Chapter 44 - Normal amount payable & components

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Statutes commonly referred to in Chapter 44

Full Title	Abbreviation
Civil Partnership Act 2004	CP Act 04
Employment and Training Act (Northern Ireland) 1950	E & T Act (NI) 50
Social Security Contributions and Benefits (Northern Ireland) Act 1992	SS C&B (NI) Act 92
Welfare Reform Act (Northern Ireland) 2007	WR Act (NI) 07

Statutory Rules commonly referred to in Chapter 44

Short description	Full title	Abbreviation
Claims and Payments Regulations	The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 No. 465	SS (C&P) Regs (NI)
D&A Regulations	The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 No. 162	SS & CS (D&A) Regs (NI)
Employment & Support Allowance Regulations	The Employment and Support Allowance Regulations (Northern Ireland) 2008 No. 280	ESA Regs (NI)
Housing Benefit Regulations	The Housing Benefit Regulations (Northern Ireland) 2006 No. 405	HB Regs (NI)
Income Support Regulations	The Income Support (General) Regulations (Northern Ireland) 1987 No. 459	IS (Gen) Regs (NI)
Jobseeker's Allowance Regulations	The Jobseeker's Allowance Regulations (Northern Ireland) 1996 No. 198	JSA Regs (NI)

Chapter 44 - Normal amount payable & components

Amount payable

General

Scope of this Chapter

44001 This Chapter explains how to calculate the normal amount payable for Employment and Support Allowance.

44002 Other rules apply where people are

1. in hospital

2. without accommodation

3. members of religious orders

4. prisoners

5. temporarily separated members of a couple or polygamous marriage

6. absent from Northern Ireland/UK

7. entitled to a mortgage interest run-on

8. subject to a restriction under the loss of benefit provisions

9. from abroad or subject to immigration control.

See DMG Chapter 54 for guidance on these special cases. Guidance on how to calculate the amount payable for a part week is in DMG Chapter 46.

Meaning of benefit week

44003 Benefit week[1] means

1. a period of 7 days ending on a day which the decision maker directs **and**

2. when calculating the amount of income to take into account a period of 7 days ending on

2.1 the day before the first day of the benefit week following the date of claim or

2.2 the last day on which Employment and Support Allowance is paid if it is in payment for less than a week.

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

Meaning of claimant

44004 Claimant[1] means a person who has claimed Employment and Support Allowance.

1 WR Act (NI) 07, sec 24(1)

Meaning of terminally ill

44005 **[See DMG Memo Vol 1/125, 2/95, 4/154, 8/103, 9/52, 10/80 & 11/31]** A claimant is considered to be terminally ill if they have a progressive disease from which death may reasonably be expected within 6 months[1].

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

Meaning of qualifying age for State Pension Credit

44006 The qualifying age for State Pension Credit[1] means

1. in the case of a woman, pensionable age **or**

2. in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man.

Note: See DMG Chapter 75 for guidance on pensionable age.

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

Deciding entitlement

44007 The decision maker cannot decide entitlement to Employment and Support Allowance until all of the information for the claim has been received (see DMG Chapter 2). Claimants will indicate when claiming whether they wish to receive

1. contribution-based Employment and Support Allowance **or**

2. income-related Employment and Support Allowance.

Claimants who wish to receive income-related Employment and Support Allowance may also meet the qualifying conditions for contribution-based Employment and Support Allowance.

Note: If all of the information to support the claim is not received, the decision maker may award an interim payment.

44008 If claimants indicate that they wish to receive income-related Employment and Support Allowance the decision maker should calculate

1. any entitlement to contribution-based Employment and Support Allowance, (the personal rate) **and**

2. any entitlement to income-related Employment and Support Allowance, (the applicable amount).

The decision maker must then consider the guidance at DMG 44045 - 44049 to decide the amount of Employment and Support Allowance to be paid.

