DMG Chapter 78: Additional amounts and special groups

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Introduction

78001 This Chapter contains guidance on SPC and the

1. additional amounts that may be awarded for

1.1 the severely disabled (see DMG 78030)

1.2 carers (see DMG 78100)

1.3 former claimants of IS/JSA(IB) (see DMG 78120)

1.4 housing costs (see DMG 78170)

1.5 those responsible for a child or qualifying young person (see DMG 78549)

2. special rules that apply to

2.1 members of polygamous marriages (see DMG 78600)

2.2 prisoners (see DMG 78650)

2.3 members of religious orders (see DMG 78680)

2.4 people in hospital (see DMG 78700)

2.5 people who are absent from GB (see DMG 78920 and DMG Chapter 07).

78002 For guidance on

1. the conditions of entitlement for SPC - see DMG 77031 et seq

2. how to establish membership of the household - see DMG 77100 et seq

3. how to calculate the normal amount payable - see DMG 77140 et seq

4. payment questions, including how to calculate the amount payable for a part week - see DMG Chapter 79

5. transitional provisions - see DMG Chapter 80

6. the assessed income period - see DMG Chapter 83

7. the treatment of capital and deemed weekly income from capital - see DMG Chapter 84

8. the treatment of income other than earnings - see DMG Chapter 85

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78005 The following paragraphs explain the meaning of terms used throughout this Chapter.

"AA"

78006 [see DMG memo 02/25] Attendance allowance ("AA") means[1] any of the following

1. "AA"[2] **or**

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

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

4. any

4.1 payments for attendance under the Civilians Personal Injury Scheme[5] **or**

4.2 similar payments to **4.1 or**

5. any payment for attendance which is part of WDisP (including severe disablement occupational allowance paid with CAA) **or**

6. any payment for attendance paid as

6.1 any retired pay, pension or allowance in respect of disablement **or**

6.2 any pension or allowance paid to

6.2.a a widow **or**

6.2.b a widower **or**

6.2.c a surviving civil partner

in respect of a death due to military service or war injury under certain legislation[6]

Note: Payments in **4.** are made to people who receive a disability pension because of war injuries suffered as civilians or civil defence volunteers.

1 SPC Regs, reg 1(2); 2 SS CB Act 92, s 64; 3 s 104 & 105; 4 s 104 & 105;
5 Personal Injuries (Civilians) Scheme 83, Art 14-16, 43 & 44;
6 SPC Regs, reg 15(5)(ac): Income Tax (Earnings and Pensions) Act 2003, s 639(2)

78007

Treated as blind or severely sight impaired

78008 A person should be treated as blind or severely sight impaired[1] for a period of 28 weeks from the date they regained their eyesight and were no longer certified as blind or severely sight impaired.

1 SPC Regs, Sch I, para 1(3); Sch II, para 14(6)(a)

Full-time student

78009 A F/T student is[1] a person who is not a qualifying young person[2] or a child and who is

1. aged less than 19 and is attending or undertaking a F/T course of advanced education **or**

2. aged 19 or over but under pensionable age and is attending or undertaking a F/T course of study at an educational establishment **or**

3. on a sandwich course.

1 SPC Regs, reg 1(2); IS (Gen) Regs, reg 61(1); 2 SPC Regs, reg 4A

78010 For further information on F/T students and qualifying young persons, see the guidance on students for IS purposes in DMG Chapter 30.

Voluntary organisation

78011 A voluntary organisation is a non-profit making organisation that is not a public authority or LA[1].

1 SPC Regs, reg 1(2)

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Categories

78025 There are five types of additional amount[1] that may be applicable when considering the amount of the AMG. These are for

1. the severely disabled

2. carers

3. former claimants of IS/JSA(IB)

4. housing costs.

5. those responsible for a child or qualifying young person.

1 SPC Act 02, s 2; SPC Regs, reg 6; Sch I, II & IIA

Rates of additional amounts

78026 DMs should note that the additional amount for

1. the severely disabled is payable at two rates. The rate depends on whether the claimant or any partner satisfies the qualifying conditions

2. carers is paid at one rate. But there may be more than one such additional amount payable (see DMG 78101)

3. former claimants of IS/JSA(IB) is variable depending on the circumstances of each individual case

4. housing costs is variable depending on the circumstances of each individual case.

5. a child or qualifying young person depends on their date of birth, and an additional amount may be payable if the child or qualifying young person is entitled to any amount of DLA/PIP,

Qualifying conditions

78027 Each additional amount has its own qualifying conditions and to be entitled to an additional amount the qualifying conditions may apply to

1. the claimant **or**

2. any partner of the claimant.

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General

78030 [See DMG memo 12/23] **[See** Memo DMG 06/25**]** **[**See Memo DMG 1/26**]** When considering the amount of the AMG, an additional amount is applicable if the claimant is treated as being severely disabled[1].

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

Note: Where a claimant claims that either they or the DP is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to DMA Leeds, for consideration of whether the benefit falls within Art. 5 of Regulation (EC) NO 883/2004

78031 An additional amount for the severely disabled is not payable[1] in the case of

1. prisoners **and**

2. members of religious orders who are fully maintained by their order.

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

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

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

1 SPC Regs, reg 6(5)

Lower rate

Claimants who have no partner

78034 [see DMG memo 02/25] Claimants with no partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if[1]

1. they are in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 the daily living component of ADP at the standard or enhanced rate **or**

1.5 AFIP **and**

2. there are no persons aged 18 or over

2.1 normally residing with the claimant **or**

2.2 who the claimant normally resides with (see DMG 78065 et seq) **and**

3. no one is entitled to and in receipt of CA, or UC that includes the carers element, in respect of caring for them.

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

Transitional protection

78035 [see DMG memo 02/25] Carers who were aged 65 and over before 28.10.02 can continue to be entitled to CA even though they are no longer providing care[1], for example after the disabled person has died.

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

78036 [see DMG memo 02/25] A claimant will not be disqualified under 78034 **3.**, from the extra amount for the severely disabled where the person in receipt of CA is not providing care but retains payment of the CA as a result of transitional protection.

78037 - 78044

Claimants who have a partner

78045 [see DMG memo 02/25] Claimants who have a partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if[1]

1. both partners are in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 the daily living component of ADP at the standard or enhanced rate **or**

1.5 AFIP **and**

2. there are no persons aged 18 or over

2.1 normally residing with the partners **or**

2.2 who the partners normally reside with (see DMG 78065 et seq) **and**

3. someone is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for only one of the partners.

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

78046 [see DMG memo 02/25] Claimants who have a partner may not satisfy the conditions in DMG 78045. In such a case the lower rate can still be awarded if[1]

1. one of the partners is in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 the daily living component of ADP at the standard or enhanced rate **or**

1.5 AFIP **and**

2. the other partner is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired **and**

3. there are no persons aged 18 or over

3.1 normally residing with the partners **or**

3.2 who the partners normally reside with (see DMG 78065 et seq) **and**

4. no-one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for the partner who is receiving "AA" or DLA as in **1.**

1 SPC Regs, Sch I, para 1(1)(c)

78047 [see DMG memo 02/25] The lower rate of additional amount for the severely disabled can also be awarded to claimants who have a partner if[1]

1. one of the partners is in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 the daily living component of ADP at the standard or enhanced rate **or**

1.5 AFIP **and**

2. the other partner would be in receipt of

2.1 "AA" **or**

2.2 the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of ADP at the standard or enhanced rate **or**

2.4 the daily living component of PIP at the standard or enhanced rate

but for being a patient for over 28 days **and**

3. there are no persons aged 18 or over

3.1 normally residing with the partners **or**

3.2 who the partners normally reside with (see DMG 78065 et seq) **and**

4. no-one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for the partner who is receiving "AA" or DLA as in **1.**.

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b) & (2)(b)

Higher rate

78048 [see DMG memo 02/25] DMs should note that the higher rate of additional amount for the severely disabled does not apply to claimants who have no partner.

78049 Claimants who have a partner are treated as being severely disabled and are entitled to the higher rate if[1]

1. both partners are in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 the daily living component of ADP at the standard or enhanced rate **or**

1.5 AFIP **and**

2. there are no persons aged 18 or over

2.1 normally residing with the partners **or**

2.2 who the partners normally reside with (see DMG 78065 et seq) **and**

3. no one is entitled to and in receipt of CA, or UC that includes the carer element, in respect of caring for either partner.

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

78050 [see DMG memo 02/25] DMs should note that DMG 78049 **1.** is **not** satisfied if either partner is treated as being in receipt of "AA" or DLA, PIP, ADP or AFIP as in DMG 78060 **2.**[1]. In such a case the lower rate of additional amount should be considered.

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

78051 - 78054

In receipt of "AA", DLA, PIP, ADP, CA and UC that includes the carer element

78055 [see DMG memo 02/25] Before awarding an additional amount for the severely disabled, the DM needs to know if

1. the claimant or partner is in receipt of "AA", DLA, PIP, ADP or AFIP **and**

2. anyone is in receipt of CA, or UC that includes the carer element, in respect of caring for the claimant or partner.

Note: Special rules apply to the treatment of "AA", DLA, PIP, ADP, AFIP and CA/UC that includes the carer element, when a person is admitted to hospital. See DMG 78805 et seq for guidance.

Example

Heather was in receipt of "AA" and had an award of SPC which included an amount for severe disability. On 10.06.2017 she was admitted to a care home. It wasn't until the 22.11.2017 that her "AA" ceased, due to some confusion around appointing someone to act. The additional amount for severe disability was correctly in payment while ever Heather was **in receipt of "**AA",

"AA", DLA, PIP, ADP and AFIP

78056 [see DMG memo 02/25] DMs should note that a person is in receipt of "AA" or DLA or PIP or AFIP only if it is paid because of that person's own incapacity or disability.

Example 1

Alistair is aged 65 and lives alone. He claims SPC and states that he is in receipt of "AA" due to his poor physical condition. No one gets CA/UC that includes the carer element, in respect of looking after him. Alistair is in receipt of "AA" and the DM considers an additional amount for the severely disabled.

Example 2

Ruby lives with her grandson Ben who is aged 14. Ben is disabled and is awarded the care component of DLA at the highest rate. But the DLA is paid to Ruby. Ruby is not in receipt of DLA. The DLA is paid because of Ben's disability and is only paid to Ruby because of Ben's age. An additional amount for the severely disabled is not applicable.

CA/UC carer element

78057 [see DMG memo 02/25] An additional amount for the severely disabled may not be applicable if someone is receiving CA or UC that includes the carer element in respect of caring for the claimant or partner[1]. But CA/UC that includes the carer element has to actually be in payment before it affects entitlement to this additional amount.

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

78058 [see DMG memo 02/25] DMs should normally treat an award of CA/UC that includes the carer element as a proper award until the CA/UC that includes the carer element decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting CA/UC that includes the carer element **or**

2. the award of CA/UC that includes the carer element is in error **or**

3. they know nothing about the CA/UC that includes the carer element award **or**

4. the CA/UC that includes the carer element claim is fraudulent

the DM should ask the CA unit or the office responsible for the UC award to investigate whether the CA or the UC that includes the carer element award is correctly made.

78059 [see DMG memo 02/25] Where the disabled person makes an allegation about the carer's integrity, as described in DMG 78058, the SPC DM can make a decision on the claim or application before the CA/UC that includes the carer element DM has decided whether the award of CA/UC that includes the carer element should be revised or superseded. However, the SPC decision should include a determination which

1. makes an assumption that the carer is properly in receipt of CA/UC that includes the carer element **and**

2. refuses to award the extra amount for severe disability.

Treated as being or not being in receipt of "AA", DLA, PIP, ADP, CA and UC that includes the carer element

78060 [see DMG memo 02/25] A person shall be treated

1. as being in receipt of "AA", or the care component of DLA at the highest or middle rate, or the daily living component of PIP at the standard or enhanced rate, or the daily living component of ADP at the standard or enhanced rate, or AFIP for any period[1]

1.1 before an award is made but in respect of which the allowance is awarded **or**

1.2 not covered by an award but in respect of which a payment is made in lieu of an award

2. in the case of a claimant who has a partner, as being in receipt of

2.1 "AA" **or**

2.2 the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of PIP at the standard or enhanced rate

2.4 the daily living component of ADP at the standard or enhanced rate

if they would be in receipt but for being a patient for over 28 days[2]

3. as not being in receipt of CA, or UC that includes the carer element, for any period before the date on which the award is first paid[3].

1 SPC Regs, Sch I, para 1(2)(a); 2 Sch I, para 1(2)(b); 3 Sch I, para 1(2)(c)

78061 - 78064

People residing with the claimant

78065 An additional amount for the severely disabled may not be applicable if[1] there are people aged 18 or over who

1. normally reside with the claimant and any partner **or**

2. the claimant and any partner normally reside with.

That is, share the accommodation (see DMG 78068). But the presence of certain people can be ignored[2]. See DMG 78077 and 78078 for full details.

1 SPC Regs, Sch I, para 1(1); 2 Sch I, para 2

Meaning of normally resides

78066 A person normally resides where they usually live. Periods of residence or absence that are of an exceptional nature should be disregarded. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

Example 1

Jack normally lives in his sister's house and is not entitled to an additional amount for the disabled. He goes into respite care for one week every other month. While he is in respite care Jack still normally resides in his sister's house. He does not qualify for an additional amount for the severely disabled.

Example 2

Mary normally lives alone in her own flat. She is entitled to an additional amount for the severely disabled. Her brother Steven comes to stay with her for a week at a time every three months. He does not normally live with Mary. She keeps her entitlement to the additional amount whilst Steven is staying with her.

78067 When considering where a person normally resides the DM should have regard to

1. the total amount of time spent in a place

2. how often time is spent in a place

3. how permanent the stay is thought to be

4. the person's intentions

5. individual circumstances

6. what degree the accommodation is shared

7. the services provided

8. whether the person owns or rents any other accommodation

9. whether the person has any liabilities for services/utilities/tv licence.

Example

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

Agnes normally lives at her son's house because

1. she sleeps at her son's house every night

2. her clothes and some of her things are kept at her son's

3. she only goes back to her own house occasionally and in daylight hours

4. she spends the majority of her time at her son's house.

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

Sharing the accommodation

78068 People should not be regarded as sharing the accommodation if[1]

1. the only shared area is a

1.1 bathroom **or**

1.2 lavatory **or**

1.3 communal area **or**

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

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

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

78069 A communal area is[1] an area of common access (not a room) including

1. halls

2. passageways

3. stairways

4. rooms of common use in sheltered accommodation.

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

Example

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

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

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

Students

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

Example

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

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

78071

Meaning of liable to make payments

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

1. the claimant has the contractual capacity to enter into an enforceable contract **and**

2. there was an intention to create legal relations.

78073 If the conditions in DMG 78072 are met, the DM must then establish that[1]

1. there is an obligation to make payments derived from a recognised source of law (for example contract law) **and**

2. the obligation to make the payments is for the occupation of the premises and not, for example, for food or clothing **and**

3. the power to bring the licence or lease to an end is referable to a breach of the condition to make the payment under the contractual licence or lease and not to some other matter.

1 R(IS) 11/98

78074 Whether a person has separate liability to a landlord should be determined by reference to the arrangements within the group. But DMs should note that the liability has to be to the same landlord. Reference to some other liability of the person to a third party is not relevant.

Example

Tom gets "AA" and no one gets CA (or UC that includes the carer element) for caring for him. He lives in a privately rented house, which he shares with three other people. They all have their own bedroom but share the kitchen and bathroom. Each are liable to pay the landlord rent for their room.

The DM decides that Tom does not normally reside with the other residents of the house. They are all separately liable to make payments to the landlord for their accommodation. Tom is awarded an additional amount for the disabled.

Contractual capacity

78075 In England and Wales, only a minor, or a person of unsound mind, may not have the capacity to incur legal liability. DMs should accept that a claimant has sufficient capacity unless there is very strong evidence to the contrary.

Carer stays overnight

78076 A carer may stay overnight with the person they are looking after. In such a case the DM should consider whether the carer normally resides with that person and should find out

1. whether the carer has a separate address **and**

2. if the carer has a separate address, whether they use it and if so, how often **and**

3. what address the carer uses as a postal address **and**

4. what address the carer is registered at for CT purposes.

People whose presence is ignored

78077 [see DMG memo 02/25] The DM can ignore the presence of[1]

1. any person aged under 18[2] **or**

2. a person who is in receipt of[3]

2.1 "AA" **or**

2.2 the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of PIP at the standard or enhanced rate **or**

2.4 the daily living component of ADP at the standard or enhanced rate **or**

2.5 AFIP **or**

3. a person who is

3.1 certified as blind or severely sight impaired by a consultant ophthalmologist[4] **or**

3.2 treated as blind or severely sight impaired[5] (see DMG 78008) **or**

4. a person who[6]

4.1 lives with the claimant in order to care for the claimant or partner **and**

4.2 is engaged by a charitable or voluntary organisation (see DMG 78011) which makes a charge to the claimant or partner for that person's services **or**

5. the partner of a person to whom **4.** applies[7] **or**

6. a person who is a qualifying young person[8] or a child for CHB purposes[9].

1 SPC Regs, Sch I, para 2(1); 2 Sch I, para 1(1)(a)(ii), (b)(ii) & (c)(iii); 3 Sch I, para 2(2)(a);
4 Sch I, para 2(2)(b); 5 Sch I, para 2(2)(c); 6 Sch I, para 2(2)(d); 7 Sch I, para 2(2)(e);
8 reg 4A; 9 Sch I, para 2(2)(f), s 40 2012 Act

78078 The DM can also ignore the presence of a person who

1. joins the claimant's household for the first time[1]

1.1 to care for the claimant or partner **and**

1.2 if, immediately before joining, the claimant or partner satisfied the conditions for an additional amount for the severely disabled **or**

2. is not a close relative (see DMG 77011) of the claimant or partner and who[2]

2.1 is liable to make payments on a commercial basis to the claimant or partner for their occupation of the dwelling **or**

2.2 the claimant or partner is liable to make payments to on a commercial basis for their occupation of that person's dwelling **or**

2.3 is a member of the household of a person in **2.1** or **2.2 or**

3. is not a close relative (except where **5.** applies) who jointly occupies the claimant's dwelling and who is[3]

3.1 a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners) **or**

3.2 jointly liable with the claimant or the claimant's partner to make payments to the same landlord for their occupation of the dwelling **or**

4. is the partner of a person to whom **3.** applies[4] **or**

5. is a close relative who satisfies **3.** or **4.**, if[5] the claimant or partner's co-ownership or joint liability arose

5.1 before 11.4.88 **or**

5.2 if later, on or before the date on which the claimant or partner first occupied the dwelling in question.

Note: 1. only applies for the first twelve weeks following the date on which the person first joins the claimant's household[6].

Note 2: When considering **5** (above) and the date the claimant or partner first occupied the dwelling, we consider the date they had the right to occupy the dwelling. If there is a delay in moving in, that would not change the date of occupation for the purposes of this paragraph.

1 SPC Regs, Sch I, para 2(3); 2 Sch I, para 2(5); 3 Sch I, para 2(6);
4 Sch I, para 2(7); 5 Sch I, para 3(3); 6 Sch I, para 2(4)

Commercial basis

78079 For a liability to be on a commercial basis[1] (see DMG 78078 **2.**)

1. there should be a legal liability to make the payment **and**

2. the payment should be broadly in line with what a lodger might pay for similar accommodation and facilities.

1 R(IS) 11/98

Shared lives scheme

78080 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PIP/ADP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will be ignored as non-dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the EASD.

Note: The claimant will not be entitled to the EASD if there are people other than the carer, members of the carer's household, other shared lives residents or anyone liable to make payments for accommodation to the carer on a commercial basis in the dwelling who cannot be ignored.[1]

1. SPC Regs, Sch 1, para 2(5)&3

Example

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of their

family having her own bedroom and sharing all the other

household facilities. Shirley is disabled and receives DLA. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get HB. The DM decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the EASD.

78081 - 78083

Temporary residence in a care home

Claimants who have no partner

78084 An additional amount for the severely disabled may not be applicable if a claimant who has no partner does not normally live alone[1]. Such a claimant will not satisfy the conditions for this additional amount while they are temporarily in a care home (see DMG 77007). This is because their stay is temporary and they continue to normally reside at home.

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

Example

Nasreen has no partner and lives with her son. The conditions for the award of an additional amount for the disabled are not satisfied. Nasreen goes into a care home temporarily. An additional amount for the severely disabled is not applicable because she continues to normally reside at home with her son.

Claimants who have a partner

78085 When a member of a couple is temporarily in a care home the separation from the partner is also temporary. In such a case the

1. couple remain members of the same household[1] **and**

2. absent partner is treated as still normally residing at home **and**

3. amount of SPC payable to them is unaffected.

1 SPC Regs, reg 5(2)

78086 The SPC and the additional amount for severe disability will have to be reviewed where the person is in temporary residential care beyond 28 days and the payability of DLA ceases.

Example

Malcolm and Wendy are married and live together in the same household. Both Malcolm and Wendy get

DLA and CA, or UC that includes the carer element is not in payment. There are no non-dependants. Higher rate EASD is in payment. Malcolm goes into temporary residential care for 6 weeks.

