Chapter 78 - State Pension Credit: additional amounts and special groups

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Statutes commonly referred to in Chapter 78

Full Title	Abbreviation
The Criminal Justice (Northern Ireland) Order 2008	Criminal Justice (NI) Order 2008
The Deregulation (Carer's Allowance) Order (Northern Ireland) 2002	The Deregulation (Carer's Allowance) Order (NI) 2002
The Housing Support Services (Northern Ireland) Order 2002	Housing Support Services (NI) Order 2002
Health and Personal Social Services (Northern Ireland) Order 1972	HPSS (NI) Order 72
Immigration and Asylum Act 1999	Immigration and Asylum Act 1999
Personal Injuries (Civilians) Scheme 1983 (Civilians) Scheme 83	Personal Injuries
Mental Health Act 1983	Mental Health Act 83
National Assistance Act 1948	NA Act 48
Prison Act (Northern Ireland) 1953	Prison Act (NI) 1953
Rates (Northern Ireland) Order 1977	Rates (NI) Order 1977
Social Security Contributions and Benefits (Northern Ireland) Act 1992	SS C&B (NI) Act 92
Social Security Fraud Act (Northern Ireland) 2001	SS Fraud Act (NI) 2001
State Pension Credit Act (Northern Ireland) 2002	SPC Act (NI) 02
Workmen's Compensation Act 1925-43	Workmen's Compensation Act 1925-1943

Statutory Rules commonly referred to in Chapter 78

Short description	Full title	Abbreviation
Decisions and Appeals Regulation	The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 No 162	SS & CS (D&A) Regs (NI)
HB Regulations	The Housing Benefit (General) Regulations (Northern Ireland) 2006 No 405	HB (Gen) Regs (NI)
HB (SPC) Regulations	The Housing Benefit (Persons who have attained the age for State Pension Credit) Regulations (Northern Ireland) 2006 No 406	HB (SPC) Regs (NI)
IS Regulations	The Income Support (General) Regulations (Northern Ireland) 1987 No 459	IS (Gen) Regs (NI)
IS (Transitional) Regulations 1987	The Income Support (Transitional) Regulations (Northern Ireland) 1987 No 460	IS (Trans) Regs (NI) 87
JSA Regulations	The Jobseeker's Allowance Regulations (Northern Ireland) 1996 No 198	JSA Regs (NI)
SPC Regulations	The State Pension Credit Regulations (Northern Ireland) 2003 No 28	SPC Regs (NI)
Consequential, Transitional and Miscellaneous Provisions Regulations	The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations (Northern Ireland) 2003 No 191	SPC (Cql, Trans & Misc Provs) Regs (NI)

Hospital In-Patients Regulations	The Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005 No 580	SS (HIP) Regs (NI)
Immigration and Asylum Consequential Regulations	The Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 No 71	SS (Immigration and Asylum) Consequential Amendments Regulations (NI) 2000
Loss of Benefit Regulations	The Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002 No 79	SS (Loss of Benefit) Regs (NI)
Miscellaneous Amendments No 5 Regulations 2006	The Social Security (Miscellaneous Amendments No 5) Regulations (Northern Ireland) 2006 No 510	SS (Misc Amdts No 5) Regs (NI) 2006
Persons from Abroad Miscellaneous Amendments 1996	The Social Security (Persons The Social Security (Persons Amendments) Regulations (Northern Ireland) 1996 No 11	SS (PFA) (Misc Amdts) Regs (NI)
Loans for Mortgage Interest Regulations	The Loans for Mortgage Interest Regulations (Northern Ireland) 2017 No 176	LMI Regs (NI)

Chapter 78 - Additional amounts and special groups

General

Scope of this Chapter

78001 This Chapter contains guidance on State Pension Credit and the

1. additional amounts that may be awarded for

1.1 the severely disabled (see DMG 78040)

1.2 carers (see DMG 78100)

1.3 former claimants of Income Support/income-based Jobseeker's Allowance (see DMG 78120)

1.4 housing costs (see DMG 78170)

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

2. special rules that apply to

2.1 members of polygamous marriages (see DMG 78600)

2.2 prisoners (see DMG 78650)

2.3 members of religious orders (see DMG 78680)

2.4 people in hospital (see DMG 78700)

2.5 people who are subject to the loss of benefit provisions (see DMG 78900)

2.6 people who are absent from Northern Ireland (see DMG 78920 and DMG Chapter 07).

78002 For guidance on

1. the conditions of entitlement for State Pension Credit - see DMG 77031 et seq

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

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

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

5. transitional provisions - see DMG Chapter 80

6. the assessed income period - see DMG Chapter 83

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

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

9. the treatment of earnings - see DMG Chapter 86.

78003 – 78004

Definitions

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

"Attendance Allowance"

78006 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Attendance Allowance means[1] any of the following

1. Attendance Allowance[2]

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

3. Exceptionally Severe Disablement Allowance which is paid because industrial disablement has been assessed at 100%[4]

4. any

4.1 Constant Attendance Allowance **or**

4.2 Exceptionally Severe Disablement Allowance

paid because the claimant is entitled to Workmen's Compensation[5]

5. an attendance allowance paid under the Pneumoconiosis Byssinosis and Miscellaneous Diseases Benefits scheme

6. any

6.1 payments for attendance under the Civilians Personal Injury Scheme[6] **or**

6.2 similar payments to **6.1**

7. any payment for attendance paid as

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

7.2 any pension or allowance paid to

7.2.a a widow **or**

7.2.b a widower **or**

7.2.c a surviving civil partner

in respect of a death due to military service or war injury under certain legislation[7]

8. any payment for attendance which is part of War Disablement Pension (including severe disablement occupational allowance paid with Constant Attendance Allowance).

Note: Payments in **6.** are made to people who receive a disability pension because of war injuries suffered as civilians or civil defence volunteers.

1 SPC Regs (NI), reg 1(2); 2 SS C&B (NI) Act 92, sec 64; 3 sec 104 & 105; 4 sec 104 & 105; 5 Workmen's Compensation Acts 1925 - 1945; 6 Personal Injuries (Civilians) Scheme 83, art 14-16, 43 & 44; 7 SPC Regs (NI), reg 15(5)(ac); Income Tax (Earnings and Pensions) Act 2003, s 639(2)

78007

Treated as blind or severely sight impaired

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

1 SPC Regs (NI), Sch 1, para 1(3); Sch 2, para 14(6)(a)

Full-time student

78009 A full time student is[1] a person who is not a qualifying young person or a child who is

1. aged less than 19 and is attending or undertaking a full time course of advanced education **or**

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

3. on a sandwich course.

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

78010 For further information on full time students, see the guidance on students for Income Support purposes in DMG Chapter 30.

Voluntary organisation

78011 A voluntary organisation is any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association[1].

1 SPC Regs (NI), reg 1(2)

78012 – 78024

Additional amounts of guarantee credit

General

Categories

78025 There are four types of additional amount[1] that may be applicable when considering the amount of the appropriate minimum guarantee. These are for

1. the severely disabled

2. carers

3. former claimants of Income Support/income-based Jobseeker's Allowance

4. housing costs

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

1 SPC Act (NI) 02, sec 2; SPC Regs (NI), reg 6; Sch 1 & 2

Rates of additional amounts

78026 Decision makers should note that the additional amount for

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

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

3. former claimants of Income Support/income-based Jobseeker's Allowance is variable depending on the circumstances of each individual case

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

5. a child or qualifying young person depends on their date of birth, and an additional amount may be payable depending if the child or qualifying young person is entitled to any amount of Disability Living Allowance/Personal Independence Payment.

Qualifying conditions

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

1. the claimant **or**

2. any partner of the claimant.

78028 – 78029

Additional amount for the severely disabled

General

78030 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** When considering the amount of the appropriate minimum guarantee, an additional amount is applicable if the claimant is treated as being severely disabled[1].

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

Note: Where a claimant claims that either they or the disabled person is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to Decision Making Services, for consideration of whether the benefit falls within article 5 of Regulation (EC) No 883/2004.

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

1. prisoners **and**

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

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

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

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

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

Lower rate

Claimants who have no partner

78034 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Claimants with no partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if[1]

1. they are in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 the daily living component of Adult Disability Payment at the standard or enhanced rate **or**

1.5 Armed Forces Independence Payment **and**

2. there are no persons aged 18 or over

2.1 normally residing with the claimant **or**

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

3. no one is entitled to and in receipt of Carer's Allowance or Universal Credit that includes the carers element, in respect of caring for them.

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

Transitional protection

78035 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Carers who are aged 65 and over on or before 28.10.02 can continue to be entitled to Carer's Allowance even though they are no longer providing care[1], for example after the disabled person has died.

1 The Deregulation (Carer's Allowance) Order (NI) 2002, SR 321/02

78036 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** A claimant will not be disqualified under DMG 78034 **3.**, from the extra amount for the severely disabled where the person in receipt of Carer's Allowance is not providing care but retains payment of the Carer's Allowance as a result of transitional protection.

78037 – 78044

Claimants who have a partner

78045 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Claimants who have a partner are treated as being severely disabled and are entitled to the lower rate of additional amount for the severely disabled if[1]

1. both partners are in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 the daily living component of Adult Disability Payment at the standard or enhanced rate **or**

1.5 Armed Forces Independence Payment **and**

2. there are no persons aged 18 or over

2.1 normally residing with the partners **or**

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

3. someone is entitled to and in receipt of Carer's Allowance or Universal Credit that includes the carer element in respect of caring for only one of the partners.

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

78046 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Claimants who have a partner may not satisfy the conditions in DMG 78045. In such a case the lower rate can still be awarded if[1]

1. one of the partners is in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 the daily living component of Adult Disability Payment at the standard or enhanced rate **or**

1.5 Armed Forces Independence Payment **and**

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

3. there are no persons aged 18 or over

3.1 normally residing with the partners **or**

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

4. no-one is entitled to and in receipt of Carer's Allowance or Universal Credit that includes the carer element in respect of caring for the partner who is receiving "Attendance Allowance" or Disability Living Allowance as in **1.**.

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

78047 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** The lower rate of additional amount for the severely disabled can also be awarded to claimants who have a partner if[1]

1. one of the partners is in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 the daily living component of Adult Disability Payment at the standard or enhanced rate **or**

1.5 Armed Forces Independence Payment **and**

2. the other partner would be in receipt of

2.1 "Attendance Allowance" **or**

2.2 the care component of Disability Living Allowance at the highest or middle rate **or**

2.3 the daily living component of Adult Disability Payment at the standard or enhanced rate **or**

2.4 the daily living component of Personal Independence Payment at the standard or enhanced rate

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

3. there are no persons aged 18 or over

3.1 normally residing with the partners **or**

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

4. no-one is entitled to and in receipt of Carer's Allowance, or Universal Credit that includes the carer element, in respect of caring for the partner who is receiving "Attendance Allowance" or Disability Living Allowance as in **1.**.

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

Higher rate

78048 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Decision makers should note that the higher rate of additional amount for the severely disabled does not apply to claimants who have no partner.

78049 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Claimants who have a partner are treated as being severely disabled and are entitled to the higher rate if[1]

1. both partners are in receipt of

1.1 ”Attendance Allowance” **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 the daily living component of Adult Disability Payment at the standard or enhanced rate **or**

1.5 Armed Forces Independence Payment **and**

2. there are no persons aged 18 or over

2.1 normally residing with the partners **or**

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

3. no one is entitled to and in receipt of Carer’s Allowance or Universal Credit that includes the carer element, in respect of caring for either partner.

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

78050 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Decision makers should note that DMG 78049 **1.** is **not** satisfied if either partner is treated as being in receipt of “Attendance Allowance” or Disability Living Allowance, Personal Independence Payment, Adult Disability Payment or Armed Forces Independence Payment as in DMG 78060 **2.**[1]. In such a case the lower rate of additional amount should be considered.

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

78051 – 78054

In receipt of “Attendance Allowance”, Disability Living Allowance, Personal Independence Payment, Adult Disability Payment, Carer’s Allowance, Armed Forces Independence Payments and Universal Credit that includes the carer element

78055 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Before awarding an additional amount for the severely disabled, the decision maker needs to know if

1. the claimant or partner is in receipt of “Attendance Allowance”, Disability Living Allowance, Personal Independence Payment, Adult Disability Payment or Armed Forces Independence Payment **and**

2. anyone is in receipt of Carer's Allowance or Universal Credit that includes the carer element, in respect of caring for the claimant or partner.

Note: Special rules apply to the treatment of "Attendance Allowance", Disability Living Allowance, Personal Independence Payment, Adult Disability Payment, Armed Forces Independence Payment and Carer's Allowance/Universal Credit that includes the carer element when a person is admitted to hospital. See DMG 78060 for guidance.

"Attendance Allowance", Disability Living Allowance, Personal Independence Payment, Adult Disability Payment and Armed Forces Independence Payment

78056 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Decision makers should note that a person is in receipt of "Attendance Allowance" or Disability Living Allowance or Personal Independence Payment or Armed Forces Independence Payment only if it is paid because of that person's own incapacity or disability.

Example 1

Alistair is aged 65 and lives alone. He claims State Pension Credit and states that he is in receipt of "Attendance Allowance" due to his poor physical condition. No one gets Carer's Allowance/Universal Credit that includes the carer element in respect of looking after him. Alistair is in receipt of "Attendance Allowance" and the decision maker considers an additional amount for the severely disabled.

Example 2

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

Carer's Allowance/Universal Credit carer element

78057 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** An additional amount for the severely disabled may not be applicable if someone is receiving Carer's Allowance or Universal Credit that includes the carer element in respect of caring for the claimant or partner[1]. But Carer's Allowance/Universal Credit that

includes the carer element has to actually be in payment before it affects entitlement to this additional amount.

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

78058 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Decision makers should normally treat an award of Carer's Allowance/Universal Credit that includes the carer element as a proper award until the Carer's Allowance/Universal Credit that includes the carer element decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting Carer's Allowance/ Universal Credit that includes the carer element **or**

2. the award of Carer's Allowance/Universal Credit that includes the carer element is in error **or**

3. they know nothing about the Carer's Allowance/Universal Credit that includes the carer element award **or**

4. the Carer's Allowance/Universal Credit that includes the carer element claim is fraudulent

the decision maker should ask the Carer's Allowance Unit or the office responsible for Universal Credit award to investigate whether the Carer's Allowance or the carer element of Universal Credit is correctly made.

78059 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Where the disabled person makes an allegation about the carer's integrity, as described in DMG 78058, the State Pension Credit decision maker can make a decision on the claim or application before the Carer's Allowance/Universal Credit that includes the carer element decision maker has decided whether the award of Carer's Allowance/Universal Credit that includes the carer element should be revised or superseded. However, the State Pension Credit decision should include a determination which

1. makes an assumption that the carer is properly in receipt of Carer's Allowance/Universal Credit that includes the carer element **and**

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

Treated as being or not being in receipt of "Attendance Allowance", Disability Living Allowance, Personal Independence Payment, Adult Disability Payment, Carer's Allowance and Universal Credit that includes the carer element

78060 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** A person shall be treated

1. as being in receipt of "Attendance Allowance", or the care component of Disability Living Allowance at the highest or middle rate or the daily living component of Personal Independence Payment at the standard or enhanced rate, or the daily living component of Adult Disability Payment at the standard or enhanced rate or Armed Forces Independence Payment for any period[1]

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

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

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

2.1 "Attendance Allowance" **or**

2.2 the care component of Disability Living Allowance at the highest or middle rate **or**

2.3 the daily living component of Personal Independence Payment at the standard or enhanced rate

2.4 the daily living component of Adult Disability Payment at the standard or enhanced rate

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

3. as not being in receipt of Carer's Allowance/Universal Credit that includes the carer element for any period before the date on which the award is made[3].

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

78061 – 78064

People residing with the claimant

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

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

2. the claimant and any partner normally reside with.

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

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

Meaning of normally resides

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

Example 1

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

Example 2

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

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

1. the total amount of time spent in a place

2. how often time is spent in a place

3. how permanent the stay is thought to be

4. the person's intentions

5. individual circumstances

6. what degree the accommodation is shared

7. the services provided

8. whether the person owns or rents any other accommodation

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

Example

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

Agnes normally lives at her son's house because

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

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

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

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

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

Sharing the accommodation

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

1. the only shared area is a

1.1 bathroom **or**

1.2 lavatory **or**

1.3 communal area **or**

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

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

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

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

1. halls

2. passageways

3. stairways

4. rooms of common use in sheltered accommodation.

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

Example

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

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

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

Students

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

Example

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

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

78071

Meaning of liable to make payments

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

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

2. there was an intention to create legal relations.

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

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

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

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

1 R(IS) 11/98

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

Example

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

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

Contractual capacity

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

Carer stays overnight

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

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

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

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

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

People whose presence is ignored

78077 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** The decision maker can ignore the presence of[1]

1. any person aged under 18[2]

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

2.1 "Attendance Allowance" **or**

2.2 the care component of Disability Living Allowance at the highest or middle rate **or**

2.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

2.4 the daily living component of Adult Disability Payment at the standard or enhanced rate **or**

2.5 Armed Forces Independence Payment **or**

3. a person who is

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

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

4. a person who[6]

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

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

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

6. a person who is a qualifying young person or a child for Child Benefit purposes[8].

Note: For the definition of a qualifying young person see DMG Chapter 20.

1 SPC Regs (NI), Sch 1, para 2(1); 2 para 1(1)(a)(ii), (b)(ii) & (c)(iii); 3 para 2(2)(a); 4 para 2(2)(b); 5 para 2(2)(c); 6 para 2(2)(d); 7 para 2(2)(e); 8 para 2(2)(f); SS C&B (NI) Act 92, Part IX

78078 The decision maker can also ignore the presence of a person who

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

1.1 to care for the claimant or partner

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

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

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

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

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

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

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

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

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

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

5.1 before 11.4.88 **or**

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

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

Note 2: When considering 5 (above) and the date the claimant or partner first occupied the dwelling, we consider the date they had the right to occupy the dwelling.

If there is a delay in moving in, that would not change the date of occupation for the purposes of this paragraph.

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

Commercial basis

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

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

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

1 R(IS) 11/98

Shared lives scheme

78080 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (Disability Living Allowance / Personal Independence Payment / Adult Disability Payment) and pays the carer a weekly contribution, the Trust also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain Housing Benefit. In these circumstances the carers will be ignored as non-dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the Extra Amount for Severe Disability.

Note: The claimant will not be entitled to the Extra Amount for Severe Disability if there are people other than the carer, carer's family or other shared lives residents in the dwelling who cannot be ignored, for example where the carer's 23 year old son still lives in the same dwelling.

Example

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of their family having her own bedroom and sharing all the other household facilities. Shirley is disabled and receives Disability Living Allowance. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get Housing Benefit. The decision maker decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the Extra Amount for Severe Disability.

78081 – 78083

Temporary residence in a residential care home or nursing home

Claimants who have no partner

78084 An additional amount for the severely disabled may not be applicable if a claimant who has no partner does not normally live alone[1]. Such a claimant will not satisfy the conditions for this additional amount while they are temporarily in a residential care home or nursing home (see DMG 77005). This is because their stay is temporary and they continue to normally reside at home.

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

Example

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

Claimants who have a partner

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

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

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

3. amount of State Pension Credit payable to them is unaffected.

1 SPC Regs (NI), reg 5(2)

78086 The State Pension Credit and the additional amount for severe disability will have to be reviewed where the person is in temporary residential care beyond 28 days and the payability of Disability Living Allowance ceases.

Example

Malcolm and Wendy are married and live together in the same household. Both Malcolm and Wendy get Disability Living Allowance and Carer's Allowance or Universal Credit that includes the carer element is not in payment. There are no non-dependants. Higher rate Extra Allowance for Severe Disability is in payment. Malcolm goes into temporary residential care for 6 weeks. They are assessed as a

couple and the higher rate Extra Allowance for Severe Disability continues in payment however after 4 weeks Malcolm's Disability Living Allowance payments cease and the Extra Allowance for Severe Disability is withdrawn.

