Chapter 84 - Deemed weekly income from capital

Contents

Introduction 84001

The general rules

Aggregation of capital

Couples 84011

Polygamous marriages 84012

Calculation of capital and deemed weekly income 84013

Rounding of fractions 84014

Cost of Living Additional Payments 84015

Is the resource capital

What is capital 84021

Rights to capital 84036

Does the person own the capital

General

Ownership of capital 84071

How a person gets a beneficial interest in capital 84081

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

The person is the legal owner 84091

Written evidence 84092

No beneficial interest in the capital or only a share in it 84093

The legal owners use their money to get capital 84095

The legal owners do not use their money to get the capital 84098

More guidance 84101

Beneficial ownership in particular cases

About the guidance 84121

Businesses and limited companies

Businesses 84123

Limited companies 84125

Capital held by a solicitor 84137

Gifts 84142
Interest in the estate of a person who has died 84171
Interest in a trust
When there is a trust 84181
Trustees 84184
Terms of a trust 84191
Interest in a trust 84193
Contingent interest 84206
Life interest 84210
Reversionary interest 84226
Discretionary trusts 84236
Charitable trusts 84240
Joint beneficial interest in capital 84246
How to decide ownership of jointly-owned capital 84253
Other ways to become tenants in common 84255
Evidence of joint-ownership 84260
Other assets 84262
Jointly-owned capital outside the UK 84265
Valuation of jointly-owned capital 84266
People who are separated or divorced
or whose civil partnership has been dissolved 84271
Mentally sick or disabled persons
Beneficial interest 84281
Office of Care & Protection 84282
Power of Attorney 84287
Appointees 84290
Person not appointed or authorised 84292
Misuse of capital 84293
Real property
Ownership of real property 84301
Resulting trust 84307
Right to buy scheme 84308
When a person is not the beneficial owner of capital
Bankruptcy 84331
Court Orders 84334

Liability to repay capital 84339

Can the capital be disregarded

The law 84351

Onus of proof 84354

What the decision maker decides 84355

Period of disregard 84356

Capital disregarded indefinitely

Annuities 84357

Age-related payments 84358

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

Payment made after Carer's Allowance reassessment following Sayce Review 84365

Business assets

The law 84371

Meaning of business assets 84374

Meaning of "reasonable period" 84376

Meaning of self-employed earner 84377

When people are working in the business 84379

Capital which is not sterling 84381

Deferral of retirement pension entitlement 84382

Deferral of state pension 84384

Dwelling occupied as the home

The law 84386

Meaning of dwelling occupied as the home 84387

Onus of proof 84388

Dwelling which has not been occupied as the home 84392

Dwelling not occupied as the home for a time 84393

More than one property owned 84395

Funeral plan contract

The law 84398

Meaning of funeral plan contract 84399

Future interests in capital 84401

Health in pregnancy grant 84403

Payments in lieu of care services....84404
Life insurance policies
The law....84406
Meaning of life insurance policy....84407
Investments which include life insurance....84408
Life interest....84409
Payment for personal injury....84410
Payment to persons imprisoned or interned by the Japanese during the Second World War....84421
Payment to sufferers of variant Creutzfeldt-Jakob disease and their partners
The law....84426
Meaning of diagnosed person....84431
Meaning of relevant trust....84432
Meaning of trust payment....84433
Pensions
The law....84436
Meaning of occupational pension scheme....84437
Meaning of personal pension scheme....84438
Personal possessions....84441
Premises lived in by a partner or relative
The law....84442
Meaning of close relative....84443
Is the person incapacitated....84444
What the decision maker decides if only part of the premises are occupied as the home....84445
Rent....84456
Second World War compensation payments....84461
The Independent Living Fund (2006)
The law....84462
Meaning of the Independent Living Fund (2006)....84463
Payment included with other capital....84467

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation, the Scottish Infected Blood Support Scheme, an approved Infected Blood Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund

The law....84475

The Trusts....84479

The Macfarlane Trusts....84480

The Macfarlane (Special Payments) Trust....84481

The Macfarlane (Special Payments) (No. 2) Trust....84482

The Fund....84483

Eileen Trust....84484

MFET Limited....84485

The Skipton Fund....84486

The Caxton Foundation....84487

Scottish Infected Blood Support Scheme....84488

Approved blood scheme....84489

The London Bombings Relief Charitable Fund....84490

The London Emergencies Trust....84491

The We Love Manchester Emergency Fund....84492

Qualifying person....84493

Evidence....84494

Payment included with other capital....84496

Other payments which are disregarded....84498

Trusts....84499

Funeral Support Payments....84502

Capital disregarded for up to two years

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

The law....84521

Meanings....84525

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation, the Scottish Infected Blood Support Scheme, an approved Infected Blood Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund

The law....84531

Meaning of child....84534

Meaning of qualifying young person 84535
Meaning of student 84539
Other meanings 84544
Payment included with other capital 84545

Capital disregarded for a year or longer

Period of disregard 84561
Arrears of benefit and compensation
The law 84566
Meaning of benefit 84567
The Supporting People Programme 84568
Money paid to the families of the disappeared 84575
Money paid for loss of or damage to the home or personal possessions 84576
Money which a person gets to buy, repair or alter a home
The law 84577
Essential repairs or alterations 84578
Bereavement Support Payment 84579

Capital disregarded for 26 weeks or longer

Dwelling left because of estrangement, divorce or dissolution of a civil partnership
The law 84601
Meaning of dwelling 84602
Meaning of lone parent 84603
Meaning of child 84604
Premises a person does not possess or occupy
The law 84621
The premises 84622
Acquiring premises 84623
Possession of premises 84624
Moving into the premises 84629
Premises which a person is taking steps to get possession of
The law 84636
The premises 84637
The date a person first asked for legal advice or started legal proceedings 84638

When legal proceedings usually start 84640
Period of disregard 84642
Premises which are to be repaired or altered
The law 84646
The premises 84647
Essential repairs or alterations 84648
The steps 84649
The date a person first takes steps to get the premises repaired or altered 84650
Period of disregard 84652
Premises which are to be disposed of
The law 84656
The premises 84657
Who can dispose of premises 84658
Reasonable steps 84659
The date a person first takes reasonable steps 84661
Period of disregard 84663

Capital disregard for the remainder of an award of State Pension Credit

Arrears and concessionary payments of £5,000 or more
When the disregard applies 84671
Period of the disregard 84672
Meaning of award of State Pension Credit 84673

What is the value of the capital

General 84691
The law
Capital in the UK other than Ulster or National Savings Certificates 84692
Capital outside of the UK 84694
Capital which is jointly held 84695
Joint tenant 84697
Tenant in common 84699

Further guidance on valuation

Value
General 84701
Current market value 84705

Current surrender value 84707
Price 84709
Capital with more than one value 84711
Costs of sale 84712
Encumbrances secured on capital 84717
Value of a deemed or actual share in a capital asset outside the UK 84720

Valuation in particular cases

Bank, Post Office and building society accounts 84731
Business assets
The assets 84736
Value of business assets 84737
Encumbrance secured on business assets 84738
Funds held by the Office of Care and Protection 84740
Personal equity plans 84746
Individual Savings Account 84748
Lifetime individual savings account 84751
Right to receive income 84752
Shares in a private company 84756
Stocks and shares quoted on the London Stock Exchange
Value of stocks and shares 84759
Encumbrances secured on stocks and shares 84764
Government securities 84768
Unit trusts
Value of unit trusts 84771
Costs of sale 84772

Notional capital

The law 84776

Deprivation of capital

General
The law 84781
Who the law applies to 84782
Have people deprived themselves of capital
Meaning of deprive 84791

Onus of proof 84792
Evidence that people no longer have capital 84793
What the decision maker decides 84794
Evidence which may show people had capital 84796
Have people deprived themselves of capital for the purpose of getting State Pension Credit or more State Pension Credit
Onus of proof 84801
What the decision maker decides 84802
Facts which decision makers should consider
Were people mentally capable when they deprived themselves of capital 84806
Did people have a choice when they deprived themselves of capital 84807
Did people know capital affects the amount of State Pension Credit they can get 84809
Did people say what they were going to do with their capital 84812
When did people deprive themselves of capital 84814
What are people going to live on after they have deprived themselves of capital 84815

People treated as sole owner or partner in a company

The law 84821
Like a sole owner or partner 84822
Undertaking activities in the course of the business 84825
What decision maker's decide 84826

What is the amount of notional capital

How to work out the amount of notional capital
The law 84831
What decision makers decide 84832
Disregards
Capital of a company 84836
Premises which are to be sold 84838
Shares 84839
Value
Capital of a company 84846
Capital spent on a resource which is not worth as much 84849
Capital which people have deprived themselves of 84850

Diminishing notional capital rule

The law 84861

What decision makers decide 84862

The diminishing notional capital rule 84863

Meaning of benefit week 84866

Meaning of relevant week 84867

Meaning of relevant subsequent week 84868

How to work out and apply the reduction - person getting State Pension Credit 84869

How to work out and apply the reduction - person not getting State Pension Credit 84881

When to change the amount of the reduction 84891

How to work out and apply the new amount of the reduction 84893

Deemed weekly income from capital

The law

Deemed weekly income from capital 84911

How to work out the amount of deemed weekly income

Total amount of capital 84921

When does income become capital 84922

Deemed weekly income 84924

Appendix 1 - How to work out deemed weekly income from capital

Statutes commonly referred to in Chapter 84

Full Title	Abbreviation
Civil Partnership Act 2004	CP Act 04
Social Security (Northern Ireland) Order 1998	SS (NI) Order 98
Social Security Contributions and Benefits (Northern Ireland) Act 1992	SS C&B (NI) Act 92
State Pension Credit Act (Northern Ireland) 2002	SPC Act (NI) 02
Pensions Act (Northern Ireland) 2015	Pensions Act (NI) 15
Charities Act 1993	Charities Act 1993
Housing Support Services (Northern Ireland) Order 2002	Housing Support Services (NI) Order 2002
Tax Credit Act 2002	Tax Credit Act 2002

Statutory Rules commonly referred to in Chapter 84

Short description	Full title	Abbreviation
Computation of Earnings Regulations	The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996 No. 520	SS Ben (C of E) Regs (NI)
JSA Regs	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)
Graduated Retirement Benefit Regs	The Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005 No. 121	SS (GRB) Regs (NI)
Bereavement Support Payment Regs	The Bereavement Support Payment Regulations (Northern Ireland) 2017	BSP Regs (NI)
The ISA Regs	The Individual Savings Account Regulations 1998	The Individual Savings Account Regulations 1998

Chapter 84 - Deemed weekly income from capital

Introduction

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

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

1. if the resource is capital

2. who owns the capital

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

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

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

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

84003 – 84010

The general rules

Aggregation of capital

Couples

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

1 SPC Act (NI) 02, sec 5

Polygamous marriages

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

1. the other member of a polygamous marriage **and**

2. any additional spouse

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

1 SPC Act (NI) 02, sec 5 & sec 12(2)(d); SPC Regs (NI), reg 8 & Sch 3, para 1(4)

Calculation of capital and deemed weekly income

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

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

Rounding of fractions

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

1. treated as a penny **or**

2. ignored

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

1 SPC Regs (NI), reg 24A

Cost of Living Additional Payments

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

1 SS (AP) Act 22, sec 8; SS (AP) Act 23, sec 8

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

1. during the benefit week they are received **or**

2. in any subsequent benefit week they remain unspent.

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

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

1 SS (AP) Act 22; SS (AP) Act 23; 2 SS (AP) Act 22, sec 6; SS (AP) Act 23, sec 6

84017 – 84020

Is the resource capital

What is capital

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

1 SPC Act (NI) 02, sec 15(1); SPC Regs (NI), reg 15

84022 Decision makers should also consider capital to be

1. **all** money held in

1.1 cash

1.2 a bank or building society account

1.3 a save as you earn scheme

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

2.1 compensation for a personal injury

2.2 money which has been borrowed (including student loans)

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

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

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

3. investments such as

3.1 businesses

3.2 capital and income bonds

3.3 life insurance policies

3.4 national savings certificates

3.5 Ulster savings certificates

3.6 personal equity plans

3.7 personal pension schemes

3.8 premium bonds

3.9 stocks and shares

3.10 unit trusts

3.11 individual saving accounts

3.12 crypto assets

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

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

84023 - 84035

Rights to capital

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

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

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

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

This is sometimes called "a chose in action". Such rights are capital because they can be sold[1].

Example

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

1 R(SB) 31/83

84038 – 84070

Does the person own the capital?

General

Ownership of capital

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

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

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

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

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

1 R(SB) 23/85

84076 Legal owners can hold capital which

1. they **and**

2. other people who are not the legal owners

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

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

84078 – 84079

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

How a person gets a beneficial interest in capital

84081 People can get a beneficial interest in capital by

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

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

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

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

5. having a beneficial interest in a trust.

1 R(IS) 8/92

84082 – 84090

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

The person is the legal owner

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

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

2. the legal owners say they have

2.1 no beneficial interest **or**

2.2 only a share in the beneficial interest.