44009 – 44010

The assessment phase

Meaning of assessment phase

44011 The assessment phase is the period of time during which the initial limited capability for work assessment takes place. It is generally a fixed period of 13 weeks beginning with the first day of entitlement to Employment and Support Allowance[1]. Entitlement will usually commence after the claimant has served 7 waiting days[2]. The assessment phase may sometimes be extended in certain circumstances, for example should the work capability assessment not take place within the first 13 weeks[3].

Note: DMG Chapter 41 provides guidance on waiting days.

1 WR Act (NI) 07, sec 24(2); 2 Sch 2, para 2; ESA Regs (NI), reg 144; 3 ESA Regs (NI), reg 4(2)

44012 The assessment phase is calculated differently for those claimants who

1. have previously claimed Employment and Support Allowance and the period of limited capability for work links to an earlier period of limited capability for work (see DMG 44019) **or**

2. are appealing a decision embodying an adverse determination on limited capability for work (see DMG 44022)

3. claim Employment and Support Allowance immediately following an award of Jobseeker's Allowance extended period of sickness (see DMG Chapter 20).

44013 The normal amount of Employment and Support Allowance payable will depend on whether the claimant is in the assessment phase. Unless the claimant is within a prescribed group (see DMG 44636) then during the assessment phase

1. no components are payable[1]

2. the personal allowance[2] for income-related Employment and Support Allowance (see DMG 44056) and the personal rate for contribution-based Employment and Support Allowance are age related[3] (see DMG 44027).

Note: From 3.4.17 the work-related activity component is no longer included in an award of Employment and Support Allowance for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

1 WR Act (NI) 07, sec 2(2), sec 2(3), sec 4(4) & sec 4(5); 2 ESA Regs (NI), reg 67(1); 3 reg 67(2)

44014 In cases where the assessment phase has lasted for a period longer than 13 weeks the payment of components may be backdated to the first day after the 13th week (see DMG 44644)[1].

1 WR Act (NI) 07, sec 2(4)(b) & 4(6)(b)

Ending of the assessment phase - new claimants

44015 The assessment phase ends on

1. the last day of the relevant period[1] (see DMG 44016) **or**

2. the date of the determination in DMG 44017 if later[2].

1 ESA Regs (NI), reg 4(1) & (3); 2 reg 4(2)

Meaning of relevant period

44016 The relevant period is the period of 13 weeks beginning with

1. the first day of the assessment phase (that is, the first day of Employment and Support Allowance entitlement)[1] **or**

2. where the first day of Employment and Support Allowance entitlement immediately follows an award of Jobseeker's Allowance extended period of sickness, the first day of the extended period of sickness[2].

1 WR Act (NI) 07, sec 24(2)(a); ESA Regs (NI), reg 4(c); 2 reg 4(b) & 5; JSA Regs (NI), reg 55ZA; JSA Regs (NI) 16, reg 46

Example

Pat is entitled to Jobseeker's Allowance and sends in fit notes when he has flu and develops a chest infection. He starts an extended period of sickness on 10.6.15. Pat has serious injuries after a road traffic accident on 9.7.15 and is admitted to hospital. He claims Employment and Support Allowance from 9.7.15, and on 1.9.15 the decision maker determines that Pat is treated as having limited capability for work. The relevant period begins on 10.6.15, the first day of the extended period of sickness, and ends on 9.9.15.

44017 Where a limited capability for work determination has not been made within the relevant period in DMG 44016[1], the assessment phase will end once it has been determined that the claimant has limited capability for work[2] either by

1. a limited capability for work assessment being carried out (see DMG Chapter 42)[3] **or**

2. the claimant being treated as having limited capability for work (see DMG Chapter 42)[4].

1 ESA Regs (NI), reg 4(4); 2 reg 4(2); 3 reg 4(3)(a), 19 & Sch 2; 4 reg 4(3)(b), 20, 25, 26, 29 or 33(2)

Example

After serving waiting days for the period 25-31 May, Claudia has been entitled to Employment and Support Allowance since 1 June on the basis of medical evidence

supplied by her General Practitioner. A limited capability for work assessment is not carried out until 10 September. On 12 September the decision maker determines that Claudia has limited capability for work. Claudia's assessment phase ends on 12 September.

