DMG Chapter 52: Capital

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Introduction 52001 - 52019

About the guidance 52001

Introduction

About the guidance

52001 This Chapter gives guidance on capital and its effect on ESA(IR). The ESA(Cont) that claimants may be entitled to is not affected by their capital.

Flowchart

52002 The flowchart at Appendix 1 to this Chapter shows how to decide the amount of the capital of a claimant and partner and its effect on ESA(IR).

The law

52003 The law says

1. how capital is worked out[1]

2. when people can be treated as having capital they do not have[2]

3. when capital people have can be disregarded[3]

4. when income can be treated as capital[4]

5. when capital can be treated as income[5]

6. claimants cannot get benefit if their capital is above £16,000[6]

7. capital of a partner is treated as the capital of the claimant[7]

8. when the total of capital is above a certain limit, the claimant is treated as having income[8]. The point at which this takes effect depends on the claimant's circumstances. Usually it starts with capital of £6,000 or more, but it starts with capital of £10,000 if they are a person, of any age, living in specific accommodation (see DMG 52771)[9].

1 WR Act 07, s 17(1); ESA Regs, Part 10; 2 WR Act 07, s 17(3)(a); ESA Regs, reg 115 & 117; 3 WR Act 07, s 17(3)(b); ESA Regs, reg 111(2), Sch 9; 4 WR Act 07, s 17(3)(c); ESA Regs, reg 112; 5 WR Act 07, s 17(3)(d); ESA Regs, reg 105; 6 WR Act 07, Sch 1, para 6(1)(b); ESA Regs, reg 110;

7 WR Act 07, Sch 1, para 6(2) ESA Regs, reg 83; 8 WR Act 07, s 17(4); ESA Regs, reg 118; 9 reg 118(3)

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What is capital

52020 Capital is

1. savings from income such as money held in

1.1 cash

1.2 a bank or building society account

1.3 a save as you earn scheme

2. a lump-sum or one-off payment such as

2.1 compensation for a personal injury

2.2 money which has been borrowed

2.3 one made by an employer to a person who is made redundant and the payment is not earnings

2.4 one made by the Home Office to people on the Refugee Resettlement Programme

2.5 one made to recompense people who have incorrectly had to pay care charges in the past

3. investments such as

3.1 businesses

3.2 capital and income bonds

3.3 individual savings accounts (ISAs)

3.4 national savings certificates

3.5 personal equity plans (PEPs)

3.6 personal pension schemes

3.7 premium bonds

3.8 stocks and shares

3.9 unit trusts

3.10 crypto and virtual assets

4. real property or in Scotland heritable property, that is land and anything that has its foundations in the land such as a house **and**

5. a beneficial interest in the capital of a trust.

52021 A payment is capital if it is

1. not made or due to be made regularly **and**

2. made without reference to a period.

The payment is income if this does not apply.

52022 - 52034

Rights to capital

52035 People have a right to capital that is due to them now or in the future. That right can be sold unless there is something that says they cannot sell it.

52036 They also have a right to sue, which means go to Court, if

1. the capital is not paid to them when due **and**

2. there is no other way they can get the capital.

In England and Wales this is sometimes called “a chose in action”. In Scotland the action is sometimes called “accounting”.

52037 Such rights are capital because they can be sold[1].

1 R(SB) 31/83

Example

On 1.3.06 Lisa agreed to sell her house to her brother Simon for £55,000. Simon could not afford to pay his sister the full amount so Lisa agreed that he could pay £20,000 on 1.3.06 and the remaining £35,000

on 1.3.08. On 8.11.08 Lisa makes a claim for ESA. She states she has no capital but that she is owed £35,000 as Simon did not pay her as agreed. The DM decides that Lisa has rights to capital.

Note: See DMG 52647 for guidance on how to get an expert valuation of rights to capital.

52038 - 52049

When income becomes capital

52050 Income other than earnings becomes capital after the end of the period it is payable for[1].

1 R(IS) 3/93

52051 Earnings become capital after

1. all liabilities such as income tax have been deducted[1] **and**

2. the end of the period they are payable for[2].

Note: DMG 52051 does not apply to earnings from self-employment because they are calculated as average weekly earnings over a period of normally a year, which are then taken into account for an equivalent period in the future. Earnings from self-employment should be treated as capital as soon as they are received. See DMG 52520 et seq for the disregard of the value of assets of a business.

1 R(SB) 35/83; 2 R(IS) 3/93

52052 The period income and earnings are payable for starts with the day they are due to be paid.

52053 The amount of income is reduced when money is withdrawn from a fund such as a bank account which includes income and capital. The amount of capital is reduced if there is evidence to show the money withdrawn is from capital.

Example

On 2 February Cath makes a claim for ESA. She has £7,550 in a bank account. This includes a month's occupational pension of £250 which Cath received on 30 January. The DM decides that Cath has capital of £7,300 because her occupational pension payment of £250 has not become capital. On 16 February Cath withdraws £320 from her bank account to pay her car insurance. There is no evidence of any other withdrawals since 2 February. The DM decides that Cath has spent her occupational pension payment of £250 and that her capital has reduced by £70 to £7,230.

52054 - 52069

Does the person own the capital 52070 - 52119

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General

Ownership of capital

52070 Only the capital where people are the beneficial owners is included when working out what capital they have.

52071 People are beneficial owners of capital if they have a beneficial interest in it. A person is the joint beneficial owner of capital if more than one person has a beneficial interest in the same capital.

52072 A person whose name the capital is in is called the legal owner. A person is the joint legal owner of capital if more than one person is the legal owner of the same capital.

52073 People who are the beneficial owners of capital are usually the legal owners. People who are the legal and beneficial owners of capital hold that capital for themselves and can use it as they wish.

52074 Legal owners who are not the beneficial owners of capital are holding that capital on trust for the beneficial owners[1]. They cannot use the capital for themselves. It should be used for the beneficial owners.

1 R(SB) 23/85

52075 Legal owners can hold capital which

1. they **and**

2. other people who are not the legal owners

are the beneficial owners of. In that case the legal owners are holding the capital on trust for themselves and the other beneficial owners. The legal owners can use for themselves only the capital which they are the beneficial owners of. The remaining capital should be used for the other beneficial owners.

52076 Only the legal owners of capital can withdraw or sell it.

People under the age of majority or without legal capacity

52077 In England and Wales, people under the age of majority can be the beneficial owners of capital. Those people are not usually the legal owners of their capital as businesses, such as banks, will not enter

into a contract with them. A person under the age of majority cannot be the legal owner of

1. real or heritable property (see DMG 52020 **4.**) **or**

2. shares.

In England and Wales the age of majority is 18 years old[1].

1 Family Law Reform Act 1969, s 1(1)

52078 In Scotland, people under the age of 16 are not usually the legal owners of their capital as they have no legal capacity[1]. People over the age of 16 can be the beneficial owners of capital. However, the courts have powers to set aside any transactions made before a person reaches age 18, if the transaction was imprudent, which in practice restricts the willingness of businesses to enter into contracts with persons under 18 years old.

1 Age of Legal Capacity (Scotland) Act 1991, s 1(1)(a)

52079 The capital of people under the age of majority or without legal capacity may be held on trust if they are the beneficial owners of the capital but not the legal owners. They become the legal owners of their capital when the terms of the trust say they can have the capital. In England and Wales this may be when they are 18 years old and in Scotland when they are 16.

52080

How a person gets a beneficial interest in capital

52081 People can get a beneficial interest in capital by

1. saving up their income such as money in a bank account

2. using their money to buy capital such as premium bonds

3. using money which has been lent to them, such as a mortgage, to buy capital[1]

4. being given capital such as a lump-sum payment of compensation

5. having a beneficial interest in a trust.

1 R(IS) 8/92

52082 - 52089

How to work out if a person is the beneficial owner of capital

The person is the legal owner

52090 If people are the legal owners of capital, assume that they are the beneficial owners unless

1. there is written evidence such as a Deed of Trust which says who has a beneficial interest in the capital **or**

2. the legal owners say they have

2.1 no beneficial interest **or**

2.2 only a share in the beneficial interest.

Note: It is the responsibility of the legal owners of capital to establish that they are not the beneficial owners.

Written evidence

52091 If there is written evidence naming who has a beneficial interest in the capital the people named in the evidence are the beneficial owners.

No beneficial interest in the capital or only a share in it

52092 If the legal owners say they have no beneficial interest in the capital or only a share in it the DM has to decide who has a beneficial interest in the capital in order to decide who the beneficial owners are.

52093 To decide who has a beneficial interest the DM needs to know

1. whose capital it is **and**

2. what the person whose capital it is says it has to be used for.

To decide whose capital it is the DM needs to know whose money was used to get the capital.

The legal owners use their money to get capital

52094 Legal owners who use their money to get capital have a beneficial interest in that capital and are beneficial owners of it.

52095 A legal owner of a bank account is the

1. sole beneficial owner of the account if only the legal owner's money is paid into the account **and**

2. joint beneficial owner if there is more than one legal owner and one or more of the legal owners pays money into the account.

52096 If the legal owners

1. use their money to get capital **and**

2. they say they cannot use the capital because they have set it aside for another person

the legal owners are the beneficial owners of the capital unless they have actually created a trust[1].

1 R(IS) 1/90

Example

Dai has some money in a building society account. The account is in his name so he is the legal owner of the money. He says that the money in the account, which he alone deposited, is not his because it is used to pay his grandchild's school fees. The DM decides that Dai is the beneficial owner of all the money in the account. This is because he is the only person who has put money into the account and there is no evidence of a clear indication that his intention was to create a trust.

The legal owners do not use their money to get the capital

52097 If the legal owners

1. do not use their own money to get the capital **and**

2. the person whose money has been used says the money has been

2.1 lent **or**

2.2 given

to the legal owners

the legal owners are the beneficial owners of the capital.

52098 A legal owner of a bank account is the beneficial owner of any money in the account which has been lent or given to the legal owner by another person.

52099 If the legal owners

1. do not use their own money to get capital **and**

2. the money which has been used belongs to

2.1 a child or young person **or**

2.2 some other people and they say

2.2.a it is their capital **and**

2.2.b who the capital is to be used for

the legal owners are not the beneficial owners of the capital because they are holding it on trust.

Example

Pradeep has a building society account. It is in her name so she is the legal owner of the money in that account. However, she says that the money in the account belongs to her sister Leena who is working abroad. On the day the account was opened £20,000 was put into it. Nothing has been paid into the account except interest and no money has been taken out. The DM has evidence from Leena that she gave £20,000 to Pradeep to save for her whilst she was working abroad and she

wants it, and the interest, back when she returns. The DM decides that Pradeep is not the beneficial owner of the money in the building society account because she is holding it on trust for Leena.

More guidance

52100 DMG 52120 - 52339 gives guidance on how to work out the beneficial interest a person has in capital in certain types of cases.

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About the guidance

52120 This part gives guidance on how to work out if a person is the beneficial owner of capital in certain types of cases.

52121 The guidance in this part involves principles of law. The law in England and Wales can be different from the law in Scotland but the outcome may be the same. If the outcome is different, the guidance will be distinguished. For example, Scots law does not have the same concept of “beneficial ownership”, but it nonetheless recognises that in some situations a person may not be the full legal owner of capital.

52122 - 52129

Businesses and limited companies

Businesses

52130 A person who is the only owner of a business is the beneficial owner of all of the capital of the business.

52131 A person who owns a business with others has an equal share of the beneficial interest in the capital of the business unless the owners agree the shares should not be equal[1]. The agreement between the owners does not have to be in writing. A person who has a share in the beneficial interest is a joint beneficial owner.

1 Partnership Act 1890, s 24(1)

Limited companies

52132 A company's capital is owned by the company. Directors of the company are not the beneficial owners of the capital of the company.

52133 If a director has lent capital to the company the loan is included in the capital of the company. The director's rights to the capital that has been lent are included when working out the director's capital.

52134 If a director

1. has shares in the company **and**

2. is the sole or joint beneficial owner of those shares

the shares will be included when working out the director's capital.

Bank, post office and building society accounts

52135 A bank, PO or building society account can be more than one asset in certain circumstances. This applies if evidence clearly shows that there is a separate part of a jointly owned bank or similar account where a claimant has

1. no beneficial interest **or**

2. a sole beneficial interest.

If **1.** applies, the claimant is only treated as possessing an equal share of the amount where the beneficial interest is shared.

If **2.** applies, the claimant is treated as possessing the whole amount that is solely owned and an equal

share of the amount where the beneficial interest is shared.

If neither **1.** or **2.** apply the claimant is treated as beneficially owning the whole account in equal shares with the other joint owners.

Example

On 8 March Matt makes a claim for ESA. He has a joint bank account with his mother, Olive, who is in a care home. There is no dispute that Matt and Olive are the joint legal owners of the account in which, on 8 March, there is the sum of £12,400. Matt provides evidence that he received a legacy of £2,000 which he paid into the account and that Olive has made all other deposits. The only withdrawals have been made to pay Olive's care home fees. The DM decides that Matt has capital of £2,000, the amount of his beneficial interest in the account.

52136 - 52139

Capital held by a solicitor

52140 People are the beneficial owners of capital, such as a payment of damages for personal injury, if it is held by their solicitor[1] unless

1. in England and Wales the amount to be repaid to the Legal Services Commission has not been worked out (see DMG 52141 - 52142) **or**

2. in Scotland

2.1 the amount to be repaid to the Scotland Legal Aid Board has not been recovered **and**

2.2 a discharge has not been granted (see DMG 52143 - 52144).

1 R(SB) 17/87

52141 In England and Wales the Legal Services Commission provides funding to help people take or defend legal proceedings. A person may have to repay all or some of their legal costs out of money or property they have gained or kept as a result of the proceedings. In such cases, the funding provided by the Legal Services Commission can act as a loan.

52142 Where DMG 52141 applies the Legal Services Commission work out a fair and reasonable amount of the costs to be repaid. Until the Legal Services Commission do this, money or property gained or kept is held by a person's solicitor. A person is not the beneficial owner of any such money or property until after the amount to be repaid to the Legal Services Commission has been worked out.

Example

Joanne was awarded the sum of £25,000 as payment of damages following a road traffic accident. This money is being held by Joanne's solicitor. Joanne received funding from the Legal Services Commission. Joanne is not the beneficial owner of the sum she was awarded until the Legal Services Commission work out the amount to be repaid.

52143 In Scotland the Scottish Legal Aid Board provides funding to help certain people take or defend legal proceedings. The Board is able to recoup their expenditure out of any property recovered or preserved for the person granted legal aid. The Board is also able to recoup their expenditure where there is a settlement to avoid proceedings or bring them to an end. In such cases, the funding provided by the Scottish Legal Aid Board can act as a loan.

52144 Where DMG 52143 applies the money or property gained or preserved is usually paid to the Scottish Legal Aid Board. However, the money or property may be held by a person's solicitor and the amount to be repaid worked out by the Scottish Legal Aid Board. The person's solicitor cannot dispose of the money or property or use it in any way until the Board has recovered the amount due and granted the person a discharge. A person is not the beneficial owner of such money or property until

1. the amount to be repaid to the Scottish Legal Aid Board has been recovered **and**

2. a discharge has been granted.

52145 - 52149

Gifts

52150 A person who is given capital is the beneficial owner of that capital. In England and Wales it can be assumed a gift has been made if the people involved are related in certain recognised ways. This is called presumption of advancement.

52151 It can be assumed a child has been given the beneficial ownership of capital if

1. the parent of **or**

2. a man who has assumed financial responsibility for

the child gives legal ownership of the capital to that child.

52152 It can be assumed wives have been given the beneficial ownership of capital if the husband has given legal ownership of the capital to them. This also applies to women who are given legal ownership of capital by the man they are going to marry.

52153 It has been held that the presumption of advancement does not have the force that it had in the past. Accordingly it is easier for circumstances to show that the transfer of capital from husband to wife

is not a gift[1]. The DM should not therefore assume that beneficial ownership has been given away if there is evidence to show that an outright gift was not made. The concept of the presumption of advancement does not exist in Scotland.

1 R(IS) 2/93

52154 - 52168

Interest in the estate of a person who has died

52169 When people die the capital they have is called the estate.

52170 People have died

1. testate if they have left a will which says who gets the capital **or**

2. intestate if they have not left a will.

52171 An estate is administered or distributed by

1. executors if there is a will (in Scotland known as executors nominate) **or**

2. if there is not a will

2.1 in England or Wales administrators

2.2 in Scotland executors dative.

They hold the dead person's estate on trust and may also be beneficiaries of the estate.

52172 It may take a long time before the executors, administrators or executors dative can administer or distribute the estate. The administration or distribution is usually complete when

1. all the dead person's

1.1 capital is accounted for **and**

1.2 debts are paid **and**

2. any dispute is settled.

52173 An executor, administrator or executor dative does not have to distribute an estate[1] until

1. in England and Wales one year after the date of death **or**

2. in Scotland six months after the date of death **or**

3. a longer period if the estate is complex.

1 R(SB) 5/85(T)

52174 The people named in a will or the relatives of a person who has died intestate have no interest in specific property in the estate until the executors, administrators or executors dative

1. are in a position to distribute the estate **or**

2. would be in a position to complete the administration of the estate if they had acted properly.

Note: This does not apply to property specifically bequeathed in a will. Such property belongs to the person who inherits the property from the date of death of the person whose estate is being administered and is actual capital. This is subject only to the right of the executors or executors dative to resort to the asset if the remainder of the estate is insufficient to meet the outstanding debts of the deceased[1].

1 R(IS) 1/01

52175 Pending the completion of the administration, a beneficiary without a specific bequest (a residuary beneficiary) has valuable rights in the form of a chose in action (see DMG 52036). In Scotland this is described as a vested right in the estate. This can be valued (DMG 52647). If the residuary beneficiary gives away his interest by a deed of variation before administration is complete then this may amount to deprivation and the DM should consider DMG 52815 et seq.

52176 At the end of the period in DMG 52174 the people named in a will or the relatives of a person who has died have a right to the capital that is due to them from the estate (see DMG 52035). A person's rights to capital are included when working out that person's capital.

52177 Separate guidance sets out cases where DMs may require expert valuation of rights to capital (see DMG 52642 et seq).

52178 People only have a beneficial interest in the capital assets of the estate when ownership of those assets has been transferred to them.

52179

Interest in a trust

When there is a trust

52180 There is a trust when a person

1. gives capital to another person to hold **and**

2. says for whom that capital has to be used.

52181 The person

1. giving the capital in England and Wales is the donor or in Scotland the truster

2. holding the capital is the trustee and is the legal owner of the capital

3. who the capital has to be used for is the donee and is the beneficial owner.

52182 People for whom the capital has to be used can include the trustee.

52183 - 52184

Trustees

52185 A trustee can be any person or body such as

1. a relative

2. solicitor

3. bank

4. in England and Wales the

- **4.1** donor
- **4.2** Court of Protection
- **4.3** Public Trustees

5. in Scotland the truster.

52186 A trustee has to do what the terms of the trust and the law says[1].

1 Trustee Act 1925 as amended by the Trustees act 2000; Trusts (Scotland) Act 1921 as amended by Trusts (Scotland) Act 1961

52187 - 52189

Terms of a trust

52190 The terms of a trust state

1. what is being held on trust **and**

2. who the donees are.

52191 The terms do not have to be written down provided the trust property is not land, but if they are they may be in a

1. will **or**

2. deed of trust **or**

3. deed of settlement.

Note: In Scotland the DM must check that the creation of the trust satisfies Scottish law[1] to prove the existence of a trust.

1 Requirements of Writing (Scotland) Act 1995, s 1(2), (3) and (4); R(IS) 10/99

52192 - 52194

Interest in a trust

52195 DMG 52205 - 52243 gives guidance on

1. some interests people can have in a trust **and**

2. when they get their interest.

52196 A person's rights to capital under a trust are included when working out what capital a person has.

52197 More than one person can have an interest in a trust. If more than one person has an interest in a trust the person is not a joint beneficial owner. Each person's interest belongs to that person. It is not shared with the other people having an interest in the trust.

52198 The expenses of the trustees will be deducted before any payments are made out of the trust.

52199 - 52204

Contingent interest

52205 Persons have a contingent interest in a trust if they have to do something or something has to happen before they can get the interest.

52206 For example, if the terms of the trust say a person can have £10,000 if the person lives to the age

of 21 the interest is a contingent interest. If the person lives to the age of 21 the person gets £10,000. If the person does not live to the age of 21 the person gets nothing.

52207 Trustees pay the income earned on a contingent interest to the people who have the interest if the

1. terms of the trust do not say who gets the income **and**

2. people with the interest have

2.1 reached the age of maturity, which in England and Wales is 18 years old and in Scotland 16 **and**

2.2 not yet been required to meet the contingency[1].

Any income which is paid is taken into account as income. The DM should decide if people have notional income if they are due income from a trust and it is not paid.

1 Trustee Act 1925, s 31(1)(ii); Trusts (Scotland) Act 1961, s 5

52208 For example, in England and Wales if the terms of the trust say a person can have £10,000 if that person lives to the age of 21 the trustees can pay the person the income earned on the £10,000 from the age of 18 because the person

1. has reached the age of majority **and**

2. has not yet been required to meet the contingency as the person has not lived to the age of 21.

52209 - 52214

Life interest or life rent

52215 In England and Wales people have a life interest or in Scotland a life rent in a trust if they have an interest for the duration of their life. A person may have a life interest or a life rent in the

1. capital **or**

2. real or heritable property (see DMG 52020 **4.**), such as a house
or a trust.

People will receive the income from capital if they have a life interest or life rent in it.

52216 For example, a person has a life interest or a life rent in the

1. income if the terms of a trust say a person can have the interest paid on the funds of the trust for life **or**

2. property if the terms say a person has the right to live in it for life.

52217 People keep the right to live in the property even if they do not live in it. But the trustees may decide to sell the property if the person no longer needs it to live in for example when a person goes permanently into residential care.

52218 If the property is sold the person will have a right to

1. the income from the money the trustees get from selling the property **or**

2. be paid a lump sum from the money equal to the value of the person's remaining life interest or life rent.

52219 Rights under a life interest or life rent end with the death of the person who has the life interest. The assets of the trust fund do not form part of their estate.

52220 - 52224

Reversionary interest

52225 In England and Wales an interest in a trust is reversionary if the possession or enjoyment of it is postponed to the prior interest of another person in the same capital.

52226 For example, Noah has a reversionary interest in a house if the terms of the trust say

1. Edna has a life interest in that house **and**

2. Noah gets the house on the death of Edna.

Noah's interest in the house is reversionary until he takes possession of the house. Noah takes possession of the house when Edna dies.

52227 A reversionary interest is not the same as a contingent interest because people with a reversionary interest already have an interest in a trust. They do not have to do something or wait for something to happen before they get an interest in a trust but a person with a contingent interest does.

52228 If people with a reversionary interest die before they take possession of their interest the reversionary interest is included in their estate.

Vested interest

52229 Children or young people have a vested interest in capital which

1. they are the beneficial owners of **and**

2. is being held for them until they reach the age of majority, which in England and Wales is 18 years old and in Scotland 16.

52230 A vested interest is not the same as a contingent or reversionary interest because the capital

already belongs to the child or young person. A child or young person may have a contingent or reversionary interest in a trust which has been set up with another person's capital.

52231 If children and young people with a vested interest die before they get their interest the interest is included in their estate.

52232 In England and Wales trustees may decide to pay the income earned on a vested interest to the parent or guardian of the child or young person who has the interest[1]. If the trustees make a payment of income it is income which is treated as capital. The trustees cannot be made to pay over the income.

1 Trustee Act 1925, s 31(1)(i)

52233 - 52235

Discretionary trusts

52236 A discretionary trust is one where the trustees have the discretion to make payments to certain people. Such people have an interest and in England and Wales are called discretionary objects. In Scotland such persons are simply called beneficiaries or more fully discretionary beneficiaries.

52237 Many trusts let the trustees invest the capital of a trust at their absolute discretion. This means the trustees have a choice in how the capital is invested. This does not mean the trust is a discretionary trust. There has to be something else in the terms of the trust to show it is a discretionary trust.

52238 The trustees of a discretionary trust may or may not make payments to the people with an interest. The trustees cannot be made to make payments to those people.

52239 If the trustees make a payment it is a voluntary payment. If the payment is

1. made regularly, it is taken into account as income other than earnings **or**

2. not made regularly, it is capital.

If the trust has been set up by a liable relative the DM has to decide if payments from the trust are LRPs.

Note: Some voluntary payments may be disregarded - see DMG 52729

52240

Charitable trusts

52241 A charitable trust is a trust which is set up for

1. the relief of poverty **or**

2. the advancement of education or religion **or**

3. any other purpose which benefits the community.

Note: There is a more prescriptive list of charitable purposes in Scotland[1] and charities there are required to register with the Office of the Scottish Charity Regulator.

1 Charities and Trustee Investment (Scotland) Act 2005

52242 Trustees of a charitable trust have discretion to make payments to people who satisfy the terms of the trust. They may or may not make payments. They cannot be made to make payments.

52243 If the trustees make a payment it is a charitable payment. If the payment is

1. made regularly, it is taken into account as income **or**

2. not made regularly, it is capital.

Jointly-owned capital

Real or heritable property

52244 In England and Wales, when two or more people jointly own real property (see DMG 52020 **4.**) they do so as

1. joint-tenants **or**

2. tenants in common.

52245 When people jointly own real property as joint-tenants each person owns the whole asset jointly and they have no separate and distinct shares. If a joint-tenant dies the asset passes to the surviving joint-tenant or joint-tenants. However when people jointly own real property as tenants in common each person's interest in the asset is their own share. The shares of tenants in common may be equal or unequal. If a tenant in common dies their share of the asset does not pass automatically to the surviving tenant or tenants in common.