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

Written evidence

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

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

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

84094 To decide who has a beneficial interest, decision makers need to know

1. whose capital it is **and**

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

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

The legal owners use their money to get capital

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

84096 So a legal owner of a bank account is the

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

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

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

84097 If the legal owners

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

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

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

Example

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

1 R(IS) 1/90

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

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

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

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

2.1 lent **or**

2.2 given

to the legal owners.

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

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

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

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

2.1 it is their capital **and**

2.2 who the capital is to be used for.

Example

Geraldine has a building society account. It is in her name so she is the legal owner of the money in that account. However, she says that the money in the account belongs to her sister Mary who is working abroad. On the day the account was opened £20,000 was put into it. Nothing has been paid into the account except interest and no money has been taken out. The decision maker has evidence from Mary that she gave £20,000 to Geraldine to save for her whilst she was working abroad and she wants it, and the interest back when she returns. The decision maker decides that Geraldine is not the beneficial owner of the money in the building society account because she is holding it on trust for Mary.

More guidance

84101 DMG 84121 - 84338 gives guidance on how to work out the beneficial interest a person has in capital in certain types of cases.

84102 – 84120

Beneficial ownership in particular cases

About the guidance

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

84122 The guidance in this part involves principles of law.

Businesses and limited companies

Businesses

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

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

1 Partnership Act 1924, sec 24(1)

Limited companies

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

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

84127 If a director

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

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

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

84128 – 84136

Capital held by a solicitor

84137 People are the beneficial owners of capital, such as a payment of damages for personal injury, if it is held by their solicitor[1] unless the amount to be repaid to the Legal Services Commission has not been worked out (see DMG 84138).

1 R(SB) 17/87

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

Where DMG 84138 applies the Legal Services Commission work out a fair and reasonable amount of the costs to be repaid. Until the Legal Services Commission do this, money or property gained or kept is held by a person's solicitor. A person is not the beneficial owner of any such money or property until the amount to be repaid to the Legal Services Commission has been worked out.

Example

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

84139 – 84141

Gifts

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

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

1. the parent of **or**

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

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

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

1 R(IS) 2/93

84146 – 84170

Interest in the estate of a person who has died

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

84172 People have died

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

2. intestate if they have not left a will.

84173 An estate is administered or distributed by

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

2. if there is not a will

2.1 in Northern Ireland administrators

2.2 in England or Wales administrators

2.3 in Scotland executors dative.

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

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

1. all the dead person's

1.1 capital is accounted for **and**

1.2 debts are paid **and**

2. any dispute is settled.

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

1. in Northern Ireland one year after the date of death **or**

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

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

4. a longer period if the estate is complex.

1 R(SB) 5/85(T)

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

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

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

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

1 R(IS) 1/01

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

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

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

84180

Interest in a trust

When there is a trust

84181 There is a trust when a person

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

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

84182 The person

1. giving the capital is the donor

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

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

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

Trustees

84184 A trustee can be any person or body such as

1. a relative

2. a solicitor

3. a bank

4. the Office of Care and Protection

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

1 Trustee Act (NI) 1958

84186 - 84190

Terms of a trust

84191 The terms of a trust say

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

2. who the donees are.

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

1. will **or**

2. deed of trust **or**

3. deed of settlement.

Interest in a trust

84193 DMG 84206 - 84252 gives guidance on

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

2. when they get their interest.

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

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

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

84197 – 84205

Contingent interest

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

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

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

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

2. people with the interest have

2.1 reached the age of majority, that is when they are 18 years old **and**

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

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

1 Trustee Act (NI) 1958, sec 32(1)(b)

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

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

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

Life interest

84210 People have a life interest in a trust if they have an interest for the duration of their life. A person may have a life interest in the

1. capital **or**

2. real property (see DMG 29020 **4.**), such as a house

of a trust.

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

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

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

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

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

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

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

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

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

84215 – 84225

Reversionary interest

84226 An interest in a trust is reversionary if the possession or enjoyment of it is postponed to the prior interest of another person in the same capital.

Example

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

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

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

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

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

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

84229 – 84235

Discretionary trusts

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

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

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

84239 If the trustees make a payment and the payment is

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

2. not made regularly, it is capital.

Charitable trusts

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

1. the relief of poverty **or**

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

3. any other purpose which benefits the community.

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

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

84243 – 84245

Joint beneficial interest in capital

84246 When two or more people jointly own real property (see DMG 84022 **4.**) they do so as

1. joint-tenants **or**

2. tenants in common.

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

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

84249 – 84251

84252 If a claimant beneficially owns a capital asset with one or more persons, the decision maker will have to decide whether those people own the asset as

1. joint-tenants **or**

2. tenants in common.

How to decide ownership of jointly-owned capital

84253 When two or more people buy real property they should be asked

1. whether they wish to be

1.1 joint-tenants **or**

1.2 tenants in common **and**

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

Example

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

84254

Other ways to become tenants in common

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

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

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

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

Example 1

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

Example 2

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

Example 3

When Alan and Lynnette were married they bought a house as joint-tenants. However, when they divorced Alan gave notice to Lynnette that he wished to put an end to his 50% interest in the property. Alan did this so that in the event of his death the house would not automatically pass under the rules of survivorship to Lynnette.

The net effect of this notice would be to change the joint-tenancy into a tenancy in common, which gives both Alan and Lynette separate and distinct shares in the property.

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

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

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

1. pays

1.1 the mortgage **or**

1.2 a greater share of the mortgage

on a property **or**

2. spends money on improvements to a property.

Example

Sean and his brother Stephen bought a house together as tenants in common. They agreed that each of them should own 50% of the property and pay half the mortgage.

Sean takes unpaid leave from his job to travel abroad so he is not able to make repayments on his share of the mortgage. Stephen therefore agrees to pay all of the mortgage on the property. Stephen's share of the property increases in proportion to the extra payments he makes. Sean's share of the property decreases by the same amount.

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

Evidence of joint-ownership

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

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

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

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

84261 When a claimant states that he owns a share of real property as a tenant in common the decision maker should obtain evidence of this. The decision maker should also obtain evidence of the claimant's share of the property. If the claimant is unable to provide evidence of unequal shares in the property, the decision maker should decide on the balance of probability (see DMG 01230 et seq) that the shares are equal.

Other assets

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

Example

Kathy and her brother have a joint building society account. The account is in both their names so they are joint legal owners of the account. There is £15,000 in the account on the date of Kathy's claim for State Pension Credit. Kathy provides evidence that both she and her brother paid money into the account but no evidence of the amount paid by each of them. The decision maker decides that Kathy is treated as having a half share in the account (£7,500).

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

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

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

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

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

Example

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

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

Jointly-owned capital outside the UK

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

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

2. the basis on which the asset is held.

The decision maker should obtain evidence of joint-ownership. If the decision maker is satisfied that the law of the country where the asset is held is not different, the guidance at DMG 84246 et seq should be followed. Decision makers should send cases of doubt to their Specialist Advisory Officer in Carlisle House for advice.

Valuation of jointly-owned capital

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

84267 – 84270

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

84271 People who are married or civil partners and have separated are the beneficial owners of capital if they were the owners before the breakdown of the marriage or civil partnership. That capital is included when working out what capital a person has.

84272 After they have separated or divorced a couple may

1. ask a Court to **or**

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

3. themselves

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

84273 A Court will take into account

1. the ages of the couple

2. their state of health

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

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

5. each person's needs

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

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

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

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

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

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

2.2 no money.

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

1 R(IS) 4/96

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

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

2. between themselves.

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

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

1. on the granting of a decree of

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

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

1.3 separation **or**

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

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

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

1 R(IS) 1/03

84279 – 84280

Mentally sick or disabled persons

Beneficial interest

84281 People who are

1. mentally sick or disabled **and**

2. unable to deal with their capital

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

1 R(IS) 9/04

Office of Care and Protection

84282 The Office of Care and Protection

1. protects **and**

2. deals with

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

1 Mental Health (NI) Order 1986

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

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

2. the controller has to do with the money.

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

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

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

84286

Power of Attorney

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

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

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

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

84289 People with power of attorney are not authorised if the person who gave them power

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

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

Appointees

84290 A person appointed by the Department to act, for social security purposes on behalf of another person is called an appointee.

84291 These appointees cannot deal with the capital of a mentally sick or disabled person unless they have been appointed the controller by the Office of Care and Protection

Person not appointed or authorised

84292 A person who has not been

1. appointed **or**

2. authorised

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

Misuse of capital

84293 Mentally sick or disabled people have rights to capital if the person who is

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

2. not appointed or authorised

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

1 R(IS) 17/98

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

Example

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

1 Enduring Powers of Attorney (NI) Order 1987, sec 5; 2 R(IS) 17/98

84295 – 84300

Real property

Ownership of real property

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

1. something in writing such as a conveyance that

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

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

2. a mistake **and**

2.1 nothing is put in writing **or**

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

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

4. a resulting trust (see DMG 84307).

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

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

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

84303 Accept what the legal owners say if

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

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

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

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

2. who the actual owners of the property are.

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

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

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

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

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

Resulting trust

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

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

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

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

Right to buy scheme

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

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

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

2. the joint legal and joint beneficial owners if

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

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

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

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

3.2 is not a legal owner.

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

84311 – 84330

When a person is not the beneficial owner of capital

Bankruptcy

84331 When a person is made bankrupt a Receiver in Bankruptcy is appointed. Then a Trustee in Bankruptcy is appointed. The Receiver in Bankruptcy may be the same person as the Trustee in Bankruptcy.

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

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

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

Court Orders

84334 A Court can make an order such as an order for a mareva injunction which stops people withdrawing or selling their capital. The order will list the capital involved.

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

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

1. given in the order **or**

2. the Court withdraws the order.

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

84338

Liability to repay capital

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

1 R(IS) 5/99

84340 – 84350

Can the capital be disregarded

The law

84351 **[See DMG Memo Vol 5/113, 9/46 & 14/69]** There are special rules for

1. what capital is disregarded when working out the amount of deemed weekly income from capital **and**

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

1 SPC Act (NI) 02, sec 15(2) & sec 15(6)(b); SPC Regs (NI), reg 15(6) & Sch 5

84352 Capital is disregarded

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

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

1 SPC Regs (NI), Sch 5, Part I; 2 Sch 5, Part II

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

1. the value of the right to receive income

1.1 under a life interest **or**

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

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

3. the value of the right to receive income from **and** the surrender value of an annuity[3] (see DMG 84357)

4. property held on trust[4] in the circumstances described at DMG 84492.

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

1 SPC Regs (NI), Sch 5, Part II, para 24; 2 Sch 5, Part II, para 25; 3 Sch 5, Part II, para 26; 4 Sch 5, Part II, para 28

Onus of proof

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

What the decision maker decides

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

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

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

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

Period of disregard

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

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

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

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

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

5. the remainder of an award of State Pension Credit (DMG 84671 et seq).

1 SPC Regs (NI), Sch 5

Capital disregarded indefinitely

Annuities

84357 An annuity is

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

1.1 by instalments **or**

1.2 in a single payment **and**

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

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

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

1 SPC Regs (NI), Sch 5, para 26

Age-Related Payments

84358 One-off age-related payments are payments of capital. Decision makers should not take them into account for State Pension Credit purposes[1].

1 Age-Related Payments (NI) Order 04

84359

Arrears of payments to certain war widows or surviving civil partners

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

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

2. under the Personal Injuries (Civilians) Scheme

3. of a person

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

3.2 that service ended before 31.3.73 **and**

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

1 SPC Regs (NI), Sch 5, para 20B; 2 para 20A

84361 – 84364

Payment made after Carer's Allowance reassessment following Sayce Review

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

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

2. that decision led to an overpayment of Carer's Allowance **and**

3. following a reassessment conducted since 13.4.26, the Department determines that the claimant's earnings should have been averaged.

Note: Arrears of Carer's Allowance that are not due to the reassessment exercise in **3.** are not disregarded.

1 SPC Regs (NI) 03, Sch 5, para 20AB

Example 1

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

Example 2

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

84366 – 84370

Business assets

The law

84371 **[See DMG Memo Vol 3/100, 4/149, 5/114, 9/47, 10/76 & 14/70]** The assets of a business are disregarded indefinitely if the person

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

2. works in the business as a self-employed earner[1].

1 SPC Regs (NI) Sch 5, para 9

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

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

2. has stopped working in the business as a self-employed earner[1].

Example

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

1 SPC Regs (NI), Sch 5, para 9

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

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

2. is not working as a self-employed earner in the business because he is

2.1 ill **or**

2.2 physically or mentally disabled **and**

3. intends to start work or return to work in the business as a self-employed earner as soon as he is able[1].

1 SPC Regs (NI), Sch 5, part I, para 9A

Meaning of business assets

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

84375 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as "work in hand" may result in an income receipt and so would be appropriate for inclusion in the profit and loss account. Where doubt exists as to whether a particular asset would represent a capital or income receipt upon its sale, the principles of commercial accounting must be applied. That is, the approach that would be taken by an accountant or Her Majesty's Revenue and Customs to such a receipt or holding.