44018 Where

1. a claimant's entitlement to Employment and Support Allowance ends, for example because they have returned to work, after the 13th week of entitlement but before the work capability assessment has been carried out **and**

2. the claimant asks for arrears of a component to be paid from week 14

the decision maker should make a decision refusing to supersede the decision which awarded entitlement, or any later superseding decision, on the grounds that the conditions allowing supersession are not satisfied. See DMG 04019 - 04020 for guidance on making a decision not to supersede. The decision carries the right of appeal to the Appeal Tribunal[1].

1 SS (NI) Order 98, art 13; R(DLA) 1/03

The assessment phase - previous claimants

44019 Where the claimant's current period of limited capability for work

1. links to an earlier period of limited capability for work under the 12 week linking rule (see DMG Chapter 42) **and**

2. the claimant was entitled to Employment and Support Allowance in that earlier period[1] **and**

3. the assessment phase had not ended in that earlier period[2]

the assessment phase begins on the first day of entitlement in the earlier period[3].

Note: See DMG 44020 where the claimant was previously entitled to Jobseeker's Allowance.

1 ESA Regs (NI), reg 5(2)(a)(ii); 2 reg 5(2)(a)(iii); 3 reg 5(1)(a)

4020 When adding together periods of entitlement to Employment and Support Allowance as in DMG 44019, a claimant is treated as entitled to Employment and Support Allowance for any period where they were

1. entitled to Jobseeker's Allowance **and**

2. treated as capable of work or as not having limited capability for work during an extended period of sickness.

1 ESA Regs (NI), reg 5(1) & (1A); JSA Reg (NI), reg 55ZA; JSA Regs (NI) 16, reg 46

Example

Tricia is awarded Employment and Support Allowance from 15.4.15 after injuring her wrist in a fall. She claims Jobseeker's Allowance from 14.5.15. Tricia is diagnosed with a suspected eye infection affecting her vision and starts an extended period of sickness on 29.5.15 after sending in fit notes from her General Practitioner. She makes a further claim for Employment and Support Allowance on 20.7.15, as she is now experiencing significant mobilising problems. Tricia is later diagnosed with multiple sclerosis and found to have limited capability for work and limited capability for work-related activity. Tricia is awarded the support component from 30.7.15, as the Employment and Support Allowance award for the periods 15.4.15 - 13.5.15 and from 20.7.15 are combined with the period of Jobseeker's Allowance extended period of sickness (29.5.15) to total 13 weeks.

44021 Where DMG 44019 applies, the assessment phase ends on the day when the total number of weeks entitlement in the earlier period and current period is 13 weeks provided that it has been determined that the claimant

1. has limited capability for work **or**

2. is treated as having limited capability for work[1].

Note: Where the entitlement in the previous period was 13 weeks or more see DMG 44636 **2.** for guidance on backdated entitlement to components.

1 ESA Regs (NI), reg 5(1)(b)

44022 If by the time that period referred to in DMG 44019 ends it has not yet been determined that the claimant has limited capability for work, then the assessment phase will end once it has been determined that the claimant has limited capability for work provided that

1. a limited capability for work determination has not been carried out within 13 weeks of the first day of entitlement to Employment and Support Allowance[1] **and**

2. there has been no determination treating the claimant as having limited capability for work[2].

1 ESA Regs (NI), reg 5(3)(a); 2 reg 5(3)(b)

The assessment phase - claimants appealing a decision

44023 Where the claimant

1. has made and is pursuing an appeal against a decision which embodies a determination that the claimant does not have limited capability for work **and**

2. is entitled to Employment and Support Allowance.