52246 The terms joint-tenants and tenants in common are legal terms appropriate to joint ownership of real property in England and Wales. DMs should not confuse them with tenancies that arise when people rent land or premises.

52247 In Scotland property is almost always owned as common property (see DMG 52020 **4.**). Legal advice should be sought if it is suggested that property is held on any other basis.

52248 Where two or more people own property as common owners, each has a separate share in the property which they can dispose of independently of the other common owners.

52249 If a claimant beneficially owns a capital asset with one or more persons the DM will have to decide whether those people own the asset as

1. joint-tenants **or**

2. tenants in common or, in Scotland, common owners.

52250

How to decide ownership of jointly-owned capital

52251 In England and Wales, when two or more people buy real property they should be asked

1. whether they wish to be

1.1 joint-tenants **or**

1.2 tenants in common **and**

2. if **1.2** applies the share of the property each person wishes to own.

Example

Anthony and his civil partner Guy decide to buy a house in Bedford. When asked, Guy wants to leave his share of the property to his children Paul and Sarah. Anthony and Guy therefore agree to be tenants in common. Anthony provided 75% of the purchase price and Guy the other 25%. They therefore agree that Anthony should own 75% of the property and Guy should own 25%.

52252 In Scotland the presumption is that common property is owned in equal shares, but the parties can provide in the title that different shares are to apply.

Example

Fraser and his wife Morag decide to buy a house in Dundee. They wish both their names on the title deeds. They will be common owners. It will be presumed that they own it in 50:50 shares, though they can provide in the title deeds that different shares are to apply

Other ways to become tenants in common or common owners

52253 As well as making a decision when real or heritable property is bought, there are other ways in which people can become tenants in common or common owners. These include

1. being left real or heritable property under the terms of a will

2. contributing to the purchase price of real or heritable property, for example under the right to buy scheme (see DMG 52309 et seq)

3. changing from joint-tenants to tenants in common.

Example 1

Sue and Melinda are sisters who inherited their mother's house. The terms of their mother's will specified that Sue should own 60% of the house and Melinda 40% of the house as tenants in common.

Example 2

Cecilia bought her council house under the right to buy scheme. She obtained a statutory discount of £8,000. Her son Ross provided the other £32,000 necessary for her to buy the house. The statutory discount obtained by Cecilia is her contribution to the purchase price of the property. There is no evidence that Cecilia and Ross wanted to own different shares in the house. Therefore Cecilia owns 20% of the property and Ross 80%.

Note: In Scotland if Cecilia had bought the house in her name, then she owns 100% of the property. Ross would simply have a right to get his £32,000 back on whatever terms it was loaned. And if the property was bought in joint names (i.e. as common property), then the presumption here is that they each own 50% unless they provide otherwise.

Example 3

When Graham and Carrie were married they bought a house as joint-tenants. However, when they divorced Graham gave notice to Carrie that he wished to put an end to his 50% interest in the property. Graham did this so that in the event of his death the house would not automatically pass under the rules of survivorship to Carrie. The effect of this notice is that the joint-tenancy is changed into a tenancy in common which gives both Graham and Carrie separate and distinct shares in the property.

52254 In England and Wales where one person uses their money to buy real or heritable property in the name of another person there is a presumption of a resulting trust (see DMG 52308). If that other person also contributes to the purchase of the property the two people will be tenants in common unless there is evidence of a contrary intention. However, DMs should note DMG 52308 **1.** and the rule of presumption of advancement (see DMG 52150 et seq).

52255 A person who is a tenant in common or common owner does not necessarily own an exact percentage of a property. For example, one person could own 36.71% of a house and another person the other 63.29%.

52256 After it has been agreed between tenants in common or common owners what share each person owns it is possible for the agreed shares to be varied (In Scotland this would require express agreement as to how the shares were to vary). This may happen where a tenant in common or common owner

1. pays

1.1 the mortgage **or**

1.2 a greater share of the mortgage

on a property **or**

2. spends money on improvements to a property.

Example

Shahid and his brother Saleem bought a house together as tenants in common. They agreed that each of them should own 50% of the property and pay half the mortgage. Shahid takes unpaid leave from his job to travel abroad so he is not able to make repayments on his share of the mortgage. Saleem therefore agrees to pay all of the mortgage on the property. Saleem's share of the property increases in proportion to the extra payments he makes. Shahid's share of the property decreases by the same amount.

52257 If a claimant reduces his share of a jointly-owned property the DM should consider the rules on deprivation of capital see DMG 52805 et seq.

Evidence of joint-ownership

52258 Evidence of the type of joint-ownership of real or heritable property and if appropriate the share each person owns can be obtained from

1. the deeds to the property **or**

2. information on the file of the solicitor acting for the people buying the property **or**

3. a definitive agreement between the people buying the property.

52259 When a claimant states that he owns a share of real or heritable property as a tenant in common or common owner the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the property. If the claimant is unable to provide evidence of unequal shares in the property, the DM should decide on the balance of probability (see DMG 01340 et seq) that the shares are equal.

Other assets

52260 Two or more people may jointly own other assets such as bank accounts (see DMG 52135) and shares. When a claimant states that he has a separate right of ownership of an asset the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the asset.

Example

Alice and her father have a joint building society account. The account is in both their names so they are joint legal owners of the account. There is £15,000 in the account on the date of Alice's claim for ESA.

Alice provides evidence that both she and her father paid money into the account but no evidence of the amount paid by each of them. The DM decides that Alice is treated as having a half share in the account (£7,500).

52261 A person does not have a joint beneficial interest in a trust if more than one person has an interest in that trust. Each person's interest belongs to that person. It is not shared with other people having an interest in the trust.

Jointly-owned capital outside the United Kingdom

52262 To decide the type of joint ownership of a capital asset outside the UK the DM should consider

1. the law of the country where the asset is held **and**

2. the basis on which the asset is held.

The DM should obtain evidence of joint ownership. If the DM is satisfied that the law of the country where the asset is held is not different, the guidance at DMG 52244 et seq should be followed. DMs should send cases of doubt to Decision Making and Appeals (Leeds) for advice.

Valuation of jointly-owned capital

52263 See DMG 52637 - 52653 for guidance on how to value a claimant's share of jointly-owned capital.

52264 - 52265

Couples who are separated or divorced or whose civil partnership has been dissolved

52266 People who are married or are civil partners and have separated are the beneficial owners of capital if they were the owners before the breakdown of the marriage or civil partnership. That capital is included when working out what capital a person has.

52267 After they have separated, divorced or dissolved their civil partnership a couple may

1. ask a Court to **or**

2. on the advice of their solicitors **or**

3. themselves

decide how their capital should be divided. In England and Wales the proceedings in Court are called ancillary relief proceedings. There is no Scottish equivalent, in Scotland it is just a court action.

52268 A Court may take into account[1]

1. the ages of the couple

2. their state of health

3. whether they are able to work and, if so, what earnings they can get

4. how long they have been married or in a civil partnership or, in Scotland, how long each party has been economically dependent on the other

5. each person's needs

6. what one of them is able to give to the other

before issuing an order which will say what capital each of them gets.

1 Matrimonial Causes Act 1973, s 25 & Family Law (Scotland) Act 1985, s 11

52269 A Court may decide that the house in which they used to live

1. cannot be sold until a future date if children of the marriage or civil partnership are still living in it **or**

2. can be given to the one who the children are living with and the other one gets

2.1 money immediately or in the future **or**

2.2 no money.

52270 People will be the beneficial owners of any capital the Court awards them outright[1].

1 R(IS) 4/96

52271 If the couple do not go to Court and share up the capital

1. in the way their solicitors say **or**

2. between themselves

a person will be the beneficial owner of the capital the person is left with. If **2.** applies and there is clear evidence that capital has been given away so the person can get benefit or more benefit the DM should decide whether the person has notional capital.

52272 A person may seek an order for financial provision and property adjustment in connection with a divorce or dissolution of a civil partnership, an action to have a marriage or civil partnership declared null, or a separation[1].

1 Matrimonial Causes Act 1973 & Civil Partnership Act 2004

52273 A person does not have a beneficial interest in any capital they are seeking unless and until a property adjustment order is made[1].

1 R(IS) 1/03

52274 - 52275

Mentally sick or disabled persons

Beneficial interest

52276 People who are

1. mentally sick or disabled **and**

2. unable to deal with their capital

do not lose their beneficial interest in capital[1]. Another person may be appointed to deal with it.

1 R(IS) 9/04

Court of Protection

52277 In England and Wales the Court of Protection

1. protects **and**

2. deals with

the capital of a mentally sick or disabled person[1].

1 Mental Health Act 1983; Mental Capacity Act 2005

52278 The Court may appoint another person to deal with the capital. A person appointed by the Court is called a Deputy. The Court will issue an order which says what

1. money the Deputy can deal with **and**

2. the Deputy has to do with the money.

The Deputies have to go back to Court if they want more money or to do something else with the money.

52279 The Court may take some time to reach a decision. The Court can issue interim certificates if mentally sick or disabled people need money immediately to pay for their day to day needs such as nursing home fees. The certificate will say what and how much money can be used by a person to pay for

those needs.

52280 Capital held by the Court or Deputy is held on trust.

Note: The Deputy used to be known as the Receiver.

The Courts in Scotland

52281 In Scotland, the Office of the Public Guardian supervises persons who manage the financial affairs of adults with incapacity, either in general or in relation to particular items of property. Such persons are known as guardians, or financial guardians, and are appointed by the Sheriff. More than one guardian may be appointed. The person will always be a named individual (rather than, for example, a social work department) and will be issued with a certificate of appointment by the Office of the Public Guardian[1].

1 Adults with Incapacity (Scotland) Act 2000

Power of Attorney

52282 People who give another person power of attorney authorize that person to deal with

1. all of their property if they give the person unlimited power **or**

2. some of their property if they give them restricted power.

52283 People who give another person power of attorney remain the beneficial owners of their capital.

52284 In England and Wales people with power of attorney are not authorized if the person who gave them power

1. becomes mentally sick or disabled **and**

2. the power has not been registered with the Court of Protection.

52285 In Scotland people with power of attorney are not authorized if the person who gave them power becomes incapable of making decisions about the matters to which the power relates **unless** the power states that it is intended to continue in that situation **and** the power has been registered with the Office of the Public Guardian. That Office will have issued a certificate of registration confirming that the power has been registered as a continuing power (a certificate that says it relates to a welfare

power is something different). However, a power of attorney that was granted prior to 2.4.01 is not subject to this condition, and will continue in force even if the granter becomes incapax, unless the power specifically provides for it to lapse in that situation. Pre-2.4.01 powers do not require to be registered with the Office of the Public Guardian.

Appointees

52286 A person appointed by the DM to act, for SS purposes only, on behalf of another person is called an appointee.

52287 Such appointment only allows a person to deal with benefit matters. An appointee is not authorised to deal with other property of the person who is unable to act (though they may, of course, have a power of attorney or hold an appointment by a court which gives them the ability to undertake such dealings).

Person not appointed or authorized

52288 A person who has not been

1. appointed **or**

2. authorized

who is holding capital of a mentally sick or disabled person is holding it on trust.

Misuse of capital

52289 Mentally sick or disabled people have rights to capital if the person who is

1. appointed or authorized to deal with their capital **or**

2. not appointed or authorized

misuses the capital. For example, if they use the capital for themselves or give it away. In such circumstances the beneficial owner has in England and Wales a chose in action to recover the capital that has been misused and, in Scotland, has a claim against the person for the misuse (see DMG 52036). The value of the chose in action or, in Scotland, the value of the claim, is actual, not notional, capital[1].

1 R(IS) 17/98

52290 However, a person who has power of attorney for another person can make gifts that are not unreasonable[1]. Examples of gifts that are not unreasonable to make are normal birthday, wedding or seasonal (for example Christmas) gifts. Where gifts that have been made by a person with power of attorney are unreasonable DMG 52289 applies but where they are not unreasonable DMG 52805 et seq should be considered[2].

1 Enduring Powers of Attorney Act 1985, s 3; Mental Capacity Act 2005, s 12; 2 R(IS) 17/98

Example

Helen has power of attorney for her mother, Barbara, who is in receipt of ESA(IR). Helen's daughter,

Kaitlan, celebrates her eighteenth birthday. Barbara had told Helen that she would buy Kaitlan a car for her eighteenth birthday. Helen therefore gives Kaitlan £2,000 of Barbara's money so she can buy a car. The DM decides that the gift is not unreasonable. The DM also considers whether the rules on notional capital apply.

52291 - 52299

Real property

Ownership of real property

52300 In England and Wales the legal owner of real property (see DMG 52020 **4.**) is also the beneficial owner unless there is

1. something in writing such as a conveyance that

1.1 dates from the time the person gets the property **and**

1.2 says who has a beneficial interest in the property **or**

2. a mistake is made **and**

2.1 nothing is put in writing **or**

2.2 what is put in writing is wrong **or**

3. a fraud which shows the person got the property dishonestly **or**

4. a resulting trust (see DMG 52308).

Note: In Scotland the normal presumption would be that the heritable property was owned by whoever was named on the property titles until they were corrected.

52301 An attendance note or other information in the file of the solicitor acting for the legal owner when the property is bought may show a mistake has been made. For example, there is

1. an attendance note which says the legal owners told the solicitor who they wanted the beneficial owners to be **or**

2. evidence which says another person put up all or some of the money to buy the property and had not made a gift of it to the legal owners.

52302 Accept what the legal owners say if

1. they say they have no beneficial interest in the property or only a share in it **and**

2. there is evidence from the solicitor which agrees with what the legal owners say.

52303 Accept people named as the actual owners are the legal and beneficial owners of the property if there is evidence which says

1. those claiming to own the property got it dishonestly **and**

2. who the actual owners of the property are.

52304 If there is no evidence of a mistake or a fraud the DM has to decide who has a beneficial interest in the property.

52305 It is very difficult to get a beneficial interest in real property after it has been bought. However people can be given a beneficial interest, for example by a deed gift.

52306 People do not necessarily get a beneficial interest in property just because they

1. pay the legal owner's mortgage on the property **or**

2. spend money on the property, for example paying for central heating to be installed.

Such people may have a charge on the property. The amount of the charge is equal to the amount of money they have spent. Such a charge is sometimes called a lien.

52307 The partner of the legal owner of a property can get a beneficial interest in that property if they pay the mortgage because the legal owner can no longer afford to do so.

Resulting trust

52308 In England and Wales legal owners are holding property on a resulting trust if another person puts up the money to buy the property and

1. there is no evidence to say the other person has given the money or the property to the legal owners **and**

2. the rule of presumption of advancement (see DMG 52150 - 52153) does not apply[1].

1 R(SB) 49/83; R(SB) 1/85

Right to buy scheme

52309 The right to buy scheme lets some LA tenants buy the property they are tenants of at a discounted price. The amount of the discount is based on the number of years the person has been a tenant.

52310 In England and Wales people who buy property under the right to buy scheme have a beneficial interest in the property because of the discount they get. They are

1. the legal and beneficial owners of the property if they use their money or raise money to pay all of the balance of the purchase price **or**

2. the joint legal and joint beneficial owners if

2.1 another person uses their money or raises money to pay all of the balance **and**

2.2 the person at **2.1** is one of the legal owners **or**

3. holding the property on trust for themselves and another person if that other person

3.1 uses their money or raises money to pay all of the balance **and**

3.2 is not a legal owner.

52311 Under the scheme the people buying the property have to pay back some of the discount if the property is sold within three years of it being bought.

52312 In Scotland a person who buys a property under the right to buy scheme would be the owner subject to any security (i.e. a mortgage) arrangements. There is no Scottish concept of beneficial ownership in this situation.

52313 - 52329

When a person is not the beneficial owner of capital

Bankruptcy

52330 When a person is made bankrupt

1. in England and Wales a Receiver in Bankruptcy **or**

2. in Scotland an interim trustee

is appointed. Then a Trustee in Bankruptcy is appointed. In Scotland the Trustee in Bankruptcy is known as the Permanent Trustee or Trustee in Sequestration. The Trustee in Bankruptcy or, in Scotland, a Permanent Trustee or Trustee in Sequestration, may be the same person as the Receiver in Bankruptcy or interim trustee.

52331 People who have been made bankrupt have no power to deal with their property except with the approval of the court once the bankruptcy order is made. This being so, they should normally be treated as having no beneficial interest in their capital from the date of the order. It may be some time after this that the trustee in bankruptcy is appointed.

1 KS v SSWP (JSA) [2009] UKUT 122 (AAC) [2010] AACR

352332 If the bankrupt person is the joint beneficial owner of capital the other beneficial owners still have a beneficial interest in the capital unless they are also bankrupt.

Court orders

52333 In England and Wales a Court can make an order such as a restraint order which stops people withdrawing or selling their capital.

52334 The order will list the capital involved.

52335 During the period of the order the people named in the order remain the beneficial owners of the capital. The restraint order restricts a person from dealing with the property listed in the order so that they are unable to do anything with it that is not permitted under the order. The practical effect of this is that while a person will be the beneficial owner of the property, the value of such property is shown as nil for benefit purposes.

52336 The period starts with the date of the order and ends on the date

1. given in the order **or**

2. the Court withdraws the order.

52337 The order may let people withdraw a fixed sum of money each week from their capital to pay for living expenses. If money is withdrawn it should be treated as the person's capital. If the claimant spends the amount he is allowed to withdraw then this will have no effect on his benefit.

52338 In Scotland an arrestment has a similar effect.

Liability to repay capital

52339 People have a beneficial interest in capital that has been given to them even if it has to be repaid. However, people no longer have a beneficial interest in capital they have been given if they are under a certain and immediate liability to repay it[1]. People are no longer the beneficial owners of the capital from the date the certain and immediate liability arises.

1 R(IS) 5/99

52340 - 52350

Can capital be disregarded 52351 - 52358

The law

52351 [See DMG Memo 11/20] The law allows for all capital to be included in the claimant's resources unless it can be disregarded[1].

1 ESA Regs, reg 111 & Sch 9

Onus of proof

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

What the DM decides

52353 The DM decides if capital can be disregarded

1. at the date of claim, revision or supersession **and**

2. before it is valued.

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

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

52355 For certain disregards the DM has to decide if it is reasonable to disregard capital for a longer period. Capital is disregarded[1]

1. indefinitely **or**

2. up to two years **or**

3. 52 weeks **or**

4. 26 weeks or more if it is reasonable **or**

5. 26 weeks **or**

6. for a prescribed period.

1 reg 111 & Sch 9

52356 The length of the disregard[1] depends on

1. the type of capital **and**

2. the circumstances of the claimant.

1 Sch 9

52357 - 52358

Capital disregarded indefinitely 52359 - 52483

Adoption allowance 52359 - 52360

Special guardianship payments 52361

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Capital which is treated as income 52379 - 52386

Dwelling occupied as the home 52387 - 52399

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Income payable in a country outside of the United Kingdom 52403

Life insurance policies 52404 - 52406

Life interest or life rent 52407

Money deposited with a housing association 52408

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Health in pregnancy grant 52411

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Payment for loss of housing benefit 52413 - 52414

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Payment in kind 52418

Payment made by local authority under child care law 52419 - 52420

Payment made to disabled persons to obtain or retain employment 52421 - 52422

Payment made to holders of the Victoria Cross or George Cross 52423

Payment made to homeworkers under the Blind Homeworkers Scheme 52424

Payments from a local authority in lieu of community care services or health care 52425

Payments under the Supporting People programme 52426

Personal pensions 52427 - 52429

Personal possessions 52431

Premises lived in by a partner or relative 52432 - 52436

Rent 52437 - 52438

Social fund payments 52439

Special educational needs 52440

Tax refunds 52441

The Independent Living Fund (2006) 52442 - 52446

The Macfarlane Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund 52447 - 52470

Payments to persons imprisoned or interned by the Japanese during the Second World War 52471

Payments made to sufferers of variant Creutzfeldt-Jakob disease and their partners 52472 - 52476

Second World War compensation payments 52477 - 52478

Age related payments 52479

Education maintenance allowance payments 52480

16-19 Bursary Fund 52481 - 52482

Local welfare provision 52483

Funeral support payments 52484

Adoption allowance

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

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

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

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

52360 Payments of adoption allowances made under specific legislation[1] are disregarded indefinitely[2].

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

Special guardianship payments

52361 Special guardianship payments are made in England and Wales to provide more security for a child than long-term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Any special guardianship payment made to the claimant under specific legislation[1] is fully disregarded indefinitely[2]. In order to find out if the payments are made under the specified legislation, the DM can make enquiries of the paying body.

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

Annuities

52362 An annuity is a fixed sum payable at specified intervals in return for a premium paid either by instalments or in a single payment. An annuity is normally taken out to provide an income in retirement. Both the right to receive income from an annuity and the surrender value of the annuity are disregarded indefinitely[1]. Payments made under an annuity are capital which is treated as income[2].

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

Best Start Grants

52363 [See Memo DMG 22/20] The Scottish Government introduced Best Start Grants to provide early years assistance to people living in Scotland[1]. From 10.12.18 under Best Start Grants, Pregnancy and Baby Grants are being introduced, with other elements introduced at a later date. The Scottish Government will be responsible for deciding on the claims to these grants and for making payments. All elements of Best Start Grant are disregarded indefinitely[2].

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

Business assets

The law

52364 **[See Memo DMG 13/20]**The assets of a business are disregarded indefinitely if

1. the person owns all or some of the business assets and is engaged in the business as a S/E earner[1]**or**

2. the business assets have been acquired by a person receiving assistance under the S/E Employment Option of the ND (see DMG 14132) for the purpose of establishing or carrying on the commercial activity for which the assistance is being received[2].

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

52365 The assets of a business are disregarded for a reasonable period to allow them to be sold or otherwise disposed of if the person

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

2. was receiving assistance under the S/E Employment Option of the ND (see DMG 14132) and has ceased carrying on the commercial activity in respect of which such assistance was being received[2].

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

Example

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

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

Meaning of business assets

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

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

Meaning of "reasonable period"

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

1. the date that the duty to dispose of the asset arose

2. the nature of the asset and the period within which that particular type of asset would normally be expected to be sold or disposed

3. any legal obligations and restrictions existing that could affect both the sale **and** disposal of any assets (e.g. in a partnership situation, the provisions of the partnership deed and the Partnership Act 1890. These provisions could place restrictions and subsequent delays on both the sale of assets, and the disposal of any cash assets resulting from the sale).

Meaning of self-employed earner

52369 S/E earner means a person

1. who is gainfully employed in GB (see DMG 070702) **and**

2. whose employment is not the same as that of an employed earner[1]

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

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

1. under a contract of service **or**

2. in an office, including an elective office, with general earnings[1].

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

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

52371 People are working in the business if they do some work for the business in a practical sense. There is no set definition of the type and amount of work that has to be done for the person to be classed as a S/E earner and the DM must decide each case on its merits[1].

1 R(IS) 14/98

52372 A partner in a business managed and worked exclusively by others is not working in the business as a self-employed earner. Even if that person receives a share of the profits of the business he is not a S/E earner[1].

1 R(IS) 14/98

Capital administered by the court

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

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

1.1 of any such court **or**

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

2. in Scotland, the Court of Session or Sheriff Court under certain rules[2].

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

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

1. an award of damages for personal injury to the person whose capital is being administered by the court[1] **or**

2. compensation for the death of one or both parents where the person concerned is under the age of 18[2].

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

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

Capital paid by instalments

52375 The value of the right to receive any outstanding instalments is disregarded indefinitely if capital is due to be paid by instalments[1].

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

1 Sch 9, para 21

Capital which is not sterling

52376 Bank charges and commission which are payable when changing capital which is not paid as sterling into sterling are disregarded indefinitely[1]. For example, if people get capital of 3,000 Canadian dollars they will have to pay commission when the dollars are changed into British money, so the commission is disregarded.

1 Sch 9, para 26

Payments from a Thalidomide trust

52377 Payments made from a trust approved by the Secretary of State that has been set up to give relief and assistance to disabled people whose disabilities were caused by the fact that during pregnancy their mother had taken the drug known as Thalidomide, are disregarded indefinitely[1].

1 ESA Regs, Sch 9, para 61

Kinship care payments

52378 An LA in Scotland 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. 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 such payments are disregarded indefinitely[1].

1 ESA Regs, Sch 9, para 61

Capital which is treated as income

The law

52379 Capital which is treated as income under ESA legislation[1] is disregarded as capital indefinitely[2].

1 ESA Regs, reg 105 & 137; 2 Sch 9, para 25

Capital paid by instalments - claimant and partner

52380 For claimants and partners capital which is payable by instalments is treated as income if on the date of

1. the first day in respect of which ESA(IR) is payable or date that the claim is determined, whichever is earlier **or**

2. in the case of a supersession, the date of that supersession

the total of the amount of the instalments outstanding and the amount of a person's other capital is more than £16,000 as calculated in accordance with the guidance in this chapter[1].

1 ESA Reg, reg 105(1)

52381

Payment made under an annuity contract

52382 Payments received under an annuity contract[1] are treated as income.

1 ESA Reg, reg 105(2)

Earnings

52383 Any earnings which are not income are treated as income[1].

1 ESA Reg, reg 105(3)

Career Development Loan

52384 A Career Development Loan paid under certain legislation[1] is treated as income[2].

1 E & T Act 73, s 2; 2 ESA Regs, reg 105(4)

Example

Roger is in receipt of ESA(IR). His wife, who is unemployed, receives a Career Development Loan of £8,000 to fund a 2 year course of vocational learning. The loan is arranged through the Learning Skills Council and with a high street bank. The payment is treated as income but is subject to a disregard (see DMG Chapter 51).