Note: The lower rate Extra Allowance for Severe Disability is not appropriate as there is no facility to treat Disability Living Allowance as in payment for those periods of respite care.

Permanent residence in a residential care home or nursing home

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

Claimants who have no partner (including self-funders)

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

Note: This will normally be self-funding claimants, but decision makers should be aware that it will also include residents where the payment of "Attendance Allowance" or Disability Living Allowance/Personal Independence Payment continues for the first four weeks after admission.

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

Example

Gerard has no partner and lives at home with his sisters. He is in receipt of the care component of Disability Living Allowance at the middle rate and no one receives Carer's Allowance (or Universal Credit that includes the carer element) for caring for him. The conditions for the award of an additional amount for the disabled are not satisfied. Gerard goes into a residential care home or nursing home on a permanent basis. The decision maker decides that Gerard is entitled to an additional amount for the disabled at the lower rate from the date that he moves into the residential care home or nursing home. This is because

1. he is in receipt of the care component of Disability Living Allowance at the middle rate **and**

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

3. no one is in receipt of Carer's Allowance or Universal Credit that includes the carer element for caring for him.

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

Claimants who have a partner

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

78090 – 78099

Additional amount for carers

General

78100 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** When considering the amount of the Appropriate Minimum Guarantee, an additional amount for carers may be applicable[1]. But the additional amount is not payable[2] in the case of

1. prisoners **and**

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

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

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

1 SPC Regs (NI), reg 6(8)

78102 – 78104

Qualifying conditions

78105 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** An additional amount for carers may be awarded for each claimant[1] or, in the case of partners, each partner[2] who is

1. entitled to Carer's Allowance[3] **or**

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

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

Note 2: Where a claimant claims that either they or the disabled person is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to Decision Making Services, for consideration of whether the benefit falls within article 5 of Regulation (EC) No 883/2004.

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

Example

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

Treated as being entitled to Carer's Allowance

78106 A person shall be treated as being entitled to Carer's Allowance for any period[1]

1. covered by an award

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

1 SPC Regs (NI), Sch 1, para 5

Carer's Allowance - treated as satisfying the qualifying conditions - run on

78107 Where an additional amount for carers has been awarded but the person in respect of

1. whose care the Carer's Allowance has been awarded dies **or**

2. whom the additional amount was awarded ceases to be entitled or treated as entitled to Carer's Allowance

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

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

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

Note: In certain specified cases Carer's Allowance can continue indefinitely after the person in respect of whose care the Carer's Allowance has been awarded dies. See DMG 78112 and Chapter 4 for detailed guidance on those rules.

The relevant date

78109 The relevant date is, where

1. the person in respect of whose care the Carer's Allowance has been awarded dies[1]

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

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

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

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

Example

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

Universal Credit carer element - treated as satisfying the qualifying conditions - run on

78110 Where an additional amount for carers has been awarded but the person in respect of whose care the Universal Credit carer element has been awarded dies, the qualifying conditions shall be satisfied or treated as satisfied for the assessment period in which the death occurred and the following two assessment periods[1].

1 UC Regs (NI) 16, reg 39

Example

Alison's award of Universal Credit includes a carer element in respect of the care she provides to her mother. Alison's assessment period runs from the 10th of the month. On 23.6.19 Alison's mother dies. She continues to receive the carers element in her Universal Credit award up to and including 9.9.19.

New claims

78111 Where a new claim for State Pension Credit is made and entitlement to Carer's Allowance had ended within 8 weeks or less before the date of the State Pension Credit claim, or entitlement to Universal Credit carer element within the two assessment periods following the death of the person being cared for, in these circumstances there is no entitlement to the extra amount for carers. The 8 week run on can only apply if this element was already included in the award.

Transitional protection

78112 Carers who were aged 65 and over before 28.10.02 can continue to be entitled to Carer's Allowance even though they are no longer providing care[1], for example after the disabled person has died. Where this protection applies and Carer's Allowance is retained the carer can continue to receive the additional amount for carers.

1 The Deregulation (Carer's Allowance) Order (NI) 2002 (SR 2002 No 321), art 4

Example

Ralph, aged 72 is entitled to State Pension Credit for himself and his partner Kath. Kath is aged 69 and has been entitled to Carer's Allowance in respect of the care she provides her mother since May 1994. Ralph's State Pension Credit includes an additional amount for carers. Kath's mother dies on 22.8.04 but Kath retains her entitlement to Carer's Allowance (beyond the 8 week run on period). Ralph continues to be entitled to the additional amount for carers in the calculation of his State Pension Credit.

78113 – 78119

Additional amount for former claimants of Income Support/income-based Jobseeker's Allowance/income-related Employment and Support Allowance

General

78120 In certain cases an additional amount may be included in the appropriate minimum guarantee if a claimant transfers from Income Support or income-based Jobseeker's Allowance or income-related Employment and Support Allowance to State Pension Credit[1]. This additional amount is known as the transitional amount and it

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

2. is worked out on an individual basis

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

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

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

1. prisoners **and**

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

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

78122 – 78125

Qualifying conditions

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

1. the claimant was entitled to Income Support or income-based Jobseeker's Allowance or income-related Employment and Support Allowance in respect of the day before the relevant day **and**

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

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

The relevant day

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

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

The relevant amount

78128 The relevant amount[1] is the amount which, on the day before the relevant day, was the claimant's applicable amount for Income Support, income-based Jobseeker's Allowance or income-related Employment and Support Allowance, **less** any

1. personal allowances for dependants (see DMG 23038)[2]

2. residential allowance (see DMG 24171)[3]

3. family premium (see DMG 23076)[4]

4. disabled child premium (see DMG 23240)[5]

5. enhanced disability premium for dependants (see DMG 23181)[6].

Note: See DMG 78129 if a transitional addition was in payment on the Income Support or income-based Jobseeker's Allowance claim.

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

Example

Maria lives with her 12 year-old dependant grandson Tim. She has an Income Support applicable amount of £108.90 on the day before her first day of entitlement to State Pension Credit (the relevant day). That is £54.65 personal allowance for herself, £38.50 dependants allowance for Tim and £15.75 family premium.

The relevant amount for Maria is £54.65. That is her Income Support applicable amount of £108.90 less £38.50 dependants allowance and £15.75 family premium.

Transitional addition in payment

78129 There may be transitional additions in payment on the Income Support or income-based Jobseeker's Allowance claim (see DMG Chapter 36). When working out the relevant amount in such a case, the deductions in DMG 78128 still apply, but the applicable amount should be increased to **include** any transitional additions in payment[1].

1 IS (Trans) Regs (NI) 87, Part II; JSA Regs (NI), reg 87(1); SPC Regs (NI), Sch 1, para 6(6)

People in hospital

78130 A claimant or partner may be in hospital at or around the point of transfer from Income Support or income-based Jobseeker's Allowance to State Pension Credit. In such a case, the relevant amount should be calculated in the normal way **unless** the

1. applicable amount of Income Support or income-based Jobseeker's Allowance is reduced[1] (see DMG 24301 et seq) on the day before the relevant day **and**

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

In such a case calculate the relevant amount **as if** the applicable amount of Income Support or income-based Jobseeker's Allowance had not been reduced[3].

1 IS (Gen) Regs (NI), Sch 7, para 1; JSA Regs (NI), Sch 4, para 1;
2 SPC Regs (NI), Sch 3, para 2(2); 3 Sch 1, para 6(7)

78131 – 78133

The provisional amount

78134 The provisional amount is the amount of the appropriate minimum guarantee (see DMG 77153) applicable to the claimant on the relevant day, without any transitional amount[1].

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

78135

Amount payable

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

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

Example 1

Victor, who lives alone, transfers from Income Support to State Pension Credit. He has an Income Support applicable amount of £170.90 on the day before the relevant day. That is £54.65 personal allowance, £23.30 disability premium, £42.95 severe disability premium and £50 housing costs. Victor also has a transitional addition of £13.80. The relevant amount for Victor is £184.70.

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

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

Example 2

Dermot transfers from income-based Jobseeker's Allowance to State Pension Credit. He has an applicable amount of £142.10 on the day before the relevant day. That is £54.65 personal allowance, £47.45 pensioner premium and £40 housing costs. Dermot also has a transitional addition, awarded on a previous conversion so that his total benefit income did not reduce, which amounts to £8.15. The relevant amount for Dermot is £150.25.

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

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

78137 – 78138

Recalculation of the transitional amount

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

Reduction of the transitional amount

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

1 SPC Regs (NI), Sch 1, para 6(8)(a)

Example

Dermot is entitled to guarantee credit with a standard minimum guarantee of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving him an appropriate minimum guarantee of	£150.25 **(a)**
Dermot has no other income so the amount of guarantee credit payable is	£150.25
On uprating his standard minimum guarantee becomes	£105.45
the additional amount for housing costs remains at	£40
and without any reduction to the transitional amount of	£8.15
the appropriate minimum guarantee would be	£153.60 **(b)**
Dermot's transitional amount is reduced by £2.90 **(b - a)** to	£4.80
His appropriate minimum guarantee is then made up of a standard minimum guarantee of	£105.45
an additional amount for housing costs of	£40
and a transitional amount of	£4.80
leaving the total appropriate minimum guarantee at	£150.25

Anniversary date

78141 The first State Pension Credit anniversary date (which was the date that had applied to the Income Support/income-based Jobseeker's Allowance claim and which has been carried forward to State Pension Credit) is a change of circumstances where a transitional amount, or increased transitional amount, may be needed.

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

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

2. did not include the amount that was allowed for housing costs in the Income Support or income-based Jobseeker's Allowance claim[1].

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

78143 Decision makers should note that the transitional amount calculated

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

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

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

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

Withdrawal of the transitional amount

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

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

2. claimant or partner ceases to be entitled to State Pension Credit[2].

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

78145 Decision makers should note that

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

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

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

3.1 a prisoner **or**

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

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

Example 1

Gina is entitled to guarantee credit with a standard minimum guarantee of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving her an appropriate minimum guarantee of	£150.25 **(a)**
On uprating, Gina's standard minimum guarantee increases to	£105.45
the additional amount for housing costs also increases following a change	£45.00
and without any recalculation to the transitional amount of	£8.15
the appropriate minimum guarantee would be	£158.60 **(b)**
The appropriate minimum guarantee has increased by **(b) - (a)**	£8.35

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

Gina's appropriate minimum guarantee is then made up of a standard minimum guarantee of	£105.45
with an additional amount for housing costs of	£45.00
and the total amount of guarantee credit is	£150.45

Example 2

Ernest is entitled to guarantee credit with a standard minimum guarantee of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£8.15
giving him an appropriate minimum guarantee of	£150.25 **(a)**
Following a change of circumstances	
the additional amount for housing costs increases to	£50

and without any recalculation to the transitional amount of	£8.15
the appropriate minimum guarantee would be	£160.25 **(b)**
The appropriate minimum guarantee has increased by **(b) - (a)**	£10
This is more than the transitional amount of	£8.15
so Ernest's transitional amount is permanently withdrawn	
His appropriate minimum guarantee is then made up of a standard minimum guarantee of	£102.10
and an additional amount for housing costs of	£50
giving a total appropriate minimum guarantee of	£152.10

78146 – 78149

Breaks in entitlement

78150 A claimant may again be entitled to a transitional amount following a break in entitlement to State Pension Credit, where the

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

2. break in entitlement was eight weeks or less.

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

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

78152 Where the conditions in DMG 78150 are satisfied, the decision maker should

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

2. recalculate the amount of the transitional amount if the appropriate minimum guarantee has increased since the end of the previous claim.

Example

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

At the end of his previous claim Fred was entitled to	
guarantee credit with standard minimum guarantee of	£102.10
an additional amount for housing costs of	£40
and a transitional amount of	£6
giving him an appropriate minimum guarantee of	£148.10 **(a)**
on uprating the standard minimum guarantee for Fred increased to	£105.45
the additional amount for housing costs stayed at	£40
and without any recalculation to the transitional amount of	£6
the appropriate minimum guarantee would be	£151.45 **(b)**
Fred's transitional amount is reduced by £3.35 **(b) - (a)** to	£2.65
his Appropriate Minimum Guarantee is then made up of a	
standard minimum guarantee of	£105.45
an additional amount for housing costs of	£40
and a transitional amount of	£2.65
leaving the appropriate minimum guarantee at	£148.10

People discharged from hospital

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

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

Death of a partner

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

78155 – 78169

Additional amount for housing costs

Introduction

78170 **[See ADM Memo 4/18]** When considering the amount of the appropriate minimum guarantee, an additional amount for housing costs may be applicable[1]. For the definition of housing costs and the changes introduced from 6.4.18, see DMG 78195. But this additional amount is not normally payable[2] in the case of

1. prisoners **and**

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

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

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

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

Basic qualifying conditions

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

1. the claimant or partner is

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

1.2 responsible for those costs (see DMG 78312) **and**

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

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

1 SPC Regs (NI), Sch 2, para 1(1)

Claimants without housing costs

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

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

2. entitlement to an additional amount for housing costs.

Rounding of fractions

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

1 SPC Regs (NI), Sch 2, para 15

Former claimants of Income Support/income-based Jobseeker's Allowance

78176 The rules on housing costs in Income Support and income-based Jobseeker's Allowance were changed in 1995. Savings provisions protected existing claimants so that their benefit income did not reduce because of the new rules (see DMG 23640 et seq).

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

78178 Where a claimant

1. transfers from Income Support or income-based Jobseeker's Allowance to State Pension Credit **and**

2. has transitional protection for housing costs in their Income Support or income-based Jobseeker's Allowance claim

the additional amount for housing costs should be calculated under the rules that apply in State Pension Credit.

78179 If the claimant is

1. entitled to a transitional amount, any difference in the amount awarded for housing costs will be taken into account in the calculation of the transitional amount (see DMG 78137)

2. not entitled to a transitional amount, the claimant will lose the transitional protection previously received on the Income Support or income-based Jobseeker's Allowance claim.

78180 – 78184

Definitions

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

Dwelling occupied as the home

78186 Dwelling occupied as the home means[1]

1. the dwelling and any

1.1 garage **and**

1.2 garden **and**

1.3 outbuildings

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

2. any agricultural land adjoining that dwelling **and**

3. any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately.

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

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

Example

Simon and Rachel live on a plot of land on which there is a caravan, some outbuildings and an old cottage in need of repair. They are allowed to use the caravan as a temporary residence while the cottage is being repaired. They sleep in the caravan but have things stored in the outbuildings and cottage. The caravan has a fixed mains water supply and is linked directly to the electricity mains. There are no mains supplies to the cottage. The land cannot be divided into two, with the caravan and site being owned or used separately from the cottage and site.

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

Normally occupied

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

Example

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

Rooms sublet

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

78189 – 78194

Housing costs

78195 Until 6.4.18 help for owner occupier payments was included in a claimant's award of an income-related benefit (also referred to as support for mortgage interest). From 6.4.18 support for mortgage interest was changed from a benefit to a loan secured by a charge on the property. See ADM Memo 4/18 for further details. Payments for housing costs, such as service charges, continue. For guidance on the transition from support for mortgage interest housing costs to support for mortgage interest loans, see Appendix 5. For advice on support for mortgage interest prior to 6.4.18, decision makers may wish to contact Decision Making Services.

78196 Housing costs are[1]

1. rents or ground rents on long tenancies

2. service charges

3. payments by way of rent charge

4. payments for tents and their sites.

1 SPC Regs (NI), Sch 2, para 1(1), 1(2)(b) & 13(5)

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

1. rent required by a person who

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

1.2 does not live in that property.

Note: This list is not exhaustive.

78198 – 78209

Steps to follow when deciding housing costs

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

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

2. if the amount spent is on the dwelling occupied as the home (see DMG 78186 and 78220)

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

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

5. if there are any eligible housing costs that can be allowed (see DMG 78455 et seq)

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

78211 – 78214

Liability for housing costs

78215 A person is liable to meet housing costs where the

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

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

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

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

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

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

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

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

78216 – 78219

Treated as occupying a dwelling as the home

Definitions

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

Medically approved

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

1 SPC Regs (NI), Sch 2, para 4(13)(a)

Training course

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

1 SPC Regs (NI), Sch 2, para 4(13)(b)

Dwelling where claimant normally lives

78223 Unless DMG 78225 - 78236 applies, a claimant should

1. be treated as living in the home where they, and any partner, normally live (see DMG 78187 and DMG 84395) **and**

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

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

78224 To decide where a claimant normally lives, the decision maker should

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

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

3. where the claimant is liable to make payments on more than one property, and DMG 78231 et seq does not apply, treat the claimant as living in the home they normally occupy. Liability to make payments includes liability for rent.

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

Full-time students and claimants on training courses

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

1. occupying one of the homes because they are

1.1 a full-time student **or**

1.2 on a training course **and**

2. liable to make payments for either, but not both, of the homes they live in when

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

2.2 not attending the course **and**

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

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

Example

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

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

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

78227 – 78229

Temporary accommodation

78230 A claimant who

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

2. is liable to make payments for either, but not both, the home or temporary accommodation

should be treated as living in the dwelling for which they are liable to make payments[1].

1 SPC Regs (NI), Sch 2, para 4(5)

Liable for two homes

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

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

1.1 in that home **or**

1.2 by a close relative **or**

1.3 by a former partner

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

2. in the case of partners, one partner is a full time student or is on a training course and it is

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

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

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

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

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

1. the length of the absence

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

3. whether there is a hope of resuming occupation

4. whether it is practicable to end the liability

5. the claimant's situation and means of support

6. the extent to which the liability was in practice being met other than through State Pension Credit.

Example

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

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

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

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

2. they are liable to make payments on both homes **and**

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

1 SPC Regs (NI), Sch 2, para 4(6)

78234 The four weeks under DMG 78233 is payable from either

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

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

1 SPC Regs (NI), Sch 2, para 4(6)(c)

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

1 SS (Misc Amdts No 5) Regs (NI) 2006, reg 4(3)

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

1 R(JSA) 9/03

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

1. the claimant or partner is

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

1.2 responsible for those costs **and**

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

2. the costs are allowable.

Treated as living in the home before moving in

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

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

2. they had claimed State Pension Credit before moving in[2] and a decision was

2.1 not made on the claim **or**

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

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

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

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

3.1.a the claimant **or**

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

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

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

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

3.3.a a patient **or**

3.3.b in a residential care home or nursing home[5].

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

78239

Temporary absences from home

Trial periods in a residential care home or nursing home

78240 A person who enters a residential care home or nursing home

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

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

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

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

1 SPC Regs (NI), Sch 2, para 4(8) & (9)

Example

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

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

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

whichever is the sooner.

Temporary absences up to 13 weeks

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

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

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

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

1 SPC Regs (NI), Sch 2, para 4(10)

Example

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

78242 The intention to return to live in the home must

1. be unqualified **and**

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

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

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

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

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

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

78244 – 78253

Temporary absences up to 52 weeks

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

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

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

3. they[4]

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

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

3.3 are required to reside in a dwelling other than a dwelling he occupies as his home **or**

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

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

3.5.a medical treatment **or**

3.5.b medically approved convalescence

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

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

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

3.8 are caring for a person under the age of 20 whose parent or guardian is temporarily absent from their home because they are receiving medically approved care or treatment[9] **or**

3.9 are

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

3.9.b receiving medically approved care

in accommodation that is not a residential care home or nursing home[10] **or**

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

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

3.12 have left the home because of fear of violence

3.12.a in that home **or**

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

3.12.c by a close relative

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

4. the absence is unlikely to

4.1 exceed 52 weeks **or**

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

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

78255 The intention to return to live in the home must

1. be unqualified **and**

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

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

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

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

1 SPC Regs (NI), Sch 2, para 4(12)

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

1. will exceed 52 weeks **or**

2. is likely to

2.1 exceed 52 weeks **or**

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

1 SPC Regs (NI), Sch 2, para 4(11)(d)

Example 1

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

Example 2

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

78258 – 78269

Housing costs not met

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

1. Housing Benefit expenditure[1] **or**

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

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

78271 Housing Benefit expenditure means[1] expenditure in respect of which Housing Benefit is payable[2], but does not include any such expenditure in respect of which an additional amount is applicable[3].

