claimant's family)

3. an AP for people who were in non-contracted out employment

4. GRB earned between 1961 and 1975 under the graduated pension scheme

5. Incs for deferred retirement

6. invalidity and age additions.

51041 A pensioner who has been in employment that was contracted out of SERPS may be entitled to

1. GMP instead of AP through an occupational pension scheme **and**

2. Incs to an occupational pension and GMP if retirement was deferred.

The DM should take these payments fully into account as an occupational pension.

Severe disablement allowance

51042 SDA should be taken fully into account. It is a non contributory benefit payable after six months of illness. For ESA purposes, this applies only to the claimant's partner.

War orphan's pension

51043 War orphan's pension should be taken into account in full.

Widow's benefit (widow's payment, widow's pension)

51044 WPT, which is paid as a lump sum should be treated as capital. In addition WP claimed prior to 9 April 2001 may be paid. The DM should take WP fully into account.

Working tax credit

51045 WTC should be taken fully into account. It is paid to employees or to S/E earners direct to their bank account. Where appropriate WTC includes an element for childcare paid to the main carer.

Note: DMG Chapter 48 gives guidance about the date on which WTC is treated as paid and also on circumstances where WTC is incorrectly paid.

Workmen's compensation (supplementation) scheme

51046 WC (Supp) which replaced WC for old cases should be taken fully into account. It is paid for industrial injuries and diseases which were caused by employment before the start of the Dis B scheme.

51047 Any attendance allowance paid with WC (Supp) should be disregarded. See DMG 51230 et seq for guidance on attendance allowances.

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Occupational pensions

Treatment of occupational pensions in ESA(IR)

51050 Payments of income from occupational pensions should be taken fully into account subject to the normal rules for calculating the amount of income to be assessed. Occupational pension schemes are set up by employers to provide pensions for employees and their dependants. Payments under the

1. British Coal Voluntary Employment Redundancy Scheme **or**

2. British Coal Industrial Death and Retirement Scheme **or**

3. British Coal RMPS **or**

4. Armed Forces Pensions[1]

are included. Occupational pension payments do not include discretionary payments from a fund set up to relieve hardship[2]. This type of payment is a charitable or voluntary payment.

1 CE/2265/2017; 2 ESA Regs, reg 2(1)

Treatment of occupational pensions in ESA(Cont)

51051 See DMG 51778 for guidance on the treatment of occupational pensions in ESA(Cont).

Personal pensions

Treatment of personal pensions in ESA(IR)

51052 Income from personal pension schemes should be taken fully into account. Personal pension schemes provide pensions on retirement for

1. S/E people **or**

2. employees who are not members of occupational pension schemes.

Personal pension schemes may also make payments to dependants following the death of the scheme member.

Treatment of personal pensions in ESA(Cont)

51053 See DMG 51772 for the guidance on the treatment of personal pensions in ESA(Cont).

51054 - 51059

Other income taken fully into account 51060 - 51079

Annuity income [See Memo DMG 16/18] 51060 - 51061

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Annuity income

[See Memo DMG 16/18]

51060 An annuity is an annual income. The most common type of annuity involves a person paying a lump sum of money to an insurance company. In return the insurance company will pay an agreed sum of money each year until the death of the investor.

51061 Annuity income should be taken fully into account apart from

1. Home income plans. These are schemes where an annuity is bought with a loan secured on the home. The income is subject to a partial disregard[1].

2. Gallantry awards. Income payable because of the award of the

2.1 Victoria Cross **or**

2.2 George Cross **or**

2.3 any similar medal (including foreign honours)

should be disregarded in full[2].

1 ESA Regs, Sch 8, para 18; 2 Sch 8, para 12

Cash in lieu of concessionary coal

51062 The DM should take into account in full[1] cash paid in lieu of concessionary coal to a

1. former employee of British Coal **or**

2. surviving husband or wife if the employee has died.

Concessionary coal is coal provided free of charge to former employees of British Coal and their dependants by the Department of Energy and Climate Change.

Note: The value of any coal provided should be disregarded as income in kind[2].

1 R(IS) 4/94; 2 ESA Regs, Sch 8, para 22

Ministry of Justice ex gratia incapacity allowances

51063 These payments should be taken fully into account. But if they are paid as a lump sum they should be treated as capital. These allowances are paid by the Ministry of Justice in England and Wales to compensate people injured in prison workshops or training courses.

Income from an insurance policy

51064 Insurance policy income should be taken fully into account except for income from a mortgage protection policy.

51065 - 51069

Income from certain sublets

51070 Income from subletting parts of the home that are not lived in (for example the garage or garden) should be taken fully into account. See DMG 51112 for sub-letting parts of the home that are lived in.

Note: In this guidance home means the dwelling occupied as the home.

Payments for attending court

51071 Payments to jurors and witnesses for loss of

1. earnings **or**

2. benefits

should be taken fully into account[1].

1 ESA Regs, Sch 8, para 43

51072

Income from certain disregarded capital

51073 Generally income from capital is not treated as income but as capital and goes towards increasing the amount of a claimant's capital. DMs should, however, take into account, subject to any appropriate income disregards, income derived from

1. trusts set up from money paid because of a personal injury while disregarded (see DMG Chapter 52)

2. assets of a business partly or wholly owned by the claimant while disregarded (see DMG Chapter 52)

3. the dwelling occupied as the home while disregarded - (see DMG Chapter 52) (but not income from boarders or sub-lets which is partially disregarded)

for as long as the value of the capital is disregarded[1].

1 ESA Regs, Sch 8, para 23

51074 - 51079

Income disregarded in part 51080 - 51209

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Income that has £10 a week disregarded 51080 - 51096

Types of income that have £10 a week disregarded

51080 Disregard the first £10 a week of[1]

1. pensions paid to victims of National Socialist persecution

2. payments of WDisP

3. payments of WWP, WMA and WPA

4. certain payments from the Armed Forces and Reserve Forces Compensation Scheme.

Note: Any remainder is taken fully into account, after any income tax has been disregarded. WWP includes a pension paid to a surviving civil partner.

1 ESA Regs, Sch 8, para 17

Weekly limit to £5, £10 and £20 disregards

51081 In some circumstances the overall weekly disregard should be limited to £20[1] for the family when

1. more than one payment listed in DMG 51080 **or**

2. covenant income **or**

3. a student loan

are taken into account in the same benefit week.

Covenant income has the first £5 disregarded. Student loans have the first £10 disregarded.

Note: This rule does not apply where two payments of the same kind are taken into account in the same benefit week[2]. In these cases each payment has its own disregard.

1 ESA Regs, Sch 8, para 39; 2 Sch 8, para 40

Pensions paid to victims of National Socialist persecution

51082 These pensions have a £10 disregard[1]. They are made under special provision of the laws of the relevant country to victims of Hitler's government.

Note: When considering whether a payment qualifies for this disregard could DMs please contact DMA Leeds with full details of the case.

1 ESA Regs, Sch 8, para 17(g)

War disablement pensions

51083 WDisP is paid to former members of

1. the armed forces **or**

2. forces nursing services

because of medical unfitness prior to 6.4.05 caused or aggravated by service but not necessarily the result of combat. See Appendix 1 to this Chapter for details of the law under which WDisP is paid.

Note: For those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05 the War Pension Scheme is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 51087.

51084 WDisP may be made up of[1]

1. wounds pension **and**

2. disablement pension **and**

3. retired pay for a disabled officer.

1 R(IS) 3/99

51085 A £10 disregard can be made for[1]

1. WDisP **and**

2. a payment to compensate for non payment of WDisP **and**

3. a similar payment made by a foreign government.

1 ESA Regs, Sch 8, para 17(a), (e) & (f)

War widow's or widower's pension

51086 WWP is paid to a widow or widower following a death caused by service or war injury prior to 6.4.05. The DM should disregard £10 from

1. WWP **and**

2. a payment to compensate for non-payment of WWP **and**

3. similar payments from a foreign government[1].

Note 1: DMs should take into account in full pensions paid to war orphans or dependants. See Appendix 1 to this Chapter for details of the law under which WWPs are paid.

Note 2: For deaths occurring on or after 6.4.05 WWP is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 51087.

1 ESA Regs, Sch 8, para 17(b), (e) & (f)

Armed Forces and Reserve Forces Compensation Scheme

51087 The Armed Forces and Reserve Forces Compensation Scheme replaces the War Pensions Scheme for those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05.

Note: The War Pensions Scheme will continue to run parallel to the new scheme for existing beneficiaries and for those who make a new claim for a War Pensions Scheme payment for injury, ill health or a death due to service in the Armed Forces prior to 6.4.05.

Definitions

51088 The Armed Forces and Reserve Forces Compensation Scheme means[1] the scheme established under specified Armed Forces Legislation[2].

1 ESA Regs, reg 2(1); 2 Armed Forces (Pensions and Compensation) Act 2004, s 1(2)

51089 A guaranteed income payment means[1] a payment made under specified Armed Forces legislation[2].

1 ESA Regs, reg 2(1); 2 Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, art 14(1)(b) or 21(1)(a)

Payments from the Armed Forces and Reserve Forces Compensation Scheme

51090 A £10 disregard applies to

1. a guaranteed income payment[1]

2. a payment to compensate for the non payment of a guaranteed income payment[2] **and**

3. a similar payment made by a foreign government, which is analogous to a guaranteed income payment[3].

1 ESA Regs, Sch 8, para 17(d); 2 Sch 8, para 17(e); 3 Sch 8, para 17(f)

51091 Where

1. a claimant is in receipt of a guaranteed income payment **and**

2. that payment has been reduced to less than £10 a week by abatement due to a pension from the Armed Forces Pension Scheme or a payment under the Armed Forces Early Departure Scheme the claimant can still have a full £10 disregard on the guaranteed income payment and the pension[1].

Note: The Armed Forces Pension Scheme means either the Armed Forces Pension Scheme of 1975 or of 2005.

1 ESA Regs, Sch 8, para 17(d)

Example

Simon is in receipt of ESA(IR). He also receives a guaranteed income payment of £2.50 per week. This is because the payment has been abated by a pension he receives under the Armed Forces Pension Scheme. The DM disregards the guaranteed income payment of £2.50 and also £7.50 of the pension. This gives a total weekly disregard of £10.

Widowed mother's allowance and widowed parent's allowance

51092 A £10 disregard applies to WMA. For claims from people whose partner died on or after 9.4.01, WMA has been replaced by WPA. It is a new benefit paid to bereaved men and women who care for children. A man with dependant children whose partner has died before 9.4.01 can claim WPA after this date. A £10 disregard is applicable to WPA[1].

1 ESA Regs, Sch 8, para 17(h) & (i)

51093 - 51096

Income with partial disregards 51097 - 51103

Civilian war injury pensions 51098

Home income plans [See Memo DMG 16/18] 51099 - 51103

51097 [See Memo DMG 16/18] Income should be disregarded in part if it is

1. a civilian war injury pension

2. a home income plan

3. income from boarders

4. income from subletting

5. a living away from home allowance

6. an income from certain disregarded capital

7. a national lottery sports award.

Civilian war injury pensions

51098 Civilian war injury pensions have a disregard that is uprated annually[1].

1 ESA Regs, Sch 8, para 51 & Personal Injuries (Civilians) Scheme 1983, s 27(3)

Home income plans

[See Memo DMG 16/18]

What is a home income plan

51099 Retired people who own their home may take out a loan secured on the home and use the money to buy an annuity which provides an income. The loan may also be for other expenditure such as building an extension. The gross income from the annuity covers the interest on the loan with any balance being used for personal use.

What is an annuitant

51100 In this guidance an annuitant is a person to whom income from an annuity is payable.

Payments from home income plans

51101 [See Memo DMG 16/18] The DM should establish if

1. the loan was taken out under a scheme under which at least 90% of the proceeds of the part of the loan intended to buy an annuity have been used to buy an annuity[1] **and**

2. the annuity ends with

2.1 the life of the person to whom the loan was made **or**

2.2 the life of the survivor of two or more annuitants who include the person to whom the loan was made **and**

3. the interest on the loan is payable by the person to whom the loan was made or by one of the annuitants **and**

4. at the time the loan was made the person to whom it was made and other annuitant was aged at least 65 **and**

5. the loan was secured on a dwelling in GB and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling **and**

6. the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as the home at the time the interest was paid.

1 ESA Regs, Sch 8, para 18

51102 If all the conditions in DMG 51101 are satisfied the DM should disregard the

1. net weekly interest where income tax is deductible **or**

2. gross amount of interest in other cases.

The balance of the annuity income should be taken into account.

Notional annuity income

51103 If the annuity income is

1. paid direct to the lender **or**

2. not paid to the claimant or the lender

the DM should consider if the claimant is treated as possessing notional income (see DMG 51456 et seq)[1].

Income from people living in the claimant's home 51104 - 51119

Income from boarders 51105

What is board and lodging accommodation 51106 - 51109

Who is a close relative 51110 - 51111

Income from subletting 51112 - 51119

51104 The following paragraphs give guidance on the treatment of income from people living in the claimant's home. DMs should not apply the disregard for payments from people who normally live with the claimant to

1. payments for board and lodging **or**

2. payments made by a subtenant under a contract.

Income from boarders

51105 Where claimants provide BL accommodation within their home the DM should

1. add together all the payments made for BL for the week

2. calculate how much BL income belongs to the claimant (i.e. if the claimant is in partnership only a share of the total payments will be the claimant's income)

3. deduct £20 **and**

4. deduct 50% of any excess over £20

for each person for whom BL is provided[1].

Note: In this paragraph "home" means the dwelling occupied as the home.

1 ESA Regs, Sch 8, para 21

Example

Anita, who is entitled to ESA(IR), had two boarders during the week.

1. Boarder 1 paid £55 for a 4 night stay.

2. Boarder 2 paid £12 a night for a five night stay.

The DM calculated the income to be taken into account as follows

Boarder 1

Payments for the week	£55
Deduct	£20
	£35
Deduct 50% of remainder	£17.50
Income from boarder 1	£17.50

Boarder 2

Payments for the week	£60
Deduct	£20
	£40
Deduct 50% of remainder	£20
Income from boarder 2	£20

Total income

From boarder 1 and boarder 2 =	£37.50

What is board and lodging accommodation

51106 BL accommodation means[1]

1. accommodation provided for a charge that includes

1.1 providing the accommodation **and**

1.2 some cooked or prepared meals **or**

2. accommodation provided in a hotel, guest house, lodging house (see DMG 51109) or similar establishment.

1 ESA Regs, reg 2(1)

51107 Accommodation provided

1. by a close relative (see DMG 51110) **or**

2. by any other member of the family **or**

3. not on a commercial basis

should not be treated as BL accommodation[1].

1 ESA Regs, reg 2(1)

51108 Any meals provided

1. should not be cooked or prepared by the boarder or member of the boarder's family **and**

2. should be eaten in the accommodation or associated premises[1].

1 ESA Regs, reg 2(1)

51109 A lodging house

1. is not a private house in which rooms are rented, even if services such as the provision and washing of bed linen are provided **and**

2. is a place where accommodation is offered on a long-term basis **and**

3. is the kind of establishment that may have a sign outside offering accommodation.

Who is a close relative

51110 When considering BL accommodation "close relative" means[1] a

1. parent

2. parent in law

3. son

4. son in law

5. daughter

6. daughter in law

7. step parent

8. step son

9. step daughter

10. brother or sister (including half-brother and half-sister)

11. husband and wives of any of the people mentioned above

12. civil partner and those who are LTAMC with any of the people mentioned above.

1 ESA Regs, reg 2(1); R(SB) 22/87

51111 For the purposes of DMG 51110, a child who is adopted becomes

1. a child of the adoptive parents **and**

2. the brother or sister of any other child of those parents.

The child stops being the child of, or the brother or sister of any children of the natural parents. Whether an adopted person is a close relative of another person depends upon the legal relationship and not the blood relationship[1].

1 R(SB) 22/87

Income from subletting

51112 Where a claimant sublets part of the home the DM should[1]

1. add together all payments made for the week by that subtenant and/or a member of the subtenant's family **and**

2. disregard

2.1 £20 **or**

2.2 the whole of the amount paid where the total is less than £20.

Note: In this guidance "home" means the dwelling occupied as the home.

1 ESA Regs, Sch 8, para 20

Example 1

Sally has a subtenant in her home who is liable under a contract to pay her rent. The weekly rent is £50 The subtenant pays £30 on Tuesday and £20 on Saturday.

The DM

1. adds together the payments in the week £30 + £20 = £50

2. and deducts £20 = £30.

Example 2

Robin has two subtenants in his home. Both subtenants pay £65 a week. The DM

1. adds together the payments in the week £65 + £65 = £130

2. and deducts £40 (£20 for each subtenant) = £90.

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Other types of income partially disregarded 51120 - 51130

Living away from home allowance 51120

Income from certain disregarded capital 51121 - 51124

National Lottery sports award 51125 - 51130

Living away from home allowance

51120 Living away from home allowance is paid by or on behalf of DWP to people attending training courses. The DM should disregard the amount of this allowance except any part of it which is equal to rent met by HB for accommodation the claimant does not normally occupy[1].

1 ESA Regs, Sch 8, para 15(1)(d)

Income from certain disregarded capital

51121 The DM should

1. take into account as income any payments (including rent) from premises other than the home while the capital value of the premises is disregarded **and**

2. treat as capital any other income received from premises apart from income from the home. This includes rent from a property that has no value because of the liabilities secured on it.

Note: The disregards explained in DMG 51122 do not apply to income from the home.

51122 The amount to be disregarded is

1. any mortgage repayments, including

1.1 both the interest and capital elements of any repayments **and**

1.2 endowment policy premiums where it is a term of the mortgage that there is an endowment policy. The DM should establish the level of endowment required by the lender to cover the mortgage. See DMG 51123 for the calculation of the deduction for the premium **and**

1.3 insurance premiums where it is a term of the mortgage that such insurance be held **and**

2. CT **and**

3. water charges

paid for the property producing the income during the period that the income was received for[1].

1 ESA Regs, Sch 8, para 23(2)

51123 Endowments have both an investment and a life insurance element. The endowment may have been chosen to provide

1. just the level of investment and life assurance required by the lender to ensure repayment of the mortgage, including in the event of death. If the DM establishes that the endowment is this type of endowment, the DM should deduct the amount of the premium **or**

2. a level of investment and life assurance higher than that required by the lender. The premium for this type of endowment is higher than the endowment in **1.**. If the DM establishes that the endowment is this type of endowment the DM should

> **2.1** establish the level of endowment actually required by the lender to cover the mortgage **and**
>
> **2.2** restrict the amount of the deduction to the amount that would buy the level of endowment actually required by the lender. When deciding this amount, the DM may choose to look at the cost of a policy from the same insurance company or a different company.

51124 The disregard applies to income from properties whose capital value is disregarded because they are

1. intended to be the claimant's home but have not yet been occupied (see DMG Chapter 52) **or**

2. occupied wholly or partly by a partner or relative of

> **2.1** a single claimant **or**
>
> **2.2** any other member of the family

who is aged at least 60 or incapacitated (see DMG Chapter 52) **or**

3. occupied wholly or partly by the claimant's former partner (see DMG Chapter 52) **or**

4. the former marital home (see DMG Chapter 52) **or**

5. premises that the claimant is taking reasonable steps to sell (see DMG Chapter 52) **or**

6. premises the claimant intends to live in and certain steps are being taken to take possession (see DMG Chapter 52) **or**

7. premises the claimant intends making home but cannot move in until essential repairs and

improvements have been completed (see DMG Chapter 52).

National Lottery sports award

Meaning of sports award

51125 “Sports award” means an award

1. made by one of the Sports Councils named in the National Lottery legislation **and**

2. out of sums allocated to it under that legislation[1].

1 ESA Regs, reg 2(1); National Lottery etc Act 1993, s 23(2)

51126 The Sport Councils named in the National Lottery legislation[1]are the

1. English Sports Council[2]

2. Scottish Sports Council

3. Sports Council for Wales

4. Sports Council for Northern Ireland

5. UK Sports Council[3].

1 s 23(2); 2 National Lottery etc Act (Amendment of s 23) Order 1996, art 2; 3 art 2

Amount of disregard

51127 Any payments of a sports award should be disregarded except to the extent that the award is made for

1. food **or**

2. ordinary clothing or footwear **or**

3. rent for which HB is payable **or**

4. household fuel **or**

5. housing costs **or**

6. CT for which the claimant or a family member is liable **or**

7. water rates for which the claimant or a family member is liable[1].

Note 1: "Food" does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person for which the sport award was made[2].

Note 2: "Ordinary clothing and footwear" means clothing or footwear for normal daily use. It does not include school uniforms or clothing used solely for sporting activities[3].

1 ESA Regs, Sch 8, para 57(1) & (2); 2 & 3 Sch 8, para 57(3)

51128 - 51130

Maternity, paternity, adoption, parental, neonatal care leave and sick pay 51131 - 51139

Statutory maternity pay 51131

Paternity pay and additional paternity pay 51132

Statutory adoption pay 51133

Statutory sick pay 51134

Statutory shared parental pay 51135

Neonatal care leave pay 51136

Treatment of SMP, paternity pay, statutory adoption pay, statutory shared parental pay and SSP 51137 - 51139

Statutory maternity pay

51131 SMP is payable by employers to female employees as part of, or instead of, normal earnings when they have given up work to have a baby. Women who are not employees are not entitled to SMP but may claim MA instead.

Paternity pay and additional paternity pay

51132 Ordinary and additional statutory paternity pay is payable to male employees during their paternity leave when they have average weekly earnings of at least the LEL.

Statutory adoption pay

51133 Statutory adoption pay is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the LEL. It is paid at the same rate as standard SMP.

Statutory sick pay

51134 SSP is payable by employers as part of or instead of, normal wages for up to 28 weeks in any period of sickness. People who are not employed are not entitled to SSP but may claim ESA instead.

Statutory shared parental pay

51135 Employees and workers my be entitled to shared parental leave and shared parental pay in respect of babies born or adopted on or after 5.4.15.

Neonatal care leave pay

51136 Neonatal care leave pay is a statutory entitlement for employed parents if their child receives neonatal care starting within 28 days of birth and goes on to spend seven or more continuous days in care. The entitlement will apply to children born on or after 6th April 2025.

Treatment of SMP, paternity pay, statutory adoption pay, statutory shared parental pay, neonatal care leave pay and SSP

51137 [See DMG Memo 08/20] The amount the DM should take into account is the gross amount less

1. any income tax paid[1] **and**

2. any employees' NI contributions or Northern Ireland Class 1 contributions[2] **and**

3. one half of any contribution paid by the claimant to an occupational or personal pension scheme[3].

Note 1: A claimant cannot be entitled to ESA for a day which is a day of incapacity for work for SSP purposes[4]. However, SSP might be received by the claimant, for example, where it is paid in arrears, whilst the claimant is in receipt of ESA(IR).

Note 2: A claimant's partner could be entitled to SSP whilst the claimant is entitled to ESA(IR).

1 ESA Regs, Sch 8, para 1; 2 Sch 8, para 4(a) & 5(a); 3 Sch 8, para 4(b) & 5(b); 4 WR Act 07, s 20(1)

Employer's private maternity, paternity, adoption or sick pay

51138 Maternity, paternity, adoption or sick pay from an employer's private scheme should be treated in the same way as SMP, Statutory paternity pay, Statutory adoption pay or SSP with disregards made for

the items described in DMG 51136.

Lump sum payments of SMP

51139 Some employers may pay SMP as a lump sum at the start of the MPP. The DM should apply the normal rules when deciding the period SMP should be taken into account[1].

1 ESA Regs, reg 91(2)(a)

Payments for housing costs and mortgage protection payments 51140 - 51149

Introduction 51140

Meanings of terms used 51141

Payments made direct to a third party when the claimant could not receive the income direct 51142

Payments made direct to a third party when the claimant could receive the income direct 51143 - 51149

Introduction

51140 The following paragraphs explain disregards on payments for housing costs. The type of disregard depends upon the way a payment is made. DMs should make sure that there is sufficient evidence available to decide how to apply the disregards.

Meanings of terms used

51141 In the following paragraphs references to

1. "home" means "dwelling occupied as the home" which includes

1.1 the dwelling and any

1.1.a garage

1.1.b garden **or**

1.1.c outbuildings

normally occupied by the claimant as the home **and**

1.2 any buildings or land not occupied as the home which it is not practicable or reasonable to sell separately **and**

1.3 in Scotland, any croft land on which the dwelling is situated

2. "qualifying housing cost" means

2.1 a loan which which qualifies under the Loans for Mortgage Interest Regulations[1] (LMI), see

ADM Memo 8/18 **or**

2.2 any other housing costs (for example service charges) which satisfies the conditions of DMG, Chapter 44

1 The Loans for Mortgage Interest Regulations 2017 (SI 2017/725)

Note: From 6.4.18 the regulations which provide for entitlement to owner occupier payments within UC, IS, JSA(IB), ESA(IR) and SPC are repealed but payment towards certain other housing costs will continue. Support for owner occupier payments will be met by stand-alone loans under new legislation. However transitional arrangements are in place for existing claimants whose housing costs can continue for a prescribed/limited period – see ADM Memo 8/18 for full details.

3. "mortgage protection policy" means an insurance policy taken out to insure against the risk of not being able to maintain repayments on a loan or mortgage

4. "third party" means a person or organization to whom the claimant is liable to make payments for housing or accommodation. This could include a

4.1. landlord

4.2. building society

4.3. insurance company

4.4. care home, an Abbeyfield Home or independent hospital (see DMG 51192 - 51194 for the meaning of care home and

5. "capital repayments" include repayments of capital on a "repayment" mortgage or loan as well as payments into

independent hospital)

5.1. endowment policies

5.2. individual savings accounts (ISAs)

5.3. personal pension plans

5.4. other investment plans

that have been taken out to repay a mortgage or loan.

Note: Rooms that are sub let should be treated as part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

Payments made direct to a third party when the claimant could not receive the income direct

51142 Where a claimant receives housing costs within their award as in DMG 51141 **2.2** then the DM should take these payments into account but only up to the level of the housing costs included in the applicable amount. Any excess should be ignored[1]. This disregard applies

1. to a payment if the claimant could not successfully apply to receive the income direct **and**

2. for any period before the claimant could expect to get a payment in a case where the claimant could successfully apply to receive the income direct.

Note: The disregards in DMG 51150 et seq do not apply to these payments[2].

1 ESA Regs, reg 106(3)(c); 2 Sch 8, para 31 & 32(2)

Example

Asif is entitled to ESA(IR). He has an income protection policy that pays £50 a week.

Under the terms of the policy payments must be made direct to his landlord. The money is used to meet Asif's service charges.

Asif's applicable amount includes £25 a week for service charges.

The DM treats Asif as having income of £25 a week. The balance of £25 is ignored.

Payments made direct to a third party when the claimant could receive the income direct

51143 Where a claimant receives housing costs within their award as in DMG 51141 **2.2** the DM should treat any payments made direct to a third party as the claimant's income from the date the claimant could expect to get the income[1]

1. if an application was made **and**

2. if the claimant could successfully apply to receive the income direct.

This notional income should be treated as if it is actually received by the claimant[2].

1 ESA Regs, reg 106(2); 2 reg 109(1)

How should the DM decide when the claimant could expect to get the income

51144 The DM should calculate the date the claimant could expect to receive the income by

1. assuming that an application was made on the date the DM first becomes aware of the possible income **and**

2. adding the estimated time it would take for an application to be processed.

Payments made direct to the claimant

51145 If the claimant

1. receives payments **or**

2. is treated as receiving payments

for housing costs direct the DM should decide if the income comes from a mortgage protection policy.

51146 Where a payment is made from a mortgage protection policy the DM should always apply any disregard for a mortgage protection policy payment before considering any other disregards[1].

Note: The DM will not automatically obtain a statement from a claimant's lender about housing costs. The DM should normally accept the claimant's own evidence. Corroboration of the claimant's evidence should only be sought if there are grounds to doubt it.

1 ESA Regs, Sch 8, para 31.

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Mortgage protection policy payments 51150 - 51159

How much mortgage protection policy payment should be disregarded 51150

What if the payment from the mortgage protection policy is more than the claimant's housing costs 51151 - 51159

How much mortgage protection policy payment should be disregarded

51150 The DM should disregard any payments that are **used** to pay the amount of any loan which

1. qualifies under the Loans for Mortgage Interest Regulations[1] (see DMG 51141) **or**

2. would qualify for such a loan if an application was made.

Note: The claimant only has to have a loan which qualifies for an LMI loan, they do not have to be in receipt of an amount of LMI loan for this disregard to apply.

1 ESA Regs, Sch 8, para 31

Example 1

Arsene receives ESA(IR) and applies for a loan under the new LMI scheme. He also has a mortgage protection policy. Arsene is assessed as requiring a loan of £50/week under LMI but he does not receive a payment as his mortgage protection policy is equal to the amount of that - £50/week. As his loan is a qualifying loan and he uses his mortgage protection policy to meet his mortgage repayments, they are disregarded in the weekly calculation of his ESA(IR) award.

Example 2

Thierry receives ESA(IR) and applies for a loan under the new LMI scheme. He also has a mortgage protection policy of £50/week. Thierry is assessed as requiring a loan of £75/week under LMI, taking into account the mortgage protection policy of £50/week. As his loan is a qualifying loan and he uses his mortgage protection policy to meet his mortgage repayments, they are disregarded in the weekly calculation of his ESA(IR) award.

What if the payment from the mortgage protection policy is more than the claimant's housing costs

51151 If the amount payable from the mortgage protection policy is more than the total the claimant has to pay to the third party, the balance will be ignored. This is because the mortgage protection policy is already taken into account in the calculation of payments under the LMI scheme. See ADM 8/18 for full details.

Example

Meghan recieves JSA and applies for a loan under the new LMI scheme. She also has a mortgage protection policy. Meghan is assessed as requiring a loan of £100/ week under LMI. She does does not receive this loan as her mortgage protection

policy is £150/week. As her loan is a qualifying loan and she uses the mortgage protection policy to pay her mortgage repayments, the payment from the mortgage protection policy is completely disregarded for JSA purposes.

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Other payments for housing costs 51160 - 51189

Types of payment disregarded 51160 - 51165

How should the DM treat payments for housing costs that also attract other disregards 51166 - 51169

Supersessions and payments for housing costs 51170 - 51189

Types of payment disregarded

51160 Payments of income

1. intended by the claimant, or person making the payment as a contribution towards certain housing and accommodation costs **and**

2. used as a contribution

towards any of the costs in DMG 51163 should be disregarded[1]. This disregard does not apply to payments under an insurance policy to which DMG 51218 applies.

1 ESA Regs, Sch 8, para 32(1)

51161 If the payment is from a mortgage protection policy the DM should consider the disregards explained in DMG 51150 - 51151 before considering this disregard.

51162 If a payment is made from an insurance policy the DM should decide if the policy was taken out to meet housing costs[1]. If the policy was taken out to meet housing costs the DM should consider the disregards at DMG 51150 et seq before any other disregards.

1 R(IS) 13/01

51163 Disregard

1. any payment on a loan secured on the claimant's home which is not a qualifying housing cost (if only part of the loan is not a qualifying housing cost this disregard only applies to the amount of the payment for that part)[1]

2. interest payments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount or by a loan payment under the new LMI scheme[2]

3. capital repayments for a loan which is a qualifying housing cost where those payments are not met by

a loan payment under the new LMI scheme[3]

4. insurance policy premiums for

4.1 mortgage protection policies if the other payments disregarded under this paragraph come from it[4] **and**

4.2 building insurance policies for the claimant's home[5]

5. other housing costs

5.1 any payment towards

5.1.a service charges **and**

5.1.b ground rent or rentcharge **and**

5.2 any payment for

5.2.a a co-ownership scheme **and**

5.2.b a Crown tenancy **and**

5.2.c a tent

to the extent that they are not met in the applicable amount or by a loan payment under the new LMI scheme[6]

6. rent on the home that is not met by HB[7]

7. accommodation charges[8] but only to the extent that the actual charge exceeds the amount payable by LAs under certain legislation.

Note 1: The disregards at **2 and 3** only apply to that part of the loan that is a qualifying housing cost.

Note 2: A service charge is a qualifying housing cost if it is payable as a condition of the claimant occupying a property. See DMG Chapter 44 for guidance when a service charge can be met as a housing cost.

1 ESA Regs, Sch 8, para 32(1)(a); 2 Sch 8, para 32(1)(b); 3 Sch 8, para 32(1)(c); 4 Sch 8, para 32(1)(d)(i); 5 Sch 8, para 32(1)(d)(ii); 6 Sch 8, para 32(1)(b); 7 Sch 8, para 32(1)(e); 8 NA Act 48, Part III; The Care Act 2014, Part 1; the Social Services Well-being (Wales) Act 2014, Part 4 (excluding any Direct Payments in s 50 or 52)

Example 1

George receives ESA(IR) and has a loan secured on his home which does not qualify under the new LMI scheme. George's father meets the loan repayments in full. The payments from George's father are completely disregarded for the purposes of calculating George's ESA(IR) award.