Note 1: DMG 44019 - 44021 and 44636 do not apply to the period of limited capability for work until a determination of limited capability for work is made (see DMG Chapter 42) after the Appeal Tribunal has heard the appeal[1]. But see DMG 44024 where there is a change of circumstances before the appeal is heard.

Note 2: See DMG Chapter 42 for detailed guidance on awards of Employment and Support Allowance made pending the outcome of an appeal.

1 ESA Regs (NI), reg 5(4) & 7(2)

Example

Emile's award of Employment and Support Allowance began on 12.2.10 and was terminated from 20.4.10 following application of the work capability assessment. He makes an appeal on 11.5.10 and is awarded Employment and Support Allowance from 20.4.10. On 8.9.10 his appeal is allowed, the Appeal Tribunal's finding that he has limited capability for work and limited capability for work-related activity and should be placed in the work-related activity group. The Appeal Tribunal's determinations are binding on the decision maker. The decision awarding Employment and Support Allowance from 20.4.10 is superseded to award the work-related activity component from 14.5.10, the 14th week of the combined period of limited capability for work.

44024 DMG 44023 does not apply where there is a change of circumstances which leads the decision maker to make a determination that the claimant

1. has limited capability for work following application of the work capability assessment **or**

2. is treated as having limited capability for work other than in DMG 42202.

The guidance in DMG 44019 - 44022 and DMG 44636 applies instead.

Example 1

Robin's award of Employment and Support Allowance was terminated after 10 weeks following application of the work capability assessment. He makes an appeal and is awarded Employment and Support Allowance from the date his previous entitlement ended. Two months later he is admitted to hospital and is referred for a work capability assessment. The health care professional advises that Robin should be treated as having limited capability for work as a hospital patient and that he does not and cannot be treated as having limited capability for work-related activity. The assessment phase ends after week 3 of the current period of limited capability for

work. The component is awarded from week 4 of the period of limited capability for work where Robin is found to have limited capability for work and limited capability for work-related activity, and the support component is awarded by the Appeal Tribunal or following application of the work capability assessment if that takes place before the Appeal Tribunal hears the appeal.

Example 2

Denise's award of Employment and Support Allowance is terminated after 20 weeks following application of the work capability assessment, and she makes an appeal. She is awarded Employment and Support Allowance from the date her previous entitlement ended. Several weeks later Denise produces evidence that her condition has deteriorated and she is referred for the work capability assessment. The decision maker determines that she has limited capability for work and limited capability for work-related activity and she is placed in the support group. The support component is paid from the first day of the award made after the appeal was lodged, even though her appeal has yet to be heard.

44025

The main phase

44026 The main phase of Employment and Support Allowance begins where there is entitlement to either the support component or work-related activity component (**see DMG 44631 for guidance on entitlement to the components**)[1]. The assessment phase must usually have been completed before a claimant enters the main phase (see DMG 44011 - 44022).

Note: From 3.4.17 the work-related activity component is no longer included in an award of Employment and Support Allowance for claims made on or after that date. See Appendix 9 for where transitional provisions apply.

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

44027 The prescribed amount payable during the main phase of Employment and Support Allowance may be increased depending on

1. the claimant's age **and**

2. if the claimant is a member of a couple, their circumstances.

Guidance later in this Chapter provides more details.

44028

Contribution-based Employment and Support Allowance

44029 Contribution-based Employment and Support Allowance is paid for the claimant only. There are no increases for any partner or dependants. The amount for each benefit week is calculated by[1]

1. deciding the personal rate appropriate to the claimant[2] **and**

2. adding the amount of the support component if the claimant is entitled to[3] **and**

3. deducting[4]

3.1 any pension payments[5] **and**

any pension protection fund periodic payments[6] **and**

3.3 any councillors' allowances[7]

Note 1: Where the calculation results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded[8].

Note 2: From 3.4.17 the work-related activity component is no longer included in an award of Employment and Support Allowance for claims made on or after that date. See Appendix 9 for where transitional provisions apply.

