DMG Chapter 84: Deemed weekly income from capital

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Introduction 84001 - 84010

Introduction

84001 Chapter 84 gives guidance on how to work out for SPC the amount of **deemed weekly income** from capital. The total of **actual capital** and **notional capital** is worked out before the amount of **deemed weekly income** is worked out.

84002 Specific guidance is given on the general rules which apply when working out actual capital, notional capital and the deemed weekly income from capital, **and** on how to decide

1. if the resource is capital

2. who owns the capital

3. what capital is disregarded when working out the amount of deemed weekly income

4. the value of capital which is in, or outside of, the United Kingdom

5. if there is any notional capital **and**

6. the amount of deemed weekly income from the total of actual capital and notional capital.

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Aggregation of capital

Couples

84011 Where the claimant is a member of a couple the actual capital, notional capital and deemed weekly income of the other member of the couple is treated as that of the claimant, unless stated otherwise[1]. For guidance on the meaning of claimant and couple, see DMG Chapter 77.

1 SPC Act 02, s 5

Polygamous marriages

84012 The actual capital, notional capital and deemed weekly income of

1. the other member of a polygamous marriage **and**
2. any additional spouse

is treated as the actual capital, notional capital and deemed weekly income of the claimant, unless stated otherwise, if the claimant is member of a polygamous marriage[1]. For guidance on the meaning of polygamous marriages, see DMG Chapter 77.

1 s 5 & s 12(2)(d); SPC Regs, reg 8 & Sch III, para 1(4)

Calculation of capital and deemed weekly income

84013 The actual capital, notional capital and deemed weekly income of a claimant is worked out in accordance with the law[1]. That law also applies when working out the actual capital, notional capital and deemed weekly income of the partner of the claimant, even if the law refers only to the claimant[2]. The guidance in this Chapter applies to **both** claimants and partners unless stated otherwise. For guidance on the meaning of partner, see DMG Chapter 77.

1 SPC Act 02, s 15(2) & 15(3); SPC Regs, reg 14; 2 reg 14

Rounding of fractions

84014 A fraction of a penny is **either**

1. treated as a penny **or**
2. ignored

depending on which is to a claimant's advantage[1] when working out the amount of actual capital and notional capital.

1 SPC Regs, reg 24A

Cost of Living Additional Payments

84015 Where a claimant receives a Cost of Living Payment, this payment is to be ignored completely when considering their entitlement to SPC[1].

1 SS (AP) Act 22, s 8; SS (AP) Act 23, S8

84016 Cost of Living Payments should **not** be considered as part of a claimant's capital on

1. during the benefit week they are received **or**
2. in any subsequent benefit week they remain unspent.

Note 1: A Cost of Living Payment is a payment made under the Social Security (Additional Payments) Acts[1] to support eligible households with the cost of living which were first announced by the Chancellor in May 2022.

Note 2: Additional cost of living payments[2] are a new benefit which are automatically passported from existing benefit entitlement.

1 SS (AP) Act 22; SS (AP) Act 23

2 SS (AP) Act 22, s 6; SS (AP) Act 23, s6

84017 - 84020

Is the resource capital 84021 - 84070

What is capital

84021 Payments made to people are either income or capital. Income for SPC is only what is defined as such[1] (see DMG 85003 - 85004). Any payment that is not defined as income is a payment of capital. See DMG 84922 for guidance on when income becomes capital.

1 SPC Act 02, s 15(1); SPC Regs, reg 15

84022 DMs should also consider capital to be

1. all money held in

1.1 cash

1.2 a bank or building society account

1.3 a SAYE scheme

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

2.1 compensation for a personal injury

2.2 money which has been borrowed (including student loans)

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

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

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

3. investments such as

3.1 businesses

3.2 capital and income bonds

3.3 life insurance policies

3.4 national savings certificates

3.5 personal equity plans

3.6 personal pension schemes

3.7 premium bonds

3.8 stocks and shares

3.9 unit trusts

3.10 individual savings accounts

3.11 crypto and virtual assets

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

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

84023 - 84035

Rights to capital

84036 People have a right to capital that is due to them now or in the future. That right can be sold unless there is something that says they cannot sell it.

84037 They also have a right to sue, which means go to Court, if

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

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

In England and Wales this is sometimes called “a chose in action”. In Scotland the action is sometimes called “accounting”. Such rights are capital because they can be sold[1].

Example

On 1.3.06 Sonia agreed to sell her house to her brother Norman for £55,000. Norman could not afford to pay his sister the full amount so Sonia agreed that he could pay £15,000 on 1.3.06 and the remaining £40,000 on 1.3.07. On 8.3.07 Sonia makes a claim for SPC. She states she has no capital but that she is owed £40,000 as Norman did not pay her as agreed. The DM decides that Sonia has rights to capital.

1 R(SB) 31/83

84038 - 84070

Does the person own the capital 84071 - 84120

General 84071 - 84090

How to work out if a person is the beneficial owner of capital 84091 - 84120

General

Ownership of capital

84071 Only the capital which people are the beneficial owners of is included when working out what capital they have.

84072 People are beneficial owners of capital if they have a beneficial interest in it. A person is the joint beneficial owner of capital if more than one person has a beneficial interest in the same capital.

84073 A person whose name the capital is in is called the legal owner. A person is the joint legal owner of capital if more than one person is the legal owner of the same capital.

84074 People who are the beneficial owners of capital are usually the legal owners. People who are the legal and beneficial owners of capital hold that capital for themselves and can use it as they wish.

84075 Legal owners who are not the beneficial owners of capital are holding that capital on trust for the beneficial owners[1]. They cannot use the capital for themselves. It should be used for the beneficial owners.

1 R(SB) 23/85

84076 Legal owners can hold capital which

1. they **and**

2. other people who are not the legal owners

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

84077 Only the legal owners of capital can withdraw or sell it.

People under the age of majority or without legal capacity

84078 In England and Wales, people under the age of majority can be the beneficial owners of capital. Those people are not usually the legal owners of their capital as businesses, such as banks, will not enter

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

1. real or heritable property (see DMG 84022 **4.**) **or**

2. shares.

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

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

84079 In Scotland, people under the age of 16 are not usually the legal owners of their capital as they have no legal capacity[1]. People over the age of 16 can be the beneficial owners of capital.

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

84080 The capital of people under the age of majority or without legal capacity may be held on trust if they are the beneficial owners of the capital but not the legal owners. They become the legal owners of their capital when the terms of the trust say they can have the capital. In England and Wales this may be when they are 18 years old and in Scotland when they are 16.

How a person gets a beneficial interest in capital

84081 People can get a beneficial interest in capital by

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

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

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

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

5. having a beneficial interest in a trust.

1 R(IS) 8/92

84082 - 84090

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

The person is the legal owner

84091 DMs should assume people are the beneficial owners of capital if the people are the legal owners unless

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

or

2. the legal owners say they have

2.1 no beneficial interest **or**

2.2 only a share in the beneficial interest.

The onus of proof is on the legal owners of capital to show they are not the beneficial owners.

Written evidence

84092 If there is **written evidence** naming who has a beneficial interest in the capital, the people named in the evidence are the beneficial owners.

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

84093 DMs have to decide who has a beneficial interest in the capital. This is in order to decide who the beneficial owners are if the legal owners say they have no beneficial interest in the capital or only a share in it.

84094 To decide who has a beneficial interest DMs need to know

1. whose capital it is **and**

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

To decide whose capital it is DMs need to know whose money was used to get the capital.

The legal owners use their money to get capital

84095 Legal owners who use their money to get capital have a beneficial interest in that capital and are beneficial owners of it.

84096 So a legal owner of a bank account is the

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

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

Note: Although beneficial owners of bank accounts have the right to the credit or debit, such as an agreed overdraft, in the account, the bank owns the account.

84097 If the legal owners

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

2. say they cannot use the capital because they have set it aside for another person[1]

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

Example

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

1 R(IS) 1/90

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

84098 The legal owners are the beneficial owners of the capital if the legal owners

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

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

2.1 lent **or**

2.2 given

to the legal owners.

84099 So a legal owner of a bank account is the beneficial owner of any money in the account which has been lent or given to the legal owner by another person.

84100 The legal owners are not the beneficial owners of the capital and are holding it on trust if

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

2. the money used belongs to someone else and that person says

2.1 it is their capital **and**

2.2 who the capital is to be used for.

Example

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

gave £20,000 to Pradeep to save for her whilst she was working abroad and she wants it, and the interest, back when she returns. The DM decides that Pradeep is not the beneficial owner of the money in the building society account because she is holding it on trust for Leena.

More guidance

84101 DMG 84121 - 84339 gives guidance on how to work out the beneficial interest a person has in capital in certain types of cases.

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About the guidance

84121 This part gives guidance on how to work out if a person is the beneficial owner of capital in certain types of cases.

84122 The guidance in this part involves principles of law. The law in England and Wales can be different from the law in Scotland but the outcome may be the same. The guidance will say if the outcome is different.

Businesses and limited companies

Businesses

84123 A person who is the only owner of a business is the beneficial owner of all of the capital of the business.

84124 A person who owns a business with others has an equal share of the beneficial interest in the capital of the business unless the owners agree the shares should not be equal[1]. The agreement

between the owners does not have to be in writing. A person who has a share in the beneficial interest is a joint beneficial owner.

1 Partnership Act 1924, s 24(1)

Limited companies

84125 A company's capital is owned by the company. Directors of the company are not the beneficial owners of the capital of the company.

84126 If a director has lent capital to the company the loan is included in the capital of the company. The director's rights to the capital that has been lent are included when working out the director's capital.

84127 If a director

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

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

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

84128 - 84136

Capital held by a solicitor

84137 People are the beneficial owners of capital, such as a payment of damages for personal injury, if it is held by their solicitor[1] unless

1. in England and Wales the amount to be repaid to the Legal Services Commission has not been worked out (see DMG 84138 - 84139) **or**

2. in Scotland

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

2.2 a discharge has not been granted (see DMG 84140 - 84141).

1 R(SB) 17/87

84138 In England and Wales the Legal Commission provides funding to help people take or defend legal proceedings. A person may have to repay all or some of their legal costs out of money or property they have gained or kept as a result of the proceedings. In such cases, the funding provided by the Legal Services Commission can act as a loan.

84139 Where DMG 84138 applies the Legal Services Commission work out a fair and reasonable amount of the costs to be repaid. Until the Legal Services Commission do this, money or property gained

or kept is held by a person's solicitor. A person is not the beneficial owner of any such money or property until after the amount to be repaid to the Legal Services Commission has been worked out.

Example

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

84140 In Scotland the Scottish Legal Aid Board provides funding to help certain people take or defend legal proceedings. The Board is able to recoup their expenditure out of any property recovered or preserved for the person granted legal aid. The Board is also able to recoup their expenditure where there is a settlement to avoid proceedings or bring them to an end. In such cases, the funding provided by the Scottish Legal Aid Board can act as a loan.

84141 Where DMG 84140 applies the money or property gained or preserved is usually paid to the Scottish Legal Aid Board. However, the money or property may be held by a person's solicitor and the amount to be repaid worked out by the Scottish Legal Aid Board. The person's solicitor's cannot dispose of the money or property or use it in any way until the Board has recovered the amount due and granted the person a discharge. A person is not the beneficial owner of such money or property until

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

2. a discharge has been granted.

Gifts

84142 A person who is given capital is the beneficial owner of that capital. In England and Wales it can be assumed a gift has been made if the people involved are related in certain recognized ways. This is called presumption of advancement.

84143 It can be assumed a child has been given the beneficial ownership of capital if

1. the parent of **or**

2. a man who has assumed financial responsibility for the child gives legal ownership of the capital to that child.

84144 It can be assumed wives have been given the beneficial ownership of capital if the husband has given legal ownership of the capital to them. This also applies to women who are given legal ownership of capital by the man they are going to marry.

84145 Do not assume beneficial ownership has been given away if there is any evidence which shows an outright gift was not made. It is now easier for circumstances to show there was no gift[1].

84146 - 84170

Interest in the estate of a person who has died

84171 When people die the capital they have is called the estate.

84172 People have died

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

2. intestate if they have not left a will.

84173 An estate is administered or distributed by

1. executors if there is a will **or**

2. if there is not a will

2.1 in England or Wales administrators

2.2 in Scotland executors dative.

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

84174 It may take a long time before the executors, administrators or executors dative can administer or distribute the estate. The administration or distribution is usually complete when

1. all the dead person's

1.1 capital is accounted for **and**

1.2 debts are paid **and**

2. any dispute is settled.

84175 An executor, administrator or executor dative does not have to administer an estate[1] until

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

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

3. a longer period if the estate is complex.

84176 The people named in a will or the relatives of a person who has died intestate have no interest in specific property in the estate until

1. the executors, administrators or executors dative are in a position to distribute the estate **or**

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

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

1 R(IS) 1/01

84177 Pending the completion of the administration, a beneficiary without a specific bequest (a residuary beneficiary) has valuable rights in the form of a chose in action (see DMG 84037). This can be valued and should be taken into account as capital. If the residuary beneficiary gives away his interest by a deed of variation before administration is complete then this may amount to deprivation and the DM should consider DMG 84781 et seq.

84178 At the end of the period in DMG 84175 the people named in a will or the relatives of a person who has died have a right to the capital that is due to them from the estate (see DMG 84036). A person's rights to capital are included when working out that person's capital.

84179 People only have a beneficial interest in the capital assets of the estate when ownership of those assets has been transferred to them.

84180

Interest in a trust

When there is a trust

84181 There is a trust when a person

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

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

84182 The person

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

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

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

84183 People for whom the capital has to be used can include the trustee.

Trustees

84184 A trustee can be any person or body such as

1. a relative

2. a solicitor

3. a bank

4. in England and Wales the

4.1 donor

4.2 Court of Protection

4.3 Public Trustees

5. in Scotland the truster.

84185 A trustee has to do what the terms of the trust and the law state[1].

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

84186 - 84190

Terms of a trust

84191 The terms of a trust say

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

2. who the donees are.

84192 The terms do not have to be written down provided the trust property is not land[1], but if they are they may be in a

1. will **or**

2. deed of trust **or**

3. deed of settlement.

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

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

Interest in a trust

84193 DMG 84206 - 84242 gives guidance on

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

2. when they get their interest.

84194 A person's rights to capital under a trust are included when working out what capital a person has.

84195 More than one person can have an interest in a trust. A person is not a joint beneficial owner if more than one person has an interest in a trust. Each person's interest belongs to that person. It is not shared with the other people having an interest in the trust.

84196 The expenses of the trustees will be deducted before any payments are made out of the trust.

84197 - 84205

Contingent interest

84206 Persons have a contingent interest in a trust if they have to do something or something has to happen before they can get the interest.

84207 For example, if the terms of the trust say a person can have £10,000 if the person lives to the age of 21 the interest is a contingent interest. The person gets £10,000 if the person lives to the age of 21, and nothing if the person does not live to the age of 21.

84208 Trustees pay the income earned on a contingent interest to the people who have the interest if the

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

2. people with the interest have

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

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

Any income which is paid is taken into account as income.

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

84209 For example, in England and Wales, if the terms of the trust say a person can have £10,000 if that person lives to the age of 21, the trustees can pay the person the income earned on the £10,000 from the age of 18 because the person

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

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

Life interest or life rent

84210 In England and Wales people have a life interest or in Scotland a life rent in a trust if they have an interest for the duration of their life. A person may have a life interest or a life rent in the

1. capital **or**

2. real or heritable property (see DMG 84022 **4.**), such as a house

of a trust.

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

84211 For example, a person has a life interest or a life rent in the

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

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

84212 People keep the right to live in the property even if they do not live in it. But the trustees may decide to sell the property if the person no longer needs it to live in for example when a person goes permanently into residential care.

84213 If the property is sold the person will have a right to

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

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

84214 A life interest or a life rent ends when the person having the life interest or life rent dies. The assets of the trust fund do not form part of the estate of the person who had the life interest or life rent.

84215 - 84225

Reversionary interest

84226 In England and Wales an interest in a trust is reversionary if the possession or enjoyment of it is

postponed to the prior interest of another person in the same capital.

Example

George has a reversionary interest in a house if the terms of the trust say

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

2. George gets the house on the death of Edith.

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

84227 A reversionary interest is not the same as a contingent interest because people with a reversionary interest already have an interest in a trust. They do not have to do something or wait for something to happen before they get an interest in a trust but a person with a contingent interest does.

84228 If people with a reversionary interest die before they take possession of their interest, the reversionary interest is included in their estate.

84229 - 84235

Discretionary trusts

84236 A discretionary trust is one where the trustees have the discretion to make payments to certain people. Such people have an interest and in England and Wales are called discretionary objects.