1 SPC Regs (NI), Sch 2, para 5(1A); 2 HB (SPC) Regs (NI), reg 13(1); 3 SPC Regs (NI), reg 6(6)(c)

78272 – 78309

Apportionment of housing costs

Composite hereditaments

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

1. domestic **and**

2. business

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

1 SPC Regs (NI), Sch 2, para 6(1); Rates (NI) Order 1977, art 4 & Sch 5

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

Responsibility for housing costs

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

1 SPC Regs (NI), Sch 2, para 6(2); R(IS) 4/00

78313 – 78439

Housing costs

78440 – 78454

Eligible housing costs

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

1. ground rent

2. service charges (see DMG 78457)

3. rent charges (see DMG 78458)

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

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

78456

Service charges

78457 Service charges should be allowed where they are[1]

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

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

3. for

3.1 the home **or**

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

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

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

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

Rent charges

78458 Property owners may hold their land subject to rent charges[1]. These exist in several forms in Northern Ireland and may be created, for example by free farm grants, statute, or under settlement of land.

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

78459 – 78461

Tents

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

1. tent **and**

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

1 SPC Regs (NI), Sch 2, para 13(1)(d)

78463 – 78464

Deductions from eligible housing costs

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

1. fuel charges **or**

2. ineligible service charges **or**

3. repairs and improvements.

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

Deductions for fuel charges

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

1. a standard fuel deduction for

1.1 heating (other than hot water) £35.25

1.2 hot water £4.10

1.3 lighting £2.85

1.4 cooking £4.10 **or**

2. if the claimant provides evidence that the

2.1 actual amount **or**

2.2 estimated amount

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

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

78467 When considering deductions for fuel charges, decision makers should note that

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

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

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

2. a deduction for heating (other than hot water) under DMG 78466 **1.1** should only be made on the amount for heating the claimant's home. Service charges for heating any communal areas are not excluded.

78468 – 78469

Deductions for ineligible service charges

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

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

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

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

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

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

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

1. living expenses for

1.1 meals[2], including the

1.1.a preparation of meals **or**

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

1.2 laundry[3], other than the provision of

1.2.a premises **or**

1.2.b equipment

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

1.3 leisure items[4] such as

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

1.3.b television rental, licence and subscription fees (except radio relay charges) and charges made in respect of the conveyance and the installation and maintenance of equipment for such conveyance of a television broadcasting service **or**

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

1.4.a communal areas **or**

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

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

1.5 transport[6] **or**

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

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

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

4.1 mental disorder

4.2 mental handicap

4.3 physical disablement **or**

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

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

5.1 at meal times **or**

5.2 with personal appearance or hygiene **or**

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

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

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

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

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

1 Housing Support Services (NI) Order 2002, art 4

Connected to the adequacy of the accommodation

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

Example

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

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

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

78474 Where service charges include an amount for repairs and improvements listed in ADM Memo 4/18, paragraph 97, and are undertaken to maintain the fitness for human habitation, they should not be allowed.

Example 1

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

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

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

Example 2

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

Example 3

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

Deductions for repairs and improvements

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

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

78476 – 78479

Contingency funds

78480 Service charges may contain an element that is paid into some kind of fund or reserve. These are most commonly referred to as

1. contingency funds **or**

2. reserve funds **or**

3. sinking funds.

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

78482 – 78484

Costs payable over 53 weeks or irregularly

78485 Where housing costs are normally payable for 52 weeks but

1. paid for 53 weeks **or**

2. paid irregularly **or**

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

4. the costs for different periods are different amounts

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

1 SPC Regs (NI), Sch 2, para 13(3)

Payment of costs waived

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

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

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

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

1 SPC Regs (NI), Sch 2, para 13(4)

Attribution of service charges

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

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

Example

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

estimate for charges for the 2005-06 year is received, the September 2005 decision may be superseded accordingly.

78488 – 78499

Persons residing with the claimant

Introduction

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

1 SPC Regs (NI), Sch 2, para 14

Definition of a non-dependant

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

1 SPC Regs (NI), Sch 2, para 1(4) & 14

Meaning of normally resides

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

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

1. the total amount of time spent in a place

2. how often time is spent in a place

3. how permanent the stay is thought to be

4. the person's intentions

5. individual circumstances

6. what degree the accommodation is shared

7. the services provided

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

Example

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

Sharing the accommodation

78504 A person resides with another only if they share any accommodation and in this context, people should be regarded as sharing the accommodation unless[1]

1. the only shared area is a

1.1 bathroom **or**

1.2 lavatory **or**

1.3 communal area **or**

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

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

1 SPC Regs (NI), Sch 2, para 1(8); R(IS) 12/96

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

1. halls

2. passageways

3. stairways

4. rooms of common use in sheltered accommodation.

1 SPC Regs (NI), Sch 2, para 1(9)

Example

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

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

78506 – 78509

People who are not non-dependants

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

1. any person aged under 18[1]

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

3. a person who

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

3.2 is engaged by a

3.2.a charitable organisation **or**

3.2.b voluntary organisation

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

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

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

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

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

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

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

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

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

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

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

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

78511 – 78514

Amount of deduction

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

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

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

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

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

Non-dependants who have partners

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

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

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

1 SPC Regs (NI), Sch 2, para 14(3)

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

Calculation of income

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

1. only one deduction should be made

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

1 SPC Regs (NI), Sch 2, para 14(4)

Non-dependant of more than one joint occupier

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

1. number of joint occupiers **and**

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

1 SPC Regs (NI), Sch 2, para 14(5)

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

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

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

1 SPC Regs (NI), Sch 2, para 14(5)

Non-dependant deduction not appropriate

78521 **[See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** Deductions should not be made if

1. the claimant or any partner

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

1.2 is receiving in respect of themselves[2]

1.2.a "Attendance Allowance" **or**

1.2.b the care component of Disability Living Allowance **or**

1.2.c the daily living component of Personal Independence Payment **or**

1.2.d the daily living component of Adult Disability Payment **or**

1.2.e Armed Forces Independence Payment **or**

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

2. non-dependants are

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

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

2.3 full time students[6] **or**

2.4 aged under 25 and in receipt of Income Support or income-based Jobseeker's Allowance[7] **or**

2.5 aged under 25, in receipt of an award of Employment and Support Allowance and is not a member of the work-related activity group or are in receipt of the support component[8]

2.6 not living with the claimant because[9] they

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

2.6.b are prisoners (see DMG 78651)

2.7 in receipt of State Pension Credit[10]

2.8 entitled to Universal Credit **and**

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

2.8.b does not have any earned income.

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

Note 2: Where a person under **1.2** has been an in-patient for a sufficient period of time they will no longer be receiving Attendance Allowance or Disability Living Allowance and as such the non-dependant will no longer be exempt from attracting a non-dependant deduction.

1 SPC Regs (NI), Sch 2, para 14(6)(a); 2 Sch 2, para 14(6)(b); 3 Sch 2, para 14(7)(dd); 4 Sch 2, para 14(7)(a); 5 Sch 2, para 14(7)(b); E&T Act (NI) 50, sec 1; 6 SPC Regs (NI), Sch 2, para 14(7)(c); 7 Sch 2, para 14(7)(d); 8 Sch 2, para 14(7)(g); 9 Sch 2, para 14(7)(e); 10 Sch 2, para 14(7)(f)

Deduction appropriate - Universal Credit non-dependants

78522 Where a non-dependant is entitled to Universal Credit and is

1. aged 25 or over **or**

2. aged less than 25 and has earned income

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

78523

Calculation of a non-dependant's gross weekly income

78524 **[DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84] [See DMG Memo Vol 8/112, 9/64, 13/135 & 14/85]** When calculating the gross weekly income of a non-dependant (see DMG 78515 and Appendix 1 to this Chapter), disregard[1] any

1. "Attendance Allowance"

2. Disability Living Allowance

3. Personal Independence Allowance

4. Adult Disability Payment

5. Armed Forces Independence Payment

6. payments made under, or derived from the

6.1 Macfarlane Trust

6.2 Macfarlane (Special Payments) Trust

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

6.4 the Fund

6.5 Eileen Trust

6.6 Independent Living Funds

6.7 MFET Limited

6.8 Caxton Foundation

6.9 Skipton Fund

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

6.11 any Grenfell Tower payment

6.12 any child abuse payment or Windrush payment

6.13 any Post Office compensation payment

6.14 any income from capital received from Infected Blood Schemes

7. payment in kind.

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

1 SPC Regs (NI), Sch 2, para 14(8)

78525 – 78529

Insufficient information to determine housing costs

78530 Where, a decision maker is

1. deciding a claim to State Pension Credit **or**

2. determining an issue on State Pension Credit housing costs

the appropriate minimum guarantee should include any housing costs that can be determined immediately on the evidence available[1]. Where there is insufficient evidence, State Pension Credit can be awarded without any additional amount for housing costs.

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

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

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

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

78533 – 78548

Additional amount for a child or qualifying young person

General

78549 **[See DMG Memo Vol 13/129]** From 1.2.19, when considering a new claim to State Pension Credit, the claimant's maximum amount shall include an amount for any child or qualifying young person for whom they are responsibile[1]. Prior to that date, support for pensioners with such responsibility was provided by tax credits[2].

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

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

Claimant with an ongoing award of tax credits

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

1 WR Act 12, s 33

Treated as having an award of tax credits

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

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

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

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

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

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

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

When the additional amount ceases

78552 Where an additional amount outlined in DMG 78549 has been awarded, that amount ceases[1] where DMG 78553 or 78554 applies.

1 SPC Regs (NI), reg 6(14)

78553 This paragraph applies where the person was awarded tax credits for the previous tax year which was not terminated and a final notice has been given in accordance with DMG 78551 **2.** above and the person makes a declaration

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

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

1 SPC Regs (NI), reg 6(15)

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

1. a revision on the grounds of official error **or**

2. a request to review by the claimant **or**

3. an appeal **or**

4. a revision, under any other circumstances, under specified legislation[1].

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

78555 – 78560

Who is the responsible person?

78561 The responsible person is

1. the person with whom the child or qualifying young person normally lives[1] **or**

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

1 SPC Regs (NI), Sch 2A, para 3(1); 2 Sch 2IA, para 3(3)

Normally lives

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

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

Example 1

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

Example 2

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

Main responsibility

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

1 SPC Regs (NI), Sch 2A, para 3(3)

78564 If

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

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

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

1 SPC Regs (NI), Sch 2A, para 3(4)

Who has main responsibility?

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

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

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

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

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

This list should not be considered exhaustive.

Example

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

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

1 SPC Regs (NI), Sch 2A, para 3(2)

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

1. in prison[1] **or**

2. except in certain cases, looked after by a local authority[2].

1 SPC Regs (NI), Sch 2A, para 5; 2 para 4

78568 – 78572

Looked after by an authority

78573 **[See DMG Memo Vol 13/130]** A looked after child is one who is in the care of an authority or provided with accommodation by an authority in exercise of its social services functions[1]. The child may be placed with a parent or a person who has parental responsibility, an authority foster parent[2], or where the child is in care the person who has a residence in order.

1 Children (NI) Order 95, art 25, 26, 27(4); 2 art 27(3)

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

1 SPC Regs (NI), Sch 2A, para 4(3)

Prisoners

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

1 SPC Regs (NI), Sch 21A, para 5

Child or qualifying young person temporarily absent

Temporary absence in Northern Ireland

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

1 SPC Regs (NI), Sch 2A, para 6

Temporarily absent from Northern Ireland

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

1. absent **or**

2. expected to be absent

from Northern Ireland for more than 4 weeks[1].

1 SPC Regs (NI), Sch 2A, para 7(1)(a)

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

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

2. a child or qualifying young person normally living with the claimant **or**

3. a close relative of

3.1 the claimant **or**

3.2 the claimant's partner **or**

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

and the Department considers that it would be unreasonable to expect the child or qualifying young person to return to Northern Ireland within 4 weeks.

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

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

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

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

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

1 SPC Regs (NI), Sch 2A, para 7(1)(c) & 7(3)

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

1 SPC Regs (NI), Sch 2A, para 7(4)

78580 – 78585

Death of child or qualifying young person

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

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

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

2.1 8 weeks **or**

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

1 SPC Regs (NI), Sch 2A, para 8

Rates of child addition

78587 The rate of the child addition for each child or qualifying young person is £53.34[1] per week. Where the eldest child or qualifying young person for whom the claimant is responsible was born before 6.4.17, that amount is £63.84 per week in respect of that child[2].

1 SPC Regs (NI), Sch 2A, para 9(1)(a); 2 para 10

Additional amount for a disabled child

78588 An additional amount of £33.67 per week will be payable where the child or qualifying young person is

1. entitled to Disability Living Allowance **or**

2. entitled to Child Disability Payment

3. entitled Adult Disability Payment **or**

4. entitled to Personal Independence Payment[1].

1 SPC Regs (NI), Sch 2A, para 9(1)(b)(i) & 9(2)

78589 Where the child or qualifying young person is

1. entitled to the care component of Disability Living Allowance at the highest rate **or**

2. entitled to the care component of Child Disability Payment at the highest rate **or**

3. entitled to the daily living component of Adult Disability Payment at the enhanced rate **or**

4. entitled to the daily living component of Personal Independence Payment at the enhanced rate **or**

5. certified as severely sight impaired or blind by a consultant ophthalmologist

the weekly additional amount will be £104.86[1].

1 SPC Regs (NI), Sch 2A, para 9(1)(b)(ii) & 9(3)

Definitions

Child

78590 Child means[1] a person under the age of 16.

Note: There is no need for the child to be receiving education for this definition to apply.

1 SPC Regs (NI), Sch 2A, para 2

Parental responsibility

78591 In Northern Ireland, parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property[1].

1 Children (NI) Order 95, art 6

Qualifying young person

78592 A qualifying young person[1] is a person who has reached the age of 16 but not the age of 20 and who is

1. aged 16 years, but only for the period up to, but not including, the 1st September that next follows their 16th birthday

2. aged up to 19 years, but only for the period up to, but not including, the 1st September that next follows their 19th birthday where they are enrolled on, or accepted for

2.1 approved training[2] **or**

2.2 a course of education

2.2.a which is not advanced education **and**

2.2.b at a school, college or other establishment that is approved by the Department **and**

2.2.c where they spend on average more than twelve hours a week during term time in receiving tuition, taking examinations or practical work or supervised study

this must not include meal breaks or unsupervised study, including homework, whether done on or off the premises of the educational establishment[3].

Note 1: Where the young person at **2.** above is aged 19, they must have started the course of education or training, or been accepted or enrolled on it before reaching that age.

Note 2: The education or training described in **2.1** and **2.2** does not include education or training that is provided through a contract of employment[4].

1 SPC Regs (NI), Sch 2A, para 2; 2 reg 4A(4); 3 reg 4A(1); 4 reg 4A(3)

78593 – 78599

Special groups

Polygamous marriages

Introduction

78600 The following guidance explains the special rules that apply to members of polygamous marriages[1]. But these rules only apply to polygamous marriages. They do not apply to multiple relationships (see DMG 77116). Decision makers should obtain evidence of the marriage if a claimant declares more than one spouse.

Note: See DMG Chapter 77 for guidance on multiple relationships and mixed-age couples.

1 SPC Act (NI) 02, sec 12; SPC Regs (NI), Sch 3, para 1

General

Claims

78601 A claim for State Pension Credit may be made by a husband or wife of a polygamous marriage, if

1. the claimant **and**

2. the other party to the marriage **and**

3. any additional spouse (whether of the claimant's or of a spouse of the claimant's)

are all members of the same household[1] and are not a mixed age couple (see DMG 77035).

Note: See DMG Chapter 77 for guidance on the treatment of mixed-age couples, including those in a polygamous marriage.

1 SPC Act (NI) 02, sec 12(1); SPC Regs (NI), Sch 3, para 1(1) & (11);
2 WR (NI) Order 15 (Comm No 13 etc) Order 2019, art 2(2)

Entitlement

78602 A claimant

1. is not entitled to State Pension Credit if

1.1 they are a member of a mixed-age couple (see DMG 77035)[1] **or**

1.2 the other party to the marriage **or**

1.3 any additional spouse

is entitled to State Pension Credit[2] (see DMG 77031)

2. who is entitled to State Pension Credit may be entitled[3] to a

2.1 guarantee credit (see DMG 78608 et seq) **or**

2.2 savings credit (see DMG 78623 et seq) **or**

2.3 both.

Note: See DMG Chapter 77 for guidance on the treatment of mixed-age couples, including those in a polygamous marriage.

1 WR (NI) Order 15 (Comm No 13 etc) Order 2019, art 2(2); 2 SPC Act (NI) 02, sec 4(1) & 12(2)(a) & (3); SPC Regs (NI), Sch 3, para 1(3); 3 SPC Act (NI) 02, sec 1(3)

Income and capital

78603 The income and capital of the other party to the marriage and any additional spouse should be treated as income and capital of the claimant[1] (see DMG Chapter 85).

1 SPC Act (NI) 02, sec 5 & 12(2)(d); SPC Regs (NI), Sch 3, para 1(4) & (11)

78604 – 78607

Guarantee credit

78608 The following guidance explains the special rules that apply when calculating the guarantee credit in polygamous marriage cases. It should be read in conjunction with DMG 77150 et seq which gives guidance on the general rules that apply.

Standard minimum guarantee

78609 In a polygamous marriage case, the standard minimum guarantee is made up of[1]

1. a set amount for the claimant and any one spouse of the claimant's **and**

2. an extra amount for each additional spouse (whether of the claimant or that spouse).

See Appendix 2 to Chapter 77 for the rates of standard minimum guarantee.

1 SPC Act (NI) 02, sec 12(2)(b) & (c); SPC Regs (NI), reg 6(1); Sch 3, para 1(5) & (11)

Example 1

Sean is a member of a polygamous marriage and is married to Elizabeth and Hanna. At the time of his State Pension Credit claim the set amount of standard minimum guarantee for Sean and his elder wife Elizabeth is £155.80. The extra amount for Hanna is £53.70. The total standard minimum guarantee for Sean is £209.50 [£155.80 + £53.70].

Example 2

Patricia is a member of a polygamous marriage. Her husband Dermot has another wife Ann and all three live together as members of the same household. Patricia claims State Pension Credit and at the time of her claim the set amount for her and Dermot is £155.80. Ann is an additional spouse of Dermot's and the extra amount for her is £53.70. The total standard minimum guarantee for Patricia is £209.50 [£155.80 + £53.70].

Additional amount for the severely disabled

78610 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** The additional amount for the severely disabled is payable at a lower or higher rate[1]. See Appendix 2 to Chapter 77 for details of those rates.

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

Lower rate

78611 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** Claimants who are members of a polygamous marriage are entitled to the lower rate of additional amount for the severely disabled if[1]

1. both partners and each additional spouse (whether of the claimant's or of a spouse of the claimant's) are in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 Armed Forces Independence Payment **and**

2. there are no other persons aged 18 or over

2.1 normally residing with the partners and any additional spouse **or**

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

3. someone is entitled to and in receipt of Carer's Allowance in respect of caring for only one of the members of the polygamous marriage.

1 SPC Regs (NI), reg 6(5)(a); Sch 1, para 1(1)(b); Sch 3, para 1(9) & (11)

78612 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Claimants may not satisfy the conditions in DMG 78611. In such a case the lower rate can still be awarded if[1]

1. at least one member of the polygamous marriage is in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 Armed Forces Independence Payment **and**

2. at least one member of the polygamous marriage is blind or treated as blind and not in receipt of

2.1 "Attendance Allowance" **or**

2.2 the care component of Disability Living Allowance at the highest or middle rate **or**

2.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **and**

3. all members of the marriage (that is both partners and each additional spouse) fall within either **1.** or **2. and**

4. there are no other persons aged 18 or over

4.1 normally residing with the partners and any additional spouse **or**

4.2 who the partners and any additional spouse normally reside with (see DMG 78065 et seq) **and**

5. either

5.1 no-one is entitled to and in receipt of Carer's Allowance in respect of caring for any person who is receiving "Attendance Allowance" or Disability Living Allowance or Personal Independence Payment or Armed Forces Independence Payment as in **1. or**

5.2 someone is entitled to and in receipt of Carer's Allowance in respect of caring for one or more, but not all, the persons receiving "Attendance Allowance" or Disability Living Allowance or Personal Independence Payment or Armed Forces Independence Payment as in **1.**.