They are assessed as a couple and the higher rate EASD continues in payment however after 4 weeks Malcolm's DLA payments cease and the EASD is withdrawn

Note: The lower rate EASD is not appropriate as there is no facility to treat DLA as in payment for these periods of respite care.

Permanent residence in a care home

78087 Claimants who are permanently in a care home are normally resident in that care home. Other residents of the home do not normally reside with the claimant, as they are separately liable to make payments to a landlord.

Claimants who have no partner (including self- funders)

78088 An additional amount for the severely disabled is applicable to a person who is permanently in a care home if all the conditions are satisfied[1].

Note: This will normally be self funding claimants, but DMs should be aware that it will also include residents where the payment of "AA" or DLA/PiP continues for the first four weeks after admission.

1 SPC Regs, reg 5(1)(b) & Sch I, para 1(1)(a)

Example

Shafaq has no partner and lives at home with his sisters. He is in receipt of the care component of DLA at the middle rate and no one receives CA, or UC that includes the carer element for caring for him. The conditions for the award of an additional amount for the disabled are not satisfied. Shafaq goes into a care home on a permanent basis. The DM decides that Shafaq is entitled to an additional amount for the disabled at the lower rate from the date that he moves into the care home. This is because

1. he is in receipt of the care component of DLA at the middle rate **and**

2. the other residents of the home do not normally reside with him **and**

3. no one is in receipt of CA, or UC that includes the carer element, for caring for him.

Entitlement to the additional amount continues as long as all of the above are satisfied.

Claimants who have a partner

78089 A member of a couple who is permanently in a care home is no longer a member of the same household as their partner. In such a case each person may claim SPC as a claimant who has no partner.

78090 - 78099

Additional amount for carers 78100 - 78119

General 78100 - 78104

Qualifying conditions 78105

Treated as being entitled to CA 78106

Treated as satisfying the qualifying conditions - run on 78107 - 78110

Transitional protection 78111 - 78119

General

78100 [See DMG memo 12/23] [See Memo DMG 01/26] When considering the amount of the AMG, an additional amount for carers may be applicable[1]. But the additional amount is not payable[2] in the case of

1. prisoners **and**

2. members of religious orders who are fully maintained by their order.

1 SPC Act 02, s 2(3)(b) & (8); SPC Regs, reg 6(6)(a) & Sch I, para 4(1); 2 reg 6(2), (3) & (6)

78101 The additional amount for carers is paid at one rate, and in the case of partners, that amount is applicable for each partner who satisfies the qualifying conditions[1]. See Appendix 2 to DMG Chapter 77 for details of the rate.

1 SPC Regs, reg 6(8)

78102 - 78104

Qualifying conditions

78105 [See DMG memo 12/23] An additional amount for carers may be awarded for each claimant[1] or, in the case of partners, each partner[2] who is

1. entitled to CA[3] **or**

2. treated as still satisfying the qualifying conditions for the award of the additional amount[4] (see DMG 78107).

Note 1: A person may be entitled to CA even if it is not payable (for example because of the overlapping benefit provisions).

Note 2 : Where a claimant claims that either they or the DP is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to DMA Leeds, for consideration of whether the benefit falls within Art. 5. of Regulation (EC) NO 883/2004

1 SPC Act 02, s 2(8)(a); SPC Regs, reg 6(8); 2 SPC Act 02, s 2(8)(b); SPC Regs, reg 6(8); 3 Sch I, para 4(2); 4 Sch I, para 4(3)

Example

Maurice lives with his wife Louise and they are both entitled to CA. They each satisfy the conditions for the award of an additional amount for carers. The couple do not qualify for any other additional amounts. At the time of Maurice's claim the SMG is £160.95 and the rate of the additional amount for carers is £25.55. Their AMG is £212.05 (£160.95 + £25.55 + £25.55).

Treated as being entitled to CA

78106 A person shall be treated as being entitled to CA for any period[1]

1. covered by an award

2. in respect of which a payment is made in lieu of an award.

1 SPC Regs, Sch I, para 5

Treated as satisfying the qualifying conditions – run on

78107 [See Memo DMG 01/26] Where an additional amount for carers has been awarded but the person in respect of

1. whose care the CA has been awarded dies **or**

2. whom the additional amount was awarded ceases to be entitled or treated as entitled to CA

the qualifying conditions shall be satisfied or treated as satisfied for a period of eight weeks[1] from the relevant date.

1 SPC Regs, Sch I, para 4(3)

78108 At the end of the eight week period, the normal change of circumstances rules apply to determine the date the additional amount is withdrawn from.

Note: In certain specified cases CA can continue indefinitely after the person in respect of whose care

the CA has been awarded dies. See Chapter 04 for detailed guidance on those rules.

The relevant date

78109 The relevant date is, where

1. the person in respect of whose care the CA has been awarded dies[1],

1.1 the Sunday following the death of the person **or**

1.2 the date of death, if the death occurred on a Sunday

2. head **1.** does not apply, the date on which the person who has been entitled to CA ceases to be entitled to it[2].

1 SPC Regs, Sch I, para 4(4)(a); 2 Sch I, para 4(4)(b)

Example

Padraig is entitled to CA and his AMG includes an additional amount for carers. The person he is caring for dies on Friday 21.11.03. The relevant date is 23.11.03. The qualifying conditions are satisfied for the period 23.11.03 to 17.1.04. The normal change of circumstances rules then apply and the additional amount for carers is withdrawn.

New claims

78110 Where a new claim for SPC is made and entitlement to CA had ended within 8 weeks or less before the date of the SPC claim, in these circumstances there is no entitlement to the extra amount for carers. The run on can only apply if this element was already included in the award.

Transitional protection

78111 Carers who were aged 65 and over before 28.10.02 can continue to be entitled to CA even though they are no longer providing care[1], for example after the disabled person has died. Where this protection applies and CA is retained the carer can continue to receive the additional amount for carers.

1 The Regulatory Reform (Carer's Allowance) Order 2002, S.I. 2002/1457, art 4

Example 1

Ralph, aged 72, is entitled to SPC for himself and his partner Kath. Kath is aged 69 and has been entitled to CA in respect of the care she provides her mother since May 1994. Ralph's SPC includes an additional amount for carers. Kath's mother dies on 22.8.04 but Kath retains her entitlement to CA (beyond the

eight week run on period). Ralph continues to be entitled to the additional amount for carers in the calculation of his SPC.

78112 - 78119

Additional amount for former claimants of IS, JSA(IB) and ESA(IR)
78120 - 78169

General 78120 - 78125

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The relevant day 78127

The relevant amount 78128 - 78133

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Amount payable 78136 - 78138

Recalculation of the transitional amount 78139

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General

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

1. protects the level of a claimant's benefit income

2. is worked out on an individual basis

3. varies depending on the circumstances of each individual case.

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

78121 DMs should note that a transitional amount is not payable[1] in the case of

1. prisoners **and**

2. members of religious orders who are fully maintained by their order.

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

78122 - 78125

Qualifying conditions

78126 A claimant is entitled to a transitional amount if[1]

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

2. on the relevant day, the relevant amount exceeds the provisional amount.

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

The relevant day

78127 The relevant day is the day in respect of which the claimant is first entitled to SPC[1]. That is their first day of entitlement to SPC.

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

The relevant amount

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

1. personal allowances for dependants (see DMG 23039)[2]

2. Res A[3]

3. FP (see DMG 23076)[4]

4. DCP (see DMG 23242)[5]

5. EDP for dependants (see DMG 23181)[6].

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

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

Example

Sian lives with her twelve year old dependant grandson Tim. She has an IS applicable amount of £108.90 on the day before her first day of entitlement to SPC (the relevant day). That is £54.65 personal

allowance for herself, £38.50 dependants allowance for Tim and £15.75 FP.

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

Transitional addition in payment

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

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

People in hospital

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

1. applicable amount of IS or JSA(IB) is reduced[1] (see DMG 24301 et seq) on the day before the relevant day **and**

2. amount of the SMG does not fall to be reduced[2] (see DMG 78700 et seq) on the relevant day.

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

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

78131 - 78133

The provisional amount

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

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

78135

Amount payable

78136 Where a transitional amount is applicable, the amount payable is the amount by which the relevant amount exceeds the provisional amount[1].

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

Example 1

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

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

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

Example 2

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

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

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

78137 - 78138

Recalculation of the transitional amount

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

Reduction of the transitional amount

78140 Unless DMG 78153 applies, the transitional amount should be reduced by the amount of any increase in the AMG[1]

Example

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

Anniversary date

78141 The first SPC anniversary date (which was the date that had applied to the IS/JSA(IB) claim and which has been carried forward to SPC) is a change of circumstances where a transitional amount, or increased transitional amount, may be needed.

78142 In such a case, the transitional amount should be calculated or, as the case may be, recalculated, on the basis that the provisional amount on the relevant day

1. included an additional amount for housing costs calculated under the SPC rules that apply from the relevant anniversary date **and**

2. did not include the amount that was allowed for housing costs in the IS/JSA(IB) claim[1].

1 SPC Regs, Sch 1, para 6(11)

78143 DMs should note that the transitional amount calculated

1. should be applied from the relevant anniversary date[1] **and**

2. is the amount which would have applied had the provisional amount included the housing costs which applied from the anniversary date rather than those which actually applied in the first SPC week **and**

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

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

Withdrawal of the transitional amount

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

1. transitional amount is reduced to nil[1] following a change of circumstances or uprating **or**

2. claimant or partner ceases to be entitled to SPC[2].

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

78145 DMs should note that

1. when a transitional amount has been reduced to nil, it cannot be re-applied

2. in some cases the transitional amount may be reinstated on a repeat claim (see DMG 78150 et seq)

3. there is no entitlement to a transitional amount if the claimant becomes[1]

3.1 a prisoner **or**

3.2 a member of a religious order fully maintained by their order.

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

Example 1

Bina is entitled to GC with an SMG of £102.10

an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving her an AMG of	£150.25 **(a)**
On uprating, Bina's SMG increases to	£105.45
the additional amount for housing costs also increases following a change	£45.00
and without any recalculation to the transitional amount of	£8.15
the AMG would be	£158.60 **(b)**
The AMG has increased by **(b)** - **(a)**	£8.35

This is greater than the transitional amount, which is reduced to nil and permanently withdrawn.

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

Example 2

Ernest is entitled to GC with an SMG of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving him an AMG of	£150.25 **(a)**
Following a change of circumstances the additional amount for housing costs increases to	£50
and without any recalculation to the transitional amount of	£8.15
the AMG would be	£160.25 **(b)**

The AMG has increased by **(b)** - **(a)**	£10
This is more than the transitional amount of	£8.15
so Ernest's transitional amount is permanently withdrawn.	
His AMG is then made up of an SMG of	£102.10
and an additional amount for housing costs of	£50
giving a total AMG of	£152.10

78146 - 78149

Breaks in entitlement

78150 A claimant may again be entitled[1] to a transitional amount following a break in entitlement to SPC, where the

1. claimant was entitled to a transitional amount at the end of the previous claim **and**

2. break in entitlement was eight weeks or less.

1 SPC Regs, Sch I, para 6(9)(a)

78151 If the break in entitlement to SPC is more than eight weeks, a transitional amount will not be applicable.

78152 Where the conditions in DMG 78150 are satisfied, the DM should

1. calculate the transitional amount **as if** there had been no break in entitlement **and**

2. recalculate the amount of the transitional amount if the AMG has increased since the end of the previous claim.

Example

Fred's SPC claim ends on 17 March and on 7 April the rates of SPC are up-rated. On 21 April, Fred reclaims SPC and is entitled to GC on his new claim. The break in his entitlement was for less than 8 weeks so the DM calculates the transitional amount as if there was no break.

At the end of his previous claim Fred was entitled to GC with

SMG of	£102.10
an additional amount for housing costs of	£40

and a transitional amount of	£6
giving him an AMG of	£148.10 **(a)**
On uprating the SMG for Fred increased to	£105.45
the additional amount for housing costs stayed at	£40
and without any recalculation to the transitional amount of	£6
the AMG would be	£151.45 **(b)**
Fred's transitional amount is reduced by £3.35 **(b - a)** to	£2.65
His AMG is then made up of an SMG of	£105.45
an additional amount for housing costs of	£40
and a transitional amount of	£2.65
leaving the AMG at	£148.10

People discharged from hospital

78153 Do not reduce the transitional amount where an increase in the AMG is due solely to a person being discharged from hospital[1].

1 SPC Regs, Sch I, para 6(9)(b)

Death of a partner

78154 There are no special rules when the partner of a claimant receiving SPC dies. In the majority of cases the transitional amount will be unchanged. But the DM should consider whether the guidance at DMG 78139 et seq is relevant.

78155 - 78169

Additional amount for housing costs 78170 - 78548

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Introduction

78170 [See Memo ADM 08/18] When considering the amount of the AMG, an additional amount for housing costs may be applicable[1]. For the definition of housing costs, and the changes introduced from 6.4.18, see DMG 78195. But this additional amount is not normally payable[2] in the case of

1. prisoners **and**

2. members of religious orders who are fully maintained by their order.

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

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

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

Basic qualifying conditions

78173 Claimants are entitled to an additional amount for housing costs if[1]

1. the claimant or partner is

1.1 liable for those costs (see DMG 78215) **and**

1.2 responsible for those costs (see DMG 78313) **and**

1.3 treated as living in the home that those costs are for (see DMG 78220 et seq) **and**

2. those costs are allowable (see DMG 78270 et seq).

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

Claimants without housing costs

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

1. liability or responsibility for housing costs **and**

2. entitlement to an additional amount for housing costs.

Rounding of fractions

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

1 SPC Regs, Sch II, para 15

Former claimants of IS/JSA(IB)

78176 The rules on housing costs in IS and JSA(IB) were changed in 1995. Savings provisions protected existing claimants so that their benefit income did not reduce because of the new rules (see DMG 23684 et seq).

78177 But in SPC the level of a claimant's benefit income can only be protected if the claimant is entitled to a transitional amount (see DMG 78120).

78178 Where a claimant

1. transfers from IS or JSA(IB) to SPC **and**

2. has transitional protection for housing costs in their IS or JSA(IB) claim

the additional amount for housing costs should be calculated under the rules that apply in SPC.

78179 If the claimant is

1. entitled to a transitional amount, any difference in the amount awarded for housing costs will be taken into account in the calculation of the transitional amount (see DMG 78120)

2. not entitled to a transitional amount, the claimant will lose the transitional protection previously received on the IS or JSA(IB) claim.

78180 - 78184

Definitions 78185 - 78209

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

Dwelling occupied as the home

78186 Dwelling occupied as the home means[1]

1. the dwelling and any

1.1 garage **and**

1.2 garden **and**

1.3 outbuildings

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

2. any buildings or land not occupied as the home which it is impracticable or unreasonable to sell separately **and**

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

Note: This means only the dwelling currently occupied as the home. It does not include any dwelling that is no longer occupied as the home[2].

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

Example

Shimon and Rachel live on a plot of land on which there is a caravan, some outbuildings and an old cottage in need of repair. The LA allow them to use the caravan as a temporary residence while the cottage is being repaired. They sleep in the caravan but have things stored in the outbuildings and cottage. The caravan has a fixed mains water supply and is linked directly to the electricity mains. There

are no mains supplies to the cottage. The land cannot be divided into two, with the caravan and site being owned or used separately from the cottage and site.

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

Normally occupied

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

Example

Niamh lives alone in a flat on which she pays service charges. She goes to stay with her brother while he is recovering from an operation and is away from home for two weeks. While at her brother's house Niamh reaches age 60 and claims SPC. The DM decides that Niamh normally lives in her own flat. The time she spends at her brother's house is exceptional. An additional amount for housing costs can be considered for her service charges.

Rooms sublet

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

78189 - 78194

Housing costs

78195 Until 6.4.18 help for owner occupier payments was included in a claimant's award of an income related benefit (also referred to as support for mortgage interest (SMI)). From 6.4.18 SMI was changed from a benefit to a loan secured by a charge on the property. See ADM memo 8/18 for further details. Payments for housing costs, such as service charges, continue. For guidance on the transition from SMI housing costs to SMI loans, see Appendix 6. For advice on SMI prior to 6.4.18, decision makers may wish to contact DMA Leeds.

78196 Housing costs are[1]

1. rents or ground rents on long tenancies

2. service charges

3. payments by way of rent charge

4. payments under co-ownership schemes

5. payments for tenancies or licences of Crown tenants

6. payments for tents and their sites.

1 SPC Regs, Sch II, para 1(1), 1(2)(b), & 13

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

1. rent required by a person who

1.1 owns jointly with the claimant the property occupied by the claimant **and**

1.2 does not live in that property

2. water charges paid via a landlord (for example, paid at the same time as service charges).

This list is not exhaustive.

1 R(IS) 19/93

Water charges

78198 Water charges means[1] any

1. water charges **and**

2. sewerage charges

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

1 SPC Regs, reg 1(2); Water Industry Act 1991, Part V, Ch 1; Local Government Finance Act 1992, Sch 11

78199 - 78209

Steps to follow when deciding housing costs 78210 - 78214

Steps to follow when deciding housing costs

78210 When deciding whether an additional amount for housing costs is applicable and if so, what that amount should be, the DM should determine

1. if the claimant or partner is liable for the housing costs (see DMG 78215)

2. if the amount spent is on the dwelling occupied as the home (see DMG 78188 and 78220)

3. if the housing costs cannot be met (see DMG 78270)

4. how to apportion the housing costs if the dwelling is used for domestic and business use (see DMG 78310)

5. if there are any eligible housing costs that can be allowed (see DMG 78438 et seq)

6. if a deduction for a non-dependant is necessary (see DMG 78500).

78211 - 78214

Liability for housing costs 78215 - 78219

78215 A person is liable to meet housing costs where the

1. liability falls on them or their partner, except where the liability is to another member of the same household[1] **or**

2. person liable for those costs is not meeting them **and**

2.1 the claimant has to meet the costs to keep on living in the home **and**

2.2 it is reasonable in all the circumstances to treat the claimant as liable for the costs[2] **or**

3. costs are shared with other members of the household who are not close relatives (see DMG 77101) of the claimant or the claimant's partner **and**

3.1 at least one member of the household is liable for those costs **and**

3.2 it is reasonable in the circumstances to treat the claimant as sharing responsibility[3].

1 SPC Regs, Sch II, para 3(a); 2 Sch II, para 3(b); R(IS) 12/94; R(IS) 8/01; 3 SPC Regs, Sch II, para 3(c)

78216 - 78219

Treated as occupying a dwelling as the home 78220 - 78269

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Treated as living in the home before moving in 78238 - 78239

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Definitions

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

Medically approved

78221 Medically approved means certified by a medical practitioner[1].

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

Training course

78222 Training course means a course of training or instruction provided wholly or partly by, or on behalf of, or by arrangement with, or approved by or on behalf of[1]

1. Scottish Enterprise **or**

2. Highlands and Islands Enterprise **or**

3. Skills Development Scotland **or**

4. a government department **or**

5. the Secretary of State.

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

Dwelling where claimant normally lives

78223 Unless DMG 78225 - 78236 applies, a claimant should

1. be treated as living in the home where they, and any partner, normally live (see DMG 78189 and 84395) **and**

2. not be treated as occupying any other dwelling as the home[1].

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

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

1. consider all homes that the claimant has, whether or not they are in GB[1] **and**

2. not treat the claimant as living in more than one home, unless the circumstances in DMG 78231 - 78235 apply **and**

3. where the claimant is responsible for housing costs on more than one property, and DMG 78231 et seq does not apply, treat the claimant as living in the home they normally occupy.

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

Full-time students and claimants on training courses

78225 Single claimants who are F/T students (see DMG 78009) or on a training course (see DMG 78222), may have different homes in term time and vacations. Such a claimant should be treated as occupying the home for which they are liable to pay housing costs if[1]

1. they are occupying one of the homes because they are

1.1 a F/T student **or**

1.2 on a training course **and**

2. they are liable for the housing costs on either, but not both, of the homes they live in when

2.1 attending the course of study or training **or**

2.2 not attending the course **and**

they are not absent from the home for which they are liable[2]

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

Example

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

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

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

78227 - 78229

Temporary accommodation

78230 A claimant who

1. has to move into temporary accommodation so that essential repairs can be carried out to their home **and**

2. is liable to pay housing costs for either, but not both, the home or temporary accommodation

should be treated as living in the dwelling for which they have to pay housing costs[1].

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

Liable for two homes

78231 A person who is liable to make payments on two dwellings should be treated as living in, and allowed housing costs for, both dwellings (one of which might attract owner-occupier payments)[1] where

1. they have left their former home, and remain absent, because of fear of violence

1.1 in that home **or**

1.2 by a close relative **or**

1.3 by a former partner

and it is reasonable to meet housing costs on both homes[2] **or**

2. in the case of partners, one partner is a F/T student or is on a training course and it is

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

2.2 reasonable to meet housing costs on both homes[3].

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

1 LMI Regs, Sch 3, para 15(3) 2 SPC Regs, Sch II, para 4(6)(a); 2 Sch II, para 4(6)(b)

78232 The question of reasonableness in DMG 78231 should be decided at the date the DM considers the issue and in the light of all the circumstances. These may include

1. the length of the absence

2. whether the claimant could reasonably be expected to take steps to end the liability for the former home

3. whether there is a hope of resuming occupation

4. whether it is practicable to end the liability

5. the claimant's situation and means of support

6. the extent to which the liability was in practice being met other than through SPC.