84237 Many trusts let the trustees invest the capital of a trust at their absolute discretion. This means the trustees have a choice in how the capital is invested. This does not mean the trust is a discretionary trust. There has to be something else in the terms of the trust to show it is a discretionary trust.

84238 The trustees of a discretionary trust may or may not make payments to the people with an interest. The trustees cannot be made to make payments to those people.

84239 If the trustees make a payment and the payment is

1. made regularly, it is taken into account as income (see DMG 85245 et seq) **or**

2. not made regularly, it is capital.

Charitable trusts

84240 A charitable trust is a trust which is set up for

1. the relief of poverty **or**

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

3. any other purpose which benefits the community.

84241 Trustees of a charitable trust have discretion to make payments to people who satisfy the terms of the trust. They may or may not make payments. They cannot be made to make payments.

84242 If the trustees make a payment it is a charitable payment and would be ignored as income (see DMG 85136). However it would be taken into account as capital.

84243 - 84245

Joint beneficial interest in capital

84246 In England and Wales, when two or more people jointly own real property (see DMG 84022 **4.**) they do so as

1. joint-tenants **or**

2. tenants in common.

84247 When people jointly own real property as joint-tenants each person owns the whole asset jointly and they have no separate and distinct shares. If a joint-tenant dies the asset passes to the surviving joint-tenant or joint-tenants. However, when people jointly own real property as tenants in common each person's interest in the asset is their own share. The shares of tenants in common may be equal or unequal. If a tenant in common dies their share of the asset does not pass automatically to the surviving tenant or tenants in common.

84248 The terms joint-tenant and tenants in common are legal terms appropriate to joint ownership of real property in England and Wales. DMs should not confuse them with tenancies that arise when people rent land or premises.

84249 In Scotland, when two or more people own heritable property (see DMG 84022 **4.**) they do so as

1. joint owners **or**

2. common owners.

84250 When two or more people own heritable property as joint owners they do not have individual rights in the property which would allow them to deal with the property as

individuals. Joint owners cannot dispose of their share of the property. If a person stops being a joint owner their share of the property goes to the other joint owners.

84251 Where two or more people own property as common owners, each has a separate share in the property which they can dispose of independently of the other common owners.

84252 If a claimant beneficially owns a capital asset with one or more person the DM will have to decide whether those people own the asset as

1. joint-tenants or, in Scotland, joint owners **or**

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

How to decide ownership of jointly-owned capital

84253 In England and Wales, when two or more people buy real property they should be asked

1. whether they wish to be

1.1 joint-tenants **or**

1.2 tenants in common **and**

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

Example

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

84254 In Scotland, when two or more people buy heritable property they will decide whether to be joint owners or common owners. The common owners should decide the share of the property each person wishes to own.

Example

Frazer and his wife Morag decide to buy a house in Dundee. They decide to be common owners. Frazer and Morag both wish to have an equal share of the property. Therefore they decide that they should both own 50% of the property.

Other ways to become tenants in common or common owners

84255 As well as making a decision when real or heritable property is bought, there are other ways in which people can become tenants in common or common owners. These include

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

2. contributing to the purchase price of real or heritable property, for example under the right to buy scheme (see DMG 84308 et seq)

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

Example 1

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

Example 2

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

Example 3

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

84256 When one person uses their money to buy real or heritable property in the name of another person there is a presumption of a resulting trust (see DMG 84307). If that other person also contributes to the purchase of the property the two people will be tenants in common unless there is evidence of a contrary intention. However, DMs should note DMG 84307 **1.** and the rule of presumption of advancement (see DMG 84142 et seq).

84257 A person who is a tenant in common or common owner does not necessarily own an exact percentage of a property. For example, one person could own 36.71% of a house and another person the other 63.29%.

84258 After it has been agreed between tenants in common or common owners what share each person owns it is possible for the agreed shares to be varied. This may happen where a tenant in common or common owner

1. pays

1.1 the mortgage **or**

1.2 a greater share of the mortgage

on a property **or**

2. spends money on improvements to a property.

Example

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

84259 If a claimant reduces his share of a jointly-owned property the DM should consider the rules on deprivation of capital (see DMG 84781 et seq).

Evidence of joint-ownership

84260 Evidence of the type of joint-ownership of real or heritable property and if appropriate the share each person owns can be obtained from

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

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

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

84261 When a claimant states that he owns a share of real or heritable property as a tenant in common or common owner the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the property. If the claimant is unable to provide evidence of unequal shares in the property, the DM should decide on the balance of probability (see DMG 01340 et seq) that the shares are equal.

Other assets

84262 Two or more people may jointly own other assets such as bank accounts (see DMG 84264) and shares. When a claimant states that he has a separate right of ownership of an asset the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the asset.

Example

Kathy and her brother have a joint building society account. The account is in both their names so they are joint legal owners of the account. There is £15,000 in the account on the date of Kathy's claim for SPC. Kathy provides evidence that both she

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

84263 A person does not have a joint beneficial interest in a trust if more than one person has an interest in that trust. Each person's interest belongs to that person. It is not shared with the other people having an interest in the trust.

84264 A person who is the joint legal owner of a bank, building society or PO account does not have a joint beneficial interest in any asset in that bank, building society or PO account if

1. there is clear evidence to show that person does not beneficially own a part of any of the assets in the account **and**

2. the asset, which that person does not beneficially own, is not for the use of that person.

The person who beneficially owns the asset may be one of the joint legal owners of the account. The joint legal owners of the account are holding on trust any asset to which **1.** and **2.** applies for the people who are the beneficial owners.

Example

On 8 March Andrew makes a claim for SPC. He has a joint bank account with his mother, Hilda, who is in a care home. There is no dispute that Andrew and Hilda are the joint legal owners of the account in which, on 8 March, there is the sum of £22,400. Andrew provides evidence that he received a legacy of £5,000 which he paid into the account and that Hilda has made all other deposits. The only withdrawals have been made to pay Hilda's care home fees. The DM decides that Andrew has capital of £5,000, the amount of his beneficial interest in the account.

Note: Although beneficial owners of bank accounts have the right to the credit or debit, such as an agreed overdraft, in the account, the bank owns the account.

Jointly-owned capital outside the United Kingdom

84265 To decide the type of joint ownership of a capital asset outside the UK the DM should consider

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

2. the basis on which the asset is held.

The DM should obtain evidence of joint ownership. If the DM is satisfied that the law of the country where the asset is held is not different, the guidance at DMG 84246 et seq should be followed. DMs should send cases of doubt to DMA Leeds for advice.

Valuation of jointly-owned capital

84266 See DMG 84695 et seq for guidance on how to value a claimant's share of jointly-owned capital.

84267 - 84270

People who are separated, divorced or whose civil partnership has been dissolved

84271 People who are married or civil partners and have separated are the beneficial owners of capital if

they were the owners before the breakdown of the marriage or civil partnership. That capital is included when working out what capital a person has.

84272 After they have separated or divorced or dissolved their civil partnership, a couple may

1. ask a Court to **or**

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

3. themselves

decide which one of them gets the capital. The proceedings in Court are called ancillary proceedings.

84273 A Court will take into account

1. the ages of the couple

2. their state of health

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

4. how long they have been married or in a civil partnership

5. each person's needs

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

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

84274 A Court may decide that the house in which they used to live

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

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

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

2.2 no money.

84275 People are the beneficial owners of any capital the Court awards them outright[1].

1 R(IS) 4/96

84276 People are the beneficial owners of the capital they are left with if the couple do not go to Court and share up the capital

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

2. between themselves.

The DM should decide whether a person has notional capital if **2.** applies and there is clear evidence to show capital has been given away so the person can get SPC or more SPC.

84277 A person may seek an order for financial provision and property adjustment which occurs[1]

1. on the granting of a decree of

1.1 a divorce or dissolution of civil partnership **or**

1.2 nullity of marriage or civil partnership **or**

1.3 separation **or**

2. at any time after any of the events in **1.**.

1 Matrimonial Causes Act 1973; CP Act 04, Sch 5

84278 A person does not have a beneficial interest in any capital they are seeking unless and until a property adjustment order is made[1].

1 R(IS) 1/03

84279 - 84280

Mentally sick or disabled persons

Beneficial interest

84281 People who are

1. mentally sick or disabled **and**

2. unable to deal with their capital

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

1 R(IS) 9/04

Court of Protection

84282 In England and Wales the Court of Protection

1. protects **and**

2. deals with

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

1 Mental Health Act 1983

84283 The Court may appoint another person to deal with the capital. A person appointed by the Court is called a receiver. The Court will issue an order which states what

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

2. the receiver has to do with the money.

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

84284 The Court may take some time to reach a decision. The Court can issue interim certificates if mentally sick or disabled people need money immediately to pay for their day to day needs such as nursing home fees. The certificate will state what and how much money can be used by a person to pay for those needs.

84285 Capital held by the Court or receiver is held on trust.

The Courts in Scotland

84286 In Scotland the Sheriff Court has powers similar to the Court of Protection in England and Wales. A person appointed[1] by the Sheriff Court to deal with the capital of a mentally sick or disabled person is called a guardian.

1 Adults with Incapacity (Scotland) Act 2000

Power of Attorney

84287 People who give another person power of attorney authorize that person to deal with

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

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

84288 People who give another person power of attorney remain the beneficial owners of their capital.

84289 In England and Wales people with power of attorney are not authorized if the person who gave them power

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

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

Appointees

84290 A person appointed by the DM to act, for SS purposes only, on behalf of another person is called an appointee.

84291 These appointees cannot deal with the capital of a mentally sick or disabled person unless they have been appointed

1. in England and Wales the receiver by the Court of Protection **or**

2. in Scotland the guardian by the Sheriff Court.

Person not appointed or authorized

84292 A person who has not been

1. appointed **or**

2. authorized

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

Misuse of capital

84293 In England and Wales mentally sick or disabled people have rights to capital if the person who is

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

2. not appointed or authorized

misuses the capital[1]. For example, if they use the capital for themselves or give it away.

1 R(IS) 17/98

84294 However a person who has power of attorney for another person can make gifts that are not unreasonable[1]. Examples of gifts that are not unreasonable to make are normal birthday, wedding or seasonal (for example Christmas) gifts. Where gifts that have been made by a person with power of attorney are unreasonable DMG 84293 applies but where they are not unreasonable, DMG 84781 et seq should be considered[2].

Example

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

84295 - 84300

Real or heritable property

Ownership of real or heritable property

84301 The legal owner of real or heritable property (see DMG 84022 **4.**) is also the beneficial owner unless there is

1. something in writing such as a conveyance that

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

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

2. a mistake **and**

2.1 nothing is put in writing **or**

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

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

4. a resulting trust (see DMG 84307).

84302 An attendance note or other information in the file of the solicitor acting for the legal owner when the property is bought may show a mistake has been made. For example, there is

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

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

84303 Accept what the legal owners say if

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

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

84304 Accept people named as the actual owners are the legal and beneficial owners of the property if there is evidence which shows

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

2. who the actual owners of the property are.

84305 The DM has to decide who has a beneficial interest in the property if there is no evidence of a mistake or a fraud.

84306 DM's should note that it is very difficult to get a beneficial interest in real property after it has been bought. People can be given a beneficial interest, for example by deed of gift, but people do not necessarily get a beneficial interest in property just because they

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

2. spend money on the property such as paying for central heating to be installed.

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

Resulting trust

84307 Legal owners are holding property on a resulting trust if another person puts up the money to buy the property and

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

2. the rule of presumption of advancement (see DMG 84142 - 84145) does not apply[1].

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

Right to buy scheme

84308 The right to buy scheme lets some LA tenants buy the property they are tenants of at a discounted price. The amount of the discount is based on the number of years the person has been a tenant.

84309 People who buy property under the right to buy scheme have a beneficial interest in the property because of the discount they get. They are

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

2. the joint legal and joint beneficial owners if

> **2.1** another person uses their money or raises money to pay all of the balance **and**
>
> **2.2** the person at **2.1** is one of the legal owners **or**

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

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

3.2 is not a legal owner.

84310 Under the scheme the people buying the property have to pay back some of the discount if the property is sold within three years of it being bought.

84311 - 84330

When a person is not the beneficial owner of capital

Bankruptcy

84331 When a person is made bankrupt

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

2. in Scotland an interim trustee

is appointed. Then a Trustee in Bankruptcy is appointed. The Receiver in Bankruptcy or the interim trustee may be the same person as the Trustee in Bankruptcy.

84332 People who have been made bankrupt have no power to deal with their property except with the approval of the court once the bankruptcy order is made. This being so, they should normally be treated as having no beneficial interest in their capital from the date of the order. It may be some time after this that a trustee in bankruptcy is appointed[1].

1 KS v SSWP (JSA) [2009] UKUT 122 (AAC); [2010] AACR 3

84333 The other beneficial owners still have a beneficial interest in the capital unless they are also bankrupt if the bankrupt person is the joint beneficial owner of capital.

Court Orders

84334 In England and Wales a Court can make an order such as a restraint order which stops people withdrawing or selling their capital. The order will list the capital involved.

84335 During the period of the order the people named in the order remain the beneficial owners of the capital. The restraint order restricts a person from dealing with the property listed in the order so that they are unable to do anything with it that is not permitted under the order. The practical effect of this is that while the person will be the beneficial owner of the property, the value of the property is shown as nil for benefit purposes.

84336 The period starts with the date of the order and ends on the date

1. given in the order **or**

2. the Court withdraws the order.

84337 The order may let people withdraw a fixed sum of money each week from their capital to pay for living expenses. If money is withdrawn it should be included as a person's capital. If the claimant spends the amount he is allowed to withdraw then this will have no effect on his benefit.

84338 In Scotland an arrestment has a similar effect.

Liability to repay capital

84339 People have a beneficial interest in capital that has been given to them even if it has to be repaid. However, people no longer have a beneficial interest in capital they have been given if they are under a certain and immediate liability to repay it[1]. People are no longer the beneficial owners of the capital from the date the certain and immediate liability arises.

1 R(IS)5/99

84340 - 84350

Can the capital be disregarded 84351 - 84356

The law 84351 - 84353

Onus of proof 84354

What the DM decides 84355

Period of disregard 84356

The law

84351 [See DMG Memo 11/20] There are special rules for

1. what capital is disregarded **and**

2. the length of time that capital is disregarded[1].

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

84352 Capital is disregarded

1. for the purpose of calculating income[1] **or**

2. only for the purposes of determining deemed income[2].

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

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

1. the value of the right to receive income

1.1 under a life interest **or**

1.2 from a life rent[1] (see DMG 84409)

2. the value of the right to receive rent but not when a person has a reversionary interest in the property for which the rent is due[2] (see DMG 84456)

3. the value of the right to receive income from **and** the surrender value of an annuity[3] (see DMG 84367)

4. property held on trust[4] in the circumstances described at DMG 84494.

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

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

Onus of proof

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

What the DM decides

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

1. before the capital is valued as the DM does not have to know the value of the capital to decide if it can be disregarded **and**

2. before working out the amount of deemed weekly income from capital.

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

Period of disregard

84356 Capital which can be disregarded is disregarded for[1]

1. an indefinite period (DMG 84367 et seq) **or**

2. up to two years (DMG 84521 et seq) **or**

3. a year or longer (DMG 84561 et seq) **or**

4. 26 weeks or longer (DMG 84601 et seq) **or**

5. the remainder of an award of SPC (DMG 84671 et seq).

1 SPC Regs, Sch V

Capital disregarded indefinitely 84357 - 84520

Annuities 84357

Age-related payments 84358

Arrears of payments to certain war widows or surviving civil partners 84360

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Payments in lieu of community care services or health care 84404 - 84405

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Life interest or life rent 84409

Payment for personal injury 84410 - 84420

Payment to persons imprisoned or interned by the Japanese during the Second World War 84421 - 84425

Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners 84426 - 84435

Pensions 84436 - 84440

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Premises lived in by a partner or relative 84442 - 84445

Provision of continuing care: looked after children 84446 - 84455

Rent 84456 - 84460

Second World War compensation payments 84461

The Independent Living Fund (2006) 84462 - 84466

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund 84475 - 84498

Trusts 84499

Local welfare provision 84500 - 84501

Funeral support payments 84502 - 84520

Annuities

84357 An annuity is

1. a fixed sum payable at specified intervals in return for a premium paid either

1.1 by instalments **or**

1.2 in a single payment **and**

2. normally taken out to provide an income in retirement.

The value of the right to receive income from **and** the surrender value of an annuity are disregarded indefinitely[1].