1 SPC Regs (NI), reg 6(5)(a); Sch 1, para 1(1)(c); Sch 3, para 1(10)

78613 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** The lower rate of additional amount for the severely disabled can also be awarded to claimants who are members of a polygamous marriage if[1]

1. one of the members of the marriage is in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 Armed Forces Independence Payment **and**

2. the other members would be in receipt of

2.1 "Attendance Allowance" **or**

2.2 the care component of Personal Independence Payment at the standard or enhanced rate **or**

2.3 the daily living component of Disability Living Allowance at the highest or middle rate **or**

2.4 Armed Forces Independence Payment

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

3. there are no other persons aged 18 or over

3.1 normally residing with the partners and additional spouse **or**

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

4. no one is entitled to and in receipt of Carer's Allowance in respect of caring for the person who is receiving "Attendance Allowance" or Disability Living Allowance or Personal Independence Payment or Armed Forces Independence Payment as in **1.**.

1 SPC Regs (NI), reg 6(5)(a); Sch 1, para 1(1)(b) & (2)(b); Sch 3, para 1(9)

Higher rate

78614 **[See DMG Memo Vol 1/129, 4/159, 7/55, 8/109, 10/86, 12/26 & 13/132]** Claimants who are members of a polygamous marriage are entitled to the higher rate of additional amount for the severely disabled if[1]

1. both partners and each additional spouse (whether of the claimant's or of a spouse of the claimant's) are in receipt of

1.1 "Attendance Allowance" **or**

1.2 the care component of Disability Living Allowance at the highest or middle rate **or**

1.3 the daily living component of Personal Independence Payment at the standard or enhanced rate **or**

1.4 Armed Forces Independence Payment **and**

2. there are no other persons aged 18 or over

2.1 normally residing with the partners and any additional spouse **or**

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

3. no one is entitled to and in receipt of Carer's Allowance or Universal Credit that includes the carer element, in respect of caring for any member of the polygamous marriage.

1 SPC Regs (NI), reg 6(5)(b); Sch 1, para 1(1)(b); Sch 3, para 1(9)

78615 Decision makers should note that DMG 78614 **1.** is **not** satisfied if either partner or any additional spouse is treated as being in receipt of "Attendance Allowance" or Disability Living Allowance or Personal Independence Payment or Armed Forces Independence Payment as in DMG 78059 **2.**[1]. In such a case the lower rate of additional amount should be considered.

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

78616 – 78619

Additional amount for carers

78620 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** The additional amount for carers is paid at one rate. In polygamous marriage cases, that amount is applicable for each partner or additional spouse who satisfies the qualifying conditions in DMG 78105[1]. See Appendix 2 to DMG Chapter 77 for details of the rate.

1 SPC Regs (NI), reg 6(8); Sch 3, para 1(8)

Additional amount for former claimants of Income Support/income-based Jobseeker's Allowance

78621 A transitional amount may need to be considered if a claimant who is a member of a polygamous marriage transfers from Income Support or income-based Jobseeker's Allowance to State Pension Credit. In such a case the decision maker should

1. follow the guidance in DMG 78120 et seq **and**

2. note that when calculating the relevant amount (see DMG 78128), an additional spouse is the equivalent of a partner[1] not a dependant.

1 SPC Regs (NI), Sch 3, para 1(8)

Additional amount for housing costs

78622 When considering the amount of the appropriate minimum guarantee, an additional amount for housing costs may be applicable. In polygamous marriage cases, decision makers should note that any references to a partner in the guidance at DMG 78170 et seq, also includes a reference to any additional spouse[1].

1 SPC Regs (NI), Sch 3, para 1(8)

Savings credit

78623 In polygamous marriage cases, a State Pension Credit claimant can get a savings credit if[1]

1. at least one member of the polygamous marriage

1.1 has obtained pensionable age before 6.4.16 **and**

1.2 has reached the age of 65 before, on or after that date **and**

1.3 at least one of those members had not[2] (but see DMG 77035 and 77167)

2. the claimant had

2.1 been entitled to Savings Credit immediately before 6.4.16 **and**

2.2 remained entitled to a Savings Credit at all times since that date[3]

3. the claimant had

3.1 qualifying income that is more than the savings credit threshold **and**

3.2 an income which, after the calculation at DMG 77170 et seq, allows amount A to be greater than amount B[4].

1 SPC Act (NI) 02, sec 3(2) & 12(3); SPC Regs (NI), Sch 3, para 1(2); 2 Pensions Act (NI) 08, sec 11(3); SPC Regs (NI), Sch 3, para 1(7A)(1); 3 Sch 3, para 1(7A)(2); 4 SPC Act (NI) 02, sec 3(2)

78624 Decision makers should note that in polygamous marriage cases the savings credit threshold and the maximum savings credit are set at the same rates as for a couple[1]. See Appendix 2 to Chapter 77 for details of the rates.

1 SPC Act (NI) 02, sec 3; SPC Regs (NI), Sch 3, para 1(6) & (7)

78625 – 78649

Prisoners

78650 The amount of State Pension Credit payable to a claimant is affected if

1. the claimant **or**

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

3. any additional spouse (in a polygamous marriage case)

is, or becomes, a prisoner[1].

1 SPC Act (NI) 02, sec 2(3), 2(9) & 3(8); SPC Regs (NI), regs 6(2)(a), 6(3) & 7(3)

Meaning of prisoner

78651 A prisoner[1] is a person who is detained in custody

1. following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person

1.1 temporarily removed from prison to hospital, unless DMG 78652 **3.** applies **or**

1.2 living outside the prison under a pre-release employment scheme[2] **or**

1.3 on temporary release[3], which may be allowed for a variety of reasons including

1.3.a home leave **or**

1.3.b attendance at rehabilitation courses **or**

1.3.c work during the daytime (see DMG 78657) **or**

2. on remand awaiting

2.1 trial **or**

2.2 sentence upon conviction.

1 SPC Regs (NI), reg 1(2); 2 R(I) 9/75; 3 Prison Act (NI) 1953

78652 The definition of prisoner does not include a person

1. under suspended sentence **or**

2. sentenced to community service **or**

3. transferred from court or prison to hospital who is detained under the Mental Health Act (NI) Order 1986 **or**

4. released on licence (see DMG 78658) **or**

5. who is on a

5.1 home detention curfew (see DMG 78659) **or**

5.2 court ordered curfew **or**

5.3 restriction of liberty order **or**

5.4 mandatory probation service programme.

Note: Release on licence means release on parole after completion of a specified part of the original sentence.

Meaning of detained in custody

78653 The word "detains" describes the physical confinement of a person[1]. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

1. in a prison

2. in a remand centre

3. in a police station when used as a remand overflow

4. abroad.

1 R(S) 10/56

78654 Detention in custody[1] might be after the

1. start of the proceedings, for example remand in custody **or**

2. proceedings have ended, for example sentence to prison.

1 R(IS) 1/94

78655 Detention in custody does not include a period before proceedings begin where the person is released on bail.

78656

Pre-release schemes

78657 Shortly before release, prisoners may be allowed short periods of release on temporary licence to help them get used to life outside prison again. They may find work outside prison to support themselves and spend short periods at home. Such people

1. are still serving a sentence of imprisonment **and**

2. continue to be prisoners until the time of their release[1].

1 R(I) 9/75

Release on licence

78658 Release on licence means release on parole after completion of a specified part of the original sentence. A person released on licence[1] is no longer detained in legal custody and is no longer a prisoner.

1 Criminal Justice (NI) Order 2008, chapter 4

Curfews

78659 Some prisoners can be released on a curfew licence before their automatic release date. Under the curfew licence they have to wear an electronic tag and remain at home during agreed periods of the day[1]. These conditions apply from the date of early release to the day they would have been eligible for release under licence.

1 Criminal Justice (NI) Order 2008, chapter 5

78660 Although subject to a curfew condition, the person is released on licence and is no longer a prisoner[1].

1 Criminal Justice (NI) Order 2008, chapter 5

Period of detention in custody

78661 When working out the period for which a person is detained in custody

1. **count** the day on which the detention starts **and**

2. **do not count** the day of release from detention

as a day on which the person is detained in custody.

78662 A period of detention in custody therefore

1. starts on the day on which the person is detained **and**

2. ends on the day before the person is released from detention.

Prisoner admitted to hospital

78663 The decision maker should establish the legislation used to admit a prisoner to hospital. A person admitted

1. under prescribed mental health legislation[1] is a patient for State Pension Credit purposes and has an applicable amount of nil **or**

2. under prescribed mental health legislation[2] other than that in **1.** above is a patient for State Pension Credit purposes and has entitlement to their full applicable amount.

1 SPC Regs (NI), reg 1(2); 2 Sch 3, para 2

78664 – 78665

Guarantee credit for prisoners

78666 Guarantee credit is not normally payable to prisoners. This is because the rate of both the

1. standard minimum guarantee **and**

2. additional amount applicable

for prisoners is nil[1]. The exception to this rule is where a person is a remand prisoner.

1 SPC Act (NI) 02, sec 2(3) & (9); SPC Regs (NI), reg 6(2)(a) & (3)

Guarantee credit for remand prisoners

Meaning of remand prisoner

78667 A remand prisoner[1] is a person who, for a period of not more than 52 weeks, has been

1. detained in custody

1.1 on remand awaiting trial **or**

1.2 awaiting sentence upon conviction **or**

2. as a condition of bail, required to live in an approved hostel.

1 SPC Regs (NI), reg 6(10)

Remand prisoners detained in custody

78668 In the case of remand prisoners detained in custody as in DMG 78667 **1.**

1. the amount of the standard minimum guarantee is nil[1] **but**

2. an additional amount for housing costs may be applicable (see DMG 78170 et seq) for a period of up to 52 weeks[2].

1 SPC Act (NI) 02, sec 2(3)(a) & (9); SPC Regs (NI), reg 6(2)(a) & (3)(a);
2 SPC Act (NI) 02, sec 2(3)(b); SPC Regs (NI), reg 6(2)(a), (3)(b) & (6)(c)

78669 Decision makers should note that

1. additional amounts for

1.1 the severely disabled

1.2 carers **and**

1.3 former claimants of Income Support or income-based Jobseeker's Allowance

are not applicable in the case of remand prisoners detained in custody[1] **and**

2. the additional amount for housing costs is no longer applicable once the person has been detained in custody for more than 52 weeks[2].

1 SPC Regs (NI), reg 6(2)(a), (3)(b), (4), (6) & (9); 2 reg 6(7)

People in bail hostels

78670 Some people are required to stay in a bail hostel as a condition of their bail (see DMG 78667 **2.**). In such a case

1. the amount of the standard minimum guarantee should be calculated as normal[1] **and**

2. an additional amount for

2.1 the severely disabled may be applicable if the qualifying conditions are satisfied[2] (see DMG 78030 et seq) **and**

2.2 housing costs may be applicable (see DMG 78170 et seq) for a period of up to 52 weeks[3].

1 SPC Act (NI) 02, sec 2(3)(a), (4), & (5); SPC Regs (NI), reg 6(1);
2 SPC Act (NI) 02, sec 2(3)(b) & (7); SPC Regs (NI), reg 6(5)(a); Sch 1, para 1(1)(a);
3 SPC Act (NI) 02, sec 2(3)(b); SPC Regs (NI), reg 6(6)(c), (9) & (10)

78671 Decision makers should note that

1. additional amounts for

1.1 carers **and**

1.2 former claimants of Income Support or income-based Jobseeker's Allowance

are not applicable in the case of people who are required to stay in a bail hostel[1] **and**

2. the additional amount for housing costs is no longer applicable once the person has been in the bail hostel for more than 52 weeks[2].

1 SPC Regs (NI), reg 6(9); 2 reg 6(10)

Savings credit for prisoners

78672 Savings credit is not payable to prisoners. This is because the maximum savings credit for all prisoners, including remand prisoners, is nil[1].

1 SPC Act (NI) 02, sec 3(8); SPC Regs (NI), reg 7(3)(a)

Membership of the household

78673 Members of a couple, or polygamous marriage, are treated as not being members of the same household (see DMG 77117) if they are detained in custody[1]. So the amount of State Pension Credit that may be awarded to a claimant will be affected if one or more of them are detained in custody.

Note: This also applies where the claimant is a patient having been transferred from court or prison to hospital under the Mental Health Acts as in DMG 78652.

1 SPC Regs (NI), reg 5(1)(c)(ii) & (iii)

Partner of a prisoner claiming State Pension Credit

78674 The partner of a prisoner may claim State Pension Credit. In such a case the partner claiming State Pension Credit should be treated as a single claimant.

Person becomes a prisoner during a State Pension Credit claim

78675 A claimant without a partner may be detained in custody during the course of a State Pension Credit claim. Unless the claimant is a remand prisoner (see DMG 78667), the decision maker should revise the award to a nil amount.

78676 For claimants with partners, it may be the claimant or their partner who is detained in custody during the course of a State Pension Credit claim. In such a case, if it is the

1. claimant's partner who is detained in custody, the decision maker should revise the award to remove the partner from the calculation

2. claimant who is detained in custody, the decision maker should

2.1 revise the award to a nil amount for the claimant **and**

2.2 consider whether a change of claimant is needed **and**

2.3 if the claimant's partner claims State Pension Credit, consider their claim under the normal rules.

Life sentences

78677 Life sentences (or indeterminate sentences) fall into two categories

1. mandatory life sentences. Where a person is convicted of murder this is the only sentence which can be imposed

2. discretionary life sentences where the judge holds it to be appropriate in the circumstances of the case or where it is held to be necessary, e.g. for public protection.

78678 In both cases the trial judge sets a tariff period which is effectively the "punishment" part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the public. Otherwise they will remain in prison. A trial judge can decline to set a tariff period. In the case of mandatory lifers this is called a 'whole life order'. It means that a prisoner can never become eligible for a Parole Board review or for release.

78679 A prisoner who remains in prison beyond their tariff date does not become eligible for social security benefits - they are still prisoners. Similarly a life sentence prisoner who is transferred to psychiatric hospital for treatment does not become eligible for social security benefits when the tariff date has been reached[1]. Such a patient would only become eligible for benefit upon release.

1 SPC Regs (NI), reg 8; Sch 3, para 2

Members of religious orders

Introduction

78680 The following guidance explains the special rules that apply to members of religious orders.

Meaning of religious order

78681 A religious order is

1. a group of people who have

1.1 given up all their belongings **and**

1.2 offered their services free for the benefit of the order **and**

2. committed to providing all that its members need for their maintenance.

Note: Monks and nuns (of the Roman Catholic, Buddhist or any other religion) are the most common examples, but there may be others.

78682

Amount payable for members of religious orders

Member fully maintained

78683 State Pension Credit is not payable if the claimant is

1. a member of a religious order **and**

2. fully maintained by their order (that is, if the order provides full board and lodging, clothing and other needs).

78684 This is because the rate of the

1. standard minimum guarantee[1] **and**

2. additional amount applicable[2] **and**

3. maximum savings credit[3]

for members of religious orders who are fully maintained by their order, is nil.

1 SPC Act (NI) 02, sec 2(3)(a) & (4); SPC Regs (NI), reg 6(2)(b) & (3)(a);
2 SPC Act (NI) 02, sec 2(3)(b) & (9); SPC Regs (NI), reg 6(2)(b) & (3)(b);
3 SPC Act (NI) 02, sec 3(8); SPC Regs (NI), reg 7(3)(b)

Example

Ted is a missionary for a group of priests that refer to themselves as a congregation. The priests give up their personal possessions on joining the congregation and are bound by religious vows. They are not allowed to do any paid work outside and are provided with all their needs.

Ted retires to a residential care home that caters for retired priests of the congregation and he claims State Pension Credit. The order continues to provide all that Ted needs in the residential care home, although they say that it is becoming increasingly difficult to do so. But what matters is whether the order is fully maintaining Ted, not whether they find it difficult to do so.

State Pension Credit is not payable to Ted because he is a member of a religious order who is being fully maintained by his order.

78685 The commitment to a religious order is often for life. So for example, the amount of State Pension Credit payable continues to be nil if a person retires but remains with the order and continues to be fully maintained by it. But State Pension Credit should be calculated in the normal way if a person ceases to be maintained by the order.

78686 – 78689

Member not fully maintained

78690 State Pension Credit may be awarded if a member of a religious order

1. leaves the order's premises for good reason, for example to nurse a sick relative **and**

2. is not fully maintained by the order during the absence.

The fact that the member has been fully maintained by the order in the past does not affect the decision on the change of circumstances.

78691 Claims may be received from elderly monks or nuns

1. in very poor physical or mental health **and**

2. for whom proper care can no longer be provided by the monastery or convent **and**

3. whose order can no longer afford to maintain them.

Such people may be living in a nursing home or private hospital being run by a religious order. Entitlement should be considered in the normal way if they are not being fully maintained by their order.

Example

Sarah is an 80 year old nun who has been a member of, and fully maintained by, a religious order for 62 years. She is suffering from Alzheimer's Disease and her order is no longer able to care for her properly. The Health and Social Services Board find her a place in a nursing home run by another order. Sarah is expected to contribute to the fees and claims State Pension Credit.

The order continues to provide suitable clothing for Sarah but cannot afford to maintain her in the nursing home and makes no financial contribution to her needs. The decision maker decides that Sarah is no longer being fully maintained by the order, and awards State Pension Credit.

78692 A member of a religious order may have no apparent income or capital of their own. But the decision maker should consider whether the rules of the order allow

1. a member to ask for financial support **or**

2. the return of money given to the order on admission.

This information can be obtained from the trust deed of the order, but enquiries should not be made into the order's financial affairs. The decision maker should submit cases of doubt to Decision Making Services.

78693 – 78699

78693 A member of a religious order may still be fully maintained by the order even though they may have funds of their own, out of which they may be contributing to the order[1].

1 [2011] EWCA Civ 103

78694 – 78699

People in hospital

General

Introduction

78700 The amount of State Pension Credit payable to a claimant may be reduced if

1. the claimant **or**

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

3. any additional spouse (in a polygamous marriage case)

is in hospital for more than a specified period[1] (see DMG 78795 - 78899).

1 SPC Act (NI) 02, sec 2(6); SPC Regs (NI), Sch 3, para 2

78701 The following guidance explains the rules that normally apply when calculating how much State Pension Credit to pay when people are in hospital. But other rules apply where a transferee or their partner is in hospital. See DMG 80011 et seq for guidance.

Definitions

78702 The following paragraphs explain the meaning of terms used throughout this guidance on people in hospital.

Patient

78703 A patient[1] is a person (other than a prisoner) who is receiving free in-patient treatment[2] (see DMG 78720 et seq).

1 SPC Regs (NI), reg 1(2); 2 SS (HIP) Regs (NI), reg 2(2)

Prisoner

78704 Decision makers should follow the guidance at DMG 78651 et seq when deciding if a person is a prisoner.

Transferee

78705 A transferee[1] is any person who

1. immediately before 6.10.03, is entitled to Income Support **and**

2. reaches, or has reached, the qualifying age on or before 6.10.03.

1 SPC (Cql Trans & Misc Provs) Regs (NI), reg 34(1)

Housing costs

78706 The claimant may be treated as continuing to occupy a dwelling as the home. If so, the decision maker should consider whether an additional amount for housing costs is applicable (see DMG 78170 et seq).

Membership of the household

78707 Decision makers should consider the guidance at DMG 77100 et seq to decide whether a patient is still a member of the household if the patient is a member of a

1. couple **or**

2. polygamous marriage.