Example 2

Charlotte receives ESA(IR) and has a loan which is a qualifying loan under the new LMI scheme but she chooses not to take up the loan offer. This is because Charlotte's parents are meeting the loan repayments in full for her. These payments are completely disregarded for the purposes of calculating Charlotte's ESA(IR) award.

Example 3

William receives ESA(IR) and receives a payment for his mortage under the new LMI scheme. However, William's loan payments are less than the amount he has to pay because the lender's interest rate is higher than the standard interest rate used to calculate the LMI payments. William's brother makes a contribution to him for the shortfall and he uses this to meet his mortgage repayments in full. The amount given to William by his brother is completely disregarded for the purposes of calculating his ESA(IR) award.

Example 4

Kate receives ESA(IR) and a payment for her mortgage under the new LMI scheme. Kate's sister also gives her the money needed to meet her mortgage repayments each month. The money given to Kate by her sister is taken fully into account for the purposes of calculating her award of ESA(IR) as it does not fall to be disregarded under the provisions described in DMG 51163.

51164 The disregards in DMG 51163 do not apply if the DM decides the payment is an LRP[1].

1 ESA Regs, reg 85

51165 If a payment for a housing cost or part of a housing cost has already been disregarded under DMG 51150 - 51151 the payment for the same cost should not be disregarded again under DMG 51163.

How should the DM treat payments for housing costs that also attract other disregards

51166 The DM should include any other disregard that applies to a payment made for housing costs. This includes any

1. income tax deducted from the payment **and**

2. disregard that applies to charitable and voluntary payments.

51167 - 51169

Supersessions and payments for housing costs

51170 Special rules on the supersession of disregards of payments for housing costs apply in ESA[1]. The special rules apply to

1. mortgage protection policies **and**

2. other payments for housing costs.

1 SS CS (D&A) Regs, regs 6(2) & 7(17E)

51171 Some disregards on payments for housing costs are based on the interest payable on a loan. If the interest payable alters, the disregard has to be revised or superseded.

51172 A supersession caused by a change in interest payable on

1. a loan that is a qualifying housing cost **or**

2. a loan that is not a qualifying housing cost but is secured on the home

will not be effective until the next appropriate date is reached[1].

1 SS CS (D&A) Regs, reg 7(17F)

51173 The appropriate date in DMG 51172 is the later of

1. the date when[1]

> **1.1** new or existing housing costs are awarded in full because the claimant or partner is aged at least 60 **or**
>
> **1.2** existing housing costs are awarded at 100% after the claimant has been in continuous receipt of ESA(IR) for 26 weeks **or**
>
> **1.3** new housing costs are awarded at 100% after the claimant has been in continuous receipt of ESA(IR) for 39

2. the date of the next change in standard interest rate[2].

weeks **or**

1 SS CS (D&A) Regs, reg 7(17F)(a); 2 reg 7(17F)(b)

Example

Frank becomes entitled to ESA(IR) on 1 April. He has a mortgage on his home which was taken out before

2.10.95. Frank has a mortgage protection policy which pays the interest and capital repayments on his mortgage.

The DM calculates the amount of the disregard for Frank's mortgage protection policy payments and decides that no income should be taken into account.

On 1 May the interest payable on Frank's mortgage increases. The DM supersedes the disregard of Frank's mortgage protection policy payments but the supersession is not effective until 1 October when his existing housing costs have been awarded at 100%.

51174 The special supersession rules only apply to changes in interest payments caused by interest rate changes. Normal supersession rules apply to all other changes of circumstances including

1. changes in capital repayments on a loan **and**

2. changes in premiums for

2.1 mortgage protection policies **and**

2.2 policies designed to repay the loan **and**

2.3 buildings insurance policies.

Note: The amount of premiums for some mortgage protection policies depends on the amount of interest actually payable. Normal supersession rules apply where a change in interest payable causes mortgage protection policy premiums to change.

51175 - 51179

51180 When

1. a change of interest payable is not effective until the next appropriate date is reached **and**

2. a later change occurs that

2.1 affects the amount of interest disregarded **and**

2.2 the special supersession rules do not apply

the amount of interest disregarded because of the second change should be based on the actual interest payable.

Example

Liam has a mortgage protection policy. The interest payable on his loan is £15 a week. He receives £10 a week interest in his applicable amount.

On 1 January the DM disregards £5 a week.

On 1 February the interest payable increases to £16 a week. The DM supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5.

On 1 March the standard interest rate changes. The interest in Liam's applicable amount increases to £12. The actual interest payable remains at £16.

The DM supersedes the amount of the disregard. The disregard is reduced to £4 (£16 - £12).

51181 When

1. a change in interest payable is not effective until the next appropriate date is reached **and**

2. a later change occurs that

2.1 affects disregarded items other than loan interest **and**

2.2 special supersession rules do not apply

there will be no grounds to supersede the disregard of interest. The supersession should be restricted to the items directly affected by the change[1].

1 R(IS) 15/93

Example

Christina receives payments from a mortgage protection policy. The interest payable on her loan is £15 a week. She gets £10 a week in her applicable amount.

From 1 January the DM disregards £5 from the mortgage protection policy payment.

On 1 February the interest on the loan increases to £16 a week. The DM supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5 a week.

On 1 March mortgage protection policy premiums increase. The DM increases the amount of the disregard relating to mortgage protection policy premiums only. The amount of the disregard relating to loan interest is not superseded until the next appropriate date is reached.

51182 - 51189

Payments for care home, Abbeyfield Home or independent hospital charges 51190 - 51209

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Introduction

51190 DMG 51191 - 51202 gives guidance on the treatment of payments of income towards accommodation charges for

1. a care home **or**

2. an Abbeyfield Home **or**

3. an independent hospital.

51191 The treatment of the income depends on

1. the type of payment

2. whether the LA has sponsored the claimant in their accommodation.

Care homes and independent hospitals

51192 In England and Wales a care home means[1] a home, other than a hospital, an independent clinic or children's home, which provides accommodation along with nursing or personal care for persons who

1. are or have been ill including mental illness **or**

2. are disabled or infirm **or**

3. are or have been dependent on alcohol and drugs.

1 ESA Regs, reg 2(1); Care Standards Act 2000, s 3;
Regulation and Inspection of Social Care (Wales) Act 2016, part 1

51193 In Scotland a care home means[1] a home care service which provides accommodation along with nursing, personal care or personal support but does not include

1. hospitals

2. schools

3. independent health care services.

1 ESA Regs, reg 2(1); Public Services Reform (Scotland) Act 2010, Sch 12, para 2

51194 An independent hospital means[1] in

1. England, a hospital that is not a health service hospital as defined in legislation[2] **or**

2. Wales, a hospital which is not a health service hospital as defined in legislation[3] **or**

3. Scotland, an independent healthcare service as defined in legislation[4].

1 ESA Regs, reg 2(1); 2 National Health Service Act 2006, s 275; 3 Care Standards Act 2000, s 2;
4 NHS (Scot) Act 78, s 10F(1)(a) & (b)

Types of payment

51195 The payments for accommodation may be

1. charitable or voluntary (see DMG 51390 et seq) **or**

2. other payments.

The DM should decide what type of payment is being made.

51196 - 51199

Payments to claimants not in Local Authority sponsored accommodation

51200 This disregard applies where a claimant is residing in

1. a care home, Abbeyfield Home, or independent hospital **and**

2. accommodation that has not been provided by an LA under certain legislation[1].

Note: This disregard does not apply to charitable or voluntary payments which are fully disregarded - see DMG 51416.

1 NA Act 48, s 26; SW (Scot) Act 68, s 59; The Care Act 2014, s 18 or 19; The Social Services and Well-being (Wales) Act 2014, s 35 or 36

51201 The DM should disregard from any payment intended and used for accommodation charges the difference between the

1. claimant's applicable amount **and**

2. actual charge made by the home or hospital[1].

1 ESA Regs, Sch 8, para 34

Example

Andrew receives ESA(IR). He lives in an independent hospital which provides treatment for drug and alcohol dependency. The LA are not sponsoring Andrew under National Assistance legislation. The weekly charge for the hospital is £300. Andrew receives a payment of £250 a week from a Trust Fund towards his accommodation charges.

The DM calculated Andrew's applicable amount as follows

personal allowance £54.65

The difference between £54.65 and the charge by the hospital is the amount of the disregard.

actual charge	£300.00
less	£54.65
The disregard is	£245.35

Other payments towards accommodation costs

51202 Disregard the amount of the payment intended and used for charges not met by the LA[1] under certain legislation[2].

Note: This would only happen if the charge was greater than the amount allowed by the LA but not if the claimant chose a more expensive home than the LA would allow.

1 ESA Regs, Sch 8, para 32(1)(e); 2 NA Act 48, s 26; The Care Act 2014, Part 1; The Social Services Well-being (Wales) Act 2014, Part 4 (excluding any Direct Payments in s 50 or 52)

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Types of income fully disregarded

51210 [See Memo DMG 12/19] [See Memo DMG 11/20] [See Memo DMG 22/20] [See Memo DMG 15/21] **[See Memo DMG 07-23][See Memo DMG 04-25] [See Memo DMG 08-25]** When calculating income for ESA(IR) disregard fully

1. any payment from and/or some payments from money that originally came from

1.1 the Macfarlane Trust

1.2 the Macfarlane (Special Payments) Trust

1.3 the Macfarlane (Special Payments) (No. 2) Trust

1.4 the Independent Living Fund (2006)

1.5 the Eileen Trust ('the Fund')

1.6 the Skipton Fund

1.7 MFET Limited

1.8 the Caxton Foundation

1.9 the Scottish Infected Blood Support Scheme

1.10 the London Emergencies Trust (LET)

1.11 the We Love Manchester Emergency Fund (WLMEF)

1.12 Infected Blood Schemes

2. any payment for a reduction of CT

3. AAs

4. AFIP

5. The Bereavement Support Payment (see DMG 51232)

6. certain payments due to be paid before the date of claim

7. CHB

8. child maintenance

9. Christmas Bonus

10. compensation for loss of HB

11. concessionary payments

12. cost of conversion of foreign money

13. CTB

14. CTC

15. dependant's or non dependant's contributions to accommodation and living costs

16. DLA

17. discretionary housing payments (DHP's)

18. Education maintenance allowance and 16 - 19 Bursary Fund payments

19. Employment Retention and Advancement (ERA) Scheme payments

20. EZ, self-employed route

21. GA

22. gallantry awards

23. HB

24. income frozen abroad

25. income in kind

26. income tax refunds

27. income treated as capital

28. increases in SS benefits for absent dependants

29. jurors' or witnesses' court attendance allowance

30. local welfare provision

31. Mobility supplement

32. ND IAP, expenses and top-up payments

33. payments for foster children

34. payment for a person temporarily in the care of the claimant

35. payments from an LA in lieu of Community Care Services

36. payment by an employer of employee's expenses

37. payment of expenses to voluntary workers

38. payment of expenses to service users

39. payments to help disabled people get or keep employment

40. payments from the SF under SS legislation

41. payments from the Supporting People programme

42. certain payments made under employment and training law

43. payments made under the Return to Work Credit Scheme

44. payments made under the Repayment of Teacher's Student Loans Scheme

45. PIP

46. resettlement benefit

47. Scottish Carer's Allowance Supplement

48. special educational needs payments and budgets

49. special guardianship payments

50. training premium and expenses

51. travelling expenses for training schemes

52. vouchers including child care cheques

53. war widows/widowers, surviving civil partners supplementary pensions

54. welfare foods, NHS supplies, travelling expenses and assisted prison visits

55. WRA expenses.

56. Best Start Grant.

57. any funeral expense assistance given in accordance with section 34 of the Social Security (Scotland) Act 2018.

Note 1: See DMG 51341 et seq for further guidance on payments listed at **1.1** - **1.12**.

51211

Adoption allowance 51212 -51215

Adoption allowance paid for members of the family 51213

Adoption allowances paid other than for a child who is a member of the family 51214

Adoption allowances paid in Scotland or Wales for children who are not members of the family 51215

Adoption allowance

51212 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

1. long-term foster parent wishes to adopt but cannot afford to lose their boarding out allowance **or**

2. child's prospects of adoption are lowered because of disability.

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

Adoption allowance paid for members of the family

51213 Any adoption allowance paid for a child or young person who is a member of the family is fully disregarded[1].

1 ESA Regs, Sch 8, para 26(1)(a)

Adoption allowances paid other than for a child who is a member of the family

51214 Disregard any payment[1] made under specific legislation[2] in respect of

1. a child who is not a member of the family **or**

2. the claimant or partner.

See DMG 51215 for adoption allowances in Scotland and Wales.

1 ESA Regs, Sch 8, para 26(2); 2 Adoption and Children Act 2002, s 2(6)(b), 3 & 4

Adoption allowances paid in Scotland or Wales for children who are not members of the family

51215 If an adoption allowance is paid in Scotland or Wales for a child or young person who is not treated as a member of the family, for example a child in youth custody, the DM should

1. disregard in full any amount which is spent on the child or young person **and**

2. take into account any amount used by the claimant or partner[1].

1 ESA Regs, reg 107(4)

Residence orders 51216 - 51217

Northern Ireland Children Order 51216

Local authority payments for children subject to a residence order 51217

Northern Ireland Children Order

51216 Payments made by an authority[1] under specified legislation[2] are fully disregarded[3].

1 Children (NI) Order 1995, art 2; 2 art 15 and Sch 1, para 17; 3 ESA Regs, Sch 8, para 26(1)(c)

Local authority payments for children subject to a residence order

51217 Payments made by a LA under specified legislation[1] are fully disregarded[2].

1 Children Act 1975, s 34(6) & 50; Children Act 1989, s 15 & Sch 1, para 15;
2 ESA Regs, Sch 8, para 26(1)(b)

Credit insurance policies 51218 - 51228

Introduction 51218

Disregard for credit insurance policies 51219 - 51223

Amount of disregard - credit insurance payments made direct to the claimant **51224**

Credit insurance payments made to third parties **51225**

Credit insurance payments made direct to the creditor 51226 - 51228

Introduction

51218 Claimants may receive payments from credit insurance policies. These are policies designed to cover repayments for debts for

1. credit cards

2. catalogue companies

3. personal loans

4. other types of credit arrangements.

Disregard for credit insurance policies

51219 A disregard applies to payments received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on[1]

1. a regulated agreement as defined in legislation **or**

2. a hire purchase agreement as defined in legislation **or**

3. a conditional sale agreement as defined in legislation[2].

Note: The disregard does not apply to insurance policies for qualifying housing costs[3]. The disregard for these policies is explained at DMG 51150 - 51151.

1 ESA Regs, Sch 8; 2 Sch 8; 3 Sch 8, para 33

51220 If an agreement is a regulated agreement under legislation, the creditor is required by law to state this in the agreement[1]. The DM may conclude that

1. if the agreement states that it is regulated under the legislation, then DMG 51219 **1.** is satisfied **and**

2. if the agreement **does not** state that it is regulated under the legislation, then DMG 51219 **1.** is not satisfied.

Note: The DM may depart from these conclusions where the evidence clearly supports another decision.

1 Consumer Credit (Agreements) Regulations 1983

51221 If an agreement is not regulated by legislation[1], the DM should decide on the facts whether it falls within DMG 51219 **2.** or **3.**

1 Consumer Credit Act 1974

51222 A hire purchase agreement is defined in legislation[1] as an agreement, other than a conditional sale agreement, under which

1. goods are bailed or (in Scotland) hired to a person in return for periodical payments **and**

2. ownership of the goods pass to this person **if**

2.1 the terms with the agreement are complied with **and**

2.2 one or more of the following occurs

2.2.a the person exercises an option to buy **or**

2.2.b an act specified in the agreement is carried out **or**

2.2.c an event specified in the agreement happens.

Note: "Bailment" is the transfer of possession of goods by the owner to someone else (the bailee). The bailor (owner) retains ownership for the time being.

1 Hire-Purchase Act 1964, s 29(1)

51223 A conditional sale agreement is defined in legislation[1] as an agreement for the sale of goods under which

1. all or part of the purchase price is payable by instalment **and**

2. the seller remains the owner of the goods until the conditions of the agreement are fulfilled[1].

1 Hire-Purchase Act 1964, s 29(1)

Amount of disregard - credit insurance payments made direct to the claimant

51224 Payments may be disregarded to the extent that they do not exceed the amounts, calculated on a weekly basis, used to

1. maintain the repayments on the agreements in DMG 51219 **and**

2. meet any amount due by way of premiums on the insurance policy itself[1].

1 ESA Regs, Sch 8, para 33(2)

Credit insurance payments made to third parties

51225 The disregard may be applied to notional income that the claimant is treated as possessing under DMG 51226 - 51227[1].

1 ESA Regs, reg 109(1)

Credit insurance payments made direct to the creditor

51226 Payments that are

1. made direct to the creditor **and**

2. available to the claimant upon application

should be treated as income available upon application. (See DMG 51496 et seq).

51227 Payments that are

1. made direct to the creditor **and**

2. not available to the claimant upon application

should be treated as income paid to a third party to the extent that they are used for the items listed in DMG 51597. Payments made for items not listed in DMG 51597 should be fully disregarded.

51228 Payments made directly to the claimant that are immediately transferred to the creditor do not fall under the provisions of DMG 51226 - 51227. They should be treated as payments made directly to the claimant.

Jurors or witness court attendance allowance 51229

Jurors or witnesses court attendance allowance

51229 The DM should fully disregard any payment to a

1. juror **or**

2. witness

for attending court. But payments for loss of earnings or benefits[1] should not be disregarded.

1 ESA Regs, Sch 8, para 43

Benefits fully disregarded 51230 - 51244

Attendance allowances 51230 - 51231

Bereavement support payment 51232

Disability living allowance, personal independence payment and armed forces independence payment 51233

CHB, CTC and child dependant increases 51234

Christmas bonus 51235

Compensation for loss of housing benefit 51236

Council tax benefit 51237

Discretionary housing payments 51238

Guardians allowance 51239

Housing benefit 51240

Increases in SS benefits and Service Pensions for absent dependants 51241 - 51242

Mobility supplement 51243

Payments from the Social Fund under SS Legislation 51244

Attendance allowances

51230 Disregard in full[1]

1. AA[2]

2. CAA which is paid with a disablement pension because disablement has been assessed at 100%[3]

3. ESDA paid because industrial disablement has been assessed at 100%[4]

4. payments for attendance under the Civilian's Personal Injury Scheme[5] or any similar payment. These payments are made to people who receive a DP because of war injuries suffered as civilians or civil defence volunteers

5. any payment for attendance which is a part of WDisP. This includes severe disablement occupational allowance paid with CAA.

1 ESA Regs, Sch 8, para 11; 2 SS CB Act 92, s 64; 3 s 104 or 105; 4 s 104 or 105;
5 Personal Injuries (Civilians) Scheme 83, art 14 - 16, 43 or 44

The meaning of attendance allowance

51231 DMs should recognize the difference between

1. the term attendance allowance which is commonly used to describe one particular benefit (abbreviation AA) **and**

2. "attendance allowance" which is defined in legislation[1] and includes all the benefits in DMG 51230 (abbreviation "AA").

1 ESA Regs, reg 2(1)

Bereavement support payment

51232 The BSP replaces BB for people whose spouse or civil partner dies on or after 6.4.17[1]. There are two rates of BSP; the higher rate and the standard rate. The regular monthly BSP payment is treated as income other than earnings[2] and is disregarded for the period in respect of which it is paid. Any unspent BSP remaining at the end of this month will become capital (with no disregard applied). The regular monthly payment does not include any arrears or the higher or standard rate of BSP that may be payable for the first month of the BSP period[3].

Note: See DMG chapter 29 for how BSP affects capital and DMG chapter 59 for more information on BSP.

1 Pensions Act 14 (Commencement No. 10) Order, art 2(1)(b); BSP Regs, reg 1(2);
2 IS (Gen) Regs, Sch 9, para 80; JSA Regs, Sch 7, para 76; 3 BSP Regs, reg 3(2) & (5)

Disability living allowance, personal independence payment and armed forces independence payment

51233 The DM should fully disregard

1. DLA

1.1 mobility component[1] **and**

1.2 care component[2]

2. PIP

2.1 mobility component[3] **and**

2.2 daily living component[4]

3. AFIP[5].

1 ESA Regs, Sch 8, para 8; 2 Sch 8, para 11; 3 Sch 8, para 8; 4 Sch 8, para 11; 5 Sch 8, para 66

CHB, CTC and child dependant increases

51234 The DM should fully disregard any

1. CHB[1]

2. CTC[2]

3. CDIs[3] paid with

3.1 CA

3.2 RP

3.3 IB

3.4 SDA

3.5 WMA

3.6 WPA.

1 ESA Regs, Sch 8, para 7(1); 2 Sch 8, para 7(2); 3 Sch 8, para 7(3)

Christmas bonus

51235 Christmas bonus should be disregarded in full[1]. It is paid in the week starting with the first Monday in December to people receiving[2]

1. RP

2. IB

3. WMA, WPA or WP

4. SDA

5. CA

6. IDB

7. AA/DLA

8. US

9. WDisP

10. WWP

11. ESA(Cont)

12. SPC.

1 ESA Regs, Sch 8, para 37; 2 SS CB Act 92, s 148

Compensation for loss of housing benefit

51236 The DM should fully disregard any payment made by the Secretary of State to compensate for the total or partial loss of HB[1].

1 ESA Regs, Sch 8, para 42

Council tax benefit

51237 The DM should fully disregard any payment of CTB[1]. CTB usually reduces the bill sent by LAs but some claimants may receive cash payments.

1 ESA Regs, Sch 8, para 65

Discretionary housing payments

51238 LAs may make discretionary housing payments to HB/CTB recipients requiring further financial assistance with their housing costs[1]. For ESA purposes discretionary housing payments should be disregarded[2].

1 Discretionary Financial Assistance Regulations 2001 (S.I. 2001 No. 1167); 2 ESA Regs, Sch 8, para 62

Guardians allowance

51239 The DM should fully disregard any GA[1]. It is payable to a person who is entitled to CHB for a child

1. whose natural parents are dead **or**

2. where one of the natural parents is dead and the other cannot be traced or is serving a long prison sentence.

1 ESA Regs, Sch 8, para 6

Housing benefit

51240 The DM should fully disregard any payments of HB[1] to which the claimant is entitled. HB may be

1. paid direct to the claimant **or**

2. paid direct to the landlord **or**

3. deducted from the rent payable.

HB is paid by LAs to help people on low incomes pay their rent.

Note: See DMG 51104 et seq where the claimant is a landlord and receives HB.

1 ESA Regs, Sch 8, para 64

Increases in Social Security benefits and Service Pensions for absent dependants

51241 The DM should fully disregard any increase in a SS benefit[1] or a service pension[2] for a

1. husband, wife, civil partner or any other adult dependant **or**

2. child

who is not a member of the family for ESA purposes.

Note: "Service Pension" in this guidance means a pension or allowance paid in respect of disablement or death due to service in the armed forces.

1 ESA Regs, Sch 8, para 50(1); 2 Sch 8, para 50(2) & The Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, Part 2 or 3

51242 Dependency increases can be paid as part of

1. MA

2. SDA

3. RP

4. US paid with Dis B (abolished for new claims in 1987).

Claimants must pay over an amount at least equal to the dependency increase to continue to receive it.

Note: CHB for a child who is not a member of the family should be taken into account in full as the income of the CHB claimant.

Mobility supplement

51243 The DM should fully disregard

1. Mobility supplement **and**

2. War Pensioner's Mobility Supplement **and**

3. The mobility component of DLA[1].

Any payment to compensate for the non-payment of these benefits should also be disregarded in full.

1 ESA Regs, Sch 8, para 8 & 10

Payments from the Social Fund under Social Security legislation

51244 The DM should fully disregard any payment made from the SF[1].

Note: This disregard does not apply to payments from the European Social Fund.

1 ESA Regs, Sch 8, para 35

Concessionary payments 51245 - 51246

Types of concessionary payments that should be disregarded 51245

What are concessionary payments 51246

Types of concessionary payments that should be disregarded

51245 The DM should fully disregard concessionary payments[1] of

1. Attendance allowances

2. DLA mobility component

3. DLA care component

4. JSA(IB)

5. IS

6. ESA(IR)

7. UC.

1 ESA Regs, Sch 8, para 9

What are concessionary payments

51246 Concessionary payments[1] are made by the Secretary of State in place of

1. SS benefits **or**

2. HB **or**

3. tax credits.

They are made when the policy intention to pay benefit cannot be achieved because of a fault in the law. They should be treated in the same way as the benefit they represent.

1 ESA Regs, reg 2(1)

Local welfare provision 51247 - 51249

Disregard of local welfare provision 51247

Meaning of local welfare provision 51248 - 51249

Disregard of local welfare provision

51247 [See Memo DMG 18/20] Any payment of local welfare provision falls to be disregarded[1]

1 ESA Reg, Sch 8, para 35A

Meaning of local welfare provision

51248 Local welfare provision means[1] occasional financial or other assistance made by an LA, the Welsh Ministers, the Scottish Minister or an authorised person for the purpose of

1. meeting or helping to meet, an immediate short term need

1.1 arising out of an exceptional event or exceptional circumstances **and**

1.2 that requires to be met to avoid a risk to the well-being of an individual **or**

2. enabling individuals to establish or maintain a settled home where those individuals have been or without assistance might otherwise be

2.1 in prison, hospital, a residential care establishment or other institution **or**

2.2 homeless or living an unsettled way of life.

1 ESA Regs, reg 2(1)

51249

Payments under the Supporting People programme 51250- 51253

51250 Payments may be made under the Supporting People programme. The DM should fully disregard[1]

1. any payment made by

1.1 a LA **or**

1.2 the Welsh Ministers

2. to or on behalf of the claimant or partner relating to a service which is

2.1 provided to develop **or**

2.2 sustain the capacity of the claimant or partner to live independently in his accommodation.

1 ESA Regs, Sch 8, para 63

51251 - 51253

Payments for children and people living temporarily with the claimant 51254 - 51261

Foster children 51254

Kinship care 51255

Payments for the welfare of children and those formerly looked after by the LA 51256 - 51258

Payments for people temporarily in the claimant's care 51259 - 51261

Foster children

51254 The DM should fully disregard payments[1] made by or on behalf of

1. a LA under its duty to provide

1.1 accommodation **and**

1.2 maintenance

for a child it is looking after[2] **or**

2. a voluntary organization under certain legislation[3] **or**

3. a LA[4]

for children who are living with claimants under fostering arrangements.

Note: These allowances should not be treated as earnings.

1 ESA Regs, Sch 8, para 28; 2 Children Act 89, s 22C(2); The Social Services and Well-being (Wales) Act 2014,
81(2); Children (Scotland) Act 95, s 26 or 26A; 3 Children Act 89, s 59(1)(a);
4 Looked After Children (Scotland) Regulations 2009, regs 33 or 51

Kinship care

51255 In Scotland an LA may place a child who is at risk of going into care or who has previously been looked after by the LA with another person. This is known as Kinship care[1]. Any payments made by the LA to the person with care are intended to cover any additional costs normally incurred by a child living at home but do not cover the costs of accommodation and maintenance of the child. Any payment made by

the LA to the person providing care should be fully disregarded[2].

1 Looked After Children (Scotland) Regulations 2009, reg 10; 2 ESA Regs, Sch 8, para 28

Payments for the welfare of children and those formerly looked after by the LA

51256 Certain legislation[1] concerning the welfare of children applies in England, Wales[1] and Scotland[2]. This applies to certain children who are being looked after by a LA.

1 CLC Act 2000; Children (Leaving Care) SS Benefit Regs, reg 1(1);
2 Children (Leaving Care) SS Benefits (Scotland) Regs, reg 1

51257 The DM should fully disregard[1] payments made by LAs under child-care law[2]

1. to promote the welfare of children **and**

2. to prevent people being taken into care.

1 ESA Regs, Sch 8, para 30(1); 2 CLC Act 2000 (Comm No. 2 & Cons Prov) Order, Sch 1, para (c) & Sch 4, para (c); Children Act 1989, s 17, 23B, 23C or 24A; SW (Scot) Act 68, s 12; Children (Scotland) Act 95, s 22, 26A, 29 or 30; The Social Services Well-being (Wales) Act 2014, s 37 or 38 (but excluding any Direct Payment in s 51, or s 109, 110, 114 or 115)

51258 Where

1. a former child (aged over 18 but under 26) who was in the claimant's care still lives with the claimant **and**

2. the LA makes payments under certain child care law[1] to the former child in care **and**

3. the former child in care passes the payments on to the claimant

those payments received by the claimant are fully disregarded[2].

Note: In Scotland this is known as 'Continuing Care'

1 Children Act 1989, s 23C; Children (Scotland) Act 95, s 22, 26A or 29; 2 ESA Regs, Sch 8, para 30(2) & (3)

Payments for people temporarily in the claimant's care

51259 The DM should fully disregard payments to a claimant or partner for a person who

1. is not normally a member of the claimant's household **and**

2. is temporarily in the claimant's care[1]

when payments are made by a LA, HA, a voluntary organization, a clinical commissioning group, the NHS Commissioning Board or the person concerned under specified legislation[2].

Note 1: This could include payments to a claimant under the Adult Placement or Shared Lives Scheme from a LAs own resources.

Note 2: Payments made by a LA do not include payments of HB made in respect of the person concerned.

1 ESA Regs, Sch 8, para 29; 2 NA Act 48, s 26(3A); NHS Act 1977, s 16BA; Health Service (Wales) Act, s 11;
The Social Services Well-being (Wales) Act 2014, s 35 or 36

51260 This type of payment is often made to people providing "respite care". This is short-term care provided to give a disabled person's usual carer a break from their caring responsibilities. People providing respite care should not be treated as

1. engaged in remunerative work **or**

2. receiving earnings from S/E[1].

1 ESA Regs, reg 97(2)

51261

Payments of expenses 51262 - 51273

Payment of expenses in the MWA Schemes and schemes for assisting persons to obtain employment 51262

Payment of employer of employee's expenses 51263 - 51264

Payment of a voluntary worker's expenses 51265 - 51267

Time-exchange schemes 51268 - 51269

Service users 51270 - 51273

Payment of expenses in the MWA Schemes and schemes for assisting persons to obtain employment

51262 Any payment of income made in respect of any travel or other expenses

1. incurred **or**

2. to be incurred

in respect of taking part in either the MWA Scheme or prescribed schemes for assisting persons to obtain employment is disregarded[1].

Note: See DMG Chapter 34 for details of the Schemes.

1 ESA Regs, Sch 8, para 1A

Payment by an employer of employee's expenses

51263 The DM should fully disregard payments made by an employer for expenses which are

1. wholly **and**

2. exclusively **and**

3. necessarily

incurred by an employee while performing the duties of the employment[1].

1 ESA Regs, Sch 8, para 3

51264 The DM should treat as earnings any payments of expenses

1. above the amount which fits the conditions **or**

2. that do not fit the conditions

described in DMG 51263.

Payment of a voluntary worker's expenses

51265 The DM should fully disregard payments towards expenses incurred and advance payments for expenses to be incurred[1] by a person who

1. does voluntary work for a

1.1 charity **or**

1.2 voluntary organisation **or**

2. is a volunteer[2].

Note: Volunteers do not have to be engaged by a charitable or voluntary organisation. An LA or a public body cannot be a voluntary organisation[3].

1 ESA Regs, Sch 8, para 2; 2 R(IS) 12/92; 3 ESA Regs, reg 2(1)

51266 The expenses may be

1. incurred in, or for the performance of the work, for example special clothing or equipment **or**

2. for personal incidental expenses resulting from the person being a voluntary worker, for example travelling expenses or child care costs.

51267 This disregard applies provided that the person is not

1. remunerated for their voluntary activity **or**

2. treated as having notional earnings.

See DMG Chapter 49 for guidance on notional earnings.

Time-exchange schemes

51268 Time-exchange schemes are based on the idea that community members donate time to the community using their specific skills, and receive the same amount of time in return from another community member with a skill they require. Participants may believe they are volunteers but for ESA(IR)

purposes it is not voluntary work (which is done without remuneration or expectation of remuneration). The hours worked by the claimant/partner are “banked” with the organisation and accumulate each time they carry out additional work under the “time-exchange” scheme.

51269 Payment of expenses to the claimant/partner for participating in a particular activity will be an exception as it is not in the nature of the scheme to use cash as part of the running of the scheme. If exceptionally, expenses are reimbursed they should be treated as other income and taken fully into account in assessing the award of ESA(IR). This is because participation in “time-exchange” is not volunteering so the treatment of volunteers' reimbursed expenses (see DMG 51265) is not appropriate here.