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

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

Age-related payments

84358 One-off age-related payments are payments of capital. DMs should not take them into account for SPC purposes[1].

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

84359 Ex gratia payments made by the government policy holders who purchased an Equitable Life with profits annuity policy before 01.09.92 and are aged 60 or over are not to be taken into account as capital for SPC purposes under the age-related legislation[1]. A payment of £5000 is made to all such policy holders with an additional £5000 being made to those policyholders who are also in receipt of SPC on 01.11.13.

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

Arrears of payments to certain war widows or surviving civil partners

84360 Payments to certain war widows and surviving civil partners are disregarded when calculating deemed income from capital[1]. The disregard applies to arrears of a supplementary pension paid to a widow or surviving civil partner

1. for the disablement or death of service personnel before 1973. This also covers any payment made to a person who is not entitled to a supplementary pension but to whom the Secretary of State for defence has made a similar payment

2. under the Personal Injuries (Civilians) Scheme

3. of a person

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

3.2 that service ended before 31.3.73 **and**

3.3 the payment is equal to the amount in **1.** above[2].

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

Best Start Grants

84361 [See Memo DMG 22/20] The Scottish Government introduced Best Start Grants to provide early years assistance to people living in Scotland[1]. From 10.12.18 under Best Start Grants, Pregnancy and Baby Grants are being introduced, with other elements introduced at a later date. The Scottish Government will be responsible for deciding on the claims to these grants and for making payments. All elements of Best Start Grant are disregarded indefinitely[2].

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

84362 - 84364

Payment made after Carer's Allowance reassessment following Sayce Review

84365 A payment received on or after 16.7.26 following a recalculation of CA under the Sayce Review[1] is disregarded indefinitely. Such a payment may be received where[2]

1. a decision was made about the claimant's CA entitlement due to fluctuating earnings between 10.4.15 and 2.9.25 **and**

2. that decision led to an overpayment of CA **and**

3. following a reassessment conducted since 13.4.26 the Secretary of State determines that the claimant's earnings should have been averaged.

Note: Arrears of CA that are not due to the reassessment exercise in **3.** are not disregarded.

1 Independent Review of Carer's Allowance Overpayments; 2 SPC Regs, Sch V, para 20AB

Example 1

Freyja was in receipt of CA as a carer for her sister Greta but had also taken irregular shift work at a local convenience store, so that her earnings fluctuated and occasionally exceeded the earnings limit for CA four times in a nine-week period. On 10.12.24 a decision was made that Freyja had been overpaid £327.60 and that amount was recoverable as Freyja had not informed the Department of these earnings. However, after a review exercise concluded on 17.7.26 it was determined that, if the earnings had been averaged over the nine-week period, Freyja's earnings would have been under the earnings limit. The overpayment is cancelled and Freyja is refunded £327.60, representing a restoration of her CA entitlement. The £327.60 is disregarded indefinitely from Freyja's total capital when determining her SPC entitlement.

Example 2

Anton receives arrears of CA of £4,853.45 following a successful appeal to the FtT after his claim made on 13.4.25 was refused. As these arrears are not associated with the Sayce Review they are included in full in Anton's capital from the date of receipt.

84366 - 84370

Business assets

The law

84371 [**See Memo DMG 13/20**] The assets of a business are disregarded indefinitely if the person

1. owns all or some of the assets **and**

2. works in the business as a S/E earner[1].

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

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

1. owns all or some of the assets **and**

2. has stopped working in the business as a S/E earner[1].

Example

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

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

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

1. owns all or some of the assets **and**

2. is not working as a S/E earner in the business because he is

2.1 ill **or**

2.2 physically or mentally disabled **and**

3. intends to start work or return to work in the business as a S/E earner as soon as he is able[1].

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

Meaning of business assets

84374 Business assets include standard items such as machinery, vehicles, fixtures and cash held in the bank (including money held following the sale of assets). They may also include items such as customer lists and contacts, current and future contracts and goodwill.

84375 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as “work in hand” may result in an income receipt and so would be appropriate for inclusion in the profit and loss account. Where doubt exists as to whether a particular asset would represent a capital or

income receipt upon its sale, the principles of commercial accounting must be applied. That is, the approach that would be taken by an accountant or Her Majesty's Revenue and Customs to such a receipt or holding.

Meaning of "reasonable period"

84376 When determining what represents a reasonable period for the sale or disposal of an asset, the DM should have regard to

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

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

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

Meaning of self-employed earner

84377 S/E earner means a person

1. who is in gainful employment in GB (see DMG 070702) **and**

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

A S/E earner includes people employed outside of GB in employment which would be classed as employment as a S/E earner if the employment was in GB. It also includes people undertaking employment as a S/E earner and that employment is disregarded when working out SS contributions[1].

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

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

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

2. in an office, including an elective office, and the fee or salary the person gets is taxed under the PAYE scheme[1].

1 SPC Regs, reg 17A(5)

When people are working in the business

84379 People are working in the business if they do some work in a practical sense. There is no set

definition of the type and amount of work that has to be done for the person to be classed as a S/E earner and the DM must decide each case on its merits[1].

1 R(IS) 14/98

84380 A partner in a business managed and worked exclusively by others is not working in the business. Such partners are not S/E earners even if they receive a share of the profits of the business[1].

1 R(IS) 14/98

Capital which is not sterling

84381 Bank charges and commission which are payable when changing capital which is not sterling into sterling are disregarded indefinitely[1]. For example, if people get capital of 3,000 Canadian dollars they will have to pay commission when the dollars are changed into British money, so the commission is disregarded.

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

Deferral of retirement pension entitlement

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

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

84383 Where

1. a person elects to be entitled to a lump sum under specified legislation[1] **or**

2. a person is treated as having made such an election **and**

3. a payment has been made following that election, disregard an amount equal to

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

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

or benefit[2].

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

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

Deferral of state pension

84384 Where

1. a person elects to be entitled to a lump sum of SP under specified legislation[1] **or**

2. fails to make an election **and**

3. a lump sum payment has been made, disregard an amount equal to

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

but only for as long as the person does not change their election in favour of an increase in their pension[2].

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

84385

Dwelling occupied as the home

The law

84386 The dwelling occupied as the home is disregarded indefinitely. Only one dwelling can be disregarded[1]. However, in some circumstances, more than one property can be the dwelling occupied as the home[2] (see DMG 84395 et seq).

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

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

Meaning of dwelling occupied as the home

84387 Dwelling occupied as the home means

1. the place lived in as the home and any

1.1 garage

1.2 garden

1.3 outbuildings **and**

2. any part not lived in as the home which

2.1 cannot be sold separately **or**

2.2 would not be reasonable to sell separately

such as, in Scotland, any croft land on which the place lived in stands[1].

1 SPC Regs, reg 1(2)

Onus of proof

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

84389 The DM has to show

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

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

Example

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

1 R(SB) 27/84

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

84391 The DM does not need to get expert advice if

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

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

Dwelling which has not been occupied as the home

84392 A dwelling which

1. has been bought **and**

2. has not been lived in as the home by the claimant or partner cannot be disregarded[1] as the dwelling occupied as the home.

1 R(SB) 27/84

Dwelling not occupied as the home for a time

84393 A dwelling which is usually occupied as the home is disregarded if

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

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

Example

Betty goes into a care home on a temporary basis and she intends to return to the house which she usually occupies as the home. The DM decides that the value of Betty's house is disregarded.

Small-holdings

84394 A small-holding is disregarded as the dwelling occupied as the home if it is like croft land in Scotland[1]. A small-holding is like croft land if

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

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

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

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

1 R(SB) 13/84

More than one property owned

84395 If a claimant owns more than one property, the DM will have to decide whether each property can be disregarded as the dwelling occupied as the home. Where a claimant has only one home that is spread over two physical buildings the DM should decide that each is the dwelling occupied as the home if each is normally occupied by the claimant.

84396 Factors the DM should consider when deciding whether the claimant has only one home are

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

2. who lives in each property, for example whether

2.1 each property is occupied by

2.1.a the claimant **or**

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

2.1.c children (see DMG 84534)

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

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

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

3.2 an investment opportunity **or**

3.3 to have a

3.3.a weekend retreat **or**

3.3.b country cottage.

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

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

84397 When considering whether the claimant normally occupies more than one property as his home, the DM should decide that the claimant's home is the place where he

1. lives

2. eats

3. sleeps

4. bathes

5. relaxes

6. enjoys with his family.

Example 1

Keith and Elma have eleven children, eight of whom are at school and three of whom are in work. They all lived in a three bedroomed house. When Keith and Elma are advised of the rules of statutory overcrowding they purchase another three bedroomed house in the same street. There are two other properties between the

houses Keith and Elma own. Elma and the five youngest children continue to live in the original house and the other children go to live in the newly purchased house. Keith lives, sleeps, eats, bathes, relaxes and enjoys with his family the original house four days a week and the newly purchased house three days a week. Keith makes a claim for SPC. The DM decides that Keith normally occupies both houses. The DM also decides that both houses are disregarded as the dwelling occupied as the home.

Example 2

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

Example 3

Bruce owns a house in London. He gets a job in Manchester and buys a flat there to live in during the week. He spends the weekends at his house in London. Bruce loses his job and returns to London. He is age 61 and claims SPC. He states he will live in London but will visit his flat once a month in order to maintain it and possibly look for work in Manchester. The DM decides that Bruce does not normally occupy the flat in Manchester. The DM also decides that the flat in Manchester is not disregarded as the dwelling occupied as the home.

Example 4

Adam is single. He lives at 25 Station Road which is a semi-detached house. The house adjoining his, 27 Station Road, comes on the market after being uninhabited for two years. It is in a derelict condition. Adam buys it cheaply. He sometimes sleeps and eats at 27 Station Road while he undertakes the necessary repairs in order to let or sell it but he spends most of his time at 25 Station Road. Adam claims SPC. The DM decides that as Adam purchased 27 Station Road as an investment it is not disregarded as the dwelling occupied as the home.

Example 5

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

Funeral plan contract

The law

84398 The value of a funeral plan contract is disregarded indefinitely[1].

1 SPC Regs, Sch V, Part I, para 11

Meaning of funeral plan contract

84399 A funeral plan contract means a contract under which

1. people make one or more payments to another person who is called the provider **and**

2. the provider agrees to provide, or secure the provision of, a funeral in the UK (see DMG 070880) for those people on their death **and**

3. the only purpose of the funeral plan is to provide, or secure the provision of, a funeral for those people on their death[1].

1 Sch V, Part 1, para 11

84400

Future interests in capital

84401 A future interest in capital is disregarded indefinitely. This does not apply to an interest in real or heritable property (see DMG 84022 **4.**) on which a person has given another person a continuing

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

2. tenancy or sub-tenancy[1].

1 Sch V, Part I, para 5

84402 For example

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

the interest because a contingent or reversionary interest is a future interest

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

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

Health in pregnancy grant

84403 This grant is payable to every woman from the 25th week of pregnancy after they have had appropriate health advice from a health professional. It will be a one off non-taxable payment. This payment is to be disregarded when calculating the capital of the claimant[1].

1 SPC Regs, Sch V, para 23B

Payments in lieu of community care services or health care

84404 Payments received which are in lieu of

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

2. health care[2]

are disregarded when calculating the capital of the claimant[3].

Note: These types of payment are sometimes known as "Direct Payments for Health Care" or "Direct Payments for Community Care".

1 Health and Social Care Act 2001, s 57; Social Work (Scotland) Act 1968, s 12B;
2 National Health Service Act 2006, s.12A – 12C; 3 SPC Regs, Sch V, para 23C

84405

Life insurance policies

The law

84406 The surrender value of a life insurance policy still in force is disregarded indefinitely[1].

1 SPC Regs, Sch V, Part I, para 10

Meaning of life insurance policy

84407 Life insurance policy means a written document which states a payment of money is made

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

2. if death happens

2.1 in certain circumstances **or**

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

1 SPC Regs, reg 1(2)

Investments which include life insurance

84408 Investments which include some life insurance are disregarded indefinitely if the agreement states how payment on death is worked out. It does not matter whether the amount paid on death is

1. more than **or**

2. equal to **or**

3. less than

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

1 R(IS) 7/98

Life interest or life rent

84409 The value of the right to receive income

1. under a life interest **or**

2. from a life rent

is disregarded indefinitely[1].

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

1 SPC Regs, Sch V, Part II, para 24

Payment for personal injury

84410 The amount equal to the amount of any payment made to claimants, or their partners if they have one, as a consequence of any personal injury is disregarded indefinitely[1]. Any of that amount is also disregarded indefinitely[2] if it is administered

1. in England and Wales

1.1 by the High Court or County Court under certain rules[3] **or**

1.2 by the Court of Protection (see DMG 84282) **or**

1.3 on behalf of a person where payment can only be disposed of by order or direction of any such court **or**

2. in Scotland by the Sheriff Court under certain rules[4] **or**

3. in accordance with the terms of a trust set up for the benefit of those claimants or partners.

Note 1: This means that for the purposes of calculating entitlement to SPC whatever capital the claimant owns (up to an amount equal to the payment amount)

will be disregarded, even if the compensation is spent and the claimant acquires other capital at some later date the disregard would still apply.

Note 2: The meaning of made as a consequence of a personal injury can include where the claimant's solicitor fails to secure the personal injury payment and the claimant sues their solicitor for professional negligence and receives a compensation payment to the value of what they should have received. However if any damages are also paid for any additional loss created by the professional negligence then this would not be disregarded[5].

1 SPC Regs, Sch V, Part I, para 16(1); 2 Sch V, Part I, para 16(2); 3 Civil Procedure Rules 1998, Rule 21.11(1); 4 Ordinary Cause Rules 1993, Rule 36.14; Rule 128; 5 KQ v SSWP (IS) [2011] UKUT 102 (AAC); [2011] AACR 43

84411 A trust exists if there is a separation of legal ownership and beneficial ownership of the payment. The disregard can apply even if there is no written trust document.

84412 The disregard at DMG 84410 does not apply if the injury was to a claimant's deceased partner[1]. Payments can only come within this disregard where the claimant or partner for whom the payment was made themselves suffered a physical and/or psychological injury. If there is any doubt as to what the payment was awarded for, then the DM should request sight of the papers awarding the amount. These should specify on what basis the award was made.

1 R(IS) 3/03

84413 - 84420

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

84421 An ex-gratia payment made by the Secretary of State on or after 1.2.01 for the imprisonment or

internment of the

1. claimant **or**

2. claimant's partner **or**

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

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

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

1 SPC Regs, Sch V, Part I, para 12

84422 - 84425

Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners

The law

84426 Any trust payment made to a claimant, or the claimant's partner, is disregarded from the date the trust payment is made to the date on which the partner dies where one of the partners

1. is a diagnosed person **or**

2. was a diagnosed person's partner at the time of the diagnosed person's death[1].

1 SPC Regs, Sch V, Part I, para 13(1)(a), 13(1)(b) & 13(2)(a)

84427 Any payment made to a claimant, or the claimant's partner, is disregarded from the date the payment is made to the date on which the partner dies if

1. one of the partners

1.1 is the diagnosed person **or**

1.2 was a diagnosed person's partner at the time of the diagnosed person's death **and**

2. the payment is made

2.1 by a person **or**

2.2 from the estate of a person

to whom a trust payment has been made[1].

1 SPC Regs, Sch V, Part I, para 13(3)(a), 13(3)(b) & 13(4)(a)

84428 For the purposes of DMG 84426 - 84427, a diagnosed person's partner includes a person who would have been the diagnosed person's partner but for the diagnosed person residing in a care home or an independent hospital[1].

1 SPC Regs, Sch V, Part I, para 13(5)(a)

84429 The definition of[1]

1. a care home is

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

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

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

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

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

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

2. an independent hospital is

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

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

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

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

84430 See DMG 84521 - 84522 for guidance on other payments which are disregarded.

Meaning of diagnosed person

84431 Diagnosed person means people

1. who have been diagnosed as suffering **or**

2. who have been diagnosed after their deaths as having suffered

from variant Creutzfeldt-Jakob disease[1].

1 SPC Regs, Sch V, Part I, para 13(6)

Meaning of the relevant trust

84432 The relevant trust means a trust set up from funds provided by the Secretary of State for the benefit of certain people who suffered from **or** who are suffering from variant Creutzfeldt-Jakob disease[1].

1 SPC Regs, Sch V, Part I, para 13(6)

Meaning of trust payment

84433 Trust payment means a payment under the relevant trust[1].

1 SPC Regs, Sch V, para 13(6)

84434 - 84435

Pensions

The law

84436 The value of the right to receive income

1. from an occupational pension scheme **or**

2. from a personal pension **or**

3. under a retirement annuity contract

is disregarded indefinitely[1].