Example

Kath lives with her partner Dave in a house on which she has service charges to pay. She gets SPC with an additional amount for housing costs for those service charges. Dave is violent towards Kath who leaves the house and moves to a rented flat. Kath starts legal proceedings and intends to return to her house as soon as it is safe for her to do so.

Kath is treated as living in both homes and the DM considers it is reasonable to meet the housing costs for both the house and the flat.

78233 A person can also be treated as living in, and allowed housing costs for, two homes for up to four weeks if[1]

1. they move to a new home, for a reason other than those in DMG 78230 and 78231 **and**

2. they are liable for housing costs on both homes **and**

3. the liability to make payments for both homes is unavoidable.

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

78234 The four weeks under DMG 78233 is payable from either

1. the first day of the benefit week where the move to the new home takes place on that day **or**

2. the first day of the next following benefit week in which the move occurs if it does not[1].

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

78235 Where SPC is payable in arrears the specified period of four weeks commences from the first day of the benefit week in which the move occurs[1].

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

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

1 R(JSA) 9/03

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

1. the claimant or partner is

1.1 liable for those costs (see DMG 78215) **and**

1.2 responsible for those costs **and**

1.3 treated as living in the home that those costs are for (see DMG 84395)

2. those costs are allowable.

Treated as living in the home before moving in

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

1. they have moved in to the home and were liable to make payments for that home before moving in[1] **and**

2. they had claimed SPC before moving in[2] and a decision was

2.1 not made on the claim **or**

2.2 made on the claim but no additional amount for housing costs was included **or**

2.3 made refusing the claim, but another claim was made within four weeks of the date on which they moved in **and**

3. the delay in moving in was reasonable **and**

3.1 necessary because the home was being adapted to meet the disablement needs of

3.1.a the claimant **or**

3.1.b the claimant's partner **or**

3.1.c a person under the age of 20 for whom the claimant or partner is responsible[3] **or**

3.2 the move was delayed pending a decision on a connected social fund claim[4] **or**

3.3 they became liable to pay the housing costs while they were

3.3.a a patient **or**

3.3.b in a care home[5].

3.4 they were waiting for a decision on a local welfare provision claim

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

78239

Temporary absences from home

Trial periods in a care home

78240 A person who enters a care home

1. to see whether the accommodation suits their needs **and**

2. with the intention of returning home if the accommodation is unsuitable **and**

3. whose part of the dwelling normally occupied as the home is not let or sub-let to another person

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

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

Example

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

1. for a further nine weeks **or**

2. until a decision is made that he will not return to live in his own home

whichever is the sooner.

Temporary absences up to 13 weeks

78241 Unless DMG 78240 or 78254 applies, a person should be treated as living in their home for any period of temporary absence of not more than 13 weeks if[1]

1. they intend to return to live in the home **and**

2. the part of the home they normally live in has not been let or sub-let to another person **and**

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

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

Example

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

78242 The intention to return to live in the home must

1. be unqualified **and**

2. be present from the start of the period of absence **and**

3. not be conditional on a future event out of the claimant's control.

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

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

1. the absence should be treated as permanent from the first day of the absence **and**

2. an additional amount for housing costs should not be awarded.

78244 - 78253

Temporary absences up to 52 weeks

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

1. they intend to return to live in the home[2] **and**

2. the part of the home they normally live in has not been let or sub-let to another person[3] **and**

3. they

3.1 are detained in custody on remand pending trial **or**

3.2 are detained pending sentence upon conviction **or**

3.3 are required to live as a condition of bail in either

3.3.a a dwelling other than a dwelling he occupies as his home **or**

3.3.b an approved bail hostel **or**

3.3.c an approved probation hostel[4] **or**

3.4 are resident in a hospital or similar institution as a patient[5] **or**

3.5 are, or their partner, or a person under the age of 20 for whom the claimant or partner is responsible, is undergoing

3.5.a medical treatment **or**

3.5.b medically approved convalescence

in the UK or elsewhere, in accommodation that is not a care home[6] **or**

3.6 are on a training course in the UK or elsewhere[7] **or**

3.7 are providing medically approved care for another person who is living in the UK or elsewhere[8] **or**

3.8 are caring for a person under the age of 20 whose parent or guardian is temporarily absent

from their home because they are receiving medically approved care or treatment[9] **or**

3.9 are

3.9.a living in the UK or elsewhere **and**

3.9.b receiving medically approved care

in accommodation that is not a care home[10] or independent hospital **or**

3.10 are a F/T student to whom DMG 78225 and 78231 **2.** do not apply[11] **or**

3.11 are receiving care in a care home or independent hospital, other than as in DMG 78240[12] **or**

3.12 have left the home because of fear of violence

3.12.a in that home **or**

3.12.b by a former partner **or**

3.12.c by a close relative

and DMG 78231 **1.** does not apply[13] **and**

4. the absence is unlikely to

4.1 exceed 52 weeks **or**

4.2 substantially exceed 52 weeks in exceptional circumstances[14] (for example where a claimant has gone into hospital or has to live in a hostel as a condition of bail).

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

78255 The intention to return to live in the home must

1. be unqualified **and**

2. be present from the start of the period of absence **and**

3. not be conditional on a future event out of the claimant's control.

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

78256 When considering DMG 78254, an additional amount for housing costs may be allowed for up to 52 weeks from the first day of absence[1]. But a person may have several periods of temporary absence. Such absences are treated as temporary if the person is not absent from home for more than 52 consecutive weeks.

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

78257 The absence should be treated as permanent from the day that it is known that the absence

1. will exceed 52 weeks **or**

2. is likely to

2.1 exceed 52 weeks **or**

2.2 substantially exceed 52 weeks in exceptional circumstances[1].

1 SPC Regs, Sch II, para 4(11)(d)

Example 1

Jon, who is in receipt of SPC, has to live in a hostel for eight weeks as a condition of bail. He intends to return to live in his own home when he leaves the hostel. His home has not been let or sub-let. Jon is temporarily absent from his home from the date he went to live in the hostel.

Example 2

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

78258 - 78269

Housing costs not met 78270 - 78309

Introduction 78270 - 78271

Introduction

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

1. HB expenditure[1] **or**

2. claimants in a care home, unless their absence from the dwelling normally occupied as their home is temporary[2] (see DMG 78240 et seq)

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

78271 HB expenditure means[1] any element for which HB may be payable[2].

Note: HB may be payable for such periodical payments as rent, service charges, mooring charges and for the site on which a caravan or mobile home stands (see DMG 78463).

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

78272 - 78309

Apportionment of housing costs 78310 - 78437

Composite hereditaments 78310 - 78311

Responsibility for housing costs 78312

Composite hereditaments

78310 A composite hereditament is[1] a property with both

1. domestic **and**

2. business

premises, for example, a shop with a flat above.

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

78311 If a claimant occupies a composite hereditament, housing costs should be awarded for the part of the property used by the claimant for their own domestic use.

Responsibility for housing costs

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

1 SPC Regs, Sch II, para 6(5)

78313 - 78437

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Costs payable over 53 weeks or irregularly 78485

Payment of costs waived 78486

Attribution of service charges 78487 - 78499

Definitions

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

Shared ownership schemes

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

78440 A co-ownership scheme in this context is[1] a specific type of scheme under which the

1. home is let by a housing association **and**

2. money payable to someone ceasing to be a member of the scheme is based directly, or indirectly, on the value of the property.

Note: Such a scheme does not involve the purchase of a share of the property so no house purchase loan is involved.

1 SPC Regs, Sch II, para 13(6)(a)

78441 A shared ownership scheme is more likely to involve the claimant

1. buying a share in the property **and**

2. paying rent for the remaining share.

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

Note: It may be the case that a claimant has paid only a percentage of the value of the property (i.e. 70%) under a government scheme, the rest being covered by an equity loan that is lodged as a charge on the property. In these cases, the claimant is not a shared owner and allowable service charges.will be payable.

78442

Crown tenant

78443 Crown tenants[1] are tenants or licensees of homes which

1. belong to **or**

2. are held on trust for

the Crown or a government department. They do not include tenants in homes managed by the Crown Estates Commission or tenants of the Duchies of Cornwall or Lancaster. But DMs should note that Greenwich Hospital Estate tenants are Crown tenants.

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

Housing association

78444 A housing association is a non-profit making voluntary body formed with the aim of providing good quality low cost housing[1].

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

Long tenancy

78445 A long tenancy[1] is one where the lease is made by deed, registered with the Land Registry and

1. granted for a specific number of years, exceeding 21 **or**

2. for a term fixed by law with a covenant or obligation for perpetual renewal[2] (unless DMG 78446 applies).

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

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

78447 In some cases a lease may be granted for life rather than for a set number of years. The law provides[1] for life tenancies to be converted to 90 year leases. Such a tenancy for life should be treated as a long tenancy.

1 Law of Property Act 1925, s 149(6)

78448 Rents, and ground rents, should be allowed where payments are connected to long tenancies[1].

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

Rent charge

78449 Rent charges, including chief rents, are rents charged to people under the conditions by which they own the freehold of a property[1].

1 Rent Charges Act 1977, s 1

78450 - 78454

Eligible housing costs

78455 Subject to the deductions in DMG 78465 and the reduction in DMG 78461, an amount for housing costs can be allowed on payments for[1]

1. rents or ground rents on long tenancies

2. service charges (see DMG 78457)

3. rent charges (see DMG 78458)

4. co-ownership schemes (see DMG 78459)

5. tenancies or licences of Crown tenants (see DMG 78460)

6. tents and their sites (see DMG 78462).

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

78456

Service charges

78457 **[See Memo DMG SPC 53]** Service charges should be allowed where they are[1]

1. not eligible to be met by HB[2] **and**

2. payable as a condition of occupancy **and**

3. for

3.1 the home **or**

3.2 the building in which the home is situated **or**

3.3 common areas for a group of homes[3] **and**

4. for services provided by a landlord or the agents of a landlord.

1 SPC Regs, Sch II, para 13(1)(b); 2 para 5: R(IS) 4/92; 3 R(IS) 4/91

Note 1: Guidance on the amount of benefit allowed as a housing cost service charge for leasehold residents where their accommodation is modernised under the Decent Homes initiative is at appendix 5.

Rent charges

78458 Rent charges, including chief rents, should be allowed as eligible housing costs[1].

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

Co-ownership schemes

78459 Payments under co-ownership schemes should be allowed as eligible housing costs[1]. Payments made under any other type of shared ownership scheme should be considered in the normal way but only in respect of the portion of the property owned.

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

Example

Helen rents her home through a housing association who let the property to Helen under a co-ownership scheme. If she leaves the scheme, Helen will receive a percentage of the value of the property. Helen has to make payments under the co-ownership scheme for rent, ground rent and service charges.

The payments under the co-ownership scheme are allowed as eligible housing costs.

Crown tenants

78460 Payments under or relating to the tenancy or licence of the Crown tenants should be allowed as eligible housing costs[1].

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

Reduction for water charges

78461 In England and Wales, payments made by Crown tenants may include an amount for water charges. In such a case, the amount to be allowed as eligible housing costs should be reduced[1]

1. where the amount payable for water charges is known, by that amount

2. in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant.

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

Tents

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

1. tent **and**

2. site on which the tent stands[1].

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

Mooring charges and pitch fees

78463 Where the claimant is liable to pay any mooring charges for a houseboat or pitch fees for a caravan or mobile home, those charges and fees will be met by HB[1].

1 HB (Persons who have attained the qualifying age for SPC) Regs, reg 12(1)(f)(g)

78464

Deductions from eligible housing costs

78465 Deductions should be made from eligible housing costs[1] where they include an amount for

1. fuel charges **or**

2. ineligible service charges **or**

3. repairs and improvements.

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

Deductions for fuel charges

78466 Where any of the charges for eligible housing costs in DMG 78455 include an amount for fuel charges, the following deductions should be made[1]

1. a standard fuel deduction for

1.1 heating (other than hot water) £35.25

1.2 hot water £4.10

1.3 lighting £2.85

1.4 cooking £4.10 **or**

2. if the claimant provides evidence that the

2.1 actual amount **or**

2.2 estimated amount

for fuel is different to the standard deductions in **1.**, the deduction should be varied to the amounts in **2.**

1 SPC Regs, Sch II, para 13(2)(a); HB (Gen) Regs, Sch 1, para 6(2)

78467 When considering deductions for fuel charges, DMs should note that

1. if the claimant's home is one room, the standard fuel deduction in DMG 78466 **1.** will be

1.1 half the amount in DMG 78466 **1.1** to **1.3 but**

1.2 the full amount in DMG 78466 **1.4 and**

2. a deduction for heating (other than hot water) under DMG 78466 **1.1** should only be made on the

amount for heating the claimant's home. Service charges for heating any communal areas are not excluded.

78468 - 78469

Deductions for ineligible service charges

78470 Where any of the charges for eligible housing costs in DMG 78455 include an amount for ineligible service charges, the following deductions should be made[1]

1. an amount equal to the amount of the ineligible service charges (see DMG 78471) **or**

2. where the charges in **1.** cannot be identified separately from housing costs, a deduction should be made

2.1 that is fairly attributable to the services in question **and**

2.2 having regard to the cost of comparable services, if the exact charge in **1.** cannot be identified.

1 SPC Regs, Sch II, para 13(2)(b); HB (Gen) Regs, Sch 1, para 1

78471 The ineligible service charges that should be deducted from eligible housing costs[1] are charges for

1. living expenses for

1.1 meals[2], including the

1.1.a preparation of meals **or**

1.1.b provision of unprepared food **or**

1.2 laundry[3], other than the provision of

1.2.a premises **or**

1.2.b equipment

to enable people to do their own laundry **or**

1.3 leisure items[4] such as

1.3.a sports facilities (but not a children's play area) **or**

1.3.b television rental subscription and licence fees (except radio relay charges) **or** charges made for the cost of adaptation or conversion of equipment for the conveyance of a

television broadcasting service **or**

1.4 cleaning of rooms and windows[5], except cleaning of

1.4.a communal areas **or**

1.4.b the outside of any windows where the claimant or any member of their household is unable to clean them

where a payment (see DMG 78472) is not made in respect of such cleaning **or**

1.5 transport[6] **or**

2. the acquisition of furniture or household equipment and the use of such items where the items will become the property of the claimant under an agreement with the landlord[7] **or**

3. the provision of an emergency alarm system[8] **or**

4. medical expenses[9], including the cost of treatment or counselling related to

4.1 mental disorder

4.2 mental handicap

4.3 physical disablement **or**

4.4 past or present alcohol or drug dependence **or**

5. nursing or personal care[10], including assistance

5.1 at meal times **or**

5.2 with personal appearance or hygiene **or**

6. general counselling or any other support services, whoever provides those services[11] **or**

7. any services not specified in **1.** to **6.**, which are not connected with the provision of adequate accommodation[12].

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

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

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

1. welfare services in respect of which the Secretary of State has paid a grant to the LA[2] **or**

2. welfare services in respect of which Senedd Cymru and Welsh Parliament has paid a grant to the LA[3] **or**

3. housing support services in respect of which Scottish Ministers have paid a grant to the LA[4].

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

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

Connected to the adequacy of the accommodation

78473 **[See Memo DMG SPC 53]** Charges for certain services not connected with the provision of adequate accommodation are not eligible. When considering if services are connected to the adequacy of the accommodation (see DMG 78457 **3.**) the DM should take a common sense view of charges for communal lounges, paths, walkways, gardens etc and not just the individual needs of the claimant.

Example

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

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

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

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

the upkeep/maintenance of communal pathways, gardens1,
repair of a lift
repointing of brickwork

the costs of a car park barrier
a car park attendant[2]
the installation of a pergola

the repair of a clock tower

are all connected with the provision of adequate accommodation.

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

78474 Where service charges include an amount for repairs and improvements listed in ADM memo 8/18, paragraph 97, and are undertaken to maintain the fitness for human habitation, they should not be allowed.

Example 1

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

1. have not been undertaken to maintain the fitness of the home for human habitation **and**

2. are not covered by the list of eligible repairs and improvements.

Example 2

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

Example 3

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

Deductions for repairs and improvements

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

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

78476 - 78479

Contingency funds

78480 **[See Memo DMG SPC 53]** Service charges may contain an element that is paid into some kind of fund or reserve. These are most commonly referred to as

1. contingency funds **or**

2. reserve funds **or**

3. sinking funds.

78481 Payments made into such a fund are "for" the general purposes of the fund, whether or not there has been any expenditure in the year in question. If those purposes include both allowable and non-allowable elements, make a corresponding apportionment of the relevant annual payment to determine how much can be allowed.

78482 – 78484

Costs payable over 53 weeks or irregularly

78485 Where housing costs are normally payable for 52 weeks but

1. paid for 53 weeks **or**

2. paid irregularly **or**

3. no such costs are payable or collected in certain periods **or**

4. the costs for different periods are different amounts

the weekly amount is the amount payable for the year divided by 52[1].

1 SPC Regs, Sch II, para 13(3)

Payment of costs waived

78486 Housing costs should continue to be allowed for up to eight weeks if[1]

1. the claimant or the claimant's partner pays for reasonable repairs or redecoration to the home **and**

2. that work was not the responsibility of the claimant or their partner **and**

3. payment for housing costs is waived because the work has been done.

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

Attribution of service charges

78487 Those housing costs attributed to a fixed 52 week period under DMG 78485 are payable from the date the liability arose.

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

Example

The claimant's award of SPC includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.04 - 31.3.05. The amount for housing costs is due to end on 31.3.05. In February 2005 the claimant sends in an estimate of service charges for the 2005-06 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.05 - 31.3.06. On 9.9.05 the claimant receives an invoice for £243.85, being the balance of finalised service charges for the 2004-05 year, and sends it to the DWP. The DM supersedes the decision of February 2005 to award housing costs of £10.87 and £4.69 for the period 9.9.05 - 31.3.06, and £4.69 for the period 1.4.06 - 6.9.06, the balance for the 2004-05 year charges being paid over a 52 week period. If a further estimate for charges for the 2005-06 year is received, the September 2005 decision may be superseded accordingly.

78488 - 78499

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Introduction

78500 Where non-dependants live with the claimant, a deduction from the allowable housing costs may be appropriate[1]. A deduction should be considered for each non-dependant or group of non-dependants, but only one deduction can be applied to each non-dependant [2].

1 SPC Regs, Sch II, para 14; 2 SPC Regs Sch II, para 14(2A)

Definition of a non-dependant

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

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

Meaning of normally resides

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

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

1. the total amount of time spent in a place

2. how often time is spent in a place

3. how permanent the stay is thought to be

4. the person's intentions

5. individual circumstances

6. what degree the accommodation is shared

7. the services provided

8. whether the person owns or rents any other accommodation.

Example

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

Sharing the accommodation

78504 People should not be regarded as sharing the accommodation if[1]

1. the only shared area is a

1.1 bathroom **or**

1.2 lavatory **or**

1.3 communal area **or**

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

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

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

78505 A communal area is[1] an area of common access (not a room) including

1. halls

2. passageways

3. stairways

4. rooms of common use in sheltered accommodation.

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

Example

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

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

78506 - 78509

People who are not non-dependants

78510 The following people who normally reside with the claimant are not non-dependants

1. any person aged under 18[1]

2. a partner of the claimant or any person under the age of 20 for whom the claimant or partner is responsible[2]

3. a person who

3.1 lives with the claimant in order to care for the claimant or partner **and**

3.2 is engaged by a

3.2.a charitable organization **or**

3.2.b voluntary organization

which makes a charge to the claimant or partner for the care provided by that person[3]

4. the partner of a person to whom **3.** applies[4]

5. any person who is not a close relative of the claimant or partner

5.1 who is liable to make payments on a commercial basis to the claimant, or partner, for their occupation of the claimant's dwelling[5] (see DMG 78079) **or**

5.2 who is a member of the household of a person to whom **5.1** applies[6]

6. a person who jointly occupies the claimant's dwelling and who is[7] either

6.1 a co-owner of that dwelling with the claimant or partner **or**

6.2 jointly liable with the claimant or partner to make payments to a landlord for their occupation of that dwelling

7. a partner of a person to whom **6.** applies[8].

Note 1: When considering **6.1**, it does not matter if there are other co-owners.

Note 2: where a partner is a PSIC they cannot be a partner of the claimant as in **2.** however the person will be a non-dependant and as a result attract the appropriate non-dependant deduction from any housing costs.

1 SPC Regs, Sch II, para 14(1) & (2); 2 Sch II, para 1(5)(a); 3 Sch II, para 1(5)(b); 4 Sch II, para 1(5)(c); 5 Sch II, para 1(6)(a); 6 Sch II, para 1(6)(c); 7 Sch II, para 1(7)(a); 8 Sch II, para 1(7)(b)

78511 - 78514

Amount of deduction

78515 The amount of deductions for non-dependants aged 18 or over depends on the

1. circumstances of the non-dependant **and**

2. amount of the non-dependant's gross weekly income[1].

See Appendix 1 to this Chapter for the rates of non-dependant deductions.

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

Non-dependants who have partners

78516 A non-dependant may be a member of a couple or polygamous marriage. In such a case

1. only one deduction should be made **and**

2. where different amounts would apply to each partner or additional spouse, the higher of those deductions should be applied[1].