78708 If a patient is no longer a member of the household, the decision maker should revise or supersede the award on the basis of the new circumstances. If it is the

1. claimant's partner who is no longer a member of the household, the decision maker should revise the award to remove the partner from the calculation and

2. claimant who is no longer a member of the household, the decision maker should

2.1 revise the award to take account of the change in the claimant's status (see DMG 78825) **and**

2.2 consider whether a claim should be invited from the claimant's partner **and**

2.3 if the claimant's partner claims State Pension Credit, consider the partner's claim under the normal rules.

Patients receiving other social security benefits

78709 A patient may be in receipt of a social security benefit as well as State Pension Credit. Social security benefits are subject to revision or supersession at the same time as any State Pension Credit. The decision maker deciding State Pension Credit should

make sure that the decision does not conflict with any decision on the same question by the decision maker deciding the social security benefit.

People admitted to hospital from residential care homes or nursing homes

78710 In State Pension Credit there is no difference between the treatment of people in residential care homes or nursing homes and those living in their own homes (other than the deemed weekly income from capital limit). So when a person is admitted to hospital from a residential care home or nursing home, the amount of any reduction in a claimant's State Pension Credit will depend on

1. the period for which the person receives, or is treated as receiving, free in-patient treatment (see DMG 78795 and 78840 et seq) **and**

2. whether the claimant has a partner who is a member of their household (see DMG 77128 et seq).

78711 – 78719

Free in-patient treatment

Deciding free in-patient treatment

78720 A person is receiving free in-patient treatment[1] for any period when they are

1. maintained free of charge (see DMG 78722) **and**

2. receiving medical or other treatment (see DMG 78725) **and**

3. in a hospital or similar institution (see DMG 78731) **and**

4. an in-patient (see DMG 78738) **and**

5. receiving the treatment

5.1 under prescribed legislation (see DMG 78746) **or**

5.2 in a hospital or similar institution maintained or administered by the Defence Council (for example an army, navy or air force hospital).

1 SPC Regs (NI), reg 1(2); SS (HIP) Regs (NI), reg 2(2)

78721 Decision makers should note that a person who does not meet any one of the conditions in DMG 78720 is not receiving free in-patient treatment. The decision maker does not need to consider the other conditions.

Maintained free of charge

78722 A person is treated as being maintained free of charge[1] in a hospital or similar institution unless

1. accommodation and services are being provided for that person as a private patient[2] **or**

2. the person is meeting the full cost of their maintenance as a private patient in a private hospital[3].

1 SS (HIP) Regs (NI), reg 2(2); 2 HPSS (NI) Order 72, art 31; 3 SS (HIP) Regs (NI), reg 2(2)

78723 In any other circumstances the person is treated as maintained free of charge. For example when a

1. payment is made by the patient for an amenity bed but the treatment is provided under the National Health Service[1]

2. patient is in paid work outside the hospital during the day and pays an amount to the Health & Social Services Board or Health and Social Services Trust, based on earnings, towards maintenance and incidental costs[2]

3. person is a patient in a nursing home being funded under arrangements made by the Health and Social Services Board or Health and Social Services Trust[3].

1 HPSS (NI) Order 72, art 33; 2 art 5; 3 HPSS (NI) Order 72

Burden of proof

78724 The burden of proving that a person is not being maintained free of charge rests with that person[1].

1 CS 591/49

Medical or other treatment

78725 To be treated as receiving free in-patient treatment a person must be receiving

1. medical treatment, for example

1.1 surgical treatment

1.2 administration of drugs and injections **or**

2. other treatment, which includes nursing services by professionally trained staff in the form of

2.1 observation

2.2 therapy

2.3 support appropriate to the person's needs

2.4 advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

78726 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment[1]. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment.

1 R(P) 1/67

78727 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day.

78728 – 78730

Hospital or similar institution

Hospital

78731 A hospital[1] is any of the following

1. an institution for

1.1 the reception and treatment of people suffering from illness

1.2 the reception and treatment of people during convalescence

1.3 people needing medical rehabilitation

2. a maternity home

3. any institution for providing dental treatment and maintained in connection with a dental school

4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 HPSS (NI) Order 72, art 2

78732 Illness includes[1]

1. mental disorder **or**

2. any injury or disability needing

2.1 medical treatment **or**

2.2 dental treatment **or**

2.3 nursing.

1 HPSS (NI) Order 72, art 2

78733 Mental disorder means[1]

1. mental illness **or**

2. mental handicap **or**

3. arrested or incomplete development of the mind **or**

4. psychopathic disorder **or**

5. any other disorder or disability of the mind.

1 Mental Health Act 83, sec 1(2)

Similar institution

78734 The term "similar institution" has no specific legal meaning. If an institution does not satisfy the definition of hospital, the decision maker should decide as a question of fact whether it is similar to a hospital taking into account the

1. purpose of the institution **and**

2. type of treatment provided **and**

3. level of care offered.

78735 A hospital or similar institution also includes those

1. maintained by or on behalf of the[1] Department **or**

2. maintained by or on behalf of the Defence Council, for example an army, navy or air force hospital.

1 HPSS (NI) Order 72

Examples of hospitals or similar institutions

78736 Decision makers should note that a hostel or registered care home providing accommodation and social care to former alcoholics or drug addicts is **not** similar to a hospital. But it **may** be a similar institution to a hospital if the institution

1. cares for

1.1 former alcoholics **or**

1.2 drug addicts **or**

1.3 psychiatric patients **and**

2. provides a degree of medical treatment or rehabilitation by trained nursing staff.

78737 A nursing home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the nursing home. But if the provision of nursing care is minimal, for example rarely expected, the nursing home may not be a hospital.

Meaning of in-patient

78738 The term "in-patient" has no specific legal meaning and so should be given its normal everyday meaning. That is a patient who occupies a bed in a

1. hospital or similar institution under Specific National Health Service legislation **or**

2. hospital or similar institution maintained or administered by the Defence Council

rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to[1].

1 R(I) 27/59; R(S) 8/51

78739 Decision makers should note that the question of whether a person is an in-patient should be judged on the facts of each case.

78740 Examples of when a person would be included as an in-patient are where the person is

1. a patient and spends part of each day away from the hospital

2. provided with meals by close relatives

3. a nurse treated in the nurses' sick bay of the hospital in which the nurse works[1].

1 R(S) 2/52

78741 Examples of when a person would not be included as an in-patient are where the person is

1. receiving treatment at home during the period a rehabilitation centre is closed for a holiday[1]

2. a matron receiving treatment in ordinary living quarters at a hospital[2].

1 R(I) 14/56; 2 R(S) 28/52

78742 – 78745

Prescribed legislation

78746 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation[1]. But in deciding whether a person is to be treated as an in-patient, the decision maker should consider the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

1. the Department **or**

2. a Health and Social Services Trust.

Note: The Department have a variety of duties under Health and Personal Social Services legislation and not all of them mean that a person is receiving free in-patient treatment.

1 SS (HIP) Regs (NI), reg 2(2)

78747 Health and Social Services Boards acting on behalf of the Department of Health and Social Services can

1. arrange for continuing health care (nursing care with accommodation) in a nursing home for a person whom they assess as needing that care[1] (in this case the service must be provided free of charge and the Health and Social Services Board is responsible for the full cost) **or**

2. contribute to the cost of continuing social care through payments to a voluntary organisation, private home owner or home care agency[2] for

2.1 personal care with accommodation in a residential care home **or**

2.2 other social care (domiciliary and day care etc)

for a person who does not need in-patient care from the Health and Personal Social Services **or**

3. make grants to voluntary organisations[3] towards the cost of care for a person who does not need in-patient care from the Health and Personal Social Services.

Note: If **1.** applies, the person is receiving free in-patient treatment under prescribed legislation.

1 HPSS (NI) Order 72, art 14A; 2 art 15 & 36 ; 3 art 71(2)

78748

Services provided under Health & Personal Social Services legislation

78749 Examples of services under Health and Personal Social Services legislation are[1]

1. hospital accommodation

2. other accommodation for the purpose of any service the Department has the power to provide

3. medical services

4. nursing services

5. facilities which the Department considers appropriate as part of the health service for the

5.1 prevention of illness **or**

5.2 care of people suffering from illness **or**

5.3 after care of people who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

1 HPSS (NI) Order 72

Imprisonment

78750 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment. This is because such hospital wings are administered by the Northern Ireland Office[1].

1 SS (HIP) Regs (NI), reg 2

78751 If a person in legal custody is admitted to a hospital outside the prison see DMG 78651 et seq.

78752 – 78754

Community care arrangements

Arrangements by Health and Social Services Boards

78755 As part of a community care programme, a Health and Social Services Board may make a variety of arrangements with nursing homes, residential care homes or hostels for

1. the continuing care of a patient in one of these homes **or**

2. a person in the community to be admitted directly to one of these homes.

The decision maker should consider DMG 78720 et seq to decide whether the person is receiving free in-patient treatment in the home or hostel.

78756 Examples of arrangements made by Health and Social Services Boards under community care programmes are

1. managing their own residential homes or hostels

2. contracting with private and voluntary sector homes for the provision of accommodation and services.

Points to consider

78757 When deciding whether the new accommodation is a hospital or similar institution the decision maker should

1. consider the definition in DMG 78731 et seq **and**

2. not compare the new accommodation with the person's previous hospital accommodation.

78758 If the arrangements between the Health and Social Services Board and the nursing home or hostel are under any of the provisions of the prescribed legislation[1], DMG 78720 is satisfied.

1 HPSS (NI) Order 72, art 14A

78759

78760 A Health and Social Services Board may decide to contract for a placement with a care home on the assumption that the person will not be treated as receiving free in-patient treatment for State Pension Credit purposes. For example they may agree to pay the difference between the

1. normal amount of State Pension Credit payable **and**

2. amount charged for the home.

Note: If the agreement is made under prescribed legislation (see DMG 78746), the Health and Social Services Board is responsible for the full cost of the accommodation and services no matter what the agreement states.

78761 A Health and Social Services Board can provide financial assistance or services, for example they may provide trained nursing staff. If the home reimburses

1. the full cost of the services to the Health and Social Services Board, the person is not receiving free in-patient treatment **or**

2. part of the cost of the services, the arrangement may be under prescribed legislation (see DMG 78746).

78762 The arrangement by the Health and Social Services Board and nursing home must include continuing help. If a placement is found without any continuing commitment from the Health and Social Services Board to fund the care, DMG 78720 is not satisfied. For example a hospital social worker may help a patient who is about to be discharged to find a suitable care home.

Existing cases - revision or supersession

78763 Enquiries should be made to decide whether all the conditions in DMG 78720 are satisfied if

1. a person is living in a registered care home or nursing home **and**

2. the Health and Social Services Board reports that the person is receiving free in-patient treatment.

If all the conditions in DMG 78720 are satisfied, the person is receiving free in-patient treatment and the claim should be revised or superseded (see DMG 78770).

78764 – 78769

Periods of free in-patient treatment

Introduction

78770 A State Pension Credit claim may need to be superseded when

1. the claimant **or**

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

3. any additional spouse (in a polygamous marriage case)

has been receiving free in-patient treatment for more than a specified period (see DMG 78805 to 78863).

Period of free in-patient treatment

78771 A person is receiving free in-patient treatment for any period that the conditions in DMG 78720 are satisfied. When working out such periods, decision makers should

1. **not count** the day of

1.1 admission to hospital **or**

1.2 return to hospital following a period of temporary absence (for example home leave)

2. **count** the day of

2.1 discharge from hospital **or**

2.2 leaving hospital on temporary absence (for example home leave)

as days of free in-patient treatment[1].

1 SPC Regs (NI), reg 1(2); SS (HIP) Regs (NI), reg 2(2A)

78772 So a period of free in-patient treatment

1. **begins** on the day after the person is admitted to hospital **and**

2. **ends** on the day the person is discharged from hospital[1].

1 SS (HIP) Regs (NI), reg 2(2A)

Example

Kieran is admitted to hospital on 7 March and is discharged on 15 March. Kieran's period of free in-patient treatment starts on 8 March (the day after he is admitted) and ends on 15 March (the day he is discharged). That is a period of eight days.

Temporary absences from hospital

78773 When a person leaves hospital temporarily, for example on home leave, the day of

1. discharge is a day in hospital **and**

2. return to hospital is not a day in hospital[1].

1 CS 131/49 (KL); R(IS) 8/51; R(S) 9/52

Transfer between hospitals

78774 If a patient is transferred from one hospital to another, the day of transfer is treated as a day in hospital.

78775 – 78780

Revision of award on admission to hospital

Deciding the date of change

78781 From 10.4.06 the amount of State Pension Credit payable is not affected when a person has been in hospital for a period of 52 weeks.

78782 – 78804

Guarantee credit for people in hospital

In hospital more than four weeks

78805 When a person has been in hospital for four weeks, the decision maker should consider the effect of the hospital admission on any additional amounts that may be applicable for

1. the severely disabled **or**

2. carers.

Additional amount for the severely disabled

78806 Where a claimant has no partner, the additional amount for the severely disabled stops when the relevant qualifying benefit ends[1] (normally after four weeks). So an additional amount for the severely disabled will usually need to be withdrawn when a claimant who has no partner has been a patient for more than four weeks.

Note: If entitlement to Adult Disability Payment begins during a period in hospital, or if a claimant transfers to Adult Disability Payment whilst in hospital, it is payable for 28 days. Entitlement to the additional amount for the severely disabled for that period will have to be considered[2].

1 SPC Regs (NI), Sch 1, para 1(1)(a); 2 DAWAP (Scotland) Regs, reg 28

78807 Claimants with partners will be entitled to the lower rate of additional amount for the severely disabled (see DMG 78045 - 78047) if[1]

1. the conditions for either rate of additional amount for the severely disabled were satisfied before

1.1 one member of a couple became a patient **or**

1.2 at least one member of a polygamous marriage was not a patient **and**

2. where the conditions for the

2.1 higher rate were satisfied, “Attendance Allowance” or Disability Living Allowance or Personal Independence Payment stops because the patient has been in hospital more than 28 days **or**

2.2 lower rate were satisfied, the patient is treated as still being in receipt of “Attendance Allowance” or Disability Living Allowance or Personal Independence Payment (see DMG 78059 **2.**).

Note: The lower rate of additional amount for the severely disabled is payable from the date "Attendance Allowance" or Disability Living Allowance or Personal Independence Payment stops. Normal change of circumstances rules apply (see DMG Chapter 04).

1 SPC Regs (NI), reg 6(5) & Sch 1, para 1(2)(b)

Example 1

Brendan and his wife Sharon satisfy the conditions for the higher rate of additional amount for the severely disabled. Brendan goes into hospital on 14 May and the higher rate continues in payment. Disability Living Allowance stops from 12 June because Brendan has been a patient for more than 28 days. The additional amount for the severely disabled is reduced to the lower rate from 12 June, subject to the normal change of circumstances rules.

Example 2

Rhona and her husband Finlay are both in receipt of Attendance Allowance. Their daughter Janet, who lives nearby, receives Carer's Allowance for caring for Finlay. An additional amount for the severely disabled is awarded to the couple at the lower rate (see DMG 78045). Rhona is admitted to hospital on 22 October and her Attendance Allowance is withdrawn from 19 November. Rhona is still treated as being in receipt of Attendance Allowance (see DMG 78059) but Janet gets Carer's Allowance in respect of caring for Finlay. So the additional amount for the severely disabled is no longer payable (see DMG 78047).

Additional amount for carers

78808 An additional amount for carers may be applicable if the claimant or any partner is entitled to Carer's Allowance (see DMG 78100 et seq). But Carer's Allowance can be affected if the carer or person being cared for is a patient. Decision makers should make enquiries to the Disability and Carer's Service to find out whether, and if so from what date, entitlement to Carer's Allowance ends. The guidance at DMG 78107 et seq should then be followed when deciding whether the additional amount for carers should be withdrawn.

78809 – 78824

In hospital 52 weeks or more

78825 From 10.4.06 the amount of guarantee credit payable to a claimant is no longer reduced if

1. the claimant[1] **or**

2. where the claimant has a partner, one or both of them **or**

3. in a polygamous marriage case, one or more of the members

has been a patient for a period of more than 52 weeks.

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

Claimant who has no partner

78826 When a single claimant has been a patient for a continuous period of 52 weeks or more, the decision maker should withdraw any additional amount applicable for housing costs[1] (see DMG 78254 et seq).

1 SPC Regs (NI), Sch 2, para 4(12)

Claimant who has a partner

78827 Unless DMG 77119 applies, couples stop being members of the same household when one of them has been a patient for 52 weeks or more (see DMG 77117 et seq). In such a case the decision maker should revise or supersede the award on the basis of the new circumstances. If it is the

1. claimant's partner who has been a patient for 52 weeks or more, the decision maker should

1.1 revise the award to remove the partner from the calculation **and**

1.2 if the partner claims State Pension Credit, consider their claim as in DMG 78826

2. claimant who has been a patient for 52 weeks or more, the decision maker should

2.1 revise the award and reconsider the claim under DMG 78826 **and**

2.2 consider whether a claim should be invited from the claimant's partner **and**

2.3 if the partner claims State Pension Credit, consider the partner's claim under the normal rules for a claimant who has no partner.

Polygamous marriages

78828 Where members of a polygamous marriage are patients for 52 weeks or more the decision maker should revise or supersede the award on the basis of the new circumstances. The effects on the State Pension Credit award in such a case depend on which member of the polygamous marriage is the patient.

78829 If the person who has been a patient for 52 weeks or more is

1. an additional spouse (whether of the claimant's or of a spouse of the claimant's), the decision maker should

1.1 revise the award to remove that additional spouse from the calculation **and**

1.2 if the additional spouse claims State Pension Credit, consider their claim as in DMG 78826

2. a spouse of the claimant but the claimant has other additional spouses, the decision maker should

2.1 revise the award to remove the spouse in hospital from the calculation **and**

2.2 if the spouse in hospital claims State Pension Credit in their own right, consider their claim as in DMG 78826

3. the only spouse of the claimant's, the decision maker should

3.1 revise the award to remove all other members of the polygamous marriage from the assessment **and**

3.2 if the other members claim State Pension Credit, consider their individual claims under the normal rules

4. the claimant, the decision maker should

4.1 revise the award as in DMG 78826 **and**

4.2 consider whether a claim should be invited from the remaining members **and**

4.3 if any of the remaining members claims State Pension Credit, consider their claims under the normal rules.

78830 – 78839

Savings credit for people in hospital

General

78840 When considering the effect of hospital admission on a claimant's savings credit, decision makers should note that

1. unless **2.** applies, savings credit remains payable whilst a person is in hospital, irrespective of the length of time spent in hospital[1] **and**

2. a re-assessment following the end of an assessed income period may remove savings credit if the claimant's circumstances have changed (see DMG Chapter 83 for guidance on assessed income periods) **and**

3. the amount of savings credit payable is not normally affected by hospital admission unless

3.1 additional amounts are applicable for

3.1.a the severely disabled (see DMG 78030 et seq) **or**

3.1.b carers (see DMG 78100 et seq) **or**

3.2 the patient stops being a member of the same household as any partner (see DMG 77100 et seq).

1 SPC Act (NI) 02, sec 3(5)

In hospital four weeks or more

78841 When a person has been in hospital for four weeks, the decision maker should consider the effect of the hospital admission on any additional amounts that may be applicable.

Additional amount for the severely disabled

78842 When a person in receipt of Attendance Allowance, Disability Living Allowance or Adult Disability Payment has been in hospital for four weeks, payments of Attendance Allowance and Disability Living Allowance are withdrawn. As a result[1], a claimant who

1. has no partner will no longer qualify for the additional amount for the severely disabled and this will also be withdrawn

2. has a partner, may

2.1 be entitled to a reduced rate of additional amount for the severely disabled (see DMG 78045 - 78047) **or**

2.2 no longer qualify for the additional amount for the severely disabled, in which case it will be withdrawn[1]

3. is a member of a polygamous marriage, may

3.1 be entitled to a reduced rate of additional amount for the severely disabled (see DMG 78611 - 78613) **or**

3.2 no longer qualify for the additional amount for the severely disabled, in which case it will be withdrawn.