1 SPC Regs, Sch V, Part I, para 22 & 23

Meaning of occupational pension scheme

84437 Occupational pension scheme means the same as stated in pension law[1].

1 SPC Act 02, s 17; Pension Schemes Act 1993, s 1

Meaning of personal pension scheme

84438 Personal pension scheme means the same as stated in pension law[1].

1 SPC Act 02, s 17; Pension Schemes Act 1993, s 1; Pension Schemes (Northern Ireland) Act 1993, s 1

Personal possessions

84441 All personal possessions such as clothing, jewellery, and cars are disregarded indefinitely[1].

1 SPC Regs, Sch V, Part I, para 8

Premises lived in by a partner or relative

The law

84442 Premises such as a house are disregarded indefinitely if they are occupied as the home in whole or in part by a

1. person who is a

1.1 close relative (see DMG 84443) **or**

1.2 grandparent **or**

1.3 grandchild **or**

1.4 uncle **or**

1.5 aunt **or**

1.6 nephew **or**

1.7 niece

of the claimant or partner where that person has reached the qualifying age for SPC or is incapacitated[1].

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

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

Example

Tony is in receipt of SPC. He goes into a care home and his wife Julie remains in their marital home. Julie visits Tony on a regular basis. The DM decides that Tony and Julie are not estranged.

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

Meaning of close relative

84443 See DMG 77010 et seq for the meaning of close relative.

Is the person incapacitated

84444 Incapacitated has no specific legal meaning. So when deciding if a partner or close relative is incapacitated for the purposes of DMG 84442 **1.**, the DM may decide they are incapacitated if

1. they are receiving

1.1 "AA"

1.2 CAA

1.3 DLA

1.4 ESA

1.5 IB

1.6 SDA

1.7 SSP

1.8 a benefit similar to the ones at **1.1** to **1.7 or**

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

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

84445 The DM has to decide if

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

2. it is reasonable for it to be sold separately

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

Provision of continuing care: looked after children

84446 Any payment made by a local authority in Scotland for the purposes of providing continuing care[1] and made to

1. the claimant **or**

2. person "A" who passes it onto the claimant but only where person "A"

2.1 was formerly in the claimant's care

2.2 is aged 16 or over **and**

2.3 continues to live with the claimant[2].

1 Children (Scotland) Act 95, s 26A; 2 SPC Regs, Sch V, Part I, para 23D

84447 - 84455

Rent

84456 The value of the right to receive rent is disregarded indefinitely but not when a person has a reversionary interest in the property for which the rent is due[1].

Example

Under the terms of Ernest's will

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

2. Percy is left the

2.1 cottage subject to the lease **and**

2.2 right to the rents from the cottage subject to Charlotte's right to those rents for the duration of her life. Charlotte has a life interest in the cottage because of her right to the rents for the duration of her life. Percy has a reversionary interest in the cottage because it is leased.

The value of Charlotte's right to the rents is disregarded until she dies because her interest in the cottage is not reversionary. When Charlotte dies the value of Percy's right to the rents is not disregarded because his interest in the cottage is reversionary.

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

1 SPC Regs, Sch. V, Part II, para 5

84457 - 84460

Second World War compensation payments

84461 Any payment to compensate for the fact that the claimant, **or** the claimant's partner, **or** the claimant's deceased spouse or deceased civil partner, **or** the claimant's partner's deceased spouse or deceased civil partner

1. was a slave labourer **or**

2. was a forced labourer **or**

3. had suffered property loss **or**

4. had suffered personal injury **or**

5. was a parent of a child who had died

during the Second World War is disregarded indefinitely. The disregard does not apply to a payment of WDisP **or** WWP[1].

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

1 SPC Regs, Sch V, Part I, para 14

The Independent Living Fund (2006)

The law

84462 One-off payments made from the Independent Living Fund (2006) are disregarded indefinitely[1].

1 SPC Regs, Sch V, Part I, para 15(1)

Meaning of the Independent Living Fund (2006)

84463 The Independent Living Fund (2006) was set up on 10.4.06 between the Secretary of State on the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin on the other part[1].

1 SPC Regs, reg 1(2)

84464 - 84466

Payment included with other capital

84467 The disregard does not apply to the other capital if the payment is included with other capital.

84468 Accept any money withdrawn is from the other capital and not the payment if money is withdrawn from an account which includes the payment and other capital. Accept any money withdrawn is from the payment if there is evidence of this.

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

The law

84475 **[See Memo DMG 15/21] [See Memo DMG 07-23] [See Memo DMG 08/23][See Memo DMG 08/24][See Memo DMG 04-25] [See Memo DMG 08-25] [See Memo DMG 04-26]** One-off payments made from the Trusts are disregarded indefinitely[1].

1 SPC Regs, Sch V, Part I, para 15(1)

84476 [See Memo DMG 08-25] A payment from money which a person gets from the Trusts is disregarded indefinitely if the payment is made

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

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

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

2. to or for the benefit of a partner or former partner of the person who got the money from the Trusts and they

2.1 are not estranged, divorced or part of a dissolved civil partnership **or**

2.2 were not estranged, divorced or part of a dissolved civil partnership if the person who got the money has died[1].

1 SPC Regs, Sch V, Part I, para 15(2)

84477 [See Memo DMG 08-25] A payment from money which a partner or former partner gets from the Trusts is disregarded indefinitely if the payment is made by or on behalf of a partner or former partner of a person who

1. has haemophilia or is a qualifying person **or**

2. had haemophilia or was a qualifying person if the person has died

and they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died[1].

1 SPC Regs, Sch V, Part I, para 15(3)

84478 Any capital the person gets from the income or capital of the payment

1. from the Trusts **or**

2. at DMG 84476 - 84477

is disregarded indefinitely[1].

1 SPC Regs, Sch V, Part I, para 15(6)

The Trusts

84479 The Trusts means

1. the Macfarlane Trust

2. the Macfarlane (Special Payments) Trust

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

4. the Fund

5. the Eileen Trust

6. MFET Limited

7. Skipton Fund

8. Caxton Foundation

9. SIBSS

10. an approved blood scheme

11. the London Emergencies Trust

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

13. the London Bombings Relief Charitable Fund[1].

1 SPC Regs, Sch V, Part I, para 15(1) & 15(7)

The Macfarlane Trust

84480 The Macfarlane Trust is the name of a charitable trust set up with part of the money being given by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those

suffering from haemophilia[1].

1 SPC Regs, reg 1(2)

The Macfarlane (Special Payments) Trust

84481 The Macfarlane (Special Payments) Trust is the name of a discretionary trust set up on 29.1.90 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia[1].

1 SPC Regs, reg 1(2)

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

84482 The Macfarlane (Special Payments) (No. 2) Trust is the name of a discretionary trust set up on 3.5.91 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia and other people[1].The other people are people who

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

2. were at risk of infection

because of contact with haemophiliacs.

1 SPC Regs, reg 1(2)

The Fund

84483 The Fund is money made available from time to time by the Secretary of State for the benefit of people who satisfy the terms of the scheme which was set up in Scotland on 10.4.92 and elsewhere on 24.4.92[1]. It benefits non-haemophiliacs who were infected with HIV whilst undergoing treatment by NHS blood or tissue transfer or blood products. It makes one-off payments.

1 SPC Regs, reg 1(2)

Eileen Trust

84484 Eileen Trust is the name of a charitable trust set up on 29.3.93 with money given by the Secretary of State for the benefit of persons who satisfy the terms of the trust[1]. It further benefits non-haemophiliacs who benefit under the Fund. It makes payment for occasional or continuing need.

1 SPC Regs, reg 1(2)

MFET Limited

84485 The Department of Health funds an organisation called MFET Limited[1] to provide financial help to

people who have been infected with HIV as a result of treatment with NHS blood or blood products.

1 SPC Regs, reg 1(2)

The Skipton Fund

84486 The Skipton Fund is the Skipton Fund Limited which was incorporated on 25.3.04 to administer an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C and other people eligible for payment in accordance with the scheme's provisions[1]. The ex-gratia payments will be a

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

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

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

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

1 SPC Regs, reg 1(2)

The Caxton Foundation

84487 The Caxton Foundation was established on 28.3.11. It administers funds provided by the Secretary of State for Health for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments[1].

1 SPC Regs, reg 1(2)

Scottish Infected Blood Support Scheme

84488 Following a review of the existing infected blood support schemes, the Scottish Government has decided that these services will be combined and administered by a new single scheme administrator for Scotland. SIBSS will be operational from 1.4.17 and will be administered by NHS National Services Scotland (NSS), legally known as the Common Services Agency. NSS is an NHS Board accountable to Scottish Ministers.

Approved blood scheme

84489 An approved blood scheme is a scheme established or approved by the Secretary of State[1] for the purpose of providing compensation to those in England, Wales and Northern Ireland who have been infected from contaminated blood products. It replaces the Eileen Trust, the Macfarlane Trust, MFET Ltd, the Skipton Fund and the Caxton Foundation from 2.10.17 and payments from this new scheme will be made from 23.10.17.

1 SPC Regs, reg 1(2)

The London Bombings Relief Charitable Fund

84490 The London Bombings Relief Charitable Fund was established on 11 July 2005 following the terrorist attacks carried out in London on 7 July 2005[1]. People who were bereaved, or who suffered injury, may receive lump sum payments from the London Bombings Relief Charitable Fund.

1 SPC Regs, reg 1(2)

The London Emergencies Trust

84491 The London Emergencies Trust was established on 28.3.17 following the terrorist attacks carried out in London on 22.3.17 and 3.6.17[1]. People who were bereaved or who suffered injury, may receive lump sum payments from the LET ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries.

1 SPC Regs, reg 1(2)

The We Love Manchester Emergency Fund

84492 The We Love Manchester Emergency Fund was established on 30.5.17 following the terrorist attack carried out in Manchester on 22.5.17. People who were bereaved or who suffered injury, may receive lump sum payments from the WLMEF ranging from £3,500 to £20,000. Further lump sums or even regular payments may be made to the same beneficiaries.

1 SPC Regs, reg 1(2)

Qualifying person

84493 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund[1].

1 SPC Regs, reg 1(2)

84494 - 84495

Payment included with other capital

84496 The disregard does not apply to the other capital if the payment is included with other capital.

84497 Accept any money withdrawn is from the other capital and not the payment if money is withdrawn from an account which includes the payment and other capital. Accept any money withdrawn

is from the payment if there is evidence of this.

Other payments which are disregarded

84498 Payments to or for the benefit of some other person are disregarded (see DMG 84531).

Trusts

84499 Property held on trust is disregarded indefinitely if

1. payments can be made **or**

2. the trustees have discretion to make payments

from the trust to or for the benefit of the claimant, **or** the claimant's partner, **or** both[1]. This does not apply to any property held under a charitable trust set up under certain legislation[2]. Nor does it apply to any payment made as a result of a personal injury which is placed in trust[3].

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

1 SPC Regs, Sch V, Part II, para 28; 2 Sch V, Part II, para 28(a) & Charities Act 1993;
3 SPC Regs, Sch V, Part II, para 28(b)

Local welfare provision

84500 Local welfare provision means[1] occasional financial or other assistance made by an LA, the Welsh Ministers, the Scottish Ministers or an authorised person for the purpose of

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

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

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

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

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

2.2 homeless or living an unsettled way of life.

1 SPC Regs, reg 1(2)

84501 [See Memo DMG 18/20] Any payment paid

1. by way of a local welfare provision[1] **or**

2. as a result of a reduction of liability to council tax[2]

is disregarded indefinitely when calculating the capital of the claimant.

1 SPC Regs, Sch V, para 20(1)(e); 2 Sch V, para 20(1)(f)

Funeral support payments

84502 The Scottish Government introduced Funeral Support Payments from 16.9.19 to provide financial assistance for funeral expenses to people who live in Scotland. FSPs are disregarded indefinitely[1].

1 SPC Regs, Sch V, para 20(2)(s)

84503 - 84520

Capital disregarded for up to two years 84521 - 84560

Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners 84521 - 84530

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation, SIBSS, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund 84531 - 84560

Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners

The law

84521 Any trust payment made to a claimant, or the claimant's partner, is disregarded for two years after the date the trust payment is made if one of the partners

1. is a parent of a diagnosed person **or**

2. a person acting in place of the diagnosed person's parent **or**

3. a person who was acting in place of the diagnosed person's parent at the date of the diagnosed person's death[1].

1 SPC Regs, Sch V, Part I, para 13(1)(c) & 13(2)(b)

84522 Any payment made to a claimant, or the claimant's partner, is disregarded for two years after the date the payment is made if

1. one of the partners

1.1 is a parent of a diagnosed person **or**

1.2 a person acting in place of the diagnosed person's parent **or**

1.3 a person who was acting in place of the diagnosed person's parent at the date of the diagnosed person's death[1] **and**

2. the payment is made

2.1 by a person **or**

2.2 from the estate of a person

to whom a trust payment has been made[1].

1 SPC Regs, Sch V, Part I, para 13(3)(c) & 13(4)(b);

84523 For the purposes of DMG 84521 - 84522, acting in place of the diagnosed person's parents at the date of the diagnosed person's death includes a person who would have been acting in place of the diagnosed person's parents at the date of the diagnosed person's death but for the diagnosed person residing in a care home or an independent hospital[1]. See DMG 77005 et seq for the meaning of care home or an independent hospital.

1 SPC Regs, Sch V, Part I, para 13(5)(b)

84524 See DMG 84426 - 84427 for guidance on other payments which are disregarded.

Meanings

84525 For the meaning of

1. diagnosed person **and**

2. trust payment

see DMG 84430 - 84432.

84526 - 84530

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

The law

84531**[See Memo DMG 07-23]** A payment from money which a person gets from the Trusts is disregarded from the date of payment to two years after the date of death of the person who gets the money from the Trust if the payment is made

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

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

1.2 has no

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

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

2. to the

2.1 person's parent or step-parent **or**

2.2 person standing in place of the parent if there is no parent or step-parent and at the date of the payment the person is a

2.2.a child **or**

2.2.b student who has not finished FTE[1].

1 SPC Regs, Sch V, Part I, para 15(4)

84532 **[See Memo DMG 07-23]** A payment from money which a person who has died got from the Trusts is disregarded for two years from the date of death if the payment is made

1. out of the estate of a person who

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

1.2 at the date of death the person had no

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

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

2. to the

2.1 person's parent or step-parent **or**

2.2 person standing in place of the parent if there is no parent or step-parent and at the date of the payment the person is a

2.2.a child **or**

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

Note: In DMG 84531 - 84532 above, step-parent includes the civil partner of a parent.

1 SPC Regs, Sch V, Part I, para 15(5)

84533 **[See Memo DMG 07-23]** Any capital which a person gets from the income or capital of the payment at DMG 84531 - 84532 is also disregarded[1].

1 Sch V, Part I, para 15(6)

Meaning of child

84534 Child means any person who is a qualifying young person or a child for the purposes of CHB[1].

1 Sch V, Part I, para 15(8) & SS CB Act 1992, Part IX

Meaning of qualifying young person

84535 A qualifying young person is

1. a person aged 16 years, from the date he attains that age up to and including the 31 August that next follows that date[1]

2. a person aged 16 years and over who is undertaking a course of full-time education at a school or college which is not advanced education[2] **or**

3. a person aged 16 years or over who is undertaking approved training that is not approved through a contract of employment[3].

1 CHB (Gen) Regs 2006, reg 4; 2 reg 3(2)(a); 3 reg 3(2)(c)

84536 For the purposes of paragraphs DMG 84535 **2.** and **3.** above the person

1. shall have commenced the course of full-time education or approved training before reaching the age of 19 years **and**

2. shall not have reached 20 years of age[1].

1 CHB (Gen) Regs 2006, reg 3(4)

84537 For the purposes of DMG 84535 **2.** above

1. education shall be treated as full-time where at least twelve hours per week during term time is spent receiving tuition, engaged in practical work or supervised study or taking examinations[1]

2. a person shall be treated as undertaking a course of full-time education during the period between the end of one course and the start of another where the person is enrolled on and starts the latter course[2].

1 reg 1; 2 reg 3(2)(b)

84538 Any person aged 19 years before 10.4.06 is not a qualifying young person[1].

1 reg 2(5)

Meaning of student

84539 Student means a person who is attending or undertaking

1. a course of study at an educational establishment **or**

2. a qualifying course.

This does not include any person who is in receipt of a training allowance[1].

1 SPC Regs, Sch V, Part I, para 15(8)

84540 Course of study means a course of study whether or not

1. it is a sandwich course **or**

2. a grant is made for undertaking or attending the course[1].

Sandwich course has the same meaning as given to it under certain Education legislation[2].