Personal injury payments

52385 Any periodical payments (but not any payments treated as capital) received by the claimant as a result of an agreement or court order are treated as income if the payments are a consequence of any personal injury sustained by the claimant[1]. The meaning of made as a consequence of a personal injury

can include where the claimant's solicitor fails to secure the personal injury payment and the claimant sues their solicitor for professional negligence and receives a compensation payment to the value of what they should have received. However if any damages are also paid for any additional loss created by the professional negligence then this would not be disregarded[2].

1 ESA Regs, reg 105(5); 2 KQ v SSWP (IS) [2011] UKUT 102 (AAC); [2011] AACR 43

Example

Lucinda was injured in a car accident and can no longer work. She is in receipt of ESA(IR). The court ordered that regular payments of £3,000 should be paid to Lucinda as a result of her injuries. The DM treats these payments as income but the payments are subject to a disregard (see DMG Chapter 51).

Student loans

52386 A student loan paid under education law[1] is treated as income[2].

1 Teaching and Higher Education Act 1998, s 22; Education (Scotland) Act 1980, s 73(3), 73B & 74; Education (Student Support) (Northern Ireland) Order 1998, art 3; Students' Allowances (Scotland) Regs, reg 4(1)(c); 2 ESA Regs, reg 137(1)

Dwelling occupied as the home

The law

52387 The dwelling occupied as the home is disregarded indefinitely. Only one dwelling can be disregarded[1]. However in some circumstances, more than one property can be the dwelling occupied as the home[2] (see DMG 52397 et seq).

1 ESA Reg, Sch 9, para 1; 2 Secretary of State v. Miah; R(JSA) 9/03

Meaning of dwelling

52388 Dwelling means any residential accommodation. This can be

1. all or part of a building **and**

2. separate and self-contained or not separate and not self-contained[1].

1 ESA Regs, reg 2(1)

Meaning of dwelling occupied as the home

52389 Dwelling occupied as the home means

1. the place normally lived in by the claimant as their home and any

1.1 garage

1.2 garden

1.3 outbuildings **and**

2. any part not lived in as the home which

2.1 cannot be sold separately **or**

2.2 would not be practicable or reasonable to sell separately

in particular in Scotland any croft land on which the place lived in stands[1].

1 ESA Regs, reg 2(1)

Onus of proof

52390 The person owning the property has to show what part of the property is occupied as the home.

52391 The DM has to show

1. what part of the property can be sold separately **and**

2. if it is reasonable for it to be sold separately[1].

1 R(SB) 27/84

Example

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

52392 The DM may need expert advice, for example from a surveyor, to show the part can be sold separately. Separate guidance sets out those cases where DMs may require such expert advice (see DMG 52647).

52393 The DM does not need to get expert advice if

1. there is evidence which shows the part cannot be sold separately even if it has a separate value, for example if the deeds of the property say it has to be sold as one unit the part would be part of the

dwelling occupied as the home **or**

2. the DM decides it is not reasonable for the part to be sold separately.

Dwelling which has not been occupied as the home

52394 A dwelling which

1. has been bought **and**

2. has not been lived in as the home by the claimant or any member of the claimant's family cannot be disregarded[1] as the dwelling occupied as the home.

1 R(SB) 27/84

Dwelling not occupied as the home for a time

52395 A dwelling which is usually occupied as the home is disregarded if

1. it is not occupied for a period of time **and**

2. the intention is to return to live in the dwelling as the home.

For example, if a person goes into residential care on a temporary basis and intends to return to the house which the person usually occupies as the home, the house is disregarded.

Small-holdings

52396 A small-holding is disregarded as the dwelling occupied as the home if it is like croft land in Scotland[1]. A small-holding is like croft land if

1. it is no bigger than 30.375 hectares **and**

2. there is a perpetual tenancy agreement which says the agreement ends

> **2.1** if the small-holder gives one year's notice and the holders are paid for any improvements they have made to the house or outbuildings, otherwise
>
> **2.2** only if the tenant has broken the terms of the tenancy **and**

3. the tenant cannot sub-let all or part of the small-holding to anyone else.

1 R(SB) 13/84

More than one property owned

52397 If a claimant owns more than one property, the DM will have to decide whether each property can

be disregarded as the dwelling occupied as the home. Where a claimant has only one home that is spread over two physical buildings the DM should decide that each is the dwelling occupied as the home if each is normally occupied by the claimant.

52398 Factors the DM should consider when deciding whether the claimant has only one home are

1. the proximity of the properties, the closer properties are to each other the more likely they are to be one home

2. who lives in each property, for example whether

2.1 each property is occupied by members of the claimant's family (see DMG Chapter 43) **or**

2.2 one of the properties is occupied solely by non-dependants

3. the reason for the purchase of more than one property, for example whether it was

3.1 to avoid statutory overcrowding[1] **or**

3.2 an investment opportunity **or**

3.3 to have a

3.3.a weekend retreat **or**

3.3.b country cottage.

If **2.2**, **3.2** or **3.3** apply, the DM should decide that the claimant **does not** have only one home and therefore only one property would be disregarded as the dwelling occupied as the home.

1 Housing Act 1985, s 325 & 326; Housing (Scotland) Act 1987, s 136 & 137; Secretary of State v. Miah; R(JSA) 9/03

52399 When considering whether the claimant normally occupies more than one property as his home, the DM should decide that the claimant's home is the place where he

1. lives

2. eats

3. sleeps

4. bathes

5. relaxes

6. enjoys family life.

Example 1

Iain and Sharon have eleven children, eight of whom are at school and three of whom are in work. They all lived in a three bedroomed house. When Iain and Sharon are advised of the rules of statutory overcrowding they purchase another three bedroomed house in the same street. There are two other properties between the houses Iain and Sharon own. Sharon and the five youngest children continue to live in the original house and the other children go to live in the newly purchased house. Iain lives, sleeps, eats, bathes, relaxes and enjoys with his family the original house four days a week and the newly purchased house three days a week. Iain becomes ill and claims ESA. The DM decides that Iain normally occupies both houses. The DM also decides that both houses are disregarded as the dwelling occupied as the home.

Example 2

Carys lives in Cambridge and is in receipt of ESA(IR). She inherits a cottage in Wales. Carys has relatives who live in Wales. She therefore decides to keep the cottage for her use when she visits her relatives. The DM decides that the cottage in Wales is not disregarded as the dwelling occupied as the home.

Example 3

Bruce owns a house in London. He gets a job in Manchester and buys a flat there to live in during the week. He spends the weekends at his house in London. Bruce falls ill and returns to London to claim ESA. He states he will live in London but will visit his flat once a month in order to maintain it and possibly look for work in Manchester. The DM decides that Bruce does not normally occupy the flat in Manchester. The DM also decides that the flat in Manchester is not disregarded as the dwelling occupied as the home.

Example 4

Adam is single. He lives at 25 Station Road which is a semi-detached house. The house adjoining his, 27 Station Road, comes on the market after being uninhabited for two years. It is in a derelict condition. Adam buys it cheaply. He sometimes sleeps and eats at 27 Station Road while he undertakes the necessary repairs in order to let or sell it but he spends most of his time at 25 Station Road. Adam then

suffers an injury at work and claims ESA. The DM decides that as Adam purchased 27 Station Road as an investment it is not disregarded as the dwelling occupied as the home.

Example 5

Wasim and his wife Ruksana live in a four bedroomed house. They have twelve children. To avoid statutory overcrowding, Wasim and Ruksana buy another house in the street where they live. Their four eldest children, all of whom are aged over 21 live in this other house and Wasim, Ruksana and their other children do not spend any time there. Wasim makes a claim for ESA. The DM decides that only the house where Wasim and Ruksana live can be disregarded as the dwelling occupied as the home.

Future interests in capital

52400 A future interest in property of any kind is disregarded indefinitely. This does not apply to an interest in real or heritable property (see DMG 52020 **4.**) on which a person has given another person a continuing

1. lease or sub-lease **or**

2. tenancy or sub-tenancy[1].

1 ESA Regs Sch 9, para 9

52401 For example

1. a person's contingent or reversionary interest in a trust is disregarded up to the time the person gets the interest because a contingent or reversionary interest is a future interest

2. capital which is due now and which has not been paid is not disregarded because a person has current rights to that capital and so it is not a future interest

3. a house which a person owns and has leased to another person is not disregarded because the disregard does not apply to real or heritable property that is let.

52402

Income payable in a country outside of the United Kingdom

52403 The value of the right to receive earnings from employment or other income is disregarded indefinitely if they are

1. payable in a country outside of the UK (see DMG 070880) **and**

2. disregarded when working out the amount of earnings or income for the time during which they cannot be transferred to the UK from that country due to a ban[1].

1 ESA Regs, Sch 9, para 19

Life insurance policies

The law

52404 The surrender value of any policy of life insurance still in force is disregarded indefinitely[1].

1 ESA Reg, Sch 9, para 20

Meaning of a policy of life insurance

52405 A policy of life insurance means a written document which says a payment of money will be made

1. on death (but not one which says payment is made only if the death is accidental) **or**

2. if death happens

2.1 in certain circumstances **or**

2.2 during the period a person has agreed to pay premiums[1].

1 ESA Reg, reg 2(1)

Investments which include life insurance

52406 Investments which include some life insurance are disregarded indefinitely if the agreement states how payment on death is worked out. It does not matter whether the amount paid on death is

1. more than **or**

2. equal to **or**

3. less than

the amount the person would get if the investment is surrendered the day before the date of death[1].

1 R(IS) 7/98

Life interest or life rent

52407 The value of the right to receive income

1. under a life interest **or**

2. from a life rent

is disregarded indefinitely[1].

Note: Payments of income under a life interest or from a life rent are taken into account as income.

1 ESA Regs, Sch 9, para 18

Money deposited with a housing association

52408 Money deposited with a housing association is disregarded indefinitely if

1. the money has to be deposited as a condition of living in the home **and**

2. the housing association comes under housing association law[1].

Note: A different disregard applies if the money deposited is to be used to buy another home (see DMG 52532 - 52534).

1 Housing Associations Act 1985, s 1(1); ESA Regs, Sch 9, para 13(a)

Occupational pensions

The law

52409 The value of the right to receive an occupational pension is disregarded indefinitely[1].

1 ESA Reg, Sch 9, para 28

Meaning of occupational pension

52410 Occupational pension means a

1. pension **or**

2. periodical payment

under an occupational pension scheme. But it does not include discretionary payments made from a fund which is for the relief of hardship in particular cases[1].

1 ESA Regs, reg 2(1)

Health in pregnancy grant

52411 The grant is payable to every woman from the 25th week of pregnancy after they have had appropriate health advice from a health professional. It is a one off non-taxable payment and should be disregarded when calculating the capital of the claimant[1].

1 ESA Reg, Sch 9, para 38A

Payment for attending court

52412 A payment made to a juror or witness for attending court is disregarded indefinitely but not if the payment is compensation for

1. loss of earnings **or**

2. benefit payable under social security law[1].

1 ESA Reg, Sch 9, para 34

Payment for loss of housing benefit

52413 Any payment made by the DM to compensate for the loss of all or some of the HB a person can get is disregarded indefinitely[1].

1 ESA Reg, Sch 9, para 33

52414

Payment for personal injury

The law

52415 The value of

1. a trust if the funds of which it consists come from a payment made because of a personal injury **and**

2. the right to receive payment from that trust

are disregarded indefinitely where the payment is made as a result of an injury to either the claimant or partner[1]. For example, the value of a payment made by the Criminal Injuries Compensation Authority is disregarded if held on trust and so is the value of the right to receive payment from the trust. A trust exists if there is a separation of legal ownership and beneficial ownership of the payment. The disregard can apply even if there is no written trust document.

Note 1: Payments of income from the trust are income from capital and are taken into account as income and not capital. (See DMG Chapter 51 for how to treat such payments.)

Note 2: This disregard does not apply if the injury was to a claimant's deceased partner[2]

Note 3: A payment made in relation to the costs of care associated with an unwanted child in a "wrongful birth" case is a payment made because of a personal injury, for instance in the case of a failed sterilisation or vasectomy.

1 ESA Regs, Sch 9, para 16; 2 R(IS) 3/03

52416 For payments not held on trust see DMG 52503.

The Children's Memorial Trust

52417 The Children's Memorial Trust was set up as a result of Court action taken by parents of deceased children whose organs were retained by Alder Hey hospital without agreement. Payments are made from the Children's Memorial Trust to the parents in respect of each child. 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, the payment will be made in consequence of a personal injury to **them**. The value of a payment made by the Children's Memorial Trust is disregarded indefinitely if held on trust. The value of the right to receive payment from the Children's Memorial Trust is also disregarded indefinitely.

Payment in kind

52418 [See Memo DMG 15/21] **[See Memo DMG 07-23]** [See Memo DMG 08-25] A payment in kind is disregarded indefinitely if made by

1. a charity

2. the Macfarlane Trust (see DMG 52452)

3. the Macfarlane (Special Payments) Trust (see DMG 52453)

4. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52454)

5. the Fund (see DMG 52455)

6. the Eileen Trust (see DMG 52456)

7. MFET Limited (see DMG 52457)

8. Skipton Fund (see DMG 52458)

9. Caxton Foundation (see DMG 52459)

10. SIBSS (see DMG 52460)

11. an approved blood scheme (see DMG 52461)

12. the London Bombings Relief Charitable Fund (see DMG 52462)

13. the Independent Living Fund (2006) (see DMG 52442)[1].

1 ESA Reg, Sch 9, para 31

Payment made by local authority under child care law

52419 Any payment of capital made by the LA under specific child care legislation[1] is disregarded indefinitely[2].

1 Children Act 1989, s 17, 23B, 23C & 24A; Children (Leaving Care) Act 2000; Social Work (Scotland) Act 1968,
s 12; Children (Scotland) Act 1995, s 29 & 30; 2 ESA Regs, Sch 9, para 22(1)

52420 Where

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

2. the LA makes a lump sum payment under certain child care law[1] to the former child in care **and**

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

that sum received by the claimant is disregarded indefinitely[2], when calculating the claimant's capital.

1 Children Act 1989, s 23C; Children (Scotland Act) 1995, s 29; 2 ESA Regs, Sch 9, para 22(2) & (3)

Payment made to disabled persons to obtain or retain employment

The law

52421 Any payment (other than a training allowance) made by the Secretary of State or some other person under the law governing the employment of disabled people[1] to help disabled people obtain or retain employment despite their disability is disregarded indefinitely[2].

Note: See DMG 52505 for guidance on payments made to disabled people under employment and training law.

1 Disabled Persons (Employment) Act 1944; 2 ESA Regs, Sch 9, para 41

Schemes which help disabled people obtain or retain employment

52422 There are three special schemes which help disabled people obtain or retain employment. These are the

• business on own account scheme that helps a disabled person set up in business if they cannot get any other type of work

• personal reader service scheme that helps a blind person employ a reader

• fares to work scheme that helps certain disabled people who cannot use public transport to get to work.

Payment made to holders of the Victoria Cross or George Cross

52423 Any payment made to people because they hold the

1. Victoria Cross **or**

2. George Cross

is disregarded indefinitely[1].

1 ESA Regs, Sch 9, para 45

Payment made to homeworkers under the Blind Homeworkers Scheme

52424 A payment made by the LA under disabled persons' law[1] to homeworkers who are helped under the Blind Homeworker's Scheme is disregarded indefinitely[2].

1 Disabled Persons (Employment) Act 1958, s 3; 2 ESA Regs, Sch 9, para 42

Payments from a local authority in lieu of community care services or health care

52425 Payments received which are in lieu of

1. community care services[1] **or**

2. health care[2]

are disregarded indefinitely[3].

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

1 Community Care (Direct Payments) Act 1996; Health and Social Care Act 2001, s 57; Social Work (Scotland) Act 1968, s 12B; 2 National Health Service Act 2006, s 12A - 12D; 3 ESA Regs, Sch 9, para 56

Payments under the Supporting People programme

52426 Payments under the Supporting People programme are disregarded indefinitely[1]. The disregard applies

1. in respect of any payment made by

1.1 a LA (including a county council) **or**

1.2 Senedd Cymru and Welsh Parliament

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

2.1 provided to develop **or**

2.2 to sustain the capacity of

the claimant or partner to live independently in their accommodation.

1 ESA Regs, Sch 9, para 55

Personal pensions

The law

52427 The value of

1. the right to receive a personal pension **and**

2. any funds held under a personal pension scheme

is disregarded indefinitely[1].

1 ESA Regs, Sch 9, para 28 & para 29

Meaning of personal pension scheme

52428 Personal pension scheme[1] means a

1. personal pension scheme as stated in pensions law[2]

2. an annuity contract or trust scheme approved under tax law[3]

3. personal pension scheme approved under tax law[4].

1 ESA Regs, reg 2(1); 2 Pension Schemes Act 1993, s 1; 3 Income and Corporation Taxes Act 1988, Part XIV, Chapter III; 4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV

52429

Personal possessions

52430 Personal possessions such as clothing, jewellery, and cars are disregarded indefinitely (but see DMG 52432)[1].

1 ESA Regs, Sch 9, para 14

52431 Personal possessions are not disregarded if people buy them to reduce the amount of capital they have so that they can get

1. ESA, JSA or IS **or**

2. more ESA, JSA or IS[1].

1 ESA Regs, Sch 9, para 14

Premises lived in by a partner or relative

The law

52432 Premises such as a house or flat are disregarded indefinitely if they are occupied in whole or in part as the home by a

1. partner or relative of a single claimant or any member of the family **and** the partner or relative is

1.1 has reached the qualifying age for SPC **or**

1.2 is incapacitated **or**

2. former partner of the claimant **and** the claimant and former partner are not estranged, divorced or former civil partners whose partnership has been dissolved[1].

Note: A claimant and former partner who are separated are not necessarily estranged.

1 ESA Regs, Sch 9, para 4

Example

Max is in receipt of ESA(IR). He goes into residential care and his wife Sheila remains in their marital home. Sheila visits Max on a regular basis. The DM decides that Max and Sheila are not estranged.

Meaning of relative

52433 Relative[1] means a

1. parent including an adoptive parent[2]

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

11. sister

12. grand-parent

13. grand-child

14. uncle

15. aunt

16. nephew

17. niece

18. the wife, husband or civil partner of any of the persons at **1.** to **11.** who lives in the same household as that person

19. a person who lives together with any of the persons listed at **1.** to **11.** as if they were their wife, husband or civil partner[2].

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

52434 A person included under DMG 52434 **18.** and **19.** ceases to be a relative if the wife, husband or civil partner they live with together dies.

Is the person incapacitated

52435 The law does not say what incapacitated means. The DM has to decide if partners or relatives are incapacitated and may decide they are where they

1. are receiving

1.1 AA

1.2 CAA

1.3 DLA

1.4 disability element of WTC

1.5 IB

1.6 ESA

1.7 SDA

1.8 SSP

1.9 a benefit similar to the ones at **1.** to **8. or**

2. are not receiving any of the benefits at **1.** but they qualify for any one of them because of the illness or disability they have.

What the DM decides if only part of the premises are occupied as the home

52436 The DM has to decide if

1. any part of the premises can be sold separately **and**

2. it is reasonable for it to be sold separately

if the partner or relative only lives in part of the premises as the home. For example, when a relative lives in the farmhouse as the home and the premises are the farmhouse and farm land.

Rent

52437 The value of the right to receive rent is disregarded indefinitely as capital but not when a person has a reversionary interest in the property for which the rent is due[1].

1 ESA Regs, Sch 9, para 30

52438 For example, under the terms of Ernest's will

1. Charlotte is left for the duration of her life the right to the rents from a cottage which is leased **and**

2. Percy is left the

> **2.1** cottage subject to the lease **and**
>
> **2.2** right to the rents from the cottage subject to Charlotte's right to those rents for the duration of her life.

Charlotte has a life interest in the cottage because of her right to the rents for the duration of her life. Percy has a reversionary interest in the cottage because it is leased. The value of Charlotte's right to the rents is disregarded until she dies because her interest in the cottage is not reversionary. When Charlotte dies the value of Percy's right to the rents is not disregarded because his interest in the cottage is reversionary.

Social fund payments

52439 A SF payment made under social security law[1] is disregarded indefinitely[2]. This does not apply to a payment made from the European Social Fund.

1 SS CB Act 92, Part VIII; 2 ESA Regs, Sch 9, para 23

Special educational needs

52440 The parents of children and young persons with special educational needs have an option of a personal budget so that they can control how some of the provision in their Education, Health and Care plans can be delivered[1]. Any payment of capital made under these provisions is fully disregarded[2].

1 The Children and Families Act 2014, s 49; 2 ESA Regs, Sch 9, para 59

Tax refunds

52441 A refund of tax which is deducted under tax law[1] from the interest on a loan is disregarded indefinitely if the loan is used to

1. buy or acquire any interest in the dwelling which is lived in as the home **or**

2. pay for repairs and improvements to such a home[2].

1 Income and Corporation Taxes Act 1988, s 369; 2 ESA Regs, Sch 9, para 24

The Independent Living Fund (2006)

The law

52442 One-off payments made from the Independent Living Fund (2006) are disregarded indefinitely[1].

Note: If the payments are made regularly they are income and the DM should decide if they can be disregarded before working out the amount of income.

1 ESA Regs, Sch 9, para 27(1)

Meaning of the Independent Living Fund (2006)

52443 The Independent Living Fund (2006) was set up on 10.4.06 between the Secretary of State on the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin on the other part[1].

1 ESA Regs, reg 2(1)

Payment included with other capital

52444 If the payment is included with other capital the disregard does not apply to the other capital.

52445 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Payments in kind

52446 [See Memo DMG 08-25] If payment is made in kind see DMG 52418.

The Macfarlane Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund

The law

[See Memo DMG 15/20][See Memo DMG 08/23][See Memo DMG 08/24][See Memo DMG 04-25] [See Memo DMG 04-26]

52447 One-off payments made from the Trusts (see DMG 52451) are disregarded indefinitely[1].

Note: If the payments are made regularly they are income and the DM should decide if they can be disregarded before working out the amount of income.

1 ESA Regs, Sch 9, para 27(1)

52448 A payment from money which a person gets from the Trusts is disregarded indefinitely if the payment is made

1. by or on behalf of the person who got the money from the Trusts and that person

1.1 has haemophilia or is a qualifying person **or**

1.2 had haemophilia or was a qualifying person if the person has died **and**

2. to or for the benefit of

2.1 a partner or former partner of the person who got the money from the Trusts and they are not estranged, divorced or part of a dissolved civil partnership or if the person has died, were not estranged, divorced, or part of a dissolved civil partnership at the time of death **or**

2.2 a child or young person who

2.2.a is a member of the family of the person who got the money from the Trusts **or**

2.2.b was a member of that person's family and is a member of the claimant's family[1].

The disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

1 ESA Regs, Sch 9, para 27(2)

52449 [See Memo DMG 08-25] A payment from money which a partner or former partner gets from the Trusts is disregarded indefinitely if the payment is made

1. by or on behalf of a partner or former partner of a person who

1.1 has haemophilia or is a qualifying person **or**

1.2 had haemophilia or was a qualifying person if the person has died

and they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died **and**

2. to or for the benefit of

2.1 a person who has haemophilia or is a qualifying person **or**

2.2 a child or young person who

2.2.a is a member of the person's at **2.1** family **or**

2.2.b was a member of that person's family and is a member of the claimant's family[1].

This disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

1 ESA Regs, Sch 9, para 27(3)

52450 [See Memo DMG 15/21] **[See Memo DMG 07-23] [See Memo DMG 08-25]** Any capital the person gets from the income or capital of the payment

1. from the Trusts **or**

2. at DMG 52450

is disregarded indefinitely[1].

1 ESA Regs, Sch 9, para 27(6)

Example

Georgia is in receipt of ESA(IR). On 5 March she gets a one-off payment of £15,000 from the Fund. She opens a building society account with the money. She has no other capital. The DM decides that the money in the building society account is disregarded. On 1 April Georgia withdraws all the money and the interest it has made and buys some shares. The DM decides that the value of the shares is disregarded indefinitely.

The Trusts

52451 The Trusts means the

1. Macfarlane Trust

2. Macfarlane (Special Payments) Trust

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

4. the Fund

5. Eileen Trust

6. MFET Limited

7. the Independent Living Fund (2006)

8. Skipton Fund

9. Caxton Foundation

10. SIBSS

11. an approved blood scheme

12. London Emergencies Trust

13. We Love Manchester Emergency Fund **and**

14. London Bombings Relief Charitable Fund[1].

1 ESA Regs, Sch 9, para 27(1) & para 27(7)

The Macfarlane Trust

52452 The Macfarlane Trust is the name of a charitable trust set up with part of the money being given

by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia[1].

1 ESA Regs, reg 2(1) & Sch 9, para 27(1)

The Macfarlane (Special Payments) Trust

52453 The Macfarlane (Special Payments) Trust is the name of a discretionary trust set up on 29.1.90 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia[1].

1 ESA Regs, reg 2(1)

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

52454 The Macfarlane (Special Payments) (No. 2) Trust is the name of a discretionary trust set up on 3.5.91 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia and other people[1]. The other people are people who

1. have become infected with HIV **or**

2. were at risk of infection

because of contact with haemophiliacs.

1 ESA Regs, reg 2(1)

The Fund

52455 The Fund is money made available from time to time by the Secretary of State for the benefit of people who satisfy the terms of the scheme which was set up in Scotland on 10.4.92 and elsewhere on 24.4.92[1]. It benefits non-haemophiliacs who were infected with HIV whilst undergoing treatment by NHS blood or tissue transfer or blood products. It makes one-off payments.