1 SPC Regs, Sch II, para 14(3)

78517 If any one of a couple or polygamous marriage is aged 18 or over, a deduction should be made unless a deduction is not appropriate (see DMG 78521).

Calculation of income

78518 When calculating the amount of a non-dependant's gross weekly income for claimants who have partners

1. only one deduction should be made

2. the deduction should be based on the joint income of the claimant and any partners[1].

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

Non-dependant of more than one joint occupier

78519 A person may be a non-dependant in respect of more than one joint occupier of a dwelling. Unless the joint occupiers are partners, the deduction for that person should be apportioned between the joint occupiers, taking account of the

1. number of joint occupiers **and**

2. proportion of housing costs for which they are each responsible[1].

1 SPC Regs, Sch II, para 14(5)

78520 When apportioning the deduction as in DMG 78519, DMs should note that

1. the amount to be apportioned should be rounded to the nearest penny[1] **and**

2. all members of a couple, or polygamous marriage, who are occupying the same dwelling should be regarded as one joint occupier.

1 SPC Regs, Sch II, para 14(5)

Non-dependant deduction not appropriate

78521 **[See** Memo DMG 06/25**]** Deductions should not be made if

1. the claimant or any partner

1.1 is certified as blind or severely sight impaired by a consultant ophthalmologist or treated as blind or severely sight impaired[1] (see DMG 78008) **or**

1.2 is receiving in respect of themselves[2]

1.2.a "AA" **or**

1.2.b the care component of DLA **or**

1.2.c the daily living component of PIP **or**

1.2.d the daily living component of ADP **or**

1.2.e AFIP **or**

1.3 has a deduction in the calculation of a rent rebate or allowance in respect of the non-dependant[3] **or**

2. non-dependants are

2.1 living with the claimant but the dwelling normally occupied as the home is elsewhere[4] **or**

2.2 in receipt of a training allowance in connection with a youth training scheme[5] **or**

2.3 F/T students[6] **or**

2.4 aged under 25 and in receipt of IS or JSA(IB)[7] **or**

2.5 aged under 25, in receipt of ESA and is not a member of the work-related activity group or are in receipt of the support component[8] **or**

2.6 not living with the claimant because[9] they

2.6.a have been patients for more than 52 weeks (see DMG 78700 et seq) **or**

2.6.b are prisoners (see DMG 78651) **or**

2.7 in receipt of SPC[11] **or**

2.8 entitled to UC **and**

2.8.a is aged less than 25 **and**

2.8.b does not have any earned income

Note 1: When calculating the 52 weeks period in **2.6.a**, any periods separated by intervals of not more than 28 days, should be treated as a single period.

Note 2: Where a person under **1.2** has been an inpatient for a sufficient period of time they will no longer be receiving AA or DLA and as such the non-dependant will no longer be exempt from attracting a non-

dependant deduction.

1 SPC Regs, Sch II, para 14(6)(a); 2 Sch II, para 14(6)(b); 3 Sch II para 14(7)(dd);
4 Sch II, para 14(7)(a); 5 Sch II, para 14(7)(b); E & T Act 73, s 2;
Enterprise and New Towns (Scotland) Act 1990, s 2;6 SPC Regs, Sch II, para 14(7)(c);
7 Sch II, para 14(7)(d); 8 Sch II, para 14(7)(g); 9 Sch II, para 14(7)(e);
10 Sch II, para 14(7)(cc); 11 Sch II, para 14(7)(f);

Deduction appropriate – UC non-dependants

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

1. aged 25 or over **or**

2. aged less than 25 and has earned income

a deduction at the rate described in Appendix 1 will be appropriate.

78523

Calculation of a non-dependant's gross weekly income

78524 [see DMG memo 02/25]**[See Memo DMG 04-25] [See** Memo DMG 06/25**] [See Memo DMG 08-25] [See Memo DMG 04-26]** When calculating the gross weekly income of a non-dependant (see DMG 78515 and Appendix 1 to this Chapter), disregard[1] any

1. "AA"

2. DLA

3. PIP

4. ADP

5. AFIP

6. payments made under, or derived from

6.1 the Macfarlane Trust

6.2 the Macfarlane (Special Payments) Trust

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

6.4 the Fund

6.5 the Eileen Trust

6.6 the Independent Living Fund (2006) (but see note)

6.7 the Skipton fund

6.8 the Caxton Foundation

6.9 MFET Limited

6.10 any income from capital received from the London Emergencies Trust (LET) and the We Love Manchester Emergency Fund (WLMEF)

6.11 any Grenfell Tower payment

6.12 any child abuse payment or Windrush payment

6.13 any Post Office compensation payment

6.14 any income from capital received from Infected Blood Schemes (IBS)

7. payment in kind.

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

1 SPC Regs, Sch II, para 14(8)

78525 - 78529

Insufficient information to determine housing costs 78530 - 78599

78530 Where, a DM is

1. deciding a claim to SPC **or**

2. determining an issue on SPC housing costs

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

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

78531 If there are several housing costs on the claim, the AMG should include only an amount for those that can be determined. The AMG should not include any amount for those housing costs where there is sufficient information to make a decision.

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

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

78533 - 78599

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General

78549 (See ADM memo 05-24) (see DMG memo 04-24) From 1.2.19, when considering a new claim to SPC, the claimant's maximum amount shall include an amount for any child or qualifying young person for whom they are responsible[1]. Prior to that date, support for pensioners with such responsibility was provided by tax credits[2].

Note: An additional amount is not payable for any child/ren who's immigration status is such that they have no recourse to public funds.

1 SPC Regs, reg 6(6)(d) & Sch IIA, para 3; 2 WR Act 12; s.33 & Sch 6, para 6

Claimant with an ongoing award of tax credits

78550 If a claimant has an ongoing award of, or is treated as having an ongoing award of tax credits, that award will continue until they have a change of circumstance that ends their award or they are migrated to SPC as part of the phased process ahead of the abolition of tax credits[1]. They cannot be

awarded a child addition in SPC if they have an ongoing award, or are treated as having an ongoing award, of tax credits.

1 WR Act 12, s.33

Treated as having an award of tax credits

78551 A person is treated as having a tax credits award[1] at the start of the current tax year even if a decision has not yet been made on a claim for the current tax year. This applies where they've been awarded tax credits for the previous tax year **and**

1. they have not been given a final notice in respect of that previous tax year, **or**

2. a final notice has been given which includes specified dates by which they must provide details of their income and circumstances, **and**

2.1 those dates have not yet passed and no current claim for a tax credit has been made, or treated as made; **or**

2.2 a claim for a tax credits has been made, or treated as made before the date in paragraph 2.1 above, but no decision has been made on that claim; **or**

3. a final notice has been given, no claim for tax credits has been made or treated as made for the current year and no decision has been made in respect of an award for the previous tax year[2].

1 SPC Regs 2002, reg 6(12); 2 reg 6(13)

When the additional amount ceases

78552 Where an additional amount outlined in DMG 78549 has been awarded, that amount ceases[1] where DMG 78553 or 78553. applies.

1 SPC Regs 2002, reg 6(14);

78553 This paragraph applies where the person was awarded tax credits for the previous tax year which was not terminated and a final notice has been given in accordance with DMG 78551.2 above and the person makes a declaration

1. during the 30 days after tax credits ceases **or**

2. after the 30 day period, but before the 31st January of the following tax year **and** where HMRC accept there was good cause throughout the period for them not doing so by the date specified.[1]

1 SPC Regs 2002, reg 6(15)

78554 This paragraph applies where a decision on the claimant's award of tax credits is revised in favour of the claimant following

1. a revision on the grounds of official error; **or**
2. a request to review by the claimant; **or**
3. an appeal; **or**
4. a revision, under any other circumstances, under specified legislation.[1]

1 SPC Regs, reg 6(16), TC Act 02

78555 - 78560

Who is the responsible person

78561 The responsible person is

1. the person with whom the child or qualifying young person normally lives[1] **or**
2. where the child or qualifying young person normally lives with two or more persons who are not a couple, the person who has main responsibility[2].

1 SPC Regs, Sch IIA para 3(1); 2 Sch IIA, para 3(3)

Normally lives

78562 "Normally lives" is not defined in legislation, and should be applied with a focus on the normal pattern of living, rather than the amount of time spent with a particular person, or in a particular place. "Normally lives with" can include both minority and majority carers.

Note: Which person gets CHB is not taken into account when determining where a child or qualifying young person normally lives.

Example 1

Alan and Frances have a daughter, Gail, who lives from Monday to Friday with her grandmother. She spends the majority of weekends and all school holidays with her mother and father. This arrangement has been in place for some time and is Gail's normal pattern of living. She therefore normally lives with her parents **and** normally lives with her grandmother. The DM will need to determine who has main responsibility for Gail.

Example 2

Alan's 14 year old son Eric has recently left LA care. He spends Monday to Thursday nights with his mother, Frances, and Friday to Sunday nights with his grandparents, Arthur and Janice. Eric normally lives with Frances for part of each week and normally lives with Arthur and Janice for the balance of each week. The DM will need to determine who has main responsibility for Eric.

Main responsibility

78563 Where a child or qualifying young person normally lives with two or more persons who are not a couple, the deciding factor will be the person who has main responsibility. Who has that main responsibility[1] should be decided between the persons with whom the child or qualifying young person normally lives.

1 SPC Regs, Sch IIA, para 3(3)

78564 If

1. joint agreement cannot be reached as to which person has main responsibility **or**

2. in the opinion of the DM the choice of person with main responsibility does not reflect the actual arrangements

the DM may determine which person has main responsibility.[1]

1 SPC Regs, Sch IIA, para 3(4)

Who has main responsibility

78565 If the DM is required to determine who has main responsibility they should note that main responsibility is not defined in regulations and should be given the meaning of the person who is normally answerable for, or called to account for the child or qualifying young person. In determining who has the main responsibility for a child or qualifying young person consideration should be given to:

1. Who makes day to day decisions about the child's welfare including, for example, arranging and taking them to visits to the doctor or dentist or enrolling and taking the child to and from school?

2. Who provides the child with clothing, shoes, toiletries and other items needed for daily use?

3. Who is the main contact for the child's school, doctor and dentist?

4. Who cares for the child when the child is ill?

This list should not be considered exhaustive.

Example

Toby, 8, has always lived with his single mother at his Grandparents' home. A year ago his mother, Steph, received a promotion at work which involves considerable travelling and prolonged absences. His grandparents, Neil and Hannah, are in receipt of SPC and claim an additional amount for Toby. The DM determines that Toby can be said to normally live with his mother and his grandparents. However, for around 60% of the time over the previous year, Neil and Hannah have been in sole charge of Toby in his mother's absence, have taken Toby to school every day, organised his after school and weekend activities, taken him to doctors and dentists appointments and cared for him when he is ill. That pattern is likely to continue and the DM determines they have main responsibility for Toby.

78566 A person cannot be responsible for a qualifying young person with whom they live as part of a couple[1].

1 SPC Regs, Sch IIA, para 3(2)

78567 A claimant is not to be treated as responsible for a child or qualifying young person during any period that child or qualifying young person is

1. in prison[1] **or**
2. except in certain cases, looked after by a local authority[2].

1 SPC Regs, Sch IIA, para 5; 2 para 4

78568 - 78572

Looked after by an LA

78573 A looked after child is one who is in the care of the LA or provided with accommodation by the LA in exercise of its social services functions[1]. The child may be placed with a foster parent, another family member, their parent or a person who has parental responsibility. In Scotland, it includes a child who is subject to relevant court orders regarding their supervision and care by the LA.

1 Children Act 89 s 22; Children (Scotland) Act 95 s 17(6); Social Services and Wellbeing (Wales) Act 2014, s 74

78574 Where a child or qualifying young person is in LA care for a planned short break or series of breaks to provide respite for the person who normally cares for them, or where they are placed with or continue to live with a person with parental responsibility, the child addition will still be payable.[1]

1 SPC Regs, Sch IIA, para 4(3)

Prisoners

78575 A claimant is not to be treated as responsible for a child or qualifying young person during any period the child or qualifying young person is a prisoner[1]. (see DMG 78651 et seq for meaning of prisoner)

1 SPC Regs, Sch IIA, para 5

Child or qualifying young person temporarily absent

Temporary absence in GB

78576 A claimant is not to be treated as responsible for a child or qualifying young person in GB where they are absent and living away from the responsible person if that absence is likely to exceed 52 weeks, unless there are exceptional circumstances and the absence is unlikely to be substantially more than 52 weeks.[1]

1 SPC Regs, Sch IIA, para 6

Temporarily absent from GB

78577 Do not treat the claimant as responsible for a child or qualifying young person where that child or qualifying young person is

1. absent **or**
2. expected to be absent

from GB for more than 4 weeks.[1]

1 SPC Regs, Sch IIA, para 7(1)(a)

78578 [see ADM memo 1/25] The absence period in DMG 78577 above can be extended by up to a further 4 weeks[1] if the temporary absence is in connection with the death of

1. the claimant's partner, **or**
2. a child or qualifying young person normally living with the claimant, **or**
3. a close relative of
    - **3.1** the claimant, **or**
    - **3.2** the claimant's partner, **or**

3.3 a child or qualifying young person normally living with the claimant

and the Secretary of State considers that it would be unreasonable to expect the child or qualifying young person to return to GB within 4 weeks.

1 SPC Regs, Sch IIA, para 7(1)(b) & 7(2)

78579 The absence period can be for a duration of up to 26 weeks[1] where that absence is solely in connection with the child or qualifying young person undergoing

1. treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner **or**

2. medically approved convalescence or care as a result of treatment` for an illness or physical or mental impairment, where the person had that illness or disability before leaving GB, **or**

3. the child or qualifying young person accompanying the claimant or the claimant's partner for convalescence or care as set out above.

1 SPC Regs, Sch IIA para 7(1)(c) & 7(3)

Note: "medically approved" means certified by a registered medical practitioner and "qualified practitioner" means a person qualified to provide medical treatment or physiotherapy or a form of treatment which is similar to, or related to, either of these forms of treatment.[1]

1 SPC Regs, Sch IIA, para 7(4)

78580 - 78585

Death of child or qualifying young person

78586 Where a claimant's award of SPC includes an amount for a child or qualifying young person for whom they are responsible and that child or qualifying young person dies[1], they will continue to be treated as responsible for that child or qualifying young person

1. for a period of 8 weeks from the day the child or qualifying young person dies **or**

2. in the case of a qualifying young person the earlier of

2.1 8 weeks **or**

2.2 the day of what would have been their 20th birthday,

1 SPC Regs, Sch IIA, para 8

Rates of child addition

78587 The rate of the child addition for each child or qualifying young person is £61.88[1] per week. Where the eldest child or qualifying young person for whom the claimant is responsible was born before 6.4.17, that amount is £72.31 per week in respect of that child[2]

1 SPC Regs, Sch IIA, para 9(1)(a); 2 para 10

Additional amount for a disabled child

78588 An additional amount of £33.67 per week will be payable where the child or qualifying young person is

1. entitled to DLA **or**
2. entitled to CDP or
3. entitled to ADP or
4. entitled to PIP[1].

1 SPC Regs, Sch IIA, para 9(1)(b)(i) & 9(2)

78589 Where the child or qualifying young person is

1. entitled to the care component of DLA at the highest rate **or**
2. entitled to the care component of CDP at the highest rate **or**
3. entitled to the daily living component of ADP at the enhanced rate **or**
2. entitled to the daily living component of PIP at the enhanced rate **or**
3. certified as severely sight impaired or blind by a consultant ophthalmologist

the weekly additional amount will be £104.86[1].

1 SPC Regs, Sch IIA, para (9)(1)(b)(ii) &(9)(3)

Definitions

Child

78590 Child means[1] a person under the age of 16.

Note: There is no need for the child to be receiving education for this definition to apply.

1 SPC Regs, Sch IIA, para 2

Parental responsibility

78591 In England and Wales, parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. In Scotland, parental responsibility means having any or all of the legal responsibilities or rights described in sections 1 or 2 of the Children (Scotland) Act 1995.[1]

1 Children Act 1989, s 3: Children (Scotland) Act 1995, s 1 or 2

Qualifying young person

78592 A qualifying young person[1] is a person who has reached the age of 16 but not the age of 20 and who is

1. aged 16 years, but only for the period up to, but not including, the 1st September that next follows their 16th birthday

2. aged up to 19 years, but only for the period up to, but not including, the 1st September that next follows their 19th birthday where they are enrolled on, or accepted for

2.1 approved training[2] **or**

2.2 a course of education

2.2.a which is not advanced education, **and**

2.2.b at a school, college or other establishment that is approved by the Secretary of State, **and**

2.2.c where they spend on average more than twelve hours a week during term time in receiving tuition, taking examinations or practical work or supervised study

this must not include meal breaks or unsupervised study, including homework, whether done on or off the premises of the educational establishment[3].

Note 1: Where the young person at **2.** above is aged 19, they must have started the course of education or training, or been accepted or enrolled on it before reaching that age.

Note 2: The education or training described in **2.1** and **2.2** does not include education or training that is provided through a contract of employment[4]

1 SPC Regs Sch IIA, para 2; 2 reg 4A(4); 3 reg 4A (1); 4 reg 4A(3)

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Introduction

78600 The following guidance explains the special rules that apply to members of polygamous marriages[1]. But these rules only apply to polygamous marriages. They do not apply to multiple relationships. DMs should obtain evidence of the marriage if a claimant declares more than one spouse.

Note: See DMG Chapter 77 for guidance on multiple relationships and mixed-age couples.

1 SPC Act 02, s 12; SPC Regs, Sch III, para 1

General

Claims

78601 A claim for SPC may be made by a husband or wife of a polygamous marriage, if

1. the claimant **and**

2. the other party to the marriage **and**

3. any additional spouse (whether of the claimant's or of a spouse of the claimant's)

are all members of the same household[1] and are not a mixed-age couple[2].

Note: See DMG Chapter 77 for guidance on the treatment of mixed-age couples, including those in a polygamous marriage.

1 SPC Act 02, s 12(1); SPC Regs, Sch III, para 1(1) & (11); 2 1 WR Act 12 (Commencement No. 31 etc.) Order 2018, art 2(2)

Entitlement

78602 A claimant

1. is not entitled to SPC if

1.1 they are a member of a mixed-age couple[1] **or**

1.2 the other party to the marriage **or**

1.3 any additional spouse

is entitled to SPC[2]

2. who is entitled to SPC may be entitled[2] to a

2.1 GC (see DMG 78608 et seq) **or**

2.2 SC (see DMG 78623 et seq) **or**

2.3 both.

Note: See DMG Chapter 77 for guidance on the treatment of mixed-age couples, including those in a polygamous marriage.

1 WR Act 12 (Commencement No. 31etc) Order 2018, art(2)(2)2 SPC; 2 1 SPC Act 02, s 4(1) & 12(2)(a) & (3); SPC Regs, Sch III, para 1(3); 2 SPC Act 02, s 1(3)

Income and capital

78603 The income and capital of the other party to the marriage and any additional spouse should be treated as income and capital of the claimant[1] (see DMG Chapter 85).

1 SPC Act 02, s 5 & 12(2)(d); SPC Regs, Sch III, para 1(4) & (11)

78604 - 78607

Guarantee credit

78608 The following guidance explains the special rules that apply when calculating the GC in

polygamous marriage cases. It should be read in conjunction with DMG 77150 et seq which gives guidance on the general rules that apply.

Standard minimum guarantee

78609 In a polygamous marriage case, the SMG is made up of[1]

1. a set amount for the claimant and any one spouse of the claimant's **and**

2. an extra amount for each additional spouse (whether of the claimant or that spouse).

See Appendix 2 to Chapter 77 for the rates of SMG.

1 SPC Act 02, s 12(2)(b) & (c); SPC Regs, reg 6(1); Sch III, para 1(5) & (11)

Example 1

Sanjay is a member of a polygamous marriage and is married to Gita and Bina. At the time of his SPC claim the set amount of SMG for Sanjay and his elder wife Gita is £155.80. The extra amount for Bina is £53.70. The total SMG for Sanjay is £209.50 [£155.80 + £53.70].

Example 2

Nisha is a member of a polygamous marriage. Her husband Ishaq has another wife Sunetra and all three live together as members of the same household. Nisha claims SPC and at the time of her claim the set amount for her and Ishaq is £155.80. Sunetra is an additional spouse of Ishaq's and the extra amount for her is £53.70. The total SMG for Nisha is £209.50 [£155.80 + £53.70].

Additional amount for the severely disabled

78610 [See DMG memo 12/23] [See Memo DMG 01/26] The additional amount for the severely disabled is payable at a lower or higher rate[1]. See Appendix 2 to Chapter 77 for details of those rates.

1 SPC Regs, reg 6(5)

Lower rate

78611 [see DMG memo 02/25] **[See** Memo DMG 06/25**]** Claimants who are members of a polygamous marriage are entitled to the lower rate of additional amount for the severely disabled if[1]

1. both partners and each additional spouse (whether of the claimant's or of a spouse of the claimant's) are in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 AFIP **and**

2. there are no other persons aged 18 or over

2.1 normally residing with the partners and any additional spouse **or**

2.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) **and**

3. someone is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for only one of the members of the polygamous marriage.