1 Sch V, Part I, para 15(8); 2 Sch V, Part I, para 15(8); Education (Student Support) Regulations 2001, reg 5(2); Education (Student Loans) (Scotland) Regulations 2000, reg 5(2); Education (Student Support) Regulations (Northern Ireland) 2000, reg 5(2)

84541 Qualifying course means the same as it does for certain rules in JSA legislation[1].

1 SPC Regs, Sch V, Part I, para 15(8); JSA Regs, reg 4 & reg 17A(7)

84542 Training allowance means an allowance paid

1. out of public funds by

1.1 a Government department **or**

1.2 by, or on behalf of, the Secretary of State or the Scottish Enterprise or the Highlands and Islands Enterprise or Skills Development Scotland **and**

2. to people for their maintenance or for a member of their family **and**

3. for a period or part of a period when those people are following a course of training or instruction

3.1 provided by or under arrangements made with that department **or**

3.2 approved for him by that department **or**

3.3 provided or approved by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or Skills Development Scotland.

84543 A training allowance does not include an allowance paid by any Government department to, or for, people who are following a course of FTE unless it is paid

1. under certain employment and training law **or**

2. to a person training as a teacher[1].

1 SPC Regs, Sch V, Part I, para 15(8); Employment and Training Act 1973, s 2

Other meanings

84544 For the meaning of

1. the Trusts **and**

2. qualifying person

see DMG 84479 and 84488.

Payment included with other capital

84545 The disregard does not apply to the other capital if the payment is included with other capital.

84546 Accept any money withdrawn is from the other capital and not the payment if money is withdrawn from an account which includes the payment and other capital. Accept any money withdrawn is from the payment if there is evidence of this.

84547 - 84560

Capital disregarded for a year or longer 84561 - 84600

Period of disregard 84561 - 84565

Arrears of benefit and compensation 84566 - 84567

The Supporting People Programme 84568 - 84575

Money paid for loss of or damage to the home or personal possessions 84576

Money which a person gets to buy, repair or alter a home 84577 - 84578

Bereavement Support Payment 84579 - 84600

Period of disregard

84561 **[See Memo DMG 02/23]** The period of disregard in this part of the guidance is

1. either

1.1 to the end of the AIP if there is an AIP **or**

1.2 one year from the date of the payment

whichever is the longer period **or**

2. for one year from the date of receipt of the payment if **1.** does not apply[1].

1 SPC Regs, Sch V, Part I, para 17

84562 - 84565

Arrears of benefit and compensation

The law

84566 A payment

1. of arrears of benefit **or**

2. of compensation for the late payment of benefit **or**

3. in lieu of the payment of benefit

4. by a LA out of money

4.1 in England and Wales provided for by the Supporting People Scheme under certain legislation[1]
or

4.2 in Scotland under certain housing support legislation[2]

is disregarded for the period in DMG 84561[3].

1 Local Government Act 2000, s 93; 2 Housing (Scotland) Act 2001, s 91; 3 SPC Regs, Sch V, para 20(1)

Meaning of benefit

84567 [See Memo DMG 01/26] Benefit means

1. AA[1]

2. AFIP[2]

3. BSP

4. CAA[3]

5. CHB

6. CTC under tax credit law[4]

7. CT benefit

8. DLA

9. ESA(IR)

10. ESDA[5]

11. HB

12. IS

13. JSA(IB)

14. MA

15. PIP[6]

16. SPC

17. SF payments

18. UC

19. any payment made with WDisP or WWP for:

19.1 exceptionally severe disablement **or**

19.2 constant attendance[7].

1 SS CB Act 92, s 64; 2 SPC Regs, Sch 5, para 20(2)(bb); 3 s 104; 4 Tax Credit Act 2002; 5 SS CB Act 92, s 105; 6 SPC Regs, Sch 5, para 20(2)(ba); 7 SPC Regs, Sch V, Part I, para 20

The Supporting People Programme

84568 On 1.4.03 responsibility for meeting costs for

1. certain counselling **and**

2. other support services

for people in supported accommodation transferred to LAs under the Supporting People programme.

84569 DMs should disregard indefinitely any payment made

1. by

1.1 a local authority **or**

1.2 Welsh Ministers

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

2.1 provided to develop **or**

2.2 sustain the capacity of

the claimant or partner to live independently in his accommodation[1].

1 SPC Regs, Sch V, Part I, para 20(1)(1)(d)

84570 - 84575

Money paid for loss of or damage to the home or personal possessions

84576 A payment under an insurance policy for the loss of or damage to

1. the property occupied as the home **or**

2. personal possessions

is disregarded for the period in DMG 84561.

1 Sch V, Part I, para 18

Money which a person gets to buy, repair or alter a home

The law

84577 Money which a person gets, or which is deposited in a person's name, is disregarded for the period in DMG 84561 if it is for the sole purpose of

1. buying premises which the person intends to occupy as the home **or**

2. paying for essential repairs or alterations to the premises

2.1 occupied as the home **or**

2.2 intended to be occupied as the home[1].

1 Sch V, Part I, para 19

Essential repairs or alterations

84578 Essential repairs or alterations are those which are needed to make the home fit to live in by the claimant, or the claimant's partner. For example, it is essential to repair the roof to make the home fit to live in if the roof is letting in water.

Bereavement Support Payment

84579 Where a claimant in receipt of SPC

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

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

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

1 BSP Regs, reg 3(2) & (5); 2 SPC Regs, Sch 5, para 23E)

84580 - 84600

Capital disregarded for 26 weeks or longer 84601 - 84670

Dwelling left because of estrangement, divorce or dissolution of civil partnership 84601 - 84620

Premises a person does not possess or occupy 84621 - 84635

Premises which a person is taking steps to get possession of 84636 - 84645

Premises which are to be repaired or altered 84646 - 84655

Premises which are to be disposed of 84656 - 84570

Dwelling left because of estrangement, divorce or dissolution of civil partnership

The law

84601 The dwelling in which a person lived as the home, is disregarded if the person stopped living in the dwelling because of estrangement, divorce or dissolution of a civil partnership from the former partner. The period of disregard is for

1. 26 weeks from the date the person stopped living in the dwelling **or**

2. as long as it is occupied if

2.1 it is occupied by the former partner **and**

2.2 the former partner is a lone parent[1].

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

Meaning of dwelling

84602 Dwelling means

1. the place formerly lived in as the home and any

1.1 garage

1.2 garden

1.3 outbuildings **and**

2. any part not formerly lived in as the home which

2.1 cannot be sold separately **or**

2.2 would not be reasonable to sell separately

such as, in Scotland, any croft land on which the place formerly lived in stands[1].

1 Sch V, Part I, para 6(2)

Meaning of lone parent

84603 Lone parent means a person

1. who has no partner **and**

2. who is responsible for a child and the child is a member of that person's household[1].

1 Sch V, Part I, para 6(2)

Meaning of child

84604 Child means any person who is a qualifying young person or a child for the purposes of CHB[1].

Note: See DMG 84535 et seq for meaning of qualifying young person.

1 SPC Regs, Sch V, Part I, para 6(2) & SS CB Act 92, Part IX

84605 - 84620

Premises a person does not possess or occupy

The law

84621 The value of any premises which the claimant has acquired with the intention of living in as their home within 26 weeks of the date of acquisition should be disregarded. Where the claimant intends to live in the premises but it will be later than 26 weeks from acquisition, then a longer period can be considered where it is reasonable to enable the claimant to obtain possession and begin occupation[1].

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

The premises

84622 The premises must be capable of being a dwelling which can be lived in as the home[1]. Land on which a person intends to build premises to live in as the home is included. Any part of the premises which a person is not going to live in as the home is not included if the DM decides the part

1. can be sold separately **and**

2. it is reasonable for it to be sold separately.

1 R(IS) 3/96

Acquiring premises

84623 People can acquire premises if they buy, are given or inherit them. The disregard applies to any premises acquired if the person

1. is not in possession of them **or**

2. cannot move in **and**

the person is going to live in the premises acquired as the home.

Possession of premises

84624 The legal owners of premises own them but do not have vacant possession of them if a tenant or lessee lives in them. During the period of a tenancy or lease the tenant or lessee is legally in possession of the premises and the owner remains the legal owner. At the end of a tenancy or lease the right to vacant possession should return to the owner.

84625 The disregard applies if the tenancy or lease ends within 26 weeks of the date the owner acquired the premises. The DM has to decide if it is reasonable for the disregard to apply for a longer period if the tenancy or lease does not end within 26 weeks of the date the owner acquired the premises. The DM may decide the premises cannot be disregarded for a longer period if a lease has several years to run.

84626 The owner has to do something to get back possession of the premises if

1. someone is living in the premises illegally such as a squatter **or**

2. a tenant or lessee does not leave the premises at the end of the tenancy or lease.

84627 The DM may decide it is reasonable to disregard the premises for more than 26 weeks if the owner is going to do something to get back possession. The DM may decide the premises cannot be disregarded for more than 26 weeks if the owner has done nothing to get back possession.

84628 A different disregard applies if the owner has asked for legal advice about getting or started legal proceedings to get back possession. See DMG 84636 - 84641.

Moving into the premises

84629 The disregard applies for 26 weeks from the date the owner acquired the premises. The disregard can apply for a longer period if the DM decides it is reasonable if the legal owner of the premises has recovered them and has not moved into them. The DM may decide the premises can be

disregarded for a longer period if they

1. were acquired by a person to move into when the person comes out of hospital and the person is still in hospital **or**

2. are land on which a person is going to build premises to live in as the home because 26 weeks is not long enough for the

2.1 premises to be built **and**

2.2 person to move into them.

84630 The disregard applies for 26 weeks from the date the owner acquired the premises or longer if the DM decides it is reasonable if the

1. premises need to be repaired or altered before the person can move in **and**

2. owner is going to do something to get the repairs or alterations done.

The DM may decide the premises cannot be disregarded for a longer period if the owner has done nothing to get the premises repaired or altered.

84631 A different disregard applies from the date the owner first takes steps to have the premises repaired or altered (see DMG 84646 - 84653).

84632 - 84635

Premises which a person is taking steps to get possession of

The law

84636 Premises which people are taking steps to get possession of are disregarded to give them time to get possession and to start living in the premises if they

1. are going to live in the premises as the home **and**

2. have

2.1 asked for legal advice about getting **or**

2.2 started legal proceedings to get

possession.

The period of disregard is for 26 weeks or longer if it is reasonable from the earliest of the first date the person asked for legal advice or started legal proceedings[1].

The premises

84637 The premises must be capable of being a dwelling which can be lived in as the home[1]. The disregard does not apply to

1. premises which are land even if persons say they are going to build a house on the land to live in as the home **and**

2. any part of the premises which a person is not going to live in as the home if the DM decides it

2.1 can be sold separately **and**

2.2 is reasonable for it to be sold separately.

1 R(IS) 3/96

The date a person first asked for legal advice or started legal proceedings

84638 The first date is the date of the first time the person

1. asked for legal advice if the person has ever asked for legal advice **or**

2. started legal proceedings if the person has ever started legal proceedings.

The date is the earliest date if both **1.** and **2.** apply.

84639 The first date does not change. So if a person has asked for legal advice several times the first date is the date the person first asked for such advice.

When legal proceedings usually start

84640 In England and Wales legal proceedings usually start in the

1. High Court on the issue of a writ or other originating process **or**

2. County Court on the issue by the Court of a summons or originating application.

The issue of a notice to quit under the terms of a tenancy agreement is **not** starting legal proceedings.

Note: DMs should send cases of doubt to DMA Leeds for advice.

84641 In Scotland legal proceedings usually start in the

1. Court of Session on service of the summons or petition on the defender or respondent

2. Sheriff Court on service of the summons or initial writ on the defender.

Period of disregard

84642 The period of disregard is 26 weeks or longer if it is reasonable. A person should be able to get possession and start living in the premises within 26 weeks of asking for legal advice or starting legal proceedings. The DM has to decide if it is reasonable to disregard the premises for a longer period if a person cannot get possession within 26 weeks.

84643 The DM may decide

1. to disregard the premises for a longer period if

1.1 legal proceedings are still being taken **or**

1.2 people have got possession and there is a good reason why they have not started to live in the premises

2. not to disregard the premises for a longer period if people have

2.1 asked for legal advice and not followed it **or**

2.2 got possession and there is no good reason why they have not moved into the premises.

84644 - 84645

Premises which are to be repaired or altered

The law

84646 Premises which need essential repairs or alterations to make them fit for people to live in them as the home are disregarded to give time for

1. the repairs or alterations to be done **and**

2. the people to start living in the premises

if they are going to live in the premises as the home. The period of disregard is 26 weeks or longer if it is necessary from the date the person first takes steps to get the premises repaired or altered[1].

1 SPC Regs, Sch V, Part I, para 3

The premises

84647 The premises must be capable of being a dwelling which can be lived in as the home[1]. The disregard does not apply to

1. premises which are land even if people say they are making alterations to the land by building a house on the land to live in as the home **and**

2. any part of the premises which a person is not going to live in as the home if the DM decides it

2.1 can be sold separately **and**

2.2 is reasonable for it to be sold separately.

1 R(IS) 3/96

Essential repairs or alterations

84648 Essential repairs or alterations are those which are needed to make the premises fit to live in as the home by the claimant, or the claimant's partner. For example, essential alterations are the widening of the doorways if the person who is going to live in the premises as the home is in a wheelchair and the doorways in the house are not wide enough for the wheelchair to pass through.

The steps

84649 The steps are what a person must do to get the premises repaired or altered and can include

1. getting a grant or loan to pay for them

2. employing an architect

3. getting planning permission

4. finding someone to do the work.

The date a person first takes steps to get the premises repaired or altered

84650 The date a person first takes steps to get the premises repaired or altered is the first date the person does something to get the work done and can include the date a person first

1. asks about a

1.1 grant

1.2 loan **or**

1.3 planning permission

2. contacts

2.1 an architect **or**

2.2 someone to do the work.

84651 The first date does not change. So if a person contacts several persons to do the work the first date is the date the first person is contacted.

Period of disregard

84652 The period of disregard is 26 weeks or longer if it is necessary. The repairs and alterations may not be done in 26 weeks if there is a lot of work to do. The DM has to decide whether it is necessary to disregard the premises for a longer period if the person has not moved into the premises within 26 weeks.

84653 The DM may decide

1. to disregard the premises for a longer period if the

1.1 person is still waiting for a grant, loan, or planning permission

1.2 work will take longer than 26 weeks

1.3 work has been delayed and there is a good reason for the delay **or**

1.4 work has been done and there is a good reason why the person has not moved in

2. not to disregard the premises for a longer period if

2.1 the person has not taken all the steps needed to get the work done, such as a person who has got a grant but has not arranged for the work to be done **or**

2.2 there is no good reason for the delay in getting the work done or for the person not moving in.

84654 - 84655

Premises which are to be disposed of

The law

84656 Premises which people are trying to dispose of are disregarded if they are taking reasonable steps to dispose of all of their interest in the premises. The period of disregard is for 26 weeks or longer if it is reasonable from the date the person first took such steps[1].

1 SPC Regs, Sch V, Part I, para 7

The premises

84657 Premises includes

1. land, such as a field

2. buildings, such as a house

3. a lease on the land or buildings

4. any premises in which a person has a time-share.

Who can dispose of premises

84658 Only the legal owner of premises can dispose of them. The disregard does not apply if the person is the

1. beneficial owner or joint beneficial owner of the premises **and**

2. not the legal owner or joint legal owner.

This also applies when people have given away premises so that they can get SPC or more SPC.

Reasonable steps

84659 Reasonable steps are what a person must do to dispose of the premises and can include

1. advertising the premises for sale

2. getting an estate agent

3. taking legal action to

- **3.1** force the sale of premises when the other legal owners do not want to sell **or**
- **3.2** get possession of the premises

4. taking action to appoint another person to act for the legal owner if the

- **4.1** owner is mentally sick or disabled **and**
- **4.2** premises are going to be sold after someone has been appointed.

84660 In deciding if reasonable steps are being taken the DM should determine the specific steps the person is taking to dispose of the premises. This applies whether or not the steps being taken are part of ancillary proceedings following the breakdown of marriage.

Example

Sanath makes a claim for SPC. He owns a house with his brother Muthiah. Neither of them lives in the house. Sanath asks Muthiah if he is prepared to sell the house. Muthiah says no because the house was left to them by their father and he would have wanted them to keep it. Sanath does not pursue the matter further. The DM decides that Sanath is not taking reasonable steps to dispose of the house.

The date a person first takes reasonable steps

84661 The date a person first takes reasonable steps is usually the first date a person does something to

dispose of the premises and can include the date

1. the premises were first advertised for sale

2. a person first contacts an estate agent

3. a person first sees a solicitor if legal action has to be taken to force a sale or get possession of the premises

4. action is started to appoint someone to act for the legal owner which may include the first date a person sees a solicitor if legal advice is needed.