Service users

51270 A service user is[1]

1. a person who is being consulted by or on behalf of

1.1 a body which has a statutory duty to provide services in the field of

1.1.a health **or**

1.1.b social care **or**

1.1.c social housing **or**

1.2 a body which conducts research or undertakes monitoring for the purpose of planning or improving the services in **1.1**

in their capacity as a user, potential user, carer of a user or a person affected by those services **or**

2. a person who is being consulted by or on behalf of

2.1 the Secretary of State in relation to social security or child support functions under relevant legislation[2] **or**

2.2 a body which conducts research or monitoring in order to plan or improve the functions in **2.1**

in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person

3. the carer of a person consulted under **1.** or **2.**.

1 ESA Regs, reg 2(8); 2 E & T Act 73, s 2

51271 For the purposes of DMG 51270

1. a service user is a person who

1.1 has used **or**

1.2 is using **or**

1.3 may potentially use **or**

1.4 is otherwise affected by

the services referred to in **2. and**

2. the services concerned are delivered by a body which has a statutory duty to provide services in the field of

2.1 health **or**

2.2 social care **or**

2.3 social housing **or**

2.4 social security **or**

2.5 child support **and**

3. a service user is a person who is consulted by the bodies in **2.** or by an alternative body (for example, educational establishments or voluntary and charitable organisations) who conduct

3.1 research **or**

3.2 monitoring **or**

3.3 planning

in order to improve services through user involvement.

Example 1

The General Social Care Council (GSCC) is required under legislation to promote high standards in the training of social care workers. It does this through inspection and regulation. Frank has had the help of a social worker in the past. Frank and other individuals have been invited to attend a training programme for social workers as visitors to monitor and advise on the training policies of the GSCC from the perspective of people who have used social work services. The DM determines that Frank is a service user.

Example 2

Claire is an unpaid carer and looks after her elderly father. Occasionally the LA ask Claire to take part in consultations to discuss the role of unpaid carers in the community and the services provided by the LA. The LA as a best value authority has a general duty under legislation to do this. The DM determines that Claire is a service user.

Example 3

The National Institute for Health & Care Excellence (NIHCE), is a statutory body. Its guidance helps support providers and commissioners deliver high quality care in health and care settings. Key to it's work is its ability to engage with stakeholders, such as NHS patients, social care service users, carers, etc. in order to produce relevant and meaningful guidance.

Helen has a diagnosis of chronic obstructive pulmonary disease (COPD). As part of developing a clinical guideline on COPD, NIHCE has asked Helen to join the guideline development group to ensure that the patient's perspective is taken into account during the development of the guideline. The DM determines that Helen is a service user.

51272 Any payment of expenses paid to the claimant as a result of participating as a service user is fully disregarded[1].

1 ESA Regs, Sch 8, para 2A

Example 1

Anton is an out-patient at his local hospital and attends there on a regular basis for treatment. He is in receipt of ESA(IR). Anton has volunteered to take part in a Patients' Forum which discusses the services and care provided by the hospital. In order to attend the meetings, Anton needs to get a taxi. The expenses for this transport are paid to him by the local Health Trust. The DM decides that the expenses can be disregarded as income when calculating Anton's entitlement to ESA(IR).

Example 2

Donna is in receipt of ESA(IR). She has volunteered to take part in a service user group at her local hospital. In order to attend, Donna needs a carer to take her

there. The transport expenses that Donna's carer incurs taking her to the service user meeting are reimbursed to Donna by the hospital. The DM disregards these expenses when calculating Donna's entitlement to ESA(IR).

51273

War widow's, widower's or surviving civil partner's supplementary pensions 51274

51274 The DM should fully disregard any

1. supplementary pension paid to a widow, widower or surviving civil partner for the disablement or death of personnel whose service terminated before 31.3.73[1] **and**

2. supplementary pension paid to a widow, widower or surviving civil partner under the Personal Injuries (Civilians) Scheme[2] **and**

3. supplementary pension paid to the widow, widower or surviving civil partner of a person

3.1 whose death was caused by service similar to being in the armed forces **and**

3.2 that service ended before 31.3.73 **and**

3.3 the payment is equal to the amount in **1.**[3].

Note: See DMG 51086 for guidance on war widows or widowers pensions. See Appendix 1 to this Chapter for details of the law under which war widows or widowers supplementary pensions are paid.

1 ESA Regs, Sch 8, para 49; 2 Sch 8, para 51; 3 Sch 8, para 52

Other types of income fully disregarded 51275 - 51337

Certain payments due before the date of claim 51275

Payments for a reduction in council tax 51276

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Welfare foods, HNS supplies, travelling expenses and assisted prison visits 51332

Work-related activity 51333

The child maintenance disregard 51334 - 51337

Certain payments due before the date of claim

51275 The DM should fully disregard any payment of income that

1. is due to be paid before the date of claim for ESA **and**

2. under normal rules would be taken into account in the same benefit week as a payment of the same kind from the same source[1].

1 ESA Regs, Sch 8, para 38

Payments for a reduction in council tax

51276 The DM should disregard in full[1] any payment made because of a reduction of CT because of transitional relief[2] when the tax was introduced.

1 ESA Regs, Sch 8, para 44; 2 LGF Act 92 s 13 or 80;

Dependant's or non-dependant's contributions to accommodation and living costs

51277 The DM should fully disregard payments for living and accommodation costs from people who normally live with the claimant who are not

1. boarders **or**

2. subtenants[1].

1 ESA Regs, Sch 8, para 19

Example

Michael receives ESA(IR). His daughter Katy is a non-dependant in his household. She pays him £25 a week as a contribution towards the household bills.

The DM disregards this payment fully as Katy is not a boarder or subtenant.

Education maintenance allowance and the 16 - 19 Bursary Fund

51278 The DM should fully disregard[1] any payment paid under prescribed legislation[2] that is

1. education maintenance allowance **or**

2. the same as an education maintenance allowance **or**

3. from the 16 - 19 Bursary Fund

made to support a young person who remains in non-advanced education after the age of 16. It can be paid for up to two years between the ages of 16 and 19. In

some cases it may continue to be paid for up to three years until the person reaches the age of 20.

Note: The 19+ Bursary, available in most Further Education colleges, falls within the definition of an Access Fund – see DMG 51827.

1 ESA Regs, Sch 8, para 13(1)(a), (b) & (c); 2 Education Act 1996, s 518; Ed (Scot) Act 80, s 49, 73ZA & 73(f);
F & HE (Scot) Act 1992, s 12(2)(c); Education Act 2002, s 14 & 181

Other payments to assist with non-advanced education

51279 The DM should fully disregard[1] any payment paid under prescribed legislation[2] in respect of a course of study attended by a

1. child or young person **or**

2. person who is in receipt of an allowance or other payment as described at DMG 51278 above.

Note: Such payments may include, for example, payments to cover scholarships or school expenses.

1 ESA Regs, Sch 8, para 13(2); 2 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 & 73ZA;
F & HE (Scot) Act 92, s 12(2)(c)

Special guardianship payments

51280 The special guardianship scheme is intended to provide more security for a child than long term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Financial support by the LA may be paid to special guardians in certain circumstances. It is expected the support will normally be made as a single payment to meet a one-off cost. However the LA may make payments in instalments or periodically to meet needs that are likely to be ongoing.

51281 Any special guardianship payment made under specific legislation[1] in respect of a child or young

person who is a member of the family should be fully disregarded[2].

1 Children Act 1989, s 14F; 2 ESA Regs, Sch 8, para 26(1)(d)

Repayment of teacher's student loans scheme

51282 The pilot of the repayment of teacher's student loans ran for three years until July 2005 although eligible teachers may continue to receive payments under this scheme. It provided financial incentives to newly qualified teachers working in shortage subject areas. In England and Wales student loan debts were waived by gradually reducing the amount of loan outstanding. However, for those who took out student loans while living in Scotland, Northern Ireland or another EEA country and who took up a post teaching shortage subjects in England and Wales - annual payments were made to the teacher to repay their student loan. There is no time restriction on payments, so as long as the teacher remains eligible, repayments will continue to be made until the loan is repaid.

51283 Any payment made to a claimant under specific legislation[1] for the repayment of a teacher's student loan should be fully disregarded[2].

1 The Education (Teacher Student Loans) (Repayment etc.) Regs, reg 11(2); 2 ESA Regs, Sch 8, para. 14

51284 - 51289

Employment retention and advancement scheme

51290 The ERA scheme[1] involved a study of different methods to help people stay in work and improve their career prospects including financial incentives known as ERA payments. People eligible for ND25+, ND for Lone Parents and people receiving WTC could volunteer to participate in the scheme.

1 E & T Act 73, s 2

Disregard

51291 The DM should fully disregard[1] any ERA payment.

Note: The disregard for payments made under employment and training law is fully explained at DMG 51313 - 51315.

1 ESA Regs, Sch 8, para 15

Employment zones and self-employed route

Discretionary payments in employment zones

51292 Claimants who have participated in an EZ programme may receive discretionary payments by the EZ contractor. Payments may be made by way of a fee, grant, loan or otherwise. These payments should

be disregarded[1].

1 ESA Regs, Sch 8, para 59

Subsistence allowance

51293 A subsistence allowance is[1] an allowance paid by an EZ contractor to a person taking part in an EZ programme. Where the amount of subsistence allowance paid to a person in a benefit week exceeds the amount of JSA(IB) they would have received in that benefit week less 50p, then the excess amount of subsistence allowance is disregarded[2].

1 ESA Regs, reg 2(1); 2 Sch 8, para 58

Self-employment route

51294 Disregards are available for participants in the self-employment route. Any payments made to a person who is receiving, or who has received assistance under the self-employment route shall be disregarded if it is

1. to meet expenses wholly and necessarily incurred whilst carrying out that activity **or**

2. used or is intended to be used to maintain repayments on a loan taken out by that person to establish or carry on his business[1].

In order for this disregard to apply, the payments have to be paid to the participant from the special account[2].

1 ESA Regs, Sch 8, para 55(1); 2 Sch 8, para 55(2)

Cost of conversion of foreign money

51295 The DM should fully disregard any

1. bank charges **or**

2. commission

paid when income paid in foreign currency is converted to sterling[1].

1 ESA Regs, Sch 8, para 25

Example

Klaus claims ESA.

He receives a pension of 200 euros a month from his former employer in Austria.

When Klaus's bank convert the payment into sterling they charge a commission of £2.

The DM disregards the £2 commission from the amount that Klaus receives in sterling.

Gallantry awards

51296 The DM should fully disregard any gallantry awards[1]. These are

1. Victoria Cross annuity **and**

2. George Cross annuity **and**

3. any similar award, including

3.1 equivalent awards from foreign countries **or**

3.2 British awards of a lower status than the Victoria Cross or George Cross.

DMs should include awards for gallantry below the highest level when considering awards from foreign countries.

1 ESA Regs, Sch 8; para 12

Income frozen abroad

51297 The DM should fully disregard income which is

1. payable in a foreign country **and**

2. cannot be transferred to the UK

for as long as it is frozen abroad[1]. Income will usually be frozen when the foreign country does not allow its currency to be transferred to the UK.

1 ESA Regs, Sch 8, para 24

Income in kind

51298 The DM should fully disregard any income in kind except

1. support provided to a claimant under specific immigration and asylum law **and**

2. notional income[1] **and**

3. payments made to a third party in respect of the claimant which are used by the third party to provide

benefits in kind to the claimant[2].

Note 1: Credits received from participating in a LETS scheme (see DMG Chapter 50) are not income in kind. Credits should be taken into account in the appropriate way.

Note 2: See DMG 51397 for the treatment of concessionary coal.

1 ESA Regs, Sch 8, para 22(1); 2 Sch 8, para 22(4)

Example 1

Karen is entitled to ESA(IR). Her mother works in a shop and the shop owner gives the mother £10 of groceries each week for Karen.

The DM decides the £10 a week is income in kind and should be fully disregarded.

Example 2

The shop owner (in example 1 above) then changes the arrangement and gives Karen's mother £10 a week to buy groceries for Karen.

Karen's mother uses the £10 to buy food each week for Karen.

The DM decides the £10 a week cannot be disregarded as income in kind and it should be taken fully into account as notional income.

51299 [See Memo DMG 15/21] The exceptions at DMG 51298 do not apply[1] when the income in kind comes from

1. the Macfarlane Trust

2. the Macfarlane (Special Payments) Trust

3. the Macfarlane (Special Payments) (No. 2) Trust

4. the Eileen Trust ('the Fund')

5. the Independent Living Fund (2006) – see **note** below

6. MFET Limited

7. the Skipton Fund

8. the Caxton Foundation

9. The Scottish Infected Blood Support Scheme

10. the London Emergencies Trust (LET)

11. the We Love Manchester Emergency Fund (WLMEF)

12 Infected Blood Schemes **or**

13. the partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

1 ESA Regs, Sch 8, para 22(2) & (3)

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.

51300 - 51309

Income treated as capital

51310 The DM should fully disregard as income any income that is treated as capital[1].

1 ESA Regs, Sch 8, para 36

Jurors or witnesses court attendance allowance

51311 The DM should fully disregard any payment to a

1. juror **or**

2. witness

for attending court. But payments for loss of earnings or benefits[1] should not be disregarded.

1 ESA Regs, Sch 8, para 43

Payments in lieu of community care services and payments in lieu of health care

51312 The DM should disregard any payments which are made

1. under relevant legislation[1] **and**

2. in lieu of[2]

2.2 community care services **or**

2.2 health care.

Note: These types of payments are sometimes known as “Direct Payments for Health Care”, “Direct Payments for Community Care” or “Personal health budget”.

1 SW (Scot) Act 68, s 12B; Health and Social Care Act 2001, s 57; National Health Service Act 2006, s 12A - 12D; The Care Act 2014, s 31-33; The Social Services Well-being (Wales) Act 2014, s 50 or 52; 2 ESA Regs, Sch 8, para 53

Example

Agnes is in receipt of ESA(IR). She receives money from her LA so that she can pay someone to be her home help. The DM

1. finds out that the money received from the LA is paid under the correct legislation **and**

2. decides that the money received from the LA should be disregarded.

Payments made under employment and training law

51313 DMs should disregard[1] any payment made under employment and training law[2] except any payment[3]

1. made as a substitute for ESA or for JSA

2. of a bridging allowance paid under specific legislation[4]

3. intended to meet the cost of living expenses while a person is participating in

3.1 an education **or**

3.2 training **or**

3.3 other scheme to enhance employment prospects unless the payment is a Career Development Loan paid under employment and training law and the period of education, training or the scheme, which is supported by the loan, has been completed

4. made in respect of the cost of living away from home to the extent that the payment relates to rent for which HB is payable in respect of accommodation which is not normally occupied as the home.

1 ESA Regs, Sch 8, para 15; 2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2; 3 ESA Regs, Sch 8, para 15(1); 4 E & T Act 73, s 2(3); Enterprise and New Towns (Scotland) Act 1990, s 2(5)

51314 Payments made under employment and training law[1] include

1. training allowances paid to young people in non-waged work based training (see DMG Chapter 49)

2. ND allowances

3. allowances for people on WBLA

4. Career Development Loans (see DMG 51440 - 51449)

5. ERA payments (see DMG 51290)

6. return to work credit scheme (see DMG 51317)

7. in work credit

8. lone parent in work credit.

This list is not exhaustive and DMs should obtain evidence that a payment is made under employment and training law.

1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2

Living expenses

51315 Living expenses to be taken into account as income are any amount for

1. food

2. ordinary clothing or footwear[1] (see DMG 51599 - 51600)

3. fuel for the claimant's household

4. rent for which HB is payable

5. housing costs included in the applicable amount

6. CT or water charges for which the claimant or member of the family is liable[2].

1 ESA Regs, Sch 8, para 15(3); 2 Sch 8, para 15(2)

Payments to help disabled people get or keep employment

51316 The DM should fully disregard payments made under certain legislation[1] to help disabled people get or keep employment[2]. The payments that qualify for this disregard include

1. the fares to work scheme operated by DWP

2. the business on their own account scheme operated by DWP

3. the personal reader service operated by the Royal National Institute for the Blind on behalf of DWP.

Note: Payments to assist disabled persons under employment and training law are included within the disregard explained at DMG 51313 - 51315.

1 Disabled Persons (Employment) Act 44; 2 ESA Regs, Sch 8, para 48

Return to work credit scheme

51317 Any payment made under the return to work credit scheme is fully disregarded[1]. The scheme has been set up under employment and training law[2] for people who stop claiming a specified benefit[3] because they have

1. found work of at least 16 hours a week **and**

2. earnings which do not exceed £15,000 a year.

A return to work credit is a non-taxable payment of £40 a week payable for a maximum of 52 weeks following the end of a person's entitlement to a specified benefit.

Note: The disregard for payments made under employment and training law is fully explained at DMG 51313 - 51315.

1 ESA Regs, Sch 8, para 15; 2 E & T Act 73, s 2;
3 SS (Incapacity Benefit Work-focused Interviews) Regulations 2003, reg 2

Discretionary payments for special needs

51318 A payment should be disregarded[1] if it is

1. discretionary **and**

2. made

2.1 under employment and training law[2] **and**

2.2 to meet, or help meet, the special needs of a person who is undertaking a qualifying course.

Note: Travelling expenses incurred as a result of the claimant's attendance on the course should not be disregarded under this paragraph if the same expenses have already been disregarded under DMG 51947 (student income).

1 ESA Regs, Sch 8, para 15; 2 E & T Act 73, s 2

51319 - 51324

Special educational needs payments and budgets

51325 The parents of children with special educational needs and young people with special educational needs have an option of a personal budget. This is so they control how some of the provision in their Education, Health and Care plans can be delivered[1]. The DM should fully disregard any of these payments[2].

1 Children and Families Act 2014, s 49; 2 ESA Regs, Sch 8, para 67

51326 - 51329

Vouchers (including child care cheques)

51330 The DM should fully disregard, in accordance with DMG 51298, any vouchers received by the claimant as income in kind. But DMs should consider whether

1. claimants should be treated as having notional income **or**

2. there has been deprivation of income

before applying the disregard[1] (See DMG 49129 for vouchers treated as earnings).

1 ESA Regs, Sch 8, para 22

51331 The types of vouchers that claimants might receive are

1. education vouchers for four-year-old children

2. luncheon vouchers

3. child care vouchers

4. child care cheques

5. gift vouchers from shops.

Welfare foods, NHS supplies, travelling expenses and assisted prison visits

51332 The DM should fully disregard

1. payments made under specific legislation for healthy start vouchers, free milk and vitamins[1] **and**

2. refunds for

2.1 NHS glasses **and**

2.2 dental treatment **and**

2.3 patients' travelling expenses made under specific legislation or any similar payments made by the Secretary of State for Health[2] **and**

3. payments made by the Secretary of State for Justice or the Scottish Ministers for travel, accommodation and BL costs for assisted prison visits[3].

1 ESA Regs, Sch 8, para 46; 2 Sch 8, para 45; 3 Sch 8, para 47

Work-related activity

51333 Any payment made to the claimant in respect of any travel or other expenses

1. incurred **or**

2. to be incurred

due to a requirement to take part in WRA is fully disregarded[1].

1 ESA Regs, Sch 8, para 15A

The child maintenance disregard

51334 Any income payment of child maintenance paid by or derived from an LR - but not by the claimant or claimant's partner - falls to be fully disregarded as income[1]. The payment has to be in respect of a child or young person who is a member of the claimant's family. LRPs which do not also fall within the meaning of child maintenance should be taken into account as LRPs[2]. DMG 51617 et seq provides guidance on LRPs.

1 ESA Regs, Sch 8, para 60; 2 reg 119

Meaning of child maintenance

51335 A payment of child maintenance is[1] any payment

1. towards the maintenance of

1.1 a child **or**

1.2 a young person **and**

2. which is under

2.1 a voluntary agreement **or**

2.2 child support law[2] **or**

2.3 a court order **or**

2.4 a consent order **or**

2.5 a maintenance agreement registered with the Scottish courts[3].

1 ESA Regs, Sch 8, para 60(2); 2 Child Support Act 1991; Child Support (Northern Ireland) Order 1991; 3 Books of Council and Session; Sheriff Court Books

Applying the disregard

51336 In order for the disregard to apply the payment of child maintenance must be a payment of income

1. made by **or**

2. derived from

an LR[1]. DMG 51642 provides guidance on who is defined as an LR.

Note: For the purposes of the disregard the meaning of an LR does not include a person who has sponsored the claimant or the child if the child has also been sponsored as a condition of their immigration[2].

1 ESA Regs, Sch 8, para 60(1); 2 Sch 8, para 60(2)

Example

Betty is in receipt of ESA(IR) and has 2 children who live with her. Dai is Betty's ex-husband and he has agreed to pay £150 a week towards the maintenance of the children. He pays this money on the last day of each month. The DM decides that none of this money paid by Dai will be taken into account when calculating Betty's entitlement to ESA(IR). This is because the payment falls within the meaning of child maintenance and so has to be fully disregarded.

51337

Child or young person attending educational establishment 51338 - 51340

51338 Payments made to an educational establishment for a child or young person who is a member of the claimant's family by or on behalf of a third party or by a member of the family out of funds contributed for that purpose by a third party are fully disregarded[1]. Do not calculate a notional income if school fees are paid entirely from the money of a member of the family (for example, from capital). The DM should consider if deprivation of capital has occurred in cases where tariff income is taken into account.

1 ESA Regs, Sch 8, para 27

51339 - 51340

Payments from Infected Blood Schemes and other specific Trusts 51341 - 51389

Infected Blood Schemes 51341 - 51344

Previous Infected Blood Schemes 51345 - 51352

The London Emergencies Trust 51353 - 51354

The We Love Manchester Emergency Fund 51355 - 51356

The Independent Living Fund (2006) 51357 - 51358

The London Bombings Relief Charitable Fund 51359

Payments from money which came from the Trusts 51360 - 51376

For how long should the payment be disregarded 51377 - 51380

Deciding if a disregard applies 51381 - 51382

Trust payments invested with other money 51383

Qualifying person or person with HIV's relationship with former partners 51384

Social fund funeral payments 51385 - 51389

Infected Blood Schemes

51341 **[See Memo DMG] 15/21] [See Memo DMG 07-23] [See Memo DMG 08-25] [See Memo DMG 04-26]** Infected Blood Schemes (IBS), approved for such purposes by the Secretary of State, replaced the five existing payment schemes (The Eileen Trust ('the Fund'), The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation – see DMG 51346 - 51352) for England, Northern Ireland and Wales from 2.10.17. These schemes provide financial support to people infected with HIV and/or hepatitis C as a result of contaminated NHS blood or blood products.

Income from Infected Blood Schemes

51342 Fully disregard[1]

1. any income from approved Infected Blood Schemes **and**

2. any income from capital that was received from approved Infected Blood Schemes.

1 ESA Regs, Sch 8, para 41(1)

The Scottish Infected Blood Support Scheme

51343 The Scottish Infected Blood Support Scheme (SIBSS)[1] became operational from 1.4.17. It is administered by NHS National Services Scotland (NSS), legally known as the Common Services Agency. NSS is an NHS Board accountable to Scottish Ministers. SIBSS combined the five exisiting blood support schemes (The Eileen Trust ('the Fund'), The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation – see DMG 51346 - 51352) into one scheme in Scotland.

1 ESA Regs, reg 2(1)

Income from the Scottish Infected Blood Support Scheme

51344 Fully disregard[1]

1. any income from the Scottish Infected Blood Support Scheme **and**

2. any income from capital that was received from the Scottish Infected Blood Suport Scheme.

1 ESA Regs, Sch 8, para 41(1)

Previous Infected Blood Schemes

51345 Prior to the introduction of the Infected Blood Schemes at DMG 51341 and the Scottish Infected Blood Support Scheme at DMG 51343, five separate schemes provided financial support to people affected by contaminated NHS blood or blood products.

The Eileen Trust ('the Fund')

51346 The Eileen Trust ('the Fund') was a charitable trust set up on 29.3.93 to give further help to people who are not haemophiliacs but who contracted HIV when receiving NHS

1. blood **or**

2. tissue or organ transfers **or**

3. blood products.

The Macfarlane Trusts

51347 The Macfarlane Trusts were set up to provide compensation to haemophiliacs who contracted HIV when receiving NHS

1. blood **or**

2. tissue or organ transfers **or**

3. blood products.

51348 The Macfarlane Trusts are

1. The Macfarlane Trust

2. The Macfarlane (Special Payments) Trust

3. The Macfarlane (Special Payments) (No 2) Trust.

MFET Limited

51349 MFET Limited[1] is an organisation funded by DH. The purpose of MFET Limited is to make payments to people who have acquired HIV as a result of treatment by the NHS with blood or blood products.

1 ESA Regs, reg 2(1)

The Caxton Foundation

51350 The Caxton Foundation was established on 28.3.11. It administers funds provided by DH for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments[1].

1 ESA Regs, reg 2(1)

Income from the Eileen Trust ('the Fund'), Macfarlane Trusts, and the Caxton Foundation

51351 Fully disregard[1]

1. any income **and**

2. any income from capital that was received from schemes in DMG 51346 - 51352.

1 ESA Regs, Sch 8, para 41(1)

The Skipton Fund

51352 The Skipton Fund administers an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C. It includes people infected as a result of NHS blood products and other people eligible for payment in accordance with the scheme's provisions[1].

Note: Payments from the Skipton Fund will be payments of capital (see DMG Chapter 52).

1 ESA Regs, reg 2(1)

The London Emergencies Trust

[See DMG Memo 15/20]

51353 The London Emergencies Trust (LET)[1] was set up to alleviate hardship for those who have been bereaved or injured as a result of the terror attacks in London on 22.3.17 and 3.6.17. Beneficiaries of the LET may receive lump sum and/or regular payments.

1 ESA Regs, reg 2(1)

Income from the London Emergencies Trust

51354 Fully disregard[1]

1. any income from the London Emergencies Trust **and**

2. any income from capital that was received from the London Emergencies Trust.

1 ESA Regs, Sch 8, para 41(1) & 41(7)

The We Love Manchester Emergency Fund

51355 The We Love Manchester Emergency Fund (WLMEF)[1] was set up to alleviate hardship for those have been bereaved or injured as a result of the terror attack in Manchester on 22.5.17. Beneficiaries of the WLMEF may receive lump sum and/or regular payments.

1 ESA Regs, reg 2(1)

Income from the We Love Manchester Emergency Fund

51356 Fully disregard[1]

1. any income from the We Love Manchester Emergency Fund **and**

2. any income from capital that was received from the We Love Manchester Emergency Fund.

1 ESA Regs, Sch 8, para 41(1) & 41(7)

The Independent Living Fund (2006)

51357 The original Independent Living Fund ran from 1988 to 1993. It was replaced by the Independent Living (1993) Fund and the Independent Living (Extension) Fund. With effect from 1.10.07 these funds were replaced by the Independent Living Fund (2006). The fund closed permanently on 30.6.15. Any payments made under any of the replacement schemes are disregarded as local welfare provisions[1].

1 ESA Regs, Sch 8, para 35A

Income from the Independent Living Fund (2006)

51358 Fully disregard[1] any income from the Independent Living Fund (2006).

Note: Income which remains unspent and becomes capital at the end of the period it was paid for is not disregarded.

1 ESA Regs, Sch 8, para 41(1)

The London Bombings Relief Charitable Fund

51359 The London Bombings Relief Charitable Fund[1] was set up to relieve the needs of victims, including families or dependants of victims, of the terrorist attacks in London on 7.7.05. Interim payments were made to relieve the immediate needs of victims followed by further lump sum payments. Recipients may receive more than one lump sum payment.

Note: Payments made from the London Bombings Relief Charitable Fund will be payments of capital (See DMG Chapter 29).

1 ESA Regs, reg 2(1)

Payments from money which came from the Trusts

Meaning of the Trusts

51360 [See Memo DMG 15/21] **[See Memo DMG 07-23]** **[See Memo DMG 08-25]** "The Trusts"[1] is the term that describes

1. the Macfarlane Trusts **and**

2. the Eileen Trust ('the Fund') **and**

3. the Skipton Fund **and**

4. the London Bombings Relief Charitable Fund **and**

5. MFET Limited **and**

6. the Caxton Foundation **and**

7. the Scottish Infected Blood Support Scheme **and**

8. the London Emergencies Trust **and**

9. the We Love Manchester Emergency Fund **and**

10. Infected Blood Schemes.

1 ESA Regs, Sch 8, para 41(7)

What payments should be disregarded

51361 Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 51364 - 51385. In these cases, the person receiving the income is not the person who qualified for the Trust payment. In any other circumstances, payments of income from a Trust payment should be treated under normal rules.

Person with HIV

51362 In this guidance the term “person with HIV” is used to describe

1. people with haemophilia **or**

2. other people

who qualify for Trust payments.

Qualifying person

51363 [See Memo DMG 15/21] **[See Memo DMG 07-23] [See Memo DMG 08-25]** In this guidance a qualifying person means[1] a person in respect of whom a payment has been made from

1. the Eileen Trust (‘the Fund’) **or**

2. the Skipton Fund **or**

3. the London Bombings Relief Charitable Fund **or**

4. MFET Limited **or**

5. the Caxton Foundation **or**

6. the Scottish Infected Blood Support Scheme **or**

7. the London Emergencies Trust **or**

8. the We Love Manchester Emergency Fund **or**

9. Infected Blood Schemes.

Note: A person in respect of whom a payment has been made from the Macfarlane Trust is not included

above but is included in the definition at DMG 51362.

1 ESA Regs, reg 2(1)

Payments by a qualifying person or person with HIV to partners, children and young people

51364 Disregard any payment made by or on behalf of a qualifying person or person with HIV from money from a Trust payment made to or for the benefit of

1. their partner or their former partner if they are **not**

1.1 estranged **or**

1.2 divorced **or**

1.3 former civil partners **or**

1.4 estranged, divorced or had their civil partnership dissolved at the date of death if the qualifying person or person with HIV has died[1] **or**

2. any child or young person who

2.1 is a member of the family of the qualifying person or person with HIV **or**

2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family[2].

Note: DMG 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(2)(a); 2 Sch 8, para 41(2)(b) & (c)

Payments by the partner or former partner of the qualifying person or person with HIV

51365 Fully disregard any payment from a Trust payment made by or on behalf of a partner or former partner of a qualifying person or person with HIV, providing the qualifying person or person with HIV and partner or former partner are **not**

1. estranged **or**

2. divorced **or**

3. former civil partners **or**

4. estranged, divorced or had their civil partnership dissolved at the date of death of either

4.1 the qualifying person or person with HIV **or**

4.2 the partner or former partner.

51366 This disregard applies if the payment is made to or for the benefit of

1. the qualifying person or person with HIV[1] **or**

2. any child or young person[2] who

2.1 is a member of the family of the qualifying person or person with HIV **or**

2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family.

Note: DMG 51377 - 51378 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(3)(a); 2 Sch 8, para 41(3)(b) & (c)

Payments by a qualifying person or person with HIV to parents, step parents or guardians

51367 Fully disregard any payment from a Trust payment by a qualifying person or person with HIV to their

1. parent **or**

2. step parent[1] **or**

3. guardian[2] if the qualifying person or person with HIV has no parent or step parent and is a

3.1 child **or**

3.2 young person **or**

3.3 student in FTE.

1 ESA Regs, Sch 8, para 41(4)(b)(i); 2 Sch 8, para 41(4)(b)(ii)

51368 This disregard applies if the qualifying person or person with HIV

1. has no partner or former partner from whom that person is **not**

1.1 estranged **or**

1.2 divorced **or**

1.3 former civil partners **and**

2. has no child or young person in the family **and**

3. has never had a child or young person in their family[1].

Note: DMG 51379 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(4)(a)

51369 - 51374

Payments from the estate of a qualifying person or person with HIV to a parent, step parent or guardian

51375 Fully disregard any payment from the estate of a qualifying person or person with HIV to

1. a parent **or**

2. a step parent[1] **or**

3. a guardian[2] if at the date of death the qualifying person or person with HIV had no parent or step parent and was a

3.1 child **or**

3.2 young person **or**

3.3 student in FTE.

1 ESA Regs, Sch 8, para 41(5)(b)(i); 2 Sch 8, para 41(5)(b)(ii)

51376 This disregard applies if at the date of death the qualifying person or person with HIV had

1. no partner or former partner from whom that person is **not**

1.1 estranged **or**

1.2 divorced **or**

1.3 former civil partners **or**

2. no child or young person in the family **and**

3. at no time had a child or young person in the family[1].

Note: DMG 51380 explains for how long the payment is disregarded.