1 ESA Regs, reg 2(1)

The Eileen Trust

52456 The Eileen Trust is the name of a charitable trust set up on 29.3.93 with money given by the Secretary of State for the benefit of persons who satisfy the terms of the trust[1]. It further benefits non-haemophiliacs who benefit under the Fund. It makes payment for occasional or continuing need.

1 ESA Regs, reg 2(1)

MFET Limited

52457 The Department of Health funds an organisation called MFET Limited[1] to provide financial help to people who have been infected with HIV as a result of treatment with NHS blood or blood products.

1 ESA Regs, reg 2(1)

The Skipton Fund

52458 The Skipton Fund is the Skipton Fund Limited which was incorporated on 25.3.04 to administer an ex gratia payment scheme for the benefit of people suffering from Hepatitis C and other people eligible for payment in accordance with the scheme's provisions[1]. The ex gratia payments will be a

1. lump sum payment of £20,000 to people infected with Hepatitis C **and**

2. further payment of £25,000 to people who develop advanced liver disease.

Note 1: No payments will be made in respect of people who died before 29.8.03 or recover from Hepatitis C naturally.

Note 2: Where a person who is entitled to an ex gratia payment dies on or after 29.8.03 but before a payment can be made, the payment will be made to that person's dependants.

1 ESA Regs, reg 2(1)

The Caxton Foundation

52459 The Caxton Foundation was established on 28.3.11. It administers funds provided by the Secretary of State for Health for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments[1].

1 ESA Regs, reg 2(1)

Scottish Infected Blood Support Scheme

52460 Following a review of the existing infected blood support schemes, the Scottish Government has decided that these services will be combined and administered by a new single scheme administrator for Scotland. SIBSS will be operational from 1.4.17 and will be administered by NHS National Services Scotland (NSS), legally known as the Common Services Agency. NSS is an NHS Board accountable to Scottish Ministers[1].

1 ESA Regs, reg 2(1)

Approved blood scheme

52461 An approved blood scheme is a scheme established or approved by the Secretary of State[1] for

the purpose of providing compensation to those in England, Wales and Northern Ireland who have been infected from contaminated blood products. It replaces the Eileen Trust, the Macfarlane Trust, MFET Ltd, the Skipton Fund and the Caxton Foundation from 2.10.17 and payments from this new scheme will be made from 23.10.17.

1 ESA Regs, reg 2(1)

The London Bombings Relief Charitable Fund

52462 The London Bombings Relief Charitable Fund[1] was established on 11.7.05 following the terrorist attacks carried out in London on 7.7.05. People who were bereaved, or who suffered injury, received lump sum payments from the London Bombings Relief Charitable Fund ranging between £3,000 and £25,000.

1 ESA Regs, reg 2(1)

The London Emergencies Trust

52463 The London Emergencies Trust was established on 28.3.17 following the terrorist attacks carried out in London on 22.3.17 and 3.6.17. People who were bereaved or who suffered injury, may receive lump sum payments from the LET ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries[1].

1 ESA Regs, reg 2(1)

The We Love Manchester Emergency Fund

52464 The We Love Manchester Emergency Fund was established on 30.5.17 following the terrorist attack carried out in Manchester on 22.5.17. People who were bereaved or who suffered injury, may receive lump sum payments from the WLMEF ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries[1].

1 ESA Regs, reg 2(1)

Qualifying person

52465 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund[1].

1 ESA Regs, reg 2(1)

Payment included with other capital

52468 If the payment is included with other capital the disregard does not apply to the other capital.

52469 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Other payments which are disregarded

52470 Other payments are disregarded. If the payment is made

1. in kind, see DMG 52418 **or**

2. to or for the benefit of some other person, see DMG 52485 - 52489.

Payments to persons imprisoned or interned by the Japanese during the Second World War

52471 An ex gratia payment of £10,000 made by the Secretary of State on or after 1.2.01 in consequence of the imprisonment or internment of

1. the claimant **or**

2. the claimant's partner **or**

3. the claimant's deceased spouse or civil partner **or**

4. the claimant's partner's deceased spouse or civil partner

by the Japanese during the Second World War is disregarded indefinitely[1].

1 ESA Regs, Sch 9, para 50

Example

Jim is receiving ESA(IR). His civil partner Albert, has capital of £2,300. Albert receives a payment of £10,000 because he was interned by the Japanese during the Second World War. The DM decides that the payment of £10,000 received by Albert is disregarded indefinitely.

Payments made to sufferers of variant Creutzfeldt-Jakob disease and their partners

Meaning of "the relevant trust"

52472 The relevant trust means the trust established out of funds provided by the Secretary of State in respect of persons who have suffered or are suffering from variant Creutzfeldt-Jakob disease and their families. Trustees have discretion to pay compensation from the fund to those eligible[1].

1 ESA Regs, Sch 9, para 53(6)

Meaning of "diagnosed person"

52473 Diagnosed person means a person who has been diagnosed as suffering from or who after his death, has been diagnosed as having suffered from variant Creutzfeldt-Jakob disease[1].

1 ESA Regs, Sch 9, para 53(6)

52474 Any payments made from the relevant trust to

1. the diagnosed person **or**

2. the partner of the diagnosed person **or**

3. the person who was the diagnosed person's partner at the date of the diagnosed person's death

is disregarded from the date on which the payment is made until the date on which that person dies[1].

Note: The reference to the surviving partner of the diagnosed person includes someone who would have been the partner but for the diagnosed person being in a care home on the date they died[2].

1 ESA Regs, Sch 9, para 53; 2 Sch 9, para 53(5)

Example

Thomas died of variant Creutzfeldt-Jakob disease on 25.11.07. His widow, Helga, makes a claim for ESA. On 5.11.08 she receives a payment of £25,000 from the relevant trust. The DM decides that this payment is disregarded for Helga's lifetime.

52475 Where a payment is made

1. by a person to whom a payment from the relevant trust has been made or from the estate of such a person **or**

2. to

2.1 the partner of the diagnosed person **or**

2.2 the person who was the diagnosed person's partner on the date the diagnosed person died

the payment is disregarded indefinitely[1].

Note: The disregard only applies to the extent that the total payments made do not exceed the total of any payments made from the relevant trust.

1 ESA Regs, Sch 9, para 53(3)

Example

Melanie is diagnosed as suffering from variant Creutzfeldt-Jakob disease and on 29.8.05 she receives a payment of £30,000 from the relevant trust. Melanie dies on 6.7.06 and her husband, David, inherits the payment which has been invested. On 11.11.08 David claims ESA. He declares that he has capital of £31,210 which is the original payment of £30,000 plus £1,210 interest from investing that money. The DM decides that the £30,000 trust payment is disregarded for David's lifetime but the interest obtained for investing that payment cannot be disregarded.

52476 Trust payments may be made to other relatives of a person diagnosed with variant Creutzfeldt-Jakob disease. See

• DMG 52490 if the payment is made to a parent of the diagnosed person

• DMG 52492 if the payment is made to a dependant child or young person who is a member of the diagnosed person's family.

Second World War compensation payments

52477 The amount of a payment, other than a war pension, to compensate for the fact that during the Second World War the person

1. was a slave labourer or a forced labourer **or**

2. suffered property loss or suffered personal injury **or**

3. was a parent of a child who died

is disregarded indefinitely.

Note: Lump sum gratuities paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 do not fall within the definition of a war pension. Such payments would be disregarded indefinitely.

52478 The disregard in DMG 52477 applies where the payment is made in respect of the

1. claimant **or**

2. claimant's partner **or**

3. claimant's deceased spouse or civil partner **or**

4. claimant's partner's deceased spouse or civil partner[1].

1 ESA Regs; Sch 9, para 54

Age related payments

52479 One-off age-related payments are payments of capital. DMs should not take them into account for ESA(IR) purposes[1].

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

Education maintenance allowance payments

52480 Any education maintenance allowance payable under prescribed legislation as

1. education maintenance allowance[1] **or**

2. the same as education maintenance allowance[2]

is disregarded indefinitely[2].

1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 and 73(f); Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & Ed (Scot) Act 80, s 73ZA;
2 Education Act 2002, s 14 and 181; ESA Regs, Sch 9, para 52(1)

16-19 Bursary Fund

52481 A new bursary scheme called the 16-19 Bursary Fund was introduced in September 2011. In England, this will replace EMA, however there will be some transitional protection for existing recipients. Any payment from this bursary fund is disregarded indefinitely[1].

1 Education Act 2002, s 14; ESA Regs, Sch 9, para 52

52482 In addition to the disregard at DMG 52481 any payment made under prescribed legislation[1] in respect of a course of study attended by a

1. child or young person **or**

2. person who is receiving an education maintenance allowance as in DMG 52481 above

is also disregarded indefinitely[2].

1 Education Act 1996, s 518; Ed (Scot) Act 80, s 49; Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & Ed (Scot) Act 80, s 73ZA; 2 ESA Regs, Sch 9, para 52(2)

Local welfare provision

52483 Local welfare provision means[1] occasional financial or other assistance made by an LA, the Welsh Ministers, the Scottish Ministers 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.

Such payments are disregarded indefinitely.

1 ESA Regs, reg 2(1)

Funeral support payment

52484 The Scottish Government introduced Funeral Support Payments from 16.9.19 to provide financial assistance for funeral expenses to people who live in Scotland. FSPs are disregarded indefinitely[1].

1 ESA Regs, Sch 9, para 64

Capital disregarded for up to two years 52484 - 52494

The Macfarlane Trusts, the Fund, the Eileen Trust, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund 52485 - 52489

Payments to certain relatives of a person suffering from variant Creutzfeldt-Jakob disease 52490 - 52495

The Macfarlane Trusts, the Fund, the Eileen Trust, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund

The law

52485 **[See Memo DMG 07-23]** A payment from money which a person gets from the Trusts is disregarded from the date of payment until two years after the date of death of the person who gets the money from the Trust if the payment is made

1. by or on behalf of the person who got the money from the Trusts and that person

1.1 has haemophilia or is a qualifying person **and**

1.2 has no

1.2.a partner or former partner from whom the person is not estranged, divorced or part of a dissolved civil partnership **or**

1.2.b child or young person who is or has been a member of the person's family **and**

2. to the person's

2.1 parent or step-parent **or**

2.2 guardian if the person does not have a parent or step-parent and at the date of the payment the person is a

2.2.a child **or**

2.2.b young person **or** in FTE[1].

1 ESA Regs, Sch 9, para 27(4)

52486 **[See Memo DMG 07-23]** A payment from money which a person who has died got from the Trusts is disregarded for two years from the date of death if the payment is made

1. out of the estate of a person who

1.1 had haemophilia or was a qualifying person **and**

1.2 at the date of death the person had no

1.2.a partner or former partner from whom the person was not estranged, divorced or part of a dissolved civil partnership **or**

1.2.b child or young person who was or had been a member of the person's family **and**

2. to the person's

2.1 parent or step-parent **or**

2.2 guardian if the person did not have a parent or step-parent and at the date of death the person was a

2.2.a child **or**

2.2.b young person **or**

2.2.c student who had not finished FTE[1].

1 ESA Regs, Sch 9, para 27(5)

Note: Step-parent includes relationships arising through civil partnerships[1].

1 Civil Partnership Act 2004, s 246

52487 **[See Memo DMG 07-23]** Any capital which a person gets from the income or capital of the payment at DMG 52485 - 52486 is also disregarded[1].

1 ESA Regs, Sch 9, para 27(6)

Example

Edward has haemophilia. His former partner was pregnant when they separated and on 21.10.06 she has a son. On 28.10.06 Edward gives his father, Leonard, £5,000 from the money he gets from the Macfarlane (Special Payments) (No. 2) Trust. Leonard puts the money in a building society account which had £2,000 in it. On 15.11.08 Leonard makes a claim for ESA. The DM decides that the £5,000 given to

Leonard by Edward is disregarded whilst Edward is alive and for two years after Edward dies. On 30.01.09 Leonard uses the money he received from Edward to buy National Savings Bonds. The DM decides that the value of the Bonds is disregarded whilst Edward is alive and for two years after Edward dies.

Payment included with other capital

52488 If the payment is included with other capital the disregard does not apply to the other capital.

52489 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

Payments to certain relatives of a person suffering from variant Creutzfeldt-Jakob disease

Payments to a parent

52490 Any payments made from the relevant trust (see DMG 52472) to

1. a parent of a person diagnosed as suffering from variant Creutzfeldt-Jakob disease **or**

2. to a person acting in the place of a parent of the person diagnosed as suffering from variant Creutzfeldt-Jakob disease **or**

3. to a person who was acting in the place of a parent at the time of the diagnosed person's death

is disregarded from the date on which the payment is made until two years after that date[1].

Note: The reference to a person acting in place of a parent at the time of the diagnosed person's death includes someone who would have been such a person but for the diagnosed person being in residential accommodation, a residential care home or nursing home on that date[2].

1 ESA Regs, Sch 9, para 53(1)(c) & 53(2)(b); 2 Sch 9, para 53(5)

52491 Where a payment is made

1. by a person to whom a payment from the relevant trust (see DMG 52472) has been made or from the estate of such a person

2. to a

2.1 parent of the diagnosed person (see DMG 52473) **or**

2.2 person acting in the place of a parent of the diagnosed person **or**

2.3 a person who would be acting in the place of a parent of the diagnosed person were it not for the diagnosed person being in

2.3.a a care home **or**

2.3.b an Abbeyfield home **or**

2.3.c an independent hospital

on the date the diagnosed person died

the payment is disregarded for a period of two years from the date on which it is made[1].

Note: The disregard only applies to the extent that the total payments made do not exceed the total of any payments from the relevant trust.

1 Sch 9, para 53(3)(b), para 53(4) & para 53(5)

Definitions

52492 The definition of[1]

1. a care home is

1.1 in England and Wales, a place providing accommodation, together with nursing or personal care, for people who

1.1.a are or have been ill **or**

1.1.b have or have had a mental disorder **or**

1.1.c are disabled or infirm **or**

1.1.d are or have been dependent on alcohol or drugs[2]

1.2 in Scotland, accommodation in which a care home service is provided[3]. That is, a service that provides accommodation, together with nursing, personal care, or personal support for people by reason of their vulnerability or need

2. an Abbeyfield home is an establishment run by the Abbeyfield Society or any other body affiliated to that Society

3. an independent hospital is

3.1 in England, a hospital that is not a health service hospital as defined in legislation[4]

3.2 in Wales, a hospital that is not a health service hospital as defined in legislation[5]

3.3 in Scotland, an independent healthcare service as defined in legislation[6].

1 ESA Regs, reg 2(1); 2 Care Standards Act 2000, s 3; 3 Regulation of Care (Scotland) Act 2001, s 2;
4 National Health Service Act 2006, s 275; 5 Care Standards Act 2000, s 2;
6 Regulation of Care (Scotland) Act 2001, s 2(5)(a) & (b)

Payments to a dependant child or qualifying young person

52493 Any payments made from the relevant trust (see DMG 52472) to a dependant child, young person or qualifying young person who is a member of the family of a person diagnosed as suffering from variant Creutzfeldt-Jakob disease or was a member of the family[1] at the date of the diagnosed person's death is disregarded until the date

1. two years after the date of the payment **or**

2. on the day before the day the child or qualifying young person ceases FTE **or**

3. on the day before the day the child or qualifying young person reaches the age of 20

whichever is the latest[2]. The disregard will therefore be for a minimum of two years.

1 ESA Regs, Sch 9, para 53(1)(d) & 53(5)(b); 2 Sch 9, para 53(2)(c)

52494 Where a payment is made

1. by a person to whom a payment from the relevant trust (see DMG 52472) has been made or from the estate of such a person

2. to a member of the family of the diagnosed person (see DMG 52473) who is a person in FTE or under the age of 20

the payment is disregarded for the appropriate period in DMG 52493 but only to the extent that such payments do not exceed the total amount of any trust payment to the diagnosed person[1].

1 Sch 9, para 53(3)(c), 53(4)(c) & 53(5)(b)

Example

Stephen is diagnosed as suffering from variant Creutzfeldt-Jakob disease and receives a payment of £35,000 from the relevant trust on 30.2.08. Stephen dies on 15.5.08 and leaves £10,000 of the trust payment to his son Craig, who was born on 5.3.90. Craig leaves FTE on 30.6.08 and makes a claim for ESA on 11.12.08. The DM decides that the £10,000 Craig inherited is disregarded until 14.5.10.

52495 **[See Memo DMG 02/23]** In DMG 52493 and DMG 52494 **2.** family includes someone who would have been a member of the diagnosed person's family were it not for the diagnosed person being in a care home, an Abbeyfield Home or an independent hospital on that date.

Capital disregarded for 52 weeks 52495 - 52519

Arrears of allowances and benefits 52496 - 52497

Additional payment of bereavement support payment 52498

Arrears of payments to certain war widows or surviving civil partners 52499

Payment for certain travel costs and NHS charges 52500

Payment made in place of milk, vitamin tokens or healthy start vouchers 52501

Payment to visit a person in custody 52502

Reduction of liability for council tax 52503

Payment for personal injury 52504 - 52505

Payments made under employment and training law 52506

Payments in respect of work related activity 52507

Payments to participants in New Deal and Employment Zone programmes 52508 - 52509

Payments to participants in the Employment, Skills and Enterprise Scheme and the Mandatory Work Activity Scheme 52510 - 52512

Arrears and concessionary payments of £5,000 or more 52513 - 52519

Arrears of allowances and benefits

The law

52496 [See Memo DMG 01/26] Arrears of certain allowances and benefits are disregarded for 52 weeks from the date the payment of arrears is received[1] (but see DMG 52513 if the arrears and any concessionary payment total £5000 or more). The disregard applies to arrears of

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. CAA and ESDA paid because the claimant is entitled to workmen's compensation[4]

5. an attendance allowance paid under the PB and MDB scheme

6. 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

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

8. the care component or the mobility component of DLA

9. the daily living component or the mobility component of PIP

10. Mobility Supplement

11. Mobility Allowance which people could get under repealed social security law[6]

12. CTB

13. DPTC

14. HB

15. WFTC

16. IS, Family Income Supplement and Supp B

17. ESA(IR)

18. JSA(IB)

19. CTC

20. WTC

21. UC

22. BSP

23. AFIP

24. MA.

The disregard also applies to a concessionary payment which is made to compensate for arrears of those benefits or allowances. The disregard applies from the date the concessionary payment is

received[1].

1 ESA Regs, Sch 9 , para 11(1); 2 SS CB Act 92, s 64; 3 s 104 or 105;
4 Workmen's Compensation Acts 1925 to 1945; 5 Personal Injuries (Civilians) Scheme 1983,
Art 14, 15, 16, 43 or 44; 6 Social Security Act 1975, s 37A

Meaning of concessionary payment

52497 Concessionary payment means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to

1. the NI Fund **or**

2. a Departmental Expenditure Vote to which payments of benefit or tax credits are charged[1].

1 WR Act 07; ESA Regs, reg 2(1)

Additional payment of bereavement support payment

52498 Where a claimant in receipt of ESA

1. makes a claim for BSP 12 months or less after their spouse or civil partner died **and**

2. receives the additional payment of BSP for the first month of their BSP period at either the higher (£3,500) or standard (£2,500) rate[1]

that first additional payment is disregarded when calculating that person's capital for a period of 52 weeks from the date of receipt[2].

1 BSP Regs, reg 3(2) & (5); 2 ESA Regs, Sch 9, para 60

Arrears of payments to certain war widows or surviving civil partners

52499 Payments to certain war widows and surviving civil partners are disregarded for 52 weeks from the date the payment of arrears is received. The disregard applies to arrears of

1. a special war widow's or surviving civil partner's payment which is made to persons whose husband, wife or civil partner died from

1.1 injuries **or**

1.2 illness

caused by military service which ended before 31.3.73

2. a supplementary pension paid to a widow or surviving civil partner for

2.1 the disablement **or**

2.2 death

of service personnel before 1973

3. a supplementary pension paid to a widow or surviving civil partner under the Personal Injuries (Civilians) Scheme **and**

4. a supplementary pension paid to the widow or surviving civil partner of a person

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

4.2 that service ended before 31.3.73 **and**

4.3 the payment is equal to the amount in **1.** above[1].

1 ESA Reg, Sch 9, para 40

Payment for certain travel costs and NHS charges

52500 Payments and repayments of certain travel costs and NHS charges are disregarded for 52 weeks from the date the payment or repayment is received. The disregard applies to

1. a payment or repayment for

1.1 travel costs to and from hospital for treatment as an in-patient or out-patient

1.2 prescription charges

1.3 sight tests

1.4 glasses

1.5 dental treatment

1.6 wigs

1.7 fabric supports

under NHS law[1] **and**

2. a payment or repayment made by the

2.1 Secretary of State for Health **or**

2.2 Scottish Ministers **or**

2.3 Secretary of State for Wales

which is like those at **1.**[2].

1 National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988, reg 3; 5 & 8;
National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003,
reg 3, 5 & 11; 2 ESA Regs, Sch 9, para 37

Payment made in place of milk, vitamin tokens or healthy start vouchers

52501 A payment made under welfare food law[1] in place of

1. milk tokens **or**

2. vitamins **or**

3. healthy start vouchers

is disregarded for 52 weeks from the date the payment is received[2].

1 Welfare Food Regulations 1996, regs 6, 8 & 12; 2 ESA Regs, Sch 9, para 38

Payment to visit a person in custody

52502 A payment made to a person by the

1. Secretary of State for Justice **or**

2. Scottish Ministers

to pay for a visit to see someone who is in custody is disregarded for 52 weeks from the date the payment is received[1].

1 ESA Regs, Sch 9, para 39

Reduction of liability for council tax

52503 A payment made because of the reduction of council tax under local government law[1] is disregarded for 52 weeks from the date the payment is received[2].

Note: The amount of council tax a person has to pay is normally reduced if the person can get a

reduction. The disregard does not apply in that case. It only applies if a payment is made instead.

1 Local Government Finance Act 1992, s 13 & 80; 2 ESA Regs, Sch 9, para 35

Payment for personal injury

52504 Any payment made because of a personal injury to the claimant or partner and not placed in trust is disregarded for a period

1. beginning with the first date of receipt by the claimant or partner of such a payment **and**

2. ending when

> **2.1** the claimant or partner no longer has any part of the payment remaining (including where the claimant or partner has used any part of the payment to buy an asset) **or**
>
> **2.2** 52 weeks have elapsed

whichever is the sooner[1].

1 ESA Reg, Sch 9, para 17

52505 This 52 week disregard does not apply to

1. any subsequent payments made as a result of the same injury in DMG 52502 above, whether it is made by the same person or another[1] (but the remainder of the existing 52 week period could still be applied) **or**

2. payments made from a trust where the funds of that trust come from a personal injury payment to the claimant or partner[2].

1 ESA Regs, Sch 9, para 17(2)(b); 2 Sch 9, para 17(2)(d)

Example

Howard is in receipt of ESA(IR) and on 27.11.08 he receives a payment of £10,000 for an injury to his leg caused when it was crushed in a machine at work some 10 months previously. The DM decides that this amount can be disregarded for 52 weeks, until 25.11.09. On 24.9.09, Howard receives a further payment of £5,000 in respect of the same injury. The DM decides that this payment can only be disregarded for the remainder of the original 52 week period i.e. from 24.9.09 to 25.11.09

Payments made under employment and training law

52506 Certain payments made under employment and training law[1] that are payments of capital are disregarded for a period of 52 weeks beginning on the date of receipt of the payment[2].

Note: See DMG Chapter 51 for guidance on the types of payments made under employment and training law.

1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2; 2 ESA Regs, Sch 9, para 32

Payments in respect of work related activity

52507 Any payment made to the claimant for travel or other expenses in respect of WRA is disregarded for a period of 52 weeks from the date payment is made[1].

1 ESA Regs, Sch 9, para 32A

Payments to participants in New Deal and Employment Zone programmes

Capital acquired under the self-employment route

52508 Any sum by a person who is receiving or has received assistance under the self-employment route is disregarded for a period of 52 weeks from the date that it was acquired. This disregard applies where the capital was required for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received[1].

1 ESA Reg, Sch 9, para 46

Payments made by an Employment Zone contractor

52509 Any discretionary payment made by an EZ contractor to a claimant taking part in an EZ programme is disregarded for 52 weeks from the date of receipt[1].

1 ESA Reg, Sch 9, para 48

Payments to participants in the Employment, Skills and Enterprise Scheme and the Mandatory Work Activity Scheme

52510 Any payments made in respect of travel or other expenses incurred or to be incurred by a participant in the ESA or MWA Schemes is disregarded for a period of 52 weeks from the date the payment is received[1].

1 ESA Regs, Sch 9, para 1A

52511 Any arrears of subsistence allowance paid as a lump sum is disregarded for 52 weeks from the date of receipt[1].

1 ESA Regs, Sch 9, para 49

52512 See DMG 14600 for further guidance on the treatment of payments made by an EZ contractor.

Arrears and concessionary payments of £5,000 or more

When the disregard applies

52513 The disregard applies where

1. the claimant receives arrears of one of the benefits, allowances or payments listed in DMG 52496 and, if appropriate, any concessionary payment to compensate for the late payment of that benefit **and**

2. the total of the arrears and any concessionary payment ("the relevant sum") is £5,000 or more **and**

3. the relevant sum is paid to rectify or compensate for

3.1 an official error (see DMG 03256) **or**

3.2 an error of law (see DMG 04280) **and**

4. the relevant sum is received in full by the claimant on or after 14.10.01[1].

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

Period of the disregard

52514 The period of the disregard is

1. 52 weeks from the date the relevant sum is received **or**

2. if the sum is received in its entirety during an award of ESA(IR), for the remaining period of the award of ESA(IR) (see DMG 52515)

whichever is the longer period[1].