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

78843 The additional amount for the severely disabled should be withdrawn, or reduced, from the date that Attendance Allowance, Disability Living Allowance or Adult Disability Payment stops. The decision maker should then recalculate the claimant's savings credit entitlement and normal change of circumstances rules should be applied (see DMG Chapter 4). See Appendix 4 to this Chapter for some examples involving people in hospital.

Example

Ulrika is aged 66 and lives alone. She is entitled to Retirement Pension of £77.45 a week and an occupational pension of £40. Ulrika qualifies for an additional amount of £42.95 because she is severely disabled and the standard minimum guarantee for her is £102.10. Under the normal calculation of State Pension Credit, Ulrika is entitled to:

Appropriate minimum guarantee [£102.10 + £42.95]	£145.05	
Disability Living Allowance [disregarded]		
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		£27.60
Savings credit [£40x60% restricted to maximum savings credit]	£14.79	
Total State Pension Credit payable		£42.39

After four weeks in hospital, payment of Disability Living Allowance is withdrawn and the additional amount for the severely disabled is also withdrawn. Ulrika is then entitled to savings credit only, calculated as follows:

Appropriate minimum guarantee		£102.10
[£102.10]		
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		nil
Savings credit [£14.79] – £6.14		£8.65
[£15.35 x 40%]		
Total State Pension Credit payable		£8.65

78844 – 78854

Additional amount for carers

78855 Entitlement to Carer's Allowance may cease when the carer, or the disabled person they look after, is in hospital. As a result, the carer will no longer qualify for the additional amount of guarantee credit for carers and this too will be withdrawn.

78856 The additional amount for carers should be withdrawn after a period calculated as in DMG 78107 et seq. The decision maker should then recalculate the claimant's savings credit entitlement. See Appendix 4 to this Chapter for some examples involving people in hospital.

Example

Bob is aged 67 and lives alone. He is entitled to Retirement Pension of £77.45 a week and an occupational pension of £40. Bob has underlying entitlement to Carer's Allowance, which overlaps with his Retirement Pension. He satisfies the conditions for the award of an additional amount for carers of £25.10 and the standard minimum guarantee for him is £102.10.

Under the normal calculation of State Pension Credit, Bob is entitled to:

Appropriate minimum guarantee		£127.20
[£102.10 + 25.10]		
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		£9.75
Savings credit [£40x60% restricted		£14.79

to maximum savings credit]		
Total State Pension Credit payable		£24.54

Disabled person in hospital

78857 The disabled person that Bob looks after is in hospital and their Attendance Allowance is lost after four weeks. Bob's is treated as satisfying the conditions for the amount for carers for a further eight weeks. After twelve weeks in hospital, the additional amount for carers is withdrawn. Bob is then entitled to savings credit only, calculated as follows:

Appropriate minimum guarantee [£102.10]		£102.10
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		nil
Savings credit [£14.79] - £6.14 [£15.35 x 40%]		£8.65
Total State Pension Credit payable		£8.65

Carer in hospital

78858 Bob is in hospital and whilst there he is not able to provide care for the disabled person. But Bob's entitlement to Carer's Allowance can continue for a further twelve weeks whilst unable to provide care. After twelve weeks in hospital entitlement to Carer's Allowance ends. Bob is treated as satisfying the conditions for the additional amount for carers for a further eight weeks. After 20 weeks in hospital the additional amount for carers is withdrawn and Bob is then entitled to savings credit only.

78859 – 78861

In hospital 52 weeks or more

Claimant who has no partner

78862 When a single claimant has been a patient for 52 weeks or more, decision makers should note that the amount of savings credit payable will

1. not change **and**

2. remain in payment irrespective of the length of time spent in hospital.

Couples and members of a polygamous marriage

78863 Couples normally stop being members of the same household when one of them has been a patient for 52 weeks or more (see DMG 77117 et seq). Members of polygamous marriages also stop being members of the same household when they have been patients for 52 weeks or more. In such a case the decision maker should

1. revise or supersede the claimant's award on the basis of the new circumstances **and**

2. invite a separate claim from each member of the couple or polygamous marriage **and**

3. attribute any resources that were brought into account in their claim as a couple or polygamous marriage, between them.

78864 – 78899

Others

Loss of benefit

Introduction

78900 The law provides for restrictions in the payment of certain benefits following convictions for benefit fraud offences[1].

1 SS Fraud Act (NI) 2001; SS (Loss of Benefit) Regs (NI)

78901 General guidance on how to apply the restrictions can be found in DMG Chapter 08 at DMG 8400 et seq. But there are certain provisions that apply particularly to State Pension Credit[1]. The following guidance explains how those provisions apply.

1 SPC Act (NI) 02, sec 14; Sch 2, Part 3, paras 32 to 37; SPC Regs (NI), reg 25(1)

Definitions

78902 The following paragraphs explain the meaning of terms used throughout this guidance on the loss of benefit provisions.

Benefit week

78903 Benefit week means[1]

1. where State Pension Credit is paid in advance, the period of 7 days beginning on the day on which, in the claimant's case, that benefit is payable

2. where State Pension Credit is paid in arrears, the period of 7 days ending on the day on which, in the claimant's case, that benefit is payable.

1 SPC Regs (NI), reg 1(2) & 25(3); SS (Loss of Benefit) Regs (NI), reg 3A(6)

Determination day

78904 The determination day is the day that a determination is made that loss of benefit should apply[1].

1 SS (Loss of Benefit) Regs (NI), reg 2(3); SPC Regs (NI), reg 25(2)(a)

Family

78905 For the purposes of the loss of benefit provisions, family[1] means a

1. couple **or**

2. a couple and any child or person of a prescribed description who is

2.1 a member of the same household **and**

2.2 the responsibility of either or both members of the couple **or**

3. person who is not a member of a couple and any child or person of a prescribed description who is

3.1 a member of the same household **and**

3.2 the responsibility of that person.

1 SS Fraud Act (NI) 2001, sec 12; SS C&B (NI) Act 92, sec 133(1)

Person of a prescribed description

78906 A person of a prescribed description for the purposes of the definition of family in DMG 78905, is[1] a person

1. who is an additional spouse in the case of a polygamous marriage[2] (see DMG 77021) **or**

2. aged 16 or over who is in full time education and is treated as a child for Child Benefit purposes[3].

1 SS (Loss of Benefit) Regs (NI), reg 3A(7); SPC Regs (NI), reg 25(3);
2 SS (Loss of Benefit) Regs (NI), reg 3A(7)(a); SPC Act (NI) 02, sec 12(1);
3 SS (Loss of Benefit) Regs (NI), reg 3A(7)(b); SS C&B (NI) Act 92, sec 142

78907 – 78908

Disqualification period

78909 Where the conditions in DMG 8403 are satisfied, restriction on the payment of State Pension Credit will apply during the disqualification period[1] (see DMG 8410). The date on which that period starts depends on whether the offender, or a member of their family, is in receipt of benefit on the determination day (see DMG 78904).

1 SS Fraud Act (NI) 2001, sec 6(6)

Conviction, administrative penalty or caution for benefit offence

78910 Where on the determination day (see DMG 8408) the offender or a member of the family of an offender is a person in receipt of State Pension Credit[1], the first day of the disqualification period (see DMG 8411) is

1. for State Pension Credit paid in arrears, the day following the first pay day after the end of the period of 28 days beginning with the determination day **or**

2. for State Pension Credit paid in advance, the first pay day after the end of the period of 28 days beginning with the determination day[2].

1 SS (Loss of Benefit) Regs (NI), reg 1A(a) and (c); 2 reg 1A(3)

78911 In any other case, including where State Pension Credit is awarded after the determination day to the offender or a member of the offender's family, the first day of the disqualification period is the first day after the end of the period of 28 days beginning with the determination day[1].

1 SS (Loss of Benefit) Regs (NI), reg 1A(6)

Second or subsequent conviction for benefit offence

78912 Where there is a second or subsequent conviction as described in DMG 8403 and, on the determination day, the offender is in receipt of State Pension Credit or has a family member in receipt of State Pension Credit, the first day of the disqualification period (see DMG 8411) is

1. for State Pension Credit paid in arrears, the day following the first pay day after the end of the period of 28 days beginning with the determination day **or**

2. for State Pension Credit paid in advance, the first day after the end of the period of 28 days beginning with the determination day[1].

1 SS (Loss of Benefit) Regs (NI), reg 2(3)

78913 In any other case, including where State Pension Credit is awarded after the determination day, the first day of the disqualification period is the first day after the end of the period of 28 days beginning with the determination day on which the Department decides to award State Pension Credit

1. to the offender **or**

2. to the offender's family member[1].

1 SS (Loss of Benefit) Regs (NI), reg 2(6)

Reduction in amount of State Pension Credit payable

78914 State Pension Credit payable to an offender or to a member of the offender's family, for any week in the disqualification period should be reduced[1]

1. where the offender, or the family member, is pregnant or seriously ill, by 20% of the relevant sum[2] **or**

2. in any other case, by 40% of the relevant sum[3].

Note: Payment of State Pension Credit must not be reduced below ten pence a week[4].

1 SS Fraud Act (NI) 2001, sec 6(2) & 8; SPC Act (NI) 02, Sch 2, para 45(2) & 46;
2 SS (Loss of Benefit) Regs (NI), reg 3A(1)(a); 3 reg 3A(1)(b); 4 reg 3A(3)

The relevant sum

78915 For the purposes of DMG 78912, the relevant sum is the amount applicable on the first day of the disqualification period

1. except where 2. applies, for a single Income Support claimant aged not less than 25[1] **or**

2. if the claimant's family member is the offender and the offender has not reached age 25, for a person of the offender's age in Income Support[2].

1 SS (Loss of Benefit) Regs (NI), reg 3A(2)(a); IS (Gen) Regs (NI), Sch 2, para 1(1);
2 SS (Loss of Benefit) Regs (NI), reg 3A(2)(b); IS (Gen) Regs (NI), Sch 2, Part I, para 1(1)

Rounding

78916 A reduction under DMG 78914 shall, if it is

1. not a multiple of five pence, be rounded to the nearest such multiple **and**

2. a multiple of two and half pence but not of five pence, be rounded to the next lower multiple of five pence[1].

1 SS (Loss of Benefit) Regs (NI), reg 3A(4)

Changes in rate of State Pension Credit payable

78917 The rate of State Pension Credit payable to an offender, or an offender's family member, may change. In such a case

1. the rules for a reduction in the State Pension Credit payable should be applied to the new rate **and**

2. any adjustment to the reduction will take effect from the first day of the first benefit week to start after the date of change[1].

1 SS (Loss of Benefit) Regs (NI), reg 3A(5)

78918 – 78919

Absence from Northern Ireland

Introduction

78920 It is a condition of entitlement to State Pension Credit that a person is in Northern Ireland[1]. But entitlement can sometimes continue during an absence from Northern Ireland[2]. Guidance on entitlement to State Pension Credit when a person is absent from Northern Ireland is given in DMG Chapter 07.

1 SPC Act (NI) 02, sec 1(2)(a) & (5)(a); SPC Regs (NI), reg 2 & 4;
2 SPC Act (NI) 02, sec 1(5)(b); SPC Regs (NI), reg 3

78921 – 78939

People subject to immigration control

General

78940 People subject to immigration control are normally excluded from social security benefits[1]. There are exceptions to this rule for certain categories of people[2].

1 Immigration and Asylum Act 1999, s 115(1);
2 SS (Immigration and Asylum) Consequential Amendments Regulations (NI) 2000

Meaning of person subject to immigration control

78941 A person subject to immigration control means[1] a person who is not a national of the European Economic Area who

1. requires leave to enter or remain in the UK but does not have it **or**

2. has leave subject to the condition that they have no recourse to public funds **or**

3. is a sponsored immigrant **or**

4. has had limited leave extended only because they have appealed a decision to vary, or refuse to vary, that leave.

1 Immigration and Asylum Act 1999, sec 115(9)

Exceptions

78942 The exceptions where State Pension Credit can be awarded in full (subject to the normal rules of entitlement) are when the claimant

1. is a sponsored immigrant who has been in the UK for five years or more[1] **or**

2. is a sponsored immigrant and the sponsor has died[1] **or**

3. has limited leave and is temporarily without funds[1] **or**

4. is an asylum seeker who has transitional protection under the 3.4.00 rules[2] **or**

5. is a national of a country which has ratified the

5.1 European Convention on Social and Medical Assistance **or**

5.2 Council of Europe Social Charter (see Appendix 4 to DMG Chapter 24)

and is lawfully present in the UK[1].

"Lawfully present" in this context means that the person should have some form of leave to enter or remain in the UK. Asylum seekers, or people with temporary

admission in other circumstances, would not be regarded as being lawfully present for this purpose.

1 SS (Immigration and Asylum) Consequential Amendments Regulations (NI) 2000, reg 2(1); 2 reg 2(7)

Sponsored immigrants

78943 Persons subject to immigration control are entitled to State Pension Credit if they

1. have leave to enter or remain in the UK as a sponsored immigrant **and**

2. have not been resident in the UK for a period of at least five years **and**

3. the sponsor has died.

If there is more than one sponsor they must all have died before State Pension Credit can be awarded.

Example 1

A man enters the UK in December 1999 with indefinite leave under a written sponsorship agreement signed in November 1999. In January 2004 the sponsor dies and he claims State Pension Credit. He is a person subject to immigration control with entitlement to State Pension Credit.

Example 2

A woman enters the UK in May 2001 with indefinite leave under a written sponsorship agreement signed by her two sons in April 2001. She lives with her elder son who dies in May 2004 and she claims State Pension Credit. But her other sponsor, her younger son, is still alive. The claimant is a person subject to immigration control with no entitlement to State Pension Credit.

Note: Where the claimant has been resident in the UK for five years, State Pension Credit can be awarded in full[1].

1 SS (Immigration and Asylum) Consequential Amendments Regulations (NI) 2000, reg 2(1), Sch, para 3

78944 – 78945

Partner is a person subject to immigration control

78946 A partner that is a person subject to immigration control is not a member of the claimant's household[1] although their presence in the dwelling may be counted as a person residing with the claimant for severe disability purposes[2].

Note: If they are not members of the same household, they are not a couple (see DMG 77013)[3].

1 SPC Regs (NI), reg 5(1)(h); 2 SPC Regs (NI), Sch 1, para 1(1)(a); 3 SPC Act (NI) 02, sec 17(1)

Temporarily without funds

78947 **[See DMG Memo Vol 1/101, 2/40, 3/89, 4/117, 5/94, 6/81, 8/51, 9/24, 13/54 & 14/52]**
A person subject to immigration control is entitled to State Pension Credit if they

1. have limited leave to enter or remain in the UK with no

1.1 recourse to public funds **or**

1.2 charge on public funds

during that period of leave **and**

2. have been self-supporting or supported without recourse to public funds (other than a previous payment under the State Pension Credit provisions) **and**

3. are temporarily without funds because the funds from abroad have been disrupted **and**

4. reasonably expect that the supply of funds will be resumed[1].

1 SS (Immigration and Asylum) Consequential Amendments Regulations (NI) 2000, reg 2(8)

78948 The expectation that the supply of funds will resume must be a reasonable one. But there is no set time limit within which the funds must resume. What is reasonable in this context should be decided on the circumstances of each individual case.

Example 1

Aniza is from Malaysia and is being supported by funds from abroad. Political unrest in her home country prevents funds from getting to the UK. But it is expected that the situation will return to normal after an election in two months time. The decision maker considers State Pension Credit.

Example 2

A visitor from Nigeria is temporarily without money because of a delay in transferring funds to a UK bank. It is reasonable to expect the funds to arrive within two weeks. The decision maker considers State Pension Credit.

78949 There is a 42 day maximum period of entitlement to State Pension Credit that applies during any one period of limited leave[1]. It is important to note that the maximum period can be made up of a number of smaller periods. The claimant may make several claims during one period of limited leave, but the 42 day period should not be exceeded in total.

1 SS (Immigration and Asylum) Consequential Amendments Regulations (NI) 2000, reg 2(8)

78950 The claimant can have up to a further 42 days of benefit if

1. the original period of leave had expired and a fresh period of leave had been given (for example not backdated to follow on from the expiry date of the original leave) **or**

2. the conditions of the leave had been varied (not just its duration).

78951 – 78954

Asylum seekers

78955 Under Income Support and income-based Jobseeker's Allowance rules, some asylum seekers who applied for asylum before 3.4.00 were entitled to Income Support or income-based Jobseeker's Allowance at urgent case payment rates. On 3.4.00 the law was changed and all new asylum seekers were excluded from social security benefits[1]. Instead they received support under a new support system provided by the Home Office.

1 Immigration and Asylum Act 1999, s 115(1);
SS (Immigration and Asylum) Consequential Amendments Regulations (NI) 2000, reg 2(4)(c) & (7)

78956 – 78999

Appendix 1

Housing costs - amount of non-dependant deductions

This appendix provides details of the rates of the non-dependant deductions[1] (see DMG 78500 et seq).

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

Rates from 7.4.14

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £91.15

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	less than £128.00	£14.15
2.2	£128.00 to £187.99	£32.45
2.3	£188.00 to £244.99	£44.55
2.4	£245.00 to £325.99	£72.95
2.5	£326.00 to £405.99	£83.05
2.6	£406.00 or more	£91.15

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.15.

Rates from 6.4.15

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £93.80

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	less than £129.00	£14.55
2.2	£129.00 to £188.99	£33.40
2.3	£189.00 to £245.99	£45.85
2.4	£246.00 to £327.99	£75.05

2.5 £328.00 to £407.99 £85.45

2.6 £408.00 or more £93.80

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.55.

Rates from 11.4.16

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £94.50

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 less than £133.00 £14.65

2.2 £133.00 to £194.99 £33.65

2.3 £195.00 to £252.99 £46.20

2.4 £253.00 to £337.99 £75.60

2.5 £338.00 to £419.99 £86.10

2.6 £420.00 or more £94.50

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.65.

Rates from 10.4.17

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £95.45

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 less than £136.00 £14.80

2.2 £136.00 to £199.99 £34.00

2.3 £200.00 to £258.99 £46.65

2.4 £259.00 to £345.99 £76.35

2.5 £346.00 to £429.99 £86.95

2.6 £430.00 or more £95.45

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.80.

Rates from 6.4.18

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £98.30

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	less than £139.00	£15.25
2.2	£139.00 to £203.99	£35.00
2.3	£204.00 to £264.99	£48.05
2.4	£265.00 to £353.99	£78.65
2.5	£354.00 to £438.99	£89.55
2.6	£439.00 or more	£98.30

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.25.

Rates from 8.4.19

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £100.65

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	less than £143.00	£15.60
2.2	£143.00 to £208.99	£35.85
2.3	£209.00 to £271.99	£49.20
2.4	£272.00 to £362.99	£80.55
2.5	£363.00 to £450.99	£91.70
2.6	£451.00 or more	£100.65

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.60.

Rates from 6.4.20

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £102.35

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	less than £143.00	£15.85
2.2	£143.00 to £208.99	£36.45
2.3	£209.00 to £271.99	£50.05
2.4	£272.00 to £362.99	£81.90
2.5	£363.00 to £450.99	£93.25
2.6	£451.00 or more	£102.35

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.85.

Rates from 12.4.21

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £102.35

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	less than £149.00	£15.95
2.2	£149.00 to £216.99	£36.65
2.3	£217.00 to £282.99	£50.30
2.4	£283.00 to £376.99	£82.30
2.5	£377.00 to £468.99	£93.70
2.6	£469.00 or more	£102.85

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.95.