Meaning of "reasonable period"

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

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

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

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

Meaning of self-employed earner

84377 Self-employed earner means a person

1. who is in gainful employment in Northern Ireland or the Republic of Ireland **and**

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

A self-employed earner includes people employed outside of Northern Ireland in employment which would be classed as employment as a self-employed earner if the employment was in Northern Ireland. It also includes people undertaking employment as a self-employed earner and that employment is disregarded when working out social security contributions[1].

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

84378 People can be self-employed earners even if they have another job as an employed earner. An employed earner is a person who is gainfully employed in Northern Ireland or the Republic of Ireland

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

2. in an office, including an elective office with general earnings which are chargeable under the legislation of the Pay As You Earn scheme or under the legislation of the Republic of Ireland which is analogous to that scheme[1].

1 SPC Regs (NI), reg 17A(6)

When people are working in the business

84379 People are working in the business if they do some work in a practical sense. There is no set definition of the type and amount of work that has to be done for the person to be classed as a self-employed earner and the decision maker must decide each case on its merits[1].

1 R(IS) 14/98

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

1 R(IS) 14/98

Capital which is not sterling

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

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

Deferral of state pension entitlement

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

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

84383 Where

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

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

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

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

3.2 the amount of the lump sum

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

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

1 SS C&B (NI) Act 92, Sch 5 or 5A; SS (GRB) Regs (NI), Sch 1;
2 SPC Regs (NI), Sch 5, para 23ZA

Deferral of state pension

84384 Where

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

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

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

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

3.2 the amount of the lump sum

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

1 Pensions Act (NI) 15, sec 8(2) & 10; 2 SPC Regs (NI), Sch 5, para 23ZB

84385

Dwelling occupied as the home

The law

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

1 SPC Regs (NI) Sch 5, para 1A; 2 Secretary of State v Miah; R(JSA) 9/03

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

Meaning of dwelling occupied as the home

84387 Dwelling occupied as the home[1] means

1. the dwelling and any

1.1 garage

1.2 garden

1.3 outbuildings

normally occupied by the claimant as the home including any part thereof not so occupied which it is impracticable or unreasonable to sell separately together with

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

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

1 SPC Regs (NI) reg1(2)

Onus of proof

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

84389 The decision maker has to show

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

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

Example

Jack makes a claim for State Pension Credit. He lives with his civil partner, Kevin, in a house with a garden and paddock. The paddock can be sold separately but jack says it is not reasonable for it to be sold separately. He provides medical evidence that Kevin suffers from depression and walking in the paddock is a therapeutic benefit

for him. The decision maker therefore decides that the paddock is part of the dwelling occupied as the home because it is not reasonable for it to be sold separately.

1 R(SB) 27/84

84390 The decision maker may need expert advice, for example from a surveyor, to show the part can be sold separately. Benefit Guidance Centre issues guidance on how to get expert advice.

84391 The decision maker does not need to get expert advice if

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

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

Dwelling which has not been occupied as the home

84392 A dwelling which

1. has been bought **and**

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

1 R(SB) 27/84

Dwelling not occupied as the home for a time

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

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

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

Example

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

84394

More than one property owned

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

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

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

2. who lives in each property, for example whether

2.1 each property is occupied by

2.1.a the claimant **or**

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

2.1.c children (see DMG 84534)

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

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

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

3.2 an investment opportunity **or**

3.3 to have a

3.3.a weekend retreat **or**

3.3.b country cottage.

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

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

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

1. lives

2. eats

3. sleeps

4. bathes

5. relaxes

6. enjoys with his family.

Example 1

Keith and Elma have 11 children, 8 of whom are at school and 3 of whom are in work. They all lived in a 3 bedroomed house. When Keith and Elma are advised of the rules of statutory overcrowding they purchase another 3 bedroomed house in the same street. There are 2 other properties between the houses Keith and Elma own. Elma and the 5 youngest children continue to live in the original house and the other children go to live in the newly purchased house. Keith lives, sleeps, eats, bathes, relaxes and enjoys with his family the original house 4 days a week and the newly purchased house 3 days a week. Keith makes a claim for State Pension Credit. The decision maker decides that Keith normally occupies both houses. The decision maker also decides that both houses are disregarded as the dwelling occupied as the home.

Example 2

Beth lives in Bangor and is in receipt of State Pension Credit. She inherits a cottage in Donegal. Beth has relatives who live in Donegal. She therefore decides to keep the cottage for her use when she visits her relatives. The decision maker decides that the cottage in Donegal is not disregarded as the dwelling occupied as the home.

Example 3

Brian owns a house in Newry. He gets a job in Coleraine and buys a flat there to live in during the week. He spends the weekends at his house in Newry. Brian loses his job and returns to Newry. He is age 61 and claims State Pension Credit. He states he will live in Newry but will visit his flat once a month to maintain it and possibly look for work in Coleraine. The decision maker decides that Brian does not normally occupy the flat in Coleraine. The decision maker also decides that the flat in Coleraine is not disregarded as the dwelling occupied as the home.

Example 4

Adam is single. He lives at 25 Station Road which is a semi-detached house. The house adjoining his, 27 Station Road, comes on the market after being uninhabited for 2 years. It is in a derelict condition. Adam buys it cheaply. He sometimes sleeps and eats at 27 Station Road while he undertakes the necessary repairs in order to let or sell it but he spends most of his time at 25 Station Road. Adam claims State Pension Credit. The decision maker decides that as Adam purchased 27 Station Road as an investment it is not disregarded as the dwelling occupied as the home.

Example 5

Walter and his wife Ruth live in a 4 bedroomed house. They have 12 children. To avoid statutory overcrowding, Walter and Ruth buy another house in the street where they live. Their 4 eldest children, all of whom are aged over 21 live in this other house

and Walter , Ruth and their other children do not spend any time there. Walter claims State Pension Credit. The decision maker decides that only the house where Walter and Ruth live can be disregarded as the dwelling occupied as the home.

Funeral plan contract

The law

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

1 SPC Regs (NI), Sch 5, para 11

Meaning of funeral plan contract

84399 A funeral plan contract means a contract under which

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

2. the provider agrees to provide, or secure the provision of, a funeral in the UK (see DMG 07880) or in the Republic of Ireland for those people on their death **and**

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

1 SPC Regs (NI), Sch 5, para 11

84400

Future interests in capital

84401 A future interest in capital is disregarded indefinitely. This does not apply to an interest in real or heritable property (see DMG 29020 **4.**) on which a person has given another person a continuing

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

2. tenancy or sub-tenancy[1].

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

84402 For example

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

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

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

Health in pregnancy grant

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

1 SPC Regs (NI), Sch 5, para 23B

Payments in lieu of care services

84404 Payments received which are in lieu of care services[1] are disregarded when calculating the capital of the claimant.

Note: These types of payment are sometimes known as “Direct Payments for Care”.

1 Carers and Direct Payments Act (NI) 2002, sec 8

84405

Life insurance policies

The law

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

1 SPC Regs (NI), Sch 5, para 10

Meaning of life insurance policy

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

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

2. if death happens

2.1 in certain circumstances **or**

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

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

Investments which include life insurance

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

1. more than **or**

2. equal to **or**

3. less than

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

1 R(IS) 7/98

Life interest

84409 The value of the right to receive income under a life interest is disregarded indefinitely[1].

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

1 SPC Regs (NI), Sch 5, para 24

Payment for personal injury

84410 The amount of any payment made to claimants, or their partners if they have one, as a result of any personal injury is disregarded indefinitely[1]. Any of that amount is also disregarded indefinitely[2] if it is administered by a High Court or by a County Court or on behalf of a person where payment can only be dispersed by an order or direction of any such court, or in accordance with the terms of a trust set up for the benefit for those claimants or partners.

Note 1: This means that for the purposes of calculating entitlement to State Pension Credit whatever capital the claimant owns (up to an amount equal to the payment amount) will be disregarded, even if the compensation is spent and the claimant acquires other capital at some later date the disregard would still apply.

Note 2: The meaning of made as a consequence of a personal injury can include where the claimant's solicitor fails to secure the personal injury payment and the claimant sues their solicitor for professional negligence and receives a compensation payment to the value of what they should have received. However if any damages are also paid for any additional loss created by the professional negligence then this would not be disregarded[3].

1 SPC Regs (NI), Sch 5, para 16(1); 2 Sch 5, para 16(2); Rules of the Supreme Court(NI) 1980, Order 80 or 109; County Court Rules (NI) 1981, Order 3 or 44; County Courts (NI) Order 1980, art 21; 3 KQ v SSWP (IS) [2011] UKUT 102 (AAC); [2011] AACR 43

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

84412 The disregard at DMG 84410 does not apply if the injury was to a claimant's deceased partner[1].

1 R(IS) 3/03

84413 – 84420

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

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

1. claimant **or**

2. claimant's partner **or**

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

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

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

1 SPC Regs (NI), Sch 5, para 12

84422 – 84425

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

The law

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

1. is a diagnosed person **or**

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

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

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

1. one of the partners

1.1 is the diagnosed person **or**

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

2. the payment is made

2.1 by a person **or**

2.2 from the estate of a person

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

1 SPC Regs (NI), Sch 5, para 13(3)(a) & 13(3)(b) & 13(4)(a)

84428 For the purposes of DMG 84426 - 84427, a diagnosed person's partner includes a person who would have been the diagnosed person's partner if the diagnosed person is in a residential care home , nursing home, or independent hospital[1]. See DMG 77005 et seq for the meaning of residential care home, nursing home and independent hospital.

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

84429 See DMG 84521 - 84522 for guidance on other payments which are disregarded.

Meaning of diagnosed person

84430 Diagnosed person means people

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

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

from variant Creutzfeldt-Jakob disease[1].

1 SPC Regs (NI), Sch 5, para 13(6)

Meaning of the relevant trust

84431 The relevant trust means a trust set up from funds provided by the Secretary of State for the benefit of certain people who suffered from **or** who are suffering from variant Creutzfeldt-Jakob disease[1].

1 SPC Regs (NI), Sch 5, para 13(6)

Meaning of trust payment

84432 Trust payment means a payment under the relevant trust[1].

1 SPC Regs (NI), Sch 5, para 13(6)

84433 – 84435

Pensions

The law

84436 **[See DMG Memo Vol 5/102, 9/31 & 14/58]** The value of the right to receive income

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

2. from a personal pension **or**

3. under a retirement annuity contract

is disregarded indefinitely[1].

1 SPC Regs (NI), Sch 5, para 22 & para 23

Meaning of occupational pension scheme

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

1 SPC Act (NI) 02, sec 17; Pension Schemes Act 1993, sec 1

Meaning of personal pension scheme

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

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

84439 – 84440

Personal possessions

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

1 SPC Regs (NI), Sch 5, para 8

Premises lived in by a partner or relative

The law

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

1. person who is a

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

1.2 grandparent **or**

1.3 grandchild **or**

1.4 uncle **or**

1.5 aunt **or**

1.6 nephew **or**

1.7 niece

of the claimant or partner where that person has reached the qualifying age for State Pension Credit or incapacitated[1]

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

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

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

Example

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

Meaning of close relative

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

Is the person incapacitated

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

1. they are receiving

1.1 Attendance Allowance

1.2 Constant Attendance Allowance

1.3 Disability Living Allowance

1.4 Employment and Support Allowance

1.5 Incapacity Benefit

1.6 Severe Disablement Allowance

1.7 Statutory Sick Pay

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

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

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

84445 The decision maker has to decide if

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

2. it is reasonable for it to be sold separately

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

84446 – 84455

Rent

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

1 SPC Regs (NI), Sch 5, para 25

Example

Under the terms of Ernest's will

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

2. Percy is left the

2.1 cottage subject to the lease **and**

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

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

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

84457 – 84460

Second World War compensation payments

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

1. was a slave labourer **or**

2. was a forced labourer **or**

3. had suffered property loss **or**

4. had suffered personal injury **or**

5. was a parent of a child who had died

during the Second World War is disregarded indefinitely. The disregard does not apply to a payment of war disablement pension, war widow's pension or war widower's pension[1].

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

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

The Independent Living Fund (2006)

The law

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

1 SPC Regs (NI), Sch 5, para 15(1)

Meaning of the Independent Living Fund (2006)

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

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

84464 – 84466

Payment included with other capital

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

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

84469 – 84474

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation, the Scottish Infected Blood Support Scheme, an approved Infected Blood Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund

The law

84475 **[See DMG Memo Vol 4/141, 5/108, 7/48, 8/89, 9/40 & 14/65] [See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [See DMG Memo Vol 5/122, 9/57 & 14/78] [See DMG Memo Vol 2/101, 5/123, 9/58 & 14/79] [See DMG Memo Vol 5/125, 9/60 & 14/81] [See DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [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]** One-off payments made from the Trusts are disregarded indefinitely[1].