1 ESA Regs, Sch 8, para 41(5)(a)

For how long should the payment be disregarded

Payments to a qualifying person or person with HIV and partners

51377 Disregard payments made to or for the benefit of

1. a qualifying person or person with HIV[1] **or**

2. the partner or former partner of a qualifying person or person with HIV[2]

for the lifetime of the person who received the payment. Breaks in entitlement to ESA(IR) do not alter this disregard.

1 ESA Regs, Sch 8, para 41(3)(a); 2 Sch 8, para 41(2)(a)

Payments to children and young people

51378 Disregard payments made to or for the benefit of a child or young person as long as they remain

1. a child or young person **and**

2. in (or they were in) the family of[1]

2.1 the qualifying person or person with HIV **or**

2.2 the partner or former partner of the qualifying person or person with HIV **and**

3. a member of the ESA(IR) claimant's family.

1 ESA Regs, Sch 8, para 41(2)(b) & (c) & 41(3)(b) & (c)

Payments to parents and guardians from a qualifying person or person with HIV

51379 Disregard payments to a

1. parent **or**

2. step parent **or**

3. guardian

from the date the payment is made until the end of two years after the qualifying person or person with HIV dies[1].

Note: In some cases this disregard may last for the length of the ESA claim, because the person with HIV may not die whilst the claimant is on ESA(IR).

1 ESA Regs, Sch 8, para 41(4)

Payments to parents and guardians from the estate of a qualifying person or person with HIV

51380 Disregard[1] payments to a

1. parent **or**

2. step parent **or**

3. guardian

for a period of two years from the date the qualifying person or person with HIV died.

Note: This disregard applies from the date of death not the date the estate makes a payment.

1 ESA Regs, Sch 8, para 41(5)

Deciding if a disregard applies

51381 Once the claimant has declared any payments made from one of the Trusts the DM should decide

1. if the payment qualifies for a disregard **and**

2. the length of any disregard.

51382 Seek further evidence if there is doubt about the

1. source of the payment **or**

2. relationship of the person receiving the payment with the qualifying person or person with HIV **or**

3. extent that money from the Trust has been kept separately.

Trust payments invested with other money

51383 If a Trust payment is invested with other money to produce an income, disregard only the proportion that came from the trust payment[1].

1 ESA Regs, Sch 8, para 41(6)

Example

Michael bought an annuity for £5,000. £4,000 came from the Eileen Trust. The balance came from his own savings.

The annuity produces an income of £50 a month.

The DM decides to disregard £40 a month. £10 a month is taken into account as income.

Qualifying person or person with HIV's relationship with former partners

51384 [See Memo DMG 15/21] **[See Memo DMG 07-23]** **[See Memo DMG 08-25]** The DM should be satisfied that a former partner or civil partner is not estranged or divorced or had the civil partnership dissolved. Accept the claimant's statement unless it is considered to be improbable or self-contradictory.

Example

Joanne receives a payment of money from the Macfarlane Trust. She is divorced from her former partner Harold, who is a person with HIV.

The DM decides that the payment should not be disregarded.

Social fund funeral payments

51385 Trust payments will become part of a person's estate upon death. Any assets of a dead person including

1. payments of income from the trusts including Variant Creutzfeldt–Jakob disease payments **and**

2. payments of income from money that originally came from the Trusts or from Variant Creutzfeldt–Jakob disease payments

are not taken into account as assets of the estate if a claim for a SFFP is made.

Note: See DMG Chapter 39.

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Charitable and voluntary payments 51390 - 51424

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What are charitable payments

51390 A charitable payment is a payment made under a charitable trust[1]. A charitable trust must

1. be wholly and exclusively charitable **and**

2. promote a public benefit (that is, it must benefit a sufficient section of the public except where the purpose is the relief of poverty).

Payments from charitable trusts are made at the discretion of the trustees.

1 R(IS) 4/94; R v. Doncaster Borough Council, Ex Parte Boulton

51391 Charitable trusts do not have to be

1. registered **or**

2. administered by a registered charity.

The DM should treat payments from registered charities as charitable payments.

51392 Charitable trusts usually provide for

1. the relief of poverty

2. advancement of education

3. advancement of religion

4. other purposes which benefit the community.

What are voluntary payments

51393 A voluntary payment is a payment that

1. has a benevolent purpose **and**

2. is given without anything being given in return[1].

Note: Voluntary payments should not be confused with payments to volunteers. Guidance on payments to volunteers is given at DMG 49210.

1 R(IS) 4/94

51394 A voluntary payment is similar to a charitable payment but it will not usually be made from a charitable trust. Voluntary payments are usually paid for the benefit of an individual. But DMs should recognize that charitable payments may also be made to individuals

1. for the relief of poverty **or**

2. because a wider purpose is involved.

51395 The DM should consider

1. the background to **and**

2. reasons for

the payment when deciding if it is voluntary.

Example 1

Jim claims ESA. He declares that he gets a payment of £20 a week from his uncle, Peter, towards the cost of running his car.

Peter makes the payment because Jim has been receiving ESA for some time and needs a car to get around.

Peter makes the payment because of family ties and affection for Jim. Peter does not expect or receive anything in return.

The DM decides that the £20 is a voluntary payment.

Example 2

Frances claims ESA. She receives a payment of £10.00 a week from her former employer.

The payment of £10.00 is paid to all former employees who worked for the company for over 20 years.

The payments were awarded by the board of directors following criticism by shareholders of the treatment of former employees with long service.

The DM decides the payment is not voluntary. This is because

1. the directors of the company are receiving in return for the payment greater satisfaction from the shareholders

2. the company's image is improved

3. the payments are not made to help needy employees. Many of the people receiving payments are quite well off.

Meaning of relevant payment

51396 A relevant payment[1] for the purposes of the disregard at DMG 51416 means

1. a charitable payment

2. a voluntary payment

3. a payment (other than in **1.** or **2.**) from a trust whose funds derive from a personal injury award to the claimant (this includes a trust whose funds derive from the Children's Memorial Trust - see DMG 51408)

4. a payment under an annuity purchased as a result of

> **4.1** any agreement or court order to make payments to the claimant **or**
>
> **4.2** funds that derive from a payment made as a consequence of a personal injury award to the claimant **or**

5. a payment (other than a payment covered by **1.** - **4.**) received as a result of any agreement or court order to make payments to the claimant as a consequence of a personal injury award.

Note: The agreement referred to in **5.** must be reached **after** the date that the injury occurred[2]

1 ESA Regs, Sch 8, para 16(3); 2 Malekout v. Secretary of State for Work & Pensions [2010] EWCA Civ

Certain types of payments

Cash in lieu of concessionary coal

51397 Payments originally made by British Coal to

1. retired miners **and**

2. widows of retired miners

in lieu of concessionary coal are not voluntary[1]. The payments were made because of a national agreement between British Coal and the trade unions. The purpose of the agreement was to ensure good labour relations and the willing services of the workforce. Treat these payments as other income with no disregard.

1 R(IS) 4/94

Civil list pensions

51398 Treat civil list pensions as voluntary payments. They are

1. paid at the discretion of the Queen **and**

2. voted annually by Parliament.

51399 They are awarded for distinguished service to the nation in

1. the arts

2. science

3. literature.

51400 - 51404

Payments from trust funds

51405 Claimants may receive payments from trust funds. If income from a trust fund is paid at the discretion of the trustees it should be treated as a voluntary payment. Treat a payment from a charitable trust as a charitable payment.

51406 Income from any trust fund set up with money from a personal injury award is treated in the same way. DMG 51416 gives guidance on the disregard appropriate to relevant personal injury trust payments.

Structured settlements

51407 A structured settlement may include a contingency fund that would be treated in the same way as any other personal injury lump sum award. However most of the award is used to provide an annuity

making periodical payments to the claimant. Payments from these annuities are capital treated as income[1] which fall within the definition of relevant payment at DMG 51396.

1 ESA Regs, reg 105(5)

Children's Memorial Trust

51408 The Children's Memorial Trust was set up as a result of Court action by the parents of deceased children whose organs had been retained by the Alder Hey hospital without parental consent.

51409 Where people can show that they have received a payment from the Children's Memorial Trust under the "Heads of Agreement" in relation to the Court action, that payment will be made in consequence of a personal injury to **them**. Income from a trust set up with money that derived from the Children's Memorial Trust is a relevant payment. DMG 51416 - 51418 gives guidance on the disregard appropriate to relevant personal injury trust payments.

51410 - 51412

Regular charitable or voluntary payments

What are regular payments

51413 Regular charitable or voluntary payments are those that are

1. made regularly **or**

2. due to be made regularly, even if they are not actually made.

Note: Voluntary payments should not be confused with payments to volunteers. Guidance on payments to volunteers is given at DMG 49209 - 49211.

51414 Regular payments include those paid or due to be paid at recurring intervals such as

1. weekly

2. monthly

3. annually (for example every Christmas)

4. any other pattern.

When is a payment due to be made

51415 A payment is due to be paid where there is a promise or agreement to make a payment.

Disregard for relevant payments

51416 Fully disregard[1] any relevant payment unless one of the exceptions at DMG 51417 - 51418 apply.

1 ESA Regs, Sch 8, para 16(1)

Relevant payments that should be taken fully into account

51417 The disregard in DMG 51416 does not apply to

1. LRPs[1] **or**

2. maintenance, that is not an LRP for

2.1 a member of the family **or**

2.2 a former partner **or**

2.3 the children

of the person making the payment[2] **or**

3. a student's covenant or grant income[3].

1 ESA Regs, reg 85; 2 Sch 8, para 16(3)(a); 3 reg 135

Relevant payments paid in kind

51418 [See Memo DMG 15/21] **[See Memo DMG 07-23] [See Memo DMG 08-25]** Fully disregard relevant payments that are paid in kind[1] unless one of the exceptions at DMG 51298 applies. The exceptions at DMG 51298 do not apply when the income in kind comes from

1. the Macfarlane Trust

2. the Macfarlane (Special Payments) Trust

3. the Macfarlane (Special Payments) (No. 2) Trust

4. the Eileen Trust ('the Fund')

5. the Independent Living Fund (2006) but see **note**

6. MFET Limited

7. the Skipton Fund **or**

8. the Caxton Foundation **or**

9. the Scottish Infected Blood Support Scheme **or**

10. the London Emergencies Trust **or**

11. the We Love Manchester Emergency Fund **or**

12. Infected Blood Schemes.

as explained at DMG 51299.

1 ESA Regs, Sch 8, para 22

Note: The Independent Living Fund 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 if a claimant receives funding from any of these replacement schemes.

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Capital payable by instalments

51425 Where capital is payable by instalments the DM should decide if the payments should be treated as capital or income. Capital can be payable by instalments in situations where

1. a person lends another person a lump sum of money and the borrower repays that money in regular or irregular payments

2. a person receives payments from an investment bond with a life assurance company.

The above list is not exhaustive.

Example

Eve has an investment bond with a friendly society. The bond is worth £20,000 but is disregarded by the DM because it has a policy of life assurance attached to it (see DMG Chapter 52). The terms of the bond allow Eve to withdraw money on a monthly basis which reduces the surrender value of the bond. The DM decides that the money Eve receives is capital payable by instalments.

51426 Add[1]

1. the amount of instalments outstanding

1.1 in the case of a claim - at the earlier of

1.1.a the first day for which ESA(IR) is payable **or**

1.1.b the date the claim is decided **or**

1.2 in the case of a supersession - at the date the supersession of the outcome decision is made **and**

2. the amount of any other capital held by the claimant or partner.

If the total is more than £16,000 treat each instalment received as income. If the total is less than £16,000 each instalment is capital.

1 ESA Regs, reg 105 & 110

51427 - 51429

When is an instalment treated as capital

51430 DMs should make the calculations in DMG 51425 - 51426 every time an instalment of capital is paid. Only the outstanding instalments should be treated as income. Any instalments paid before the date of claim or supersession should be taken into account as capital.

Annuity payments

51431 Treat any payment from an annuity as income[1]. An annuity is an investment which produces an annual sum of money[2]. Payments may be made monthly or quarterly as well as yearly.

1 ESA Regs, reg 105(2); 2 R(IS) 10/01

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What is a career development loan

51440 A career development loan is a deferred repayment bank loan which provides a person with initial help to pay for periods of study or training. The amount borrowed can vary between £200 and £8,000. Career development loans are usually paid to cover

1. 80% or 100% of course fees (payment of 100% of course fees depends on the person's circumstances) **and**

2. expenses incurred in connection with the course of study or training course **and**

3. day to day living expenses arising during the course of study or training course.

The DM should regard career development loans as income other than grant income.

Amount to be disregarded

51441 A career development loan should be treated as income[1]. The DM should disregard any income from a career development loan[2] that is not intended to cover living expenses. The disregard applies for the period of education or training supported by the loan[3]. The DM should take into account as income any amount of the loan that has been applied for, and paid for living expenses (see DMG 51442).

1 ESA Regs, reg 105(4); 2 E & T Act 73, s 2; 3 ESA Regs, Sch 8, para 15

Note: The main disregard for payments made under employment and training law is explained at DMG 51313.

Living expenses

51442 The living expenses to be taken into account as income are any amount loaned to the claimant or family member for

1. food

2. ordinary clothing and footwear (see DMG 51446)

3. fuel for the claimant's household

4. rent for which HB is payable

5. housing costs included in the applicable amount[1]

6. CT or water charges for which the claimant or member of the family is liable[2].

1 ESA Regs, reg 67(1)(c); 2 Sch 8, para 15(2)

51443 A budget planner is included in the career development loan pack. If this has been completed it may help the DM decide how much of the loan is intended for living expenses. If a budget planner has not been completed the claimant should be asked how much of the loan had been applied for and paid for living expenses.

51444 - 51445

Ordinary clothing and footwear

51446 Ordinary clothing and footwear means clothing or footwear for normal daily use. It does not include school uniforms or clothing and footwear used solely for sport, for example football boots[1].

Note: The DM should consider the wide needs of all claimants when applying the test of "for normal daily use".

1 ESA Regs, reg 2(1)

Example

Ross is in receipt of ESA(IR). His partner, Sue, is a F/T student on an art and design course. Sue has received a career development loan of £4,000 to pay for all of her books and course materials and 80% of the course fees. The rest is a contribution towards her living expenses.

The DM

1. disregards the amount of the loan intended for books, course materials and course fees **and**

2. asks the claimant what amount was intended for living expenses. The DM then decides how much of the career development loan should be taken into account as income and the period over which the income should be taken into account.

Period over which a career development loan should be taken into account

51447 The DM should take income from a career development loan into account for the period of education or training intended to be supported by the loan[1]. The income from the loan should be taken into account even if the person does not complete the period of education or training.

1 ESA Regs, reg 91(3)

51448 The DM should consider guidance on the calculation of the weekly amount of the income because

1. the period the income is to be taken into account will be more than one week (see DMG Chapter 48) **and**

2. in some cases, only part of the income will overlap a benefit week (see DMG Chapter 48).

51449 The DM should not take income from a career development loan into account after the period of education or training supported by that loan has been completed[1].

1 ESA Regs, Sch 8, para 15(1)(c)

Example 1

Alice is in receipt of ESA(IR). Her benefit week ends on a Monday. On 29 September she starts a one year course for which she received a career development loan of £3,000. The course ends on 26 June the next year. The DM decides that £1,200 of the loan is intended for living expenses and is to be taken into account for the period 29 September to 26 June, a total of 271 days. The loan is taken into account as follows

BWE 29 September £4.43 is taken into account (see DMG Chapter 48). This is because the first day of the course overlaps with this benefit week

$$\frac{£1,200}{271} \times 1 \text{ day} = £4.43$$

BWE 6 October to 22 June £31.00 is taken into account (Chapter 48)

$$\frac{£1,200}{271} \times 7 \text{ days} = £31.00$$

BWE 29 June £17.72 is taken into account (Chapter 48). This is because the last four days of the course overlap with this benefit week

$$\frac{£1,200}{271} \times 4 \text{ days} = £17.72$$

Example 2

Annie is in receipt of ESA(IR). Her partner, Alistair starts a one year F/T course for which he receives a career development loan. The course starts on 29 September and ends on 26 June the next year. The DM decides that the amount of the career development loan intended to cover living expenses should be taken into account as income for the period 29 September to 26 June.

On 10 December Alistair decides that he no longer wishes to attend his course. The DM decides that income from the career development loan should still be taken into account until 26 June as this is the period intended to be supported by the loan.

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What is notional income

51456 A person may be treated as having an income that is not actually received. This type of income is known as notional income and may take a number of different forms.

Types of notional income

51457 Notional income may be calculated because of

1. deprivation of income

2. income available if applied for (including special rules for personal pensions)

3. income due but not yet paid

4. income for a member of the family paid to a third party

5. income for a third party made to a member of the family.

Actual and notional income

51458 A person may have actual and notional income. DMs need not consider notional income if a person's actual income on its own is greater than the applicable amount. If income is less than the applicable amount the DM should consider if there is any notional income.

Treatment of notional income

51459 Calculate notional income in the same way as actual income[1]. The income should be taken into account using normal rules, including applying any appropriate disregard.

1 ESA Regs, reg 109(1)

Notional income - tasters

51460 If a claimant does a taster of a NDYP option for three days or more in a benefit week notional income is not taken into account[1]. This is because a taster is an employment or training programme for which no training allowance is payable.

Note: The notional income rules must be considered if the person is participating in a taster for less than three days in any benefit week.

1 ESA Regs, reg 108(4)(b)

Liable relative payments

51461 The guidance in DMG 51469 - 51614 does not apply to LRPs[1].

1 ESA Regs, reg 85

Service users

51462 The rules on notional income do not apply to payments of expenses or earnings paid as a result of a claimant's participation as a service user[1]. Where a DM might normally consider treating a claimant as possessing income which he doesn't actually have, such as in cases of

1. deprivation of income for the purposes of securing entitlement to benefit or increasing the amount of benefit payable

2. income upon application

3. income due but not paid

4. income paid to or in respect of a third party

5. notional earnings

then this will not apply where the possible income in question is payment arising from participation in a service user group (see DMG 51270).

1 ESA Regs, reg 106(9), 107(8) & 108(5)

51463 - 51468

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51469 DMs should treat claimants as receiving income that they have deprived themselves of for the purpose of gaining entitlement or increasing the amount of ESA(IR)[1], IS or JSA(IB).

1 ESA Regs, reg 106(1)

Meaning of deprive

51470 The word deprive is an ordinary English word. Its meaning is not a question of law. It should be given a normal everyday meaning[1].

1 R(SB) 38/85

51471 Claimants will have deprived themselves of income, if, because of their own actions, they no longer have that income. Claimants will still have deprived themselves of income whether or not another income has replaced the original income[1].

1 R(SB) 40/85

51472 Claimants cannot deprive themselves of income that they have already received. If a payment of income is received it is actual income and should be taken into account in the normal way.

51473 A deprivation of income may occur where a claimant's income is reduced to repay an overpaid income. The DM should decide if a significant reason for the reduction is to get or increase the amount of ESA(IR), IS or JSA(IB). DMs should bear in mind that the repayment of a

1. legally enforceable **and**

2. immediately repayable

debt cannot be for the purpose of increasing or getting ESA(IR)[1], IS or JSA.

1 R(SB) 12/91

Questions for consideration

51474 The DM should consider the questions in DMG 51484 - 51488 where claimants seem to have deprived themselves of income.

Was it the claimant's income

51475 The DM must decide if an income belongs to the claimant. If there is evidence that a person has been receiving an income (possibly on a previous award of benefit), the DM should presume the income belongs to the claimant.

51476 - 51480

51481 There may be supporting evidence, such as a letter or document, that shows an income belongs to the claimant. If it is alleged that an income is not the claimant's the claimant must prove the income belongs to someone else.

Has a deprivation of income happened

51482 Deprivation will have happened if a person

1. gives up **or**

2. transfers to another person

an income due to be received.

Example

Suzanne receives ESA(IR). She arranges by a deed of gift to transfer income from an occupational pension to her adult daughter. The DM decides that Suzanne has deprived herself of the income from the occupational pension.

51483 The claimant has to prove that an income is no longer received. Once the DM has shown that a claimant was receiving an income it is up to the claimant to prove it is no longer paid. If the claimant cannot do this the DM should decide that the income is still being received. The income should be taken into account as actual income[1].

1 R(SB) 38/85

Was the purpose of the deprivation to get or increase the amount of ESA(IR), IS or JSA(IB)

51484 There may be more than one reason for a person disposing of an income. Only one of those reasons might be getting or increasing ESA(IR)[1], IS or JSA(IB).

1 R(SB) 38/85

51485 Getting or increasing ESA(IR), IS or JSA(IB) need not be the most important reason for disposing of an income but it must be a significant reason[1].

1 R(SB) 40/85

51486 It is unlikely that there will be direct evidence that a deprivation was for the purpose of getting benefit. Decide on a person's reasons for disposing of an income after considering all the facts of the case. These may include

1. the person's explanations

2. the timing of the disposal

3. the claimant's knowledge of the benefit system

4. the likelihood of a benefit claim at the time of the deprivation.

51487 When considering claimants' intentions in depriving themselves of income the DM should consider what account of the claimant's intentions best explains the facts of the case. If the best explanation of the deprivation is that a significant reason for the disposal was getting or increasing ESA(IR), IS or JSA(IB) the DM should calculate a notional income.

Timing of the disposal of income

51488 DMs should carefully consider the timing of a disposal of income as a claim for ESA(IR), IS or JSA(IB) made shortly after the disposal of an income may indicate that getting or increasing ESA(IR), IS or JSA(IB) was a significant reason for the disposal. A claim for ESA(IR), IS or JSA(IB) made a long time after the disposal of an income is less likely to indicate that getting or increasing ESA(IR), IS or JSA(IB) was a significant reason for the disposal. But if there is evidence that a claimant was considering claiming ESA(IR), IS or JSA(IB) at a later date, deprivation may still have been for getting or increasing benefit.

Example

Rosemary transfers a payment from an annuity to her daughter by deed of gift. A month later, after her entitlement to SSP ends, she claims ESA. The DM decides that Rosemary deprived herself of the income and that the need to claim ESA at a later date was an important factor in the deprivation.

51489 - 51495

Income available on application 51496 - 51515

General 51496

What types of income should not be treated as notional income available on application 51497 - 51499

What types of income should be taken into account 51500

Date from which income should be taken into account 51501 - 51505

Income from an unadministered estate 51506 - 51515

General

51496 DMs should treat an income that

1. would be paid to the claimant or partner if applied for **and**

2. has not been applied for[1]

as notional income.

1 ESA Regs, reg 106(2)

What types of income should not be treated as notional income available on application

51497 The DM should not take into account as notional income available on application

1. income payable under a discretionary trust fund[1]

2. income from a trust set up using money paid because of a personal injury[2]

3. ESA[3]

4. JSA[4]

5. WTC[5]

6. CTC[6]

7. payments from a personal pension, occupational pension, or the Pension Protection Fund when the person is under the qualifying age for SPC (see DMG 77032)[7]

8. an award of damages for personal injury which is administered by the court[8]

9. a rehabilitation allowance made under specified legislation[9]

10. a student loan where

10.1 the full amount of the loan has not been made in respect of that full academic year **and**

10.2 the educational institution has confirmed in writing that the student has suspended their course due to

10.2.a a health condition **or**

10.2.b disability **and**

10.3 the student is incapable of continuing the course[10].

1 reg 106(2)(a); 2 reg 106(2)(b); 3 reg 106(2)(c); 4 reg 106(2)(d); 5 reg 106(2)(e); 6 reg 106(2)(f); 7 reg 106(2)(g); 8 reg 106(2)(h) & Sch 9, para 43(1)(a) & 43(2)(a) or 44(a); 9 E & T Act 73, s 2; ESA Regs, reg 106(2)(j); 10 reg 106(2)(gb)

51498 Apply any appropriate disregards to notional income[1]. Do not take into account any income that would be fully disregarded but has not been applied for.

1 ESA Regs, reg 109(1)

51499 Only take an income into account if it can be shown beyond doubt that an application or claim for it would succeed. The DM should

1. gather evidence **and**

2. consider all the qualifying conditions for the income.

It should not be assumed that one or more qualifying conditions are satisfied.

Example

Claudette claims ESA. She is sick as a result of an industrial accident but has not claimed Dis B. The DM decides that there are doubts about whether Claudette satisfies the conditions for claiming Dis B. Dis B is not taken into account as income available upon application.

What types of income should be taken into account

51500 All types of income, except those mentioned in DMG 51497, may be taken into account. Examples of incomes that might be available upon application are

1. SS benefits

2. councillors' attendance allowance

3. personal and occupational pensions for people who are of the qualifying age for SPC.

Date from which income should be taken into account

51501 Take into account income available on application from the date it could be expected to be received if an application was made[1].

1 ESA Regs, reg 106(2)

51502 Calculate the date on which income could be expected to be received by

1. assuming an application was made on the date the DM first became aware of the notional income **and**

2. adding the estimated time it would take for an application to be processed once made.

Example 1

Mushtaq receives ESA(IR) and has a Mortgage Protection Policy. The DM discovers on 1 November that he has a voluntary arrangement to have payments made direct to the building society.

The insurance company tell the DM that it would take about a month for the payment to be redirected from the building society to Mushtaq.

The DM decides to take into account notional income from the Mortgage Protection Policy from 1 December.

Example 2

Alastair is 61 and receives ESA(IR). On 1 November the DM discovers that Alastair could apply for his occupational pension from a former employer. He has not yet applied because he would get a bigger pension at the age of 62.

Alastair's former employer tells the DM that payment of a pension of £230 a calendar month would have started on 1 December if an application had been made on 1 November.

The DM decides to take into account a weekly notional income of £53.07 from 1 December.

51503 - 51505

Income from an unadministered estate

51506 The DM may decide that a person should be treated as receiving notional income from the estate of a dead person.

51507 A person who is entitled to income from an unadministered estate can

1. enforce their right to the income through the courts if there is a will **or**

2. take out letters of administration if there is no will or in Scotland applying for Confirmation as executor-dative.

51508 Delays in paying income from an estate are often caused by legal action over debts or problems with the will. The DM must consider this when deciding if

1. an income will become available **and**

2. when it would be paid if an application was made.

51509 If the DM knows that the claimant or a member of the family might receive income from a dead person's estate the case should be referred to DMA Leeds for advice if there is a long delay.

51510 Usually the DM should wait for a year after the

1. granting of probate or letters of administration or in Scotland a grant of confirmation **or**

2. the deceased person’s death if a grant of probate or administration or in Scotland a grant of confirmation has not been made

before referring the case to DMA Leeds.

51511 If the only reason for the delay in receiving income is a failure of the person to apply for it promptly the DM should calculate notional income.

51512 - 51515

Notional income - carer's allowance 51516 - 51534

Deprivation of income 51517 - 51524

Income available on application 51525 - 51526

Income due but not paid 51527

Notional income and changes in circumstances 51528 - 51534

51516 DMG 51517 - 51528 gives guidance on how to apply the notional income provisions in cases

1. where

1.1 SDP has been withdrawn or reduced because CA is in payment to the carer **and**

1.2 the carer then chooses to give up CA **and**

2. where it appears that a carer may be entitled to CA but CA is not in payment.

Note: The Scottish carer's allowance supplement[1] , paid by the Scottish Government to those recipients of CA living in Scotland, is not the same as CA and is fully disregarded for income purposes.

1 The Scotland Act 2018, s47

Deprivation of income

51517 If carers do something that means CA stops being paid, this is deprivation of income[1]. This may include

1. telling the DM they no longer wish CA to be paid to them **or**

2. changing their circumstances so they no longer qualify for CA.

Where there has been a deprivation of CA, the purpose of the deprivation should then be considered[2].

1 & 2 ESA Regs, reg 106(1)

51518 A carer should be treated as possessing income where CA has been given up for the purpose of gaining entitlement to, or increasing the amount of ESA[1] for the carer, the carer's partner or any other member of the carer's family (see DMG Chapter 43).

Note: The carer does not have to be the ESA claimant.

1 ESA Regs, reg 106(1)

51519 Carers should **not** be treated as possessing CA which they have given up solely to secure or increase ESA(IR) for someone who is **not** a member of the ESA(IR) family. In these circumstances DMs should consider whether DMG 51525 applies.

51520 Guidance on establishing the purpose of a deprivation is at DMG 51482 et seq. DMs should note that it is not enough that securing or increasing ESA(IR) is a natural consequence of giving up CA. A positive intention to secure or increase ESA(IR) has to be shown[1].

1 R(SB) 9/91, para 8

51521 - 51524

Income available on application

51525 If CA is not to be taken into account under the deprivation rule, the DM should also consider the available on application rule (see DMG 51496 et seq)[1].

1 ESA Regs, reg 106(2)

51526 CA may be taken into account using this rule where there is no doubt that

1. a fresh claim **or**

2. an application to the DM for payments to resume

will lead to payments being made to the carer. Guidance on the date from which notional income is assumed under this rule is at DMG 51499 et seq.

Income due but not paid

51527 CA should not be assumed under this rule[1]. CA is an exception (see DMG 51564 **4.8**)[2].

1 & 2 ESA Regs, reg 106(2)

Notional income and changes in circumstances

51528 After notional CA is taken into account, the carer's circumstances may change. Notional income is calculated as if the income in question is really in payment[1]. This means that notional CA should only stop where the change

1. would have caused CA to stop, had it really been in payment **and**

2. has not been contrived by the carer to secure or increase benefit as in DMG 51518.

Note: This applies to notional income under either DMG 51518 or 51526.

1 ESA Regs, reg 109(1)

51529 - 51534

Personal and occupational pensions 51535 - 51562

General 51535 - 51546

Information and evidence 51547 - 51550

Notional income - schemes where income withdrawal is allowed 51551 - 51553

Notional income - schemes where income withdrawal is not allowed 51554 - 51562

General

51535 There are rules for calculating income that is

1. available on application from a personal or occupational pension **or**

2. is treated as being available from a personal or occupational pension.

51536 These rules apply to people who have reached the qualifying age for SPC. The DM should ignore potential income from

1. personal pension schemes **or**

2. occupational pension schemes **or**

3. the Board of the Pension Protection Fund

for people under the qualifying age for SPC[1]. The weekly amount of any notional income to be taken into account should be calculated as if it is actual income[2].

1 ESA Regs, reg 106(2)g); 2 reg 109(1)

What is a personal pension

51537 A personal pension is a pension scheme that[1] is not an occupational pension scheme **and** is established by a person within specified finance legislation[2].

1 ESA Regs, reg 2(1); PS Act 93, s 1; 2 Finance Act 2004, s 154(1)

What is an occupational pension

51538 An occupational pension is any pension or other periodical payment under an occupational

pension scheme, but does not include any discretionary payment out of a fund established for relieving hardship in particular cases[1].

1 ESA Regs, reg 2(1)

Pension Protection Fund

51539 The Pension Protection Fund Board was set up to compensate members of defined benefit (final salary) occupational pension schemes where the employer goes out of business and the scheme is left with insufficient funds. Compensation may be made as regular payments of income and lump sum payments (just as the former pension scheme would have paid). Payments from the Pension Protection Fund are treated in the same way as payments from occupational pensions schemes.

What is a pension fund holder

51540 Where reference is made to a pension fund holder, this means the

1. trustee **or**

2. manager **or**

3. administrator

of a personal pension scheme[1].

1 ESA Regs, reg 2(1)

Who is a person who derives entitlement

51541 The term "person who derives entitlement" is used to describe people who may be paid a pension at the discretion of the pension fund holder. When the original pensioner dies the pension fund holder has discretion to decide what to do with the fund.

People, such as widows, widowers or surviving civil partners of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

Lump sums on retirement

51542 At the point that

1. an annuity is bought **or**

2. an income is taken

from the personal pension fund a lump sum of up to 25% of the fund may be taken. Treat this payment as capital. Do not take it into account as notional capital available on application[1].

Pension Flexibilities

51543 Since April 2015 people have had greater flexibility in how they access their pension savings, generally known as “pension flexibilities”. These flexibilities allow an individual to be able to choose what they want to do with their defined contribution fund or money purchase benefits scheme (sometimes referred to as a “pension pot”). If they want to, they could

1. draw out all of the funds in the pension pot

2. purchase an annuity (see DMG 51060)

3. opt for a drawdown arrangement (where lump sums or regular amounts can be drawn down from the pension pot) without any restriction either in the form of a cap or a minimum income amount

4. do nothing and leave the fund untouched.

Income and Capital Drawdowns

51544 Whilst a claimant’s pension pot is held by the pension provider then that sum falls to be disregarded as capital. If the claimant has withdrawn money from their pension pot (known as a “drawdown”) then a determination has to be made as to how this is to be treated. Where a claimant chooses to withdraw amounts on a regular basis then those amounts fall to be treated as income and taken into account as such.