Rates from 11.4.22

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £106.05

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	less than £154.00	£16.45
2.2	£154.00 to £223.99	£37.80

2.3 £224.00 to £291.99 £51.85

2.4 £292.00 to £388.99 £84.85

2.5 £389.00 to £483.99 £96.60

2.6 £484.00 or more £106.05

3. any other non-dependant aged 18 or over for whom deductions are relevant - £16.45.

Rates from 10.4.23

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £116.75

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 less than £162.00 £18.10

2.2 £162.00 to £235.99 £41.60

2.3 £236.00 to £307.99 £57.10

2.4 £308.00 to £409.99 £93.40

2.5 £410.00 to £510.99 £106.35

2.6 £511.00 or more £116.75

3. any other non-dependant aged 18 or over for whom deductions are relevant - £18.10.

Appendix 2

The remunerative work rule for non-dependant housing cost deductions

1 This guidance sets out the remunerative work rule as it applies for non-dependant deductions when calculating the mount of housing costs in State Pension Credit[1].

1 SPC Regs (NI), Sch 2, para 2

Introduction

2 Remunerative work is[1] work for which payment is made, or which is done in expectation of payment and in which the person is engaged for not less than

1. 16 hours a week **or**

2. 16 hours a week on average where the hours of work fluctuate.

1 SPC Regs (NI), Sch 2, para 2(1)

Does the person have employment

3 Decision makers should decide that a person is not in remunerative work if they do not have any employment and are between jobs. Decision makers will need to decide whether employment has ended if someone has been engaged in remunerative work.

4 Decision makers should decide that a person is still in employment and not between jobs if

1. the contract of employment (which can be written or verbal) is still current **or**

2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because

2.1 there is an express agreement (written or verbal) **or**

2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

Off-shore oil workers

5 Off-shore oil workers may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

6 It is a question of fact for the decision maker whether the work is continuing or not. The decision maker will need to consider, amongst other things, whether there is a continuing relationship between the person and the employer. Frequent resumption of work with the same employer may be an indication that work is continuing (see paragraph 4 **2.2**).

Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognisable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. The decision maker has to decide whether Dennis is in remunerative work at a time when he is not working. On looking at the facts of Dennis' past work for the company, the decision maker is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The decision maker decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

Treated as in or not in remunerative work

7 A person engaged in remunerative work may be **treated** as **not** being in remunerative work (see paragraph 140 et seq)[1]. Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work[2] (see paragraphs 126 et seq).

1 SPC Regs (NI), Sch 2, para 2(6), (7) & (8); 2 para 2(5)

Work done for payment or in expectation of payment

8 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The decision maker should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it **or**

2. it is done in expectation of payment[1].

Remunerative does not mean profitable (see paragraph 11).

1 SPC Regs (NI), Sch 2, para 2(1); R(IS) 1/93

Payment in kind

9 "Payment" includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

Example 1

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work.

Example 2

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

Expectation of payment

10 Work "done in expectation of payment" means more than a mere hope that payment will be made at a future date[1]. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

Self-employed earners

11 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the time. The decision maker need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why[1].

1 CA, CAO v Ellis (R(IS) 22/95)

Sale of goods

12 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

Note: Also that payment may be derived from takings.

Business start up

13 An allowance payable under certain schemes to assist people to become self-employed is not payment for work[1].

Note: That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

1 CA, CAO v. Smith

14 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

Example

Annie and her husband run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

Company directors

15 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director[1]. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a self-employed earner. In such cases DMG 20234 applies.

1 R(IS) 5/95

16 - 20

Establishing hours of work

Introduction

21 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count. See paragraph 42 for guidance on teachers.

Counting the hours

Flexible working schemes

22 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

Overtime

23 Overtime for which payment is made or expected counts towards the weekly total.

Night duty

24 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if

1. payment made or expected is less than for normal daytime duties

2. the time on the night duty is spent sleeping.

Example

Edward makes a claim for State Pension Credit. His non-dependant daughter, Michelle, works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than for her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The decision maker decides that Michelle is in remunerative work.

Evidence of hours

25 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

26 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a self-employed earner, follow the guidance at paragraph 28 to establish any additional hours worked.

Musicians

27 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

Example 1

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

Example 2

A musician is engaged to perform music. The performances last for twelve hours a week. She practices the performances for ten hours a week. She is engaged in remunerative work.

Self-employed

28 Include all the hours necessary to run the business, for example, time spent in

1. trips to wholesalers and retailers

2. visits to potential customers

3. advertising or canvassing

4. cleaning the business premises

5. cleaning and maintaining items used in the business, for example a taxi or driving school car

6. providing estimates

7. book-keeping

8. research work, for example where the person is a writer.

29 Where a self-employed person is running a business which is

1. building up or

2. winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

30 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

Example

Peter, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of ten customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the decision maker concluded that he worked six hours a day, five days a week, a total of 30 hours a week.

31 If a self-employed person has been doing undisclosed work or working more hours than is claimed, the decision maker must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.

32 - 41

Teachers

42 The conditions of employment of most schoolteachers, except head teachers, are laid down in an Order[1] or Agreement[2]. They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables

2. assessing and reporting on pupils

3. helping to administer and organize the school

4. advising pupils and ensuring their discipline, health and safety

5. discussing pupils' progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the decision maker is unsure whether a teacher is obliged to do a particular activity, consult the Order or Agreement.

1 Education and Libraries (NI) Order 1986, art 69;
2 Teachers (Terms and Conditions of Employment) Regs (NI) No 267 and No 269

43 Before either the Order or Regulations came into force, teachers were generally required by their contracts to carry out the duties now laid down[1]. Members of the teaching profession not covered by the Order or Regulations (for example higher education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work or

2. any such work is included in the hours of work laid down in the contract.

1 Teachers (Terms and Conditions of Employment) Regs (NI)

44 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person's own evidence if it seems reasonable. If a person states that the time spent on non-teaching duties is anything up to one third of the time spent teaching, accept this without question.

45 It may be reasonable to accept a larger proportion than a third depending on the

1. teacher's experience

2. subjects being taught

3. method of teaching

4. amount of homework to be marked

5. number of pupils.

In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

46 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

Paid breaks

47 Paid breaks do not count when establishing the hours of remunerative work.

48 - 57

Calculating average hours

58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours[1].

1 SPC Regs (NI), Sch 2, para 2(2)

Identifying a recognisable cycle

59 See if there is any pattern of work over a period of time. This is known as a recognisable cycle[1]. A recognisable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

Example 1

week 1 X hours

week 2 Y hours

week 3 X hours

week 4 X hours

week 5 Y hours

week 6 X hours

There is a recognisable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

Example 2

month 1 A hours

month 2 B hours

month 3 A hours

month 4 B hours

There is a recognisable cycle of two months.

Example 3

week 1 X hours

week 2 X hours

week 3 Y hours

week 4 W hours

week 5 V hours

There is no recognisable cycle.

Note: A cycle may include weeks in which no work is done[2].

1 SPC Regs (NI), Sch 2, para 2(2)(a); 2 para 2(2)(a)

Permanent or indefinite contract

60 A recognisable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

Example

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. The decision maker decides that Julia's contract establishes a cycle from its outset.

Fixed term contracts and casual workers

61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)[1]. Decision makers should decide each case on its facts. The decision maker will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. Decision makers should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

Example

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He does not work for the Christmas holiday but says that

he has been asked to return to work after the holidays. Bill tells the decision maker that he expects to return to work as he did the previous January. The decision maker decides that Bill has established a recognisable cycle of work and that it has not been broken. Bill is in remunerative work because on average he works 16 hours or more a week.

Extra work

62 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle.[1]

1 R(JSA) 5/02

Example

Celeste is employed as a shop assistant by a students union. The terms of her employment contract are "Monday to Friday, 8.15 am to 1.15 pm term time only". Celeste agrees to do extra work stocktaking during the first week of the summer holidays. The decision maker is asked to decide whether she is in remunerative work on the day after she finishes the extra work. The decision maker decides that Celeste's contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

Probation

63 A recognisable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

Example

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a six month probationary period, specifies that he is expected to work during term times and not during school holidays. The decision maker decides that he is in a recognisable cycle from the outset of the contract and, on average, works 16 hours or more a week. He is in remunerative work.

64 - 69

Recognisable cycle established

70 Where there is a recognisable cycle calculate the average hours over one complete cycle[1]. Include, where the cycle involves periods when the person does no work, those periods, but disregard any other absences.

1 SPC Regs (NI), Sch 2, para 2(2)(a)

Periods when a person does not work

71 Periods when a person does not work can fall into the following categories:

1. periods of absence because of sickness or maternity leave, ordinary paternity leave or adoption leave

2. periods of unauthorised absence "without good cause"

3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer

4. periods during which someone can be properly regarded as on holiday.

Note: For periods during which someone is not working because they are between jobs they are not in remunerative work, see paragraphs **2.** - **5.**.

Sickness, maternity leave, paternity leave, adoption leave and periods of unauthorised absence

72 **[See DMG Memo Vol 4/155, 5/118, 8/104, 9/53, 10/81, 13/126 & 14/74]** When someone is absent from work due to sickness, maternity leave, paternity leave, shared parental leave, parental bereavement leave, or adoption leave (see paragraph 141) the decision maker should decide that they are not in remunerative work during such absences[1]. When someone has a period of absence without good cause, the decision maker should treat such an absence in the same way as proper holidays[2] (see paragraph 79).

1 SPC Regs (NI), Sch 2, para 2(7); 2 para 2(5)

Holidays or periods of no work

73 The decision maker should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

1. spread over a year in equal instalments **and**

2. enhanced to take account of a lack of holiday entitlement

should not be taken into account when deciding whether someone has paid holidays.

74 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99[1].

1 Working Time Regulations (NI) 1998 No 386

Calculating the number of hours for which a person is engaged in work

75 If the decision maker has decided that a person is still in employment (see paragraphs 2 - 5) (and they are not absent from work due to sickness or maternity leave, ordinary paternity leave or adoption leave) they will need to calculate the number of hours for which the person is engaged in work.

76 If the person works the same number of hours each week when not on holiday that is the number of hours worked in each week.

77 If the person's hours of work fluctuate, the decision maker should take an average

1. as per paragraph 90 if there is no cycle of work **or**

2. as per paragraph 79 if there is a cycle of work.

78

Calculating the average hours

79 Legislation[1] requires that in cycle cases where the hours of work fluctuate the average should be calculated by taking into account periods in which the person does not work but disregarding other absences. Decision makers should only deduct periods of holiday, absences without good cause, sickness and maternity leave, ordinary paternity leave and adoption leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle. Periods of no work should not be deducted. Put another way, it is only periods of holiday absences without good cause, sickness and maternity leave, ordinary paternity leave or adoption leave which are "other absences to be disregarded".

1 SPC Regs (NI), Sch 2, para 2(2)(a)

80

Yearly cycle with school holidays or similar vacations

81 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, whether or not payment is made for any part of the holidays, there is a recognisable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, exclude from the calculation of average hours any periods

1. of school holidays or similar vacations when that person does no work **and**

2. not part of school holidays or similar vacations, when the person is not required to work[1].

1 SPC Regs (NI), Sch 2, para 2(3); R(IS) 15/01

Example

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2003 for 15.5 hours of work a week during academic terms. There is no entitlement to paid holiday, but the contract states "your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday pay." The academic terms cover 38 weeks, but Megan receives her pay over the calendar year in twelve equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 2002/2003 academic year she has four other such contracts:

1. seven and a half hours a week for twelve weeks in the autumn term

2. eight and half hours a week for ten weeks in the spring term

3. seven and half hours a week for four weeks in the summer term

4. five hours a week for six weeks in the summer term.

In June 2004 Megan starts her summer vacation, and the decision maker is asked to decide whether or not she is in remunerative work.

Megan is not entitled to holiday pay. The fact that she receives her pay spread over the year in equal instalments does not affect this, nor does the fact that she receives an enhanced rate of pay.

The periods of school holiday are excluded from the calculation of average hours.

Total number of hours is 824. Divided by 38, equals 21.7 (i.e. over 16). Megan is in remunerative work.

Ancillary school workers

82 Ancillary school workers are members of the non-teaching staff of schools and other educational establishments. Where such workers have a yearly cycle of work during term-time only, follow the guidance at paragraph 81. Examples of ancillary school workers include

1. school meals services employees

2. domestic staff

3. clerical staff (such as secretaries and clerks)

4. laboratory workers

5. nursing assistants

6. school bus drivers.

83 - 87

No recognisable cycle established

Estimating future hours

88 Where

1. a person has just started work or is about to start work **or**

2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work **or**

3. because of absences from work a recognisable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week[1].

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

89 Average the estimated hours over a period long enough to cover the expected pattern of work[1]. Consider the case where there is sufficient evidence to average the actual hours worked.

1 R(IS) 8/95

Averaging past hours

90 Where the person has been in work before the date of claim and a recognisable cycle has not been established calculate average weekly hours over

1. the five weeks immediately before the date of claim[1] **or**

2. a longer or shorter period immediately before the date of claim if the five week period in **1.** does not give a fair average.

"Immediately before" in this context means the end of the last complete week before the date of decision or date of claim.

1 SPC Regs (NI), Sch 2, para 2(2)(b)

91 Include in the calculation at paragraph 90 any periods of non-working within the normal pattern of employment (rest periods)[1].

1 R(IS) 12/95

92 Examples of circumstances in which it may not be appropriate to use the five week period in paragraph 90 **1.** are where the

1. five weeks contain a period of absence which distorts the average **or**

2. five weeks do not show the person's normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**

3. person is paid at intervals of longer than a week.

In either of the circumstances in 1. or 2. a period of less than five weeks as in paragraph 90 2. might give a fairer result. Extending the period beyond the last five weeks would still include the distortions so in these circumstances estimate future hours as in paragraph 88.

93 If the decision maker bases a weekly average of hours over a period of more or less than five weeks, as in paragraph 90 **2.**, the alternative period must still be a period immediately before the date of decision or the date of claim. It should be either

1. more than the five week period in paragraph 90 1., in which case it will include those five weeks **or**

2. less than the five week period in paragraph 90 1., in which case it will be a part of those five weeks immediately before the date of claim.

94 The approaches outlined in paragraph 88 and paragraph 90 are alternatives. There is no provision for the decision maker to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

Short-time workers

95 Employers experiencing a fall in business may put their employees on short-time working. This can be

1. a reduction in hours worked each day or

2. no work on certain days of the week or

3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in paragraphs 88 - 89 and estimate future hours[1] at the start of short-time working until average hours over a past period can be calculated[2]. Periods of no work should be included in the average.

1 SPC Regs (NI), Sch 2, para 2(4); R(IS) 8/95; 2 SPC Regs (NI), Sch 2, para 2(2)(a) & (b)

96 - 106

Changes to the normal hours

107 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**

2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**

3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather, and the decision maker decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over

3.1 the cycle of work if there is now a recognisable cycle[1] **or**

3.2 the five week period or other more suitable period immediately before the date of application for supersession[2].

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

Seasonal workers

108 The normal remunerative work rules apply to self-employed seasonal workers except where the business ceases to operate during the off-season. If it does, the person is no longer self-employed and cannot be in remunerative work. Accept that a business has ceased to operate where no activities in connection with the business are undertaken during the off-season (see DMG Chapter 27).

Business ceases during off-season

109 A person is not in remunerative work once the business has ceased to operate.

Business continues during the off-season

110 Where the business continues during the off-season a person will be treated as engaged in remunerative work throughout the year if the hours, or average hours, are 16 or more a week[1] for the person.

1 SPC Regs (NI), Sch 2, para 2(1); R(JSA) 1/03

Averaging the hours

111 Calculate average hours over

1. if there is a recognisable cycle - one complete cycle of work (this will usually be one year where a business continues to operate throughout the year). Include periods in which the person does no work, but exclude other absences such as holidays or sickness[1] **or**

2. if there is no recognisable cycle - over the five week period, or other more suitable period, immediately before the date of claim, the date of decision or the date of application for supersession[2].

Include in the calculation time spent on all activities connected with the business.

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

Agency and casual workers

112 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

113 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

114 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

See DMG Chapter 26 for guidance on when employment ends. If the question of non-dependants arises after employment is terminated, the person will not be in remunerative work.

115 - 125

People treated as in remunerative work

Introduction

126 People can be treated as in remunerative work even though they are absent from remunerative work[1]. However see paragraph 141 for details of when this rule does not apply[2].

1 SPC Regs (NI), Sch 2, para 2(5); 2 Sch 2, para 2(7)

127 Treat people as in remunerative work for any period during which they are[1]

1. absent without good cause **or**

2. absent by reason of a recognized, customary or other holiday.

1 SPC Regs (NI), Sch 2, para 2(5)

Absent without good cause

128 "Good cause" is for the decision maker to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorised the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause. Examples of good cause include where the absence is due to

1. bereavement or sudden serious illness in the family **or**

2. a disaster at home **or**

3. suspension from work, whether or not on full pay **or**

4. a requirement to attend court.

Recognised, customary or other holiday

129 A person should be treated as in remunerative work for any period of absence because of a recognised, customary or other holiday[1]. This is the case even if there is no permanent contract of employment. But this will not apply where the

1. absence is not a holiday (see paragraph 73) **or**

2. work is not remunerative as in paragraph 1 et seq **or**

3. person goes on holiday after employment ends.

See DMG Chapter 20 for guidance on what is a recognized, customary or other holiday.

1 SPC Regs (NI), Sch 2, para 2(5)

130 - 139

People treated as not in remunerative work

Income Support and income-based Jobseeker's Allowance

140 A person on

1. Income Support for more than three days in any Income Support benefit week[1] **or**

2. income-based Jobseeker's Allowance for more than three days in any Jobseeker's Allowance benefit week[2]

shall be treated as not being in remunerative work in that week[3].

1 IS (Gen) Regs (NI), reg 2(1); 2 JSA Regs (NI), reg 1(2); SPC Regs (NI), Sch 2, para 2(6)

Leave or absence from work

141 **[See DMG Memo Vol 4/155, 5/118, 8/104, 9/53, 10/81, 13/126 & 14/74]** A person shall be treated as not being in remunerative work[1] on any day on which they are

1. on maternity leave **or**

2. on paternity leave **or**

3. on adoption leave **or**

4. shared parental leave **or**

5. on parental bereavement leave **or**

6. absent from work because of illness.

1 SPC Regs (NI), Sch 2, para 2(7)

Meaning of ordinary paternity leave

142 Ordinary paternity leave means[1] a period of absence from work on leave in accordance with legislation[2].

1 SPC Regs (NI), reg 1(2); 2 ER (NI) Order 96, art 112A or 112B

Meaning of adoption leave

143 Adoption leave means[1] a period of absence from work on ordinary or additional adoption leave in accordance with legislation[2].

1 SPC (Trans & Misc Provs) (Amdt) Regs (NI), reg 2(2); SPC Regs (NI), reg 1(2);
2 ER (NI) Order 96, art 107A or 107B

Sports awards

144 People engaged in an activity for which a sports award has been made, or is to be made, to them should be treated as not engaged in remunerative work if no other payment is made or expected to be made to them in respect of the activity[1].

1 SPC Regs (NI), Sch 2, para 2(8)

145 A sports award means[1] an award made by one of the Sports Councils named in the National Lottery legislation[2] out of sums allocated under that legislation.

1 SPC Regs (NI), Sch 2, para 2(8); 2 National Lottery etc. Act 1993, s 23(2)

Appendix 3

Examples of calculations for special groups

This Appendix contains examples of how the amount of State Pension Credit payable is worked out where people are

1. members of polygamous marriages (see DMG 78600)

2. prisoners (see DMG 78650)

3. members of religious orders (see DMG 78680).

Decision makers should note that these examples are

1. for illustrative purposes only **and**

2. based on the rates and percentages applicable as from 6.4.04.

See Appendix 2 to DMG Chapter 77 for examples of how the amount of State Pension Credit payable is worked out in normal circumstances.