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b); Sch III, para 1(9) & (11)

78612 [see DMG memo 02/25] Claimants may not satisfy the conditions in DMG 78611. In such a case the lower rate can still be awarded if[1]

1. at least one member of the polygamous marriage is in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.2 the daily living component of PIP at the standard or enhanced rate **or**

1.3 AFIP **and**

2. at least one member of the polygamous marriage is blind or treated as blind and **not** in receipt of

2.1 "AA" **or**

2.2 the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of PIP at the standard or enhanced rate **and**

3. all members of the marriage (that is both partners and each additional spouse) fall within either **1.** or **2.** **and**

4. there are no other persons aged 18 or over

4.1 normally residing with the partners and any additional spouse **or**

4.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) **and**

5. either

5.1 no-one is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for any person who is receiving "AA" or DLA or PIP or AFIP as in **1. or**

5.2 someone is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for one or more, but not all, the persons receiving "AA" or DLA or PIP or AFIP as in **1.**.

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(c); Sch III, para 1(10)

78613 [see DMG memo 02/25] The lower rate of additional amount for the severely disabled can also be awarded to claimants who are members of a polygamous marriage if[1]

1. one of the members of the marriage is in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 AFIP **and**

2. the other members would be in receipt of

2.1 "AA" **or**

2.2 the care component of DLA at the highest or middle rate **or**

2.3 the daily living component of PIP at the standard or enhanced rate **or**

2.4 AFIP

but for being a patient for over 28 days **and**

3. there are no other persons aged 18 or over

3.1 normally residing with the partners and additional spouse **or**

3.2 who the partners and additional spouse normally reside with (see DMG 78065 et seq) **and**

4. no-one is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for the person who is receiving "AA" or DLA or PIP or AFIP as in **1.**.

1 SPC Regs, reg 6(5)(a); Sch I, para 1(1)(b) & (2)(b); Sch III, para 1(9)

Higher rate

78614 [see DMG memo 02/25] Claimants who are members of a polygamous marriage are entitled to

the higher rate of additional amount for the severely disabled if[1]

1. both partners and each additional spouse (whether of the claimant's or of a spouse of the claimant's) are in receipt of

1.1 "AA" **or**

1.2 the care component of DLA at the highest or middle rate **or**

1.3 the daily living component of PIP at the standard or enhanced rate **or**

1.4 AFIP **and**

2. there are no other persons aged 18 or over

2.1 normally residing with the partners and any additional spouse **or**

2.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) **and**

3. no one is entitled to and in receipt of CA or UC that includes the CE, in respect of caring for any member of the polygamous marriage.

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

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

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

78616 - 78619

Additional amount for carers

78620 [See DMG memo 12/23] [See Memo DMG 01/26] The additional amount for carers is paid at one rate. In polygamous marriage cases, that amount is applicable for each partner or additional spouse who satisfies the qualifying conditions in DMG 78105[1]. See Appendix 2 to DMG Chapter 77 for details of the rate.

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

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

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

1. follow the guidance in DMG 78120 et seq **and**

2. note that when calculating the relevant amount (see DMG 78128), an additional spouse is the equivalent of a partner[1]**not** a dependant.

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

Additional amount for housing costs

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

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

Savings credit

78623 **(link is external)** In polygamous marriage cases, an SPC claimant can get a SC if[1]

1. at least one member of the polygamous marriage

1.1 has obtained pensionable age before 6.4.16 and

1.2 has reached the age of 65 before, on or after that date; and

1.3 at least one of those members had not [2] (but see DMG 77035 and 77167)

2**.** the claimant had

2.1 been entitled to SC immediately before 6.4.16 and

2.2 remained entitled to a SC at all times since that date. [3]

3. the claimant had

3.1 qualifying income (QI) that is more than the savings credit threshold (SCT) and

3.2 an income which, after the calculation at DMG 77170 et seq, allows amount A to be greater than amount B. [4]

1 SPC Act 02, s 3(1) & 12(3); SPC Regs, Sch III, para 1(2); 2 Pensions Act 07, s 13(3), SPC Regs Sch III para 1(7A)(1); 3 SPC Regs Sch III para 1(7A)(2); 4 SPC Act 02, s 3(1)

78624 DMs should note that in polygamous marriage cases the SCT and the maximum savings credit (MSC) are set at the same rates as for a couple[1]. See Appendix 2 to Chapter 77 for details of the rates.

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

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Introduction

78650 The amount of SPC payable to a claimant is affected if

1. the claimant **or**

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

3. any additional spouse (in a polygamous marriage case)

is, or becomes, a prisoner[1].

1 SPC Act 02, s 2(3), 2(9) & 3(8); SPC Regs, regs 6(2)(a), 6(3) & 7(3)

Meaning of prisoner

78651 A prisoner[1] is a person who is detained in custody

1. following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person

1.1 temporarily removed from prison to hospital, unless DMG 78652 **3.** applies **or**

1.2 living outside the prison under a pre-release employment scheme[2] **or**

1.3 released on temporary licence[3], which may be allowed for a variety of reasons including

1.3.a home leave **or**

1.3.b attendance at rehabilitation courses **or**

1.3.c work during the daytime (see DMG 78657) **or**

2. on remand awaiting

2.1 trial **or**

2.2 sentence upon conviction.

1 SPC Regs, reg 1(2); 2 R(I) 9/75; 3 Prison Act 1952; Prisons (Scotland) Act 1995

78652 The definition of prisoner does not include a person

1. under suspended sentence **or**

2. sentenced to community service **or**

3. transferred from court or prison to hospital who is detained under Mental Health legislation[1] **or**

4. released on licence (see DMG 78658) **or**

5. who is on a

5.1 home detention curfew (see DMG 78659) **or**

5.2 court ordered curfew **or**

5.3 restriction of liberty order **or**

5.4 mandatory probation service programme.

Note: Release on licence means release on parole after completion of a specified part of the original sentence.

1 MH Act 1983, MH (C & T) (Scot) Act 03

Meaning of detained in custody

78653 The word “detains” describes the physical confinement of a person[1]. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

1. in a prison

2. in a remand centre

3. in a police station when used as a remand overflow

4. abroad.

1 R(S) 10/56

78654 Detention in custody might be after the

1. start of the proceedings, for example remand in custody **or**

2. proceedings have ended, for example sentence to prison.

1 R(IS) 1/94

78655 Detention in custody does not include a period before proceedings begin where the person is released on bail.

78656

Pre-release schemes

78657 Shortly before release, prisoners may be allowed short periods of release on temporary licence to help them get used to life outside prison again. They may find work outside prison to support themselves and spend short periods at home. Such people

1. are still serving a sentence of imprisonment **and**

2. continue to be prisoners until the time of their release[1].

1 R(I) 9/75

Release on licence

78658 Release on licence means release on parole after completion of a specified part of the original sentence. A person released on licence[1] is no longer detained in legal custody and is no longer a prisoner.

1 Criminal Justice Act 1991, s 32 to 37A

Curfews

78659 Some prisoners sentenced to less than four years can be released on a curfew licence up to 60 days before their automatic release date. Under the curfew licence they have to wear an electronic tag and remain at home during agreed periods of the day[1]. These conditions apply from the date of early

release to the day they would have been eligible for release under licence.

1 Criminal Justice Act 1991, s 34A & 37A

78660 Although subject to a curfew condition, the person is released on licence and is no longer a prisoner[1].

1 Criminal Justice Act 1991, s 32 to 37A

Period of detention in custody

78661 When working out the period for which a person is detained in custody

1. count the day on which the detention starts **and**

2. do not count the day of release from detention

as a day on which the person is detained in custody.

78662 A period of detention in custody therefore

1. starts on the day on which the person is detained **and**

2. ends on the day before the person is released from detention.

Prisoner admitted to hospital

78663 The DM should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation[1] is not a patient for SPC purposes and has an applicable amount of nil **or**

2. under prescribed mental health legislation[2] other than that in **1.** above is a patient for SPC purposes and has entitlement to their full applicable amount

1 SPC Regs, reg 1(2), Sch III, para 2, MH Act 83 s 47, s 45A; MH (C & T) (Scot) Act 03 s 136, s 130; Criminal Procedure (Scotland) Act 1995; 2 MH Act 83

Claimant is a Technical Lifer - England and Wales only

78664 The status of technical lifer[1] is an administrative classification which was given to certain prisoners with a life sentence. It was given when the Secretary of State for Justice accepted that the criminal court that heard the individual's case would have given an order for hospital treatment rather than impose a sentence of imprisonment.

1 Regina (EM and others) v SoS for Work and Pensions [2009] EWHC 454 (Admin)

78665 A technical lifer should be treated, for the purposes of entitlement to SPC, as though they had been given a hospital order[1] with no term of imprisonment. This means that a person with technical lifer status is eligible for SPC as an ordinary hospital in-patient.

Note: The practice of treating prisoners as technical lifers was abandoned in 2005.

1 MH Act 83, s 37

Guarantee credit for prisoners

78666 GC is not normally payable to prisoners. This is because the rate of both the

1. SMG **and**

2. additional amount applicable

for prisoners is nil[1]. The exception to this rule is where a person is a remand prisoner.

1 SPC Act 02, s 2(3) & (9); SPC Regs, reg 6(2)(a) & (3)

Guarantee credit for remand prisoners

Meaning of remand prisoner

78667 A remand prisoner[1] is a person who, for a period of not more than 52 weeks, has been

1. detained in custody

1.1 on remand awaiting trial **or**

1.2 awaiting sentence upon conviction **or**

2. as a condition of bail, required to live in an approved hostel[2].

1 SPC Regs, reg 6(10); 2 Probation Service Act 1993, s 27(1); Criminal Justice & Court Services Act 2000, s 9(2)

Remand prisoners detained in custody

78668 In the case of remand prisoners detained in custody as in DMG 78667 **1.**

1. the amount of the SMG is nil[1] **but**

2. an additional amount for housing costs may be applicable (see DMG 78170 et seq) for a period of up to

52 weeks[2].

1 SPC Act 02, s 2(3)(a) & (9); SPC Regs, reg 6(2)(a) & (3)(a); 2 SPC Act 02, s 2(3)(b); SPC Regs, reg 6(2)(a), (3)(b) & (6)(c)

78669 DMs should note that

1. additional amounts for

1.1 the severely disabled

1.2 carers **and**

1.3 former claimants of IS or JSA(IB)

are not applicable in the case of remand prisoners detained in custody[1] **and**

2. the additional amount for housing costs is no longer applicable once the person has been detained in custody for more than 52 weeks[2].

1 SPC Regs, reg 6(2)(a), (3)(b), (4), (6) & (9); 2 reg 6(7)

People in bail hostels

78670 Some people are required to stay in a bail hostel as a condition of their bail (see DMG 78667 **2.**). In such a case

1. the amount of the SMG should be calculated as normal[1] **and**

2. an additional amount for

2.1 the severely disabled may be applicable if the qualifying conditions are satisfied[2] (see DMG 78030 et seq) **and**

2.2 housing costs may be applicable (see DMG 78170 et seq) for a period of up to 52 weeks[3].

1 SPC Act 02, s 2(3)(a), (4), & (5); SPC Regs, reg 6(1); 2 SPC Act 02, s 2(3)(b) & (7); SPC Regs, reg 6(5)(a); Sch I, para 1(1)(a); 3 SPC Act 02, s 2(3)(b); SPC Regs, reg 6(6)(c), (9) & (10)

78671 DMs should note that

1. additional amounts for

1.1 carers **and**

1.2 former claimants of IS or JSA(IB)

are not applicable in the case of people who are required to stay in a bail hostel[1] **and**

2. the additional amount for housing costs is no longer applicable once the person has been in the bail hostel for more than 52 weeks[2].

1 SPC Regs, reg 6(9); 2 reg 6(10)

Savings credit for prisoners

78672 SC is not payable to prisoners. This is because the MSC for all prisoners, including remand prisoners, is nil[1].

1 SPC Act 02, s 3(8); SPC Regs, reg 7(3)(a)

Membership of the household

78673 Members of a couple, or polygamous marriage, are treated as not being members of the same household (see DMG 77117) if they are detained in custody[1]. So the amount of SPC that may be awarded to a claimant will be affected if one or more of them are detained in custody.

Note: This also applies where the claimant is a patient having been transferred from court or prison to hospital under the Mental Health Acts as in DMG 78652.

1 SPC Regs, reg 5(1)(c)(ii) & (iii)

Partner of a prisoner claiming SPC

78674 The partner of a prisoner may claim SPC. In such a case the partner claiming SPC should be treated as a single claimant.

Person becomes a prisoner during an SPC claim

78675 A claimant without a partner may be detained in custody during the course of an SPC claim. Unless the claimant is a remand prisoner (see DMG 78667), the DM should revise the award to a nil amount.

78676 For claimants with partners, it may be the claimant or their partner who is detained in custody during the course of an SPC claim. In such a case, if it is the

1. claimant's partner who is detained in custody, the DM should revise the award to remove the partner from the calculation

2. claimant who is detained in custody, the DM should

2.1 revise the award to a nil amount for the claimant **and**

2.2 consider whether a change of claimant is needed **and**

2.3 if the claimant's partner claims SPC, consider their claim under the normal rules.

Life Sentences

78677 Life sentences (or indeterminate sentences) fall into two categories-

1. mandatory life sentences. Where a person is convicted of murder this is the only sentence which can be imposed;

2. discretionary life sentences where the judge holds it to be appropriate in the circumstances of the case or where it is held to be necessary, e.g. for public protection.

78678 In both cases the trial judge sets a tariff period which is effectively the "punishment" part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the public. Otherwise they will remain in prison. A trial judge can decline to set a tariff period. In the case of mandatory lifers this is called a 'whole life order'. It means that a prisoner can never become eligible for a Parole Board review or for release.

78679 A prisoner who remains in prison beyond their tariff date does not become eligible for DWP benefits - they are still prisoners. Similarly a life sentence prisoner who is transferred to psychiatric hospital for treatment does not become eligible for DWP benefits when the tariff date has been reached[1]. Such a patient would only become eligible for benefit upon release.

1 SPC Regs, reg 8; Sch III, para. 2

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Amount payable for members of religious orders 78683 - 78699

Introduction

78680 The following guidance explains the special rules that apply to members of religious orders.

Meaning of religious order

78681 A religious order is

1. a group of people who

> **1.1** are bound by vows living under the same religious, moral and social regulations observing a discipline according to a particular rule **and**
>
> **1.2** offer their services free for the benefit of the order **and**

2. committed to providing all that its members need for their maintenance.

Note: Monks and nuns (of the Roman Catholic, Buddhist or any other religion) are the most common examples, but there may be others.

78682

Amount payable for members of religious orders

Member fully maintained

78683 SPC is not payable if the claimant is

1. a member of a religious order **and**

2. fully maintained by their order (that is, if the order provides full board and lodging, clothing and other needs).

78684 This is because the rate of the

1. SMG[1] **and**

2. additional amount applicable[2] **and**

3. MSC[3]

for members of religious orders who are fully maintained by their order, is nil.

1 SPC Act 02, s 2(3)(a) & (4); SPC Regs, reg 6(2)(b) & (3)(a); 2 SPC Act 02, s 2(3)(b) & (9); SPC Regs, reg 6(2)(b) & (3)(b); 3 SPC Act 02, s 3(8); SPC Regs, reg 7(3)(b)

Example

Ted is a missionary for a group of priests that refer to themselves as a congregation. The priests give up their personal possessions on joining the congregation and are bound by religious vows. They are not allowed to do any paid work outside and are provided with all their needs.

Ted retires to a care home that caters for retired priests of the congregation and he claims SPC. The order continues to provide all that Ted needs in the care home, although they say that it is becoming increasingly difficult to do so. But what matters is whether the order is fully maintaining Ted, not whether they find it difficult to do so.

SPC is not payable to Ted because he is a member of a religious order who is being fully maintained by his order.

78685 The commitment to a religious order is often for life. So for example, the amount of SPC payable continues to be nil if a person retires but remains with the order and continues to be fully maintained by it. But SPC should be calculated in the normal way if a person ceases to be maintained by the order.

78686 - 78689

Member not fully maintained

78690 SPC may be awarded if a member of a religious order

1. leaves the order's premises, for example to nurse a sick relative **and**

2. is not fully maintained by the order during the absence.

The fact that the member has been fully maintained by the order in the past does not affect the decision on the change of circumstances.

78691 Claims may be received from elderly monks or nuns

1. in very poor physical or mental health **and**

2. for whom proper care can no longer be provided by the monastery or convent **and**

3. whose order can no longer afford to maintain them.

Such people may be living in a care home or private hospital being run by a religious order. Entitlement should be considered in the normal way if they are not being fully maintained by their order.

Example

Sarah is an 80 year old nun who has been a member of, and fully maintained by, a religious order for 62 years. She is suffering from Alzheimer's Disease and her order is no longer able to care for her properly. The LA find her a place in a care home run by another order. Sarah is expected to contribute to the fees and claims SPC.

The order continues to provide suitable clothing for Sarah but cannot afford to maintain her in the care home and makes no financial contribution to her needs. The DM decides that Sarah is no longer being fully maintained by the order, and awards SPC.

78692 A member of a religious order may have no apparent income or capital of their own. But the DM should consider whether the rules of the order allow

1. a member to ask for financial support **or**

2. the return of money given to the order on admission.

This information can be obtained from the trust deed of the order, but enquiries should not be made into the order's financial affairs. The DM should submit cases of doubt to DMA Leeds.

78693 A member of a religious order may still be fully maintained by the order even though they may have some funds of their own, out of which they may be contributing to the order[1].

1 [2011] EWCA Civ 103

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Introduction

78700 The amount of SPC payable to a claimant may be reduced if

1. the claimant **or**

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

3. any additional spouse (in a polygamous marriage case)

is in hospital for more than a specified period[1] (see DMG 78805 - 78899).

1 SPC Act, s 2(6); SPC Regs, Sch III, para 2

78701 The following guidance explains the rules that normally apply when calculating how much SPC to pay when people are in hospital. But other rules apply where a transferee or their partner is in hospital. See DMG 80011 et seq for guidance.

Definitions

78702 The following paragraphs explain the meaning of terms used throughout this guidance on people in hospital.

Patient

78703 A patient[1] is a person (other than a prisoner) who is receiving free in-patient treatment[2] (see DMG 78720 et seq).

1 SPC Regs, reg 1(2); 2 SS (HIP) Regs, reg 2(2)

Prisoner

78704 DMs should follow the guidance at DMG 78651 et seq when deciding if a person is a prisoner.

Transferee

78705 A transferee[1] is any person who

1. immediately before 6.10.03, is entitled to IS **and**

2. reaches, or has reached, the qualifying age on or before 6.10.03.

1 SPC Cql Regs, reg 36(1)

Housing costs

78706 The claimant may be treated as continuing to occupy a dwelling as the home. If so, the DM should consider whether an additional amount for housing costs is applicable (see DMG 78170 et seq).

Membership of the household

78707 DMs should consider the guidance at DMG 77100 et seq to decide whether a patient is still a member of the household if the patient is a member of a

1. couple **or**

2. polygamous marriage.

78708 If a patient is no longer a member of the household, the DM should revise or supersede the award on the basis of the new circumstances. If it is the

1. claimant's partner who is no longer a member of the household, the DM should revise or supersede the award to remove the partner from the calculation **and**

2. claimant who is no longer a member of the household, the DM should

> **2.1** revise or supersede the award to take account of the change in the claimant's status (see DMG 78825) **and**
>
> **2.2** consider whether a claim should be invited from the claimant's partner **and**
>
> **2.3** if the claimant's partner claims SPC, consider the partner's claim under the normal rules.

Patients receiving other social security benefits

78709 A patient may be in receipt of a SS benefit as well as SPC. SS benefits are subject to revision or

supersession at the same time as any SPC. The DM deciding SPC should make sure that the decision does not conflict with any decision on the same question by the DM deciding the SS benefit.

People admitted to hospital from care homes

78710 In SPC there is no difference between the treatment of people in care homes and those living in their own homes (other than the deemed weekly income from capital limit). So when a person is admitted to hospital from a care home, the amount of any reduction in a claimant's SPC will depend on

1. the period for which the person receives, or is treated as receiving, free in-patient treatment (see DMG 78795 and 78840 et seq) **and**

2. whether the claimant has a partner who is a member of their household (see DMG 77128 et seq).

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Deciding free in-patient treatment

78720 A person is receiving free in-patient treatment[1] for any period when they are

1. maintained free of charge (see DMG 78722) **and**

2. receiving medical or other treatment (see DMG 78725) **and**

3. in a hospital or similar institution (see DMG 78731) **and**

4. an in-patient (see DMG 78738) **and**

5. receiving the treatment

5.1 under prescribed legislation[2] (see DMG 78746) **or**

5.2 in a hospital or similar institution maintained or administered by the Defence Council (for example an army, navy or air force hospital).

1 SPC Regs, reg 1(2); SS (HIP) Regs, reg 2(2); 2 NHS Act 77; NHS (Scotland) Act 78; NHS & CC Act 90

78721 DMs should note that a person who does not meet any one of the conditions in DMG 78720 is not receiving free in-patient treatment. The DM does not need to consider the other conditions.