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

52515 For the purposes of DMG 52514 **2.** the remaining period of the award of ESA(IR) means

1. the award of ESA(IR) in which

1.1 the relevant sum is received **or**

1.2 the first part of the relevant sum is received if it is paid in more than one instalment **and**

2. any further award either of ESA(IR), until the end of the last such further award if

2.1 the further award follows the award at **1. and**

2.2 the further award begins immediately after the end of the previous award **and**

2.3 the claimant

2.3.a is the person who received the relevant sum **or**

2.3.b is the partner of the person who received the relevant sum **or**

2.3.c was the partner at the date of death of the person who received the relevant sum **or**

2.3.d is a joint-claim couple for a joint-claim jobseekers allowance and either member, or both members of that joint-claim couple received the relevant sum[1].

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

Example 1

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

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

Example 2

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

Example 3

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

52516 - 52519

Capital disregarded for 26 weeks or longer 52520 - 52600

Business assets 52520 - 52523

Dwelling left because of estrangement, divorce or dissolution of a civil partnership 52524 - 52529

Grants made to buy, repair or alter premises 52530 - 52531

Money deposited with a housing association 52532 - 52534

Money from the sale of premises which were lived in as the home 52535 - 52545

Money paid for damage to or loss of the home or personal possessions 52546 - 52547

Money which a person gets to repair or improve the home 52548 - 52550

Premises a person does not possess or occupy 52551 - 52562

Premises which a person is taking steps to get possession of 52563 - 52570

Premises which are to be repaired or altered 52571 - 52578

Premises which are to be disposed of 52579 - 52600

Business assets

The law

52520 The assets of a business are disregarded to give a person time to start or return to work in the business if the person

1. owns all or some of the business **and**

2. is not working as a S/E earner in the business because the person is

2.1 ill **or**

2.2 physically or mentally disabled **and**

3. is going to start work or return to work in the business as a S/E earner when the person recovers or is able to work.

The period of disregard is 26 weeks, or longer if it is reasonable, from the date the claim for benefit is made or treated as made[1].

Note: The DM has to decide whether the business is ready to open if the person has not started working in the business as a S/E earner. If the business is not ready to open the disregard does not apply.

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

Meaning of self-employed earner

52521 S/E earner means a person

1. who is gainfully employed in GB (see DMG 070702) **and**

2. whose employment is not the same as that of an employed earner[1].

Contrast with an employed earner who is a person who is gainfully employed in GB under a contract of service or in an office, including an elective office, with general earnings[2].

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

Deciding if it is reasonable to disregard for a longer period

52522 The DM may decide it is

1. reasonable to disregard the assets for a longer period if the person is still ill or disabled and can do the work when fit and able **or**

2. not reasonable if there is evidence, such as medical evidence, which says the person will not be able to do the work when fit and able.

Other disregards

52523 Business assets can also be disregarded if the person

1. is working in the business as a S/E earner **or**

2. has ceased trading.

See DMG 52371 - 52374.

Dwelling left because of estrangement, divorce or dissolution of a civil partnership

The law

52524 The dwelling in which a person lived as the home is disregarded if the person stopped living in the dwelling because of estrangement, divorce or the dissolution of a civil partnership. The period of the disregard is for

1. 26 weeks from the date the person stopped living in the dwelling **or**

2. as long as it is occupied if

2.1 it is occupied as a home by the former partner **and**

2.2 the former partner is a lone parent[1].

1 ESA Regs, Sch 9, para 5

Meaning of dwelling

52525 Dwelling means a place where a person lives. The place can be

1. all or part of a building **and**

2. separate and self-contained or not separate and not self-contained[1].

1 reg 2(1)

Meaning of dwelling occupied as the home

52526 Dwelling occupied as the home means

1. the place lived in as the home and any

1.1 garage

1.2 garden

1.3 outbuildings **and**

2. any part not lived in as the home which

2.1 cannot be sold separately **or**

2.2 would not be reasonable to sell separately

for example in Scotland any croft land on which the place lived in stands[1].

1 reg 2(1)

Meaning of lone parent

52527 Lone parent means[1] a person who

1. has no partner **and**

2. is

2.1 responsible for **and**

2.2 a member of the same household as

a child or young person.

1 ESA Regs, reg 2(1)

Meaning of child

52528 A child is a person under the age of 16[1].

1 reg 2(1)

Meaning of young person

52529 Young person

1. means[1] a person who is a qualifying young person **but**

2. does not include a person who

2.1 is an eligible child **or**

2.2 is a relevant child **or**

2.3 in Scotland is a person of a prescribed description

under certain legislation[2].

DMG Chapter 43 provides guidance on who is a qualifying young person.

1 reg 2(1); 2 Children (Leaving Care) Act 2000, s 6

Grants made to buy, repair or alter premises

The law

52530 A grant made to a person by a local housing authority or LA under housing law[1] which has to be used to

1. buy premises **or**

2. repair or alter premises to make them fit to live in as the home

is disregarded to give the person time to buy, repair or alter the premises and to move in. The period of disregard is 26 weeks or longer if it is reasonable from the date the grant is received[2].

1 Housing Act 1988, s 129; Housing (Scotland) Act 1988, s 66; 2 ESA Regs, Sch 9, para 36

Deciding if it is reasonable to disregard for a longer period

52531 The DM may decide it is reasonable to disregard the grant for a longer period if

1. people have tried but not found premises which are suitable for their or a member of their family's needs (in particular, if one of them is disabled and needs a certain type of accommodation)

2. the person has found premises and the

2.1 sale has not been completed **or**

2.2 seller later decides not to sell

3. the repairs and alterations will take more than 26 weeks.

Money deposited with a housing association

The law

52532 Money which was deposited with a housing association and the

1. money was deposited as a condition of living in the home **and**

2. housing association comes under housing association law[1] **and**

3. money is to be used to buy another home

is disregarded to give the person time to buy another home. The period of disregard is 26 weeks or longer if it is reasonable[2].

1 Housing Associations Act 1985, s 1; 2 ESA Regs, Sch 9, para 13(b)

Note: A different disregard applies to money which is on deposit with a housing association as a condition of living in the home (see DMG 52408).

Date the disregard starts

52533 The period of disregard starts on the date when the money is no longer held by the housing association.

Deciding if it is reasonable to disregard for a longer period

52534 The DM may decide it is reasonable to disregard the money for a longer period if people have

1. tried but not found another home which is suitable for their or a member of their family's needs, in particular, if one of them is disabled and needs a certain type of accommodation

2. found a home and the

2.1 sale has not been completed **or**

2.2 seller later decides not to sell.

Money from the sale of premises which were lived in as the home

The law

52535 Money from the sale of premises which were lived in as the home is disregarded to give a person time to buy other premises if the person is going to

1. use the money to buy premises **and**

2. live in those premises as the home.

The period of disregard is 26 weeks or longer if it is reasonable from the date of sale[1].

1 ESA Regs, Sch 9, para 3

The money

52536 Money includes a payment made to a tenant or lessee by a landlord to buy back a tenancy or lease[1].

1 R(IS) 6/95

Applying the disregard

52537 For the disregard to apply people should show

1. they intend to use the money to buy premises to live in as the home **and**

2. it is reasonably certain that they will in fact do so within 26 weeks or longer if it is reasonable from the sale of premises which were lived in as the home[1].

1 R(IS) 7/01

Example

Ethan receives £50,000 from the sale of his previous home. He moves to another area and claims ESA. He states that he intends to use the £50,000 to buy a new house but he didn't want to do so straightaway in case he did not like the new area. The DM decides that the disregard does not apply because it is not reasonably certain that Ethan will use the money to buy another home within 26 weeks or any extended period.

52538 Evidence of an intention to use money to buy premises to live in as the home may include a

1. binding agreement to buy premises **or**

2. firm agreement from which a person would not be expected to withdraw, such as one which is subject to contract.

52539 Money does not include payment from the sale of premises which

1. were bought with money from the sale of the previous home and those premises have not been lived in as the home **or**

2. a person was not the beneficial owner of at the time of sale.

Example 1

Rozma sells her home and moves into a rented flat. She uses the money from the sale of her home to buy a holiday home. She uses that home just for holidays. The money she gets when she sells the holiday home is not disregarded.

Example 2

The executors of Norma's estate sell her home. Norma's daughter Juliet inherits the money from the sale. The disregard does not apply because Juliet is not the beneficial owner of the house when it is sold; even if the house was Juliet's home.

52540 If the premises sold include a part which was not lived in as the home, such as a business with living accommodation, the disregard does not apply to the money from the sale of that part. The DM will need to get expert advice if the DM cannot work out how much of the money from the sale is for the part which was lived in as the home[1]. Separate guidance sets out those cases where DMs may require such expert advice.

1 R(SB) 18/82

52541 The disregard does not apply to any money which a person

1. gets from selling the home **and**

2. is not going to use to buy another home.

Example

A man and wife are going to buy another home using £60,000 of the £100,000 they got from selling their previous home. The disregard does not apply to £40,000 because it is not going to be used to buy another home. It does apply to £60,000.

The premises

52542 The disregard applies if the person is going to

1. use money from the sale of the previous home to

1.1 buy a plot of land **and**

1.2 pay for premises such as a house to be built on the land **and**

2. live in the premises as the home when they are built.

The date of sale

52543 The money is disregarded from the date of sale. The date of sale is the date the sale is completed and may not be the date the person gets the money from the sale.

Period of disregard

52544 The period of disregard is 26 weeks or longer if it is reasonable. If the person has not bought another home within 26 weeks the DM has to decide if it is reasonable to disregard the money for a longer period.

52545 The DM may decide to disregard the money for a longer period if people have

1. tried but not found premises which are suitable for their or a member of their family's needs, in particular, if one of them is disabled and needs a certain type of accommodation **or**

2. found premises and the

2.1 sale has not been completed **or**

2.2 seller later decides not to sell.

Money paid for damage to or loss of the home or personal possessions

The law

52546 Money, such as a payment from an insurance company following a fire, which

1. a person gets because of damage to or loss of

1.1 the home **or**

1.2 personal possessions **and**

2. is intended for the repair or replacement of the home or personal possessions

is disregarded to give the person time to have the home or personal possessions repaired or replaced. The period of disregard is 26 weeks or longer if it is reasonable from the date the money is paid[1].

Note: The disregard does not apply to money which a person gets when a landlord buys back a tenancy or lease[2].

1 ESA Regs, Sch 9, para 12(a); 2 R(IS) 6/95

Deciding if it is reasonable to disregard for a longer period

52547 The DM may decide it is reasonable to disregard the money for a longer period if

1. the repairs will take more than 26 weeks

2. people have tried but not found another home which is suitable for their or a member of their family's needs, in particular, if one of them is disabled and needs a certain type of accommodation

3. the person has found a home and the

3.1 sale has not been completed **or**

3.2 seller later decides not to sell

4. the replacement of personal possessions will take more than 26 weeks.

Example

Sally has a burglary at her home. Some items of jewellery are stolen and she receives £7,500 from her insurance company which she intends to use to replace the stolen items. However, Sally uses only £4,000 of that money within 26 weeks. She states that she has not been able to find suitable items to replace some of her stolen jewellery but she hopes to do so in another 6 weeks. The DM decides that it is reasonable to disregard the remaining £3,500 for a period longer than 26 weeks.

Money which a person gets to repair or improve the home

The law

52548 Money which a person gets to pay for essential repairs to or to improve the home is disregarded to give time for the work to be done if

1. as a condition of getting the money it has to be used to pay for those repairs and improvements **and**

2. the person is going to use the money to pay for that work.

The period of disregard is 26 weeks or longer if it is reasonable from the date the money is acquired[1].

Note: The money can be a loan, grant or gift. The condition that it has to be used for the repairs and improvements does not have to be in writing.

1 ESA Regs, Sch 9, para 12(b)

Essential repairs and improvements

52549 Essential repairs and improvements are those which are needed to make the home fit to live in by the person or a member of the person's family. For example, if the roof of the home is letting in water it is essential to repair the roof to make the home fit to live in.

Deciding if it is reasonable to disregard for a longer period

52550 The DM may decide it is

1. reasonable to disregard the money for a longer period if the work will take more than 26 weeks **and**

2. not reasonable to disregard the money for a longer period if the money is being spent on something else.

Premises a person does not possess or occupy

The law

52551 The value of any premises which the claimant has acquired with the intention of living in as their home within 26 weeks of the date of acquisition should be disregarded. Where the claimant intends to live in the premises but it will be later than 26 weeks from acquisition, then a longer period can be considered where it is reasonable to enable the claimant to obtain possession and begin occupation[1].

1 ESA Regs, Sch 9, para 2

The premises

52552 The premises must be capable of being a dwelling which can be lived in as the home[1]. Land on which a person intends to build premises to live in as the home is included. Any part of the premises which a person is not going to live in as the home is not included if the DM decides the part

1. can be sold separately **and**

2. it is reasonable for it to be sold separately.

Acquiring premises

52553 People can acquire premises if they buy, are given or inherit them.

52554 If the premises which have been acquired are going to be lived in as the home the disregard applies if the person acquiring the premises

1. is not in possession of them **or**

2. cannot move in.

Possession of premises

52555 The legal owners of premises own them but do not have vacant possession of them if a tenant or lessee lives in them. During the period of a tenancy or lease the tenant or lessee is legally in possession of the premises and the owner remains the legal owner. At the end of a tenancy or lease the right to vacant possession should return to the owner.

52556 If the tenancy or lease ends within 26 weeks of the date the owner acquired the premises the disregard applies. If it does not the DM has to decide if it is reasonable for the disregard to apply for a longer period. The DM may decide the premises cannot be disregarded for a longer period if a lease has several years to run.

52557 The owner has to do something to get back possession of the premises if

1. someone is living in the premises illegally such as a squatter **or**

2. a tenant or lessee does not leave the premises at the end of the tenancy or lease.

52558 If the owner is going to do something to get back possession the disregard applies for 26 weeks from the date the owner acquired the premises or longer if the DM decides it is reasonable. The DM may decide the premises cannot be disregarded for a longer period if the owner has done nothing to get back possession.

52559 A different disregard applies if the owner has asked for legal advice about getting or started legal proceedings to get back possession (see DMG 52563 - 52570).

Moving into the premises

52560 If the legal owner of the premises has recovered them and has not moved into them the disregard applies for 26 weeks from the date the owner acquired the premises or longer if the DM decides it is reasonable. The DM may decide the premises can be disregarded for a longer period if they

1. were acquired by a person to move into when the person comes out of hospital and the person is still in

hospital **or**

2. are land on which a person is going to build premises to live in as the home because 26 weeks is not long enough for

2.1 the premises to be built **and**

2.2 the person to move into them.

52561 If

1. the premises need to be repaired or altered before the person can move in **and**

2. the owner is going to do something to get the repairs or alterations done

the disregard applies for 26 weeks from the date the owner acquired the premises or longer if the DM decides it is reasonable. The DM may decide the premises cannot be disregarded for a longer period if the owner has done nothing to get the premises repaired or altered.

52562 A different disregard applies from the date the owner first takes steps to have the premises repaired or altered (see DMG 52571 - 52578).

Premises which a person is taking steps to get possession of

The law

52563 Premises which people are taking steps to get possession of are disregarded to give them time to get possession and to start living in the premises if they

1. are going to live in the premises as the home **and**

2. have

2.1 asked for legal advice about getting **or**

2.2 started legal proceedings to get

possession.

The period of disregard is 26 weeks, or longer if it is reasonable, from the date the person asked for legal advice or started legal proceedings, whichever is earlier[1].

1 ESA Regs, Sch 9, para 7

The premises

52564 The premises must be capable of being a dwelling which can be lived in as the home. The

disregard does not apply to

1. premises which are land even if persons say they are going to build a house on the land to live in as the home **and**

2. any part of the premises which a person is not going to live in as the home if the DM decides it

2.1 can be sold separately **and**

2.2 is reasonable for it to be sold separately.

The date a person first asked for legal advice or started legal proceedings

52565 The first date is the date the person

1. asked for legal advice the first time the person asked for such advice **or**

2. started legal proceedings the first time such proceedings were started.

If both **1.** and **2.** apply the first date is the first of those dates.

52566 The first date does not change. So if a person has asked for legal advice several times the first date is the date the person first asked for such advice.

When legal proceedings usually start

52567 In England and Wales legal proceedings usually start in the

1. High Court on the issue of a writ or other originating process

2. County Court on the issue by the Court of a summons or originating application.

The issue of a notice to quit under the terms of a tenancy agreement is **not** starting legal proceedings.

Note: DMs should send cases of doubt to Decision Making and Appeals (Leeds) for advice.

52568 In Scotland legal proceedings usually start in the

1. Court of Session on service of the summons or petition on the defender or respondent

2. Sheriff Court on service of the summons or initial writ on the defender.

The issue of a notice to quit under the terms of a tenancy agreement is **not** starting legal proceedings.

Note: DMs should send cases of doubt to Decision Making and Appeals (Leeds) for advice.

Period of disregard

52569 The period of disregard is 26 weeks or longer if it is reasonable. A person should be able to get possession and start living in the premises within 26 weeks of asking for legal advice or starting legal proceedings. If not the DM has to decide if it is reasonable to disregard the premises for a longer period.

52570 The DM may decide

1. to disregard the premises for a longer period if

1.1 legal proceeding are still being taken **or**

1.2 people have got possession and there is a good reason why they have not started to live in the premises

2. not to disregard the premises for a longer period if people have

2.1 asked for legal advice and not followed it **or**

2.2 got possession and there is no good reason why they have not moved into the premises.

Premises which are to be repaired or altered

The law

52571 Premises which need essential repairs or alterations to make them fit for people to live in them as the home are disregarded to give time for

1. the repairs or alterations to be done **and**

2. the people to start living in the premises

if they are going to live in the premises as the home. The period of disregard is 26 weeks or longer if it is reasonable from the date the person first takes steps to get the premises repaired or altered[1].

1 ESA Regs, Sch 9, para 8

The premises

52572 The premises must be capable of being a dwelling which can be lived in as the home. The disregard does not apply to

1. premises which are land even if people say they are making alterations to the land by building a house on the land to live in as the home **and**

2. any part of the premises which a person is not going to live in as the home if the DM decides it

2.1 can be sold separately **and**

2.2 is reasonable for it to be sold separately.

Essential repairs or alterations

52573 Essential repairs or alterations are those which are needed to make the premises fit to live in as the home by the person or a member of the person's family. For example, if the person is in a wheelchair and the doorways in the house are not wide enough for the wheelchair to pass through the essential alterations are the widening of the doorways so the person can move into the premises.

The steps

52574 The steps are what a person must do to get the premises repaired or altered and can include

1. getting a grant or loan to pay for them

2. employing an architect

3. getting planning permission

4. finding someone to do the work.

The date a person first takes steps to get the premises repaired or altered

52575 The date a person first takes steps to get the premises repaired or altered is the first date the person does something to get the work done and can include the date a person first

1. asks about a

1.1 grant

1.2 loan **or**

1.3 planning permission

2. contacts

2.1 an architect **or**

2.2 someone to do the work.

52576 The first date does not change. So if a person contacts several persons to do the work the first date is the date the first person is contacted.

Period of disregard

52577 The period of disregard is 26 weeks or longer if it is reasonable. The repairs and alterations may

not be done in 26 weeks if there is a lot of work to do. If the person has not moved into the premises within 26 weeks the DM has to decide if it is reasonable to disregard the premises for a longer period.

52578 The DM may decide

1. to disregard the premises for a longer period if the

1.1 person is still waiting for a grant, loan, or planning permission

1.2 work will take longer than 26 weeks

1.3 work has been delayed and there is a good reason for the delay **or**

1.4 work has been done and there is a good reason why the person has not moved in

2. not to disregard the premises for a longer period if

2.1 the person has not taken all the steps needed to get the work done, such as a person who has got a grant but has not arranged for the work to be done **or**

2.2 there is no good reason for the delay in getting the work done or for the person not moving in.

Premises which are to be disposed of

The law

52579 Premises which a person is trying to dispose of are disregarded if the person is taking reasonable steps to dispose of them. The period of disregard is for 26 weeks or longer if it is reasonable from the date the person first took such steps[1].

1 ESA Regs, Sch 9, para 6

The premises

52580 Premises includes

1. land, such as a field

2. buildings, such as a house

3. a lease on the land or buildings

4. any premises in which a person has a time-share.

Who can dispose of premises

52581 Only the legal owner of premises can dispose of them. If a person is

1. the beneficial owner or joint beneficial owner of the premises **and**

2. not the legal owner or joint legal owner

the disregard does not apply.

Note: This applies when a person has given away premises to get benefit or more benefit.

Reasonable steps

52582 Reasonable steps are what a person must do to dispose of the premises and can include

1. advertising the premises for sale

2. getting an estate agent or solicitor to market the property

3. taking legal action to

3.1 force the sale of premises when the other legal owners do not want to sell **or**

3.2 get possession of the premises

4. taking action to appoint another person to act for the legal owner if

4.1 the owner is mentally sick or disabled **and**

4.2 the premises are going to be sold after someone has been appointed.

52583 In deciding if reasonable steps are being taken the DM should determine the specific steps the person is taking to dispose of the premises. This applies whether or not the steps being taken are part of ancillary proceedings following the breakdown of marriage.

Example

Sanath makes a claim for ESA. He owns a house with his brother Muthiah. Neither of them lives in the house. Sanath asks Muthiah if he is prepared to sell the house. Muthiah says no because the house was left to them by their father and he would have wanted them to keep it. Sanath does not pursue the matter further. The DM decides that Sanath is not taking reasonable steps to dispose of the house.

The date a person first takes reasonable steps

52584 The date a person first takes reasonable steps is usually the first date a person does something to dispose of the premises and can include the date

1. the premises were first advertised for sale

2. a person first contacts an estate agent or solicitor to market the property

3. a person first sees a solicitor if legal action has to be taken to force a sale or get possession of the premises

4. action is started to appoint someone to act for the legal owner which may include the first date a person sees a solicitor if legal advice is needed.

52585 The first date does not normally change. So if a person has tried several times to dispose of the premises the date is the first date the person did something reasonable to dispose of the premises the first time. However, there may be exceptional circumstances where the first date may change due to a break in attempts to market the property.

Example

In March 2010 Simon's father dies leaving him a house. Simon places the house on the market in August 2010. There is some interest in the house but due to ongoing work on a large civil engineering project close to the property, potential buyers are not making offers on the house due to the unknown effects that this project will have on the house. Simon's estate agent advises him to take the house off the market until the situation regarding the civil engineering project is clear. In February 2011, the works are completed and there is no effect on the property so Simon decides to put the house back on the market on 20 February 2011. He makes a claim for JSA at the same time. The DM considers the circumstances and decides that due to the reason for the break in the marketing of the property for sale being exceptional and something over which the claimant had no control, the date from which the 26 week disregard period will be calculated will be the second attempt to sell the house, i.e. 20 February 2011.

Period of disregard

52586 The period of disregard is 26 weeks or longer if it is reasonable. If the person has not disposed of the premises within 26 weeks of first doing something to dispose of them the DM has to decide if it is reasonable to disregard the premises for a longer period.

52587 The DM may decide to disregard the premises for a longer period if

1. people have done all they have to do to sell the premises and the asking price is no more than the premises are worth **or**

2. action is still being taken to

2.1 force a sale **or**

2.2 get possession of the premises **or**

2.3 appoint someone to act for the legal owner.

52588 The DM may need expert advice to find out what the premises are worth. DWP Capital Valuations issue guidance on how to get such advice.

52589 - 52600

Capital disregarded for 26 weeks 52601 - 52604

Payment of a sports award 52601 - 52604

Payment of a sports award

52601 A payment of a sports award[1] is disregarded for a period of 26 weeks from the date on which the payment was received[2]. However the disregard does not apply to any amount paid 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 of the claimant or a member of his family that are covered by ESA **or**

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

7. water charges for which the claimant or a member of his family is liable[3].

Note 1: "Food" does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the sport award was made[4].

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[5].

1 ESA Regs reg 2(1) & Sch 9, para 47(1); 2 Sch 9, para 47(1);
3 Sch 9, para 47(2); 4 Sch 9, para 47(3); 5 reg 2(1)

52602 - 52604

Capital disregarded for a prescribed period 52605 - 52609

Mortgage interest run-on 52605 - 52609

Mortgage interest run-on

52605 When a person satisfies the conditions of paragraph DMG 20530, any capital should be disregarded in full[1].

1 ESA Regs, Sch 9, para 51

52606 - 52609

What is the value of capital 52610 - 52719

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General

52610 All of the capital a person has, is included when working out the amount of capital but not capital which is disregarded[1].

1 ESA Regs, reg 111(1)

Capital in the United Kingdom

52611 The value of capital which a person has in the UK (see DMG 070880) is its current market or surrender value less

1. 10% of that market or surrender value if there are costs of sale **and**

2. the amount of any incumbrance secured on the capital[1].

1 reg 113

52612 - 52613

Capital outside of the United Kingdom

52614 The value of capital which a person has outside of the UK (see DMG 070880) is

1. its current market or surrender value in the country outside of the UK if people can transfer the money they get for the capital to the UK **or**

2. the price people would get for it if sold to a willing buyer in the UK if the country will not let them transfer money to the UK

less 10% of the market or surrender value or price if there are costs of sale and the amount of any incumbrance secured on the capital[1].

1 reg 114

Current market value

52615 Current market value means the price a willing buyer will pay a willing seller in that market on the relevant date[1]. The market is the market for what is for sale. So if a house is for sale it is the property market. The relevant date is the date of claim or date of revision/supersession.