1 WR Act (NI) 07, sec 2; 2 sec 2(1)(a); ESA Regs (NI), reg 67(2);
3 WR Act (NI) 07, sec 2(1)(b); ESA Regs (NI), reg 67(3); 4 WR Act (NI) 07 sec 2(1)(c)
5 sec 3(1)(a); 6 sec 3(1)(b); 7 sec 3(1)(c); 8 ESA Regs (NI), reg 3(a)

44030 In the assessment phase only, contribution-based Employment and Support Allowance has two separate personal rates. They are for claimants aged

1. less than 25 **or**

2. 25 and over[1].

In the main phase all contribution-based Employment and Support Allowance claimants, regardless of their age, are entitled to the 25 and over rate[2].

1 WR Act (NI) 07, sec 2(1)(a); ESA Regs (NI), reg 67(2) & Sch 4, para 1(1)(b) & (c);
2 reg 67(2) & Sch 4, para 1(1)(a)

44031 – 44034

Income-related Employment and Support Allowance

Amount of income-related Employment and Support Allowance payable

44035 One of the conditions of entitlement for income-related Employment and Support Allowance is that the claimant should have

1. no income **or**

2. income that does not exceed the applicable amount[1].

1 WR Act (NI) 07, Sch 1, para 6(1)(a)

44036 The amount of income-related Employment and Support Allowance payable is

1. the applicable amount if the claimant has no income **or**

2. the difference between the income and the applicable amount if the claimant has income that does not exceed the applicable amount[1].

1 WR Act (NI) 07, sec 4(1)

Applicable amount

44037 Income-related Employment and Support Allowance is paid for the claimant and any partner or partners[1]. There is no amount for dependants. The applicable amount includes[2]

1. the claimant's personal allowance. This may include an amount for any partner or, in the case of a polygamous marriage, partners[3] (see DMG 44061). During the assessment phase the personal allowance is age related (see DMG 44058)

and

2. if appropriate

2.1 premiums

2.2 certain housing costs

3. if appropriate the support component.

Note 1: In special circumstances a claimant may have an applicable amount of nil[5]. An applicable amount may also be reduced in certain circumstances or may be limited to allowable housing costs only (see DMG Chapter 54).

Note 2: From 3.4.17 the work-related activity component is no longer included in an award of Employment and Support Allowance for claims made on or after that date. See Appendix 9 for when transitional provisions apply.

1 ESA Regs (NI), reg 67(1)(a); 2 reg 67(1); 3 reg 68; 4 WR Act (NI) 07, sec 4(2)(b); 5 sec 4(3)

44038 When deciding the amount of income-related Employment and Support Allowance payable the applicable amount may be awarded without

1. housing costs[1] **or**

2. severe disability premium[2]

if there is not enough evidence to include these elements.

1 SS & CS (D&A) Regs (NI), reg 13(1); 2 reg 13(2)

44039 The applicable amount may be revised or superseded if further information about severe disability premium or housing costs is received after the claim or question has been decided[1].

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

44040 – 44044

Entitlement to both contribution-based Employment and Support Allowance and income-related Employment and Support Allowance

44045 Where a claimant satisfies both the contribution-based Employment and Support Allowance and income-related Employment and Support Allowance conditions of entitlement and has no income, the amount payable is the greater of

1. the contribution-based Employment and Support Allowance personal rate **and**

2. the income-related Employment and Support Allowance applicable amount[1].

1 WR Act (NI) 07, sec 6(2)

Example

Mary is a single woman aged 27 who lives at home with her parents. She claims Employment and Support Allowance. She satisfies the conditions for contribution-based Employment and Support Allowance and is entitled to £60.50 per week. She also satisfies the conditions for income-related Employment and Support Allowance and is entitled to £67.45 per week. The decision maker awards Employment and Support Allowance of £67.45 per week because this amount of income-related Employment and Support Allowance is greater than the amount of contribution-based Employment and Support Allowance.