51545 Where a claimant chooses to

1. take ad-hoc withdrawals **or**

2. take the whole sum

then the amount withdrawn falls to be treated as capital (see DMG Chapter 52).

51546 For the purposes of notional income for claimants, or their partners as appropriate, who have reached the qualifying age for SPC (see DMG 77032), the claimant’s pension pot is required to be re-valued

1. after every drawdown of capital

2. after every drawdown of income which exceeds the applicable notional income amount (see DMG 51550) **or**

3. upon the claimant’s request.

Example

John is in receipt of SPC. He has a pension pot of £40,000 which he doesn't wish to access at the moment but might do at a later stage. The DM calculates that as an annuity income, this would produce £2,000 per annum or £38.46 per week. This is based on 100% of the rate of annuity that the fund would generate (see DMG 28631). The figure of £38.46 is taken into account as notional income. John then decides to draw down £8,000 as capital, leaving £32,000 in his pension pot. The DM reassesses the notional income figure based on 100% of the rate of annuity that the remaining amount in the fund would generate.

Information and evidence

51547 Pension fund holders must provide the DM with information about

1. the rate of annuity available from the pension fund **and**

2. the amount of income that would be available if the funds were held in a scheme that produces an income.

This information is usually provided by the provider on form PPR1 and is based on tables prepared by the Government Actuary's Department[1]. The rate of annuity is 100% of the rate of the annuity that could be generated by the fund. DMs must consider evidence from pension fund holders when deciding the amount of notional income[2]. Do not make a decision until the pension fund holder has been given sufficient time to provide evidence.

1 SS (C&P) Regs, reg 7(6); 2 ESA Regs, regs 106, reg 6 & 7

51548 DMs must consider the evidence of the pension fund holder but are not bound to accept it. Consider all the evidence on the amount of notional income before making a decision. The decision should be based on the most convincing evidence available.

51549 - 51550

Notional income - schemes where income withdrawal is allowed

When should a person be treated as having notional income

51551 Treat a claimant, who has reached the qualifying age for SPC or over as having[1]

1. any income from an occupational pension scheme, a personal pension scheme or the Board of the Pension Protection Fund which

1.1 has not been claimed **and**

1.2 he might expect to be entitled to if a claim for it was made

2. income from an occupational pension scheme which the claimant has elected to defer.

1 ESA Regs, reg 106(3)

Amount of notional income

51552 The amount of the notional income is

1. where no income is drawn, 100% of the rate of annuity that may be withdrawn from the fund **or**

2. where some income is drawn, the difference between the rate of annuity and the income actually withdrawn.

Example

Adam is over the qualifying age for SPC and his wife Delores is in receipt of ESA(IR). Adam has a pension pot of £50,000 which he doesn't wish to access at the moment but might do at a later stage. The DM determines that as an annuity income, this would produce £2,500 per annum or £48.07 per week. This is based on 100% of the rate of annuity that the fund would generate. This amount is taken into account as a notional income and is deducted from the award of ESA. Adam and Delores then later decide to put the £50,000 into a flexi draw down fund and take an actual income of £50 per week. The DM now decides that the amount of income to take into account each week is £50. There is no notional amount to take into account.

From what date should the DM take notional income into account

51553 Take notional income into account from the date that the person could expect to get the income if an application was made[1]. To calculate this date

1. assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**

2. add the estimated time it would take the pension fund holder to process an application for the 100% of the rate of annuity that the fund would generate.

1 ESA Regs, reg 106(3)

Example

Bernard receives ESA(IR). He is of qualifying age for SPC .

On 1 November the DM receives evidence that Bernard is entitled to a personal pension but has not bought an annuity or drawn an income.

The pension fund holder states that Bernard's scheme can provide an income. In Bernard's case the maximum amount of income, based on the GAD tables, is £23 a week.

Once an application is made it would take the pension fund holder six weeks to arrange for the maximum

income to be paid.

The DM decides that Bernard should be treated as having a notional income of £23 a week from 13 December.

Notional income - schemes where income withdrawal is not allowed

When should a person be treated as having notional income

51554 Treat a claimant who has at least reached the qualifying age for SPC as having income when[1] entitled to money purchase benefits under an occupational or personal pension scheme and he fails to purchase an annuity with the funds available in that scheme where

1. he defers, in whole or part, the payment of any income which would have been payable to him by his pension fund holder **or**

2. he fails to take any necessary action to secure the whole of the income which would be payable to him by his pension fund holder, if he applied for it **or**

3. income withdrawal is not available to him under that scheme.

Note: Money purchase benefits has the same meaning as in specific pensions law[2]. This type of scheme does not pay benefits related to a person's final salary. Contributions paid in are invested and the benefits paid depend on how well the investments perform.

1 ESA Regs, reg 106(4); 2 PS Act 93

Amount of notional income

51555 The amount of notional income is the amount that a person could have received, without buying an annuity, if the pension funds were held in a scheme that did allow income withdrawal[1].

1 ESA Regs, reg 106(7)

From what date should the DM take notional income into account

51556 Take notional income into account from the date that the person could expect to get the income if an application was possible[1]. To calculate this date

1. assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**

2. add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for 100% of the rate of annuity that the fund would generate.

1 ESA Regs, reg 106(5)

Example

Mark receives ESA(IR). His partner Fiona is 61. On 1 November the DM receives evidence that Fiona is entitled to money purchase benefits under an occupational pension scheme.

The pension fund holder provides evidence, based on the GAD tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The DM estimates that it would take six weeks for a typical pension fund holder to arrange for 100% of the rate of annuity that the fund would generate.

The DM decides that Fiona should be treated as having a notional income of £30 a week from 13 December.

Actual income

51557 Take into account in full in the normal way any income that is

1. paid under an annuity bought with funds from a personal or occupational pension **or**

2. withdrawn from a personal or occupational pension scheme.

51558 - 51562

Income due but not yet paid 51563 - 51575

Income that should not be taken into account if due but not paid 51564 - 51568

Types of income that may be due but not paid 51569 - 51575

51563 Treat income

1. that is due to the claimant or partner **and**

2. has not been paid

as belonging to that person[1]. This does not apply to the income listed in DMG 51564.

1 ESA Regs, reg 107(1)

Income that should not be taken into account if due but not paid

51564 DMs should not take certain income into account, even though it may be due but not paid. That income is

1. earnings which are due on termination of employment by reason of redundancy[1]

2. income payable under a discretionary trust fund **or**

3. income payable under a trust set up from a payment made because of a personal injury[2] **or**

4. payments, including increases for dependents, of

4.1 IB

4.2 MA

4.3 WB

4.4 BA and WPA

4.5 RP

4.6 AA

4.7 SDA

4.8 CA

4.9 DLA

4.10 Dis B

4.11 REA

4.12 WDisP and WWP that is not paid as a gratuity and any payment that the DM accepts is similar

4.13 Training allowance

4.14 EU benefits

4.15 JSA(Cont)

which are normally recovered from or reduced by the amount of ESA(IR) that has been paid because they have not been paid when they were due)[3] **or**

5. income from an occupational pension scheme that has not been paid because the trustees or managers of the scheme

5.1 have suspended or stopped payments because of insufficient resources[4] **or**

5.2 have insufficient resources to meet in full the scheme's liabilities to its beneficiaries[5].

Note: Any benefit in the form of a grant, gratuity or widows payment should not be taken into account if due but not paid[6]. These payments should normally be treated as capital.

1 ESA Regs, reg 107(2)(c); 2 reg 107; 3 reg 107(1)(b); 4 reg 107(2);
5 reg 107(2)(b); 6 SS (POR) Regs, reg 8(1) & 9

51565 “Resources” in DMG 51564 means the funds out of which the benefits of the occupational pension scheme are paid. This includes

1. money from an insurance policy **and**

2. an annuity contract

taken out for the purposes of the scheme.

51566 - 51568

Types of income that may be due but not paid

51569 Examples of income that may be due but not paid include

1. pension payments which have stopped because of a strike by a company's pension section **or**

2. payments of income that have been interrupted because of a postal strike.

Evidence required

51570 The DM should decide if an income is due but not paid. Ask to see written evidence that income has not been paid even though it may be due. Disallow a new claim if the claimant refuses to

1. provide written evidence **or**

2. give permission to the DM to obtain written evidence.

This is because the claimant will have failed to establish entitlement[1].

1 R(IS) 4/93

51571 - 51575

Payments of income to third parties 51576 - 51612

What is a third party 51578 - 51579

Meaning of payment in respect of a person 51580 - 51584

Income paid to the claimant or partner for the other person 51585

Income paid to a third party for the claimant or partner 51586 - 51600

Payments by a third party for care home, Abbeyfield Home or independent hospital charges 51601 - 51603

Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance 51604 - 51605

Income paid to the claimant or partner for a third party 51606 - 51612

51576 The DM should apply special rules to income paid to a third party[1]. The treatment of third party income[2] depends on whether it is

1. paid to the claimant and partner **and**

2. how it is used.

1 ESA Regs, reg 107(3); 2 R(IS) 4/01

51577 The special rules in DMG 51580 - 51586 apply when

1. a third party receives a payment for the claimant or their partner **or**

2. a claimant receives a payment for a third party.

Note: DMG Chapter 49 gives guidance about Fine Payment Work. The rules in DMG 51576 et seq do not apply to such work. The reduction in the fine which results from such work is purely administrative and there is no payment of income to a third party.

What is a third party

51578 The term “third party” can include organizations such as LAs, care homes, Abbeyfield Homes and independent hospitals as well as people. Third parties can be

1. people who are not the claimant or their partner

2. claimants and partners.

51579 DWP may make payments direct to provide for a person's participation in assisting them to find employment or other programmes. These payments are not taken into account as notional resources under third party rules. This applies to both income and capital payments[1].

1 ESA Regs, reg 107(5)(c) & 115(5)

Meaning of payment in respect of a person

51580 Payment includes a part of a payment[1]. A payment can be made "in respect" of a person even if it is not made specifically or solely for that person.

1 ESA Regs, reg 2(1)

Example

A company decides to sponsor adult learners at a local university by paying £5,000 towards their fees.

Half way through the year Candy, whose husband receives ESA(IR), starts attending the university.

Even though the payment was not specifically for Candy she is now a member of the group for which it was made.

The payment, therefore, is made for Candy.

51581 If pension payments are made to a third party such as a trustee in bankruptcy, the payment is made in respect of[1] the claimant if it is used to assist in maintaining the claimant and reduce the need for him to be supported by income-related benefits.

1 R(IS) 2/03

Example

James receives ESA(IR). His partner Kathy is 62 and retired. She previously was self employed but was made bankrupt three years ago.

Kathy's pension annuity is being paid to her trustee in bankruptcy under the provisions of the Insolvency Act, to reduce her indebtedness.

The pension payments are not made in respect of the claimant's partner because they cannot be used towards her maintenance.

Income paid to the claimant or partner for the other person

51585 An income paid to either the claimant for their partner or to the partner for the claimant should be treated as the income of the person it is paid for.

Example

Graham receives ESA(IR). His partner Margaret receives a payment from a trust fund for Graham.

The DM treats the payment as being Graham's income.

Income paid to a third party for the claimant or partner

Benefit paid to a third party

51586 Benefit for the claimant or a partner may be paid to a third party.

The following benefits should be treated as the income of the claimant or partner

1. SS benefits

2. SSP

3. SMP

4. a benefit under the WC (Supp) Scheme

5. a benefit under the PB and MDB Scheme

6. WDisP

7. WWP, War Widower's Pension or Surviving Civil Partner's War Pension

8. a pension paid to a forces widow or surviving civil partner under specific provisions[1] **or**

9. another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen

if the third party pays it to or uses it on behalf of the claimant or partner[2].

1 Armed Forces (Pensions and Compensation) Act 2004; 2 ESA Regs, reg 107(3);

Example

Simon is entitled to ESA(IR). His wife Janet lives with him. Janet receives money from a benevolent fund

from a former employer. Her employer pays the money to Janet's mother as Janet is unable to manage her financial affairs. Janet's mother gives the money to Simon. The DM treats the money as Janet's income.

Training and Employment Programme payments to third parties

51587 A payment should not be treated as notional income under the third party payment rule where it is made

1. under certain legislation[1] **and**

2. for a person's participation in

2.1 an employment programme[2] **or**

2.2 a training scheme[3] **or**

2.3 the IAP[4] **or**

2.4 a qualifying course[5] (see DMG 21152).

DMG Chapter 34 provides guidance on training schemes and employment programmes including the IAP.

1 E & T Act 73, s 2; 2 ESA Regs, reg 107(5)(c)(i); 3 reg 107(5)(c)(ii); 4 reg 107(5)(c)(iii); 5 reg 107(5)(c)(iv)

Third party payments for participants in the MWA Scheme and schemes for assisting persons to obtain employment

51588 A payment should not be treated as notional income under the third party payment rule where it is made in respect of a person's participation in

1. ESE Scheme **or**

2. a scheme for assisting persons to obtain employment[1].

1 ESA Regs, reg 107(5)(ca)

Other payments to a third party

51589 Except where DMG 51590 - 51592 apply, a claimant is treated as possessing certain payments paid to a third party in respect of[1] (see DMG 51581) the claimant or partner. These payments are

1. occupational pensions and payments from the Pension Protection Fund

2. pensions or any other periodical payments under a personal pension scheme[2].

1 R(IS) 2/03; 2 ESA Regs, reg 107(3)(b)

51590 A claimant is not treated as possessing a payment under DMG 51589 where[1]

1. they have been made bankrupt before 29.5.00 **and**

2. pension payments are paid to the claimant's trustee in bankruptcy and not the claimant.

This is because before 29.5.00 pension payments were included in a bankrupt person's estate that was assigned to the trustee in bankruptcy.

Note: From 29.5.00 the law changed to exclude from their estate any rights of a person made bankrupt under approved pension arrangements. This means that such pension payments can be treated as income of a person made bankrupt on or after 29.5.00.

1 R(IS) 4/02

51591 A claimant is not treated as possessing a payment under DMG 51589 where

1. the payment is made

1.1 for a person in respect of whom a bankruptcy order has been made **and**

1.2 to the trustee in bankruptcy or any other person acting on behalf of the creditors **and**

2. neither the person for whom the payment has been made nor their partner has actual or notional income apart from that payment[1].

1 ESA Regs, reg 107(5)(d)

51592 A claimant is also not treated as possessing a payment under DMG 51589 where

1. the estate of the person for whom the payment is made

1.1 is subject to a sequestration order **or**

1.2 has a judicial factor on it **and**

2. the payment is made to a person acting on behalf of the creditors **and**

3. neither the person for whom the payment has been made nor their partner has actual or notional income apart from that payment[1].

1 ESA Regs, reg 107(5)(d)

51593 - 51596

51597 Income other than a benefit may be paid to a third party. The DM should treat this type of income as the notional income of the claimant or partner for whom it is payable, to the extent it is used for that person's[1]

1. food

2. ordinary clothing or footwear

3. fuel, for the household that the claimant normally occupies

4. accommodation costs covered by ESA(IR)

5. rent for which HB is payable

6. water charges for which the claimant or partner is liable

7. CT for which the claimant or partner is liable.

Ignore any part of the income not used on these items.

Note: If the income paid to the third party in the first instance is a payment in kind it would be excluded from this notional income rule.

1 ESA Regs, reg 107(3)(c)

51598 [See Memo DMG 15/21] **[See Memo DMG 07-23] [See Memo DMG 08-25]** Disregard the payment to the third party[1]

1. whatever it is used for, if it is made from

1.1 the Macfarlane Trusts **or**

1.2 the Eileen Trust ('the Fund') **or**

1.3 MFET Limited **or**

1.4 the Independent Living Fund (2006) **or**

1.5 the Skipton Fund **or**

1.6 the Caxton Foundation **or**

1.7 the Scottish Infected Blood Support Scheme **or**

1.8 the London Emergencies Trust **or**

1.9 the We Love Manchester Emergency Fund **or**

2. if it is for the purchase and supply of concessionary coal under specified legislation[2]. The Department of Energy and Climate Change is now responsible for the purchase and supply of concessionary coal. Coal is purchased through contracts and supplied to ex-coal workers and their families. The payment from the Department of Energy and Climate Change to the contractor is a payment to a third party and is disregarded.

1 ESA Regs, reg 107(5)(a); 2 The Coal Industry Act 94, s 19(1)(a); ESA Regs, reg 107(5)(b)

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.

Meaning of ordinary clothing or footwear

51599 The expression "ordinary clothing or footwear" means[1] clothing or footwear for normal daily use. It does not include

1. school uniforms **or**

2. clothing or footwear used solely for sport, for example football boots.

1 ESA Regs, reg 2(1)

51600 The DM should consider the wide needs of all claimants when applying the test of "for normal daily use".

Example 1

Geeta receives ESA(IR). She receives a payment from a local charity to buy wellington boots for herself.

The DM decides that as it would be unreasonable for Geeta to wear wellington boots in all weather conditions they are not for normal daily use.

Example 2

Emma receives ESA(IR). She receives a payment for orthopaedic shoes.

The DM decides that orthopaedic shoes may be normal for Emma but are not normal for adults in general. The DM decides that the orthopaedic shoes are not for normal daily use.

Example 3

Rosalind receives ESA(IR). She receives a payment for an ordinary pair of shoes. The DM decides that the

shoes are for normal daily use.

Payments by a third party for care home, Abbeyfield Home or independent hospital charges

51601 Treat payments made by a third party, who is not the claimant or a member of the claimant's family, towards the cost of charges for a

1. care home **or**

2. Abbeyfield Home **or**

3. independent hospital

for the claimant or partner as the income of the claimant or partner[1].

1 ESA Regs, reg 107(6)

51602 This rule applies when the

1. claimant lives in or is temporarily absent from a care home, Abbeyfield Home or independent hospital **and**

2. payment is made to the care home, Abbeyfield Home or independent hospital.

The DM should calculate the amount of income and treat it as if it was actual income[1].

1 ESA Regs, reg 109

51603

Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance

51604 A payment is disregarded[1] if it is

1. made for

1.1 after-care under specified legislation[2] **or**

1.2 accommodation or welfare services referred to in specified legislation[3] **and**

2. treated as possessed under the notional income rule at DMG 51601[4].

1 ESA Regs, Sch 8, para 56; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25; 3 NA Act 48, Part III;

SW (Scot) Act 68; The Care Act 2014, part 1; The Social Services Well-being (Wales) Act 2014, Part 4; 4 ESA Regs, reg 107(6)

51605 Payments that satisfy DMG 51604 include payments or reimbursements by a LA for

1. persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**

2. expectant and nursing mothers[1].

1 NHS & CC Act 90, s 42; NA Act 48, s 21(4)

Income paid to the claimant or partner for a third party

51606 [See Memo DMG 15/21] **[See Memo DMG 07-23] [See Memo DMG 08-25] [See Memo DMG 04-26]** Take into account in full any income paid to the claimant or claimant's partner for a third party who is not a member of the family if

1. the income is kept by **or**

2. is not paid over to the third party by

the person who received it. Ignore any income that is paid over to the third party[1].

1 ESA Regs, reg 107(4)

51607 Fully disregard any payment from

1. the Macfarlane Trusts

2. the Eileen Trust ('the Fund')

3. MFET Limited

4. the Independent Living Fund (2006) but see **note**

5. the Skipton Fund

6. the Caxton Foundation

7. the Scottish Infected Blood Support Scheme

8. the London Emergencies Trust

9. the We Love Manchester Emergency Fund

regardless of who keeps it or how it is used.

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 clamant receives funding from any of these replacement schemes.

51608 The DM should decide using, available evidence

1. whether **and**

2. how much

income has been kept by the claimant or partner.

51609 Treat income as having been kept when

1. there is no intention of

1.1 paying it over to **or**

1.2 using it for

the third party **or**

2. if after having the income for a reasonable period of time the claimant or partner has

2.1 not started paying it over **or**

2.2 not started using it for the third party **or**

2.3 has no plans for paying it over or using it for the third party.

51610 The DM should consider

1. the type of income **and**

2. how often the income is paid **and**

3. why the income is paid

when deciding if a reasonable period of time has passed.

Example 1

Rodney receives ESA(IR)

Rodney receives income for his cousin Roland who is a long-term patient in a local hospital.

The income is paid weekly and Rodney has been receiving it for four weeks.

Rodney has no good reason for not having passed the money to Roland.

The DM decides that in the circumstances four weeks was a reasonable period in which to expect that the money would have been handed over to Roland. Rodney is treated as having the full amount of income.

Example 2

Peter receives ESA(IR). His partner, Rowena receives an income for her aunt.

She has received three monthly payments but has not passed any money to her aunt because she has been busy looking after an elderly person.

The DM decides that in the circumstances of the case that a reasonable time had passed for Rowena to have handed over the payments.

Rowena is treated as having the full amount of the income.

Example 3

Denis claims ESA(IR). He receives a weekly income on behalf of his sister Daphne.

Denis and Daphne live 30 km (20 miles) apart. Denis has not paid any money over to Daphne for ten weeks.

Denis has no private transport. He says he has not been well enough to travel by bus or post the money.

The DM decides in the circumstances of the case a reasonable period of time had not passed for Denis to have handed over the money.

He is treated as not having any of the income.

51611 - 51612

Employment zones subsistence allowance 51613 - 51616

51613 Participants in the second stage of EZ programmes receive a subsistence allowance from the EZ contractor so as to leave 50p benefit in payment. A subsistence allowance means an allowance which an EZ contractor has agreed to pay to an EZ programme participant[1].

1 ESA Regs, reg 2(1)

51614 Where the amount of subsistence allowance paid in any benefit week is less than the amount of JSA(IB) that the person would have received in that benefit week less 50p, the DM should treat the claimant as possessing the difference between the actual amount of subsistence allowance paid and the correct amount of subsistence allowance payable[1]. This notional income is in addition to the actual amount of subsistence allowance in payment. DMG 51613 provides guidance on the correct amount of subsistence allowance which should be payable.

1 ESA Regs, reg 108(2)

51615 - 51616

Liable relative payments 51617 - 51764

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Liability to maintain

51617 Certain people are liable to maintain claimants or members of the family under legislation[1].

1 SS A Act 92, s 78(6)-(9) & 105(3)

Husbands, wives and civil partners

51618 Under legislation

1. a man is liable to maintain his wife or civil partner **and**

2. a woman is liable to maintain her husband or civil partner.

These liabilities end on divorce or dissolution of a civil partnership.

Children

51619 Under legislation parents are liable to maintain their children. It does not matter if the parents have never been married. This liability lasts until the child is

1. 16 **or**

2. 20 if the child is in education.

Note: Under child support legislation the upper child age limit for child support maintenance liability purposes is until the child is 19 if they are in education.

Sponsored immigrants

51620 A person who on or after 23.5.80, either

1. alone **or**

2. with some other person

has undertaken to be responsible for the maintenance and accommodation of another person under immigration law[1] is liable to maintain that person.

1 Immigration Act 71

Action by the DM in the courts

51621 If people who are liable to maintain are not maintaining ESA claimants and members of the family the DM may apply to a court for a maintenance order[1]. If liabilities are not met the DM has the power to start criminal proceedings against the person who is not paying[2].

1 SS A Act 92, s 106(1); 2 s 105(1)

51622 - 51624

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Treatment as income

51625 Payments of LRPs are payments of income[1] which fall to be taken into account (but see DMG 51641).

1 ESA Regs, reg 120

51626 There are special rules for the treatment of LRPs[1]. The normal rules for the treatment of

1. income **and**

2. notional income (including deprivation of income) **and**

3. capital (except for the calculation of the capital limit) **and**

4. student's income

do not apply to LRPs. Follow the guidance in this section when dealing with LRPs.

Note: If a payment is not an LRP it should still be considered under the normal income/capital rules.

1 ESA Regs, reg 85

Meaning of liable relative payment

51627 An LRP[1] is a payment that is

1. a periodical payment made by a liable relative

2. any other payment made by or derived from a liable relative.

1 ESA Regs, reg 119

Identification of liable relative payments

51628 An LRP is not restricted to a payment from a person who is liable to maintain under the Acts. In particular a payment to a divorced husband, wife or to a person who has had a civil partnership dissolved is an LRP even though there is no liability to maintain under the Acts. If the DM has doubts whether a payment is an LRP details should be requested from

1. the claimant's solicitor **or**

2. the claimant.

51629 Both income and capital payments can be taken into account as LRPs. If it is decided that a capital payment is an LRP it is treated as income[1]. LRPs may be

1. periodical payments **or**

2. non-periodical payments.

1 ESA Regs, reg 120(a)

51630 - 51631

Liable relative payments from discretionary trusts

51632 Payments from discretionary trusts should be taken into account only if they are actually paid.

Payments made before the date of claim

51633 DMs should consider if payments received before the date that ESA(IR) is payable are LRPs. For example, LRPs may have been made to

1. young claimants before they left the parental home **or**

2. people who have separated from their partners.

51634 If a person has recently left their partner or a young claimant has recently left the parental home, decide

1. if any payments have been made **and**

2. if they are LRPs.

51635 If LRPs have been made, decide

1. the period over which they should be taken into account **and**

2. the effect on ESA(IR).

51636 - 51640

When the DM should not take payments into account as income

51641 The DM may

1. arrange to collect payment if ESA(IR) is in payment **and**

2. decide not to treat the payment as the claimant's income.

DMs should disregard these payments when calculating the claimant's income[1].

1 ESA Regs, reg 121

Meaning of liable relative

51642 Liable relative is defined as[1]

1. a spouse or civil partner of the

- **1.1** claimant **or**
- **1.2** member of the claimant's family

2. a former spouse or civil partner of the

- **2.1** claimant **or**
- **2.2** member of the claimant's family

3. a parent of

3.1 a child or young person who is a member of the claimant's family **or**

3.2 a young claimant

4. a person who it is reasonable to treat as the father of a

4.1 child who is a member of the claimant's family **or**

4.2 young person who is a member of the claimant's family **or**

4.3 young claimant

because of contributions towards their maintenance. This applies even though a court has not found the person to be the father

5. a person who has, on or after 23.5.80, agreed to maintain

5.1 the claimant **or**

5.2 a member of the claimant's family

as a condition of their immigration.

Note: Not all liable relatives are people who are liable to maintain under SS law.

1 ESA Regs, reg 119

Meaning of parent

51643 In DMG 51644 references to parents include people who are not the

1. natural **or**

2. adoptive

parents of a child, young person or young claimant.

People who can be treated as parents

51644 People who have accepted a

1. child **or**

2. young person **or**

3. young claimant

as a member of their family can be treated as parents. An example of this would be a stepfather or stepmother.

51645 A person who is treated as a parent is not liable to maintain a

1. child **or**

2. young person **or**

3. young claimant.

If a person in this position is making payments treat them as a liable relative. Treat any payments made as LRPs. If payments cease the DM will not be able to seek their reinstatement.

Meaning of young claimant

51646 A young claimant is a person who is aged 16 - 19 years who is an ESA(IR) claimant[1].

1 ESA Regs, reg 119

Liable relative payments and income tax

Liable relative payments subject to income tax

51647 The DM should take into account the amount of an LRP after any tax has been deducted by HMRC.

What should the DM do if the claimant receives a tax refund

51648 If the claimant receives a tax refund for a

1. periodical LRP **or**

2. non-periodical LRP

it should be treated as a periodical or non-periodical LRP as appropriate.

51649 Use the date that the claimant received the tax refund when deciding the date the LRP was made. The DM should

1. decide the date the refund was received **and**

2. then apply the normal rules for deciding the date on which a

2.1 non-periodical LRP **or**

2.2 periodical LRP

is paid.

51650 - 51655

Payments not treated as liable relative payments 51656 - 51709

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Which payments should not be treated as liable relative payments

51656 The following payments should not be treated as LRPs[1]

1. certain payments made because of separation, divorce or the dissolution of a civil partnership

2. payments made after the death of a liable relative

3. certain gifts

4. certain payments to or for third parties

5. payments in kind

6. payments for children and young people who are not members of the family

7. certain payments that have already been taken into account

8. certain payments that have been recovered under prevention of duplication of payments rules

9. certain payments that have already been used

10. payments of disregarded child maintenance.

Further guidance is given in DMG 51657 et seq.

1 ESA Regs, reg 119

Payments made because of divorce or separation

51657 Do not treat as an LRP any payment made because of the rearrangement of the family's property to give each partner a share of assets. For this rule to apply the payment must be made because of

1. an agreement to separate **or**

2. proceedings for judicial separation, divorce, nullity of marriage or dissolution of a civil partnership.

51658 It does not matter if the payment was made before or after the agreement to separate or the court proceedings to end a marriage or civil partnership.

51659 The payment must be part of a chain of events leading from the rearrangement of property[1]. The payment itself must not be the property rearrangement.

1 R(SB) 1/89

51660 It is not necessary for an asset to have been sold before the payment is made. Examples of this include

1. the setting up of a trust **or**

2. transfer of property, such as a house[1].

1 R(SB) 1/89

51661 If it is decided a payment made because of the rearrangement of property is not an LRP it should be treated as capital or income as appropriate.

Payments made after the death of a liable relative

51662 Do not treat as an LRP any payment made after the death of the liable relative. These payments

should be treated as

1. other income **or**

2. capital

as appropriate.

Gifts made by liable relatives

51663 Do not treat as an LRP the first £250 of a payment made as a gift. These payments should be treated as

1. other income **or**

2. capital

as appropriate.

Example

Rachel is separated from her husband and is in receipt of ESA(IR). Her son David receives a gift of money from his father. The gift is less than £250 and is to celebrate David's birthday.

The DM decides that the payment is not an LRP and goes on to consider how to treat the payment under the normal income and capital rules.

51664 - 51666

More than one gift made during a 52 week period

51667 If two or more gifts are received during a 52 week period starting on the date that the first payment was made

1. do not treat the first £250 of the total gifts as an LRP **and**

2. treat the excess over £250 as an LRP.

51668 The start of the 52 week period can be before the start of entitlement to ESA(IR). When a 52 week period ends a further 52 week period will begin on the first day of the benefit week in which the next gift payment is made.

51669 - 51670

Payments made to or for third parties

51671 A payment made

1. to a third party in respect of the claimant or the claimant's partner or made or derived from a person falling within DMG 51642 **5.** (agreement to maintain as a condition of immigration) **or**

2. to the claimant or claimant's partner in respect of a third party or made or derived from a person falling within DMG 51642 **5.** (agreement to maintain as a condition of immigration)

is not to be treated as an LRP unless DMG 51672 applies[1].

1 ESA Regs, reg 119

51672 If the payment is in respect of

1. food

2. ordinary clothing or footwear

3. fuel

4. rent for which HB is payable

5. housing costs

6. CT

7. water charges

then the payment made to, or in respect of, a third party should be treated as being an LRP.

Note: Ordinary clothing and footwear means[1] that worn for normal daily use but does not include school uniform. Housing costs[2] means those costs which can be met as part of the claimant's applicable amount (see DMG Chapter 44).

1 ESA Regs, reg 119; 2 reg 119

Example 1

Anna is in receipt of ESA(IR). Her ex-partner has agreed to pay £85 a month to the electricity supplier in respect of Anna's fuel bills. This monthly payment is paid direct to the company. The DM decides that this payment is an LRP and takes it into account against Anna's ESA(IR) entitlement.

Example 2

Gill is in receipt of ESA(IR). Her young son attends a stage school every Saturday. Gill's ex-husband, Mike, pays the stage school fees directly to the school. The DM decides that the payment from Mike is not an LRP.

Types of payments made to third parties

51673 Liable relatives may make payments direct to a third party rather than to the claimant. The most common types of these payments are

1. payments made direct to a fuel company for the claimant's fuel bills **and**

2. payments for housing costs made direct to

2.1 a building society **or**

2.2 a landlord **and**

3. payments of school fees direct to a school that is not a boarding school **and**

4. payments towards

4.1 hire purchase commitments **or**

4.2 loans.

What is a third party

51674 A third party is

1. a person **or**

2. a group of people such as a company or some other organization.

Any third party payment must be made to a person or organization.

Example

Colin is separated from his wife. He receives ESA(IR).

His wife makes payments to Colin of £5 a week. She states the payment is to buy food for Colin's dog.

The DM decides that the payment is made to Colin and is not a payment to a third party as the dog is not a person or organization.

51675 - 51681

What should the DM do if a payment to a third party is treated as a liable relative payment

51682 If the DM decides that a third party payment is an LRP it should be taken into account as a

1. periodical payment **or**

2. non-periodical payment

as appropriate.

What should the DM do if a payment to a third party is not treated as a liable relative payment

51683 If the DM decides that a third party payment is not an LRP the normal rules for payments of income and capital to third parties should be considered.

51684 - 51687

Payments made for a third party

Types of payments made for third parties

51688 Payments may be made to

1. the claimant **or**

2. a member of the family

for a third party. This may happen when a person continues to pay maintenance to a parent for a child or young person who is no longer a member of the family.