1 SPC Regs (NI), Sch 5, para 15(1)

84476 **[DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** A payment from money which a person gets from the Trusts is disregarded indefinitely if the payment is made

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

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

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

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

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

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

1 SPC Regs (NI), Sch 5, para 15(2)

84477 **[DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** A payment from money which a partner

or former partner gets from the Trusts is disregarded indefinitely if the payment is made by or on behalf of a partner or former partner of a person who

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

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

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

1 SPC Regs (NI), Sch 5, para 15(3)

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

1. from the Trusts **or**

2. at DMG 84476 - 84477

is disregarded indefinitely[1].

1 SPC Regs (NI), Sch 5, para 15(6)

The Trusts

84479 The Trusts means

1. the Macfarlane Trust

2. the Macfarlane (Special Payments) Trust

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

4. the Fund

5. the Eileen Trust

6. MFET Limited

7. the Skipton Fund

8. the Caxton Foundation

9. Scottish Infected Blood Support Scheme

10. an approved Infected Blood Scheme

11. the London Emergencies Trust

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

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

1 SPC Regs (NI), Sch 5, para 15(1) & para 15(7)

The Macfarlane Trust

84480 The Macfarlane Trust is the name of a charitable trust set up with part of the money being given by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia[1].

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

The Macfarlane (Special Payments) Trust

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

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

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

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

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

2. were at risk of infection

because of contact with haemophiliacs.

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

The Fund

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

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

Eileen Trust

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

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

MFET Limited

84485 The Department of Health funds an organisation called MFET Limited[1] to provide financial help to people who have been infected with Human Immunodeficiency Virus as a result of treatment with NHS blood or blood products.

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

The Skipton Fund

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

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

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

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

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

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

The Caxton Foundation

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

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

Scottish Infected Blood Support Scheme

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

Approved blood scheme

84489 An approved blood scheme is a scheme established or approved by the Secretary of State[1] for the purpose of providing compensation to those in England, Wales and Northern Ireland who have been infected from contaminated blood products. It

replaces the Eileen Trust, the Macfarlane Trust, MFET Ltd, the Skipton Fund and the Caxton Foundation from 2.10.17 and payments from this new scheme will be made from 1.11.17.

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

The London Bombings Relief Charitable Fund

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

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

The London Emergencies Trust

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

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

The We Love Manchester Emergency Fund

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

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

Qualifying person

84493 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, MFET Limited, the Skipton Fund or the London Bombings Relief Charitable Fund[1].

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

Evidence

84494 The Department has agreed the payments from the

1. Macfarlane Trust

2. Macfarlane (Special Payments) Trust

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

4. Fund

5. Eileen Trust

6. Skipton Fund

7. MFET Limited

8. Caxton Foundation

9. the London Bombings Relief Charitable Fund

do not have to be declared if they are kept separate from any other capital the person has. The person getting the payment is told this.

84495 Benefit Guidance Centre will get information about payments from those trusts or funds if it is needed. The trustees and Health and Social Services Board should not be contacted.

Payment included with other capital

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

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

Other payments which are disregarded

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

Trusts

84499 Property held on trust is disregarded indefinitely if

1. payments can be made **or**

2. the trustees have discretion to make payments

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

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

1 SPC Regs (NI), Sch 5, para 28; 2 Sch 5, para 28(a) & Charities Act 1993; 3 SPC Regs (NI), Sch 5, para 28(b)

84500 – 84501

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

1 SPC Regs (NI),Sch 5, para 20(2)(r)

84503 – 84520

Capital disregarded for up to two years

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

The law

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

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

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

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

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

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

1. one of the partners

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

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

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

2. the payment is made

2.1 by a person **or**

2.2 from the estate of a person

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

1 SPC Regs (NI), Sch 5, para 13(3)(c) & 13(4)(b)

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

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

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

Meanings

84525 For the meaning of

1. diagnosed person **and**

2. trust payment

see DMG 84430 - 84432.

84526 – 84530

The Macfarlane Trusts, the Fund, Eileen Trust, MFET Limited, Skipton Fund, the Caxton Foundation the Scottish Infected Blood Support Scheme, an approved Infected Blood Scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund and the London Bombings Relief Charitable Fund

The law

84531 **[See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)]** A payment from money which a person gets from the Trusts is disregarded from the date of payment to two years after the date of death of the person who gets the money from the Trust if the payment is made

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

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

1.2 has no

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

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

2. to the

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

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

2.2.a child **or**

2.2.b student who has not finished full time education[1].

1 SPC Regs (NI), Sch 5, para 15(4)

84532 **[See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)]** A payment from money which a person who has died got from the Trusts is disregarded for two years from the date of death if the payment is made

1. out of the estate of a person who

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

1.2 at the date of death the person had no

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

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

2. to the

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

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

2.2.a child **or**

2.2.b student who had not finished full time education[1].

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

1 SPC Regs (NI), Sch 5, para 15(5)

84533 **[See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)]** Any capital which a person gets from the income or capital of the payment at DMG 84531 - 84532 is also disregarded[1].

1 SPC Regs (NI), Sch 5, para 15(6)

Meaning of child

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

1 SPC Regs (NI), Sch 5, para 15(8) & SS C&B (NI) Act 92, Part 9

Meaning of qualifying young person

84535 A qualifying young person is

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

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

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

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

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

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

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

1 CHB (Gen) Regs 2006, reg3(4)

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

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

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

1 CHB (Gen) Regs 2006, reg 1; 2 reg 3(2)(b)

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

1 CHB (Gen) Regs 2006, reg 2(5)

Meaning of student

84539 Student means a person who is attending or undertaking

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

2. a qualifying course.

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

1 SPC Regs (NI), Sch 5, para 15(8)

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

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

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

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

1 SPC Regs (NI), Sch 5, para 15(8);
2 Sch 5, para 15(8) & Education (Student Support) Regulations 2001, reg 5(2);
Education (Student Loans) (Scotland) Regulations 2000, reg 5(2);
Education (Student Support) Regulations (Northern Ireland) 2000, reg 5(2)

84541 Qualifying course means the same as it does for certain rules in Jobseeker's Allowance legislation[1].

1 SPC Regs (NI), Sch 5, para 15(8) & JSA Regs (NI), reg 4 & reg 17A(7)

84542 Training allowance means an allowance paid

1. out of public funds by

1.1 a Government department **or**

1.2 by, or on behalf of, the Department for Employment and Learning **and**

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

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

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

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

3.3 provided or approved by or on behalf of the Department for Employment and Learning.

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

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

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

1 SPC Regs (NI), Sch 5, para 15(8) & E&T Act (NI) 1950, sec 1

Other meanings

84544 For the meaning of

1. the Trusts **and**

2. qualifying person

see DMG 84479 and 84488.

Payment included with other capital

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

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

84547 – 84560

Capital disregarded for a year or longer

Period of disregard

84561 **[See DMG Memo Vol 1/127, 5/120, 9/55, 10/82 & 14/76]** The period of disregard in this part of the guidance is

1. either

1.1 to the end of the assessed income period if there is an assessed income period **or**

1.2 one year from the date of the payment

whichever is the longer period **or**

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

1 SPC Regs (NI), Sch 5, para 17

84562 – 84565

Arrears of benefit and compensation

The law

84566 A payment

1. of arrears of benefit **or**

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

3. in lieu of the payment of benefit **or**

4. by way of a payment made by the Northern Ireland Housing Executive to or on behalf of the claimant or his partner relating to service which is provided to develop or sustain the capacity of the claimant or his partner to live independently in his accommodation

is disregarded for the period in DMG 84561[1].

1 Housing Support Services (NI) Order 2002, art 4; SPC Regs (NI), Sch 5, para 20(1)

Meaning of benefit

84567 Benefit means

1. Attendance Allowance[1]

2. Armed Forces Independence Payments[2]

3. Bereavement Support Payments

4. Constant Attendance Allowance[3]

5. Child Benefit

6. Child Tax Credit under tax credit law[4]

7. council tax benefit

8. Disability Living Allowance

9. income-related Employment and Support Allowance

10. Exceptionally Severe Disablement Allowance[5]

11. Housing Benefit

12. Income Support

13. income-based Jobseeker's Allowance

14. Maternity Allowance

15. Personal Independence Payments[6]

16. State Pension Credit

17. Social Fund payments

18. Universal Credit

19. any payment made with a War Disablement Pension, or War Widow's Pension for

19.1 exceptionally severe disablement[7]

19.2 constant attendance.

1 SS C&B (NI) Act 92, sec 64; 2 SPC Regs (NI), Sch 5, para 20(2)(aa); 3 SS C&B (NI) Act 92, sec 104; 4 Tax Credit Act 2002; 5 SS C&B (NI) Act 92, sec 105; 6 SPC Regs (NI), Sch 5, para 20(2)(bb); 7 Sch 5, para 20(2)(i)

The Supporting People Programme

84568 On 1.4.03 responsibility for meeting costs for

1. certain counselling **and**

2. other support services

for people in supported accommodation transferred to the Northern Ireland Housing Executive under the Supporting People Programme.

84569 Decision makers should disregard indefinitely any payment made by the Northern Ireland Housing Executive to or on behalf of the claimant or partner relating to a service which is

1. provided to develop **or**

2. to sustain the capacity of

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

1 SPC Regs (NI), Sch 5, para 20(1)(d)

84570 – 84574

Money paid to families of the disappeared

84575 Where an ex-gratia payment has been made by the Secretary of State to members of the families of the disappeared, it is disregarded but only for a period of 52 weeks from the date of payment[1].

1 SPC Regs (NI), Sch 5, para 23A

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

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

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

2. personal possessions

is disregarded for the period in DMG 84561[1].

1 SPC Regs (NI), Sch 5, para 18

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

The law

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

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

2. paying for essential repairs or alterations to the premises

2.1 occupied as the home **or**

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

1 SPC Regs (NI), Sch 5, para 19

Essential repairs or alterations

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

Bereavement Support Payment

84579 Where a claimant in receipt of State Pension Credit

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

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

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

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

84580 – 84600

Capital disregarded for 26 weeks or longer

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

The law

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

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

2. as long as it is occupied if

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

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

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

Meaning of dwelling

84602 Dwelling means

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

1.1 garage

1.2 garden

1.3 outbuildings **and**

1.4 any agricultural land adjoining that dwelling **and**

2. any land not adjoining that dwelling which

2.1 is impracticable to be sold separately **or**

2.2 would not be reasonable to sell separately[1].

1 SPC Regs (NI), Sch 5, para 6(2)

Meaning of lone parent

84603 Lone parent means a person

1. who has no partner **and**

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

1 SPC Regs (NI), Sch 5, para 6(2)

Meaning of child

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

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

1 SPC Regs (NI), Sch 5, para 6(2); SS C&B (NI) Act 92, Part 9

84605 – 84620

Premises a person does not possess or occupy

The law

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

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

The premises

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

1. can be sold separately **and**

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

1 R(IS) 3/96

Acquiring premises

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

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

2. cannot move in **and**

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

Possession of premises

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

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

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

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

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

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

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

Moving into the premises

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

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

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

2.1 the premises to be built **and**

2.2 the person to move into them.

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

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

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

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

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

84632 – 84635

Premises which a person is taking steps to get possession of

The law

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

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

2. have

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

2.2 started legal proceedings to get possession.

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

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

The premises

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

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

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

2.1 can be sold separately **and**

2.2 is reasonable for it to be sold separately.

1 R(IS) 3/96

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

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

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

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

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

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

When legal proceedings usually start

84640 In Northern Ireland legal proceedings usually start in the

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

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

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

Note: Decision makers should send cases of doubt to Decision Making Services.

84641

Period of disregard

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

84643 The decision maker may decide

1. to disregard the premises for a longer period if

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

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

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

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

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

84644 – 84645

Premises which are to be repaired or altered

The law

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

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

2. the people to start living in the premises

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

1 SPC Regs (NI), Sch 5, para 3

The premises

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

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

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

2.1 can be sold separately **and**

2.2 is reasonable for it to be sold separately.

1 R(IS) 3/96

Essential repairs or alterations

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

The steps

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

1. getting a grant or loan to pay for them

2. employing an architect

3. getting planning permission

4. finding someone to do the work.

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

84650 The date a person first takes steps to get the premises repaired or altered is the first date the person does something to get the work done and can include the date a person first

1. asks about a

1.1 grant

1.2 loan **or**

1.3 planning permission

2. contacts

2.1 an architect **or**

2.2 someone to do the work.

84651 The first date does not change. So if a person contacts several persons to do the work the first date is the date the first person is contacted.

Period of disregard

84652 The period of disregard is 26 weeks or longer if it is necessary. The repairs and alterations may not be done in 26 weeks if there is a lot of work to do. The decision maker has to decide if it is necessary to disregard the premises for a longer period if the person has not moved into the premises within 26 weeks.