84662 The first date does not normally change. So if a person has tried several times to dispose of the premises the date is the first date the person did something to dispose of the premises the first time. However, there may be exceptional circumstances where the first date may change due to a break in attempts to market the property.

Example

In March 2010 Simon's brother dies leaving him a house. Simon places the house on the market in August 2010. There is some interest in the house but due to ongoing work on a large civil engineering project close to the property, potential buyers are not making offers on the house due to the unknown effects that this project will have on the house. Simon's estate agent advises him to take the house off the market until the situation regarding the civil engineering project is clear. In February 2011, the works are completed and there is no effect to the property so Simon decides to put the house back on the market on 20 February 2011. He makes a claim for SPC at the same time. The DM considers the circumstances and decides that due to the reason for the break in the marketing the property for sale being exceptional and something over which the claimant had no control, the date from which the 26 week disregard will be calculated will be the second attempt to sell the house, i.e. 20 February 2011.

Period of disregard

84663 The period of disregard is 26 weeks or longer if it is reasonable. People should be able to dispose of premises within 26 weeks, but may not be able to do so if the market for premises is depressed. The DM has to decide if it is reasonable to disregard the premises for a longer period if they are not disposed of within 26 weeks.

84664 The DM may decide to disregard the premises for a longer period if

1. people have done all they have to do to sell the premises and the asking price is no more than the premises are worth **or**

2. action is still being taken to

2.1 force a sale **or**

2.2 get possession of the premises **or**

2.3 appoint someone to act for the legal owner.

84665 The DM may need expert advice to find out what the premises are worth. DWP Capital Valuations issues guidance on how to get such advice.

84666 - 84670

Capital disregarded for the remainder of an award of SPC 84671 - 84690

Arrears and concessionary payments of £5000 or more 84671 - 84690

Arrears and concessionary payments of £5000 or more

When the disregard applies

[See Memo DMG 15/20]

84671 This disregard applies where

1. a person receives arrears of one of the

1.1 benefits **or**

1.2 allowances **or**

1.3 payments

listed in DMG 84567 and, if appropriate, any concessionary payment to compensate for the late payment of that benefit **and**

2. the total of the arrears and any concessionary payment is £5000 or more **and**

3. the total of arrears and any concessionary payment is paid to rectify or compensate for an

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

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

4. the total of arrears and any concessionary payment is received in full by the person

4.1 on or after the day on which entitlement to SPC began[1] **or**

4.2 in respect of a payment disregarded for the purposes of

4.2.a IS

4.2.b JSA

4.2.c HB

4.2.d CTB

4.2.e ESA

where that payment was disregarded immediately before the person became entitled to SPC[2].

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

Period of the disregard

84672 The period of the disregard of arrears and concessionary payments of £5000 or more is the remainder of a person's award of SPC[1].

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

Meaning of award of SPC

84673 For the purposes of DMG 84672, award of SPC means[1]

1. the award of SPC in which the

1.1 arrears and any concessionary payment are received **or**

1.2 the first part of the arrears and any concessionary payment is received if it is paid in more than one instalment **and**

2. any further award of SPC (or until the end of the last such further award) if

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

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

2.3 the claimant

2.3.a is the person who received the arrears and any concessionary payment **or**

2.3.b is the partner of the person who received the arrears and any concessionary payment **or**

2.3.c was the partner at the date of death of the person who received the arrears and any concessionary payment.

Example 1

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

Example 2

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

Example 3

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

Example 4

Janice receives arrears of AA amounting to £6,000 6 months into her 1 year AIP. The DM decides that these arrears can be disregarded up to the end of the AIP and for a further 6 months after that. (See DMG 84561 **1.2**).

1 SPC Regs, Sch V, Part I, para 20A(4)

84674 - 84690

What is the value of the capital 84691 - 84700

General 84691

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General

84691 The DM should decide the value of any capital which is not disregarded. Capital which is disregarded does not have to be valued.

The law

Capital in the UK

84692 The value of capital which a person has in the UK (see DMG 070880), is its current market or surrender value less

1. 10% of the value if there are costs of sale **and**

2. the amount of any encumbrance secured on the capital[1].

1 SPC Regs, reg 19, R(SB) 2/83, CJSA 3067/09

84693

Capital outside of the UK

84694 The value of capital which a person has outside of the UK (see DMG 070880) is

1. its current market or surrender value in the country outside of the UK if people can transfer the money they get for the capital to the UK **or**

2. the price people get for it if sold to a willing buyer in the UK if the country will not let them transfer money to the UK

less 10% of the market or surrender value or price if there are costs of sale and the amount of any encumbrance secured on the capital[1].

1 reg 20

Capital which is jointly held

84695 It was assumed that the jointly owned capital rule applied to all types of joint ownership. However

on 15.10.01 the Commissioner decided that the jointly-owned capital rule did not apply to real property (see DMG 84022 **4.**) which two or more people beneficially own as tenants in common[1]. The Commissioner's decision was upheld by the Court of Appeal.

1 R(IS) 4/03

84696 See DMG 84246 et seq for guidance on how to decide whether a claimant owns a capital asset with one or more persons as a

1. joint-tenant or, in Scotland, joint owner **or**

2. tenant in common or, in Scotland, common owner.

Joint-tenant or joint owner

84697 Where the claimant's interest in jointly-owned capital is as a joint-tenant or a joint owner the DM should

1. treat the claimant and the other beneficial owners as having equal shares in the asset[1] **and**

2. value the claimant's deemed share under the normal rules[2].

1 SPC Regs, reg 23; 2 R(IS) 26/95

84698 The DM should not assume that

1. the market value in all cases is the market value of the whole asset divided by the number of beneficial owners **or**

2. in the case of a dwelling, any joint-owners who live in the property do not live there.

Tenant in common or common owner

84699 Where the claimant has an interest in an asset as a tenant in common or a common owner the DM should value the claimant's actual share[1].

1 R(IS) 4/03

Example 1

Cecilia and her son Ross own a house as tenants in common. Cecilia owns 20% of the property and Ross owns 80% but he does not live in it. Cecilia goes into a care home and makes a claim for SPC. The DM decides that the value of Cecilia's share of the house cannot be disregarded. The DM also decides to take the value of Cecilia's 20% share of the house into account.

Example 2

Sue and Melinda own a house as tenants in common. Sue owns 60% of the property and Melinda 40%. Sue and Melinda both go into a care home and claim SPC. The DM decides that the value of their share of the house cannot be disregarded. When deciding Sue's claim for SPC, the DM takes the value of her 60% of the property into account. When deciding Melinda's claim for SPC, the DM takes the value of her 40% share of the property into account.

84700

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Value

General

84701 DMs should ensure all factors which might affect the valuation of an item of capital are taken into account[1]. Some of the factors which might affect valuation are

1. it should be assumed that the person owning the capital is willing to sell it if that person is the claimant, or the claimant's partner

2. when a person is the beneficial owner and not the legal owner, such as when capital is held on trust, as the legal owners could

2.1 sell the capital and not give the proceeds of sale to the beneficial owners

2.2 encumber the capital with secured debts

2.3 if the capital is real or heritable property (see DMG 84022 **4.**), grant a lease on the property

3. whether the capital can be sold or withdrawn and if so when, such as when

3.1 there is a court order which says capital cannot be sold until a future date or event

3.2 the terms of an agreement says capital can only be withdrawn at the end of a fixed period

3.3 a bank or building society will not let money be withdrawn until it is decided who gets the money following the breakdown of marriage or civil partnership.

4. court proceedings, such as

4.1 when there is a disagreement about who has a beneficial interest in the capital

4.2 following the breakdown of marriage or civil partnership

5. the cost of any action to appoint someone to act on behalf of a legal owner who is mentally sick or disabled

6. if the capital is real or heritable property (see DMG 84022 **4.**),

6.1 whether it is freehold or leasehold, and whether anyone is living in the property, such as a

6.1.a tenant

6.1.b lessee

6.1.c child of a marriage which has broken down and the court has ordered that the child can live in the property until a certain date or event

6.2 whether there are planning or other restrictions on the property

7. the chances of a person who has rights to capital getting that capital if it is due and has not been paid.

Note: For the purposes of DMG 84701 **6.1** a person can fall within the term "excluded occupier" if they share the living space of the property with the claimant. However, this does not give the person any rights against eviction. For a person to acquire rights against eviction the nature of any licence to remain should be such that it can be determined by giving reasonable notice.

1 R(IS) 26/95

84702 There are additional factors if the capital is jointly held and real or heritable property (see DMG 84022 **4.**). Some of those additional factors are

1. whether the other owners

1.1 are willing and able to buy the share

1.2 will agree to the sale of the asset as a whole

1.3 are occupying the property and, if so, whether they would be willing to vacate the property

2. whether the courts would order

2.1 the sale of the property as a whole **or**

2.2 the partition of the property

if the other owners will not buy the share or agree to the sale of the asset as a whole

3. the length of time the buyer of the share may have to wait to get possession if the matter goes to court

4. the possibility of the buyers having to pay their legal costs and those of the other joint owners if the matter goes to court

5. the rights of the other joint owners to occupy the property

6. the amount of any encumbrances secured on the property

7. whether there is a current market for the claimant's share of the property or whether one might develop in the future.

84703 DMs should have a copy of the instructions given to the expert valuer if an expert valuer is used to ensure that the valuer has taken into account all the factors which might affect the valuation. The expert valuer should consider and say to what extent each of the factors would encourage, or discourage, a potential buyer. Also, if capital

is jointly held and is real or heritable property (see DMG 84022 **4.**), that the valuers have said

1. whether on the facts of the case there is any market for the deemed or actual share and where that market lies

2. how the market value has been worked out and what comparables have been relied on if comparables have been used

3. what their experience or knowledge is of the sale of a share in the circumstances of the case being valued[1]

4. what specific facts and law have been considered if the valuer says a court would order the sale of the property as a whole, or order the partition of the property[2]

5. how location, size and condition of a property affect its value

6. if the property is leasehold, what the length of the lease is and any special terms in it.

Note 1: The expert may have to make assumptions because the information is not available. If this is the case, the DM should ensure that the expert has stated what information is missing and the assumptions that have been made[3].

Note 2: Scottish valuations are made on a different basis from those undertaken in the rest of Britain. In particular they do not involve a discount for factors such as delayed right to possession.

1 R(IS) 26/95; 2 R(IS) 1/01; 3 R(JSA) 1/02

84704 The instructions from the Department to the expert valuer and the valuer's report on the valuation should be placed in evidence before the Appeal Tribunal if an appeal is made against the valuation. The valuer can be called as a witness at the hearing of the appeal if needed.

Current market value

84705 Current market value means the price a willing buyer will pay a willing seller in that market on the relevant date[1]. The market is the market for what is for sale. So, if a house is for sale, it is the property market. The relevant date is the date of claim or date of supersession.

1 R(SB) 6/84

84706 DMs work out the current market value

1. themselves **or**

2. from evidence given by the claimant or person whose capital it is **or**

3. from evidence from an expert valuer.

Current surrender value

84707 Current surrender value means the money people get if

1. they withdraw their capital on the date of claim or supersession **and**

2. that date is before the date a person gets the capital under the terms of the agreement **and**

3. the terms of the agreement lets a person withdraw the capital before the agreed date.

84708 The DM accepts the money people would get on the date of claim or supersession as the value. The value is the current market value if the agreement does not let a person withdraw capital before the agreed date.

Price

84709 The price is what people get for capital they have outside the UK (see DMG 070880) if it is sold to a willing buyer in the UK. The price is needed when the country where the capital is held will not allow the transfer of money to the UK.

84710 DMs work out the price

1. from evidence given by the claimant or person whose capital it is **or**

2. from evidence from an expert valuer.

Most cases will need an expert valuation.

Capital with more than one value

84711 DMs have to decide which value to accept if capital has more than one value, such as when capital has a current market and surrender value[1].

Costs of sale

84712 10% of the current market or surrender value or price is only deducted if there would be costs when a person sells capital. 10% of the value or price is deducted even if the actual costs would be more or less than that amount.

84713 There are normally costs of sale if a person

1. uses another person to sell the capital, such as

1.1 an estate agent

1.2 a broker **or**

1.3 an auctioneer **or**

2. needs the services of another person before the capital can be sold such as

2.1 a solicitor **or**

2.2 an accountant.

84714 There are always costs of sale if the capital is real or heritable property (see DMG 84022 **4.**)[1].

1 R(IS) 21/93

84715 Costs of sale do not include the cost of

1. postage, such as when a person applies in writing to withdraw premium bonds **or**

2. travelling expenses, such as bus fares when a person visits a building society to withdraw money.

84716 DMs work out 10% of the current market or surrender value or price if there are costs of sale. Costs of sale are worked out before a deduction is made for any incumbrances secured on the capital.

Incumbrances secured on capital

84717 An incumbrance is secured on capital when a person is owed money and has a right to

1. the capital **or**

2. stop it being sold

until the money owed is paid back. Such a debt is a legal charge or mortgage and is deducted from the

value of capital. A debt which is not secured is not deducted[1]. Any incumbrances secured on the capital as a whole will be taken into account when valuing the deemed or actual share if capital is jointly held and an expert valuer is used to value the deemed or actual share.

1 R(IS) 21/93

84718 The amount of the incumbrance which is deducted is the amount of money owed on the date of claim or supersession. The amount is deducted from the capital on which the debt is secured. If the debt is secured on more than one item of capital, the amount is deducted from

1. the total of the value of each item of capital on which the incumbrance is secured **or**

2. the total of the value of each item of capital

2.1 which is not disregarded **and**

2.2 on which the incumbrance is secured[1]

3. if any item of capital on which the incumbrance is secured can be disregarded.

Example

On 29.3.04 Anwar makes a claim for SPC. His capital consists of 20,000 shares and two houses. He lives in one of the houses, the other is unoccupied. Anwar has a mortgage which he used to buy the house he lives in. However, the mortgage is secured on his other house. He is in debt to his bank.

The bank is holding the share certificates and has a charge on the two houses as security for the debt. On 29.3.04 the current market value of the shares is £50,000 and that of the unoccupied house is £72,000. The amount outstanding on the mortgage is £45,000 and the debt to the bank is £62,000.

The DM decides that the value of the unoccupied house, less 10% for costs of sale and the mortgage which is secured on it, is £19,800. The DM also decides that the value of the shares, less 10% for costs of sale, is £45,000. Finally, the DM decides that the value of the unoccupied house and shares, less the debt to the bank which is secured on them, is £2,800 (£19,800 + £45,000 - £62,000 = £2,800).

1 R(IS) 21/93

84719 DMs need to know the amount of money owed on an incumbrance secured on capital at the date of claim or supersession. The person whose capital it is has to

1. provide evidence of the amount owed **or**

2. give permission for someone else to get the information.

The amount owed is deducted from the current market or surrender value, or price. DMs should not

make a deduction if there is no evidence of the amount owed, or permission is not given to get the information, and the DM cannot work out the amount owed from what evidence there is.

Value of a deemed or actual share in a capital asset outside the UK

84720 The value of a part-share in a capital asset outside the UK (see DMG 070880) depends on whether or not the country will allow money to be transferred to the UK.

84721 If money can be transferred to the UK the value of the deemed or actual share of the capital asset is

1. the market value of the deemed or actual share less

2. 10% if there would be expenses of sale.

Note: In most cases an expert valuation of the value of the deemed share will be needed.

84722 If the country will not allow the transfer of money to the UK, the value of the deemed or actual share will be the price the owner of the deemed or actual share would get from a willing buyer in the UK. DMs work out the price from evidence

1. given by the claimant or person whose capital it is **or**

2. from an expert valuer.

Note: Most cases will need an expert valuation.

84723 The onus is on the claimant to provide a letter from a bank of the country where the asset is held, or a letter from the Embassy of the country concerned. If there are difficulties getting this information DWP Capital Valuations will take expert advice from the Valuations Office in London.

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Bank and building society accounts

84731 A person who has money in a bank or building society account has a right to capital. The value of the rights to capital is the balance in the account on the date of claim or supersession. This is because it is assumed the bank or building society will be able to pay out the money when asked.

84732 If a person has a joint beneficial interest in a bank or building society account, the value of the deemed share is required. This is the balance in the account on the date of claim or supersession divided by the number of joint beneficial owners.

Example

Fergal and his daughter, Siobhan, are the joint legal and beneficial owners of a building society account. They both put money into the account to meet household bills. Siobhan now pays more into the account than Fergal as her income is larger than her father's since he retired. Fergal makes a claim to SPC and the balance in the account is £8,250. The DM decides that Fergal and his daughter have a joint beneficial interest in the account. The DM also decides that Fergal's share of the account is £4,125.