Should the DM treat a payment for a third party as a liable relative payment

51689 The DM must decide if a payment received by the claimant or member of the family for someone else should be treated as

1. a payment for the claimant **or**

2. a payment for the third party.

Note: Payments for children or young people who are treated as not being members of the claimant's household should not be treated as LRPs[1].

1 ESA Regs, reg 119

51690

What should the DM do if the payment is not treated as a liable relative payment

51691 If the DM decides that the payment should not be treated as an LRP the payment should be considered under normal income and capital rules for payments for third parties.

51692 If the person for whom the claimant receives a payment claims ESA(IR) the DM should not take the payment into account in both assessments.

Payments in kind

51693 Do not treat any payment in kind as an LRP. Consider any payment in kind under the normal rules for income and capital.

51694

Payments for people who are not members of the household

51695 Do not treat as an LRP any payment to or for a

1. child **or**

2. young person

who is treated as not being a member of the claimant's household. Consider the guidance for payments of income or capital for third parties (see DMG 51606).

Payments already taken into account

51696 Do not treat as an LRP non-periodical payments that have already been taken into account on a previous award or decision on ESA.

Payments being recovered

51697 Do not treat as LRPs non-periodical payments that

1. have been **or**

2. are being

recovered under prevention of duplication of payment rules[1].

1 SS A Act 92, s 74(1)

Payments that have been used

51698 Do not treat as LRPs non-periodical payments that have been used by the claimant at the time

that the DM's decision on the payment is made. This rule does not apply to claimants who have deprived themselves of money from payments to get or increase the amount of the benefit now being considered.

51699 Deprivation for the purposes of getting or increasing JSA or IS should not be considered if ESA is the benefit under consideration.

Child maintenance

51700 Do not treat as LRPs payments of child maintenance that have been disregarded[1] (see DMG 51334).

1 ESA Regs, reg 119

51701 - 51709

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Introduction

51710 The way in which LRPs are taken into account depends upon whether it is a periodical payment or a non-periodical payment.

What is a periodical payment

51711 A periodical payment is

1. a payment made or due to be made at regular intervals **or**

2. a payment that forms part of an established pattern **or**

3. a payment that substitutes or replaces a payment in **1.** and **2.** whether or not it is

3.1 a complete multiple of those payments **or**

3.2 made in advance or arrears **or**

4. any payment that is the same or less than the rate of ESA(IR) that would have been payable if it had not been made[1].

Note: DMs must consider entitlement to ESA(Cont) when considering the amount of ESA that would have been payable if the payment had not been made.

1 ESA Regs, reg 119

51712 A payment that was due to be paid before the first benefit week of the claim but was paid after that benefit week is not a periodical payment.

51713 Periodical payments are usually made at weekly or monthly intervals under

1. a court order **or**

2. an agreement between the claimant and the person making the payment.

Calculation of weekly amount

Periodical payment made at weekly intervals

51714 If a periodical payment is

1. made **or**

2. due to be made

at weekly intervals the weekly amount to be taken into account is the amount of each of the payments[1].

1 ESA Regs, reg 124(1)

Periodical payment made at monthly intervals

51715 If a periodical payment is made or due to be made at monthly intervals the weekly amount is calculated by

1. multiplying the amount of the payment by twelve **and**

2. dividing the result by 52[1].

1 ESA Regs, reg 124(2)

Example

Donna receives ESA(IR). She receives periodical payments of £120 a month.

The DM calculates the weekly amount by multiplying £120 by 12 and dividing the result by 52.

Calculation

$$\frac{£120 \times 12}{52} = £27.69.$$

Periodical payments made other than weekly or monthly

51716 If a periodical payment is made or is due to be made at intervals other than

1. weekly **or**

2. monthly

the weekly amount to be taken into account is calculated by dividing the amount of the payment by the number of weeks (including part weeks) in the interval between the payments[1].

1 ESA Regs, reg 124(3)

Example

Nigel receives ESA(IR). He receives an LRP of £500 on the first day of every third month.

He receives £500 on 1.9.09 and a further £500 on 1.12.09.

The DM decides that the payment for 1.9.09 - 30.11.09 is for 13 weeks.

The weekly amount is calculated as follows

$$\frac{£500}{13} = £38.46$$

The DM decides that the payment for 1.12.09 - 28.2.10 is for twelve weeks and six days.

The weekly amount is calculated as follows

$$\frac{£500}{12\ 6/7} = £38.88$$

(twelve weeks and six days).

Payment made up of more than one periodical payment

51717 If a lump sum is received instead of all or part of a series of periodical payments calculate the weekly amount in the same way as the weekly amount of the payments it represents would be calculated[1]. This applies whether or not

1. the payment is a complete multiple of the payments it represents **or**

2. the payments are made in advance or arrears.

1 ESA Regs, reg 124(4)

Example

Marie receives ESA(IR). She is due to receive payment of £10 a week.

Over a 13 week period she receives two payments of £40 and one payment of £50.

The DM decides that the payments made represent a series of periodical payments.

The weekly amount taken into account is £10.

51718 - 51722

Period over which a periodical payment should be taken into account

Periodical payments made at regular intervals

51723 If periodical payments are made at regular intervals take each payment into account for a period equal to the length of time between payments[1].

1 ESA Regs, reg 122(1)(a)

Periodical payments due to be made regularly but made irregularly

51724 If periodical payments are due to be made at regular intervals but are not being made regularly calculate the number of weeks (including part weeks) by dividing the amount of the payment by the weekly amount of the payment[1].

1 ESA Regs, reg 122(1)(b)

Example

Mario receives ESA(IR).

He is due to receive LRPs of £30 a week under a court order.

The payments are not made regularly.

He receives a payment for £200.

$$\frac{£200}{£30} = 6^{2}/_{3}$$

It is taken into account over $6^{2}/_{3}$ weeks. This means that the DM takes £30 a week into account for 6 weeks and the balance of £20 into account for week 7.

Periodical payments not due to be made regularly

51725 If a periodical payment is not

1. made **or**

2. due to be made

at regular intervals take it into account for one week[1]. This applies to cases where a liable relative who is not usually making payments makes an occasional payment.

1 ESA Regs, reg 122(1)(c)

51726 If an occasional payment is more than the amount of ESA(IR) in payment treat it as a non-periodical payment.

When should the period start over which a periodical payment is taken into account

51727 The period over which a periodical payment should be taken into account begins on the date the payment is treated as paid[1].

1 ESA Regs, reg 122(2)

On what date should a periodical payment be treated as paid

Periodical payments made before the first benefit week of entitlement

51728 Treat periodical payments due to be made before the first benefit week of the claim as paid on the same weekday as the first day of the benefit week[1]. The DM should decide the claimant's benefit week before deciding the date from which the payment should be taken into account.

1 ESA Regs, reg 125(1)(a)

Example

Catriona claims ESA on 10.12.08. Her BWE day is a Thursday.

She received a periodical payment of £200 for a period of a month on 1.12.08.

The DM decides that Catriona's benefit week starts on a Friday.

The payment is taken into account for a month from 5.12.08, which is the Friday in the week that the payment was received.

Periodical payments made during the course of an award of ESA(IR)

51729 Treat a periodical payment made during the course of an award of ESA(IR) as paid on the first day

of the benefit week in which it is due to be paid. If it is not practicable to do this it should be taken into account in the next or a subsequent benefit week[1]. It is not practicable to take a payment into account during the benefit week in which it was received when benefit has already been paid for that week.

1 ESA Regs, reg 125(1)(b)

Payments under agreements or court orders

51730 Where an agreement or court order is in force decide the date that payments are due to be paid by reference to the agreement or order currently in force. This includes cases where the amount due to be paid under the agreement or court order is varied.

Example 1

Andrew is due to make payments under a court order of £50 a week to Sarah. Sarah is in receipt of ESA(IR).

During 2009 Andrew has fallen into arrears with his court order.

The court has made a new order requiring the arrears to be paid on 1.1.10.

The DM decides that the due date for the arrears is now 1.1.10 and not the date the arrears were originally due to be paid.

Example 2

Corinne is in receipt of ESA(IR). Her ex-partner Adam has agreed to pay her £30 a week.

Over the last 2 weeks Adam has not made any payments to Corinne.

After a discussion Corinne and Adam come to a new agreement whereby Adam will pay the £60 arrears by increasing his regular payment of £30 a week to £40 a week starting from 1 June.

The DM decides that the due date for the arrears is now 1 June and not the date the arrears were originally due to be paid.

51731 - 51735

Liable relative payments - non-periodical payments 51736 - 51764

What is a non-periodical payment 51736 -51737

Should all of a payment be taken into account as a non-periodical payment 51738 - 51745

Periodical payments and any other payment made by a liable relative 51746 - 51755

Periodical payments not being made when a non-periodical payment is received 51756

Period over which a non-periodical payment is taken into account 51757 - 51759

Date a non-periodical payment is treated as paid 51760

What is a non-periodical payment

51736 Treat any LRP that is not a periodical payment as a non-periodical payment or "other payment"[1].

1 ESA Regs, reg 119

51737 Examples of non-periodical payments include one-off payments for specific items. But if the payment is for less than the amount of ESA that would otherwise be payable it should be treated as a periodical payment.

Example 1

Clayton is the father of Amina's child.

He makes a payment of £120 for a baby buggy.

Amina claims ESA. The amount of ESA(IR) that is payable without the payment for the baby buggy is £74.

The DM decides that the payment is a non-periodical payment.

Example 2

Roger is the father of Linda's child.

He makes a one off payment of £35 for Linda and her child.

Linda claims ESA. The amount of ESA(IR) that is payable without the payment is £40.

The DM decides the payment is a periodical payment.

Should all of a payment be taken into account as a non-periodical payment

51738 DMs should not always take the full amount of a payment into account as a non-periodical payment. Calculate the amount as follows

1. take into account as an LRP the amount of the payment less

2. any amount that has been taken into account under any previous ESA decision **or**

3. any amount that has been or is currently being recovered by the DM under prevention of duplication of payment rules[1] **or**

4. any amount that the claimant has spent unless that amount was spent for the purpose of getting or increasing ESA.

1 SS A Act 92, s 74(1)

51739 Consider all the circumstances surrounding the payment when calculating the amount of a non-periodical payment. DMs should not take into account as an LRP any part of a payment spent

1. clearing outstanding debts that occurred during the marriage or relationship **or**

2. paying an amount owed to a solicitor.

51740 - 51745

Periodical payments and any other payment made by a liable relative

Period when non-periodical liable relative payment taken into account

51746 Where a liable relative makes a periodical payment and at the same time an additional payment then the DM has to determine whether the weekly periodical payment as calculated in accordance with DMG 51714 - 51717 is less than the total of[1]

1. £2 **and**

2. the amount of ESA(IR) which would have been paid had the periodical payment not been made.

1 ESA Regs, reg 123(4) & (10)

51747 If the periodical payment is less than the total in DMG 51746 then the DM should take the additional payment into account for a period determined by applying the formula[1]

$$\frac{A}{B - C}$$

Where[2]:

A = the amount of the non-periodical payment

B = the total of £2 and the amount of ESA(IR) which would have been paid had the periodical payment not been made

C = the weekly amount of the periodical payment

Any fraction has to be treated as a fraction of a week[3].

1 ESA Regs, reg 123(5); 2 reg 123(10); 3 reg 123(9)

Example

Mary has an applicable amount of £65.45 but receives ESA(IR) of £40.45 a week because she is in receipt of a periodical LRP of £25 a week. She receives a non-periodical LRP of £500 in addition to the periodical LRP of £25 a week.

The DM determines that the periodical payment of £25 is less than £67.45 (the total of £2 + £65.45).

The DM then has to determine the period for which the additional payment of £500 is to be taken into account. The DM applies the formula in DMG 51747 where:

A = £500

B = £67.45 (£2 + £65.45)

C = £25

This gives an answer of 11.77 (£500 ÷ (£67.45 - £25)). The DM takes the payment into account for 11 weeks at £42.45 and 1 week at £33.05. The weekly amount of the payment in addition to the periodical LRP ends Mary's entitlement to ESA.

The weekly amount of the non-periodical payment

51748 The weekly amount of the non-periodical payment is equal to the divisor used to calculate the period for which it is taken into account[1]. This will be the total of

1. £2 and the amount of ESA(IR) which would have been paid had the periodical payment not been made **less**

2. the weekly amount of the periodical payment in payment.

1 ESA Regs, reg 124(5)

When should the DM start taking a non-periodical payment into account

51749 The period during which the non-periodical payment should be taken into account should begin on the date the payment is treated as paid[1].

1 ESA Regs, reg 123(8)

Periodical payments change while a non-periodical payment is being taken into account

51750 If subsequent periodical payments change, the balance (if there is any) of the non-periodical payment has to be taken into account. The number of weeks for which it is taken into account is determined by the formula[1]

$$\frac{D}{B-E}$$

Where[2]

B = the total of £2 and the amount of ESA(IR) which would have been paid had the periodical payment not been made

D = the balance (if any) of the non-periodical payment

E = the weekly amount of any subsequent periodical payment.

1 ESA Regs, reg 123(7); 2 reg 123(10)

Example

Mary has had her award of ESA ended in the circumstances explained in the example to DMG 51747. Two weeks later she contacts the DWP to reclaim ESA and says that her regular periodical payment of £25 has now changed to just £5.

The DM has to re-determine the period for which the non-periodical payment is to be taken into account. The DM performs the calculation in DMG 51750 where:

B = £67.45 (£2 + £65.45)

D = £415.10 (£500 - (2 x £42.45))

E = £5

This gives a period of 6.64 weeks (£415.10 ÷ (£67.45 - £5)). The DM therefore continues to take the non-periodical payment into account but for a period running into 7 weeks not 12 as originally determined.

51751 The period for which a change is said to occur begins on the first day of the benefit week in which the change took place[1]. However, the day on which the non-periodical payment is treated as paid is still

the first day of the benefit week in which it was received (see DMG 51749).

1 ESA Regs, reg 123(8)

Periodical payments cease while a non-periodical payment is being taken into account

51752 Where the liable relative stops making periodical payments, the remaining balance (if there is one) of any non-periodical payment has to be taken into account. In order to determine the number of weeks for which the non-periodical payment is taken into account, the DM should divide that remaining balance (if there is one) by[1]

1. £2 **and**

2. the amount of ESA(IR) which would have been paid had the liable relative payment not been made.

1 ESA Regs, reg 123(6) & (3)

51753 The calculation to re-determine the period over which the non-periodical payment is taken into account begins on the first day of the benefit week in which the payment ceased[1].

1 ESA Regs, reg 123(8)

Example

Mary has had her ESA award ended in the circumstances described in DMG 51747. 2 weeks after her award has ended, Mary informs the DWP that she is no longer in receipt of the periodical payment of £25 and reclaims ESA.

The DM has to determine the period for which the non-periodical payment is to be taken into account. The balance of the payment is £415.10. This figure is divided by the aggregate of:

£2 + £65.45 = £67.45

then

£415.10 ÷ £67.45 = 6.15

The DM determines that the non-periodical payment should be taken into account at a rate of £67.45 for a further 6 weeks and the balance of £10.40 (£415.10 - (6 x £67.45)) would be treated as income if Mary reclaims ESA in week 7.

51754 - 51755

Periodical payments not being made when a non-periodical payment is received

Weekly amount of non-periodical payment for claimants

51756 If a non-periodical payment is made and periodical payments are not being made, the amount that should be taken into account each week is[1] the total of

1. £2 **and**

2. the amount of ESA(IR) which would have been paid had the LRP not been made.

1 ESA Regs, reg 124(5) & 123(3)

Period over which a non-periodical payment is taken into account

Non-periodical payments made for the claimant

51757 If a non-periodical payment is made[1] then it is taken into account for the number of weeks obtained by dividing the payment by the total of[2]

1. £2 **and**

2. the amount of ESA(IR) which would have been paid had the LRP not been made.

Any fraction is to be treated as a fraction of a week[3].

1 ESA Regs, reg 123(1); 2 reg 123(2) & (3); 3 reg 123(9)

Example

Jess is currently in receipt of ESA(IR) of £35 a week. She receives a payment from her ex-partner of £120. The DM determines that this is a non-periodical payment. To decide the period over which it is taken into account the DM divides £120 by

1. £2 **and**

2. £35.

The payment of £120 is therefore divided by £37 (£2 + £35).

This gives 3.24 (£120 ÷ £37). The DM takes the payment into account for the first 3 weeks at a weekly rate of £37.00. The balance of £9 is taken into account in the 4th week. If Jess becomes re-entitled to ESA(IR) in week 4, the DM will have to take into account the balance of £9.

When should the DM start to take the non-periodical payment into account

51758 The period over which the non-periodical payment should be taken into account begins on the date the payment is treated as paid[1].

1 ESA Regs, reg 123(8)

51759

Date a non-periodical payment is treated as paid

Non-periodical payment made before the first benefit week of the claim

51760 If a non-periodical payment is made before the first benefit week of the claim treat it as paid on the day in the week in which it is paid that corresponds to the first day of the benefit week[1]. This rule does not apply if the payment is made during a period in which a previous non-periodical payment is being taken into account.

1 ESA Regs, reg 125(2)(a) & (3)

Non-periodical payment made during the course of an award of ESA(IR)

51761 If a non-periodical payment is made during the period of an award it should be treated as paid on the first day of

1. the benefit week in which it was paid **or**

2. a subsequent benefit week if it is not practicable to take the payment into account straight away[1].

Consider the method of payment of ESA when deciding if it is not practicable to take a payment into account straight away. See DMG 51729 for examples.

These rules do not apply if the payment is made during a period in which a previous non-periodical payment is being taken into account.

1 ESA Regs, reg 125(2)(a) & (b)

Non-periodical payment made during a period where a previous non-periodical payment is already being taken into account

51762 If a non-periodical payment is made during the period in which a previous non-periodical payment is being taken into account treat it as paid on the first day following that period[1].

1 ESA Regs, reg 125(3)

51763 - 51764

ESA (Cont) and pension payments 51765 - 51827

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Introduction 51765 - 51767

ESA(Cont) and pension payments

51765 The guidance in DMG 51766 to 51859 refers only to deductions from ESA(Cont).

51766 Pension payments and PPF periodic payments that are

1. made to a claimant for any week **and**

2. more than £85 each week

are deducted from the claimant's personal rate, when calculating the amount of ESA(Cont) payable to the claimant for each benefit week or part-week. The amount deducted is half the excess over £85[1].

1 WR Act 07, s 2(1)(c) & s 3; ESA Regs, reg 74(1)

Example

Kim receives pension payments totalling £90 each week. The pension payments exceed the £85 maximum by £5. This means that £2.50 is deducted in each benefit week from the amount of ESA(Cont) that she is entitled to because this is half of the £5 excess.

51767 The law provides for

1. when pension payments and PPF periodic payments are to be taken into account[1] (see DMG 51802 et seq) **and**

2. certain payments to be disregarded[2] (see DMG 51804) **and**

3. the calculation of a weekly amount where pensions are paid for periods other than a week[3] (see DMG 51814 et seq).

1 ESA Regs, reg 77; 2 reg 75; 3 reg 79

Meaning of pension payments and pension protection fund payments 51768 - 51801

Pension payments

51768 Pension payments are[1] periodical payments (see DMG 51770 et seq) paid to or for a person

1. under a personal pension scheme (see DMG 51772 et seq) **or**

2. in connection with the ending of the person's employment as an earner (see DMG 51790) under

2.1 an occupational pension scheme (see DMG 51778) **or**

2.2 a public service pension scheme (see DMG 51779 et seq)

3. under an insurance policy[2] providing benefits in connection with physical or mental illness or disability (see DMG 51798).

1 WR Act 07, s 3(3); 2 ESA Regs, reg 72

51769 Payments as in DMG 51768 **2.** may be, but are not confined to, pensions that the employer has contributed to. These include

1. payments made under a scheme arranged by the employer where the money is provided exclusively by the claimant

2. payments made by the UK or other governments where provision is made for them in law, for example pensions to former Crown employees

3. pensions from employment overseas (see DMG 51817)

4. the compensation element of a retired local government officer's pension[1]

5. payments under the Civil Service Compensation Scheme (see DMG 51783 et seq)

6. payments under the Civil Service Pension Scheme.

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Periodical payments and lump sums

51770 Periodical payments are those that are paid at regular intervals.

51771 A lump sum payment is not a periodical payment. This applies even where the claimant has chosen to receive a lump sum instead of a periodical payment[1]. But where

1. a person is entitled to a lump sum payment **and**

2. the rules of the scheme allow the lump sum to be paid in instalments **and**

3. the person chooses to receive it in this way

the instalments are periodical payments.

1 R(U) 5/85

Personal pension scheme

51772 Personal pension schemes are

1. for earners[1], either employed or self-employed (see DMG 51773) **or**

2. under a contract or trust scheme[2] (see DMG 51774).

1 PS Act 93, s 1; 2 Finance Act 2004, Sch 36, para 1(1)(f);

Note: This includes self-invested personal pensions (see DMG 51777).

51773 A personal pension scheme for employed or self-employed earners is[1] any scheme or arrangement

1. where the earner has arranged with the scheme's trustees or managers to become a member of the scheme **and**

2. that

2.1 provides **or**

2.2 is capable of providing

benefits in the form of pensions or otherwise **and**

3. where benefits are payable on

3.1 death **or**

3.2 retirement to or for earners.

1 WR Act 07, s 3(4); PS Act 93, s 1

51774 Personal pension schemes under DMG 51772 **2.** are contracts or trust schemes established before 4.1.88 that provide for a life annuity later in life[1].

1 Finance Act 2004, Sch 36, para 1(1)(f) & WR Act 07, s 3(4)

51775 If the member of the scheme used the personal pension to contract-out of the state earnings related pension scheme (SERPS), the part of the pension that

1. comes from DWP rebates **and**

2. is used to replace the state earnings related pension scheme

can only be drawn from age 60.

51776 The DM should refer the case to DMA Leeds, if

1. they are unable to decide whether a pension is paid under a personal pension scheme **and**

2. the pension payment does not satisfy any other part of DMG 51768

Self-invested personal pensions

51777 Self-invested personal pensions are subject to the normal rules for registered pension schemes[1]. With self-invested personal pensions people can purchase an annuity or can receive an income by drawdown or an unsecured pension. Payments from self-invested personal pensions are payments under a personal pension scheme[2].

1 Finance Act 2004, s 154(1); 2 SS CB Act 92, s 30DD(6), PS Act 93, s 1

Occupational pension scheme

51778 An occupational pension scheme is[1] any scheme or arrangement that

1. is comprised in one or more instruments (for example trust deeds) or agreements (for example informal arrangements) **and**

2. has, or is capable of having, effect on one or more types of employment **and**

3. provides benefits, for example pensions, payable on

3.1 termination of service **or**

3.2 death **or**

3.3 retirement

for earners with qualifying service.

1 WR Act 07, s 3(4); PS Act 93, s 1; R(JSA) 1/01; R(JSA) 6/02

Public service pension scheme

51779 A public service pension scheme is[1] an occupational pension scheme that is

1. established under legislation, by royal prerogative or under a royal charter **and**

1.1 all its particulars are set out in the legislation, royal warrant or charter **or**

1.2 it cannot come into force or be amended without the government's approval **or**

2. established with the government's approval **or**

3. prescribed by legislation[2].

1 WR Act 07, s 3(4); PS Act 93, s 1;
2 Occupational Pension Schemes (Public Service Pension Schemes) Regs 1978

51780 Pension schemes that are also public service pension schemes include pension schemes for

1. civil servants **or**

2. local government employees **or**

3. teachers **or**

4. the Armed Forces **or**

5. police officers.

51781 If DMs have difficulty in determining whether a pension scheme is a public service pension scheme they should arrange to get

1. the claimant's consent to contact the manager of the scheme **and**

2. a statement from the manager of the scheme as to whether the pension scheme is a public service pension scheme within the meaning of the relevant law[1].

Note: If a pension scheme is not a public service pension scheme it may still fall within the definition of an occupational pension scheme (see DMG 51778).

1 PS Act 93, s 1

51782 Most public service schemes include provision for injury or contracting a disease (for example Police and Fire Service schemes). Such pensions may be paid on a minimum income guarantee basis.

This means that the pension tops up existing income to a certain level. The pension rate may therefore be affected by the amount of ESA(Cont) entitlement. In such cases the DM should take into account the gross amount of pension i.e. before any adjustment has been made for ESA(Cont). This ensures that the gross amount of the pension is offset against any ESA(Cont), and the pension provider takes the subsequent balance of any ESA(Cont) payable into account. There is no disadvantage to the claimant, and means that in cases where the amount of pension paid to the claimant is equal to the level of guarantee, the claimant's total income remains unchanged. The pension provider needs to be informed of the correct amount of ESA(Cont) payable.

Example

The amount of pension is £120.00 per week, and the amount of guarantee is £120.00 per week. ESA(Cont) entitlement is £100.15 which is reduced by £17.50 (half the excess over £85) to £82.65. The pension is then paid at £37.35 to bring the guaranteed income back to £120.00.

Civil Service Compensation Scheme

51783 Civil servants may be entitled to annual payments as compensation[1] if their employment ends because of

1. compulsory redundancy **or**

2. voluntary early retirement or severance

in a redundancy situation.

1 R(JSA) 1/01; R(JSA) 2/01

51784 Until 1995, payments made to civil servants taking early retirement or redundancy were made as part of the Principal Civil Service Pension Scheme. The Principal Civil Service Pension Scheme also provided benefits to those who retired at the normal retirement age. But on 1.1.95, a separate scheme, called the Civil Service Compensation Scheme was introduced.

51785 The Civil Service Compensation Scheme provides benefits to civil servants whose employment ends before the normal retirement age. The Principal Civil Service Pension Scheme continues to provide benefits to those who retire at the normal retirement age.

51786 Under the Civil Service Compensation Scheme, annual compensation payments may be made to civil servants. The Civil Service Compensation Scheme also allows civil servants to change the mix of their

1. lump sum **and**

2. annual compensation payments **and**

3. preserved pension.

51787 The Civil Service Compensation Scheme is a public service pension scheme[1] and annual compensation payments from it are payments from a public service pension scheme. This means that half of the excess of the £85 weekly limit (see DMG 51766) are taken into account in ESA(Cont).

1 R(JSA) 2/01

Local government premature retirement scheme

51788 Some pensionable local government employees who

1. are made redundant **or**

2. volunteer for redundancy **or**

3. cease work in the interests of the efficient exercise of the employers' functions

receive payments under the local government premature retirement scheme[1].

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regs 2006

51789 The scheme entitles employees[1] to annual payments as compensation for their employment ending as in DMG 51788. These are calculated on the same basis as their annual retirement pension under the superannuation legislation[2]. The compensation payment is a payment from a public service pension scheme.

1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regs 2006; 2 Local Government Pension Scheme Regulations 1995

In connection with the coming to an end of the employment

51790 A pension must be paid in connection with the end of employment of the person who it is paid for, to fall within DMG 51768 **2.**. Occupational or public service pensions that are paid where the employment has not ended do not fall within DMG 51768 **2.**. For example, war pensions paid

1. because of disablement **and**

2. regardless of whether the employment is continuing.

51791 In this context "employment" includes any trade, business, profession, office or vocation[1]. Employment in the Armed Services falls within this definition.

1 ESA Regs, reg 2(1)

51792 Retired officers who are entitled to a war pension receive it as a disablement addition to their service pension. This disablement addition is

1. awarded by the Service Personnel and Veterans Agency **and**

2. paid by the Paymaster General in the same cheque as the person's service pension.

51793 If the claimant is a retired officer with a service pension, the DM should

1. find out the amount of any disablement addition **and**

2. deduct it from the total payment received.

51794 Gallantry awards are sometimes paid to former members of the Forces in addition to their service pensions. Payment is

1. made from the date of the award **and**

2. a reward for conduct rather than a period of service.

These awards are not paid in connection with the coming to an end of an employment and are **not** pension payments.

51795 Pension payments may be payable to the claimant from the former employer of a deceased partner or other relative. Such payments should be disregarded (see DMG 51805).

51796 The amount of a service pension may be increased if the claimant has been invalided out of the Forces. The full amount should be taken into account.

51797 Police officers who retire because of permanent disability may be entitled to an ill health award[1] in addition to a pension under a public service pension scheme. If they are permanently disabled through an injury received while carrying out their duties, they are also entitled to an injury pension. It is a condition for the receipt of both payments that the officer ceases to be a member of a police force. The payments are therefore made in connection with the coming to an end of a police officer's employment and are payments as in DMG 51768 **2.2**.

1 Police Pension Regs 1987

Insurance policy providing benefits in connection with physical or mental illness or disability

51798 A payment under a permanent health insurance policy is a pension payment for the purposes of ESA(Cont)[1]. It means[2] any periodical payment

1. made to a former employee **and**

2. which was arranged by an employer under an insurance policy **and**

3. which provides benefits to the former employee in connection with physical or mental illness or disability **and**

4. is payable on the termination of employment.

1 ESA Regs, reg 72(1); 2 reg 72(2)

Pension protection fund periodic payments

51799 PPF periodic payments are defined as[1]

1. any periodic compensation payments made in relation to a person, payable under the pension compensation provisions set out in specified legislation[2]

2. any periodic payments made in relation to a person, payable under specific legislation[3]

other than payments made to the claimant as a beneficiary on the death of a person entitled to such payments[4].

1 WR Act 07, s 3(3); 2 Pensions Act 04, s 162(2); Pensions (Northern Ireland Order) 05, art 146(2); 3 Pensions Act 04, s 166; Pensions (Northern Ireland) Order 05, art 150; 4 ESA Regs, reg 75(b)

Armed Forces redundancy arrangements

51800 Pensions payable to service personnel who retire from the Armed Forces are paid under a public service pension scheme.

51801 Pensions paid to service personnel who have been made redundant

1. are calculated on the length of qualifying service completed, plus an additional number of years **and**

2. fall within the definition of public service pension schemes.

When to take pension payments into account 51802 - 51803

Payment of a pension 51802

When the pension is uprated 51803

Payment of a pension

51802 Where

1. a claimant is entitled to a pension payment **and**

2. the payment is **paid** to the claimant

the pension payment should be taken into account from the first day of the benefit week in which the payment is made[1].

1 ESA Regs, reg 77

Example

Donald claims ESA and is entitled to ESA(Cont) from Thursday 7 November. His benefit week ends on a Thursday. He receives a pension payment of £100 a week, starting on Monday 11 November. Only half of the excess of the amount above £85 can be deducted from ESA(Cont). In the benefit week 8 November to 14 November £7.50 is deducted from his ESA(Cont).

When the pension is uprated

51803 A claimant's rate of pension may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the new rate is paid[1].

1 ESA Regs, reg 78

Example

Amrit claims ESA, her benefit week ends on a Thursday and she is entitled to ESA(Cont). She receives a pension payment of £90 a week. Her ESA(Cont) is reduced by £2.50 each benefit week. She receives an increase of £5 a week in her pension starting on Monday 11 November. The increase in the pension payment is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

1. 1 November to 7 November, £2.50 is deducted from her ESA(Cont)

2. 8 November to 14 November, £5 is deducted from her ESA(Cont).

Disregarded payments 51804 - 51811

Pension payments 51805 - 51806

Pension protection fund periodic payments 51807

Shortfalls in pension schemes 51808

War pensions 51809 - 51811

51804 Certain payments may be received by the claimant but do not fall to be deducted from ESA(Cont)[1].

1 WR Act 07, s 3(2)(a), ESA Regs, reg 75

Pension payments

51805 Payments may be payable to the claimant under

1. a personal pension scheme **or**

2. an occupational pension scheme **or**

3. a public service pension scheme **and**

because a person who was a member of the scheme has died.

51806 Any payments in DMG 51805 are known as survivors' benefits and should be disregarded in full[1].

1 ESA Regs, reg 75(a)

Example

Guy's wife Jane is a member of an occupational pension scheme. Following Jane's death a reduced pension payment is paid by the scheme to Guy. This pension is not taken into account when working out the amount of ESA(Cont) payable to Guy.

Pension protection fund periodic payments

51807 Any PPF periodic payment made to the claimant as a beneficiary on the death of a person who was entitled to this type of payment is disregarded[1].

1 ESA Regs, reg 75(b)

Shortfalls in pension schemes

51808 Where a full pension cannot be paid to a claimant because of a deficit or because of insufficient resources in the pension scheme then the shortfall is not taken into account[1].

1 ESA Regs, reg 75(c)

War pensions

51809 Any pension payment under a pensions scheme in respect of death due to military or war service is not to be deducted from ESA(Cont)[1].