1 R (SB) 6/84

52616 DMs work out the current market value

1. themselves **or**

2. from evidence given by the claimant or person whose capital it is **or**

3. from evidence from an expert valuer.

Current surrender value

52617 Current surrender value means the money people would get if

1. they withdraw their capital on the date of claim or revision **and**

2. that date is before the date a person gets the capital under the terms of the agreement **and**

3. the terms of the agreement lets a person withdraw the capital before the agreed date.

52618 The DM accepts the money people would get on the date of claim or revision as the value. If the agreement does not let a person withdraw capital before the agreed date the value of the capital is its current market value.

Capital with more than one value

52619 DMs have to decide which value to accept if capital has more than one value, such as when capital has a current market and surrender value[1].

1 R(SB) 6/84

Costs of sale

52620 10% of the current market or surrender value or price is only deducted if there are costs when a person sells capital. 10% of the value or price is deducted even if the actual costs are more or less than that amount.

52621 There are normally costs of sale if a person

1. uses another person to sell the capital, such as

1.1 an estate agent or solicitor **or**

1.2 a broker **or**

1.3 an auctioneer **or**

2. needs the services of another person before the capital can be sold , such as

2.1 a solicitor **or**

2.2 an accountant.

52622 There are always costs of sale if the capital is real or heritable property (see DMG 52020 **4.**)[1].

1 R(IS) 21/93

52623 Costs of sale do not include the cost of

1. postage, such as when a person applies in writing to withdraw premium bonds **or**

2. travelling expenses such as bus fares when a person visits a building society to withdraw money.

52624 DMs work out 10% of the current market or surrender value or price if there are costs of sale. Costs of sale are worked out before a deduction is made for any incumbrances secured on the capital.

Incumbrances secured on capital

52625 An incumbrance is secured on capital when a person is owed money and has a right

1. to the capital **or**

2. to stop it being sold

until the money owed is paid back. Such a debt is a legal charge or mortgage and is deducted from the value of capital. A debt which is not secured is not deducted[1].

1 R(IS) 21/93

52626 The amount of the incumbrance which is deducted is the amount of money owed on the date of claim or revision. The amount is deducted from the capital which the debt is secured on. If the debt is secured on more than one item of capital it is deducted from

1. the total of the values of the capital on which it is secured **and**

2. the total of the values of the capital which

> **2.1** is not disregarded **and**
>
> **2.2** on which it is secured

if any of the capital on which it is secured is disregarded when working out what capital a person has[1].

1 R(IS) 21/93

Example

On 29 January Anwar makes a claim for ESA. His capital consists of 20,000 shares and two houses. He lives in one of the houses, the other is unoccupied. Anwar has a mortgage which he used to buy the house he lives in. However, the mortgage is secured on his other house. He is in debt to his bank. The bank is holding the share certificates and has a charge on the two houses as security for the debt. On 29 January the current market value of the shares is £50,000 and that of the unoccupied house is £72,000. The amount outstanding on the mortgage is £45,000 and the debt to the bank is £62,000.

The DM decides that the value of the unoccupied house, less 10% for costs of sale and the mortgage which is secured on it, is £19,800. The DM also decides that the value of the shares, less 10% for costs of sale, is £45,000. Finally, the DM decides that the value of the unoccupied house and shares, less the debt to the bank which is secured on them, is £2,800 (£19,800 + £45,000 - £62,000 = £2,800).

52627 The DM needs to know the amount of money owed on an incumbrance secured on capital at the date of claim or revision. The person whose capital it is has to

1. provide evidence of the amount owed **or**

2. give permission for someone else to get the information.

The amount owed is deducted from the current market or surrender value or price.

52628 The DM should not make a deduction if there is no evidence of the amount owed or permission is not given to get the information and the DM cannot work out the amount owed from the available evidence.

52629 - 52636

Jointly-owned capital

The law

52637 See DMG 52244 et seq for guidance on how to decide whether a claimant owns a capital asset with one or more persons as a

1. joint-tenant or, in Scotland, joint owner **or**

2. tenant in common or, in Scotland, common owner.

Joint-tenant or joint-owner

52638 Where the claimant's interest in jointly-owned capital is as a joint-tenant or a joint owner the DM should

1. treat the claimant and the other beneficial owners as having equal shares in the asset[1] **and**

2. value the claimant's deemed share itself, under the normal rules.

1 ESA Regs, reg 117

52639 The DM should not assume that

1. the market value in all cases is the market value of the whole asset divided by the number of beneficial owners **or**

2. in the case of a dwelling, any joint-owners who live in the property do not live there.

Tenant in common or common owner

52640 Where the claimant has an interest in an asset as a tenant in common or a common owner the DM should value the claimant's actual share[1].

1 R(IS) 4/03

Example 1

Cecilia and her son Ross own a house as tenants in common. Cecilia owns 20% of the property and Ross owns 80% but he does not live in it. Cecilia goes into a care home and makes a claim for ESA. The DM decides that the value of Cecilia's share of the house cannot be disregarded. The DM also decides to take the value of Cecilia's 20% share of the house into account.

Example 2

Sue and Melinda own a house as tenants in common. Sue owns 60% of the property and Melinda 40%. Sue and Melinda both go into a care home and claim ESA. The DM decides that their share of the value of the house cannot be disregarded. When deciding Sue's claim for ESA, the DM takes the value of her 60% share of the property into account. When deciding Melinda's claim for ESA, the DM takes the value of her 40% share of the property into account.

Capital asset in the United Kingdom

52641 Where a claimant is a joint-tenant or joint owner, the DM should establish the market value of the deemed share. Where a claimant is a tenant in common or a common owner, the DM should establish the market value of the actual share (see **Examples** at DMG 52640). The market value is the price that a willing buyer would pay a willing seller[1] for the share the claimant is deemed to possess or actually possesses.

1 R(SB) 6/84

Land or premises

52642 In the case of land or premises the DM should obtain an expert opinion of the market value of the deemed or actual share. In either case the DM should ensure that the expert has taken into account

1. that the claimant is assumed to be a willing seller **and**

2. whether the other owners would be willing and able to buy the share **and**

3. whether the other owners would agree to the sale of the asset as a whole **and**

4. in a case where the other owners would not buy the share or agree to a sale of the asset as a whole

4.1 whether on the facts of the claimant's particular case the courts would order

4.1.a the sale of the property as a whole **or**

4.1.b the partition of the property **and**

4.2 the length of time a purchaser may have to wait before obtaining possession **and**

4.3 the legal costs a buyer may have to pay if an application to the courts for an order for sale and/or partition was pursued (this includes both the buyer and the other parties costs) **and**

5. the rights of occupation of the other owners **and**

6. whether any of the other owners are occupying the property and whether they would be willing to vacate the property **and**

7. any rights of occupation possessed by any occupants who are not owners (e.g. tenants) **and**

8. any incumbrances secured on the asset being valued **and**

9. any legal protection available to a potential purchaser **and**

10. any risk that the legal owners may

10.1 sell the property and keep the proceeds for themselves **or**

10.2 encumber the property with secured debts **or**

10.3 lease the property **and**

11. whether there are planning or other restrictions on the property **and**

12. whether there is a current market for the claimant's share of the property or whether one might develop in the future.

Note 1: The valuer should consider whether and to what extent each of the above factors would encourage or discourage a potential purchaser.

Note 2: For the purposes of DMG 52642 **4.1** the valuer should not simply assume that an order will be granted. The specific facts of the case and the relevant law should be considered. This is because the purpose for which joint-ownership was established will need to be scrutinized in order to assess whether a court would order a sale[1].

Note 3: For the purposes of DMG 52642 **5.** a person can fall within the term "excluded occupier" if they share the living space of the property with the claimant. However, this does not give the person any rights against eviction. For a person to acquire rights against eviction the nature of any licence to remain

should be such that it can be determined by giving reasonable notice.

Note 4: This is not an exhaustive list of the factors relevant to the value of a deemed or actual share. In order to reach an opinion on the value of a particular share, a valuer may have to take additional factors into account.

Note 5: Scottish valuations are made on a different basis from those undertaken in the rest of Britain. In particular they do not involve a discount for factors such as delayed right to possession.

1 R(IS) 1/01

52643 The DM should also ensure that the expert has explained

1. whether on the facts of the case there is any market for the deemed or actual share and where that market lies **and**

2. how the market value has been calculated including factors relevant to that calculation and how they affect it **and**

3. either

3.1 what comparables have been relied on **or**

3.2 how the valuation has been arrived at without using comparables **and**

4. whether the valuer has any experience or knowledge of the sale of an undivided share in the circumstances of the claimant's case **and**

5. how location, size and condition of a property affect its value **and**

6. if the property is leasehold, details of the length of the lease and any special terms in it.

Note 1: A valuation arrived at simply by dividing the value of the property as a whole by the number of owners and then giving a single discount to reflect the restricted demand for a deemed or actual share does not meet the requirements of the regulations.

Note 2: The expert may have to make assumptions because the information is not available. If this is the case, the DM should ensure that the expert has stated what information is missing and the assumptions that have been made[1].

1 R(JSA) 1/02

52644 The DM should accept a valuation that satisfies DMG 52641 and DMG 52642 and not accept one that does not. If provided with more than one valuation that satisfies DMG 52641 and DMG 52642 the DM should decide between them according to which presents the stronger evidence and arguments.

52645 The value of a deemed or actual share in a capital asset is

1. the market value of the deemed or actual share less

2. 10% if there would be any expenses of sale[1].

Note: The amount of any incumbrances secured on the asset should not be deducted from the market value of the deemed or actual share in these cases. The incumbrances should be taken into account by the valuer when establishing the market value[1].

1 ESA Regs, reg 113

52646 Administrative procedures for obtaining expert opinions on the value of deemed or actual shares in capital assets have been set up (see DMG 52647). If an opinion under these procedures is challenged on appeal

1. the instructions and evidence given to the valuer should be included in the evidence put to the tribunal **and**

2. obtain a written report from the valuer

3. the valuer may be called as a witness if necessary.

52647 DWP Capital Valuations issue guidance[1] on how to get an expert valuation of

1. real or heritable property (see DMG 52020 **4.**)

2. the assets of a business

3. investments

4. shares which are not quoted on the Stock Exchange, such as shares in a private company

5. an interest in a trust

6. current rights to capital

7. capital which is outside the UK.

1 Valuation of Capital Assets Handbook

Bank, post office and building society accounts

52648 To calculate the value of a deemed share in a bank, post office or building society account the DM should establish

1. the amount that is jointly owned by the claimant and the other beneficial owners (see DMG 52135) **and**

2. the value of the deemed share by dividing the amount jointly held by the number of beneficial owners.

Note: If the account is with an institution that is in financial difficulty, an expert valuation of the value of the deemed share should be obtained.

Other assets

52649 An expert opinion should be obtained as to what a willing buyer would in reality be prepared to pay to a willing seller for the deemed or actual share. The DM should then deduct

1. 10% if there would be any expenses of sale **and**

2. the amount of any incumbrances secured on the asset[1].

1 ESA Regs, reg 113

Value of a deemed or actual share in a capital asset outside the United Kingdom

52650 The value of a deemed or actual share in a capital asset outside the UK (see DMG 070880) depends on whether or not the country will allow money to be transferred to the UK.

52651 If money can be transferred to the UK the value of the deemed or actual share of the capital asset is

1. the market value of the deemed or actual share less

2. 10% if there would be expenses of sale.

Note: In most cases an expert valuation of the value of the deemed share will be needed.

52652 If the country will not allow the transfer of money to the UK the value of the deemed or actual share will be the price the owner of the deemed or actual share would get from a willing buyer in the UK. DMs work out the price from evidence

1. given by the claimant or person whose capital it is **or**

2. from an expert valuer.

Note: Most cases will need an expert valuation.

52653 The onus is on the claimant to provide a letter from a bank of the country where the asset is held, or a letter from the Embassy of the country concerned. If there are difficulties getting this information, DWP Capital Valuations will take expert advice from the Valuations Office in London.

52654

Business assets

52655 Business assets are the things which are risked and used in the business. Business assets can include

1. capital which may be in a bank or building society account, some other investment, or cash

2. money owed to the business, which is a current right to capital (see DMG 52035 - 52037)

3. business premises, including the lease on such premises

4. machinery and equipment such as

4.1 cars and vans

4.2 sewing and gaming machines

4.3 work benches and display cabinets

4.4 refrigerators and freezers

4.5 computer equipment and facsimile machines

4.6 desks and chairs

5. stock, including livestock such as cows and horses.

Value of business assets

52656 The current market or surrender value or price of each business asset is needed. So if there are 30 sewing machines the DM has to decide the current market value or price of each machine.

Incumbrances secured on business assets

52657 Only debts which are an incumbrance secured on the business asset are deducted. So if suppliers are owed money and their debt is not secured on any of the business assets no deduction is made.

52658 A bank may have a floating charge on the business assets if the business has an overdraft. A floating charge is an incumbrance secured on each business asset. The amount to deduct from the total value of all the business assets is the amount overdrawn on the date of claim or revision.

Funds held by the Court of Protection

52659 When a mentally sick or disabled person has funds held by the Court of Protection (see DMG 52277 et seq), those funds should be valued in accordance with DMG 52611 - 52614. The person's incapacity does not affect this[1].

Example

Veronica lives in a care home and makes a claim for ESA. She has capital of £82,000 which was inherited from her father and is held by the Court of Protection. Veronica's brother, Henry, is her Deputy. Henry states that Veronica's capital has negligible value because of her incapacity. However, the DM decides that Veronica is not entitled to ESA(IR) because the value of her capital exceeds £16,000.

Personal equity plans

52660 A personal equity plan (PEP) was an investment. People could invest up to a certain amount of money in a PEP in each tax year if they were

1. 18 or over **and**

2. liable to pay UK tax (see DMG Chapter 07).

The value of a PEP is what people would get if they withdrew their investment on the date of claim or supersession. Any income which is paid out of a PEP is income from capital.

52661 A PEP mortgage is not a mortgage. It is a PEP and should be valued as such even if people say they are going to use their investment to pay off their mortgage. Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. The mortgage is not likely to be an incumbrance secured on the PEP.

Note: A PEP was replaced by an Individual Savings Account (ISA) in April 1999. From that date people could no longer invest in their PEP or open a new one.

Individual savings account

52662 An individual savings account (ISA) is an investment. People can invest up to a certain amount of money in an ISA in each tax year if they are

1. 16 or over **and**

2. resident or ordinarily resident in the UK for tax purposes.

The value of an ISA is what people would get if they withdrew their investment on the date of claim or supersession. Any income, which is paid out of an ISA, is income from capital.

52663 Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. If someone says they are using an ISA to pay off their mortgage this is not likely to be an incumbrance secured on the ISA. The ISA should be valued as such.

52664 It is a requirement of the ISA regulations that the ISA remain in the beneficial ownership of the investor[1].

Note: If there is evidence that the ISA or PEP was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the ISA or PEP then it may constitute an equitable charge and they should be valued taking that into account.

1 The Individual Savings Account Regulations 1998, reg 4(6)

Lifetime Individual savings account

52665 The Lifetime individual savings account is available for people who are aged 18 to 40 when it is opened. It is similar in many ways to a normal individual savings account with the addition of a government bonus of 25% paid on the contributions made by the saver of up to a limit of £4000 annually. This Lifetime individual savings account should be treated as capital from the outset with a value of

1. 75% of the surrender value where the person is under age 60 **or**

2. 100% of the surrender value where the person is over age 60

taken into account.

Stocks and shares quoted on the London Stock Exchange

Value of stocks and shares

52666 The value of stocks and shares can be obtained from the financial pages in a newspaper which is dated the same date as the date of claim or supersession. A newspaper gives the price for most of the stocks and shares quoted on the London Stock Exchange. A valuation using the price given in a newspaper is not an exact valuation.

52667 To decide if an exact valuation is needed, first work out the value of the stocks and shares using the price given in a newspaper. An exact valuation is always needed if the price of a stock or share is not given in a newspaper.

52668 To work out the value of stocks and shares from the price given in a newspaper

1. find the price of the stock or share in a newspaper which is dated the same date as the date of claim or application for supersession **and**

2. multiply the figure at **1.** by the number of that stock or share the person has.

52669 An exact valuation is needed if the value of the stocks or shares are close to the lower or upper capital limits or there is a change to the amount of tariff income when the value is added to any other

capital the claimant and partner has[1].

1 R(IS) 18/95

52670 To work out the exact value of stocks and shares

1. use the free internet tool Yahoo Finance to find the highest and lowest price for the day before the date of claim or supersession **and**

2. deduct the lowest price from the highest price **and**

3. divide the figure at **2.** by four **and**

4. add the figure at **3.** to the lowest price **and**

5. multiply the figure at **4.** by the number of that stock or share the person has.

52671 Once the share value has been calculated as in DMG 52669, deduct 10% costs of sale as per DMG 52611, rounding down in the claimant's favour at the last stage in the calculation.

Example

Roy has 250 Marks and Spencer shares. The highest and lowest share prices for the day before the date of claim is £4.1750 and £4.1250 respectively.

Deduct the lowest from the highest price (£4.1750 - £4.1250) = £0.05

Divide £0.05 by 4 = £0.0125

Add £0.0125 to the lowest share price (£0.0125 + £4.1250) = £4.1375

Multiply £4.1375 by the number of share (250) = £1034.3750

Deduct 10% expense of sale = £930.93.

Incumbrances secured on stocks and shares

52672 Stockbrokers have an incumbrance secured on stocks or shares if the person they have bought the stocks or shares for has not paid

1. the broker for them **or**

2. the broker's commission[1].

The incumbrance is secured only on the stocks and shares which have not been paid for or on which commission has not been paid. The incumbrance is not secured on any other stocks and shares which

the stockbroker buys for the person.

1 R(IS) 18/95

52673 The amount of the incumbrance is the amount owed to the stockbroker.

Government securities

52674 Government Securities are stocks issued by the British Government. They are sold in £100 units but re-investments can be for different amounts. Government Securities include

1. consolidated stock

2. conversion loan

3. exchequer stock

4. funding stock

5. Treasury stock

6. 3½% War Loan

52675 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 52665 et seq).

52676 The free internet tool Yahoo Finance will provide DMs with a value provided the stock has not reached the date when the capital invested is repayable. If that date has been reached, the claimant should be advised to write to the Historic Price Service, London Stock Exchange, Old Broad Street, London EC2N 1HP. Any cost imposed by this service would be payable by the claimant. Information can be obtained from the London Stock Exchange website. However, this only holds data from 1999 onwards.

52677 - 52679

Unit trusts

Value of unit trusts

52680 To work out the value of a unit in a unit trust

1. find the bid price for a unit in the trust in a newspaper which is dated the same date as the date of claim or application for supersession **and**

2. multiply the figure at **1.** by the number of units a person has.

Note: the value of a unit trust can also be found at: http://markets.ft.com/research/Markets/Data-Archive

Costs of sale

52681 Persons apply to the manager of the trust to withdraw their money so there are no costs of sale. This applies even if persons use an agent, such as a stockbroker.

52682 - 52684

Value of capital in certain cases

Bank and building society accounts

52685 A person who has money in a bank or building society account has a right to capital. The value of the rights to capital is the balance in the account on the date of claim or application for supersession because it is assumed the bank or building society will be able to pay out the money when asked.

52686 An expert valuation of a right to capital is needed if there is something which stops people getting their money out of a bank or building society account, such as the

1. person is the beneficial owner of the money in the account and not the legal owner and the legal owner will not withdraw the money **or**

2. bank or building society has gone into liquidation.

Right to receive income

52687 An expert valuation is needed of the value of the right to receive an income if the income can be signed over to another person.

52688 Income which cannot be signed over to another person is

1. periodical maintenance payments

2. public service pensions, such as a civil service pension

3. SS benefits and allowances, such as CHB.

Shares in a private company

52689 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

52690 The value of the shares is not worked out by dividing the value of all the shares in the company by the number of shares a person has[1]. If the company's auditors say what a fair value is the expert valuation cannot be more than this figure and is more likely to be less[2].

52691 The expert valuation should take into account

1. anything in the articles of association which restricts the sale of the shares, such as the shares can only be sold

1.1 to the other shareholders and the shareholders will not buy them **or**

1.2 if the directors agree and they do not agree **and**

2. whether the person's shares in the company are a minority, equal or controlling interest.

52692 - 52719

Total amount of capital 52720 - 52744

How to work out the total amount of actual capital 52720 - 52724

Income which is treated as capital 52725 - 52744

How to work out the total amount of actual capital

52720 For each person add together the value of each item of capital the person has. The total for each person is the total amount of actual capital the person has.

52721 - 52724

Income which is treated as capital

52725 Certain types of income are treated as capital[1]. The DM has to decide the amount of income which

1. each person has **and**

2. is treated as capital.

The total amount of income which is treated as capital for each person is added to the total amount of actual capital that person has.

1 ESA Regs, reg 112

Advance of earnings or loan from employer

52726 An advance of earnings or a loan from an employer is income which is treated as capital if the person is an employed earner[1].

1 ESA Regs, reg 112(5)

52727 An employed earner is a person who is gainfully employed in GB (see DMG 070702)

1. under a contract of service **or**

2. in an office, including an elective office, and the fee or salary the person gets is taxed under the PAYE scheme[1].

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

Example

Barrie is in receipt of ESA(IR). On 19 January his wife, Anne, starts P/T work. She receives her first wage on 30 January. Anne's wage is £50 a week but her first wage slip shows a deduction of £20 for an advance of pay and £10 repayment of a loan. Barrie says that Anne received an advance of her wage on 23 January and a loan of £300 from her employer on 26 January and that Anne has to repay the loan at £10 a week. The DM decides that the £20 advance of Anne's wage and the £300 loan are treated as capital and are taken into account as capital on the day they are received.

Bounty payments

52728 A bounty payment from certain work is income which is treated as capital if it is paid yearly or at intervals of longer than a year[1]. This applies to work as

1. a P/T member of a fire brigade which is kept under fire services law[2] **or**

2. an auxiliary coast guard and the work is coast rescue **or**

3. a P/T member of a lifeboat crew and the work is manning or launching the lifeboat **or**

4. a member of a reserve force which comes under SS law[3].

1 ESA Regs, reg 112(1); 2 Fire and Rescue Services Act 2004; Fire (Scotland) Act 2005;
3 Social Security (Contributions) Regulations 2001, Sch 6

Charitable or voluntary payments

52729 [See Memo DMG 15/21] **[See Memo DMG 07-23] [See Memo DMG 08-25] [See Memo DMG 04-26]** A charitable or voluntary payment which is not made or due to be made regularly is income which is treated as capital[1] but not if it is a payment from

1. the Macfarlane Trust (see DMG 52452) **or**

2. the Macfarlane (Special Payments) Trust (see DMG 52453) **or**

3. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52454) **or**

4. the Fund (see DMG 52455) **or**

5. the Eileen Trust (see DMG 52456) **or**

6. MFET Limited (see DMG 52457) **or**

7. the Skipton Fund (see DMG 52458) **or**

8. the Caxton Foundation (see DMG 52459)

9. SIBSS (see DMG 52460) **or**

10. an approved blood scheme (see DMG 52461) **or**

11. the London Emergencies Trust (see DMG 52463) **or**

12. the We Love Manchester Emergency Fund (see DMG 52464) **or**

13. Independent Living Fund (2006) (see DMG 52442)[2].

1 ESA Regs, reg 112(7); 2 reg 112(8)

52730 - 52731

Discharge grant paid to prisoners

52732 A discharge grant paid to prisoners under prison law[1] is income treated as capital[2].

1 Prison Act 1952, s 30; Prisons (Scotland) Act 1989, s 17; 2 ESA Regs, reg 112(6)

Holiday pay

52733 Holiday pay which is payable more than four weeks after a person has left a job or has stopped work because of an interruption is income which is treated as capital[1].

1 ESA Regs, reg 112(3)

52734 Holiday pay is normally payable on the last working day and would not be income which is treated as capital. So if holiday pay is paid more than four weeks later the DM should check that it is payable on the date paid. Holiday pay may be payable more than four weeks later if the

1. person has left the job without giving notice **and**

2. employer will not pay the holiday pay until the date it is payable.

Example

On 29 December Alfred makes a claim for ESA. He says he last worked on 31 October but did not receive his two weeks holiday pay until 19 December. The DM checks with Alfred's former employer. The former employer confirms that Alfred last worked on 31 October but as he left without giving notice, the holiday pay was not paid until it was due to be paid on 19 December when the firm closed down for Christmas. The DM decides that the holiday pay is treated as capital.

Income from capital

52735 Income from capital is income which is treated as capital but not if the capital is disregarded because it is

1. the dwelling occupied as the home[1] **or**

2. premises acquired for occupation by the claimant as his home[2] **or**

3. premises which are occupied by

3.1 a partner **or**

3.2 a relative of the claimant or of any member of the family who is aged 60 or over or is incapacitated[3] **or**

3.3 the former partner of the claimant as his home, unless the former partner is estranged or divorced from, or a former civil partner of, the claimant

4. the dwelling which a person has left because of estrangement, divorce or dissolved civil partnership, from the former partner[4] **or**

5. premises which the person is taking steps to dispose of[5] **or**

6. premises which the person is taking legal action or legal proceedings to get possession of[6] **or**

7. premises which need essential repairs or improvements[7] **or**

8. business assets and the person

8.1 works in the business as a S/E earner **or**

8.2 has stopped trading **or**

8.3 has stopped working or not started work in the business because the person is

8.3.a ill or physically or mentally disabled **and**

8.3.b is going to work in the business as a S/E earner when fit or able[8] **or**

9. the funds of a trust where the funds are a payment of compensation for a personal injury to the claimant or partner[9]

10. an award of damages for a personal injury to the claimant or partner or compensation for the death of one or both parents where the person concerned is aged less than 18 where

10.1 in England and Wales that award or compensation is administered by the High Court, County Court or the Court of Protection and such sum can only be disposed of by order or direction

10.1.a of any such court **or**

10.1.b where the person concerned is under age 18, prior to that person reaching 18[10]

10.2 in Scotland, the Court of Session or Sheriff Court under certain rules[11].