84733 An expert valuation of a right to capital is needed if there is something which stops people

getting their money out of a bank or building society account, such as the

1. person is the beneficial owner of the money in the account and not the legal owner and the legal owner will not withdraw the money **or**

2. bank or building society has gone into liquidation.

84734 - 84735

Business assets

The assets

84736 Business assets are the things which are risked and used in the business. Business assets can include

1. capital which may be in a bank or building society account, some other investment, or cash

2. money owed to the business, which is a current rights to capital (see DMG 84036 - 84037)

3. business premises, including the lease on such premises

4. machinery and equipment such as

- **4.1** cars and vans
- **4.2** sewing and gaming machines
- **4.3** work benches and display cabinets
- **4.4** refrigerators and freezers
- **4.5** computer equipment and facsimile machines
- **4.6** desks and chairs

5. stock, including livestock such as cows and horses.

Value of business assets

84737 The current market or surrender value or price of each business asset is needed. So if there are 30 sewing machines the DM has to decide the current market value or price of each machine.

Encumbrances secured on business assets

84738 Only debts which are an encumbrance secured on the business asset are deducted. So if suppliers are owed money and their debt is not secured on any of the business assets no deduction is

made.

84739 A bank may have a floating charge on the business assets if the business has an overdraft. A floating charge is an encumbrance secured on each business asset. The amount to deduct from the total value of all the business assets is the amount overdrawn on the date of claim or supersession.

Funds held by the Court of Protection

84740 When a mentally sick or disabled person has funds held by the Court of Protection (see DMG 84282 et seq), those funds should be valued in accordance with DMG 84692 - 84694. The person's incapacity does not affect this[1].

Example

Veronica lives in a care home and makes a claim for SPC. She has capital of £82,000 which was inherited from her father and is held by the Court of Protection. Veronica's brother, Henry, is her receiver. Henry states that Veronica's capital has negligible value because of her incapacity. However, the DM decides that Veronica's capital of £82,000 is taken into account for the purposes of calculating the amount of deemed weekly income from capital.

1 R(IS) 9/04

84741 - 84745

Personal equity plans

84746 A personal equity plan is an investment. People can invest up to a certain amount of money in a personal equity plan in each tax year if they are

1. 18 or over **and**

2. liable to pay UK (see DMG 070880) tax.

The value of a Personal Equity Plan is what people would get if they withdrew their investment on the date of claim or supersession. Any income which is paid out of a Personal Equity Plan is income from capital.

84747 A Personal Equity Plan mortgage is not a mortgage. It is a Personal Equity Plan and should be valued as such even if people say they are going to use their investment to pay off their mortgage. Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. The mortgage is not likely to be an incumbrance secured on the Personal Equity Plan.

Note: A Personal Equity Plan was replaced by an Individual Savings Account in April 1999. From that date people could no longer invest in their Personal Equity Plan or open a new one.

Individual savings account

84748 An Individual Savings Account is an investment. People can invest up to a certain amount of money in an Individual Savings Account in each tax year if they are

1. 16 or over **and**

2. resident or ordinarily resident in the UK for tax purposes.

The value of an Individual Savings Account is what people would get if they withdrew their investment on the date of claim or supersession. Any income, which is paid out of an Individual Savings Account, is income from capital.

84749 Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. If someone says they are using an Individual Savings Account to pay off their mortgage this will not be an incumbrance secured on the Individual Savings Account. The Individual Savings Account should be valued as such.

84750 It is a requirement of the Individual Savings Account regulations that the Individual Savings Account remain in the beneficial ownership of the investor[1].

1 The Individual Savings Account Regulations 1998 para 4(6)

Note: If there is evidence that the Individual Savings Account or Personal Equity Plan was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the Individual Savings Account or Personal Equity Plan then it may constitute an equitable charge and they should be valued taking that into account.

Lifetime individual savings account

84751 The Lifetime individual savings account is available for people who are aged 18 to 40 when it is opened. It is similar in many ways to a normal individual savings account with the addition of a government bonus of 25% paid on the contributions made by the saver of up to a limit of £4000 annually. This Lifetime individual savings account should be treated as capital from the outset with a value of

1. 75% of the surrender value where the person is under age 60 **or**

2. 100% of the surrender value where the person is over age 60

taken into account.

Right to receive income

84752 An expert valuation is needed of the value of the right to receive an income if the income can be

signed over to another person.

84753 Income which cannot be signed over to another person is

1. periodical maintenance payments

2. public service pensions, such as a civil service pension

3. SS benefits and allowances, such as RP.

84754 - 84755

Shares in a private company

84756 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

84757 The value of the shares is not worked out by dividing the value of all the shares in the company by the number of shares a person has[1]. The expert valuation cannot be more than the figure the company's auditors says is a fair value if the company's auditors say what a fair value is. The value is more likely to be less than what the company's auditors says is a fair value[2].

1 R(SB) 18/83; 2 R(IS) 2/90

84758 The expert valuation should take into account

1. anything in the articles of association which restricts the sale of the shares, such as the shares can only be sold

1.1 to the other shareholders and the shareholders will not buy them **or**

1.2 if the directors agree and they do not agree **and**

2. whether the person's shares in the company are a minority, equal or controlling interest.

Stocks and shares quoted on the London Stock Exchange

Value of stocks and shares

84759 The value of stocks and shares can be obtained from the financial pages in a newspaper which is dated the same date as the date of claim or supersession. A newspaper gives the price for most of the stocks and shares quoted on the London Stock Exchange. A valuation using the price given in a newspaper is not an exact valuation.

84760 To decide if an exact valuation is needed, first work out the value of the stocks and shares using the price given in a newspaper. An exact valuation is always needed if the price of a stock or share is not

given in a newspaper.

84761 To work out the value of stocks and shares from the price given in a newspaper

1. find the price of the stock or share in a newspaper which is dated the same date as the date of claim or supersession **and**

2. multiply the figure at **1.** by the number of that stock or share the person has.

84762 An exact valuation may be needed if DMG 84911 applies. To work out the exact value of stocks and shares[1]

1. use the free internet tool Yahoo Finance to find the highest and lowest price for the day before the date of claim or supersession

2. deduct the lowest price from the highest price

3. divide the figure at **2.** by four

4. add the figure at **3.** to the lowest price **and**

5. multiply the figure at **4.** by the number of that stock or share the person has.

1 R(IS) 18/95

84763 Once the value has been calculated as in DMG 84762 deduct 10% for expense of sale as in DMG 84692. Round down in the claimant's favour at the last stage of the calculation.

Example

Roy has 250 Marks and Spencer shares. The highest and lowest share prices for the day before the date of claim is £4.1750 and £4.1250 respectively.

Deduct the lowest from the highest price (£4.1750 - £4.1250) = £0.05

Divide £0.05 by 4 = £0.0125

Add £0.0125 to the lowest share price £0.0125 + £4.1250) = £4.1375

Multiply £4.1375 by the number of shares (250) = £1034.3750

Deduct 10% expense of sale = £930.93

Incumbrances secured on stocks and shares

84764 Stockbrokers have an incumbrance secured on stocks or shares if the person they have bought the stocks or shares for has not paid

1. the broker for them **or**

2. the broker's commission[1].

The incumbrance is secured only on the stocks and shares which have not been paid for or on which commission has not been paid. The incumbrance is not secured on any other stocks and shares which the stockbroker buys for the person.

1 R(IS) 18/95

84765 - 84766

84767 The amount of the incumbrance is the amount owed to the stockbroker.

Government securities

84768 Government Securities are stocks issued by the British Government. They are sold in £100 units but re-investments can be for different amounts. Government Securities include

1. consolidated stock

2. conversion loan

3. exchequer stock

4. funding stock

5. Treasury stock

6. 3½% War Loan

84769 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 84759 et seq).

84770 The free internet tool Yahoo Finance will provide DMs with a value provided the stock has not reached the date when the capital invested is repayable. If that date has been reached, the claimant should be advised to write to the Historic Price Service, London Stock Exchange, Old Broad Street, London EC2N 1HP. Any costs for this service should be met by the claimant. The information can be obtained from the London Stock Exchange website, although this only holds data from 1999 onwards.

Unit trusts

Value of unit trusts

84771 To work out the value of a unit in a unit trust

1. find the bid price for a unit in the trust in a newspaper which is dated the same date as the date of claim or supersession **and**

2. multiply the figure at **1.** by the number of units a person has.

Note: the value of a unit trust can also be found at: http://markets.ft.com/research/Markets/Data-Archive

Costs of sale

84772 People apply to the manager of the trust to withdraw their money so there are no costs of sale. This applies even if persons use an agent, such as a stockbroker.

84773 - 84775

Notional capital 84776 - 84780

The law 84776 - 84780

The law

84776 People should be treated as having capital they do not have if

1. they deprive themselves of capital to get SPC or more SPC **or**

2. they have shares in a company and are treated as a

2.1 sole owner **or**

2.2 partner

in the business of that company[1].

1 SPC Act 02, s 15(6)(a) & SPC Regs, reg 21

84777 The capital people are treated as having is called notional capital.

84778 - 84780

Deprivation of capital 84781 - 84820

General 84781 - 84790

Have people deprived themselves of capital 84791 - 84800

Have people deprived themselves of capital for the purpose of getting SPC or more SPC 84801 - 84805

Facts which DMs should consider 84806 - 84820

General

The law

84781 People should be treated as having capital they do not have if they deprive themselves of their capital for the purpose of getting SPC or more SPC[1]. People are not treated as having the amount by which notional capital is reduced under the diminishing notional capital rule[2]. People have not deprived themselves of capital if they disposed of it

1. to reduce or pay a debt owed by themselves[3] **or**

2. to buy goods or services and it was reasonable in their case to buy such goods or services[4].

Example

Geoffrey has made a new claim to SPC and has provided evidence of his bank accounts. These show a receipt of £45,000 followed quickly by a transfer of £38,000 Geoffrey was formerly an owner occupier but has since moved into rented accommodation. The property has been sold and after repayment of the mortgage the completion statement shows that the net proceeds were £45,000. Geoffrey advises that he gave £38,000 to his sons leaving him with £7,000. Following his divorce 10 years ago, he had borrowed £32,000 from the sons to buy his former wife's share of the property. He produces a legal deed confirming that he would repay the sons with interest in the event of selling the property. The DM accepts that Geoffrey's capital is below £10,000 and that he had to repay a debt.

1 SPC Regs, reg 21(1); 2 reg 21(1); 3 reg 21(2)(a); 4 reg 21(2)(b)

Who the law applies to

84782 The law applies only to people who were the beneficial owners or joint beneficial owners of the capital which they have deprived themselves of. So if claimants are the joint beneficial owners of a building society account which has £10,000 in it and the claimant's share is £4,000 the law

1. applies if claimants deprive themselves of that £4,000 or any part of it for the purpose of getting SPC

or more SPC **and**

2. does not apply if the other £6,000 or any part of it is spent or given away.

84783 The law does not apply if another person, such as

1. an appointee appointed by the Secretary of State **or**

2. someone with power of attorney (unless DMG 84294 applies)

deprives people of their capital.

84784 DMs should decide the question of deprivation each time SPC is claimed because

1. a decision on a claim is final **and**

2. any fact found or determination made in connection with that decision cannot be carried forward to decide the next claim[1].

1 SS Act 98, s 17

84785 - 84790

Have people deprived themselves of capital

Meaning of deprive

84791 The meaning of deprive is not a question of law and should be given its normal every day meaning[1]. So people have deprived themselves of capital if they no longer have it even if they use it to get other capital[2].

Example

Jane was formerly an owner occupier. She has moved into rented accommodation owned by her son's property investment company. The completion statement shows that the net proceeds from the sale of her house were £75,000. Harvey, who is her son and also her landlord, has provided invoices in the sum of £70,000 for essential repairs and renovation to the new accommodation. The DM does not accept that payments for improvements to Harvey's property were debts owed by Jane, and treats Jane as having notional capital of £70,000.

1 R(SB) 40/85; 2 R(SB) 40/85

Onus of proof

84792 People have to show they no longer have capital[1].

1 R(SB) 38/85

Evidence that people no longer have capital

84793 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real or heritable property (see DMG 84022 **4.**), such as a house, has been transferred to another person **or**

2. a deed, such as a deed of

2.1 gift **or**

2.2 trust **or**

2.3 settlement

which shows capital has been given to another person **or**

3. receipts which show what the capital has been spent on.

What the DM decides

84794 The DM decides if people have

1. the capital **or**

2. deprived themselves of it.

DMs do not have to decide if people have deprived themselves of capital for the purpose of getting SPC or more SPC if they decide those people have the capital. Such capital is included when working out actual capital.

84795 DMs should decide people have actual capital if

1. there is evidence to show they had the capital **and**

2. those people cannot show they no longer have it[1].

Example

Diana is in receipt of SPC. She was formerly an owner occupier. Owing to increased care needs she has moved permanently to live with her daughter. The value of the former home was disregarded while the property was on the market. The sale has been completed and the completion statement shows that the

net proceeds were £300,000. Diana states she only has £7,000 but is unable to account for the rest. The DM decides that it is reasonable to treat Diana as still having actual capital in the sum of £300,000 and she is therefore no longer entitled to SPC.

1 R(SB) 38/85

Evidence which may show people had capital

84796 Evidence which may show people had capital can include information

1. given when SPC was claimed or claimed previously, such as when claimants have said they

1.1 had capital and do not say they have capital now **or**

1.2 owned the house in which they used to live and do not say what has happened to the house when they move into accommodation they do not own **or**

2. from another source, such as from the former partner, which shows claimants have got a one-off payment.

84797 - 84800

Have people deprived themselves of capital for the purpose of getting SPC or more SPC

Onus of proof

84801 DMs have to show the purpose for the deprivation was to get SPC or more SPC if they decide people have deprived themselves of capital. Getting SPC or more SPC may not be the predominant purpose but it must be a significant one[1]. So when claimants give away all their capital to a relative just before claiming SPC their

1. main, or predominant, purpose may be to benefit the relative **and**

2. intention, or significant purpose, may be to reduce their capital so they can get SPC or more SPC.

1 R(SB) 40/85

What the DM decides

84802 DMs have to decide if the significant purpose was to get SPC or more SPC. The DM has to make such a decision each time people deprive themselves of capital. So if claimants have spent their capital on several things the DM has to decide the claimant's purpose for each act of deprivation.

84803 Normally there is no direct evidence to show the purpose was to get SPC or more SPC. So the DM has to consider all the facts of each case when making the decision[1].

Example

Ruth has been in receipt of SPC since 6.10.06. On 25.2.07 she transfers legal and beneficial ownership of her house to her daughters and goes to live in a care home. Ruth says that she transferred ownership of her home to her daughters so they still had somewhere to live when she went to live in the care home. The DM decides that there are grounds to revise or supersede the decision awarding SPC to Ruth. The DM also decides that, although her predominant motive was to provide a home for her daughters, a significant purpose was to receive SPC. The DM therefore decides that Ruth deprived herself of the value of her house in order to receive SPC.

1 R(SB) 9/91

84804 - 84805

Facts which DMs should consider

Were people mentally capable when they deprived themselves of capital

84806 People who are not mentally capable have not deprived themselves of capital for the purpose of getting SPC or more SPC if they were not mentally capable at the time they deprived themselves of capital. Such people have actual capital if they gave their capital to another person because the gift is not valid. The person who has been given the capital is holding it on trust for those people.

Did people have a choice when they deprived themselves of capital

84807 The DM has to decide why people chose to deprive themselves of capital when they did if they had a choice in the matter, such as when people give their capital away. The fact that people had a choice does not mean their purpose was to get SPC or more SPC[1]. It is a fact which the DM should take into account when deciding the purpose of the deprivation.

1 R(SB) 12/91

84808 People have no choice if they use their capital to pay for the necessities of life, such as food and fuel. People have not deprived themselves of capital to get SPC or more SPC if they have no choice.

Did people know capital affects the amount of SPC they can get

84809 People have not deprived themselves of capital for the purpose of getting SPC or more SPC if they did not know that the capital they have deprived themselves of would affect the amount of SPC they could get[1].

1 R(SB) 12/91

84810 DMs have to show people did have such knowledge if they are to decide the purpose was to get SPC or more SPC. Facts which the DM should consider include

1. previous claims for SPC which may show people

1.1 did not get SPC, or got a reduced amount, because of the capital they had **or**

1.2 have been told about the effect of capital on SPC

2. official forms and leaflets which people have been given when claiming SPC[1] **and**

3. people's educational standing[2].