1 ESA Regs, reg 75(d); Income Tax (Earnings and Pensions) Act 2003, s 639(2)

Guaranteed income payments

51810 Any guaranteed income payment[1] under the Armed Forces Compensation Scheme is not to be deducted from ESA(Cont)[2].

1 ESA Regs, reg 2(1); 2 reg 75(e)

Permanent health insurance

51811 Where the claimant

1. receives a payment under a permanent health insurance scheme **and**

2. had contributed over 50% of the premium

then the payment is not deducted from ESA(Cont)[1].

1 ESA Regs, reg 75(f)

Payment in arrears 51812 - 51813

51812 Pension payments are often made in arrears, and can be

1. weekly **or**

2. monthly **or**

3. quarterly **or**

4. any other period.

Subject to DMG 51802 – 51806 any pension payments deducted from ESA(Cont) should start from the **first** day of the benefit week in which the payment is made to the claimant[1].

1 ESA Regs, reg 77 & 78

51813 A pension payment **must actually be made** before the DM deducts an amount from ESA(Cont).

Example

William claims ESA and is entitled to ESA(Cont) from Thursday 8 November. His benefit week ends on a Thursday. He is entitled to a pension payment of £95 a week from Monday 5 November of which he receives his first payment (£380) on Monday 26 November. Only half of the excess of the weekly pension amount above £85 can be deducted from ESA(Cont). ESA(Cont) is awarded at the full rate from 8 November but from the benefit week 23 November to 28 November and thereafter £5 [(£95 - £85) ÷ 2] is deducted from his ESA(Cont).

In the following May, William receives his regular pension payment in arrears of £380 and a payment of arrears of £420 covering a period of 202 days. The payment of arrears of £420 gives a weekly amount of £14.55 [(£420 x 7) ÷ 202 = £14.55] to add to his regular pension payment of £95 giving a weekly amount of £109.55. As a result £12.27 [(£109.55 - £85) ÷ 2] is deducted from his ESA(Cont). Following this deduction period, when the next regular payment of £380 is received the deduction from his ESA(Cont) reverts to £5 [(£95 - £85) ÷ 2] from the first day of the benefit week in which the regular payment of £380 is received.

Calculating the amount of the pension 51814 - 51827

General 51814 - 51822

Calculating the weekly pension rate 51823 - 51827

General

51814 Except for DMG 51816, the amount of the pension payment is the gross amount payable. Where income tax is deducted at source, the amount to be taken into account is the amount before tax is deducted[1].

1 R(U) 8/83

51815 Some claimants

1. have to make **or**

2. choose to make

certain payments from their pensions. The payments may be to the employer or a third party. With the exception of compulsory payments to buy or repay an element of their current pension, any payments deducted before the pension is paid should be ignored. The amount of pension to be taken into account is the amount before deductions are made. The claimant's liability to make the payments is separate from the liability to pay the pension. The deductions at source are simply a convenient method of ensuring that the claimant's obligations or wishes are met. Examples of these payments include

• repaying a debt to a former employer

• payments to someone because of a court order

• subscriptions to a trade union or other association

• payments into a further pension scheme.

51816 Where the rules of the claimant's pension scheme provide for compulsory deductions, for example to buy or repay an element of their current pension, the amount deducted should be disregarded in calculating the amount of pension. This is because "payments" refers to the amount the claimant is actually entitled to receive. So a payment made under a binding obligation, for example to acquire additional pension rights, should be disregarded in calculating the amount of the pension.

Example

Jim is employed by an electricity company for 29 years and two months. He retires voluntarily. For superannuation purposes he is treated as having completed 30 years service. Under the rules of the superannuation scheme, a monthly deduction of £35.00 is made from his gross occupational pension of £450.50 for the purchase of the ten additional months. He is also paying £20.00 a month to a debt collecting agency under a court order.

Jim cannot avoid the reduction to his pension payments. While he must buy additional pension rights under the rules of the scheme, he would normally repay his other debts from any net income he receives. The payments made under the court order are not to be disregarded. The DM takes into account a pension payment of £415.50 a month[1].

1 R(U) 4/83

51817 Sometimes pension payments are received by the claimant in a currency other than sterling. To work out the sterling equivalent, DMs should use the selling rate that applies

1. on the date on which payment is due **and**

2. not the date on which it is actually converted.

No allowance should be made for commission or other expenses incurred in converting currency[1].

1 R(SB) 28/85

51818 Because exchange rates fluctuate, the DM will need to give a fresh decision each time a pension payment is made, for the period it covers (subject to DMG 51802 –51806). For the purposes of working out a sterling equivalent only, it does not matter that the pension is not available in sterling until some time after the pension is due.

Attachment orders, earmarking orders and pension sharing orders

51819 An attachment order[1] or an earmarking order[2] is where a court orders the trustees or managers of a pension scheme to make payments of pension (including lump sum payments) when they become payable direct to the former spouse or former civil partner of a member of the scheme as part of the financial settlement on divorce/nullity or dissolution of a civil partnership[3].

1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 CP Act 04, Sch 5

51820 A pension sharing order[1] is where a court orders that a percentage of the value of a member's shareable rights in a pension scheme (that is the cash equivalent transfer value) can be shared between the spouses or civil partners at the time of divorce/nullity or dissolution of civil partnership)[2].

1 Mat Causes Act 73, s 24BB & 25B; 2 CP Act 04, Sch 5

51821 Where there is an attachment order[1] or an earmarking order[2] and a court directs the claimant's pension provider to pay an amount to a former spouse or former civil partner[3], when the claimant's pension becomes payable, the claimant continues to have underlying beneficial entitlement to the whole of the pension. However, the amount paid directly to the former spouse or former civil partner by the pension

provider is not "a pension payment payable to him" within the meaning of the legislation[4]. This is because he does not receive, and is not entitled to receive the amount directed to be paid to the former spouse or former civil partner. In these cases, the amount paid by way of the court order should not be included when determining the weekly rate of pension payable to the claimant. Copies of the financial order and the attachment order made by the court at the time of the divorce or dissolution of a civil partnership will need to be obtained from the claimant in order to determine whether the attachment order or earmarking order was made under the relevant legislation.

Note: Attachment orders and earmarking orders may only be made against private pension schemes but not against the state second pension or RP.

1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 CP Act 04 Sch 5; 4 SS CB Act 92, s 30DD(1)

51822 Where the claimant is a former spouse or civil partner who receives a payment under an attachment order[1] or an earmarking order[2], that payment is **not** a pension payment if it derives from

1. an occupational pension scheme **or**

2. a public service pension scheme.

This is because it is not a payment in connection with the ending of the claimant's employment[3]. Cases where a claimant receives a payment under an attachment order or an earmarking order which derives from a personal pension scheme should be sent to DMA Leeds for advice.

1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 SS CB Act 92, s 30DD(5)(a)

Calculating the weekly pension rate

51823 Where payments are paid to the claimant weekly then it is the weekly rate that should be deducted from ESA(Cont) as per DMG 51765[1].

1 ESA Regs, reg 74(1)

51824 If payments are not paid weekly, they should be converted into a weekly amount[1]. To do this

1. monthly payments should be multiplied by twelve and the result divided by 52[2] (a month means a

calendar month[3])

2. quarterly payments (three monthly) should be multiplied by 4 and then divided by 52[4]

3. annual payments should be divided by 52[5]

4. payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment[6].

1 ESA Regs, reg 79(1); 2 reg 94(1)(b)(i); 3 CG 66/49 (KL);
4 ESA Regs, reg 94(1)(b)(ii); 5 reg 94(1)(b)(iii); 6 reg 94(1)(b)(iv)

51825 The weekly amount of a payment may be averaged[1] if the payment varies. The DM should average over

1. a complete cycle if there is a recognizable cycle of work (this is unlikely to apply to ESA(cont) recipients in receipt of a pension) **or**

2. five weeks **or**

3. another period if this means a more accurate weekly amount can be calculated.

1 ESA Regs, reg 79(1) & reg 94(6)

Disregard of fractions

51826 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage[1].

1 ESA Regs, reg 3(a)

More than one pension

51827 Where a claimant is receiving more than one pension the DM should

1. calculate the weekly rate of each pension separately **and**

2. add the weekly rates together

before working out the excess over the maximum sum[1].

1 ESA Regs, reg 79(2)

ESA(Cont) and councillor’s allowances 51828 - 51859

Subpages

- Deductions from ESA(Cont) for councillor’s allowances 51828 - 51832
- The amount of the deduction from ESA(Cont) 51833 - 51851
- When to take councillor’s allowances into account 51852 - 51859

Deductions from ESA(Cont) for councillor's allowances 51828 - 51832

Introduction 51828 - 51829

Definitions 51830 - 51832

Introduction

51828 The guidance in DMG 51829 to 51856 refers only to deductions from ESA(Cont). For treatment of ESA(IR) and Councillor's allowances see DMG Chapter 41 & 49.

51829 A person who is in work is treated as not entitled to ESA. This does not apply where that work is as a councillor[1]. However, any allowances received for performing the duties of a councillor may affect the amount of ESA(Cont) payable[2].

1 ESA Regs, reg 40(2)(a); 2 WR Act 07, s 3(1)(c)

Definitions

Councillor

51830 Councillors are[1]

1. in England and Wales, members of

1.1 a London borough council **or**

1.2 a county council **or**

1.3 a district council **or**

1.4 a parish or community council **or**

1.5 the Common Council of the City of London **or**

1.6 the Council of the Isles of Scilly

1.7 a county borough council

2. in Scotland, a member of a council for a local government area[2].

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

51831 The official duties and responsibilities of a councillor[1] will vary from council to council. Each LA must draw up a scheme[2] for payment of allowances to councillors. This will give information on the official duties of its councillors and the allowances paid for those duties. The official duties may include attendance at

1. a meeting of the authority **and**

2. a sub-committee of the authority **and**

3. a meeting for any other body to which the authority makes appointments **and**

4. other meetings authorized by the authority.

1 R(IS) 6/92; 2 Local Authorities (Members' Allowances) Regs 91, Part II, reg 6

Councillor's allowance

51832 A councillor's allowance[1] is a payment

1. in England of an allowance made under certain legislation[2]

2. in Wales of an allowance made under certain legislation[2]

3. in Scotland of an allowance or remuneration under certain legislation[3].

1 ESA Regs, reg 2(1); 2 Local Government Act 1972, s 173 or 177 but not s 173(4);
3 Local Government and Housing Act 1989, s 18 or Local Governance (Scotland) Act 2004, s 11

The amount of the deduction from ESA(Cont) 51833 - 51851

The weekly limit 51833

The amount of the deduction 51834

The net weekly amount of a councillor's allowance 51835 - 51836

Basic allowance 51837

Special responsibilities allowance 51838

Childcare and dependent carers' allowance 51839

Expenses 51840 - 51850

Deductions for Income Tax and NI Contributions 51851

The weekly limit

51833 The net weekly limit of a councillor's allowance before it can affect ESA(Cont) is calculated by[1]

1. multiplying the rate of the NMW[2] by 16[3] **and**

2. rounding the amount calculated in **1.** which includes an amount of less than

2.1 50p up to the nearest 50p[4] **or**

2.2 £1 but more than 50p up to the nearest £1[5].

A net weekly payment of a councillor's allowance below this limit will not reduce the amount of ESA(Cont) payable. It is only when the net amount of the councillor's allowance exceeds this limit that a reduction is made from ESA(Cont).

1 ESA Regs, reg 76(1); 2 reg 2(1); National Minimum Wage Regulations 1999, reg 11;
3 ESA Regs, reg 76(1); 4 reg 76(3)(i); 5 reg 76(3)(ii)

The amount of the deduction

51834 The amount to be deducted from the claimant's award of ESA(Cont) is the excess over the net weekly limit[1].

1 ESA Regs, reg 76(1)

Example

Ruth is entitled to ESA(Cont). She is also a councillor and receives a net weekly councillor's allowance of £104.50. The amount of the reduction in her ESA(Cont) is

£7.00 (£104.50 - £97.50)

The DM makes a weekly deduction of £7.00 from Ruth's ESA(Cont).

The net weekly amount of a councillor's allowance

51835 It is the net weekly amount of a councillor's allowance that may affect the amount of ESA(Cont) payable. The net amount means the amount after reductions for any payment by way of expenses

1. wholly **and**

2. exclusively **and**

3. necessarily

incurred in the performance of duties as a councillor (see DMG 51840 et seq). When calculating the net weekly amount, DMs should add all the allowances paid to the councillor in the week[1].

1 ESA Regs, reg 76(2)

51836 The allowances paid for official duties may include

1. basic allowance

2. special responsibilities allowance

3. childcare and dependent carers' allowance

4. travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see DMG 51840 et seq).

Basic allowance

51837 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

1. for the time they devote to their work **and**

2. to cover costs for which no other payment is made, for example, the use of a councillor's home and telephone. The amount actually used for expenses will vary in each case.

Special responsibilities allowance

51838 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly.

Childcare and dependent carers' allowance

51839 LAs may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor.

Expenses

51840 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties[1], for example travel and subsistence allowances[2]. If the LA

cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

1 ESA Regs, reg 76(2); 2 R(IS) 6/92

51841 After expenses in DMG 51840 have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the LA. The councillor must justify the amount of each expense, and the amount of expense incurred should be no more than necessary to satisfy the minimum acceptable standard from someone in the councillor's position.

Example

Sophie attends three school summer fairs, in her capacity as a LA councillor. At each one she donates a small gift for a raffle. She provides evidence of her allowance for the month of July, and claims the amount she spent on the gifts as an expense. The DM decides that such an expense is no more than the necessary minimum from a person in the claimant's position, and decides that the expense was wholly, exclusively and necessarily incurred in the performance of her duties as a councillor.

51842 The DM should

1. add together all of the allowances that are paid **and**

2. deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's **official** duties[1].

1 ESA Regs, reg 76(2); R(IS) 16/93

51843 For the purposes of DMG 51842, if the expenses are wholly, necessarily and exclusively incurred in the performance of **constituency work**, those expenses should only be deducted from the basic allowance. This is because this allowance is paid to every councillor and not for any specific duties.

51844 Postage and stationery expenses that arise from the role of being a councillor rather than official duties should only be deducted from the basic allowance.

51845 Secretarial expenses should only be deducted from the basic allowance.

51846 Dependants' care costs cannot be deducted as an expense. This is because they are expenses incurred in order to enable councillors to perform their duties rather than necessary for the performance of them.

51847 Clothing and footwear expenses wholly, exclusively and necessarily incurred in the performance of a councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by

reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use.

DMs may need to apply averages and estimates over a period to calculate a weekly deduction.

51848 Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see DMG 51840). This is different to the normal treatment of travelling expenses. When councillors travel from home to the council office or any other work place, for example surgeries, and governor's meetings it is not just travelling to work it is part of the work itself.

51849 Subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance.

51850 Additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance (see DMG 51840). The DM should establish what proportion of the total household bill can be regarded as arising from the councillor's work. Unless the DM is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence.

Deductions for Income Tax and NI Contributions

51851 Income Tax and NI Contributions do not count as expenses incurred in the performance of duties as a councillor. DMs should not make a reduction from the gross amount paid in councillor's allowances in respect of any deductions for Income Tax and NI Contributions[1].

1 R(IB) 3/01

Example

Derek receives an allowance in respect of his work as a councillor. The amount he is paid is £104.50 a week after £20 is deducted in respect of Income Tax and NI Contributions. The DM decides that the net amount of allowance for the purposes of deciding the amount of ESA(Cont) is £124.50. This means that the amount of reduction in Derek's ESA(Cont) is

£27.00 (£124.50 - £97.50)

The DM makes a weekly deduction of £27.00 from Derek's ESA(Cont).

When to take councillor's allowances into account 51852 - 51859

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When the councillor's allowance is uprated 51853

Calculating the weekly rate 51854

Payment of a councillor's allowance

51852 Where

1. a claimant is entitled to a councillor's allowance **and**

2. the payment is **paid** to the claimant

the allowance should be taken into account from the first day of the benefit week in which the payment is made[1].

1 ESA Regs, reg 77

Example

Bill claims ESA and is entitled to ESA(Cont) from Thursday 3 November. His benefit week ends on a Thursday. He receives a net councillor's allowance of £102.50 a week, starting on Monday 7 November. Only excess of the amount above £97.50 can be deducted from ESA(Cont). In the benefit week 4 November to 10 November £5.00 is deducted from Bill's ESA(Cont).

When the councillor's allowance is uprated

51853 A claimant's rate of councillor's allowance may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the increase or decrease is paid[1].

1 ESA Regs, reg 78

Example

Hillary claims ESA, her benefit week ends on a Thursday and she is entitled to ESA(Cont). She receives a councillor's allowance of £96.50 a week. Her ESA(Cont) is reduced by £1.50 each benefit week. She receives an increase of £5 a week in her allowance starting on Monday 11 November. The increase in the allowance is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

1. 1 November to 7 November, £1.50 is deducted from her ESA(Cont)

2. 8 November to 14 November, £6.50 is deducted from her ESA(Cont).

Calculating the weekly rate

51854 Where a councillor's allowance is paid to the claimant weekly then it is the weekly rate that should be deducted from ESA(Cont) as per DMG 51834[1].

1 ESA Regs, reg 76(1)

51855 If the councillor's allowance is not paid weekly, then it should be converted into a weekly amount as follows[1]

1. monthly payments should be multiplied by twelve and the result divided by 52[2]. A month means a calendar month[3]

2. quarterly payments (three monthly) should be multiplied by 4 and then divided by 52[4]

3. annual payments should be divided by 52[5]

4. payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment[6].

1 ESA Regs, reg 79(1); 2 reg 94(1)(b)(i); 3 CG 66/49 (KL);
4 ESA Regs, reg 94(1)(b)(ii); 5 reg 94(1)(b)(iii); 6 reg 94(1)(b)(iv)

51856 The weekly amount of a councillor's allowance may be averaged[1] if the income varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognizable cycle of work **or**

2. five weeks **or**

3. another period if this means a more accurate weekly amount can be calculated.

1 ESA Regs, reg 79(1) & reg 94(6)

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Students 51860 - 51999

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- Covenant income and other income and capital 51976 - 51980
- Income of former students 51981 - 51999

Students - general 51860

51860 This section deals with the calculation and treatment of certain income that is usually paid only to students. For ESA(IR) the income of a claimant, or a partner, may be taken into account[1]. Any income paid because a claimant or partner is a student may affect the amount payable.

1 ESA Regs, reg 83(1)

Definitions and meaning of terms 51861 - 51889

ESA(IR) - income and capital 51862 - 51863

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Education authority 51889

51861 Claimant means[1] a person who has claimed ESA.

Partner means[2], where the claimant is

1. a member of a couple, the other member of that couple **or**

2. married polygamously, the other members of the marriage.

1 WR Act 07, s 24(1); 2 ESA Regs, reg 2(1)

ESA(IR) - income and capital

51862 A reference to a student is a reference to that person alone. It does not include the student's partner. If the student is the claimant's partner, the student's income is treated as the claimant's[1]. This happens once the weekly amount to be taken into account has been worked out.

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

51863 A student or a member of their family may have income which is not subject to the special student rules. When considering this income a reference to the claimant may be taken to be a reference to a partner[1].There may also be a question about capital. Do not treat the capital of a child or young person as the claimant's[2].

1 ESA Regs, reg 83(1); 2 reg 83(2)

Meaning of course and modular course

51864 See DMG Chapter 41 for the definition of course and modular course.

Course of advanced education

51865 Course of advanced education means[1]

1. a course leading to a

1.1 postgraduate degree or comparable qualification

1.2 first degree or comparable qualification

1.3 diploma of higher education

1.4 higher national diploma **or**

2. any other course of a standard above that of

2.1 advanced GNVQ or equivalent

2.2 GCE advanced level (A levels)

2.3 a Scottish national qualification (higher or advanced higher).

Full-time course of advanced education

England and Wales

51866 F/T course of advanced education means[1] a course of advanced education that is

1. a F/T course of study that is not wholly or partly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **or**

2. a course of study which

2.1 is partly or wholly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **and**

2.2 involves the student in more than 16 guided learning hours per week (seven days) as stated in

2.2.a England in the student's learning agreement **or**

2.2.b Wales in a document signed on behalf of the college.

1 ESA Regs, reg 131

Scotland

51867 In Scotland, F/T course of advanced education means[1] a course of advanced education which is

1. a F/T course of

1.1 study, not wholly or partly funded by the Scottish Ministers at a college of further education **or**

1.2 higher education (see DMG Chapter 41), wholly or partly funded by the Scottish Ministers **or**

2. a course of study other than higher education, which is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**

2.1 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff as stated in a document signed on behalf of the college **or**

2.2 21 hours a week in total as stated in a document signed on behalf of the college made up of

2.2.a 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**

2.2.b extra hours using structured learning packages, supported by teaching staff.

1 ESA Regs, reg 131

Course of study

51868 A course of study[1] means any course of study including a sandwich course. It does not matter whether a grant is made for attending or undertaking the course.

A person who has started a course of study should be treated as attending or undertaking it until

1. the last day of the course (see DMG Chapter 41) **or**

2. such earlier date as they

2.1 abandon the course (see DMG Chapter 41) **or**

2.2 are dismissed from it (see DMG Chapter 41).

1 ESA Regs, reg 14(1)

Full-time course of study

England and Wales

51869 F/T course of study means[1] a F/T course that is

1. not wholly or partly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers **or**

2. wholly or partly funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding or the Welsh Ministers, if it involves the person in more than 16 guided learning hours per week, as stated in the student's signed learning agreement in England or, in Wales a document signed on behalf of the college.

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

1 ESA Regs, reg 131

Scotland

51870 In Scotland F/T course of study means[1] a F/T course of study that is

1. not wholly or partly funded by the Scottish Ministers, at a college of further education **or**

2. higher education (see DMG Chapter 41), wholly or partly funded by the Scottish Ministers **or**

3. not higher education and is wholly or partly funded by the Scottish Ministers at a college of further education, if it involves **more than**

3.1 16 hours a week of classroom or workshop based programmed learning, under the direct guidance of teaching staff, as stated in a document signed on behalf of the college **or**

3.2 21 hours a week in total, as stated in a document signed on behalf of the college made up of

3.2.a 16 hours or less of classroom or workshop based programmed learning, under the direct guidance of teaching staff **and**

3.2.b extra hours using structured learning packages, supported by teaching staff.

1 ESA Regs, reg 131

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

Sandwich course

51871 See DMG Chapter 41 for the definition of sandwich course.

Periods of experience and work experience

51872 Periods of experience means periods of work experience which form part of a sandwich course[1].

1 ESA Regs, reg 131

51873 Periods of work experience are associated with the F/T study but are done outside an educational establishment. The experience has to be

1. industrial **or**

2. professional **or**

3. commercial[1].

1 Support Regs, reg 2(1)

51874 If the course includes[1]

1. the study of one or more modern languages for at least half the time spent studying **and**

2. periods of residence in a country whose language is a part of the course

periods of work experience means any periods of overseas residence when the student is in gainful

employment.

1 Support Regs, reg 2(1)

Student unable to find placement

51875 A student may not be able to find a placement in the period of work experience. This does not automatically mean that they have stopped being a student. The DM should consider whether the student has abandoned or been dismissed from the course (see DMG Chapter 41).

Meaning of educational establishment

51876 The term educational establishment is not defined and so must be given its ordinary everyday meaning. Schools, colleges and universities are clearly such places. But other less obvious places may also be included. For example, the training division of a large organisation specially set up for that purpose.

A person is attending an educational establishment if they are receiving

1. training

2. instruction **or**

3. schooling

in an organisation, or at an establishment, set up for any of those purposes.

Note: For Open University students see DMG 51899.

Academic year

51877 Academic year means[1] a period of twelve months starting on

1. 1 January for courses starting in winter

2. 1 April for courses starting in spring

3. 1 July for courses starting in summer

4. 1 September for courses starting in autumn.

Note: If a student begins a course in August or September and continues to attend throughout autumn, the beginning of the academic year will be the autumn rather than the summer.

1 ESA Regs, reg 131

Terms used in Scotland

51878 See DMG Chapter 41 for the definitions of a college of further education, further education and higher education in Scotland.

Meaning of guided learning hours

51879 See DMG Chapter 41 for the definition of guided learning hours.

Student loan

51880 A student loan[1] is a loan made for a student's maintenance under specific law[2]. The Student Loan Company administers student loans.

1 ESA Regs, reg 131; 2 T & HE Act 98, s 22; Ed (Scot) Act 80, s 73(f), 73B & 74; Support (NI) Order, Article 3

Grant

51881 Grant means[1] any kind of educational grant or award and includes any

1. scholarship

2. studentship

3. exhibition

4. allowance

5. bursary.

DMs should note that it does not include any payment derived from access funds or any payment of education maintenance allowance.

1 ESA Regs, reg 131

Access funds

51882 Access funds are grants, loans or other payments made under specific law[1] that are paid on a discretionary basis to assist students in financial difficulties[2].

1 F & HE Act 92, s 68; Ed (Scot) Act 80, s 73(a), (c) & s 74(1); Education and Libraries (Northern Ireland) Order 1993, Art 30; Further Education (Northern Ireland) Order 1997, Art 5; 2 ESA Regs, reg 131

51883 Access funds also include

1. in England - 'Learner Support Funds' which may be made available to students under specific law[1]. For those in further education they are paid out of funds provided by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England[2]

2. in Wales - 'Financial Contingency Funds' made available by the Welsh Ministers[2].

1 F & HE Act 92, s 7; L & S Act 2000, s 5, 6 & 9; 2 ESA Regs, reg 131

Note: Access funds do not include Senedd Cymru - Welsh Parliament Learning Grants. Financial Contingency Funds are made available to prevent the financial hardship of students who are not eligible for a Senedd Learning Grant.

Education maintenance allowance

51884 Education maintenance allowance consists of means-tested payments paid under specific law[1] to support young people who remain in non-advanced education after the age of 16. Payments can be made for up to 2 years to support young people between the ages of 16 and 19, but in some cases an allowance may continue to be paid for up to 3 years between the ages of 16 and 20.

1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 & 73(f); F & H E (Scot) Act 92, s 12(2)(c) & 21; Education Act 2002, s 14 & 181

Grant income

51885 Grant income means[1] any income by way of a grant and normally includes any assessed contribution whether paid or not. However where the student is either

1. a lone parent **or**

2. a person to whom specified legislation[2] applies

there is an exception and only the grant and any contribution actually paid is included as grant income.

Note: Any such contribution paid by way of a covenant is also included as grant income.

1 ESA Regs, reg 131; 2 regs 14-18

Standard maintenance grant and allowances

51886 In England and Wales, the standard maintenance grant is the amount set in law[1]. In Scotland it is the amount given as the 'allowance' by the Student Awards Agency for Scotland. For bursaries paid under specific law[2] and provided by a college of further education or a LEA, it is the amount given in the nearest equivalent to the guide.

1 Education (Mandatory Awards) Regs 2003, Sch 2(2) & (3); ESA Regs, reg 131;
2 Ed (Scot) Act 80, s 73(f), 73B & 74; ESA Regs, reg 131

Contribution

51887 The contribution[1] is the income of the student or any other person that the Secretary of State, an education authority or the Scottish Ministers, takes into account when considering the amount of grant or loan payable[2].

1 ESA Regs, reg 131; 2 Awards Regs, reg 18; Support Regs, reg 92

51888 In Scotland only, the contribution[1] is also the amount that the Scottish Ministers or an education authority, consider that the student, their spouse, civil partner or parents or parent's partner could reasonably be expected to make towards the student's expenses when considering the amount of allowance or bursary payable.

The amount of support awarded to a student is reduced by the amount of assessed contribution.

1 Ed (Scot) Act 80; ESA Regs, reg 131

Education authority

51889 An education authority is[1]

1. a government department **or**

2. in England and Wales, an LEA, which means[2] a

- **2.1** joint education board
- **2.2** county council
- **2.3** metropolitan district council **or**

3. in Scotland, an education authority as defined under specified legislation[3]

4. in Northern Ireland, an education and library board **or**

5. any body which is defined as a research council in certain law[4] **or**

6. any similar government department, authority, board or body of

- **6.1** the Channel Islands **or**
- **6.2** the Isle of Man **or**

6.3 any other country outside GB.

1 ESA Regs, reg 131; 2 Education Act 2002, s 212; 3 Local Government (Scotland) Act 1973, s 123; 4 Science and Technology Act 65

Meaning of student and full-time student 51890 - 51906

General 51890

NHS funded students 51891 - 51892

New entrepreneur scholarships 51893

General Social Care Council bursaries 51894 - 51897

Teacher training 51898

Open University students 51899

Community Orders 51900 - 51906

General

51890 The DM must decide whether a person is a student. That broadly means a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance (see DMG Chapter 41) is not a student[1]. A person who has reached pension age is not a student.

1 ESA Regs, reg 131

NHS funded students

Healthcare professionals

51891 NHS students may be undertaking a variety of healthcare professional courses e.g. nursing, midwifery, physiotherapy etc. To be eligible for an NHS bursary the student must be accepted for an NHS funded place. An NHS student undertaking a

1. diploma course may receive a non-means tested bursary. Such a student is not entitled to a student loan.

2. degree-level course may be entitled to a means tested bursary and is eligible to apply for a student loan.

Return to practice courses

51892 Those taking part in refresher training known as ‘return to practice’ are students if they are

undergoing a course of study at an educational establishment. Any allowances paid to such students over the duration of the course should be treated as grant income and taken into account as such.

New entrepreneur scholarships

51893 These scholarships have been developed to address the issue of entrepreneurs from deprived areas being given the chance to gain business management skills. Participants receive no funding for their business through the scholarships. Any payment made in respect of travel costs or books and equipment should be disregarded by DMs in the normal way (see DMG 51858).

General Social Care Council bursaries

51894 The General Social Care Council award two types of bursary which are

1. non-income assessed bursary known as social work bursary

2. additional graduate bursary.

Social work bursary

51895 This is a non-income assessed grant which is paid as an incentive to train. It consists of three elements, grant, tuition fees and a practice learning opportunity. The grant element is payable over 52 weeks at three rates depending on where the student lives. It is offered to both full and part-time students with part-time students receiving 50% of the grant. DMs should take the grant into account over 52 weeks[1] (see DMG 51956 et seq) disregarding[2] the items listed at DMG 51947 and DMG 51953[3] as appropriate. Tuition fees are either paid in full or the balance that has not been met by the LA is paid all direct to the University. DMs should disregard any amount paid for tuition fees[2] (see DMG 51947 **1.**). Any amount payable to a student intended for travelling expenses should be disregarded[3].

1 ESA Regs, reg 132(4)(b); 2 reg 132(2); 3 reg 132(3)

Additional graduate bursary

51896 This is paid to graduates on post-graduate courses who are in receipt of the social work bursary. It is an income assessed grant available to full-time students only. This bursary is paid for 30 weeks to cover the period of the course. There is also an additional days grant which is calculated weekly for courses that extend beyond 30 weeks. However where courses are for 45 weeks or more the bursary is automatically awarded for 52 weeks. Extra allowances may also be payable with the additional graduate bursary eg Adult Dependents Allowance and Parents Learning Allowance. These allowances are usually payable over 52 weeks.

51897 Where the income from the additional graduate bursary is payable for the period of study, the DM should take that income into account over the period of study[1]. Where the income is payable for a different period (the automatic 52 weeks) it should be taken into account for that period[2]. Income from

the extra allowances as mentioned in DMG 51904 should be taken into account for the period for which they are payable. The DM should disregard[3] any amount for items listed at DMG 51947.

1 ESA Regs, reg 132(4)(a); 2 reg 132(4)(b); 3 reg 132(2)

Teacher training

51898 A person undertaking or attending teacher training is a student where a course of study is being undertaken at an educational establishment. Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

Open University students

51899 A claimant who is on an Open University course will fall within the definition of a student[1]. Such courses are not F/T and are normally followed at times that would fit in with employment. Most of the course material is done in the person's home and not at an educational establishment however they are still undertaking a course of study[2]. Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

1 ESA Regs, reg 131; 2 R(IS) 1/96

Community Orders

51900 Offenders on specified activity may be undertaking basic skills education which will generally be funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding in England and the appropriate funding body in Wales. DMs must check the number of guided learning hours and consider if the offender is a F/T student. There is no such equivalent in Scotland. In Scotland, courts have access to a number of community penalties, principally probation orders, community service orders, drug treatment and testing orders and restriction of liberty orders. Conditions can be attached to these orders including the requirement to undertake unpaid work. The activities which can be imposed as part of the orders are funded by the Scottish Ministers[1].

1 SW (Scot) Act 68, s 27A

General

51901 A student is a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance is not a student[1].

1 ESA Regs, reg 131

Full-time student

51902 A F/T student is a person who is not a qualifying young person or child under specified legislation[1]

and is

1. aged less than 19 who is attending or undertaking a F/T course of advanced education **or**

2. aged 19 or over, but under pension age, who is attending or undertaking a F/T course of study at an educational establishment **or**

3. on a sandwich course[2].