84653 The decision maker may decide

1. to disregard the premises for a longer period if the

1.1 person is still waiting for a grant, loan, or planning permission

1.2 work will take longer than 26 weeks

1.3 work has been delayed and there is a good reason for the delay **or**

1.4 work has been done and there is a good reason why the person has not moved in

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

2.1 the person has not taken all the steps needed to get the work done, such as a person who has got a grant but has not arranged for the work to be done **or**

2.2 there is no good reason for the delay in getting the work done or for the person not moving in.

84654 – 84655

Premises which are to be disposed of

The law

84656 Premises which people are trying to dispose of are disregarded if they are taking reasonable steps to dispose of all of their interest in the premises. The period of disregard is for 26 weeks or longer if it is reasonable from the date the person first took such steps[1].

1 SPC Regs (NI), Sch 5, para 7

The premises

84657 Premises includes

1. land, such as a field

2. buildings, such as a house

3. a lease on the land or buildings

4. any premises in which a person has a time-share.

Who can dispose of premises?

84658 Only the legal owner of premises can dispose of them. The disregard does not apply if the person is the

1. beneficial owner or joint beneficial owner of the premises **and**

2. not the legal owner or joint legal owner.

This also applies when people have given away premises so that they can get State Pension Credit or more State Pension Credit.

Reasonable steps

84659 Reasonable steps are what a person must do to dispose of the premises and can include

1. advertising the premises for sale

2. getting an estate agent

3. taking legal action to

3.1 force the sale of premises when the other legal owners do not want to sell **or**

3.2 get possession of the premises

4. taking action to appoint another person to act for the legal owner if

4.1 the owner is mentally sick or disabled **and**

4.2 the premises are going to be sold after someone has been appointed.

84660 In deciding if reasonable steps are being taken the decision maker should determine the specific steps the person is taking to dispose of the premises. This applies whether or not the steps being taken are part of ancillary proceedings following the breakdown of marriage.

Example

Steve makes a claim for State Pension Credit. He owns a house with his brother Mark. Neither of them lives in the house. Steve asks Mark if he is prepared to sell the house. Mark says no because the house was left to them by their father and he would have wanted them to keep it. Steve does not pursue the matter further. The decision maker decides that Steve is not taking reasonable steps to dispose of the house.

The date a person first takes reasonable steps

84661 The date a person first takes reasonable steps is usually the first date a person does something to dispose of the premises and can include the date

1. the premises were first advertised for sale

2. a person first contacts an estate agent

3. a person first sees a solicitor if legal action has to be taken to force a sale or get possession of the premises

4. action is started to appoint someone to act for the legal owner which may include the first date a person sees a solicitor if legal advice is needed.

84662 The first date does not normally change. So if a person has tried several times to dispose of the premises the date is the first date the person did something to dispose of the premises the first time. However, there may be exceptional circumstances where the first date may change due to a break in attempts to market the property.

Example

In March 2010 Simon's brother dies leaving him a house. Simon places the house on the market in August 2010. There is some interest in the house but due to ongoing work on a large civil engineering project close to the property, potential buyers are

not making offers on the house due to the unknown effects that this project will have on the house. Simon's estate agent advises him to take the house off the market until the situation regarding the civil engineering project is clear. In February 2011, the works are completed and there is no effect to the property so Simon decides to put the house back on the market on 20 February 2011. He makes a claim for State Pension Credit at the same time. The decision maker considers the circumstances and decides that due to the reason for the break in the marketing the property for sale being exceptional and something over which the claimant had no control, the date from which the 26 week disregard will be calculated will be the second attempt to sell the house i.e. 20 February 2011.

Period of disregard

84663 The period of disregard is 26 weeks or longer if it is reasonable. People should be able to dispose of premises within 26 weeks, but may not be able to do so if the market for premises is depressed. The decision maker has to decide if it is reasonable to disregard the premises for a longer period if they are not disposed of within 26 weeks.

84664 The decision maker may decide to disregard the premises for a longer period if

1. people have done all they have to do to sell the premises and the asking price is no more than the premises are worth **or**

2. action is still being taken to

2.1 force a sale **or**

2.2 get possession of the premises **or**

2.3 appoint someone to act for the legal owner.

84665 The decision maker may need expert advice to find out what the premises are worth. Benefit Guidance Centre issues guidance on how to get such advice.

84666 – 84670

Capital disregarded for the remainder of an award of State Pension Credit

Arrears and concessionary payments of £5,000 or more

When the disregard applies
[See DMG Memo Vol 5/115, 6/96, 9/48 & 14/71]

84671 This disregard applies where

1. a person receives arrears of one of the

1.1 benefits **or**

1.2 allowances **or**

1.3 payments

listed in DMG 84567 and, if appropriate, any concessionary payment to compensate for the late payment of that benefit **and**

2. the total of the arrears and any concessionary payment is £5,000 or more **and**

3. the total of arrears and any concessionary payment is paid to rectify or compensate for an

3.1 official error (see DMG 3256) **or**

3.2 error of law (see DMG 4280) **and**

4. the total of arrears and any concessionary payment is received in full by the person

4.1 on or after the day on which entitlement to State Pension Credit began[1] **or**

4.2 in respect of a payment disregarded for the purposes of

4.2.a Income Support

4.2.b Jobseeker's Allowance

4.2.c Housing Benefit

4.2.d Employment and Support Allowance

where that payment was disregarded immediately before the person became entitled to State Pension Credit[2].

1 SPC Regs (NI), Sch 5, para 20A(1); 2 Sch 5, para 20A(2)

Period of the disregard

84672 The period of the disregard of arrears and concessionary payments of £5000 or more is the remainder of a person's award of State Pension Credit[1].

1 SPC Regs (NI), Sch 5, para 20A(3)

Meaning of award of State Pension Credit

84673 For the purposes of DMG 84672, award of State Pension Credit means[1]

1. the award of State Pension Credit in which the

1.1 arrears and any concessionary payment are received **or**

1.2 the first part of the arrears and any concessionary payment is received if it is paid in more than one instalment **and**

2. any further award of State Pension Credit (or until the end of the last such further award) if

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

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

2.3 the claimant

2.3.a is the person who received the arrears and any concessionary payment **or**

2.3.b is the partner of the person who received the arrears and any concessionary payment **or**

2.3.c was the partner at the date of death of the person who received the arrears and any concessionary payment.

1 SPC Regs (NI), Sch 5, para 20A(4)

Example 1

Winston is in receipt of State Pension Credit. On 17 June he receives arrears of Income Support of £6,995. Winston dies on 20 June and his widow, Cynthia, makes a claim for State Pension Credit on 21 June. The decision maker decides that the arrears received by Winston are disregarded until the end of Cynthia's award of State Pension Credit.

Example 2

Hannah was in receipt of Income Support and she transferred to State Pension Credit on 6.10.06. She received Attendance Allowance which was disregarded for the purposes of her Income Support claim. On 3.2.07 she receives arrears of Attendance

Allowance of £4,950 and on 17.3.07 she receives a concessionary payment of £150 because of an official error. The decision maker decides that from 3.2.07 the arrears of £4,950 are disregarded to the end of her Assessed Income Period (being a longer period than one year) and from 17.3.07 the concessionary payment and any of the remaining payment of arrears are disregarded for the remainder of Hannah's award of State Pension Credit.

Example 3

Rhys receives State Pension Credit until 2.4.07. On 17.5.07 he receives a concessionary payment of £15,000 because of an official error. Rhys then makes another claim to State Pension Credit on 4.6.07. The decision maker decides that the concessionary payment can be disregarded for no more than one year from 17.5.07 (see DMG 84561 et seq).

84674 – 84690

What is the value of the capital

General

84691 The decision maker should decide the value of any capital which is not disregarded. Capital which is disregarded does not have to be valued.

The law

Capital in the UK

84692 The value of capital which a person has in the UK (see DMG 070880), is its current market or surrender value less

1. 10% of the value if there are costs of sale **and**

2. the amount of any encumbrance secured on the capital[1].

1 SPC Regs (NI), reg 19(a)

84693

Capital outside of the UK

84694 The value of capital which a person has outside of the UK (see DMG 070880) is

1. its current market or surrender value in the country outside of the UK if people can transfer the money they get for the capital to the UK **or**

2. the price people get for it if sold to a willing buyer in the UK if the country will not let them transfer money to the UK

less 10% of the market or surrender value or price if there are costs of sale and the amount of any encumbrance secured on the capital[1].

1 SPC Regs (NI), reg 20

Capital which is jointly held

84695 It was assumed that the jointly-owned capital rule applied to all types of joint-ownership. However on 15.10.01 the Commissioner decided that the jointly-owned capital rule did not apply to real property (see DMG 84022 **4.**) which two or more people beneficially own as tenants in common[1]. The Commissioner's decision was upheld by the Court of Appeal.

1 R(IS) 4/03

84696 See DMG 84246 et seq for guidance on how to decide whether a claimant owns a capital asset with one or more persons as a

1. joint-tenant **or**

2. tenant in common.

Joint-tenant

84697 Where the claimant's interest in jointly-owned capital is as a joint-tenant the decision maker should

1. treat the claimant and the other beneficial owners as having equal shares in the asset[1] **and**

2. value the claimant's deemed share under the normal rules[2].

1 SPC Regs (NI), reg 23; 2 R(IS) 26/95

84698 The decision maker should not assume that

1. the market value in all cases is the market value of the whole asset divided by the number of beneficial owners **or**

2. in the case of a dwelling, any joint-owners who live in the property do not live there.

Tenant in common

84699 Where the claimant has an interest in an asset as a tenant in common, the decision maker should value the claimant's actual share[1].

1 R(IS) 4/03

Example 1

Cecilia and her son Ross own a house as tenants in common. Cecilia owns 20% of the property and Ross owns 80% but he does not live in it. Cecilia goes into a care home and makes a claim for State Pension Credit. The decision maker decides that the value of Cecilia's share of the house cannot be disregarded. The decision maker also decides to take the value of Cecilia's 20% share into account.

Example 2

Sue and Melinda own a house as tenants in common. Sue owns 60% of the property and Melinda 40%. Sue and Melinda both go into a care home and claim State Pension Credit. The decision maker decides that their share of the value of the house cannot be disregarded. When deciding Sue's claim for State Pension Credit, the decision maker takes the value of her 60% share of the property into account. When deciding Melinda's claim for State Pension Credit, the decision maker takes the value of her 40% share of the property into account.

84700

Further guidance on valuation

Value

General

84701 Decision makers should ensure all factors which might affect the valuation of an item of capital are taken into account[1]. Some of the factors which might affect valuation are

1. it should be assumed that the person owning the capital is willing to sell it if that person is the claimant, or the claimant's partner

2. when a person is the beneficial owner and not the legal owner, such as when capital is held on trust, as the legal owners could

2.1 sell the capital and not give the proceeds of sale to the beneficial owners

2.2 encumber the capital with secured debts

2.3 if the capital is real property (see DMG 84022 **4.**), grant a lease on the property

3. whether the capital can be sold or withdrawn and if so when, such as when

3.1 there is a court order which says capital cannot be sold until a future date or event

3.2 the terms of an agreement says capital can only be withdrawn at the end of a fixed period

3.3 a bank or building society will not let money be withdrawn until it is decided who gets the money following the breakdown of marriage or civil partnership

4. court proceedings, such as

4.1 when there is a disagreement about who has a beneficial interest in the capital

4.2 following the breakdown of marriage or civil partnership

5. the cost of any action to appoint someone to act on behalf of a legal owner who is mentally sick or disabled

6. if the capital is real property (see DMG 84022 **4.**)

6.1 whether it is freehold or leasehold, and whether anyone is living in the property, such as a

6.1.a tenant

6.1.b lessee

6.1.c child of a marriage which has broken down and the court has ordered that the child can live in the property until a certain date or event

6.2 whether there are planning or other restrictions on the property

7. the chances of a person who has rights to capital getting that capital if it is due and has not been paid.

Note: For the purposes of DMG 84701 **6.1** a person can fall within the term "excluded occupier" if they share the living space of the property with the claimant. However, this does not give the person any rights against eviction. For a person to acquire rights against eviction the nature of any licence to remain should be such that it can be determined by giving reasonable notice.

1 R(IS) 26/95

84702 There are additional factors if the capital is jointly held and real property (DMG 84022 **4.**). Some of those additional factors are

1. whether the other owners

1.1 are willing and able to buy the share

1.2 will agree to the sale of the asset as a whole

1.3 are occupying the property and, if so, whether they would be willing to vacate the property

2. whether the courts would order

2.1 the sale of the property as a whole **or**

2.2 the partition of the property

if the other owners will not buy the share or agree to the sale of the asset as a whole

3. the length of time the buyer of the share may have to wait to get possession if the matter goes to court

4. the possibility of the buyers having to pay their legal costs and those of the other joint owners if the matter goes to court

5. the rights of the other joint owners to occupy the property

6. the amount of any encumbrances secured on the property

7. whether there is a current market for the claimant's share of the property or whether one might develop in the future.