Polygamous marriages

Example 1 No additional amounts

Example 2 Additional amount for the severely disabled

Example 3 Additional amount for carers

Prisoners

Example 4 Single remand prisoner

Example 5 Partner becomes a prisoner

Members of religious orders

Example 6 Claimant not fully maintained by the religious order

Example 1 - No additional amounts

Sean, who is aged 65, is a member of a polygamous marriage and is married to Liz and Mary. Sean is entitled to Retirement Pension of £127.25 a week and has no other income. Sean does not qualify for any additional amounts.

Calculation of Guarantee credit:

Standard minimum guarantee for Sean and his eldest wife Liz	£160.95
Standard minimum guarantee for additional spouse Mary	£55.50
Additional amounts	nil
Appropriate minimum guarantee	£216.45
Less income	£127.25
Amount of Guarantee credit	**£89.20**

Calculation of Savings credit:

Savings credit threshold	£127.25
Qualifying income	£127.25
Amount of savings credit	**Nil**

Total State Pension Credit payable	**£89.20**

Calculation of total weekly income:

Retirement Pension	£127.25
State Pension Credit	£89.20

Total weekly income is	**£216.45**

Example 2 - Additional amount for the severely disabled

Nisha is aged 66 and a member of a polygamous marriage. Her husband Paul has another wife Susan and all three live together as members of the same household. Nisha is entitled to Retirement Pension of £76.60 a week and her husband Paul gets Retirement Pension of £127.25 a week. All three receive "Attendance Allowance" and no one else lives in the household. But someone gets Carer's Allowance in respect of caring for Susan. Nisha qualifies for an additional amount of £44.15 a week because she is treated as being severely disabled (see DMG 78611).

Calculation of guarantee credit:

Standard minimum guarantee for Nisha and her husband Paul	£160.95
Standard minimum guarantee for additional spouse Susan	£55.50
Additional amounts	£44.15
Appropriate minimum guarantee	£260.60
Less income (£79.60 + £127.25)	£206.85
Amount of guarantee credit	**£53.75**

Calculation of savings credit:

Savings credit threshold	£127.25
Qualifying income	£206.85
Qualifying income exceeds savings credit threshold by	£79.60
60% x £79.60	£47.76
Maximum savings credit	£20.22
Amount A	£47.76
Amount B (income does not exceed appropriate minimum guarantee)	Nil
Amount of savings credit (the maximum savings credit)	**£20.22**
Total State Pension Credit payable	**£73.97**

Calculation of total weekly income:

Total Retirement Pension	£206.85
State Pension Credit	£73.97
Total weekly income is	**£280.82**

Example 3 - Additional amount for carers

Sean, who is aged 65, is a member of a polygamous marriage and is married to Liz and Mary. Sean is entitled to Retirement Pension of £127.25 a week and Mary gets Retirement Pension of £79.60 a week. Both Liz and Mary are entitled to Carer's Allowance and each satisfy the conditions for the award of an additional amount for carers.

Calculation of guarantee credit:

Standard minimum guarantee for Sean and his eldest wife Liz	£160.95
Standard minimum guarantee for additional spouse Mary	£55.50
Additional amounts (£25.55 x 2)	£51.10
Appropriate minimum guarantee	£267.55
Less income (£79.60 + £127.25)	£206.85
Amount of guarantee credit	**£60.70**

Calculation of savings credit:

Savings credit threshold	£127.25
Qualifying income	£206.85
Qualifying income exceeds savings credit threshold by	£79.60
60% x £79.60	£47.76
Maximum savings credit	£20.22
Amount A	£47.76
Amount B (income does not exceed appropriate minimum guarantee)	Nil
Amount of savings credit (the maximum savings credit)	**£20.22**
Total State Pension Credit payable	**£80.92**

Calculation of total weekly income:

Total Retirement Pension	£206.85
State Pension Credit	£80.92
Total weekly income is	**£287.77**

Example 4 - Single remand prisoner

Fred, who is aged 69, lives alone in a flat on which he has eligible housing costs of £60 a week. He is arrested and charged with a serious criminal offence. Fred is then held on remand (see DMG 78668) while he is awaiting trial and because he is in prison is disqualified from receiving any Retirement Pension. He has no other income and claims State Pension Credit.

Calculation of Guarantee Credit:

Standard minimum guarantee	Nil
Additional amount for housing costs	
(for a period of up to 52 weeks)	£60
Appropriate minimum guarantee	£60
Less income	Nil
Amount of guarantee credit	**£60**

Calculation of savings credit:

Maximum savings credit	Nil
Amount of savings credit	**Nil**
Total State Pension Credit payable	**£60**

Calculation of total weekly income:

State Pension Credit	£60
Total weekly income is	**£60**

Example 5 - Partner becomes a prisoner

Bernard is aged 68 and lives with his partner Agnes. He is entitled to Retirement Pension of £127.25 and occupational pension of £32 a week. He does not qualify for any additional amounts and is not entitled to guarantee credit but gets savings credit of £20.22 a week. So his total weekly income is £179.45. Agnes is detained in custody and as a result Bernard's Retirement Pension reduces to £79.60. The decision maker revises the State Pension Credit award to remove Agnes from the calculation.

Calculation of guarantee credit:

Standard minimum guarantee (claimant with no partner)	£105.45
Additional amounts	Nil
Appropriate minimum guarantee	£105.45
Less income (£77.45 + £32)	£111.60
Amount of guarantee credit	**Nil**

Calculation of savings credit:

Savings credit threshold (claimant with no partner)	£79.60
Qualifying income	£111.60
Qualifying income exceeds savings credit threshold by	£32
60% x £32	£19.20
Maximum saving credit	£14.79
Amount A	£15.51
Income exceeds appropriate minimum guarantee by	£6.25
Amount A (£14.79) – Amount B (£2.94)	£13.01
Amount of savings credit	**£13.01**

Total State Pension Credit payable **£13.01**

Calculation of total weekly income:

Retirement Pension	£79.60
Occupational pension	£32
State Pension Credit	£13.01
Total weekly income is	**£124.61**

Example 6 - Claimant not fully maintained by the religious order

Marie is a 65 year-old nun who has been a member of, and fully maintained by, a religious order for many years. Marie leaves the order's premises to nurse her brother while he is recovering from a serious road traffic accident. The order does not maintain Marie while she is at her brother's house and she has no income. She does not qualify for any additional amounts.

Calculation of guarantee credit

Standard minimum guarantee	£105.45
Additional amounts	Nil
Appropriate minimum guarantee	£105.45
Less income	Nil
Amount of guarantee credit	**£105.45**

Calculation of savings credit

Savings credit threshold	£79.60
Qualifying income	Nil
Amount of savings credit	**Nil**

Total State Pension Credit payable	**£105.45**

Calculation of total weekly income

State Pension Credit	£105.45
Total weekly income	**£105.45**

Appendix 4

Hospital cases - rates of reduction and examples of calculations

This Appendix contains

1. details of the rates of reduction that apply where a claimant's guarantee credit falls to be reduced because of hospital admission (see DMG 78805 et seq) **and**

2. some examples of how the amount of State Pension Credit payable is worked out in cases involving people in hospital (see DMG 78700 et seq).

Note: The examples in this Appendix are for illustrative purposes only and are based on the rates applicable as from 6.10.03.

Examples of calculations for hospital cases

Example 1 Single - additional amount for the severely disabled

Example 2 Single - additional amount for carers

Example 3 Couple - additional amount for the severely disabled

Example 4 Couple - additional amount for carers

Example 1: Single - additional amount for the severely disabled

Ulrika is aged 66 and lives alone. She is entitled to Retirement Pension of £77.45 a week and an occupational pension of £40. Ulrika qualifies for an additional amount of £42.95 because she is severely disabled and the standard minimum guarantee for her is £102.10.

Under the **normal calculation** of State Pension Credit, Ulrika is entitled to

Appropriate minimum guarantee [£102.10 + £42.95]		£145.05
Disability Living Allowance [disregarded]		
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		£27.60
Savings credit [£40x60% restricted to maximum savings credit]		£14.79
Total State Pension Credit payable		£42.39

After **4 weeks** in hospital, payment of Disability Living Allowance is withdrawn and the additional amount for the severely disabled is also withdrawn (see DMG 78806). Ulrika is then entitled to savings credit only, calculated as follows

Appropriate minimum guarantee [£102.10]		£102.10
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		nil
Savings credit [£14.79 MSC] – £6.14 [£15.35 x 40%]		£8.65
Total State Pension Credit payable		£8.65

After Ulrika has been in hospital for **52 weeks**, her Retirement Pension is reduced to £15.50 a week and her standard minimum guarantee is also reduced to £15.50 (see DMG 78826). Ulrika is then entitled to State Pension Credit of

Appropriate minimum guarantee		£15.50
Retirement Pension	£15.50	
Occupational pension	£40	£55.50
Guarantee credit		nil
Savings credit protected (see DMG 78857)		£8.65
Total State Pension Credit payable		£8.65

Example 2: Single - additional amount for carers

Tony is aged 67 and lives alone. He is entitled to Retirement Pension of £77.45 a week and an occupational pension of £40. Tony has underlying entitlement to Carer's Allowance, which overlaps with his Retirement Pension. He satisfies the conditions for the award of an additional amount for carers of £25.10 and the standard minimum guarantee for him is £102.10.

Under the **normal calculation** of State Pension Credit, Tony is entitled to

Appropriate minimum guarantee [£102.10 + £25.10]		£127.20
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		£9.75
Savings credit [£40x60% restricted to maximum savings credit]		£14.79
Total State Pension Credit payable		£24.54

The disabled person who Tony looks after is admitted to hospital and their Attendance Allowance is withdrawn after four weeks. But Tony's underlying entitlement to Carer's Allowance continues for a further eight weeks (see DMG 78107 et seq). After the person Tony looks after has been in hospital for **twelve weeks**, underlying entitlement to Carer's Allowance ends and the additional amount for carers is withdrawn. Tony is then entitled to savings credit only, calculated as follows

Appropriate minimum guarantee [£102.10 standard minimum guarantee]		£102.10
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		nil
Savings credit [£14.79 maximum savings credit] – £6.14 [£15.35 x 40%]		£8.65
Total State Pension Credit payable		£8.65

State Pension Credit remains payable at this rate without any further adjustment. This is because it is the disabled person who Tony looked after that is in hospital and **not** Tony.

Example 3: Couple - additional amount for the severely disabled

Gareth, who is aged 68, lives with his wife Aideen. Gareth is entitled to Retirement Pension of £123.80 a week and an occupational pension of £40. Both Gareth and Aideen are in receipt of Attendance Allowance, no one else lives with them, and no one gets Carer's Allowance in respect of caring for either of them. The conditions for the award of an additional amount for the severely disabled at the higher rate of £85.90 are satisfied (see DMG 78049) and the standard minimum guarantee for the couple is £155.80.

Under the **normal calculation** of State Pension Credit, Gareth is entitled to

Appropriate minimum guarantee [£155.80 + £85.90]		£241.70
Attendance Allowance [disregarded]	[£76.60]	
Retirement Pension	£123.80	
Occupational pension	£40	£163.80
Guarantee credit		£77.90
Savings credit [£40x60% restricted to maximum savings credit]		£19.20
Total State Pension Credit payable		£97.10

Gareth is admitted to hospital and after he has been in hospital for **four weeks**, his Attendance Allowance is withdrawn. The couple retain entitlement to the additional amount for the severely disabled, but at the lower rate (see DMG 78047). Gareth is then entitled to State Pension Credit calculated as follows

Appropriate minimum guarantee [£155.80 + £42.95]		£198.75
Attendance Allowance [disregarded]	[£38.80]	
Retirement Pension	£123.80	
Occupational pension	£40	£163.80
Guarantee credit		£34.95
Savings credit [£40x60% restricted to maximum savings credit]		£19.20
Total State Pension Credit payable		£54.15

When Gareth has been in hospital for **52 weeks**, he stops being a member of the same household as Aideen. Aideen is invited to make a claim and Gareth's claim is revised to that of a single person.

Example 4: Couple - additional amount for carers

Charlie, who is aged 65, lives with his partner Hazel. Charlie is entitled to Retirement Pension of £77.45 a week and an occupational pension of £40. Hazel is entitled to Carer's Allowance and she satisfies the conditions for the award of an additional amount for carers of £25.10. The couple do not qualify for any other additional amounts and the standard minimum guarantee for them is £155.80.

Under the **normal calculation** of State Pension Credit, Charlie is entitled to

Appropriate minimum guarantee [£155.80 + £25.10]		£180.90
Carer's Allowance	£43.15	
Retirement Pension	£77.45	
Occupational pension	£40	£160.60
Guarantee credit		£20.30

Savings credit [£36.80 x 60% restricted to maximum savings credit]	£19.20
Total State Pension Credit payable	£39.50

The disabled person who Hazel looks after is admitted to hospital and their Attendance Allowance is withdrawn after four weeks. But Hazel's entitlement to Carer's Allowance continues for a further eight weeks (see DMG 78107 et seq). After the person that Hazel looks after has been in hospital for **twelve weeks**, Hazel's entitlement to Carer's Allowance ends and the additional amount for carers is withdrawn. Entitlement to savings credit is then extinguished and Charlie becomes entitled to guarantee credit only, calculated as follows

Appropriate minimum guarantee [£155.80 + nil]		£155.80
Retirement Pension	£77.45	
Occupational pension	£40	£117.45
Guarantee credit		£38.35
Savings credit [Qualifying income no longer exceeds savings credit threshold]		nil
Total State Pension Credit payable		£38.35

State Pension Credit remains payable at this rate without any further adjustment. This is because it is the disabled person who Hazel looked after that is in hospital and **not** Charlie or Hazel.

Appendix 5

Transitional end day

1 From 6.4.18 the regulations which provide for entitlement to payments in respect of loans and loans for repairs and improvements[1] within the Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and State Pension Credit regulations are omitted[2]. As a result these support for mortgage interest payments will no longer be met through those benefits. Payment towards housing costs, for example, service charges, will continue. Certain transitional arrangements are in place for existing claimants whose housing costs can continue to be met (beyond 6.4.18) but only until the transitional end day[3].

1 IS (Gen) Regs (NI), reg 17(e) & 18(1)(f); JSA Regs (NI), reg 83(f) & 84(1)(g) & 86A; ESA Regs (NI), reg 67(1)(c) & 68(1)(d); SPC Regs (NI), Sch 11, para 1(1)(b) & 1(2) & 8, 9, 11, 12; 2 LMI Regs (NI), reg 18; 3 reg 19

Loan offer made before 6.4.18

2 Where the loan offer is made before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 3 below **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends[1].

Note: The following paragraphs contain detailed options. Decision makers should be vigilant when establishing the transitional end day.

1 LMI Regs (NI), reg 19(1)

3 For the purposes of paragraph 2 **1.** the day referred to is the later of

1. for claimants of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit, where 6.4.18 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after 6.4.18 **or**

2. the day immediately following the day which is the earliest[1] to occur of the following

2.1 the day the decision maker receives notification that the claimant does not wish to accept the offer of loan payments **or**

2.2 where the decision maker

2.2.a receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 9 below **or**

2.2.b has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant[3].

1 LMI Regs (NI), reg 19(2); 2 reg 19(3); 3 reg 2(1)

Example

William is in receipt of Income Support that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6.4.18). From this date William is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

4 For the purposes of paragraph 3 **2.2.a** the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received[1].

1 LMI Regs (NI), reg 19(3)(b)

Loan offer made on or after 6.4.18

5 Where the loan offer does not occur before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 6 below **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends[1]

3. the day immediately following the day the decision maker receives notification that the claimant does not wish to receive loan payments[1].

1 LMI Regs (NI), reg 19A(1)

6 For the purposes of paragraph 5 **1.** the day referred to is

1. 7.5.18[1] **or**

2. where the loan payments offer date is before 7.5.18 **and**

2.1 the decision maker receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the

loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2.2 the decision maker has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: Where the day described in paragraph **2.1** or **2.2** above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date[2].

1 LMI Regs (NI), reg 19A(2)(a); 2 reg 19A(2)(b)

7 For claimants of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit, where 7.5.18 or the day described at paragraph 5 **3.** is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day[1].

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant.

1 LMI Regs (NI), reg 19A(3)

8 Where

1. before 19.3.18 the decision maker has asked the claimant to provide information needed to

1.1 establish whether the claimant wishes to receive an offer of a loan payment **or**

1.2 be able to send the loan agreement and associated documents **and**

2. the claimant has not provided that information

then the preceding paragraphs 5 to 7 do not apply and the support for mortgage interest regulations are removed, subject to paragraph 9, from 6.4.18[1].

1 LMI Regs (NI), reg 19A(4)

9 Where paragraph 8 applies (and this is not because the claimant lacks capacity) and the 6.4.18 is not the first day of the claimants benefit week then the removal of the owner occupier payments from benefit entitlement is effective from the first day of the first benefit week that begins after that date[1].

1 LMI Regs (NI), reg 19A(5)

Persons who lack capacity - identified before 6.4.18

10 Where, before 6.4.18 the decision maker

1. is satisfied that the claimant lacks capacity to make some or all the decisions about entering into the loan agreement **or**

2. suspects that the claimant may lack such capacity

then claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below[1].

1 LMI Regs (NI), reg 20(1)

11 The date referred to in paragraph 10 falls on the day that is the earlier of

1. the day described in paragraph 12 or paragraph 14 **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends[1].

1 LMI Regs (NI), reg 20(2)

12 For the purposes of paragraph 11 **1.** that day is the later of

1. 5.11.18 **or**

2. where, before 6.4.18, the decision maker suspects the claimant lacks capacity but prior to 5.11.18 the decision maker's suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the decision maker formed that belief[1] **or**

3. where an application for a decision of a type described in the Note below is made before the later of

3.1 5.11.18 **or**

3.2 the day prescribed in paragraph 12 **2.**

the relevant day is the day immediately following[2]

3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision **or**

3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn[3].

1 LMI Regs (NI), reg 20(3)(b); 2 reg 20(3)(c); 3 reg 20(4)

Note: The relevant person is a person appointed with an enduring power of attorney, appointed as a controller by the court or an appointed attorney in order that someone has the power to act on the claimant's behalf in respect of entering n the loan agreement[1].

1 LMI Regs (NI), reg 20(7); Enduring Powers of Attorney (NI) Order 1987; Metal Health (NI) Order 1986, art 101; Power of Attorney Act (NI) 1971

Example 1

Bert receives State Pension Credit which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5.11.18, the later of the dates outlined in paragraph 12 **3.**, which is the earlier of the dates in paragraph 11. Owner occupier payments will continue until that date.

Example 2

Ernest receives State Pension Credit which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Controller. Owner occupier payments continue. On 30.10.18 Jim advises the decision maker that he has been appointed. The transitional end date for Ernest is 6 weeks after that determination which in this particular case is 11.12.18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

13 Where more than one application for a decision (as described in the Note to paragraph 12) is made within the intervening period cited at 12 **3.** then the periods described in paragraph 12 **3.** do not start to run until the relevant person has decided the last application or that all the applications are withdrawn[1]. Similarly where there is one application for a decision referred to in the Note but it is made within the intervening period to more than one relevant person then the day will be the later of the days[2].

1 LMI Regs (NI), reg 20(5); 2 reg 20(6)

14 Where, before 6.4.18, the decision maker suspects the claimant lacks capacity but prior to 5 November the decision maker's suspicion becomes a belief that the claimant does not in fact lack capacity then the relevant day is the day immediately following the earlier of

1. the day described in paragraph 15 **or**

2. the day on which the decision maker is notified that the claimant does not wish to receive loan payments[1].

1 LMI Regs (NI), reg 20(8)

15 For the purposes of paragraph 14 **1.** the relevant day is the earlier of

1. where the decision maker receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2. where the decision maker has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: Where the day described in paragraph **1.** or **2.** above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date[2].

1 LMI Regs (NI), reg 20(9)

16 For claimants of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit, where 5.11.18 or the day described at paragraph 14 **2.** or paragraph 15 is not the first day of the claimant's benefit week, the first day of the first benefit week that begins after that day[1].

1 LMI Regs (NI), reg 20(10)