1 SS CB Act, s 142; 2 ESA Regs, reg 131(2)(a)

51903 A F/T student is treated as attending or undertaking a F/T course of study from the first day of the course until

1. the last day of the course **or**

2. such earlier date as the student

2.1 abandons the course **or**

2.2 is dismissed from it[1].

1 ESA Regs, reg 131

Treatment of modular courses

51904 A student attending or undertaking part of a modular course on a F/T basis is treated as a F/T student from the day that part of the course begins until

1. the last day he is registered as attending or undertaking that part as a F/T course of study **or**

2. such earlier date as the student

2.1 abandons the course **or**

2.2 is dismissed from it[1].

1 ESA Regs, reg 131(2)(a)(ii)

51905 The period described in DMG 51904 above includes any period

1. that the student attends or undertakes the course to retake exams or a module. The student must have been undertaking the original part of the course or modules as a F/T course of study.

2. of vacation falling within the period or immediately following it. This does not include a vacation immediately following the last day of the course[1].

1 ESA Regs, reg 131(3)(b)

Modular course

51906 In these circumstances a modular course means a course of study consisting of two or more modules. The student must complete a specified number of modules before they are considered to have completed the course[1].

1 ESA Regs, reg 131(4)

Meaning of full-time 51907 - 51916

General 51907 - 51912

Evidence from educational establishment 51913

Other evidence 51914

Number of hours involved 51915

Courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England, Welsh Ministers or the Scottish Ministers 51916

General

51907 The DM has to consider whether a person is a full time student (a F/T student). For courses funded by the Scottish Ministers, except where it is a course of higher education (see DMG Chapter 41), and for those funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England or by Welsh Ministers, the term F/T is defined by reference to the number and type of hours involved (see DMG Chapter 41). But for non funded courses there is no definition.

51908 In courses not funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, Welsh Ministers or the Scottish Ministers and in courses of higher education funded by the Scottish Ministers, the term F/T applies to the course itself and not to a person's attendance on it[1]. It is the time spent by a notional reasonable student that is considered. A person who attends a F/T course on a P/T basis is still a student.

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

51909 Each case must be decided on its facts[1]. The DM must look at the sequence of studies and activities that make up the course itself. The nature of the course is not affected by[2]

1. a person's reasons for attending it **or**

2. a person's readiness to abandon it, for example, to accept an offer of employment **or**

3. what a particular person happens to be doing.

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

51910 In modular courses a sequence of studies is established once a person has decided which

modules to take. This sequence can be distinguished from the work that the person is putting in at any given time. When deciding whether a course is F/T, all of the studies and activities involved in it should be taken into account. This includes both supervised and unsupervised study and activity, whether done on or off college premises. In the case of courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, the Welsh Ministers or the Scottish Ministers, take no account of private study (see DMG Chapter 41).

51911 Do not compare the total hours involved with what may be regarded as a full working week. One approach is to look at the total time the course might require of an average student. It may take up a substantial part of a week, after allowing for reasonable rest and recreation. The course might then be regarded as F/T.

51912 The DM should determine whether the course is modular or non-modular. Whether a modular course counts as a F/T course is a question of fact. If the educational establishment's description is not conclusive, other relevant evidence may include

1. the education establishment's regulations

2. the educational establishments registration procedures

3. the course regulations

4. the course handbook

5. other relevant information given to the student about his status.

Evidence from educational establishment

51913 See DMG Chapter 41 regarding evidence from educational establishments.

Other evidence

51914 See DMG Chapter 41 regarding obtaining other evidence.

Number of hours involved

51915 See DMG Chapter 41 regarding the number of hours involved.

Courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding for England, Welsh Ministers or the Scottish Ministers

51916 DMG Chapter 41 contains guidance on

1. courses funded by the Secretary of State for Education, the Chief Executive of Education and Skills Funding, the Welsh Ministers or the Scottish Ministers

2. higher education

3. non funded courses **and**

4. further education and other courses.

Eligibility 51917 - 51920

General 51917

Partner only is a full-time student 51918 - 51920

General

51917 Being in education affects entitlement to ESA(IR)[1]. However, a claimant who is

1. in education **and**

2. entitled to DLA

may have entitlement to ESA(IR)[2].

See DMG Chapter 41 for how education affects entitlement to ESA.

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

Partner only is a full-time student

51918 If the claimant is not a student but their partner is, the claimant may be eligible for ESA. This is subject to the normal conditions of entitlement.

ESA(Cont)

51919 Only a claimant's own earnings (if they exceed the exempt work limits) and pension payments can affect the amount of ESA(Cont) payable[1]. A partner's loan or grant income can have no effect.

1 ESA Regs, reg 74

ESA(IR)

51920 Income of a claimant or their partner can affect the amount of ESA(IR)[1] payable. Any loan or grant income paid to the partner should be taken into account.

1 ESA Regs, reg 83

Financial support available to students - loans and grants 51921 - 51968

Loans - eligibility 51922 - 51930

Student loans treated as income 51931

Amount of loan 51932 - 51935

Disregards 51936 - 51937

Assessed contribution 51938

Calculation of weekly income 51939 - 51944

Student from Northern Ireland 51945

Grants 51946

Amount of grant income 51947 - 51955

Period over which grant income taken into account 51956 - 51964

Access funds 51965 - 51968

51921 In the case of students and their partners, some of the normal rules on income are modified[1]. This means that their income may be treated differently.

1 ESA Regs, reg 87

Loans - eligibility

51922 Loans are generally available to students on courses of higher education.

Designated courses

51923 Courses must[1]

1. last for at least one academic year or at least six weeks in the case of flexible postgraduate courses for teaching training **and**

2. be designated **and**

3. be at institutions receiving support from public funds.

1 Support Regs, reg 5(1); SL (Scot) Regs, reg 4(1)

51924 A course is designated[1] if it is a

1. first degree course

2. course for the Diploma of Higher Education

3. course for the Certificate of Higher Education

4. course for the further training of youth and community workers

5. course for the Higher National Diploma or Higher National Certificate of BTEC or Scottish Qualifications Authority

6. course leading to an initial teacher qualification

7. course for which entry does not normally require a first degree (or equivalent) that

7.1 is in preparation for a professional examination of a standard higher than

7.1.a GCE A levels

7.1.b Scottish highers

7.1.c BTEC and Scottish Qualifications Authority National Awards (as distinct from Higher National Certificate and Higher National Diploma) **or**

7.2 provides education of a standard higher than courses in **7.1**, but not higher than a first degree course.

1 Support Regs, Sch 2 & SL (Scot) Regs, Sch 2

51925 Institutions receiving support from public funds means[1] that the monies are provided by Parliament. **Except** where the funds have been provided by a local council. A course is provided by an institution[2] if it supplies the teaching and supervision that makes up the course.

1 Support Regs, reg 2; 2 reg 5(5)(a)

51926 Loans are generally available for sandwich courses. They are available for the whole of the course. They are not reduced because of the student's periods of experience.

Personal eligibility

51927 A student must be personally eligible as well as attending or undertaking a qualifying course. A student is eligible for a loan if

1. they meet the residence conditions[1] (see DMG 51928) **and**

2. they have not received an award under certain NHS regulations[2] **and**

3. they are not eligible to receive an allowance under certain regulations[3] **and**

4. they are not in breach of any obligation contained in a loan agreement[4] **and**

5. after reaching age 18 they confirmed any loan agreement that was made while under that age[5] **and**

6. they are not, in the opinion of the Secretary of State for Children, Schools and Families, unfit to receive support[6].

Note: A student is only eligible for a loan on a single designated course, whether F/T or P/T, in any one academic year[7].

1 Support Regs, reg 4(2); 2 reg 4(3)(c); 3 Education (Student Loans) Act 1990; Education (Student Loans) (NI) Order 1990; 4 Support Regs, reg 4(3)(d); 5 reg 4(3)(e); 6 reg 4(3)(f); 7 reg 4(6)

Residence conditions

51928 To satisfy the residence conditions a student must[1]

1. be ordinarily resident in England, Wales or Scotland on the first day of their course **and**

2. throughout the three years before the first day of the course have been ordinarily resident in the

2.1 UK if

2.1.a the student is settled in the UK **or**

2.1.b the student, their spouse, civil partner or their parent have been granted leave to remain by the HO

2.2 EEA if the student, their spouse, or their partner have established migrant worker status **and** their stay is not wholly or mainly to receive FTE.

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

European Economic Area Nationals

51929 A student, who is an EEA national or the child of an EEA national, may be eligible for a student loan if[1]

1. the conditions at DMG 51928 **2.** are satisfied **and**

2. the course in

2.1 England and Wales, is provided wholly or partly by an institution in England or Wales **or**

2.2 Scotland, is at a Scottish establishment.

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

Refugees

51930 A student may be eligible for a student loan if[1]

1. they, their spouse, civil partner or parent are granted refugee status **and**

2. from the time they are recognised as a refugee they are ordinarily resident in the UK **and**

3. they satisfy the conditions at DMG 51928 **1.**.

1 SA (Scot) Regs, Sch 1

Student loans treated as income

51931 Student loans are treated as income[1]. Students are treated as possessing a student loan for an academic year where

1. a student loan has been paid to them for that year[2] **or**

2. they could acquire a loan in respect of that year by taking reasonable steps to get one[3].

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

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

Amount of loan

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

1. where the student is studying **and**

2. whether the student has reached the final year of the course **and**

3. whether the student lives in the parental home.

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

1. the maximum amount of student loan the student could get by taking all reasonable steps[1] to do so (even if the student applies for less than the maximum loan) **and**

2. unless an exception at DMG 51939 applies[2], the amount of any contribution whether or not it is paid to the student[3].

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

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

1. the student took all reasonable steps to obtain the maximum amount[1] **and**

2. no deduction was made from the loan because of a means test[2].

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

Postgraduate Master's Degree Loan

[See Memo DMG 15/20]

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

1. £10,000 for courses that began in the 2016/17 academic year
2. £10,280 for courses that began in the 2017/18 academic year
3. £10,609 for courses that began in the 2018/19 academic year
4. £10,906 for courses that began in the 2019/20 academic year
5. £11,222 for courses that began in the 2020/21 academic year

Note: for courses that began in the:

1. Academic year 2016/17, the loan is only paid in the first and second academic years of a course (£5,000 in each year), regardless of the total course length;

2. Academic year 2017 onwards, the loan will be divided equally across each year of the course (typically in three installments of 33%, 33% and 34% for courses lasting three years for example).

51935 For income purposes, 30%[1] of the maximum postgraduate master's degree loan[2] will be the amount taken into account in the calculation of IS, ESA (IR) and JSA (IB). This figure reflects the amount which will typically be available to spend on maintenance costs, taking account of typical master's course tuition fees.

1 SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016;
2 ESA Regs, reg 137(5A)

51936 If a claimant is eligible for a new postgraduate loan but has failed to take all reasonable steps to acquire it they will usually be treated as if they are in receipt of the maximum postgraduate master's loan to which they would be entitled to[1] for:

1. that academic year **or**

2. where the course lasts for two or more academic years, the maximum amount that would be paid in each academic year (see note at **DMG 51934**) .

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

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

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

Disregards

51937 The amount of student loan to be taken into account under DMG 51931 to DMG 51935 should be reduced by[1] a fixed amount for

1. travel costs **and**

2. the cost of books and equipment

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

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

1 ESA Regs, reg 137(6)

Example

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

Disregard for fee loans

51938 Changes to the student support system[1] mean that loans for course fees will be paid directly to the university or college. DMs should disregard[2] a loan for fees, known as a fee loan or a fee contribution loan paid under specified legislation[3].

1 Support Regs, regs 17-21 & 31-32; 2 ESA Regs, reg 139;
3 Education (Student Support) (N Ireland) Order 1998, Art 3; T & HE Act 98, s 22;
Ed (Scot) Act 80, s 73(f)

Assessed contribution

51939 The education authority may decide that the student, their spouse, civil partner, parents or parent's partner should contribute to the loan. The contribution is assessed according to the income of the student, their spouse, civil partner, parent or parent's partner. The amount of loan awarded is then cut by the assessed contribution[1].

The amount of contribution assessed by the education authority may not be paid to the student in part or in full. But the full amount of the contribution should still be treated as possessed by the student unless[2] the student is entitled to DLA.

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

Calculation of weekly income

Course duration is for one academic year or less

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

1. the first benefit week that begins on or after the start of the academic year **or**

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

and ending with the last benefit week that ends on or before the last day of the course[1].

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

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

51941 Where a student loan is made in respect of an academic year that begins other than on 1

September the DM should divide the student loan equally between the period which

1. starts at the beginning of the first benefit week starting on or after the first day of the academic year **and**

2. ends on the last day of the last benefit week which ends on or before the last day of the academic year **and**

excludes any complete benefit weeks which fall entirely within the quarter where, in the opinion of the Secretary of State, the longest holiday period is taken[1].

Note: Quarter means[2] one of the periods in the academic year from

1. 1 January to 31 March **or**

2. 1 April to 30 June **or**

3. 1 July to 31 August **or**

4. 1 September to 31 December.

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

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

1. in September **or**

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

and ending with the last benefit week that ends on or before the last day of June[1].

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

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

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

1. the first benefit week that begins on or after the start of the academic year **and**

2. ending with the last benefit week that ends on or before the last day of the course[1].

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

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

1. 1 September **or**

2. the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of the course[1].

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

Disregard

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

Example 1

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

Example 2

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

Example 3

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

Example 4

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

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

Student from Northern Ireland

51946 A student from Northern Ireland may be eligible for a student loan under Northern Ireland law[1]. The qualifying conditions are the same as in the rest of the UK. Treat any loan for which the student is eligible in the same way.

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

Grants

51947 A student may receive a grant from a number of different sources. Grants, bursaries or allowances etc may be paid in respect of various types of study such as Nursing and Teacher training. Students who are paid under specific law[1] may be entitled to supplementary grants, as current or old system students

1. for extra costs incurred because they are disabled students[2]

2. for travel costs[3]

3. for childcare[4]

4. for living costs[5]

5. for adult dependants[6]

6. for Parents' Learning Allowance[7].

Note: This list is not exhaustive.

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

Amount of grant income

Initial disregard

51948 The DM should disregard from the student's grant income any payment

1. intended to meet tuition or examination fees[1]

2. intended to meet additional expense a disabled student has for attending a course[2]

3. intended to meet additional expenses connected with term time residential study away from the student's educational establishment[3]

4. on account of the student maintaining a home at a place other than where they live during the course[4]

5. on account of any other person if[5] that person lives outside the UK and there is no applicable amount for them

6. intended to meet the cost of books and equipment[6]

7. intended to meet travel expenses caused by the student's attendance on the course[7]

8. intended for the maintenance of a child dependant[8]

9. intended for the child care costs of a child dependant[9].

10. of higher education bursary for care leavers made under specified legislation[10] .

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

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

51949 Disregard amounts under DMG 51948 only if the grant is specifically intended to be used for one of those purposes.

Higher education grant

51950 In England and Wales the Higher Education Grant[1] was introduced in September 2004. A student qualified for this grant if he began the designated course on or after 1.9.04. The grant is to defray the cost of books, equipment, travel or childcare for the purpose of attending that course. DMs should disregard[2] the amount of Higher Education Grant paid to an existing student. In Scotland these are not specific grants but cover other expenses incurred in taking advantage of educational facilities[3].

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

Special support grant

51951 In England and Wales the Special Support Grant[1] was introduced from 1.9.06. The grant is to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course. DMs should disregard[2] the amount of Special Support Grant paid to students from 1.9.06.

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

51952 Where a student is in receipt of the maximum Special Support Grant and the Higher Education Establishment charges the full £3,145 tuition fees, then the Higher Education Establishment must pay

the student a bursary to at least make up the difference between the Special Support Grant and the £3,145 fee. As this bursary is for tuition fees it should be disregarded[1] in full whatever its value. In addition, a Higher Education Establishment may award other grants and bursaries and these may be disregarded if they fall within the disregards listed at DMG 51948.

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

Special Support Loan (England only)

51953 **[See DMG Memo 01/24]** Special Support Grants are intended to meet the cost of books, equipment, travel expenses and childcare, and so can be fully disregarded under existing legislation - DMG 51951 refers. From the beginning of the 2016/17 academic year, Special Support Loans replaced Special Support Grants[1] for new students. Regulations (2-5) amend existing legislation[2] to provide that the Special Support Loan can also be disregarded.

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

Disregards for students with child care responsibilities

51954 In England and Wales, a Department for Children, Schools and Families Parents Learning Allowance is available to F/T students with child care responsibilities. DMs should disregard this allowance in full[1].

1 ESA Regs, reg 132(2)

Extra disregards

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

1. travelling expenses (£303) **and**

2. books and equipment (£390)[1].

1 ESA Regs, reg 132(3)

Example 1

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

Example 2

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

disregard for travelling costs - £303 plus the extra disregard for books and equipment - £390.

Period over which grant income taken into account

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

1. what elements of grant are involved **and**

2. whether the grant is paid for the period of study.

Dependant and lone parent grants

51957 The DM should take these grants into account

1. for the same period as the loan **or**

2. for the period a loan would have been taken into account had the student taken reasonable steps to get one[1].

1 ESA Regs, reg 132(6)

Example

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

NHS dependant grants

51958 A grant or bursary paid for dependants, under relevant law[1], to an NHS student should be taken into account equally over

1. 52 weeks **or**

2. 53 weeks, if there are 53 benefit weeks (including part-weeks) in the year[2].

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

period of study.

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

Other grant income

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

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

2. for which it is payable.

Period of study for grant income purposes

51960 Period of study has two different meanings. One for grant income purposes[1] and one for eligibility[2] (see DMG Chapter 41). DMs should not confuse the two definitions.

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

51961 For grant income purposes[1], each year of a course has a separate period of study. That period

1. starts with

1.1 the first day of the course, in the first or only year **or**

1.2 the first day of that years course, in any later year **and**

2. ends with

2.1 the last day of the course, in the last or only year **or**

2.2 the day before the summer holiday, where the grant is not for study throughout the whole year **or**

2.3 the day before the start date of the next years course where

2.3.a the grant is for study throughout the year **or**

2.3.b if the student does not have a grant, where a loan would have been assessed as payable throughout the year.

1 ESA Regs, reg 131(1)

Example

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

1. the first year - the first day of the course to the day before the summer holiday separating the first and second years

2. the second year - the first day of that years course to the day before the summer holiday separating the second and third years

3. the third (final) year - the first day of that years course to the last day of the course**.**

Grant payable for period of study

51962 Grant income may be payable for the period of study. If so the DM should take the income into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period of study and ending with the last benefit week which ends on or before the last day of the period of study[1].

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

Sandwich course

51963 Where a student is on a sandwich course, any periods of experience should be excluded from the period of study. Grant income is then spread equally between the weeks in the period beginning with the benefit week that begins on or after the last day of the period of experience and ends with the last benefit week which ends on or before the last day of the period of study[1].

1 ESA Regs, reg 132(7)

Grant not payable for period of study

51964 Grant income may be awarded for a specific period. In these cases the grant income should be taken into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period for which the grant is payable and ending with the last benefit week which ends on or before the last day of the period for which the grant is payable[1].

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

Access funds

51965 Students who are in financial difficulties may receive payments from access funds[1] (see DMG 51882). Treatment of these payments depends upon

1. when the payment is made

2. what the payment is intended for **and**

3. whether the payment is a

3.1 regular payment **or**

3.2 single lump sum.

1 ESA Regs, reg 131

51966 The DM should fully disregard an access fund payment where it is made[1]

1. before the first day of the course in anticipation of the person becoming a student **or**

2. on or after the earlier of

2.1 1 September **or**

2.2 the first day of the course **and**

2.3 the student loan has not been received **and**

2.4 the payment is intended to help them manage financially until they receive their loan.

1 ESA Regs, reg 138(4)

Regular payments

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

1. food

2. ordinary clothing or footwear

3. household fuel

4. rent for which HB is payable

5. housing costs met in the applicable amount

6. council tax

7. water charges.

Note: The DM should disregard £20 from any payments that are intended and used for the above items. This is subject to the overall limit on disregarded income[1] (see DMG 51969 et seq).

1 ESA Regs, reg 138(3)

Lump sum payments

51968 Any lump sum payment from an access fund should be treated as capital[1]. Where a lump sum payment is intended and used for items other than those listed at DMG 51967 the DM should disregard the capital for 52 weeks from the date of payment[2].

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

Overall limit to income disregard 51969 - 51975

Income for necessary course expenses 51970 - 51973

Disregard of partner's contribution 51974

Disregard of student's contribution 51975

51969 A student may have income other than grant income, covenant income or a student loan. The amount of any disregard will depend on

1. what type of income is paid **and**

2. whether it is paid for a specific purpose.

Do not disregard any part of a student's grant income or covenant income as a charitable or voluntary payment[1].

1 ESA Regs, reg 135

Income for necessary course expenses

51970 The income may be specifically intended (in whole or in part) to meet the cost of any item

1. set out in DMG 51947 **and**

2. necessary as a result of attendance on the course.

51971 In such a case disregard[1]

1. the total amount specifically intended for the purposes at **1.** and **2.** above **less**

2. the total amount of any grant and covenant income already disregarded for the particular item.

1 ESA Regs, reg 136(1)

51972 Where the income does not include an amount specifically intended for books and equipment, a disregard cannot be made for those items.

51973 If after the disregard in DMG 51971 there is a balance to take into account the normal rules on attribution of income apply (see DMG Chapter 48).

Disregard of partner's contribution

51974 The student's loan or grant income may include an assessed contribution from their partner. The DM should disregard this amount when considering the income of the partner[1].

Note: The student may complain because their partner does not have an income on which the assessment was based. The DM should advise such a student to contact the authority responsible for the grant. The authority may then reassess the amount of their grant.

1 ESA Regs, reg 140

Disregard of student's contribution

51975 Where the student's own income is taken into account when assessing the loan or grant the DM should disregard this amount when calculating the student's income[1]. The amount to be disregarded under DMG 51972 and this paragraph should be spread equally between the period that the loan or grant income has been taken into account. It should be applied to the income of the spouse or the partner respectively. It cannot all be applied to the student's own income.

1 ESA Regs, reg 141

Covenant income and other income and capital 51976 - 51980

Covenant income 51977 - 51978

Student's tax refund 51979 -

Other types of loan 51980

51976 Where a student has other income, the normal rules apply. This is subject to the overall limit on disregarded income (see DMG 51969). Where a student has capital other than a student loan (see DMG 51922 et seq), normal rules apply.

Covenant income

51977 Covenant income is[1] income payable to a student under a deed of covenant by a person whose income is

1. taken into account **or**

2. likely to be taken into account

in assessing the student's grant or award.

1 ESA Regs, reg 131(1)

51978 There are special rules which cover the assessment and attribution of covenant income. If a student declares that they are in receipt of covenant income the DM should forward the case urgently to DMA Leeds, Room GS36, Quarry House, Leeds. DMs are, however, unlikely to see this type of case as the Income Tax advantages associated with Deeds of Covenant were abolished some years ago.

Student's tax refund

51979 Treat any refund of tax taken from a student's income as capital[1]. This is not restricted to tax taken from grant income. It applies to any income related tax refund.

1 ESA Regs, reg 142

Other types of loan

51980 Students may have loans that are not made under the relevant law[1]. The treatment of these loans depends on whether they are capital or income. For guidance on Career Development Loans see DMG 51440 et seq.

1 T & HE Act 98, s 22; Ed (Scot) Act 80, s 73(f), 73B & 74; Support (NI) Order, Article 3; Students' Allowances (Scot) Regs 2007, reg 4(1)(c)

Income of former students 51981 - 51999

Course completed 51983

Course not completed - treatment of grant income 51984

Period income is taken into account 51985 - 51992

Calculation of weekly income 51993

Course not completed, treatment of loan and dependant grant income 51994 - 51998

Calculation of weekly income when loan is paid by two or more instalments 51999

51981 A person stops being a student for ESA from the day after the

1. last day of the course **or**

2. date they abandon or are dismissed from the course[1].

1 ESA Regs, reg 131(2)

51982 From the date that the person stops being a student the treatment of income depends on whether the course has been completed.

Course completed

51983 When a student has completed a course the DM should disregard from the day after the last day of the course[1] any

1. grant or covenant income

2. loan

3. income assessed contribution.

1 ESA regs, Sch 8, para 54

Course not completed - treatment of grant income

51984 A person has not completed the course if they have abandoned or were dismissed from it. Special

rules[1] apply to income that

1. is grant income (that is not taken into account in DMG 51985 et seq) **and**

2. was paid to a person who ceased to be a student before the end of the period for which the income was payable **and**

3. has to be repaid because the person ceased to be a student before the end of the period for which the income was payable.

1 ESA Regs, reg 91(4), reg 94(7) & reg 104(7)

Period income is taken into account

51985 Other than where DMG 51984 applies, grant income is taken into account over a period that

1. begins on the date that the income was treated as paid **and**

2. ends on the earlier of

2.1 the date when the repayable grant income is repaid **or**

2.2 the last day of the term or holiday in which the person ceased to be a F/T student **or**

2.3 where the grant is paid in instalments, on the day before the next instalment would have been paid had the person remained a F/T student[1].

1 ESA Regs, reg 91(4)

51986 Students who have not completed the course, and have to repay grant income who

1. are already receiving ESA(IR), will continue to have the same weekly grant income deducted from the day they stopped being a student (see DMG 51995)

2. make a new claim to ESA, will have the net weekly grant income attributed from the date that the last payment of grant income was treated as paid until the date established at DMG 51985 **2**.

51987 When considering the date income is treated as paid the guidance at DMG Chapter 48 applies. The DM will first need to establish the due date of the last grant payment which will usually be the last instalment.

51988 A decision on the due date of a grant instalment must be based on evidence from the paying authority. The DM can get this

1. directly from the authority **or**

2. from documents produced by them.

51989 If the paying authority gives a due date this should generally be followed. Notices of award or authorities' general literature may say that payments are to be made available on a set date. This date should usually be accepted as the due date.

51990 It may not be possible to get specific evidence of the due date from the paying authority. The due date should then be accepted as the date of the actual payment.

51991 In Scotland the Student Awards Agency sends payments on a monthly basis by bank transfer for the maintenance element of mandatory awards to the college or university. Take such a payment as being due on the first day of the relevant term.

51992 In England and Wales the arrangements for payment of student grants vary between LAs.

Calculation of weekly income

51993 The weekly grant income of a former student to be taken into account for the period in DMG 51985 is equal to the amount which would have applied if the person was still a student[1]. This means that the

1. appropriate deductions and disregards apply (see DMG 51947 et seq)

2. weekly amount is calculated in the same way (see DMG 51956 et seq).

The amount of income to be taken into account for each benefit week is calculated on the basis that the person is still a student and none of the income has been repaid[2]. The weekly amount is not reduced by repayments of the grant.

1 ESA Regs, reg 94(7) & reg 132; 2 reg 104(7)

Course not completed, treatment of loan and dependant grant income

Relevant payment

51994 A relevant payment is either a student loan or an amount for the maintenance of dependants, or both[1], paid to a student.

1 ESA Regs, reg 104(6)

Calculation of weekly income

51995 If a claimant abandons or is dismissed from the course of study before the final instalment of a relevant payment has been paid, the DM should calculate the weekly amount to take into account using

the formula[1].

$$\frac{A - (B \times C)}{D}$$

Where

1. A is the total amount of relevant payment which the claimant would have received, less the appropriate deduction for travel costs, books and equipment, had he remained a student until the last day of the term in which he abandoned or was dismissed from the course

2. B is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course

3. C is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been taken into account had the claimant been entitled to ESA(IR))

4. D is the number of benefit weeks in the assessment period. This is the number of weeks in the period[2]

> **4.1** beginning with the benefit week that includes the day on which the course was abandoned, or the claimant was dismissed **and**
>
> **4.2** ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable.

Note: A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December[3].

1 ESA Regs, reg 104(5); 2 reg 104(6); 3 Support Regs, reg 6

51996 The weekly amount calculated as in DMG 51995 should be taken into account for the period in DMG 51995 **4.**[1].

1 ESA Regs, reg 104(5)

Example

Erin abandons her course of study on 25.2.10 in her second year after £2,020 of her students loan allocation has been paid. Had she remained a student for the full year she would have been entitled to a loan of £3,020 which is paid in three instalments; £1,020 in October, £1,000 in January and £1,000 in April. She is a Tuesday BWE.

The DM calculates a weekly amount of £NIL to take into account from 23.2.10 to 6.4.10;

A = £1,345 (£2,020 - £295 - £380)

B = 25 (number of weeks between 2.9.09 and 23.2.10)

C = £55.84 (£3,020 - £295 - £380 = £2,345/42 = £55.84 per week which would have been taken into account (before a £10 disregard) had she remained a student)

D = 6 (number of weeks between 24.2.10 and 6.4.10)

$$\frac{£1,345 - (25 \times £55.84)}{6} = £NIL$$

51997 A student who has prematurely stopped being a student may voluntarily repay some or all of their student loan. In such a case there are no grounds to revise or supersede the award. This is because the repayment of a student loan is not a relevant change of circumstances[1].

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

51998 Where the former student repays the loan because the loan company has requested repayment, the claimant is under a certain and immediate liability to repay. Under such circumstances the DM should not treat the loan as income from the date that such a liability arises.

Calculation of weekly income when loan is paid by two or more instalments

51999 When a student loan is paid by two or more instalments and a student abandons or is dismissed from the course, the DM should calculate the weekly amount to take into account by using the formula[1]

$$\frac{A - (B \times C)}{D}$$

Where

1. A is the total amount of the relevant payments which the person received or would have received from the first day of the academic year to the day the person abandoned or was dismissed from the course, less the appropriate deduction for travel costs, books and equipment.

2. B is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course.

3. C is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been taken into account had the student been entitled to ESA).

4. D is the number of weeks in the assessment period. This is the number of weeks in the period[2]

4.1 beginning with the benefit week which includes the day on which the claimant abandoned or was dismissed from the course **and**

4.2 ending on the earlier of the benefit week which includes

4.2.a the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued **or**

4.2.b the last day of the last quarter for which an instalment of the relevant payment was payable.

Note: A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December[3].

1 ESA Regs, reg 104(5A); 2 reg 104(6); 3 Support Regs, reg 6

Example

Alan abandons his course of study on 9.2.09 in his second year after receiving £2,000 of his student loan allocation. He was entitled to a student loan of £3,570 and this was being paid in monthly instalments of £400 on the 1st of each month from 1st October to 1st May with a final payment of £370 due on 1st June. He is a Wednesday BWE.

The DM calculates that there is nothing to be taken into account from the student loan:

A = £1,325 (£2,000 - £295 - £380)

B = 22 (number of weeks from 4.9.08 to 4.2.09)

C = £68.92 (£3,570 - £295 - £380 = £2,895/42 weeks (4.9.08 to 24.6.08) = £68.92 per week which would have been taken into account had he remained a student)

D = 4 (number of weeks between 5.2.09 and 4.3.09)

£1325 – (22 x £68.92) = Nil

Appendix 1 - War Pensions

War widow's, widower's or surviving civil partner's supplementary pensions

War disablement pension, war widow's pension and war widower's pension

War widow's, widower's or surviving civil partner's supplementary pensions

1 Any

1. supplementary pension paid under article 23(2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (pensions to widows, widowers or surviving civil partners) **or**

2. similar payment made by the Secretary of State for Defence to a person not entitled to a pension under the Order in **1.**

2 A pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983.

3 Any payment made to a widow, widower or surviving civil partner of a person

1. whose death was connected to service similar to service as a member of the armed forces **and**

2. which is equal to a payment made under article 23(2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (pensions to widows, widowers or surviving civil partners) **and**

3. whose service ended before 31.3.73

under the following Dispensing Instruments

3.1 The Order in Council of 19th December 1881

3.2 The Royal Warrant of 27 October 1884

3.3 The Order by His Majesty of 14th January 1922.

War disablement pension, war widow's pension and war widower's pension

The following instruments are specified[1] for the meaning of war disablement pension, war widow's pension and war widower's pension.

1 Defence (Local Defence Volunteers) Regulations 1940.

2 War Pensions (Coastguards) Scheme 1944.

3 War Pensions (Naval Auxiliary Personnel) Scheme 1964.

4 Pensions (Polish Forces) Scheme 1964.

5 War Pensions (Mercantile Marine) Scheme 1964.

6 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard.

7 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after 27.4.52.

8 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment.

9 Personal Injuries (Civilians) Scheme 1983.

10 Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983.

1 ESA Regs, reg 2(1); Income Tax (Earnings and Pensions) Act 2003, s 639(2)

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