84703 Decision makers should have a copy of the instructions given to the expert valuer if an expert valuer is used to ensure that the valuer has taken into account all the factors which might affect the valuation. The expert valuer should consider and say to what extent each of the factors would encourage, or discourage, a potential buyer. Also, if capital is jointly held and is real property (see DMG 84022 **4.**), that the valuers have said

1. whether on the facts of the case there is any market for the deemed or actual share and where that market lies

2. how the market value has been worked out and what comparables have been relied on if comparables have been used

3. what their experience or knowledge is of the sale of a share in the circumstances of the case being valued[1]

4. what specific facts and law have been considered if the valuer says a court would order the sale of the property as a whole, or order the partition of the property[2]

5. how location, size and condition of a property affects its value

6. if the property is leasehold, what the length of the lease is and any special terms in it.

Note: The expert may have to make assumptions because the information is not available. If this is the case, the decision maker should ensure that the expert has stated what information is missing and the assumptions that have been made[3].

1 R(IS) 26/95; 2 R(IS) 1/01; 3 R(JSA) 1/02

84704 The instructions from the Department to the expert valuer and the valuer's report on the valuation should be placed in evidence before the Appeal Tribunal if an appeal is made against the valuation. The valuer can be called as a witness at the hearing of the appeal if needed.

Current market value

84705 Current market value means the price a willing buyer will pay a willing seller in that market on the relevant date[1]. The market is the market for what is for sale. So, if a house is for sale, it is the property market. The relevant date is the date of claim or date of supersession.

1 R(SB) 6/84

84706 Decision makers work out the current market value

1. themselves **or**

2. from evidence given by the claimant or person whose capital it is **or**

3. from evidence from an expert valuer.

Current surrender value

84707 Current surrender value means the money people get if

1. they withdraw their capital on the date of claim or supersession **and**

2. that date is before the date a person gets the capital under the terms of the agreement **and**

3. the terms of the agreement lets a person withdraw the capital before the agreed date.

84708 The decision maker accepts the money people would get on the date of claim or supersession as the value. The value is the current market value if the agreement does not let a person withdraw capital before the agreed date.

Price

84709 The price is what people get for capital they have outside the UK (see DMG 070880) if it is sold to a willing buyer in the UK. The price is needed when the country where the capital is held will not allow the transfer of money to the UK.

84710 Decision makers work out the price

1. from evidence given by the claimant or person whose capital it is **or**

2. from evidence from an expert valuer.

Most cases will need an expert valuation.

Capital with more than one value

84711 Decision makers have to decide which value to accept if capital has more than one value, such as when capital has a current market and surrender value[1].

1 R(SB) 6/84

Costs of sale

84712 10% of the current market or surrender value or price is only deducted if there would be costs when a person sells capital. 10% of the value or price is deducted even if the actual costs would be more or less than that amount.

84713 There are normally costs of sale if a person

1. uses another person to sell the capital, such as

1.1 an estate agent

1.2 a broker **or**

1.3 an auctioneer **or**

2. needs the services of another person before the capital can be sold such as

2.1 a solicitor **or**

2.2 an accountant.

84714 There are always costs of sale if the capital is real property (see DMG 84022 **4.**)[1].

1 R(IS) 21/93

84715 Costs of sale do not include the cost of

1. postage, such as when a person applies in writing to withdraw premium bonds **or**

2. travelling expenses, such as bus fares when a person visits a building society to withdraw money.

84716 Decision makers work out 10% of the current market or surrender value or price if there are costs of sale. Costs of sale are worked out before a deduction is made for any encumbrances secured on the capital.

Encumbrances secured on capital

84717 An encumbrance is secured on capital when a person is owed money and has a right to

1. the capital **or**

2. stop it being sold

until the money owed is paid back. Such a debt is a legal charge or mortgage and is deducted from the value of capital. A debt which is not secured is not deducted[1]. Any encumbrances secured on the capital as a whole will be taken into account when valuing the deemed or actual share if capital is jointly held and an expert valuer is used to value the deemed or actual share.

1 R(IS) 21/93

84718 The amount of the encumbrance which is deducted is the amount of money owed on the date of claim or supersession. The amount is deducted from the capital on which the debt is secured. If the debt is secured on more than one item of capital, the amount is deducted from

1. the total of the value of each item of capital on which the encumbrance is secured **or**

2. the total of the value of each item of capital

2.1 which is not disregarded **and**

2.2 on which the encumbrance is secured[1]

if any item of capital on which the encumbrance is secured can be disregarded.

Example

On 29.3.04 Alan makes a claim for State Pension Credit. His capital consists of 20,000 shares and two houses. He lives in one of the houses, the other is unoccupied. Alan has a mortgage which he used to buy the house he lives in. However, the mortgage is secured on his other house. He is in debt to his bank. The bank is holding the share certificates and has a charge on the two houses as security for the debt. On 29.3.04 the current market of the shares is £50,000 and that of the unoccupied house is £72,000. The amount outstanding on the mortgage is £45,000 and the debt to the bank is £62,000.

The decision maker decides that the value of the unoccupied house, less 10% for costs of sale and the mortgage which it is secured on it, is £19,800. The decision maker also decides that the value of the shares, less 10% for costs of sale, is £45,000. Finally, the decision maker decides that the value of the unoccupied house and shares, less the debt to the bank which is secured on them, is £2,800 (£19,800 + £45,000 - £62,000 = £2,800).

1 R(IS) 21/93

84719 Decision makers need to know the amount of money owed on an encumbrance secured on capital at the date of claim or supersession. The person whose capital it is has to

1. provide evidence of the amount owed **or**

2. give permission for someone else to get the information.

The amount owed is deducted from the current market or surrender value, or price. Decision makers should not make a deduction if there is no evidence of the amount owed, or permission is not given to get the information, and the decision maker cannot work out the amount owed from what evidence there is.

Value of a deemed or actual share in a capital asset outside the UK

84720 The value of a part-share in a capital asset outside the UK (see DMG 070880) depends on whether or not the country will allow money to be transferred to the UK.

84721 If money can be transferred to the UK, the value of the deemed or actual share of the capital asset is

1. the market value of the deemed or actual share less

2. 10% if there would be expenses of sale.

Note: In most cases an expert valuation of the value of the deemed share will be needed.

84722 If the country will not allow the transfer of money to the UK, the value of the deemed or actual share will be the price the owner of the deemed or actual share would get from a willing buyer in the UK. Decision makers work out the price from evidence

1. given by the claimant or person whose capital it is **or**

2. from an expert valuer.

Note: Most cases will need an expert valuation.

84723 The onus is on the claimant to provide a letter from a bank of the country where the asset is held, or a letter from the Embassy of the country concerned. If there are any difficulties getting this information contact Benefit Guidance Centre for advice.

84724 – 84730

Valuation in particular cases

Bank, Post Office and building society accounts

84731 A person who has money in a bank, Post Office or building society account has a right to capital. The value of the rights to capital is the balance in the account on the date of claim or supersession. This is because it is assumed the bank, Post Office or building society will be able to pay out the money when asked.

84732 If a person has a joint beneficial interest in a bank, Post Office or building society account, the value of the deemed share is required. This is the balance in the account on the date of claim or supersession divided by the number of joint beneficial owners.

Example

Fergal and his daughter, Siobhan, are the joint legal and beneficial owners of a building society account. They both put money into the account to meet household bills. Siobhan now pays more into the account than Fergal as her income is larger than her father's since he retired. Fergal makes a claim to State Pension Credit and the balance in the account is £8,250. The decision maker decides that Fergal and his daughter have a joint beneficial interest in the account. The decision maker also decides that Fergal's share of the account is £4,125.

84733 An expert valuation of a rights to capital is needed if there is something which stops people getting their money out of a bank, Post Office or building society account, such as the

1. person is the beneficial owner of the money in the account and not the legal owner and the legal owner will not withdraw the money **or**

2. bank, Post Office or building society has gone into liquidation.

84734 – 84735

Business assets

The assets

84736 Business assets are the things which are risked and used in the business. Business assets can include

1. capital which may be in a bank, Post Office or building society account, some other investment, or cash

2. money owed to the business, which is a current rights to capital (see DMG 84036 - 84037)

3. business premises, including the lease on such premises

4. machinery and equipment such as

4.1 cars and vans

4.2 sewing and gaming machines

4.3 work benches and display cabinets

4.4 refrigerators and freezers

4.5 computer equipment and facsimile machines

4.6 desks and chairs

5. stock, including livestock such as cows and horses.

Value of business assets

84737 The current market or surrender value or price of each business asset is needed. So if there are 30 sewing machines the decision maker has to decide the current market value or price of each machine.

Encumbrances secured on business assets

84738 Only debts which are an encumbrance secured on the business asset are deducted. So if suppliers are owed money and their debt is not secured on any of the business assets, no deduction is made.

84739 A bank may have a floating charge on the business assets if the business has an overdraft. A floating charge is an encumbrance secured on each business asset. The amount to deduct from the total value of all the business assets is the amount overdrawn on the date of claim or supersession.

Funds held by the Office of Care and Protection

84740 When a mentally sick or disabled person has funds held by the Office of Care and Protection (see DMG 84272 et seq), those funds should be valued in accordance with DMG 84692 - 84694. The person's incapacity does not affect this[1].

Example

Veronica lives in a care home and makes a claim for State Pension Credit. She has capital of £82,000 which was inherited from her father and is held by the Office of Care and Protection. Veronica's brother, Henry is her controller. Henry states that Veronica's capital has negligible value because of her incapacity. However, the decision maker decides that Veronica's capital of £82,000 is taken into account for the purposes of calculating the amount of deemed weekly income from capital.

1 R(IS) 9/04

84741 – 84745

Personal equity plans

84746 A personal equity plan is an investment. People can invest up to a certain amount of money in a personal equity plan in each tax year if they are

1. 18 or over **and**

2. liable to pay UK (see DMG 070880) tax.

The value of a personal equity plan is what people would get if they withdrew their investment on the date of claim or supersession. Any income which is paid out of a personal equity plan is income from capital.

84747 A personal equity plan mortgage is not a mortgage. It is a personal equity plan and should be valued as such even if people say they are going to use their investment to pay off their mortgage. Normally, a mortgage is an encumbrance secured on the property bought with the mortgage. The mortgage is not likely to be an encumbrance secured on the personal equity plan.

Note: A personal equity plan was replaced by an individual savings account in April 1999. From that date people could no longer invest in their personal equity plan or open a new one.

Individual savings account

84748 An individual savings account is an investment. People can invest up to a certain amount of money in an individual savings account in each tax year if they are

1. 16 or over **and**

2. resident or ordinarily resident in the UK for tax purposes.

The value of an individual savings account is what people would get if they withdrew their investment on the date of claim or supersession. Any income, which is paid out of an individual savings account, is income from capital.

84749 Normally, a mortgage is an encumbrance secured on the property bought with the mortgage. If someone says they are using an individual savings account to pay off their mortgage this will not be an encumbrance secured on the individual savings account. The individual savings account should be valued as such.

84750 It is a requirement of the individual savings account regulations that the individual savings account remain in the beneficial ownership of the investor[1].

1 The Individual Savings Account Regulations 1998, para 4(6)

Note: If there is evidence that the individual savings account or personal equity plan was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the individual savings account or personal equity plan then it may constitute an equitable charge and they should be valued taking that into account.

Lifetime individual savings account

84751 The lifetime individual savings account is available for people who are aged 18 to 40 when it is opened. It is similar in many ways to a normal individual savings account with the addition of a government bonus of 25% paid on the contributions made by the saver of up to a limit of £4,000 annually. This lifetime individual savings account should be treated as capital from the outset with a value of

1. 75% of the surrender value where the person is under age 60 **or**

2. 100% of the surrender value where the person is over age 60

taken into account.

Right to receive income

84752 An expert valuation is needed of the value of the right to receive an income if the income can be signed over to another person.

84753 Income which cannot be signed over to another person is

1. periodical maintenance payments

2. public service pensions, such as a civil service pension

3. social security benefits and allowances, such as Retirement Pension.

84754 – 84755

Shares in a private company

84756 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

84757 The value of the shares is not worked out by dividing the value of all the shares in the company by the number of shares a person has[1]. The expert valuation cannot be more than the figure the company's auditors say is a fair value if the company's auditors say what a fair value is. The value is more likely to be less than what the company's auditors say is a fair value[2].

1 R(SB) 18/83; 2 R(IS) 2/90

84758 The expert valuation should take into account

1. anything in the articles of association which restricts the sale of the shares, such as the shares can only be sold

1.1 to the other shareholders and the shareholders will not buy them **or**

1.2 if the directors agree and they do not agree **and**

2. whether the person's shares in the company are a minority, equal or controlling interest.

Stocks and shares quoted on the London Stock Exchange

Value of stocks and shares

84759 The value of stocks and shares can be obtained from the financial pages in a newspaper which is dated the same date as the date of claim or supersession. A newspaper gives the price for most of the stocks and shares quoted on the London Stock Exchange. A valuation using the price given in a newspaper is not an exact valuation.

84760 To decide if an exact valuation is needed, first work out the value of the stocks and shares using the price given in a newspaper. An exact valuation is always needed if the price of a stock or share is not given in a newspaper.