Maintained free of charge

78722 A person is treated as being maintained free of charge[1] in a hospital or similar institution unless

1. accommodation and services are being provided for that person as a private patient[2] **or**

2. the person is meeting the full cost of their maintenance as a private patient in a private hospital[3].

1 SS (HIP) Regs, reg 2(2); 2 NHS Act 77, s 65; NHS (Scotland) Act 78, s 58 & Sch 7A, para 14; NHS & CC Act 90, Sch 2, para 14; 3 SS (HIP) Regs, reg 2(2)

78723 In any other circumstances the person is treated as maintained free of charge. For example when a

1. payment is made by the patient for an amenity bed but the treatment is provided under the NHS[1]

2. patient is in paid work outside the hospital during the day and pays an amount to the HA, based on earnings, towards maintenance and incidental costs[2]

3. person is a patient in a care home being funded under arrangements made by the HA[3].

1 NHS Act 77, s 64; NHS (Scotland) Act 78, s 55; 2 NHS Act 77, s 64; NHS (Scotland) Act 78, s 56; 3 NHS Act 77; NHS (Scotland) Act 78

Burden of proof

78724 The burden of proving that a person is not being maintained free of charge rests with that person[1].

1 CS 591/49

Medical or other treatment

78725 To be treated as receiving free in-patient treatment a person must be receiving

1. medical treatment, for example

1.1 surgical treatment

1.2 administration of drugs and injections **or**

2. other treatment, which includes nursing services by professionally trained staff in the form of

2.1 observation

2.2 therapy

2.3 support appropriate to the person's needs

2.4 advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

78726 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment[1]. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment.

1 R(P) 1/67

78727 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day.

78728 - 78730

Hospital or similar institution

Hospital

78731 A hospital[1] is any of the following

1. an institution for

1.1 the reception and treatment of people suffering from illness

1.2 the reception and treatment of people during convalescence

1.3 people needing medical rehabilitation

2. a maternity home

3. in Scotland, any institution for dental treatment maintained in connection with a dental school

4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 SS (HIP) Regs, reg 2(2); NHS Act 77, s 128; NHS (Scotland) Act 78, s 108

78732 Illness includes[1]

1. mental disorder **or**

2. any injury or disability needing

2.1 medical treatment **or**

2.2 dental treatment **or**

2.3 nursing.

1 NHS Act 77, s 128; NHS (Scotland) Act 78, s 108

78733 Mental disorder means

1. in England and Wales[1]

1.1 mental illness **or**

1.2 arrested or incomplete development of the mind **or**

1.3 psychopathic disorder **or**

1.4 any other disorder or disability of the mind

2. in Scotland[2], any form of

2.1 mental illness **or**

2.2 mental handicap.

1 Mental Health Act 83, s 1(2); 2 Mental Health (Care and Treatment) (Scotland) Act 2003

Similar institution

78734 The term "similar institution" has no specific legal meaning. If an institution does not satisfy the definition of hospital, the DM should decide as a question of fact whether it is similar to a hospital taking into account the

1. purpose of the institution **and**

2. type of treatment provided **and**

3. level of care offered.

78735 A hospital or similar institution also includes those

1. maintained by or on behalf of the[1]

1.1 DH

1.2 Welsh Office

1.3 Scottish Executive Department of Health **or**

2. maintained by or administered by the Defence Council, for example an army, navy or air force hospital.

Note: These include special hospitals such as Broadmoor, Rampton and the State Hospital in Scotland.

1 NHS Act 77, s 4; NHS (Scotland) Act 78, s 102

Examples of hospitals or similar institutions

78736 DMs should note that a hostel or care home providing accommodation and social care to former alcoholics or drug addicts is **not** similar to a hospital. But it **may** be a similar institution to a hospital if the institution

1. cares for

1.1 former alcoholics **or**

1.2 drug addicts **or**

1.3 psychiatric patients **and**

2. provides a degree of medical treatment or rehabilitation by trained nursing staff.

78737 A care home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the nursing home. But if the provision of nursing care is minimal, for example rarely expected, the care home may not be a hospital.

Meaning of in-patient

78738 The term "in-patient" has no specific legal meaning and so should be given its normal everyday meaning. That is a patient who occupies a bed in a

1. hospital or similar institution under specific NHS legislation **or**

2. hospital or similar institution maintained or administered by the Defence Council

rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to[1].

1 R(I) 27/59; R(S) 8/51

78739 DMs should note that the question of whether a person is an in-patient should be judged on the facts of each case.

78740 Examples of when a person would be included as an in-patient are where the person is

1. a patient and spends part of each day away from the hospital

2. provided with meals by close relatives

3. a nurse treated in the nursed sick bay of the hospital in which the nurse works[1].

1 R(S) 2/52

78741 Examples of when a person would not be included as an in-patient are where the person is

1. receiving treatment at home during the period a rehabilitation centre is closed for a holiday[1]

2. a matron receiving treatment in ordinary living quarters at a hospital[2].

1 R(I) 14/56; 2 R(S) 28/52

78742 - 78745

Prescribed legislation

78746 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation[1]. But in deciding whether a person is to be treated as an in-patient, the DM should consider the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

1. the DH **or**

2. the Scottish Executive Department of Health **or**

3. a HA in England and Wales **or**

4. a Health Board in Scotland **or**

5. a National Health Service Trust.

Note: Health Authorities and Health Boards have a variety of duties under NHS legislation and not all of them mean that a person is receiving free in-patient treatment.

1 NHS Act 77; NHS (Scotland) Act 78; NHS & CC Act 90

England and Wales

78747 Health Authorities acting on behalf of the Secretary of State can

1. arrange for long term health care in a care home for a person whom they assess as needing that care[1] (in this case the service must be provided free of charge and the HA is responsible for the full cost) **or**

2. contribute to the cost of care through payments to an LA, voluntary organization or housing association[2] for

2.1 social care **or**

2.2 accommodation **or**

2.3 housing costs

for a person who does not need in-patient care from the NHS **or**

3. make grants to voluntary organizations[3] towards the cost of care for a person who does not need in-patient care from the NHS.

Note: If **1.** applies, the person is receiving free in-patient treatment under prescribed legislation.

1 NHS Act 77, s 23; 2 s 28A; 3 HS & PH Act 68, s 64

Scotland

78748 Health Boards, acting on behalf of the Secretary of State for Scotland, can

1. provide accommodation and services needed to meet all reasonable requirements[1]

2. make the necessary arrangements to meet all reasonable requirements[2].

Note: If services are provided under **2.**, the Health Board is responsible for the full cost.

1 NHS (Scotland) Act 78, s 36; 2 s 37

Services provided under National Health Service legislation

78749 Examples of services under National Health Service legislation are[1]

1. hospital accommodation

2. other accommodation for the purpose of any service the Secretary of State has the power to provide

3. medical services

4. nursing services

5. facilities which the Secretary of State considers appropriate as part of the health service for the

5.1 prevention of illness **or**

5.2 care of people suffering from illness **or**

5.3 after care of people who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

1 NHS Act 77, s 3(1); NHS (Scotland) Act 78, s 36 & 37

Imprisonment

78750 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment. This is because such hospital wings are administered by

1. the Home Office **or**

2. in Scotland, the Scottish Office Prisons Directorate

and not the DH[1].

1 SS (HIP) Regs, reg 2

78751 If a person in legal custody is admitted to a hospital outside the prison see DMG 78651 et seq.

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Community care arrangements 78755 - 78769

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Arrangements by Health Authorities and Health Boards

78755 As part of a community care programme, a Health Authority or Health Board may make a variety of arrangements with care homes or hostels for

1. the continuing care of a patient in one of these homes **or**

2. a person in the community to be admitted directly to one of these homes.

The DM should consider DMG 78720 et seq to decide whether the person is receiving free in-patient treatment in the home or hostel (see DMG 78764 if the LA is involved in the arrangements).

78756 Examples of arrangements made by Health Authorities and Health Boards under community care programmes are

1. setting up their own homes or hostels

2. setting up trusts to provide homes

3. contracting with private and voluntary sector homes for the provision of accommodation and services

4. contracting with a voluntary agency to find suitable placements for patients.

Points to consider

78757 When deciding whether the new accommodation is a hospital or similar institution the DM should

1. consider the definition in DMG 78731 et seq **and**

2. not compare the new accommodation with the person's previous hospital accommodation.

78758 If the arrangements between the Health Authority or Health Board and the home or hostel are

under any of the provisions of the prescribed legislation[1], DMG 78720 is satisfied.

1 NHS Act 77; NHS (Scotland) Act 78; NHS & CC Act 90

78759 If a Health Authority or Health Board helps a voluntary sector home by awarding a grant or loan under other legislation[1], DMG 78720 is **not** satisfied. But if the Health Authority or Health Board have a contractual agreement to pay a grant for future financial years, this may be evidence that the agreement has been made under prescribed legislation (see DMG 78746). If that is the case, the person may be receiving free in-patient treatment.

1 HS & PH Act 68, s 64; NHS (Scotland) Act 78, s 16B

78760 A Health Authority or Health Board may agree to provide help to a home on the assumption that the person will not be treated as receiving free in-patient treatment for SPC purposes. For example they may agree to pay the difference between the

1. normal amount of SPC payable **and**

2. amount charged for the home.

Note: If the agreement is made under prescribed legislation (see DMG 78746), the Health Authority or Health Board is responsible for the full cost of the accommodation and services no matter what the agreement states.

78761 A Health Authority or Health Board can provide financial assistance or services, for example they may provide trained nursing staff. If the home reimburses

1. the **full** cost of the services to the Health Authority or Health Board, the person is not receiving free in-patient treatment **or**

2. part of the cost of the services, the arrangement may be under prescribed legislation (see DMG 78746).

78762 The arrangement by the Health Authority or Health Board must include continuing help. If a placement is found without any continuing commitment from the Health Authority or Health Board to fund the care, DMG 78720 is not satisfied. For example a hospital social worker may help a patient who is about to be discharged to find a suitable care home.

Existing cases - revision or supersession

78763 Enquiries should be made to decide whether all the conditions in DMG 78720 are satisfied if

1. a person is living in a care home **and**

2. the Heath Authority or Health Board reports that the person is receiving free in-patient treatment.

If all the conditions in DMG 78720 are satisfied, the person is receiving free in-patient treatment and the claim should be revised or superseded. (see DMG 78770)

Local authority placements

78764 LAs have responsibilities for placing some people in residential care[1]. The LAs

1. contract with the home owners **and**

2. are responsible for the full cost of the placement **and**

3. may be helped with funding from a Health Authority or Health Board[2].

If an LA has made the placement, the conditions in DMG 78720 are not satisfied. This is because the placement has not been arranged under prescribed legislation[3]. Any funding from the Health Authority or Health Board does not affect the placement.

1 NA Act 48; Social Work (Scotland) Act 68; 2 NHS Act 77, s 28A; NHS (Scotland) Act 78;
3 NHS Act 77; NHS (Scotland) Act 78; NHS & CC Act 90

78765 - 78769

Periods of free in-patient treatment 78770 - 78804

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Period of free in-patient treatment 78771 - 78780

Revision of award on admission to hospital 78781 - 78804

Introduction

78770 An SPC claim may need to be superseded when

1. the claimant **or**

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

3. any additional spouse (in a polygamous marriage case)

has been receiving free in-patient treatment for more than a specified period (see DMG 78805 to 78863).

Period of free in-patient treatment

78771 A person is receiving free in-patient treatment for any period that the conditions in DMG 78720 are satisfied. When working out such periods, DMs should

1. not count the day of

1.1 admission to hospital **or**

1.2 return to hospital following a period of temporary absence (for example home leave)

2. count the day of

2.1 discharge from hospital **or**

2.2 leaving hospital on temporary absence (for example home leave)

as days of free in-patient treatment[1].

1 SPC Regs, reg 1(2); SS (HIP) Regs, reg 2(2A)

78772 So a period of free in-patient treatment

1. begins on the day after the person is admitted to hospital **and**

2. ends on the day the person is discharged from hospital[1].

1 SPC Regs, reg 2(2A)

Example

Kieran is admitted to hospital on 7 March and is discharged on 15 March. Kieran's period of free in-patient treatment starts on 8 March (the day after he is admitted) and ends on 15 March (the day he is discharged). That is a period of eight days.

Temporary absences from hospital

78773 When a person leaves hospital temporarily, for example on home leave, the day of

1. discharge is a day in hospital **and**

2. return to hospital is **not** a day in hospital[1].

1 CS 131/49 (KL); R(IS) 8/51; R(S) 9/52

Transfer between hospitals

78774 If a patient is transferred from one hospital to another, the day of transfer is treated as a day in hospital.

78775 - 78780

Revision of award on admission to hospital

Deciding the date of change

78781 From 10.4.06 the amount of SPC payable is not affected when a person has been in hospital for a period of 52 weeks.

78782 - 78804

Guarantee credit for people in hospital 78805 - 78839

In hospital more than four weeks 78805 - 78824

In hospital 52 weeks or more 78825 - 78839

In hospital more than four weeks

78805 When a person has been in hospital for four weeks, the DM should consider the effect of the hospital admission on any additional amounts that may be applicable for

1. the severely disabled **or**

2. carers.

Additional amount for the severely disabled

78806 Where a claimant has no partner, the additional amount for the severely disabled stops when the relevant qualifying benefit ends[1] (normally after four weeks). So an additional amount for the severely disabled will usually need to be withdrawn when claimant who has no partner has been a patient for more than four weeks.

Note: If entitlement to ADP begins during a period in hospital, or if a claimant transfers to ADP whilst in hospital, it is payable for 28 days. Entitlement to the additional amount for the severely disabled for that period will have to be considered[2]

1 SPC Regs, Sch I, para 1(1)(a); 2 DAWAP(Scotland) Regs, reg 28

78807 Claimants with partners will be entitled to the lower rate of additional amount for the severely disabled (see DMG 78045 - 78047) if[1]

1. the conditions for either rate of additional amount for the severely disabled were satisfied before

1.1 one member of a couple became a patient **or**

1.2 at least one member of a polygamous marriage was not a patient **and**

2. where the conditions for the

2.1 higher rate were satisfied, “AA” or DLA or PIP stops because the patient has been in hospital more than 28 days **or**

2.2 lower rate were satisfied, the patient is treated as still being in receipt of “AA” or DLA or PIP

(see DMG 78059 **2.**).

Note: The lower rate of additional amount for the severely disabled is payable from the date "AA" or DLA or PIP stops. Normal change of circumstances rules apply (see DMG Chapter 04).

1 SPC Regs, reg 6(5) & Sch I, para 1(2)(b)

Example 1

Brendan and his wife Sharon satisfy the conditions for the higher rate of additional amount for the severely disabled. Brendan goes into hospital on 14 May and the higher rate continues in payment. DLA stops from 12 June because Brendan has been a patient for more than 28 days. The additional amount for the severely disabled is reduced to the lower rate from 12 June, subject to the normal change of circumstances rules.

Example 2

Rhona and her husband Finlay are both in receipt of AA. Their daughter Janet, who lives nearby, receives CA for caring for Finlay. An additional amount for the severely disabled is awarded to the couple at the lower rate (see DMG 78045). Rhona is admitted to hospital on 22 October and her AA is withdrawn from 19 November. Rhona is still treated as being in receipt of AA (see DMG 78059) but Janet gets CA in respect of caring for Finlay. So the additional amount for the severely disabled is no longer payable (see DMG 78047).

Additional amount for carers

78808 An additional amount for carers may be applicable if the claimant or any partner is entitled to CA (see DMG 78100 et seq). But CA can be affected if the carer or person being cared for is a patient. DMs should make enquiries of the CA Unit to find out whether, and if so from what date, entitlement to CA ends. The guidance at DMG 78107 et seq should then be followed when deciding whether the additional amount for carers should be withdrawn.

78809 - 78824

In hospital 52 weeks or more

78825 From 10.4.06 the amount of GC payable to a claimant is no longer reduced if

1. the claimant[1] **or**

2. where the claimant has a partner, one or both of them **or**

3. in a polygamous marriage case, one or more of the members

has been a patient for a period of more than 52 weeks.

1 SPC Regs, Sch III, para 2

Claimant who has no partner

78826 When a single claimant has been a patient for a continuous period of 52 weeks or more, the DM should withdraw any additional amount applicable for housing costs[1] (see DMG 78254 et seq)

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

Claimant who has a partner

78827 Unless DMG 77119 applies, couples stop being members of the same household when one of them has been a patient for 52 weeks or more (see DMG 77117 et seq). In such a case the DM should revise or supersede the award on the basis of the new circumstances. If it is the

1. claimant's partner who has been a patient for 52 weeks or more, the DM should

1.1 revise the award to remove the partner from the calculation **and**

1.2 if the partner claims SPC, consider their claim as in DMG 78826

2. claimant who has been a patient for 52 weeks or more, the DM should

2.1 revise the award and reconsider the claim under DMG 78826 **and**

2.2 consider whether a claim should be invited from the claimant's partner **and**

2.3 if the partner claims SPC, consider the partner's claim under the normal rules for a claimant who has no partner.

Polygamous marriages

78828 Where members of a polygamous marriage are patients for 52 weeks or more the DM should revise or supersede the award on the basis of the new circumstances. The effects on the SPC award in such a case depend on which member of the polygamous marriage is the patient.

78829 If the person who has been a patient for 52 weeks or more is

1. an additional spouse (whether of the claimant's or of a spouse of the claimant's), the DM should

1.1 revise the award to remove that additional spouse from the calculation **and**

1.2 if the additional spouse claims SPC, consider their claim as in DMG 78826

2. a spouse of the claimant but the claimant has other additional spouses, the DM should

2.1 revise the award to remove the spouse in hospital from the calculation **and**

2.2 if the spouse in hospital claims SPC in their own right, consider their claim as in DMG 78826

3. the only spouse of the claimant's, the DM should

3.1 revise the award to remove all other members of the polygamous marriage from the assessment **and**

3.2 if the other members claim SPC, consider their individual claims under the normal rules

4. the claimant, the DM should

4.1 revise the award as in DMG 78826 **and**

4.2 consider whether a claim should be invited from the remaining members **and**

4.3 if any of the remaining members claims SPC, consider their claims under the normal rules.

78830 - 78839

Savings credit for people in hospital 78840 - 78919

General 78840

In hospital 4 weeks or more 78841 - 78861

In hospital 52 weeks or more 78862 - 78919

General

78840 When considering the effect of hospital admission on a claimant's SC, DMs should note that

1. unless **2.** applies, SC remains payable whilst a person is in hospital, irrespective of the length of time spent in hospital[1] **and**

2. a re-assessment following the end of an AIP may remove SC if the claimant's circumstances have changed (see DMG Chapter 83 for guidance on AIPs) **and**

3. the amount of SC payable is not normally affected by hospital admission unless

3.1 additional amounts are applicable for

3.1.a the severely disabled (see DMG 78030 et seq) **or**

3.1.b carers (see DMG 78100 et seq) **or**

3.2 the patient stops being a member of the same household as any partner (see DMG 77100 et seq).

1 SPC Act 02, s 3(5)

In hospital four weeks or more

78841 When a person has been in hospital for four weeks, the DM should consider the effect of the hospital admission on any additional amounts that may be applicable.

Additional amount for the severely disabled

78842 When a person in receipt of AA, DLA or ADP has been in hospital for four weeks, payments of AA and DLA are withdrawn. As a result[1], a claimant who

1. has no partner will no longer qualify for the additional amount for the severely disabled and this will also be withdrawn

2. has a partner, may

2.1 be entitled to a reduced rate of additional amount for the severely disabled (see DMG 78045 - 78047) **or**

2.2 no longer qualify for the additional amount for the severely disabled, in which case it will be withdrawn

3. is a member of a polygamous marriage, may

3.1 be entitled to a reduced rate of additional amount for the severely disabled (see DMG 78611 - 78613) **or**

3.2 no longer qualify for the additional amount for the severely disabled, in which case it will be withdrawn.

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

78843 The additional amount for the severely disabled should be withdrawn, or reduced, from the date that AA, DLA or ADP stops. The DM should then recalculate the claimant's SC entitlement and normal change of circumstances rules should be applied (see DMG Chapter 4). See Appendix 4 to this Chapter for some examples involving people in hospital.

Example

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

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

After four weeks in hospital, payment of DLA is withdrawn and the additional amount for the severely disabled is also withdrawn. Ulrika is then entitled to SC only, calculated as follows:

AMG [£102.10]		£102.10
RP £77.45		
Occupational pension	£40	£117.45
GC		Nil
SC [£14.79] – £6.14 [£15.35 x 40%]		£8.65
Total SPC payable		£8.65

78844 - 78854

Additional amount for carers

78855 Entitlement to CA may cease when the carer, or the disabled person they look after, is in hospital. As a result, the carer will no longer qualify for the additional amount of GC for carers and this too will be withdrawn.

78856 The additional amount for carers should be withdrawn after a period calculated as in DMG 78107 et seq. The DM should then recalculate the claimant's SC entitlement. See Appendix 4 to this Chapter for some examples involving people in hospital.