The income from capital is treated as capital from the date it is due to be paid[12].

1 ESA Regs, Sch 9, para 1; 2 Sch 9, para 2; 3 Sch 9, para 4; 4 Sch 9, para 5; 5 Sch 9, para 6; 6 Sch 9, para 7
7 Sch 9, para 8; 8 Sch 9, para 10; 9 Sch 9, para 16; 10 Sch 9, para 43; 11 Sch 9, para 44; 12 reg 112(4)

52736 Income from capital includes

1. interest on an investment, such as a building society account

2. dividends on shares **or**

3. rent from real or heritable property (see DMG 52020 **4.**).

52737 The income from capital is treated as capital for the period it is payable even if the income is spent in that period. The period starts with the date the income is due to be paid. At the end of the period if there is any of the income left it is capital and not income which is treated as capital.

Example 1

On 13 April Paul makes a claim for ESA. Paul lives with his parents but rents out a house which he owns. The value of this house with a sitting tenant is £40,000. Paul has a mortgage which is secured on this house and the amount outstanding is £38,500. The rent is £320 a calendar month and Paul uses this to pay the mortgage and other outgoings on the house. The rent is due to be paid on the first day of the month. The DM decides that the £320 rental income is treated as capital. The DM

also decides that this amount will be treated as capital for one month even though Paul uses it to pay his mortgage and other outgoings on his house.

Example 2

Eric is in receipt of ESA(IR). He was seriously injured and is awarded £1.5 million damages and this is administered by the Court of Protection. The Court authorizes payment of £5,000 a month to Eric's mother who uses the money to pay for Eric's care. The DM decides that each payment of £5,000 is treated as capital for a month even though it is used for Eric's care.

52738 The DM has to decide if people have deprived themselves of capital if any of the income is spent in the period it is treated as capital.

52739 - 52741

Tax refunds

52742 A refund of income tax which has been paid in respect of, or deducted from, profits or income under certain income tax legislation[1] is income which is treated as capital[2].

1 Income Tax (Trading and Other Income) Act 2005, Part 2 & Income Tax (Earnings and Pensions) Act 2003, Part 2; 2 ESA Regs, reg 112(2)

52743 The refund of income tax referred to in DMG 52742 covers

1. Profits or income of the S/E[1] **and**

2. Employed earners under the PAYE scheme[2].

1 Income Tax (Trading and Other Income) Act 2005, Part 2;
2 Income Tax (Earnings and Pensions) Act 2003, Part 2

Example

Michael is in receipt of ESA(IR). His wife, Hazel, works P/T and her earnings, after deductions for tax and NI are £65 a week. On 5 March Hazel receives a wage of £175 which includes £110 refund of tax paid under the PAYE scheme. The DM decides that the £110 tax refund is treated as capital.

Arrears of subsistence allowance

52744 Any arrears of subsistence allowance paid to the claimant by an EZ contractor as a lump sum is treated as a payment of capital[1].

1 ESA Regs, reg 112(9)

How to work out the total amount of capital 52745 - 52759

Notional capital 52748 - 52749

Fractions 52750 - 52759

52745 For each person add together the total of

1. actual capital **and**

2. income which is treated as capital **and**

3. notional capital.

The total of **1.** and **2.** and **3.** is the total amount of capital each person has.

52746 The total amount of capital a claimant has is the total amount of

1. the claimant's capital if the claimant does not have a partner **or**

2. the claimant's and the partner's capital if the claimant has a partner[1].

1 ESA Regs, reg 83

52747

Notional capital

52748 The DM has to decide if a person has notional capital if the total of actual capital and income which is treated as capital is £16,000 or less[1].

1 R(SB) 45/83

52749 The total amount of notional capital for each person is the total of the value of each item of notional capital that person has.

Fractions

52750 A fraction of a penny is disregarded[1] if

1. the value of any item of actual or notional capital **or**

2. any item of income which is treated as capital

ends in a fraction.

1 reg 3

52751 - 52759

Effect of capital on benefit 52760 - 52794

When claimant cannot get benefit 52760

When claimant is treated as having an income 52761 - 52762

When capital does not affect benefit 52763 - 52767

When the higher capital limits apply 52768 - 52769

Claimants in specific accommodation 52770

Specific accommodation 52771 - 52774

Meaning of personal care 52775

When a person is treated as living permanently in specific accommodation 52776 - 52778

Cost of Living Additional Payments 52779 - 52794

When claimant cannot get benefit

52760 Claimants cannot get ESA(IR) if the total amount of capital is more than £16,000[1].

1 ESA Regs, reg 110

When claimant is treated as having an income

52761 Claimants are treated as having an income if the total amount of capital is more than

1. £6,000 but not more than £16,000[1] **or**

2. £10,000 but not more than £16,000 if DMG 52770 applies[2].

The income they are treated as having is called tariff income.

Note: The total amount of capital includes any income treated as capital (see DMG 52725 et seq) and any liable relative payments treated as capital[3] (see DMG Chapter 51).

1 reg 118(1); 2 reg 118(2); 3 reg 118(6)

52762 Claimants are treated as having tariff income of £1 a week for each complete £250 of capital over

1. £6,000 up to and including £16,000

2. £10,000 up to and including £16,000 if DMG 52770 applies.

They are also treated as having tariff income of £1 a week for any capital which is left and which is not a complete £250[1]. See Appendix 3 to this Chapter, for a table which shows how to work out tariff income.

1 reg 118(1) & 118(5)

When capital does not affect benefit

52763 Capital does not affect what benefit claimants can get if their capital is

1. £6,000 or less **or**

2. £10,000 or less if DMG 52770 applies.

52764 - 52767

When the higher capital limits apply

52768 Higher capital limits apply once a claimant, lives in certain specific accommodation[1].

1 reg 118(3)

52769

Claimants in specific accommodation

52770 Where the claimant lives, or is treated as living permanently in specific accommodation[1], they will not be able to get benefit if their capital is more than £16,000.

1 ESA Regs, reg 118(3)

Specific accommodation

52771 Specific accommodation is

1. a care home[1] **or**

2. an independent hospital[2] (see DMG 52491) which is not a health service hospital or in Scotland an independent healthcare service **or**

3. an Abbeyfield Home[3] (see DMG 52491) **or**

4. the Ilford Park Polish Home[4] if the claimant requires personal care and it is provided by that home.

1 reg 118(3)(a); 2 reg 118(3)(a) & reg 2(1); Care Standards Act 2000, s 2(2); Regulation of Care (Scotland) Act 2001, s 2(5)(a) & (b); 3 ESA Regs, reg 118(3)(b); 4 reg 118(3)(c)

52772 In England and Wales "care home"[1] means a home, other than a hospital, an independent clinic or children's home, which provides accommodation along with nursing or personal care for people who

1. are or have been ill including mental illness

2. are disabled or infirm

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

1 reg 2(1); Care Standards Act 2000, s 3

52773 In Scotland "care home" means a care home service[1] which provides accommodation along with nursing, personal care or personal support for vulnerable people but does not include

1. hospitals

2. schools

3. independent health care services.

1 Regulation of Care (Scotland) Act 2001, s 2(3)

52774 In Scotland legislation[1] defines an independent health care service. For the purposes of ESA an "independent health care service"[2] means an independent hospital or private psychiatric hospital.

1 s 2(5); 2 s 2(5)(a) & (b)

Meaning of personal care

52775 Personal care[1] in DMG 52771 **4.** means

1. care by reason of old age or disablement **or**

2. care for past or present dependence on alcohol or drugs **or**

3. care for past or present mental disorder **or**

4. care for a terminal illness.

The care includes assistance with bodily functions if such assistance is needed.

1 ESA Regs, reg 118(3)(c)

When a person is treated as living permanently in specific accommodation

52776 Claimants are treated as living permanently in specific accommodation if they are

1. absent from accommodation at DMG 52771 **1. 2. or 3.** and DMG 52772 for 52 weeks or less **and**

2. over pension age[1].

1 reg 118(4)(a)(i)

52777 Claimants are also treated as living permanently in specific accommodation if

1. DMG 52776 does not apply **and**

2. they are absent from accommodation at DMG 52771 **1. 2. or 3.** and DMG 52772 for 13 weeks or less[1].

1 reg 118(4)(a)(ii)

52778 Claimants are treated as living permanently in specific accommodation if they

1. are absent from accommodation at DMG 52771 **4.** and the manager of that home has agreed they can return to the home **and**

2. intend to return to the home[1].

1 reg 118(4)(b)

Cost of Living Additional Payments

52779 Where a claimant receives a Cost of Living Payment, this payment is to be ignored completely when considering their entitlement to ESA(IR)[1].

1 SS (AP) Act 22, s 8; SS (AP) Act 23, S8

52780 Cost of Living Payments should **not** be considered as part of a claimant's capital

1. during the benefit week they are received **or**
2. in any subsequent benefit week they remain unspent.

Note 1: A Cost of Living Payment is a payment made under the Social Security (Additional Payments) Acts[1] to support eligible households with the cost of living which were first announced by the Chancellor in May 2022.

Note 2: Additional cost of living payments[2] are a new benefit which are automatically passported from existing benefit entitlement.

1 SS (AP) Act 22; SS (AP) Act 23

2 SS (AP) Act 22, s 6; SS (AP) Act 23, s6

52781 - 52794

Notional capital 52795 - 52804

The law 52795 - 52796

What the DM decides 52797 - 52804

The law

52795 The law says people are treated as having capital they do not have if

1. they deprive themselves of actual capital to get benefit or more benefit **or**

2. they can get capital if they apply for it **or**

3. it is paid to a third party **or**

4. they have shares in a company and are treated as a

4.1 sole owner **or**

4.2 partner

in the business of that company[1].

1 ESA Regs, reg 115

52796 The capital people are treated as having is called notional capital.

What the DM decides

52797 The DM decides if a person has notional capital if the total of the claimant's actual capital and income which is treated as capital is £16,000 or less.

52798 - 52804

Deprivation of capital 52805 - 52854

General 52805 - 52814

Have people deprived themselves of capital 52815 - 52824

Have people deprived themselves of capital for the purpose of getting benefit or more benefit 52825 - 52829

Facts which the DM should consider 52830 - 52854

General

The law

52805 The law says people are treated as having capital they do not have if they deprive themselves of their capital for the purpose of getting

1. ESA or IS or JSA **or**

2. more ESA or IS or JSA[1].

1 ESA Regs, reg 115(1)

52806 People are not treated as having capital of which they have deprived themselves if

1. the capital is a payment made because of a personal injury to them (including payments from the Children's Memorial Trust - see DMG 52417) **and**

2. the payment is held on trust for their benefit[1].

They are also not treated as having the amount by which notional capital is reduced under the diminishing notional capital rule[2].

1 ESA Regs, reg 115(1)(a), (1)(c) & (1)(d); 2 reg 115(1)(b)

52807 The law applies if claimants use their capital to buy personal possessions, such as a car, and they bought them to get

1. ESA or IS or JSA **or**

2. more ESA or IS or JSA.

The personal possessions are not disregarded if this applies[1].

Note: See DMG 52895 for guidance on the value of personal possessions if this applies.

1 ESA Regs, Sch 9, para 14

52808

Who the law applies to

52809 The law applies to claimants and partners only if they were the beneficial owner or joint beneficial owners of the capital. So if a claimant is the joint beneficial owner of a building society account which has £10,000 in it and the claimant's share is £4,000 the law

1. applies if the claimant spends or gives away that £4,000 or any part of it for the purpose of getting benefit or more benefit **and**

2. does not apply if the other £6,000 or any part of it is spent or given away.

52810 The law does not apply to claimants and partners if another person, such as

1. an appointee appointed by the DM to act for the claimant **or**

2. someone with power of attorney (unless DMG 52289 applies)

deprives claimants of their capital. DMG 52288 gives guidance on how to treat claimants capital in these circumstances.

52811 DMs should decide the question of deprivation each time benefit is claimed because

1. a decision on a claim is final **and**

2. any fact found or determination made in connection with that decision cannot be carried forward to decide the next claim[1].

1 Social Security Act 1998, s 17

52812 - 52814

Have people deprived themselves of capital

Meaning of deprive

52815 The meaning of deprive is not a question of law and should be given its normal every day meaning[1]. So claimants have deprived themselves of capital if they no longer have it even if they use it to

1. get

1.1 other capital[2] **or**

1.2 personal possessions **or**

2. pay debts.

1 R(SB) 40/85; 2 R(SB) 40/85

Onus of proof

52816 People have to show they no longer have capital[1].

1 R(SB) 38/85

Evidence that people no longer have capital

52817 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real or heritable property (see DMG 52020 **4.**), such as a house, has been transferred to another person **or**

2. a deed, such as a deed of

2.1 gift **or**

2.2 trust **or**

2.3 settlement

which shows capital has been given to another person **or**

3. receipts which show

3.1 what the capital has been spent on **or**

3.2 which debts have been paid out of the capital.

What the DM decides

52818 The DM decides if claimants or partners have

1. the capital **or**

2. deprived themselves of it.

DMs do not have to decide if claimants or partners have deprived themselves of capital for the purpose

of getting benefit or more benefit if they decide claimants or partners still have the capital. Such capital is included when working out what actual capital the claimant or partner has.

52819 DMs should decide claimants or partners have actual capital if

1. there is evidence to show claimants or partners had the capital **and**

2. claimants or partners cannot show they no longer have it[1].

1 R(SB) 38/85

Evidence which may show people had capital

52820 Evidence which may show people had capital can include information

1. given when benefit was claimed or claimed previously, such as when claimants have said they

1.1 had capital and do not say they have capital now **or**

1.2 owned the house in which they used to live and do not say what has happened to the house when they move into accommodation they do not own **or**

2. information from another source, such as from the former employer, which shows claimants have got a one-off payment.

52821 - 52824

Have people deprived themselves of capital for the purpose of getting benefit or more benefit

Onus of proof

52825 DMs have to show the claimant's or partner's purpose was to get benefit or more benefit if they decide claimants or partners have deprived themselves of capital. Getting benefit or more benefit may not be the claimant's or partner's predominant purpose but it must be a significant one[1]. So when claimants give away all their capital to a relative just before claiming benefit their

1. main, or predominant, purpose may be to benefit the relative **and**

2. intention, or significant purpose, may be to reduce their capital so they can get benefit or more benefit.

1 R(SB) 40/85

What the DM decides

52826 DMs have to decide if the claimant's or partner's significant purpose was to get benefit or more

benefit. The DM has to make such a decision each time claimants or partners deprive themselves of capital. So if claimants have spent their capital on several things the DM has to decide the claimant's purpose for each act of deprivation.

52827 Normally there is no direct evidence to show the claimant's or partner's purpose was to get benefit or more benefit. So the DM has to consider all the facts of each case when making the decision[1].

1 R(SB) 9/91

52828 - 52829

Facts which the DM should consider

Were people mentally capable when they deprived themselves of capital

52830 Claimants or partners who are not mentally capable have not deprived themselves of capital for the purpose of getting benefit or more benefit if they were not mentally capable at the time they deprived themselves of capital.

52831 Such claimants or partners have actual capital if they gave their capital to another person because the gift is not valid. The person who has been given the capital is holding it on trust for the claimant or partner.

Did claimants have a choice when they deprived themselves of capital

52832 The DM has to decide why claimants or partners chose to deprive themselves of capital when they did if they had a choice in the matter[1]. The fact that claimants had a choice does not mean their purpose was to get benefit or more benefit. It is a fact which the DM should take into account when deciding the claimant's or partner's purpose.

1 R(SB) 12/91

52833 Claimants or partners have no choice if they use their capital to pay

1. for the necessities of life, such as food and fuel **or**

2. debts which are

2.1 immediately repayable **and**

2.2 legal debts capable of enforcement[1] **or**

3. the Department to repay an overpayment.

Claimants or partners who had no choice have not deprived themselves of capital to get benefit or more benefit.

52834 Claimants or partners have a choice if they

1. give their capital away

2. spend their capital extravagantly or imprudently even if they say they have used it to pay for the necessities of life

3. pay back a debt before the agreed date, such as when they pay off their mortgage and the agreement says it is not due to be paid back for another 15 years[1]

4. pay more than the amount due on a debt, such as when they pay more than the minimum payment on a credit card debt, unless the payment has been made to remove the threat of high interest payments and the DM decides it was reasonable for the claimant to act in the way that they did.

5. pay back a debt which is not a legal debt capable of enforcement

6. make payments to a flexible current account mortgage which reduce the outstanding balance on the mortgage.

Note: See DMG 52339 if a person has a certain and immediate liability to repay capital that has been given to them.

1 R(SB) 12/91

52835 In England and Wales a legal debt capable of enforcement is one which is recognized in law as having legal effect. It can be created in a variety of ways, such as

• by judgement of a court

• an instrument under seal

• a deed

• a contract to pay.

52836 A contract is made if

1. there is a binding agreement, which does not have to be in writing **and**

2. some consideration passes between the people who have entered into the agreement, such as a mutual promise to lend and to repay money **and**

3. there is an intention to create legal relations.

52837 Legal relations are created if the parties to the agreement intend that the agreement should be binding and of legal effect. This means the interests of all the parties can be protected by legal action if necessary, such as when a lender asks for a debt to be repaid before the agreed date. It does not mean that the parties have agreed how the contract will be enforced if the debt is not paid back by the agreed date.

52838 In Scotland any valid debt can be legally capable of enforcement. This applies even if

1. the debt has not been acknowledged **or**

2. there is no written contract **or**

3. no consideration has passed between the parties involved.

52839 DMs should decide if a debt paid by claimants or partners is a legal debt capable of enforcement. Some of the things which the DM will need to take into account when making the decision are

1. the size and importance of the debt

2. the circumstances under which the loan was made

3. any written or other contemporaneous evidence

4. the relationship of the parties involved.

Did people know capital affects the amount of benefit they can get

52840 Claimants or partners have not deprived themselves of capital for the purpose of getting benefit or more benefit if they did not know that the capital they have deprived themselves of would affect the amount of benefit they could get[1].

1 R(SB) 12/91

52841 DMs have to show claimants or partners did have such knowledge if they are to decide the purpose was to get benefit or more benefit. Facts which the DM should consider include

1. previous claims for benefit which may show claimants or partners

1.1 did not get benefit, or got a reduced amount, because of the capital they had **or**

1.2 have been told about the effect of capital on benefit

2. official forms and leaflets which claimants or partners have been given when claiming benefit[1] **and**

3. the claimant's or partner's educational standing[2].

52842

Did people say what they were going to do with their capital

52843 Claimants or partners have not deprived themselves of capital for the purpose of getting benefit or more benefit if they

1. say exactly what they are going to do with their capital **and**

2. are told by the DWP it **will not** affect the amount of benefit they can get **and**

3. do what they said they were going to do with their capital.

52844 However, DMs should consider whether claimants or partners have deprived themselves of capital for the purpose of getting benefit or more benefit if they

1. say exactly what they are going to do with their capital **and**

2. are told by the DWP it **will** affect the amount of benefit they can get **and**

3. do what they said they were going to do with their capital.

When did people deprive themselves of capital

52845 The DM should consider the date claimants or partners deprived themselves of capital. Such a fact is more relevant if deprivation is near to the date of the claim or the date the claimant's circumstances change[1].

1 R(SB) 9/91

Example

Ruth has been in receipt of ESA(IR) since November 2008. On 25.2.09 she transfers legal and beneficial ownership of her house to her daughters and goes to live with her sister. Ruth says that she transferred ownership of her home to her daughters so they still had somewhere to live when she went to live with her sister. The DM decides that there are grounds to revise or supersede the decision awarding ESA to Ruth. The DM also decides that, although her predominant motive was to provide a home for her daughters, a significant purpose was to receive ESA. The DM therefore decides that Ruth deprived herself of the value of her house in order to receive ESA.

What are people going to live on after they have deprived themselves of capital

52846 The DM should consider what claimants or partners say they are going to live on after they have deprived themselves of capital. Such a fact is more relevant if they have no other capital or income to live

on[1].

1 R(SB) 9/91

52847 The DM cannot decide the purpose of the deprivation was to get benefit or more benefit if the only fact is that after depriving themselves of capital

1. claimants or partners should have realized **or**

2. the effect of it would be

they would need benefit[1].

1 R(SB) 40/85

52848 - 52854

Capital available on application 52855 - 52859

The law 52855 - 52856

Capital which is available 52857 - 52858

What the DM decides 52859

The law

52855 The law says people are treated as having capital which they could get if

1. they applied for it **and**

2. it is available to them if they apply for it.

They are treated as having the capital from the date they could be expected to get it if they applied for it[1].

1 ESA Regs, reg 115(2)

52856 This does not apply to capital people could get from

1. a discretionary trust[1] **or**

2. a trust and the funds of the trust are a payment which was made because of a personal injury to them[2] (including payments from the Children's Memorial Trust - see DMG 52417) **or**

3. getting a loan

3.1 which is secured on capital **and**

3.2 the capital is disregarded when working out what capital they have, such as the dwelling occupied as the home[3] **or**

4. a personal pension scheme[4] **or**

5. an occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant has not yet attained the qualifying age for SPC[5] **or**

6. capital administered by the Court which derives from a personal injury[6].

1 reg 115(2)(a); 2 reg 115(2)(b); 3 reg 115(2)(c); 4 reg 115(2)(d);

5 reg 115(2)(e); 6 reg 115(2)(f) & (2)(g)

Capital which is available

52857 Capital which is available on application is capital which people could have if they applied for it, such as

1. an unclaimed win on the premium bonds **or**

2. money which the person

2.1 has paid under the terms of a contract **and**

2.2 can get back if the terms of the contract lets them or the law specifically allows them to get their money back[1]

such as an agreement for credit under which people have paid a deposit and they can withdraw from the agreement within a certain period of time and get their deposit back.

1 Consumer Credit Act 1974, s 68

52858 Capital which is not included is actual capital which has already been taken into account when working out what capital people have. This applies even if they have to apply to get their money. For example, a man who has £2,000 invested in premium bonds will have £2,000 actual capital but would have to apply to withdraw his investment in the bonds if he wanted the money.

What the DM decides

52859 The DM decides if people could get capital if they applied for it. If so, the DM decides if the capital is available to them if they applied for it. If so, the DM treats them as having capital from the date they could expect to get it if they applied for it.

Capital paid to or for a third party 52860 - 52874

Capital paid to a third party for the claimant or a claimant's partner 52860

Capital paid to a claimant or claimant's partner for a third party 52861 - 52864

Third party 52865 - 52867

What the DM decides 52868 - 52874

Capital paid to a third party for the claimant or a claimant's partner

52860 [See Memo DMG 15/21] **[See Memo DMG 07-23]** Except for payments listed at DMG 52862, the law[1] states that a claimant or a claimant's partner is treated as having capital which is paid to a third party if the payment

1. is for that

1.1 claimant **or**

1.2 claimant's partner **and**

2. is made under social security law[2] **or is a**

2.1 WDisP[3] **or**

2.2 WWP, War Widower's Pension or Surviving Civil Partner's War Pension[4] **or**

2.3 a pension paid to a forces widow or surviving civil partner under specific provisions[5] **or**

2.4 another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen[6]

3. is a payment

3.1 of an occupational pension **or**

3.2 of a pension or other periodical payment made under a personal pension scheme **or**

3.3 made by the board of the PPF[7] **or**

4. in any other case[8], is a payment used by the claimant or a claimant's partner

4.1 for food **or**

4.2 ordinary clothing or footwear **or**

4.3 household fuel **or**

4.4 rent for which housing benefit is payable **or**

4.5 housing costs which are included when working out the claimant's applicable amount **or**

4.6 CT or water charges which the claimant or partner has to pay.

This does not apply if the payment is made to a third party and it is for a member of the third party's family.

Note: "Ordinary clothing or footwear" means clothing or footwear for normal daily use. It does not include school uniforms or clothing or footwear used solely for

sporting activities[9]. Ordinary clothing or footwear for normal daily use is what people in general wear on a daily basis. So it does not include clothing or footwear which

1. people in general do not wear, such as orthopaedic shoes which a disabled person might wear **or**

2. is not worn on a daily basis, such as wellington boots.

1 ESA Regs, reg 115(3); 2 reg 115(3)(a)(i); JS Act 95; SS CB Act 92; WRA 07, Part 1; 3 ESA Regs, reg 115(3)(a)(iii); 4 reg 115(3)(a)(iii); 5 Armed Forces (Pensions and Compensation) Act 2004; ESA Regs, reg 115(3)(a)(ii); 6 reg 115(3)(a)(iv); 7 reg 115(3)(b); 8 reg 115(3)(c); 9 reg 2(1)

Capital paid to a claimant or claimant's partner for a third party

52861 **[See Memo DMG 07-23] [See Memo DMG 08-25]** Except for payments listed at DMG 52862, any payment made to the claimant or claimant's partner in respect of a third party has to be treated as being possessed by the claimant or partner to the extent that it is kept or used by the claimant or partner.[1] This does not apply where the third party is a member of the claimant's family other than the claimant's partner.