84761 To work out the value of stocks and shares from the price given in a newspaper

1. find the price of a stock or share in a newspaper which is dated the same date as the date of claim or supersession **and**

2. multiply the figure at **1.** by the number of that stock or share the person has.

84762 An exact valuation may be needed if DMG 84911 applies. To work out the exact value of stocks and shares[1]

1. use the free internet tool Google Finance to find the highest and lowest price for the day before the date of claim or supersession **and**

2. deduct the lowest price from the highest price **and**

3. divide the figure at **2.** by four **and**

4. add the figure at **3.** to the lowest price **and**

5. multiply the figure at **4.** by the number of that stock or share the person has.

1 R(IS) 18/95

84763 Once the value has been calculated as in DMG 84762 deduct 10% for expense of sale as in DMG 84692. Round down in the claimant's favour at the last stage of the calculation.

Example

Roy has 250 Marks and Spencer shares. The highest and lowest share prices for the day before the date of claim is £4.1750 and £4.1250 respectively.

Deduct the lowest from the highest price (£4.1750 - £4.1250) = £0.05

Divide £0.05 by 4 = £0.0125

Add £0.0125 to the lowest share price (£0.0125 + £4.1250) = £4.1375

Multiply £4.1375 by the number of shares (250) = £1034.3750

Deduct 10% expense of sale = £930.93

Encumbrances secured on stocks and shares

84764 Stockbrokers have an encumbrance secured on stocks or shares if the person they have bought the stocks or shares for has not paid

1. the broker for them **or**

2. the broker's commission[1].

The encumbrance is secured only on the stocks and shares which have not been paid for or on which commission has not been paid. The encumbrance is not secured on any other stocks and shares which the stockbroker buys for the person.

1 R(IS) 18/95

84765 – 84766

84767 The amount of the encumbrance is the amount owed to the stockbroker.

Government securities

84768 Government securities are stocks issued by the British Government. They are sold in £100 units but re-investments can be for different amounts. Government securities include

1. consolidated stock

2. conversion loan

3. exchequer stock

4. funding stock

5. Treasury stock

6. 3½% War Loan.

84769 The value of government securities should be worked out in the same way as for stocks and shares (see DMG 84759 et seq).

84770 The free internet tool Google Finance will provide decision makers with a value provided the stock has not reached the date when the capital invested is repayable. If that date has been reached, the claimant should be advised to write to the Historic Price Service, London Stock Exchange, Old Broad Street, London EC2N 1HP. Any cost for this service should be met by the claimant. The information can be obtained from the London Stock Exchange website, although this only holds data from 1999 onwards.

Unit trusts

Value of unit trusts

84771 To work out the value of a unit in a unit trust

1. find the bid price for a unit in the trust in a newspaper which is dated the same date as the date of claim or supersession **and**

2. multiply the figure at **1.** by the number of units a person has.

Note: The value of a unit trust can be found at:
http://markets.ft.com/research/Markets/Data-Archive

Costs of sale

84772 People apply to the manager of the trust to withdraw their money so there are no costs of sale. This applies even if persons use an agent, such as a stockbroker.

84773 – 84775

Notional capital

The law

84776 People should be treated as having capital they do not have if

1. they deprive themselves of capital to get State Pension Credit or more State Pension Credit **or**

2. they have shares in a company and are treated as a

2.1 sole owner **or**

2.2 partner

in the business of that company[1].

1 SPC Act (NI) 02, sec 15(6)(a) & SPC Regs (NI), reg 21

84777 The capital people are treated as having is called notional capital.

84778 – 84780

Deprivation of capital

General

The law

84781 **[See DMG Memo Vol 5/102, 9/31 & 14/58]** People should be treated as having capital they do not have if they deprive themselves of their capital for the purpose of getting State Pension Credit or more State Pension Credit[1]. People are not treated as having the amount by which notional capital is reduced under the diminishing notional capital rule[2]. People have not deprived themselves of capital if they disposed of it

1. to reduce or pay a debt owed by themselves[3] **or**

2. to buy goods or services and it was reasonable in their case to buy such goods or services[4].

1 SPC Regs (NI), reg 21(1); 2 reg 21(1); 3 reg 21(2)(b)(i); 4 reg 21(2)(b)(ii)

Who the law applies to

84782 The law applies only to people who were the beneficial owners or joint beneficial owners of the capital which they have deprived themselves of. So if claimants are the joint beneficial owners of a building society account which has £10,000 in it and the claimant's share is £4,000 the law

1. applies if claimants deprive themselves of that £4,000 or any part of it for the purpose of getting State Pension Credit or more State Pension Credit **and**

2. does not apply if the other £6,000 or any part of it is spent or given away.

84783 The law does not apply if another person, such as

1. an appointee appointed by the Department **or**

2. someone with power of attorney (unless DMG 84294 applies)

deprives people of their capital.

84784 Decision makers should decide the question of deprivation each time State Pension Credit is claimed because

1. a decision on a claim is final **and**

2. any fact found or determination made in connection with that decision cannot be carried forward to decide the next claim[1].

1 SSA (NI) Act 92, sec 58

84785 – 84790

Have people deprived themselves of capital

Meaning of deprive

84791 The meaning of deprive is not a question of law and should be given its normal every day meaning[1]. So people have deprived themselves of capital if they no longer have it even if they use it to get other capital[2].

1 R(SB) 40/85; 2 R(SB) 40/85

Onus of proof

84792 People have to show they no longer have capital[1].

1 R(SB) 38/85

Evidence that people no longer have capital

84793 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real property (see DMG 84022 **4.**), such as a house, has been transferred to another person **or**

2. a deed, such as a deed of

2.1 gift **or**

2.2 trust **or**

2.3 settlement

which shows capital has been given to another person **or**

3. receipts which show what the capital has been spent on.

What the decision maker decides

84794 The decision maker decides if people have

1. the capital **or**

2. deprived themselves of it.

Decision makers do not have to decide if people have deprived themselves of capital for the purpose of getting State Pension Credit or more State Pension Credit if they decide those people have the capital. Such capital is included when working out actual capital.

84795 Decision makers should decide people have actual capital if

1. there is evidence to show they had the capital **and**

2. those people cannot show they no longer have it[1].

1 R(SB) 38/85

Evidence which may show people had capital

84796 Evidence which may show people had capital can include information

1. given when State Pension Credit was claimed or claimed previously, such as when claimants have said they

1.1 had capital and do not say they have capital now **or**

1.2 owned the house in which they used to live and do not say what has happened to the house when they move into accommodation they do not own **or**

2. from another source, such as from the former partner, which shows claimants have got a one-off payment.

84797 – 84800

Have people deprived themselves of capital for the purpose of getting State Pension Credit or more State Pension Credit

Onus of proof

84801 Decision makers have to show the purpose for the deprivation was to get State Pension Credit or more State Pension Credit if they decide people have deprived themselves of capital. Getting State Pension Credit or more State Pension Credit may not be the predominant purpose but it must be a significant one[1]. So when claimants give away all their capital to a relative just before claiming State Pension Credit their

1. main, or predominant, purpose may be to benefit the relative **and**

2. intention, or significant purpose, may be to reduce their capital so they can get State Pension Credit or more State Pension Credit.

1 R(SB) 40/85

What the decision maker decides

84802 Decision makers have to decide if the significant purpose was to get State Pension Credit or more State Pension Credit. The decision maker has to make such a decision each time people deprive themselves of capital. So if claimants have spent their capital on several things the decision maker has to decide the claimant's purpose for each act of deprivation.

84803 Normally there is no direct evidence to show the purpose was to get State Pension Credit or more State Pension Credit. So the decision maker has to consider all the facts of each case when making the decision[1].

Example

Ruth has been in receipt of State Pension Credit since 6.10.03. On 25.2.04 she transfers legal and beneficial ownership of her house to her daughters and goes to live in a care home. Ruth says that she transferred ownership of her home to her daughters so they still had somewhere to live when she went to live in the care home. The decision maker decides that there are grounds to revise or supersede the decision awarding State Pension Credit to Ruth. The decision maker also decides that, although her predominant motive was to provide a home for her daughters, a significant purpose was to receive State Pension Credit. The decision maker therefore decides that Ruth deprived herself of the value of her house in order to receive State Pension Credit.

1 R(SB) 9/91

84804 – 84805

Facts which decision makers should consider

Were people mentally capable when they deprived themselves of capital

84806 People who are not mentally capable have not deprived themselves of capital for the purpose of getting State Pension Credit or more State Pension Credit if they were not mentally capable at the time they deprived themselves of capital. Such people have actual capital if they gave their capital to another person because the gift is not valid. The person who has been given the capital is holding it on trust for those people.

Did people have a choice when they deprived themselves of capital

84807 The decision maker has to decide why people chose to deprive themselves of capital when they did if they had a choice in the matter, such as when people give their capital away. The fact that people had a choice does not mean their purpose was to get State Pension Credit or more State Pension Credit[1]. It is a fact which the decision maker should take into account when deciding the purpose of the deprivation.

1 R(SB) 12/91

84808 People have no choice if they use their capital to pay for the necessities of life, such as food and fuel. People have not deprived themselves of capital to get State Pension Credit or more State Pension Credit if they have no choice.

Did people know capital affects the amount of State Pension Credit they can get

84809 People have not deprived themselves of capital for the purpose of getting State Pension Credit or more State Pension Credit if they did not know that the capital they have deprived themselves of would affect the amount of State Pension Credit they could get[1].

1 R(SB) 12/91

84810 Decision makers have to show people did have such knowledge if they are to decide the purpose was to get State Pension Credit or more State Pension Credit. Facts which the decision maker should consider include

1. previous claims for State Pension Credit which may show people

1.1 did not get State Pension Credit, or got a reduced amount, because of the capital they had **or**

1.2 have been told about the effect of capital on State Pension Credit

2. official forms and leaflets which people have been given when claiming State Pension Credit[1] **and**

3. people's educational standing[2].

1 R(SB) 12/91; 2 R(SB) 12/91

84811

Did people say what they were going to do with their capital

84812 People have not deprived themselves of capital for the purpose of getting State Pension Credit or more State Pension Credit if they

1. say exactly what they are going to do with their capital **and**

2. are told by the Department it will not affect the amount of State Pension Credit they can get **and**

3. do what they said they were going to do with their capital.

84813 However, decision makers should consider whether people have deprived themselves of capital for the purpose of getting State Pension Credit or more State Pension Credit if they

1. say exactly what they are going to do with their capital **and**

2. are told by the Department it **will** affect the amount of State Pension Credit they can get **and**

3. do what they said they were going to do with their capital.

When did people deprive themselves of capital

84814 Decision makers should consider the date people deprived themselves of capital. Such a fact is more relevant if the date of deprivation is near to the date of claim or supersession[1].

1 R(SB) 9/91

What are people going to live on after they have deprived themselves of capital

84815 Decision makers should consider what people say they are going to live on after they have deprived themselves of capital. Such a fact is more relevant if they have no other capital or income to live on[1].

1 R(SB) 9/91

84816 Decision makers cannot decide the purpose of the deprivation was to get State Pension Credit or more State Pension Credit if the only fact is that after depriving themselves of capital

1. people should have realised **or**

2. the effect of it would be

they would need State Pension Credit[1].

1 R(SB) 40/85

84817 – 84820

People treated as sole owner or partner in a company

The law

84821 People who have shares in a company are treated as the sole owner or a partner in the business of that company if they are like a sole owner or partner in the business of the company. If this applies to the person, the

1. value of the person's shares in the company is disregarded when working out what capital the person has **and**

2. person is treated as having capital which is equal to

2.1 the value of the capital of that company if the person is treated as the sole owner **or**

2.2 the person's share of the value of the capital of that company if the person is treated as a partner[1].

The capital the person is treated as having at **2.** is disregarded if the person is undertaking activities in the course of the business of that company[2].

1 SPC Regs (NI), reg 21(3); 2 reg 21(4)

Like a sole owner or partner

84822 Whether a person who has shares in a company is like a sole owner or partner in the business of that company is a question of fact in each case[1]. A person who does not work for the company can be like a sole owner or partner[2].

1 R(IS) 8/92; 2 R(IS) 8/92

84823 The sole owner of a business has total influence over the day to day running of the business. When a business is jointly owned the number of partners is normally small and the influence a partner has over the day to day running of the business will depend on the terms of the partnership agreement. So for a person to be like a

1. sole owner in the business of the company that person should have total influence over the day to day running of the company, such as when a person owns 99% of the shares in a company[1] **and**

2. partner in the business of the company the

2.1 number of shareholders in the company should be small **and**

2.2 person should have some meaningful influence over the day to day running of the company[2].

1 R(IS) 13/93; 2 R(IS) 8/92

84824 A person who has some shares in a company which has a large number of shareholders, such as ICI, is an investor because such a person has no influence over the day to day running of the company[1].