Example

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

Under the normal calculation of SPC, Bob is entitled to:

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

Disabled person in hospital

78857 The disabled person that Bob looks after is in hospital and their entitlement to AA is lost after four weeks. Bob is treated as satisfying the conditions for the additional amount for carers for a further eight weeks. After twelve weeks in hospital, the additional amount for carers is withdrawn. Bob is then entitled to SC only, calculated as follows:

AMG [£102.10]		£102.10
RP	£77.45	
Occupational pension	£40	£117.45
GC		Nil
SC [£14.79] – £6.14 [£15.35 x 40%]		£8.65
Total SPC payable		£8.65

Carer in hospital

78858 Bob is in hospital and whilst there he is not able to provide care for the disabled person. But Bob's entitlement to CA can continue for a further twelve weeks whilst unable to provide care. After twelve weeks in hospital entitlement to CA ends. Bob

is treated as satisfying the conditions for the additional amount for carers for a further eight weeks. After 20 weeks in hospital the additional amount for carers is withdrawn and Bob is then entitled to SC only.

78859 - 78861

In hospital 52 weeks or more

Claimant who has no partner

78862 When a single claimant has been a patient for 52 weeks or more, DMs should note that the amount of SC payable will

1. not change **and**

2. remain in payment irrespective of the length of time spent in hospital.

Couples and members of a polygamous marriage

78863 Couples normally stop being members of the same household when one of them has been a patient for 52 weeks or more (see DMG 77117 et seq). Members of polygamous marriages also stop being members of the same household when they have been patients for 52 weeks or more. In such a

case the DM should

1. revise or supersede the claimant's award on the basis of the new circumstances **and**

2. invite a separate claim from each member of the couple or polygamous marriage **and**

3. attribute any resources that were brought into account in their claim as a couple or polygamous marriage, between them.

78864 - 78919

Others 78920 - 78999

Subpages

- Absence from Great Britain 78920 - 78939
- People subject to immigration control 78940 - 78999

Absence from Great Britain 78920 - 78939

78920 It is a condition of entitlement to SPC that a person is in GB[1]. But entitlement can sometimes continue during an absence from GB[2]. Guidance on entitlement to SPC when a person is absent from GB is given in DMG Chapter 07 paragraphs 077001 - 077029.

1 SPC Act 02, s 1(2)(a) & (5)(a); SPC Regs, reg 2 & 4; 2 SPC Act, s 1(5)(b); SPC Regs, reg 3

78921 - 78939

People subject to immigration control 78940 - 78999

General 78940 - 78954

Asylum Seekers 78955 - 78999

General

78940 PSICs are normally excluded from SS benefits[1]. There are exceptions to this rule for certain categories of people[2].

1 I & A Act 99, s 115(1); 2 SS (I&A) Cql Amdts Regs

Meaning of person subject to immigration control

78941 PSICs means[1] a person who is not a national of the EEA who

1. requires leave to enter or remain in the UK but does not have it **or**

2. has leave subject to the condition that they have no recourse to public funds **or**

3. is a sponsored immigrant **or**

4. has had limited leave extended only because they have appealed a decision to vary, or refuse to vary that leave.

1 I & A Act 99, s 115(9)

Exceptions

78942 The exceptions where SPC can be awarded in full (subject to the normal rules of entitlement) are when the claimant

1. is a sponsored immigrant who has been in the UK for five years or more[1] **or**

2. is a sponsored immigrant and the sponsor has died[1] **or**

3. has limited leave and is temporarily without funds[1] **or**

4. is an asylum seeker who has transitional protection under the 3.4.00 rules[2] **or**

5. is a national of a country which has ratified the

5.1 European Convention on Social and Medical Assistance **or**

5.2 Council of Europe Social Charter (see Appendix 4 to DMG Chapter 24)

and is lawfully present in the UK[1].

"Lawfully present" in this context means that the person should have some form of leave to enter or remain in the UK. Asylum seekers, or people with temporary admission in other circumstances, would not be regarded as being lawfully present for this purpose.

1 SS (I&A) Cql Amdts Regs, reg 2(1); 2 reg 2(7)

Sponsored immigrants

78943 PSIC's are entitled to SPC if they

1. have leave to enter or remain in the UK as a sponsored immigrant **and**

2. have not been resident in the UK for a period of at least five years **and**

3. the sponsor has died.

If there is more than one sponsor they must all have died before SPC can be awarded.

Example 1

A man enters the UK in December 1999 with indefinite leave under a written sponsorship agreement signed in November 1999. In January 2004 the sponsor dies and he claims SPC. He is a PSIC with entitlement to SPC.

Example 2

A woman enters the UK in May 2001 with indefinite leave under a written sponsorship agreement signed by her two sons in April 2001. She lives with her elder son who dies in May 2004 and she claims SPC. But her other sponsor, her younger son, is still alive. The claimant is a PSIC with no entitlement to SPC.

Note: Where the claimant has been resident in the UK for five years, SPC can be awarded in full[1].

1 SS (I&A) Cql Amdts Regs, reg 2 (1), Sch, para 3

78944 - 78945

Partner is a person subject to immigration control

78946 A partner that is a PSIC is not a member of the claimant's household[1] although their presence in the dwelling may be counted as a person residing with the claimant for severe disability purposes[2].

Note: If they are not members of the same household, they are not a couple (see DMG 77013)[3]

1 SPC Regs, reg 5(1)(h); 2 Sch I, para 1(1)(a);3 SPC Act 02, s17(1)

78947 - 78954

Asylum Seekers

78955 Under IS and JSA(IB) rules, some asylum seekers who applied for asylum before 3.4.00 were entitled to IS or JSA(IB) at urgent case payment rates. On 3.4.00 the law was changed and all new asylum seekers were excluded from SS benefits[1]. Instead they received support under a new support system provided by the Home Office.

1 I & A Act 99, s 115(1); SS (I&A) Cql Amdts Regs, reg 2 (4)(c)& (7)

78956 - 78999

Appendix 1 - Housing costs - amount of non-dependant deductions

[See Memo DMG 02/26]

Rates from 6.4.18

Rates from 8.4.19

Rates from 6.4.20

Rates from 12.4.21

Rates from 11.4.22

Rates from 10.4.23

Rates from 8.4.24

Rates from 7.4.25

This appendix provides details of the rates of the non-dependant deductions[1] (see DMG 78500 et seq)

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

Rates from 6.4.18

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £98.30

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £139.00	£15.25
2.2	£139.00 to £203.99	£35.00
2.3	£204.00 to £264.99	£48.05
2.4	£265.00 to £353.99	£78.65
2.5	£354.00 to £438.99	£89.55
2.6	£439.00 or more	£98.30

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.25.

Rates from 8.4.19

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £100.65

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £143.00 £15.60

2.2 £143.00 to £208.99 £35.85

2.3 £209.00 to £271.99 £49.20

2.4 £272.00 to £362.99 £80.55

2.5 £363.00 to £450.99 £91.70

2.6 £451.00 or more £100.65

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.60.

Rates from 6.4.20

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £102.35

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £149.00 £15.85

2.2 £149.00 to £216.99 £36.45

2.3 £217.00 to £282.99 £50.05

2.4 £283.00 to £376.99£81.90

2.5 £377.00 to £468.99£93.25

2.6 £469.00 or more £102.35

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.85.

Rates from 12.4.21

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £102.35

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £149.00 £15.95

2.2 £149.00 to £216.99 £36.65

2.3 £217.00 to £282.99 £50.30

2.4 £283.00 to £376.99£82.30

2.5 £377.00 to £468.99£93.70

2.6 £469.00 or more £102.85

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.95.

Rates from 11.4.22

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £106.05

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £154.00 £16.45

2.2 £154.00 to £223.99 £37.80

2.3 £224.00 to £291.99 £51.85

2.4 £292.00 to £388.99 £84.85

2.5 £389.00 to £483.99 £96.60

2.6 £484.00 or more £106.05

3. any other non-dependant aged 18 or over for whom deductions are relevant - £16.45.

Rates from 10.4.23

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £116.75

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £162.00 £18.10

2.2 £162.00 to £235.99 £41.60

2.3 £236.00 to £307.99 £57.10

2.4 £308.00 to £409.99 £93.40

2.5 £410.00 to £510.99 £106.35

2.6 £511.00 or more £116.75

3. any other non-dependant aged 18 or over for whom deductions are relevant - £18.10.

Rates from 8.4.24

8 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £124.55

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

	Gross weekly income	Deduction
2.1		
2.2	less than £176.00	£19.30
2.3	£176.00 to £255.99	£44.40
2.4	£256.00 to £333.99	£60.95
2.5	£334.00 to £444.99	£99.65
2.6	£445.00 to £553.99	£113.50
2.7	£554.00 or more	£124.55

3. any other non-dependant aged 18 or over for whom deductions are relevant - £19.30.

Rates from 7.4.25

9. Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £126.65

2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

	Gross weekly income	Deduction
2.2	less than £176.00	£19.65
2.3	£176.00 to £255.99	£44.15
2.4	£256.00 to £333.99	£62.00
2.5	£334.00 to £444.99	£101.35
2.6	£445.00 to £553.99	£115.45
2.7	£554.00 or more	£126.65

3. any other non-dependant aged 18 or over for whom deductions are relevant - £19.65.

Appendix 2 - Housing costs - the remunerative work rule for non-dependant housing cost deductions

Subpages

- Introduction
- Work done for payment or in expectation of payment
- Establishing hours of work
- People treated as in remunerative work
- People treated as not in remunerative work

Introduction

Does the person have employment

Treated as in or not in remunerative work

1. This guidance sets out the remunerative work rule as it applies for non-dependant deductions when calculating the amount of housing costs in SPC[1].

1 SPC Regs, Sch II, para 2

2. Remunerative work is[1] work for which payment is made, or which is done in expectation of payment and in which the person is engaged for not less than

1. 16 hours a week **or**

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

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

Does the person have employment

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

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

1. the contract of employment (which can be written or verbal) is still current **or**

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

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

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

Off-shore oil workers

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

6 It is a question of fact for the DM whether the work is continuing or not. The DM will need to consider,

amongst other things, whether there is a continuing relationship

between the person and the employer. Frequent resumption of work with the same employer may be an indication that work is continuing (see paragraph 3 **2.2**).

Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognizable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. The DMG has to decide whether Dennis is in remunerative work at a time when he is not working. On looking at the facts of Dennis' past work for the company, the DM is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The DM decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

Treated as in or not in remunerative work

7 A person engaged in remunerative work may be **treated** as **not** being in remunerative work (see paragraph 140 et seq)[1]. Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work[2] (see paragraphs 126 et seq).

1 SPC Regs, Sch II, para 2(6), (7) & (8); 2 para 2(5)

Work done for payment or in expectation of payment

Payment in kind

Expectation of payment

Self-employed earners

Sale of goods

Business start up

Company directors

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

1. payment is made for it **or**

2. it is done in expectation of payment[1].

Remunerative does not mean profitable (see para 11).

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

Payment in kind

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

Example 1

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

Example 2

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

Expectation of payment

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

1 R(IS) 1/93

Self-employed earners

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

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

Sale of goods

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

Note: Also that payment may be derived from takings.

Business start up

13 An allowance payable under certain schemes to assist people to become S/E is not payment for work[1].

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

1 CA, CAO v. Smith

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

Example

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

Company directors

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

1 R(IS) 5/95

Establishing hours of work

Introduction

Counting the hours

Calculating average hours

Identifying a recognizable cycle

Recognizable cycle established

Periods when a person does not work

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

Calculating the average hours

Yearly cycle with school holidays or similar vacations

No recognizable pattern established

Changes to the normal hours

Introduction

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

Counting the hours

Flexible working schemes

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

Overtime

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

Night duty

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

1. payment made or expected is less than for normal daytime duties

2. the time on the night duty is spent sleeping.

Example

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

Evidence of hours

25 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment

note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

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

Musicians

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

Example 1

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

Example 2

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

Self-employed

28 Include all the hours necessary to run the business, for example, time spent in

1. trips to wholesalers and retailers

2. visits to potential customers

3. advertising or canvassing

4. cleaning the business premises

5. cleaning and maintaining items used in the business, for example a taxi or driving school car

6. providing estimates

7. book-keeping

8. research work, for example where the person is a writer.

29 Where a S/E person is running a business which is

1. building up **or**

2. winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

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

Example

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

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

Teachers

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

1. preparing and planning lessons and timetables

2. assessing and reporting on pupils

3. helping to administer and organize the school

4. advising pupils and ensuring their discipline, health and safety

5. discussing pupils' progress with parents.

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

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

43 Before either the Order or Agreement came into force, teachers were generally required by their contracts to carry out the duties now laid down[1]. Members of the teaching profession not covered by the Order or Agreement (for example higher

education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work **or**

2. any such work is included in the hours of work laid down in the contract.

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

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

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

1. teacher's experience

2. subjects being taught

3. method of teaching

4. amount of homework to be marked

5. number of pupils.

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

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

Paid breaks

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

48 - 57

Calculating average hours

58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours[1].

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

Identifying a recognizable cycle

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

Example 1

week 1 X hours

week 2 Y hours

week 3 X hours

week 4 X hours

week 5 Y hours

week 6 X hours

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

Example 2

month 1 A hours

month 2 B hours

month 3 A hours

month 4 B hours

There is a recognizable cycle of two months.

Example 3

week 1 X hours

week 2 X hours

week 3 Y hours

week 4 W hours

week 5 V hours

There is no recognizable cycle.

Note: A cycle may include weeks in which no work is done[2].

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

Permanent or indefinite contract

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

Example

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

Fixed term contracts and casual workers

61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)[1]. DMs should decide each case on its

facts. The DM will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. DMs should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

Example

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

Extra work

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

1 R(JSA) 5/02

Example

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

Probation

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

Example

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

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

Recognizable cycle established

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

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

Periods when a person does not work

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

1. periods of absence because of sickness, maternity leave, paternity leave, shared parental leave or adoption leave

2. periods of unauthorised absence "without good cause"

3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer

4. periods during which someone can be properly regarded as on holiday.

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

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

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

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

Holidays or periods of no work

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

1. spread over a year in equal instalments **and**

2. enhanced to take account of a lack of holiday entitlement

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

1 R(JSA) 5/03

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

1 Working Time Regulations 1998 No. 1833

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

75 If the DM has decided that a person is still in employment (see paragraphs 2 - 5) (and they are not absent from work due to sickness, maternity leave, paternity leave or adoptive leave) they will need to calculate the number of hours for which the person is engaged in work.

76 If the person works the same number of hours each week when not on holiday, that is the number of hours worked in each week.

77 If the person's hours of work fluctuate, the DM should take an average

1. as per paragraph 90 if there is no cycle of work **or**

2. as per paragraph 79 if there is a cycle of work.

78

Calculating the average hours

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

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

80

Yearly cycle with school holidays or similar vacations

81 Where a person has a contract of employment (written, verbal or implied) which continues throughout

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

1. of school holidays or similar vacations when that person does no work **and**

2. not part of school holidays or similar vacations, when the person is not required to work[1].

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

Example

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

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

1. seven and a half hours a week for twelve weeks in the autumn term

2. eight and half hours a week for ten weeks in the spring term

3. seven and half hours a week for four weeks in the summer term

4. five hours a week for six weeks in the summer term.

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

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

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

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

Ancillary school workers

82 Ancillary school workers are members of the non-teaching staff of schools and other educational

establishments. Where such workers have a yearly cycle of work during term-time only follow the guidance at paragraph 81. Examples of ancillary school workers include

1. school meals services employees

2. domestic staff

3. clerical staff (such as secretaries and clerks)

4. laboratory workers

5. nursing assistants

6. school bus drivers.

83 - 87

No recognizable cycle established

Estimating future hours

88 Where

1. a person has just started work or is about to start work **or**

2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work **or**

3. because of absences from work a recognizable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week[1].

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

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

1 R(IS) 8/95

Averaging past hours

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

1. the five weeks immediately before the date of claim[1] **or**

2. a longer or shorter period immediately before the date of claim if the five week period in **1.** does not

give a fair average.

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

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

91 Include in the calculation at paragraph 90 any periods of non-working within the normal pattern of employment (rest periods)[1].

1 R(IS) 12/95

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

1. five weeks contain a period of absence which distorts the average **or**

2. five weeks do not show the person’s normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**

3. person is paid at intervals of longer than a week.

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

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

It should be either

1. more than the five week period in paragraph 90 **1.**, in which case it will include those five weeks **or**

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

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

Short-time workers

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

1. a reduction in hours worked each day **or**

2. no work on certain days of the week **or**

3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in paragraphs 88 - 89 and estimate future hours[1] at the start of short-time working until average hours over a past period can be calculated[2]. Periods of no work should be included in the average.

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

96 - 106

Changes to the normal hours

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

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**

2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**

3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather and the DM decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over

3.1 the cycle of work if there is now a recognizable cycle[1] **or**

3.2 the five week period or other more suitable period immediately before the date of application for supersession[2].

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

Seasonal workers

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

Business ceases during off-season

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

Business continues during the off-season

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

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

Averaging the hours

111 Calculate average hours over

1. if there is a recognizable cycle - one complete cycle of work (this will usually be one year where a business continues to operate throughout the year). Include periods in which the person does no work, but exclude other absences such as holidays or sickness[1] **or**

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

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

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

Agency and casual workers

112 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

113 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

114 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

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

115 - 125

People treated as in remunerative work

Introduction

Absent without good cause

Recognised, customary or other holiday

Introduction

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

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

127 Treat people as in remunerative work for any period during which they are[1]

1. absent without good cause **or**

2. absent by reason of a recognized, customary or other holiday.

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

Absent without good cause

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

1. bereavement or sudden serious illness in the family **or**

2. a disaster at home **or**

3. suspension from work, whether or not on full pay **or**

4. a requirement to attend court.

Recognised, customary or other holiday

129 A person should be treated as in remunerative work for any period of absence because of a recognized, customary or other holiday[1]. This is the case even if there is no permanent contract of

employment. But this will not apply where the

1. absence is not a holiday (see paragraph 73) **or**

2. work is not remunerative as in paragraph 1 et seq **or**

3. person goes on holiday after employment ends.

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

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

130 - 139

People treated as not in remunerative work

IS and JSA(IB)

Leave or absence from work

Sports awards

IS and JSA(IB)

140 A person on

1. IS for more than three days in any IS benefit week[1] **or**

2. JSA(IB) for more than three days in any JSA benefit week[2]

shall be treated as not being in remunerative work in that week[3].

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

Leave or absence from work

141 A person shall be treated as not being in remunerative work[1] on any day on which they are

1. on maternity leave **or**

2. on paternity leave **or**

3. on adoption leave **or**

4. shared parental leave **or**

5. on parental bereavement leave **or**

6. absent from work because of illness.

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

Meaning of paternity leave

142 Paternity leave means[1] a period of absence from work on leave in accordance with legislation[2].

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

Meaning of adoption leave

143 Adoption leave means[1] a period of absence from work on ordinary or additional adoption leave in accordance with legislation[2].

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

Sports awards

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

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

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

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

Appendix 3 - Examples of calculations for special groups

Example 1 - No additional amounts

Example 2 - Additional amount for the severely disabled

Example 3 - Additional amount for carers

Example 4 - Single remand prisoner

Example 5 - Partner becomes a prisoner

Example 6 - Claimant not fully maintained by the religious order

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

• members of polygamous marriages (see DMG 78600)

• prisoners (see DMG 78650)

• members of religious orders (see DMG 78680).

DMs should note that these examples are

• for illustrative purposes only **and**

• based on the rates and percentages applicable as from 6.04.04.

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

Polygamous marriages

Example 1 No additional amounts

Example 2 Additional amount for the severely disabled

Example 3 Additional amount for carers

Prisoners

Example 4 Single remand prisoner

Example 5 Partner becomes a prisoner

Members of religious orders

Example 6 Claimant not fully maintained by the religious order

Example 1 - No additional amounts

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

Calculation of GC:

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

Calculation of SC:

SCT	£127.25
QI	£127.25
Amount of SC	**Nil**
Total SPC payable	**£89.20**

Calculation of total weekly income:

RP	£127.25
SPC	£89.20
Total weekly income is	**£216.45**

Example 2 - Additional amount for the severely disabled

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

Calculation of GC:

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

Calculation of SC:

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

Calculation of total weekly income:

Total RP	£206.85
SPC	£73.97
Total weekly income is	**£280.82**

Example 3 - Additional amount for carers

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

Calculation of GC:

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

Calculation of SC:

SCT	£127.25
QI	£206.85
QI exceeds SCT by	£79.60
60% x £79.60	£47.76
MSC	£20.22
Amount A	£47.76
Amount B (income does not exceed AMG)	Nil

Amount of SC (the MSC)	**£20.22**
Total SPC payable	**£80.92**

Calculation of total weekly income:

Total RP	£206.85
SPC	£80.92
Total weekly income is	**£287.77**

Example 4 - Single remand prisoner

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

Calculation of GC:

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

Calculation of SC:

MSC	Nil
Amount of SC	**Nil**
Total SPC payable	**£60**

Calculation of total weekly income:

SPC	£60
Total weekly income is	**£60**

Example 5 - Partner becomes a prisoner

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

Calculation of GC:

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

Calculation of SC:

SCT (claimant with no partner)	£79.60
QI	£111.60
QI exceeds SCT by	£32
60% x £32	£19.20
MSC	£
Amount A	£15.51
Income exceeds AMG by	£6.25
Amount A (£15.51) – Amount B (£2.50)	£13.01
Amount of SC	**£13.01**

Total SPC payable	**£13.01**

Calculation of total weekly income:

RP	£79.60
Occupational pension	£32
SPC	£13.01
Total weekly income is	**£124.61**

Example 6 - Claimant not fully maintained by the religious order

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

Calculation of GC

SMG	£105.45
Additional amounts	Nil
AMG	£105.45
Less income	Nil
Amount of GC	**£105.45**

Calculation of SC

SCT	£79.60
QI	Nil
Amount of SC	**Nil**
Total SPC payable	**£105.45**

Calculation of total weekly income

SPC	£105.45

Total weekly income	**£105.45**.