1 ESA Reg, reg 115(4)

52862 **[See Memo DMG 15/21][See Memo DMG 07-23] [See Memo DMG 08-25] [See Memo DMG 04-26]** DMG 52860 and DMG 52861 do not apply[1] to payments of capital made from

1. the Macfarlane Trust (see DMG 52452) **or**

2. the Macfarlane (Special Payments) Trust (see DMG 52453) **or**

3. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 52454) **or**

4. the Fund (see DMG 52455) **or**

5. the Eileen Trust (see DMG 52456) **or**

6. MFET Limited (see DMG 52457) **or**

7. the Independent Living Fund (2006) (see DMG 52442) **or**

8. the Skipton Fund (see DMG 52458) **or**

9. the Caxton Foundation (see DMG 52459) **or**

10. SIBSS (see DMG 52460) **or**

11. an approved blood scheme (see DMG 52461) **or**

12. the London Emergencies Trust (see DMG 52463) **or**

13. the We Love Manchester Emergency Fund (see DMG 52464) **or**

11. the London Bombings Relief Charitable Fund[2] (DMG 52462) **or**

12. a payment under relevant legislation[3] in respect of participation in

12.1 a specified employment programme[4] **or**

12.2 a specified training scheme[5] **or**

12.3 the Intensive Activity Period[6] **or**

12.4 a specified employment-related course[7] **or**

12.5 the MWA Scheme[8] **or**

12.6 the ESE Scheme[9] **or**

13. a payment under an

13.1 an occupational pension scheme **or**

13.2 a personal pension scheme **or**

13.3 a payment made by the Pension Protection Fund where the payment is made

13.3.a for a person in respect of whom a bankruptcy order has been made **or** where in Scotland, the estate of that person is subject to sequestration or has a judicial factor appointed on it **and**

13.3.b it is paid to a trustee in bankruptcy or any other person acting on behalf of the creditors **and**

13.3.c neither the person in respect of whom the payment has been made nor that person's partner has actual or notional capital apart from that payment[10].

1 ESA Regs, reg 115(5); 2 reg 115(5)(a); 3 E & T Act 73, s 2; 4 ESA Regs, reg 115(5)(b)(i); 5 reg 115(5)(b)(ii); 6 reg 115(5)(b)(iii); 7 reg 115(5)(b)(iv); 8 reg 107(5)(ca); 9 reg 115(5)(ba); 10 reg 115(5)(c)

52863 - 52864

Third party

52865 Third party includes a public body, such as a LA.

52866 - 52867

What the DM decides

52868 The DM decides

1. whether a claimant or claimant's partner should be treated as having capital which has been paid to or for a third party **and**

2. if so the amount of capital that claimant or claimant's partner is treated as having **and**

3. DMG 52860 - 52861 does **not** apply when payments are made to a third party rather than the claimant at the claimant's own request.

Note: See DMG 52428 for the definition of "personal pension scheme".

52869 - 52874

Person treated as sole owner or partner in a company 52875 - 52884

The law 52875

Like a sole owner or partner 52876 - 52878

Undertaking activities in the course of the business 52879

What the DM decides 52880 - 52884

The law

52875 The law says a person who has shares in a company is treated as the sole owner or a partner in the business of that company if the person is like a sole owner or partner in the business of the company. If this applies to the person the law says the

1. value of the person's shares in the company is disregarded when working out what capital the person has **and**

2. person is treated as having capital which is equal to

> **2.1** the value of the capital of that company if the person is treated as the sole owner **or**
>
> **2.2** the person's share of the value of the capital of that company if the person is treated as a partner[1].

If the person is undertaking activities in the course of the business of that company the capital the person is treated as having at **2.** is disregarded[2].

1 ESA Regs, reg 115(6); 2 reg 115(7)

Like a sole owner or partner

52876 Whether a person who has shares in a company is like a sole owner or partner in the business of that company is a question of fact in each case[1]. A person who does not work for the company can be like a sole owner or partner[2].

1 R(IS) 8/92; 2 R(IS) 8/92

52877 The sole owner of a business has total influence over the day to day running of the business. When a business is jointly owned the number of partners is normally small and the influence a partner has over the day to day running of the business will depend on the terms of the partnership agreement.

So for a person to be like a

1. sole owner in the business of the company that person should have total influence over the day to day running of the company, such as when a person owns 99% of the shares in a company[1] **and**

2. partner in the business of the company the

2.1 number of shareholders in the company should be small **and**

2.2 person should have some significant influence over the day to day running of the company[2].

1 R(IS) 13/93; 2 R(IS) 8/92

52878 A person who has some shares in a company which has a large number of shareholders, such as BT, is an investor because such a person has no influence over the day to day running of the company[1].

1 R(IS) 8/92

Undertaking activities in the course of the business

52879 A person who is a shareholder in a company is undertaking activities in the course of the business of the company if that person is doing some work, no matter how little, for that company. So a person who takes telephone messages and receives mail for the company is undertaking activities in the course of the business of that company[1].

1 R(IS) 13/93

What the DM decides

52880 The DM decides whether a person who has shares in a company is treated as a sole owner or partner in the business of the company. If so the DM

1. disregards the value of the person's shares in the company **and**

2. decides whether the value of the capital the person is treated as having is disregarded because the person is undertaking activities in the course of the business of the company.

If the value at **2.** cannot be disregarded the DM decides the value of the capital the person is treated as having.

52881 - 52884

What is the amount of notional capital 52885 - 58999

How to work out the amount of notional capital 52885 - 52896

Disregards 58287 - 52890

Value 52891 - 52893 - 52899

Diminishing notional capital rule 52999

How to work out the amount of notional capital

The law

52885 The law says the amount of notional capital is worked out in the same way as if the person has the capital[1].

1 ESA Regs, reg 115(8)

What the DM decides

52886 The DM decides

1. what notional capital can be disregarded (see DMG 52351 - 52605) **and**

2. the value of notional capital which cannot be disregarded (see DMG 52610 - 52691).

Disregards

Capital of a company

52887 Normally a person has no beneficial interest in the capital of a company. But if a person who has shares in a company is treated as a

1. sole owner **or**

2. partner

in the business of the company the person is also treated as having the value of the capital of the company unless it is disregarded.

52888 The value of the capital of a company is disregarded if the person is undertaking activities in the course of the business of the company.

Premises which are to be sold

52889 Premises which are to be sold are normally disregarded. But they are not disregarded if people are treated as having them because they transferred legal ownership to another person in order to secure entitlement to ESA, IS or JSA or to increase the amount of those benefits. A person who is not the legal owner of premises cannot take any steps to dispose of them so the disregard does not apply.

Shares

52890 The value of a person's shares in a company is not normally disregarded. But the value of a person's shares in a company is disregarded if the person is treated as a

1. sole owner **or**

2. partner

in the business of the company.

Value

Capital of a company

52891 Normally a person has no beneficial interest in the capital of a company. But if a person who has shares in a company is treated as a

1. sole owner **or**

2. partner

in the business of the company the person is also treated as having the value or a share of the value of the capital of the company if it is not disregarded.

52892 The value of the capital of the company is the net value of the capital of that company. The net value is the difference between

1. the total value of the capital of the company **and**

2. the amount of any liabilities the company has[1].

It is not the value of some of the capital of the company[2].

Note: An expert valuation will be needed if the company's auditors do not provide evidence of the net value of the capital of the company.

1 R(IS) 13/93; 2 R(IS) 13/93

52893 The value the person is treated as possessing is

1. all the value if the person is treated as a sole owner **and**

2. a share of the value if the person is treated as a partner.

The share at **2.** is the same fraction as the fraction of shares the person has in the company. So a person who has 40 out of a 100 shares in a company has a two fifth's share of the value.

Capital paid to or for a third party

52894 The amount of capital a person is treated as having if capital is paid to a

1. third party for a claimant or claimant's partner **or**

2. claimant or claimant's partner for a third party

is not always the full amount of the capital paid. See DMG 52860 - 52868 which says what capital the person is treated as having.

Capital spent on a resource which is not worth as much

52895 If claimants or partners have deprived themselves of capital to get ESA, IS or JSA or more ESA, IS or JSA and they spent their capital on a resource which is not worth as much as the capital spent, the value of notional capital is the difference between the value of the

1. capital spent **and**

2. resource which was bought[1].

Note: This may apply when a person has spent capital on personal possessions to get benefit or more benefit because personal possessions are not normally worth as much as a person paid for them. The DM should **not** consider any further increase in the difference between the amount paid for a personal possession and its current market value[2].

1 R (SB) 38/85; 2 R(IS) 8/04

Example

Jens makes a claim for ESA. Two weeks before making his claim, Jens buys a car for £7,250. The DM decides that Jens bought the car to get benefit. When Jens makes his claim the value of the car is £6,500. The DM decides that Jens has actual capital of £6,500 and notional capital of £750. Although the value of the car reduces, the DM does not make an increase in the amount of notional capital.

Capital which people have deprived themselves of

52896 If claimants or partners deprive themselves of capital to get ESA, IS or JSA or more ESA, IS or JSA the value of the capital they are treated as having is the difference between

1. its value on the date of claim or revision **and**

2. the amount of any reduction under the diminishing notional capital rule[1].

1 ESA Regs, reg 115(1)(b)

52897 - 52899

Diminishing notional capital rule

The law

52900 The law says

1. when the amount of notional capital should be reduced **and**

2. how the amount of the reduction is worked out[1].

1 ESA Regs, reg 116

What the DM decides

52901 The DM decides

1. when the capital a claimant is treated as having because of deprivation should be reduced **and**

2. the amount of the reduction.

The diminishing notional capital rule

52902 The diminishing notional capital rule gives two ways for reducing the amount of capital the claimant is treated as having because of deprivation. If the claimant

1. is getting benefit capital is reduced as in DMG 52915 - 52917

2. is not getting benefit it is reduced as in DMG 52925 - 52928.

52903 - 52904

Meaning of benefit week

52905 Benefit week in this guidance means a period of seven days which ends on a day decided by the DM[1].

1 reg 2(1)

52906

Meaning of part-week

52907 In this guidance part-week means any period of less than a week when the claimant gets ESA[1].

1 reg 116(7)

Meaning of relevant week

52908 Relevant week in this guidance means

1. the first benefit week or first part-week when deprivation of capital is first taken into account to decide the claimant's entitlement to ESA(IR), JSA or IS[1] **or**

2. any benefit week or part-week after the one at **1.** when the capital is taken into account to revise or supersede what ESA(IR), JSA or IS the claimant can get and it is decided the claimant can

2.1 start getting ESA(IR), JSA or IS **or**

2.2 no longer get ESA(IR), JSA or IS[2].

If more than one benefit week or part-week is identified after applying **1.** and **2.** the relevant week is the latest benefit week or the latest part-week[3].

1 ESA Regs, reg 116(7)(a); 2 reg 116(7)(b); 3 reg 116(7)

Example 1

On 12.12.08 Carol makes a claim for ESA. Her first BWE is Wednesday 17.12.08. Two days before making her claim Carol deprived herself of £8,500 and the DM decides she did so in order to get ESA(IR). The period from 12.12.08 to 17.12.08 at the start of Carol's claim is a part-week. It is the first part-week she is treated as having because notional capital is taken into account. The DM therefore decides that the part-week is the relevant week.

Example 2

On 11.12.08 Alan makes a claim for ESA. His BWE is Thursday. The DM decides that on 4.12.08 he deprived himself of £9,200 in order to get ESA(IR). On 23.4.09 Alan makes another claim for ESA. The DM decides that on 4.12.08 Alan deprived himself of capital to get ESA(IR) and he should be treated as having £7,685.70. Alan has no other income or capital so the DM decides that Alan is now entitled to ESA(IR). The DM also decides that the part-week from 23.4.09 to 26.4.09 is the relevant week.

52909

Meaning of relevant subsequent week

52910 In this guidance relevant subsequent week means

1. the benefit week or part-week which includes

1.1 the day when a further claim for benefit is made **or**

1.2 where more than one further claim for benefit is made the day the last such claim is made **and**

2. the further claim for benefit is made 26 weeks or more after

2.1 the date of the claim when the claimant is first treated as having capital because of deprivation **or**

2.2 the date of the claim when the amount of the reduction to capital is last changed (see DMG 52935 - 52940) **or**

2.3 the date the claimant stopped getting benefit **and**

if more than one date is identified after applying **2.1** to **2.3** the date is the latest date **and**

3. the claimant would get benefit if he were not treated as having capital because of deprivation[1].

1 ESA Regs, reg 116(4), (5) & (7)

Example

On 13.6.09 Fernando makes a claim for ESA. His BWE is Monday. The DM decides that he cannot get ESA(IR) because he should be treated as having capital of £35,000 because of deprivation. On 10.4.10 Fernando makes a further claim for ESA. The DM decides that the amount of notional capital Fernando is treated as having because of deprivation has reduced to £31,934.10. The DM also decides that the relevant subsequent week is from 10.4.10 to 16.4.10.

52911 - 52914

How to work out and apply the reduction - claimant getting benefit

52915 The amount of the reduction is the extra benefit claimants would get if they are not treated as having capital because of deprivation[1].

1 reg 116(1)(a) & (2)

52916 The reduction is made if

1. in the relevant week or any week after that week claimants are getting benefit, **and**

2. they would get more benefit if they are not treated as having the capital[1].

1 reg 116(1)(a) & (2)

52917 The reduction is made from the week after the relevant week and any week after that[1].

1 reg 116(1)(a)

Example

On 5 March Mohammed makes a claim for ESA. He is single and has no income or capital but the DM decides he is treated as having capital of £7,150 because of deprivation. The DM therefore decides that Mohammed is entitled to ESA(IR) of £51.20 a week. Mohammed would get £56.20 a week if he had not been treated as having capital because of deprivation. The DM also decides that the reduction in Mohammed's notional capital is £5 a week.

52918 - 52924

How to work out and apply the reduction - claimant not getting benefit

52925 The amount of the reduction is

1. the amount of benefit claimants get in the relevant week if they are not treated as having capital because of deprivation, see also DMG 52926 **and**

2. the difference between

2.1 the maximum amount of

2.1.a HB **and**

2.1.b CTB

claimants can get **and**

2.2 the amount of that benefit claimants are getting for

2.2.a a period of seven consecutive days starting on a Monday and ending on Sunday **and**

2.2.b the period includes the last day of the relevant week[1].

Note: The amount of the reduction can be changed (see DMG 52935 - 52940).

1 ESA Regs, reg 116(1)(b) & (3)

52926 If the relevant week is a part-week the benefit claimants get should be worked out by

1. dividing the amount of benefit they would get if they are not treated as having capital for the part-week by the number of days in the part-week **and**

2. multiplying the figure at **1.** by 7[1].

1 reg 116(3)(a)

52927 The reduction is made if in the relevant week claimants can get benefit if they are not treated as having capital because of deprivation[1].

1 reg 116(1)(b) & (3)

52928 The reduction is made from the week after the relevant week and any week after that week[1].

1 reg 116(1)(b)

Example

On 9.5.09 Ben makes a claim for ESA. His BWE is Monday. He has a partner and has no income or capital but the DM decides he is treated as having capital of £18,000 because of deprivation. The DM therefore decides that Ben is not entitled to ESA(IR). Ben would get £88.15 a week if he had not been treated as having capital because of deprivation. Ben is not getting any HB or CTB but the maximum amount of those benefits he could get is £65.50 a week. The DM also decides that the

reduction in Ben's notional capital is £153.65 a week and the first week of the reduction is from 10.5.09 to 16.5.09.

52929 - 52934

When to change the amount of the reduction in DMG 52925

52935 The amount of the reduction in DMG 52925 can be changed if

1. another claim for ESA is made[1] (see DMG 52936) **and**

2. claimants can get ESA(IR) in the relevant subsequent week if they are not treated as having capital because of deprivation[2].

1 ESA Regs, reg 116(4); 2 reg 116(5)(b)

52936 The claim for benefit must be made 26 weeks or more after

1. the date of the claim when the claimant is first treated as having capital because of deprivation **or**

2. the date of the claim when the amount of the reduction is last changed under DMG 52935 **or**

3. the last date the claimant stopped getting ESA(IR)

If more than one date is identified after applying **1.** to **3.** the date is the latest date[1].

1 reg 116(5)

Example

On 1.9.09 Sabrina makes a claim for ESA. She is single and has no income or capital but the DM decides she is treated as having capital of £21,300 because of deprivation. Sabrina would get ESA(IR) of £55.65 if she had not been treated as having capital because of deprivation. She is not entitled to HB or CTB. The DM therefore decides that the reduction in Sabrina's notional capital is £55.65 a week.

On 10.5.10 Sabrina makes another claim for ESA. Her circumstances have not changed and the DM decides that she is treated as having capital of £19,496.55 because of deprivation. Sabrina would now get ESA(IR) of £56.20 a week if she had not been treated as having capital because of deprivation.

The DM therefore decides that the reduction in Sabrina's notional capital is changed to £56.20 a week.

Note: See DMG 52940 for guidance on when the new amount of the reduction begins.

How to work out and apply the new amount of the reduction

52937 The amount of the reduction is

1. the benefit claimants would get in the relevant subsequent week if they are not treated as having capital because of deprivation (see also DMG 52938) **and**

2. the difference between

2.1 the maximum amount of

2.1.a HB **and**

2.1.b CTB

claimants can get **and**

2.2 the amount of benefit claimants are getting for

2.2.a a period of seven consecutive days starting on a Monday and ending on Sunday **and**

2.2.b for HB the period includes the last day of the relevant subsequent week **or**

2.2.c for CTB the period includes the last day of the relevant week[1].

1 ESA Regs, reg 116(1)(b), (3) & (4)

52938 If the relevant subsequent week is a part-week the benefit claimants get should be worked out by

1. dividing the amount of benefit they would get if they were not treated as having capital for the part-week by the number of days in the part-week **and**

2. multiplying the figure at **1.** by seven[1].

1 reg 116(3)(a) & (4)

52939 If the amount of the reduction as in DMG 52937 is less than the one before use the one before[1].

1 reg 116(6)

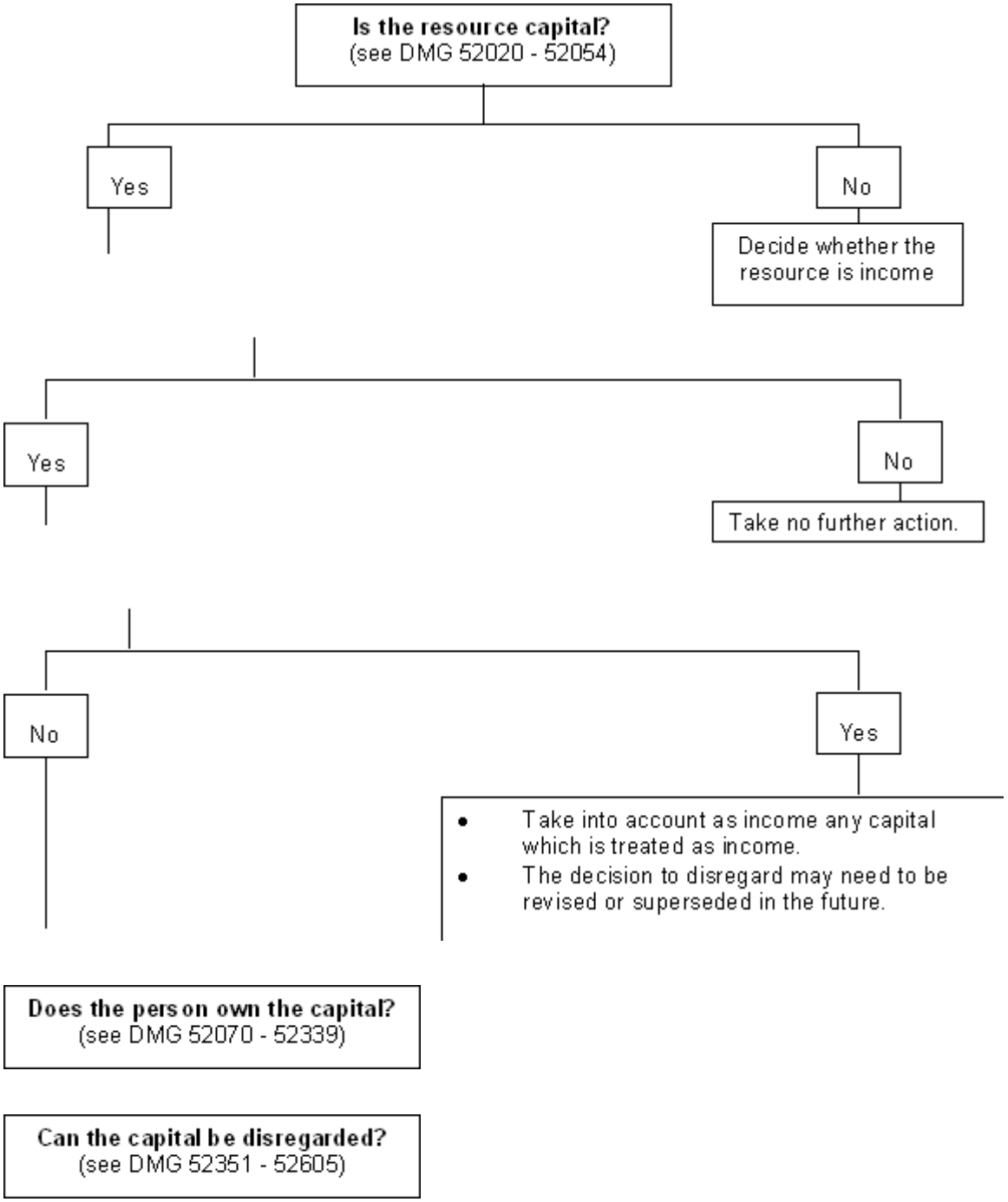
52940 The new amount of the reduction is made from the week after the relevant subsequent week and any week after that[1].

1 reg 116(4)(b)

52941 - 52999

Appendix 1 : Flowchart

How to work out the amount of capital of a claimant and partner and its effect on benefit



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What is the value of the capital (see DMG 52610 - 52691) and its effect on benefit (see DMG 52760 - 52778)?

1. Work out the value of the capital
2. Add together
   - 2.1 the value of each item of capital belonging to the claimant and partner **and**
   - 2.2 any income of the claimant and partner which has to be treated as capital
3. If the total is

£16,000 or less has the person any notional capital? (see DMG 52795 - 52880).

More than £16,000, the claimant cannot get benefit (see DMG 52760).

No

Yes

Is the total more than £6,000 but not more than £16,000, or more than £10,000 but not more than £16,000 if DMG 52770 applies?

Yes

No

Work out the amount of tariff income (see DMG 52761 - 52762).

Take no further action.

What is the amount of notional capital (see DMG 52885) and its effect on benefit (see DMG 52760 - 52778)?

1. Work out the value of the notional capital.
2. Add together
   - 2.1 The value of each item of capital belonging to the claimant and partner **and**
   - 2.2 The total of their actual capital and income treated as capital
3. If the total is
   - 3.1 more than £16,000, the claimant cannot get benefit
   - 3.2 more than £6,000 but not more than £16,000, or more than £10,000 but not more than £16,000 if DMG 52770 applies, work out the amount of tariff income
   - 3.3 £6,000 or less, take no further action.

Appendix 2: How to work out tariff income

Table 1 - DMG 52770 does not apply to the claimant

Total capital		Tariff income £
From £	**To £**	
NIL	6,000.00	NIL
6,000.01	6,250.00	1
6,250.01	6,500.00	2
6,500.01	6,750.00	3
6,750.01	7,000.00	4
7,000.01	7,250.00	5
7,250.01	7,500.00	6
7,500.01	7,750.00	7
7,750.01	8,000.00	8
8,000.01	8,250.00	9
8,250.01	8,500.00	10
8,500.01	8,750.00	11
8,750.01	9,000.00	12
9,000.01	9,250.00	13
9,250.01	9,500.00	14

9,500.01	9,750.00	15
9,750.01	10,000.00	16
10,000.01	10,250.00	17
10,250.01	10,500.00	18
10,500.01	10,750.00	19
10,750.01	11,000.00	20
11,000.01	11,250.00	21
11,250.01	11,500.00	22
11,500.01	11,750.00	23
11,750.01	12,000.00	24
12,000.01	12,250.00	25

Total capital		**Tariff income £**
From £	**To £**	
12,250.01	12,500.00	26
12,500.01	12,750.00	27
12,750.01	13,000.00	28
13,000.01	13,250.00	29
13,250.01	13,500.00	30
13,501.00	13,750.00	31
13,750.01	14,000.00	32

14,000.01	14,250.00	33
14,250.01	14,500.00	34
14,500.01	14,750.00	35
14,750.01	15,000.00	36
15,000.01	15,250.00	37
15,250.01	15,500.00	38
15,500.01	15,750.00	39
15,750.01	16,000.00	40
16,000.01	and over	claimant cannot get benefit

Table 2 - DMG 52770 does apply to the claimant

Total capital		**Tariff income £**
From £	**To £**	
NIL	10,000.00	NIL
10,000.01	10,250.00	1
10,250.01	10,500.00	2
10,500.01	10,750.00	3
10,750.01	11,000.00	4
11,000.01	11,250.00	5
11,250.01	11,500.00	6
11,500.01	11,750.00	7

11,750.01	12,000.00	8
12,000.01	12,250.00	9
12,250.01	12,500.00	10
12,500.01	12,750.00	11
12,750.01	13,000.00	12
13,000.01	13,250.00	13
13,250.01	13,500.00	14
13,500.01	13,750.00	15
13,750.01	14,000.00	16
14,000.01	14,250.00	17
14,250.01	14,500.00	18
14,500.01	14,750.00	19
14,750.01	15,000.00	20
15,000.01	15,250.00	21
15,250.01	15,500.00	22
15,500.01	15,750.00	23
15,750.01	16,000.00	24
16,000.01	and over	claimant cannot get benefit

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