1 R(IS) 8/92

Undertaking activities in the course of the business

84825 A person who is a shareholder in a company is undertaking activities in the course of the business of the company if that person is doing some work, no matter how little, for that company. So a person who takes telephone messages and receives mail for the company is undertaking activities in the course of the business of that company[1].

1 R(IS) 13/93

What decision makers decide

84826 Decision makers decide whether a person who has shares in a company is treated as a sole owner or partner in the business of the company. If so, decision makers

1. disregard the value of the person's shares in the company **and**

2. decide whether the value of the capital the person is treated as having is disregarded because the person is undertaking activities in the course of the business of the company.

Decision makers decide the value of the capital the person is treated as having if the value at **2.** cannot be disregarded.

84827 – 84830

What is the amount of notional capital

How to work out the amount of notional capital

The law

84831 The amount of notional capital is worked out in the same way as if the person has the capital[1].

1 SPC Regs (NI), reg 21(5)

What decision makers decide

84832 Decision makers decide

1. what notional capital can be disregarded (see DMG 84836 - 84839) **and**

2. the value of notional capital which cannot be disregarded (see DMG 84846 - 84850).

84833 – 84835

Disregards

Capital of a company

84836 Normally a person has no beneficial interest in the capital of a company. But, if a person who has shares in a company, is treated as a

1. sole owner **or**

2. partner

in the business of the company the person is also treated as having the value of the capital of the company unless it is disregarded.

84837 The value of the capital of a company is disregarded if the person is undertaking activities in the course of the business of the company.

Premises which are to be sold

84838 Premises which are to be sold are normally disregarded. But they are not disregarded if people are treated as having them because they transferred legal ownership to another person to get State Pension Credit or more State Pension Credit. A person who is not the legal owner of premises cannot take any steps to dispose of them so the disregard does not apply.

Shares

84839 The value of a person's shares in a company is not normally disregarded. But the value of a person's shares in a company is disregarded if the person is treated as a

1. sole owner **or**

2. partner

in the business of the company.

84840 – 84845

Value

Capital of a company

84846 Normally a person has no beneficial interest in the capital of a company. But if a person who has shares in a company is treated as a

1. sole owner **or**

2. partner

in the business of the company the person is also treated as having the value or a share of the value of the capital of the company if it is not disregarded.

84847 The value of the capital of the company is the net value of the capital of that company. The net value is the difference between

1. the total value of the capital of the company **and**

2. the amount of any liabilities the company has[1].

It is not the value of some of the capital of the company[2].

An expert valuation will be needed if the company's auditors do not provide evidence of the net value of the capital of the company.

1 R(IS) 13/93; 2 R(IS) 13/93

84848 The value the person is treated as possessing is

1. all the value if the person is treated as a sole owner **and**

2. a share of the value if the person is treated as a partner.

The share at **2.** is the same fraction as the fraction of shares the person has in the company. So a person who has 40 out of a 100 shares in a company has a two fifth's share of the value.

Capital spent on a resource which is not worth as much

84849 The value of notional capital is the difference between the values of

1. capital spent **and**

2. resource which was bought

if people have deprived themselves of capital to get State Pension Credit or more State Pension Credit and they spent their capital on a resource which is not worth as much as the capital spent[1].

1 R(SB) 38/85

Capital which people have deprived themselves of

84850 The value of the capital people are treated as having is the difference between

1. its value on the date of claim or supersession **and**

2. the amount of any reduction under the diminishing notional capital rule

if they have deprived themselves of capital to get State Pension Credit or more State Pension Credit[1].

1 SPC Regs (NI), reg 21(1)

84851 – 84860

Diminishing notional capital rule

The law

84861 There are special rules for

1. when capital a person is treated as having because of deprivation should be reduced **and**

2. how the amount of the reduction is worked out[1].

1 SPC Regs (NI), reg 22

What decision makers decide

84862 Decision makers decide

1. when the capital a person is treated as having because of deprivation should be reduced **and**

2. the amount of the reduction.

The diminishing notional capital rule

84863 The diminishing notional capital rule gives two ways for reducing the amount of capital a person is treated as having because of deprivation. If the person

1. is getting State Pension Credit, capital is reduced as in DMG 84870 - 84871

2. is not getting State Pension Credit, it is reduced as in DMG 84881 - 84883.

84864 – 84865

Meaning of benefit week

84866 Benefit week means a period of seven days starting with the day on which State Pension Credit is payable[1].

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

Meaning of relevant week

84867 Relevant week means

1. the first benefit week when the capital a person is treated as having because of deprivation is taken into account to decide what State Pension Credit the claimant can get **or**

2. any benefit week after the one at **1.** when the capital is taken into account to determine or re-determine what State Pension Credit the person can get and it is decided the person

2.1 can start getting State Pension Credit **or**

2.2 can no longer get State Pension Credit.

The relevant week is the latest benefit week if more than one benefit week is identified after applying **1.** and **2.**[1].

Example

On 11.3.04 Freda makes a claim for State Pension Credit. Her State Pension Credit payday is Monday. Two days before making her claim Freda deprived herself of £18,500 and the decision maker decides she did so in order to get State Pension Credit. The week from 15.3.04 to 21.3.04 is the first notional capital is taken into account. The decision maker decides that this is the relevant week.

1 SPC Regs (NI), reg 22(7)(a)

Meaning of relevant subsequent week

84868 Relevant subsequent week means

1. the benefit week which includes the day when

1.1 a further claim for State Pension Credit is made **or**

1.2 the last claim for State Pension Credit is made if more than one further claim for State Pension Credit is made **and**

2. the further claim for State Pension Credit is made 26 weeks or more after

2.1 the date of the claim when the person is first treated as having capital because of deprivation **or**

2.2 the date of the claim when the amount of the reduction to capital is last changed (DMG 84891 - 84895) **or**

2.3 the last date the claimant stopped getting State Pension Credit **and**

if more than one date is identified after applying **2.1** to **2.3** the date is the latest date **and**

3. the person can get State Pension Credit if they are not treated as having capital because of deprivation[1].

1 SPC Regs (NI), reg 22(7)(b)

Example

On 6.10.03 Harry makes a claim for State Pension Credit. His State Pension Credit payday is Monday. The decision maker decides that Harry should be treated as having capital of £35,000 because of deprivation. Harry is not entitled to State Pension Credit. On 28.4.04 Harry makes a further claim for State Pension Credit. The decision maker decides that the amount of notional capital Harry is treated as having because of deprivation has reduced. The decision maker also decides that the relevant subsequent week is from 3.5.04 to 9.5.04.

How to work out and apply the reduction - person getting State Pension Credit

84869 The amount of the reduction is the extra State Pension Credit people would get if they are not treated as having capital because of deprivation[1].

1 SPC Regs (NI), reg 22(1)(a) & (2)

84870 The reduction is made if

1. in the relevant week or any week after that week people are getting State Pension Credit, **and**

2. they would get more State Pension Credit if they are not treated as having the capital[1].

1 SPC Regs (NI), reg 22(1)(a) & (2)

84871 The reduction is made from the week after the relevant week and any week after that[1].

1 SPC Regs (NI), reg 22(1)(a)

84872 – 84880

How to work out and apply the reduction - person not getting State Pension Credit

84881 The amount of the reduction is

1. the State Pension Credit people get in the relevant week if they are not treated as having capital because of deprivation **and**

2. the difference between

2.1 the maximum amount of housing benefit they can get **and**

2.2 the amount of that housing benefit people are getting for

2.2.a a period of seven consecutive days starting on a Monday and ending on Sunday **and**

2.2.b the period includes the last day of the relevant week[1].

The amount of the reduction can be changed (see DMG 84891 - 84895).

1 SPC Regs (NI), reg 22(1)(b) & (3)

84882 The reduction is made if, in the relevant week, people can get State Pension Credit if they are not treated as having capital because of deprivation[1].

1 SPC Regs (NI), reg 22(1)(b) & (3)

84883 The reduction is made from the week after the relevant week and any week after that week[1].

1 SPC Regs (NI), reg 22(1)(b)

84884 – 84890

When to change the amount of the reduction

84891 The amount of the reduction in DMG 84881 can be changed if

1. another claim for State Pension Credit is made[1] (see DMG 84892) **and**

2. people can get State Pension Credit in the relevant subsequent week if they are not treated as having capital because of deprivation[2].

1 SPC Regs (NI), reg 22(4); 2 reg 22(5)

84892 The claim for State Pension Credit must be made 26 weeks or more after

1. the date of the claim when the claimant is first treated as having capital because of deprivation **or**

2. the date of the claim when the amount of the reduction is last changed under DMG 84891 **or**

3. the last date the claimant stopped getting State Pension Credit.

If more than one date is identified after applying **1.** to **3.** the date is the latest date[1].

1 SPC Regs (NI), reg 22(5)

How to work out and apply the new amount of the reduction

84893 The amount of the reduction is

1. the State Pension Credit people get in the relevant subsequent week if they are not treated as having capital because of deprivation **and**

2. the difference between

2.1 the maximum amount of housing benefit they can get **and**

2.2 the amount of that benefit they are getting for

2.2.a a period of seven consecutive days starting on a Monday and ending on Sunday **and**

2.2.b the period includes the last day of the relevant subsequent week[1].

1 SPC Regs (NI), reg 22(1)(b), (3) and (4)

84894 If the amount of the reduction as in DMG 84893 is less than the one before use the one before[1].

1 SPC Regs (NI), reg 22(6)

84895 The new amount of the reduction is made from the week after the relevant subsequent week and any week after that[1].

1 SPC Regs (NI), reg 22(4)(b)

84896 – 84910

Deemed weekly income from capital

The law

Deemed weekly income from capital

84911 The amount of deemed weekly income from capital is £1

1. for each £500 over £10,000 **and**

2. for any capital which is left and which is not a complete £500[1].

1 SPC Act (NI) 02, sec 15(2) & SPC Regs (NI), reg 15(6)

84912 – 84920

How to work out the amount of deemed weekly income

Total amount of capital

84921 The total amount of capital each person has is the total of the value of each item of actual capital **and** notional capital that person has. The total amount of capital of claimants is

1. the total amount of their capital if they do not have a partner **or**

2. the total amount of their capital and the total amount of their partner's capital if they have a partner[1].

1 SPC Act (NI) 02, sec 5 & sec 12(2)(d) & SPC Regs (NI), reg 8 & Sch 3, para 1(4)

When does income become capital

84922 Where a claimant receives income, at a certain point that income becomes capital. This point is reached when the period for which the income is paid has expired. So the decision maker should have regard to receipts of income when calculating tariff income deemed to be generated from a claimant's capital[1].

1 R(PC) 3/08

Example

Bill submits a claim for State Pension Credit on 21 August. He provides a bank statement dated 18 August showing a balance of £12,335.46. If tariff income were calculated on this amount it would be £5.00 per week. Bill also receives Retirement Pension of £415.63 which is paid four weekly directly into this bank account. He last received a payment on 17 August to cover the period 17 August to 13 September. At the date of claim, as the period for which the Retirement Pension was paid has not yet expired, his capital should be reduced by the amount of his 4 weekly payment of

Retirement Pension. This reduces his capital to £11,919.83 which produces a tariff income of £4.00 per week.

84923 If any amount is withdrawn from an account which includes income and capital, the amount of capital is reduced if there is evidence to show the money withdrawn is from capital. The assumption is that income is spent before capital.

Example

On 2 February Wendy makes a claim for State Pension Credit. She has £11,550 in a bank account. This includes a month's occupational pension of £250 which Wendy receives on the last day of each calendar month. The decision maker decides that Wendy has capital of £11,300 because the period for which her occupational pension of £250 paid has not yet expired and so has not become capital. On 16 February, Wendy withdraws £320 from her bank account to pay her car insurance. There is no evidence of any other withdrawals since 2 February. The decision maker decides that Wendy has spent her occupational pension of £250 and that her capital has reduced by £70 (i.e. the difference between the amount withdrawn and the amount of the occupational pension payment) to £11,230.

Deemed weekly income

84924 The total amount of capital of the claimant is used to work out the deemed weekly income. See Appendix 1 for a table which shows how to work out deemed weekly income on the total amount of capital. See DMG 85030 et seq for how to take the deemed weekly income into account.

84925 – 84999

Appendix 1

How to work out deemed weekly income from capital (DMG 84911)

		Deemed weekly income from capital
From £	**To £**	**£**
NIL	10,000.00	NIL
10,000.01	10,500.00	1
10,500.01	11,000.00	2
11,000.01	11,500.00	3
11,500.01	12,000.00	4
12,000.01	12,500.00	5
12,500.01	13,000.00	6
13,000.01	13,500.00	7
13,500.01	14,000.00	8
14,000.01	14,500.00	9
14,500.01	15,000.00	10
15,000.01	15,500.00	11
15,500.01	16,000.00	12
16,000.01	16,500.00	13
16,500.01	17,000.00	14
17,000.01	17,500.00	15
17,500.01	18,000.00	16
18,000.01	18,500.00	17
18,500.01	19,000.00	18
19,000.01	19,500.00	19
19,500.01	20,000.00	20
and so on	and so on	and so on