Appendix 4 - Hospital cases - rates of reduction and examples of calculations

Examples of calculations for hospital cases

Example 1: Single - additional amount for the severely disabled

Example 2: Single - additional amount for carers

Example 3: Couple - additional amount for the severely disabled

Example 4: Couple - additional amount for carers

This Appendix contains

1. details of the rates of reduction that apply where a claimant's GC falls to be reduced because of hospital admission (see DMG 78805 et seq) **and**

2. some examples of how the amount of SPC payable is worked out in cases involving people in hospital (see DMG 78700 et seq).

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

Examples of calculations for hospital cases

Example 1	Single - additional amount for the severely disabled
Example 2	Single - additional amount for carers
Example 3	Couple - additional amount for the severely disabled
Example 4	Couple - additional amount for carers

Example 1: Single - additional amount for the severely disabled

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

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

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

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

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

Example 2: Single - additional amount for carers

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

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

AMG [£102.10 + £25.10]		£127.20
RP	£77.45	
Occupational pension	£40	£117.45
GC		£9.75

SC [£40x60% restricted to MSC]	£14.79
Total SPC payable	£24.54

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

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

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

Example 3: Couple - additional amount for the severely disabled

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

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

AMG [£155.80 + £85.90]		£241.70
AA [disregarded]	[£76.60]	
RP	£123.80	
Occupational pension	£40	£163.80

GC	£77.90
SC [£40x60% restricted to MSC]	£19.20
Total SPC payable	£97.10

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

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

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

Example 4: Couple - additional amount for carers

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

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

AMG [£155.80 + £25.10]	£180.90
CA	£43.15
RP	£77.45

Occupational pension	£40	£160.60
GC		£20.30
SC [£36.80 x 60% restricted to MSC]		£19.20
Total SPC payable		£39.50

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

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

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

Appendix 5: Housing Costs - leasehold major works

Housing costs - leasehold major works

Introduction

1 The following guidance explains about the amount of benefit allowed as a housing cost for leasehold residents where their accommodation is modernised under the Decent Homes initiative.

Background

2 The Decent Homes initiative was extended by the Public Service Agreement in response to a challenge from the government to increase the number of households in the private sector living in decent homes. This includes homes of former LA tenants who have purchased their property under the right to buy scheme.

3 In order to be decent a home should meet the current statutory minimum standard for housing, be in a reasonable state of repair and have reasonably modern facilities and services.

4 The building components that should be in a reasonable state of repair include external walls, roof structure and coverings, windows and doors, heating systems, plumbing and electrics. Modern facilities are indicated by kitchens less than 20 years old and bathrooms less than 30 years old and, for blocks of flats, there should be adequate size and layout of common areas.

5 Landlords are achieving the Decent Homes standard by a programme of regeneration and refurbishment with building works carried out on their leasehold housing stock.

Costs

6 The cost of the structural work and refurbishments will be charged to leaseholders through service charges. A service charge is, as decided in R(IS) 4/91, a charge which the claimant is obliged to pay in terms of their occupancy agreement for services rendered in terms of that agreement.

7 Some residents may choose to meet their service charge costs by obtaining a home improvement loan. From 6.4.18, these loans can no longer be considered as housing costs (see ADM Memo 8/18).

Service charge

8 To determine what part of the service charge is eligible to be met as a housing cost the claimant will provide the annual service charge account which should include an itemised

breakdown of the total expenditure including the reason that each item or structure has been replaced or refurbished. For example

Items	Major building works	Costs	Unit cost/ dwelling	Reason for work
Electrical installations	Replace mains distribution board, rising and lateral mains cables	£13,040	£1,630	Updating old systems and wiring
Rainwater goods	Replace guttering and down pipes	£2,400	£300	Leaking, broken and in disrepair

Note: To be representative of different sized dwellings the unit cost may be presented on the annual account as a fraction or a percentage of the total cost.

9 Having identified the amount charged for a year the DM should convert the total costs for the claimant's portion of the refurbishment works into a weekly amount (dividing by 52) and then from that weekly total deduct any ineligible costs. The resulting sum represents the weekly amount of eligible service charge.

Ineligible costs

10 Ineligible costs[1] which should be deducted from the weekly amount arise in three circumstances. These are

1. where the costs are inclusive of any items mentioned in paragraph 6(2) of Schedule 1 to the Housing Benefit Regulations 2006 (payments in respect of fuel charges)

2. where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit Regulations 2006 (ineligible service charges) the amount attributable to those ineligible service charges

3. any amount for repairs and improvements.

1 JSA Regs, Sch 2, para 16(2); IS (Gen) Regs, Sch 3, para 17(2); ESA Regs, Sch 6, para 18(2); SPC Regs, Sch 2, para 13(2)

11 The ineligible charges[1] mentioned in paragraph 10 **1.** above concern payments in respect of fuel charges and are unlikely to arise under the Decent Homes improvements.

1 HB Regs 06, Sch 1, para 6(2)

12 There are several ineligible service charges[1], mentioned in paragraph 10 **2.** above, which includes any charges that are not connected with the provision of adequate accommodation,

however these are unlikely to arise under the Decent Homes improvements.

1 HB Regs 06, Sch 1, para 1

13 "Repairs and improvements", mentioned in paragraph 10 **3.** above, means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling

1. Provision of a fixed bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including the provision of hot water not connected to a central heating system;

2. Repairs to existing heating systems;

3. Damp proof measures;

4. Provision of ventilation and natural lighting;

5. Provision of drainage facilities;

6. Provision of facilities for preparing and cooking food;

7. Provision of insulation of the dwelling occupied as a home;

8. Provision of electric lighting and sockets;

9. Provision of storage facilities for fuel or refuse;

10. Repairs of unsafe structural defects;

11. Adapting a dwelling for the special needs of a disabled person; **or**

12. Provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 20 who is part of the same family as the claimant.

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

1. The upkeep/maintenance of communal pathways, gardens[1], repair of a lift and repointing of brickwork are all connected with the provision of adequate accommodation. The costs of a car park barrier, a car park attendant[2], the installation of a pergola and the repair of a clock tower are all connected with the provision of adequate accommodation.

2. Works which are to be funded out of the service charge can be for the avoidance of the need for the repair of unsafe structural defects. For example, timely replacement of slackening roofing tiles will prevent the roof timbers becoming rotted to the point of collapse through water penetration[3].

3. Where there are windows there is natural light already and no need to provide it[3].

4. Provision is something not already in existence or the replacement of something which no longer functions[3].

5. Re-pointing is not a damp proof measure, redecoration is not a repair or improvement and so their associated costs are not deducted from the service charge[4] .

6. By preventing the entry of rainwater a roof may prevent damp, damp proofing may not be the predominant purpose of a roof and although a roof repair might have the predominant purpose of preventing damp a roof renewal would not[5].

1 CIS/1496/95; 2 CIS/2205/00; 3 R(IS) 2/07; 4 CIS/667/02; 5 CIS/2132/98

15 The final weekly amount of the service charge is then attributed to a 52 week period from the date the liability arose[1].

Note: The attribution period for this service charge is independent of any prior service charge that is already in payment so the dates are unlikely to be the same.

1 JSA Regs, Sch 2, para 16(3); IS (Gen) Regs, Sch 3, para 17(3); ESA Regs, Sch 6, para 18(3); SPC Regs, Sch 2, para 13(3)

Example

The leasehold residents of a 2 storey flat complex have had their building modernised under the Decent Homes programme at a cost of £90,400, the work involved the prudent renewal of the communal electrical wiring, windows and doors, the lift, replacing all the roof tiles, external redecoration, the perimeter fencing and the upgrading of the roof space insulation. The costs are levied as a service charge and each of the 8 residents are required to contribute an appropriate share of the costs. In this case each persons share of the costs amounted to £11,300 which comprised of £1,100 for wiring, £2,800 for windows and doors, £2,000 for lift renewal, £3,200 for roof tiles, £500 towards redecoration, £900 for fencing and £800 towards insulation.

Resident 1, Juliet, is liable for the service charge (she does not obtain a loan to meet the

service charge). The DM decides that the £11,300 is a service charge[1] and that this converts to a weekly amount of £217.31 a week (£11,300 divided by 52). From the weekly amount there should be deducted the costs of any works considered to be, not connected with the provision of adequate accommodation or a repair or improvement. The DM considers that, all the works are connected with the provision of adequate accommodation (therefore there is nothing to deduct as described by paragraph 10 **2.** above). The DM considers the roof renewal is not a damp proof measure[2] and therefore not a repair or improvement, the rewiring is not the provision of electrical lighting or sockets[3] and not a repair or improvement, the replacement of windows and doors is not the provision of natural lighting or ventilation[4], the upgrading of roof space insulation with better rated material is not

the provision of insulation and neither redecoration[5], the lift replacement, nor fencing are included in the exhaustive list of potential repair or improvements. As there is nothing in the works to indicate that what is contemplated is anything more than the prudent renewal of protective decoration or the replacement of potentially unserviceable items with similar items, then there is nothing that is a repair or improvement (as described by paragraph 10 **3.** above) and therefore nothing to deduct. The cost of the building works is met in full giving a housing cost service charge of £217.31 a week.

1 R(IS) 4/91; 2 CIS/2132/98; 3 CSJSA/160/98; 4 CIS/2901/04; 5 CSJSA/106/98

Typical repairs

16 The following table contains a list of some of the typical building repair and refurbishments carried out on leasehold accommodation under the Decent Homes initiative including corresponding columns highlighting eligibility where the costs are met by a service charge.

Typical repairs		**service charge**
Roof	a. Major Repair	- No
	b. Renewal	- Yes
	c. Replacement	- Yes

	d.	Chimney stack repairs	-Yes
Roof safety	This may include fitting roof safety rails, or roof safety harness's, allowing regular inspection and maintenance		-Yes
Insulation	a.	Roof insulation	Yes if not provision
	b.	Wall insulation	
Building frame repairs		Cladding to the exterior of the building to prevent damage to the structure, insulates protects building from the elements	-Yes
Concrete repairs	This may include cleaning, painting and protective coating, or repairs (including the concrete frame)		-Yes
External walls	a.	Brickwork cleaning	- Yes
	b.	Repairs to brickwork, pointing, repairs to rendered surfaces	-Yes
	c.	Replace wall ties	-Yes
Balconies walkways	a.	Repairs to balcony balustrades and handrails	-Yes
	b.	Repairs to common walkways and balconies	-Yes
Windows	a.	Replacement	-Yes
	b.	Replacement of single glaze with double glaze	-Yes
Communal doors		Repair and replacement of communal doors, ensuring compliance with fire regulations	-Yes
External redecoration		Carry out the redecoration to all external elements of the existing fabric of the building, including use of anti-graffiti paint where appropriate	-Yes
Communal area repairs & decoration	a.	Carry out redecoration of all communal internal areas including corridors and stairways, using fire retardant and/or anti-graffiti paint where appropriate	-Yes
	b.	Replacement of communal flooring	-Yes
Rainwater goods		Repair/replace guttering and down pipes	-Yes if not

				provision

Drains	a.	Rod and Jetting wash through all existing drainage and inspection chambers	-	Yes
	b.	Replace communal waste/soil pipes		Yes if not provision
	c.	Major repair or replacement		
Electrical Installations	a.	Replace mains distribution board	-	Yes
	b.	Replace rising and lateral mains cables	-	Yes
	c.	Replace bulk head lighting to communal staircases & balcony soffits		Yes if not provision
	d.	Replace communal corridor lighting		
TV Aerial	a.	Replace analogue aerial with digital, may include replacing cabling serving all units	-	Yes
	b.	Installation of satellite dish to receive additional channels	No	
Ventilation	a.	Maintenance and cleaning of communal shafts & flues	-	Yes
	b.	Replace communal extractor fans		Yes if not provision
Entry Systems and Access	a.	Installation or renewal of entry systems, which may include cabling and handsets in each property	-	Yes
	b.	Works to comply with Disability Discrimination Act	-	Yes
Damp works	All methods of damp proofing, which may include:-		-	-
	a.	Insertion of chemical damp proof course	-	No
	b.	Laying a waterproof membrane on the basement floor	-	No
Refuse/ recycling systems		Replacement or repair of refuse/recycling systems and or hopper heads	-	Yes if not provision

Bin chambers		Repairs to communal bin chambers	-	Yes
Lifts	a.	Replacement of lift car, control panel and components	-	Yes
	b.	Replace lift motor room equipment	-	Yes
	c.	Major overhaul	-	Yes
	d.	Installing lifts and shafts	-	Yes
Dry rot works	May include:-		-	-
	a.	Chemical treatment of problem areas	-	Yes
	b.	Replacement of structural timbers such as joists	-	No

Water pumps	May include:-			
	a.	Installation of pumps due to reduced water mains pressure	-	Yes
	b.	Replacement of an existing pump	-	Yes
Water supply	a.	Replacement of the water main serving the building	-	Yes
	b.	Replacement of communal water tanks	-	Yes
Fire safety	a.	Install, repair or replace communal fire detection systems	-	No
	b.	Installation or renewal of smoke detectors	-	No
	c.	Replacement of dry risers to tower blocks (essential part of fire fighting)	-	Yes
	d.	Install, repair or replace fire escapes	-	Yes
Lightning protection		Installation or replacement of lightning conductor	-	Yes
Asbestos removal		Removal of asbestos under controlled conditions	-	Yes

Communal Heating	a.	Major overhaul or replacement of communal heating systems or individual elements	-	No
	b.	Installation of communal heating systems	-	Yes
Estate works	a.	Estate lighting	-	Yes if not provision
	b.	Controlled access and security	-	Yes
	c.	Repairs to estate roads or paths	-	Yes
	d.	Provision and refurbishment of recreational areas	-	Yes
	e.	Landscaping	-	Yes
	f.	Boundary walls and fences	-	Yes
Associated costs	Costs essential to the works, which may include:		-	-
	a.	Surveys		Yes
	b.	Preliminaries e.g. site set up costs		Yes
	c.	Fees		Yes
	d.	Access equipment e.g. scaffolding		Yes
	e.	Health and safety		Yes

Appendix 6: Transitional End Date

Introduction

Loan offer made before 6.4.18

Loan offer made on or after 6.4.18

Persons who lack capacity - identified before 6.4.18

Introduction

1. From 6.4.18 the regulations which provide for entitlement to payments in respect of loans and loans for repairs and improvements[1] within the IS, JSA(IB), ESA(IR) and SPC regulations are omitted [2]. As a result these SMI payments will no longer be met through those benefits. Payment towards other housing costs, for example, service charges, will continue. Certain transitional arrangements are in place for existing claimants whose housing costs can continue to be met (beyond 6.4.18) but only until the transitional end day[3]

1 IS Gen Regs, reg 17(e) & 18(1)(f); JSA Regs, reg 83(f) & 84(1)(g) & 86A; ESA Regs, reg 67(1)(c) & 68(1)(d); SPC Regs, Sch II, Para 1(1)(b) & 1(2)(c) & 8, 9, 11, 12; 2 LMI Regs, reg 18 3. reg 19

Loan offer made before 6.4.18

2. Where the loan offer is made before 6.4.18 the transitional end day will be the earlier of

1 the day described at paragraph 3 below **or**

2 the day immediately following the day on which entitlement to a qualifying benefit ends[1]

Note: the following paragraphs contain detailed options. DMs should be vigilant when establishing the transitional end day.

1 LMI Regs, reg 19(1)

3. For the purposes of paragraph 2**.1** the day referred to is the later of

1 for claimants of IS, JSA(IB), ESA(IR) or SPC, where 6.4.18 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after 6.4.18 **or**

2 the day immediately following the day which is the earliest [1] to occur of the following

2.1 the day the DM receives notification that the claimant does not wish to accept the offer of loan payments **or**

2.2 where the DM

2.2.a receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 9 below **or**

2.2.b has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant[3].

Example:

William is in receipt of IS that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6.4.18). From this date William is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

1 LMI Regs, reg 19(2); 2 reg 19(3); 3 reg 2(1)

4. For the purposes of paragraph 3**.2.2.a** the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received[1].

1 LMI Regs, reg 19(3)(b)

Loan offer made on or after 6.4.18

5. Where the loan offer does not occur before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 6 below **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends[1]

3. the day immediately following the day the DM receives notification that the claimant does not wish to receive loan payments[1].

1 LMI Regs, reg 19A(1)

6. For the purposes of paragraph 5**.1** the day referred to is

1. 7.5.18[1]**or**

2. where the loan payments offer date is before 7.5.18 **and**

2.1 the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2.2 the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: Where the day described in paragraph **2.1** or **2.2** above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date[2]

1 LMI Regs, reg 19A(2)(a); 2 reg 19A (2)(b)

7. For claimants of IS, JSA(IB), ESA(IR) or SPC, where 7.5.18 or the day described at paragraph 5.**3** is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day[1]

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant.

1 LMI Regs, reg 19A(3)

8. Where

1 before 19.3.18 the DM has asked the claimant to provide information needed to

1.1 establish whether the claimant wishes to receive an offer of a loan payment or

1.2 be able to send the loan agreement and associated documents and

2 the claimant has not provided that information

then the preceding paragraphs 5 to 7 do not apply and the support for mortgage interest regulations are removed, subject to paragraph 9, from 6.4.18[1].

1 LMI Regs, reg 19A(4)

9. Where paragraph 8 applies (and this is not because the claimant lacks capacity) and the 6.4.18 is not the first day of the claimants benefit week then the removal of the owner occupier payments from benefit entitlement is effective from the first day of the first benefit week that begins after that date[1].

1 LMI Regs, reg 19A(5)

Persons who lack capacity – identified before 6.4.18

10. Where, before 6.4.18 the DM

1 is satisfied that the claimant lacks capacity to make some or all the decisions about entering into the loan agreement. **or**

2 suspects that the claimant may lack such capacity

then claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below[1].

1 LMI Regs,reg 20(1)

11. The date referred to in paragraph 10 falls on the day that is the earlier of

1 the day described in paragraph 12 or paragraph 14 **or**

2 the day immediately following the day on which entitlement to a qualifying benefit ends[1].

1 LMI Regs, reg 20(2)

12. For the purposes of paragraph 11**.1** that day is the later of

1 5.11.18 **or**

2 where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5.11.18 the DMs suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the DM formed that belief[1]**or**

3 where an application for a decision of a type described in the Note below is made before the later of

3.1 5.11.18 **or**

3.2 the day prescribed in paragraph 12**.2**

the relevant day is the day immediately following[2]

3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision **or**

3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn[3].

1 LMI Regs, reg 20(3)(b); 2 reg 20(3)(c); 3 reg 20(4)

Note: In England and Wales the relevant person is the Court of Protection or Public Guardian and the decision they need to determine would concern registering a lasting power of attorney, appointing a deputy or making an order in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement. In Scotland the relevant person is the Sheriff or Court of Session and the decision they need to determine would concern the making of an intervention order, the appointment of a guardian or the appointment of a judicial factor in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement[1].

1 LMI Regs, reg 20(7); Adults with Incapacity(Scotland) Act 2000, s 53; Judicial Factors Act 1849; Mental Capacity Act 2005; s16(2);

Example 1

Bert receives SPC which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5.11.18, the later of the dates outlined in paragraph 12.3, which is the earlier of the dates in paragraph 11. Owner occupier payments will continue until that date.

Example 2

Ernest receives SPC which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Financial Deputy. Owner occupier payments continue. On 30.10.18 Jim advises the DM that he has been appointed. The transitional end date for Ernest is 6 weeks after that determination which in this particular case is 11.12.18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

13 Where more than one application for a decision (as described in the Note to paragraph 12) is made within the intervening period cited at 12**.3** then the periods described in paragraph 12.**3** do not start to run until the relevant person has decided the last application or that all the applications are withdrawn[1]. Similarly where there is one application for a decision referred to in the Note but it is made within the intervening period to more than one relevant person then the day will be the later of the days[2].

1 LMI Regs, reg 20(5); 2 reg 20(6)

14 Where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5 November the DMs suspicion becomes a belief that the claimant does not in fact lack capacity then the relevant day is the day immediately following the earlier of

1 the day described in paragraph 15 **or**

2 the day on which the DM is notified that the claimant does not wish to receive loan payments[1]

1 LMI Regs, reg 20(8)

15 For the purposes of paragraph 14.1 the relevant day is the earlier of

1 where the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2 where the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: Where the day described in paragraph **1. or 2.** above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date[2]

1 LMI Regs, reg 20(9)

16 For claimants of IS, JSA(IB), ESA(IR) or SPC, where 5.11.18 or the day described at paragraph 14.**2** or paragraph 15 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day[1]

1 LMI Regs, reg 20(10)