Example

George has been in receipt of SPC for over a year and has £12,000 in his bank account. As a hobby, he likes to do mechanical work on cars and vans for friends and also for himself. A relative of George bequeaths him £10,000 and this now means that his deemed weekly income from capital exceeds his SPC entitlement. George then spends the £10,000 on two vehicles which he says he wants to restore and on various parts and tools. He reclaims SPC. The DM decides that, in George's case, the expenditure was not reasonable because there was no need to spend the whole amount on expanding his hobby. George is familiar with the SPC capital rules and knew what effect his capital had. The DM decides that George has to be treated as possessing notional capital of £10,000 because, on balance, his intention was to secure entitlement to SPC.

1 R(SB) 12/91; 2 R(SB) 12/91

84811

Did people say what they were going to do with their capital

84812 People have not deprived themselves of capital for the purpose of getting SPC or more SPC if they

1. say exactly what they are going to do with their capital **and**

2. are told by the Department it **will not** affect the amount of SPC they can get **and**

3. do what they said they were going to do with their capital.

84813 However, DMs should consider whether people have deprived themselves of capital for the purpose of getting SPC or more SPC if they

1. say exactly what they are going to do with their capital **and**

2. are told by the Department it **will** affect the amount of SPC they can get **and**

3. do what they said they were going to do with their capital.

When did people deprive themselves of capital

84814 DMs should consider the date people deprived themselves of capital. Such a fact is more relevant if the date of deprivation is near to the date of claim or supersession[1].

1 R(SB) 9/91

What are people going to live on after they have deprived themselves of capital

84815 DMs should consider what people say they are going to live on after they have deprived themselves of capital. Such a fact is more relevant if they have no other capital or income to live on[1].

1 R(SB) 9/91

84816 DMs cannot decide the purpose of the deprivation was to get SPC or more SPC if the only fact is that after depriving themselves of capital

1. people should have realized **or**

2. the effect of it would be

they would need SPC[1].

Example

Laetitia makes a new claim to SPC and has never claimed means-tested benefits before. Prior to claiming SPC, Laetitia spent a retirement lump sum from her former employer on a Caribbean cruise. When she returned home, she made a claim to SPC after a friend told her she might be entitled because she isn't receiving the full amount of SP. The DM decides Laetitia no longer has the capital that she spent on the holiday but that, on balance, the deprivation wasn't for the purpose of securing entitlement to SPC. This is because Laetitia had no knowledge of the SPC capital rules and didn't realise that she might be entitled to it on top of her SP.

1 R(SB) 40/85

84817 - 84820

People treated as sole owner or partner in a company 84821 - 84830

The law

84821 People who have shares in a company are treated as the sole owner or a partner in the business of that company if they are like a sole owner or partner in the business of the company. If this applies to the person, the

1. value of the person's shares in the company is disregarded when working out what capital the person has **and**

2. person is treated as having capital which is equal to

> **2.1** the value of the capital of that company if the person is treated as the sole owner **or**
>
> **2.2** the person's share of the value of the capital of that company if the person is treated as a partner[1].

The capital the person is treated as having at **2.** is disregarded if the person is undertaking activities in the course of the business of that company[2].

1 SPC Regs, reg 21(3); 2 reg 21(4)

Like a sole owner or partner

84822 Whether a person who has shares in a company is like a sole owner or partner in the business of that company is a question of fact in each case[1]. A person who does not work for the company can be like a sole owner or partner[2].

1 R(IS) 8/92; 2 R(IS) 8/92

84823 The sole owner of a business has total influence over the day to day running of the business. When a business is jointly owned the number of partners is normally small and the influence a partner has over the day to day running of the business will depend on the terms of the partnership agreement. So for a person to be like a

1. sole owner in the business of the company that person should have total influence over the day to day running of the company, such as when a person owns 99% of the shares in a company[1] **and**

2. partner in the business of the company the

> **2.1** number of shareholders in the company should be small **and**

2.2 person should have some meaningful influence over the day to day running of the company[2].

1 R(IS) 13/93; 2 R(IS) 8/92

84824 A person who has some shares in a company which has a large number of shareholders, such as ICI, is an investor because such a person has no influence over the day to day running of the company[1].

1 R(IS) 8/92

Undertaking activities in the course of the business

84825 A person who is a shareholder in a company is undertaking activities in the course of the business of the company if that person is doing some work, no matter how little, for that company. So a person who takes telephone messages and receives mail for the company is undertaking activities in the course of the business of that company[1].

1 R(IS) 13/93

What DMs decide

84826 DMs decide whether a person who has shares in a company is treated as a sole owner or partner in the business of the company. If so, DMs

1. disregard the value of the person's shares in the company **and**

2. decide whether the value of the capital the person is treated as having is disregarded because the person is undertaking activities in the course of the business of the company.

DMs decide the value of the capital the person is treated as having if the value at **2.** cannot be disregarded.

84827 - 84830

What is the amount of notional capital 84831 - 84910

How to work out the amount of notional capital 84831 - 84835

Disregards 84836 - 84845

Value 84846 - 84860

Diminishing notional capital rule 84861 - 84910

How to work out the amount of notional capital

The law

84831 The amount of notional capital is worked out in the same way as if the person has the capital[1].

1 SPC Regs, reg 21(5)

What DMs decide

84832 DMs decide

1. what notional capital can be disregarded (see DMG 84836 - 84839) **and**

2. the value of notional capital which cannot be disregarded (see DMG 84846 - 84850).

84833 - 84835

Disregards

Capital of a company

84836 Normally a person has no beneficial interest in the capital of a company. But, if a person who has shares in a company, is treated as a

1. sole owner **or**

2. partner

in the business of the company the person is also treated as having the value of the capital of the company unless it is disregarded.

84837 The value of the capital of a company is disregarded if the person is undertaking activities in the course of the business of the company.

Premises which are to be sold

84838 Premises which are to be sold are normally disregarded. But they are not disregarded if people are treated as having them because they transferred legal ownership to another person to get SPC or more SPC. A person who is not the legal owner of premises cannot take any steps to dispose of them so the disregard does not apply.

Shares

84839 The value of a person's shares in a company is not normally disregarded. But the value of a person's shares in a company is disregarded if the person is treated as a

1. sole owner **or**

2. partner

in the business of the company.

84840 - 84845

Value

Capital of a company

84846 Normally a person has no beneficial interest in the capital of a company. But if a person who has shares in a company is treated as a

1. sole owner **or**

2. partner

in the business of the company the person is also treated as having the value or a share of the value of the capital of the company if it is not disregarded.

84847 The value of the capital of the company is the net value of the capital of that company. The net value is the difference between

1. the total value of the capital of the company **and**

2. the amount of any liabilities the company has[1].

It is not the value of some of the capital of the company[2].

An expert valuation will be needed if the company's auditors do not provide evidence of the net value of the capital of the company.

1 R(IS) 13/93; 2 R(IS) 13/93

84848 The value the person is treated as possessing is

1. all the value if the person is treated as a sole owner **and**

2. a share of the value if the person is treated as a partner.

The share at **2.** is the same fraction as the fraction of shares the person has in the company. So a person who has 40 out of a 100 shares in a company has a two fifth's share of the value.

Capital spent on a resource which is not worth as much

84849 The value of notional capital is the difference between the value of

1. capital spent **and**

2. resource which was bought

if people have deprived themselves of capital to get SPC or more SPC and they spent their capital on a resource which is not worth as much as the capital spent[1].

1 R(SB) 38/85

Capital which people have deprived themselves of

84850 The value of the capital people are treated as having is the difference between

1. its value on the date of claim or supersession **and**

2. the amount of any reduction under the diminishing notional capital rule

if they have deprived themselves of capital to get SPC or more SPC[1].

1 SPC Regs, reg 21(1)

84851 - 84860

Diminishing notional capital rule

The law

84861 There are special rules for

1. when capital a person is treated as having because of deprivation should be reduced **and**

2. how the amount of the reduction is worked out[1].

1 reg 22

What DMs decide

84862 DMs decide

1. when the capital a person is treated as having because of deprivation should be reduced **and**

2. the amount of the reduction.

The diminishing notional capital rule

84863 The diminishing notional capital rule gives two ways for reducing the amount of capital a person is treated as having because of deprivation. If the person

1. is getting SPC, capital is reduced as in DMG 84869 - 84871

2. is not getting SPC, it is reduced as in DMG 84881 - 84883.

84864 - 84865

Meaning of benefit week

84866 Benefit week means a period of seven days starting with the day on which SPC is payable[1].

1 SPC Regs, reg 1(2)

Meaning of relevant week

84867 Relevant week means

1. the first benefit week when the capital a person is treated as having because of deprivation is taken into account to decide what SPC the claimant can get **or**

2. any benefit week after the one at **1.** when the capital is taken into account to determine or re-determine what SPC the person can get and it is decided the person

2.1 can start getting SPC **or**

2.2 can no longer get SPC.

The relevant week is the latest benefit week if more than one benefit week is identified after applying **1.** and **2.**[1].

Example

On 8.3.07 Freda makes a claim for SPC. Her SPC payday is Monday. Two days before making her claim Freda deprived herself of £18,500 and the DM decides she did so in order to get SPC. The week from 12.3.07 to 18.3.07 is the first notional capital is taken into account. The DM therefore decides that this is the relevant week.

1 reg 22(7)(a)

Meaning of relevant subsequent week

84868 Relevant subsequent week means

1. the benefit week which includes the day when

1.1 a further claim for SPC is made **or**

1.2 the last claim for SPC is made if more than one further claim for SPC is made **and**

2. the further claim for SPC is made 26 weeks or more after

2.1 the date of the claim when the person is first treated as having capital because of deprivation **or**

2.2 the date of the claim when the amount of the reduction to capital is last changed (see DMG 84891 - 84895) **or**

2.3 the last date the claimant stopped getting SPC **and**

if more than one date is identified after applying **2.1** to **2.3** the date is the latest date **and**

3. the person can get SPC if they are not treated as having capital because of deprivation[1].

Example

On 9.10.06 Hamish makes a claim for SPC. His SPC payday is Monday. The DM decides that Hamish should be treated as having capital of £35,000 because of deprivation. Hamish is not entitled to SPC. On 25.4.07 Hamish makes a further claim for SPC. The DM decides that the amount of notional capital Hamish is treated as having because of deprivation has reduced. The DM also decides that the relevant subsequent week is from 30.4.07 to 6.5.07.

1 SPC Regs, reg 22(7)(b)

How to work out and apply the reduction - person getting SPC

84869 The amount of the reduction is the extra SPC people would get if they are not treated as having capital because of deprivation[1].

1 reg 22(1)(a) & (2)

84870 The reduction is made if

1. in the relevant week or any week after that week people are getting SPC, **and**

2. they would get more SPC if they are not treated as having the capital[1].

1 reg 22(1)(a) & (2)

84871 The reduction is made from the week after the relevant week and any week after that[1].

1 reg 22(1)(a)

84872 - 84880

How to work out and apply the reduction - person not getting SPC

84881 The amount of the reduction is

1. the SPC people get in the relevant week if they are not treated as having capital because of deprivation **and**

2. the difference between

2.1 the maximum amount of HB and CT benefit they can get **and**

2.2 the amount of that HB and CT benefit people are getting for

2.2.a a period of seven consecutive days starting on a Monday and ending on Sunday **and**

2.2.b the period includes the last day of the relevant week[1].

The amount of the reduction can be changed (see DMG 84891 - 84895).

1 SPC Regs, reg 22(1)(b) & (3)

84882 The reduction is made if, in the relevant week, people can get SPC if they are not treated as having capital because of deprivation[1].

1 reg 22(1)(b) & (3)

84883 The reduction is made from the week after the relevant week and any week after that week[1].

1 reg 22(1)(b)

84884 - 84890

When to change the amount of the reduction

84891 The amount of the reduction in DMG 84881 can be changed if

1. another claim for SPC is made[1] (see DMG 84892) **and**

2. people can get SPC in the relevant subsequent week if they are not treated as having capital because of deprivation[2].

1 reg 22(4); 2 reg 22(5)

84892 The claim for SPC must be made 26 weeks or more after

1. the date of the claim when the claimant is first treated as having capital because of deprivation **or**

2. the date of the claim when the amount of the reduction is last changed under DMG 84891 **or**

3. the last date the claimant stopped getting SPC.

If more than one date is identified after applying **1.** to **3.** the date is the latest date[1].

1 reg 22(5)

How to work out and apply the new amount of the reduction

84893 The amount of the reduction is

1. the SPC people get in the relevant subsequent week if they are not treated as having capital because of deprivation **and**

2. the difference between

2.1 the maximum amount of HB and CT benefit they can get **and**

2.2 the amount of that benefit they are getting for

2.2.a a period of seven consecutive days starting on a Monday and ending on Sunday **and**

2.2.b the period includes the last day of the relevant subsequent week[1].

1 reg 22(1)(b), (3) and (4)

84894 If the amount of the reduction as in DMG 84893 is less than the one before use the one before[1].

1 SPC Regs, reg 22(6)

84895 The new amount of the reduction is made from the week after the relevant subsequent week and any week after that[1].

1 reg 22(4)(b)

84896 - 84910

Deemed weekly income from capital 84911 - 84999

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How to work out the amount of deemed weekly income 84921 - 84999

The law

Deemed weekly income from capital

84911 The amount of deemed weekly income from capital is £1

1. for each £500 over £10,000 **and**

2. for any capital which is left and which is not a complete £500[1].

1 SPC Act 02, s 15(2) & SPC Regs, reg 15(6)

84912 - 84920

How to work out the amount of deemed weekly income

Total amount of capital

84921 The total amount of capital each person has is the total of the value of each item of actual capital **and** notional capital that person has. The total amount of capital of claimants is

1. the total amount of their capital if they do not have a partner **or**

2. the total amount of their capital and the total amount of their partner's capital if they have a partner[1].

1 SPC Regs, s 5 & s 12(2)(d) & reg 8 & Sch III, para 1(4)

When does income become capital

84922 Where a claimant receives income, at a certain point that income becomes capital. This point is reached when the period for which the income is paid has expired. So the DM should have regard to receipts of income when calculating tariff income deemed to be generated from a claimant's capital[1].

Example

Bill submits a claim for SPC on 21 August. He provides a bank statement dated 18 August showing a balance of £12,335.46. If tariff income were calculated on this amount it would be £5.00 per week. Bill also receives RP of £415.63 which is paid four weekly directly into this bank account. He last received a

payment on 17 August

to cover the period 17 August to 13 September. At the date of claim, as the period for which the RP was paid has not yet expired, his capital should be reduced by the amount of his 4 weekly payment of RP. This reduces his capital to £11,919.83 which produces a tariff income of £4.00 per week.

1 R(PC) 3/08

84923 If any amount is withdrawn from an account which includes income and capital, the amount of capital is reduced if there is evidence to show the money withdrawn is from capital. The assumption is that income is spent before capital.

Example

On 2 February Wendy makes a claim for SPC. She has £11,550 in a bank account. This includes a month's occupational pension of £250 which Wendy receives on the last day of each calendar month. The DM decides that Wendy has capital of £11,300 because the period for which her occupational pension of £250 is paid has not yet expired and so has not become capital. On 16 February Wendy, withdraws £320 from her bank account to pay her car insurance. There is no evidence of any other withdrawals since 2 February. The DM decides that Wendy has spent her occupational pension of £250 and that her capital has reduced by £70 (i.e. the difference between the amount withdrawn and the amount of the occupational pension payment) to £11,230.

Deemed weekly income

84924 The total amount of capital of the claimant is used to work out the deemed weekly income. See Appendix 1 for a table which shows how to work out deemed weekly income on the total amount of capital. See DMG 85030 et seq for how to take the deemed weekly income into account.

84925 - 84999

Appendix 1 - How to work out deemed weekly income from capital (DMG 84911)

How to work out deemed weekly income from capital (DMG 84911)

Total capital		**Deemed weekly income from capital**
From	**To**	**£**
£	**£**	
NIL	10,000.00	NIL
10,000.01	10,500.00	1
10,500.01	11,000.00	2
11,000.01	11,500.00	3
11,500.01	12,000.00	4
12,000.01	12,500.00	5
12,500.01	13,000.00	6
13,000.01	13,500.00	7
13,500.01	14,000.00	8
14,000.01	14,500.00	9
14,500.01	15,000.00	10
15,000.01	15,500.00	11
15,500.01	16,000.00	12

16,000.01	16,500.00	13
16,500.01	17,000.00	14
17,000.01	17,500.00	15
17,500.01	18,000.00	16
18,000.01	18,500.00	17
18,500.01	19,000.00	18
19,000.01	19,500.00	19
19,500.01	20,000.00	20
and so on	and so on	and so on

The content of the examples in this document (including use of imagery) is for illustrative purposes only