44046 If, using the comparison in DMG 44045, the amount of Employment and Support Allowance payable is the applicable amount, income-related Employment and Support Allowance is made up of two elements[1]

1. an amount equal to the personal rate **and**

2. an amount that is the difference between the

2.1 personal rate **and**

2.2 applicable amount.

1 WR Act (NI) 07, sec 6(5)

Example

Graham is a married man aged 50. His wife, Tracey, is also aged 50. Graham claims Employment and Support Allowance. He satisfies the conditions for contribution-based Employment and Support Allowance and is entitled to £60.50 per week. He also satisfies the conditions for income-related Employment and Support Allowance and is entitled to £87.30 per week. The decision maker awards Employment and

Support Allowance of £87.30 per week. The decision maker decides that Graham's entitlement to Employment and Support Allowance is made up of two elements.

1. £60.50 which is the amount that is equal to his personal rate **and**

2. £26.80 which is the amount that is the difference between his personal rate and his applicable amount.

The amount under **1.** is attributable to the claimant's entitlement to contribution-based Employment and Support Allowance[1]. The amount under **2.** is attributable to the claimant's entitlement to income-related Employment and Support Allowance[2].

1 WR Act (NI) 07, sec 6(6); 2 sec 6(7)

44047 Where a claimant satisfies both the contribution-based Employment and Support Allowance and income-related Employment and Support Allowance conditions and has income, the amount payable is the greater of

1. the personal rate **and**

2. the amount by which the applicable amount exceeds the claimant's income[1].

1 WR Act (NI) 07, sec 6(3)

Example 1

Terry is a married man aged 52. His wife, Julie is aged 51. Terry claims Employment and Support Allowance. Julie works part-time and earns £35 per week. Terry satisfies the contribution-based Employment and Support Allowance conditions and is entitled to £60.50 per week. He also satisfies the income-related Employment and Support Allowance conditions and is entitled to £79.95 per week (£94.95 - £15 Julie's wages after £20 earnings disregard). The decision maker awards Employment and Support Allowance of £79.95 per week.

Example 2

Ellen is a single woman aged 34. She claims Employment and Support Allowance and declares that she has capital of £7,882. She satisfies the contribution-based Employment and Support Allowance conditions and is entitled to £60.50 per week. She also satisfies the income-related Employment and Support Allowance conditions and is entitled to £47.65 per week (£55.65 less £8 tariff income). The decision maker awards contribution-based Employment and Support Allowance of £60.50 per week.

44048 If, using the comparison in DMG 44045, the amount payable is the difference between the income and the applicable amount. Income-related Employment and Support Allowance is made up[1] of an amount

1. equal to the personal rate[2] **and**

2. an amount that is the difference between the

2.1 applicable amount less income **and**

2.2 the personal rate[3].

1 WR Act (NI) 07, sec 6(5); 2 sec 6(5)(a); 3 sec 6(5)(b)

Example

Terry is a married man aged 52. His wife, Julie is aged 51. Terry claims Employment and Support Allowance. Julie works part-time and earns £45 per week. Terry satisfies the contribution-based Employment and Support Allowance conditions and is entitled to £60.50 per week. He also satisfies the income-related Employment and Support Allowance conditions and is entitled to £62.30 per week (£87.30 - £25 Julie's wages after £20 disregard). The decision maker awards Employment and Support Allowance of £62.30 per week. The decision maker decides that Terry's entitlement to Employment and Support Allowance is made up of two elements

1. £60.50 which is the amount that is equal to his personal rate **and**

2. £1.80 which is the amount that is the difference between his personal rate and his applicable amount less income.

The amount under **1.** is attributable to the claimant's entitlement to contribution-based Employment and Support Allowance[1]. The amount under **2.** is attributable to the claimant's entitlement to income-related Employment and Support Allowance[2].

1 WR Act (NI) 07, sec 6(6); 2 sec 6(7)

44049 Where the amount of Employment and Support Allowance payable to the claimant does not exceed the claimant's personal rate then that amount is treated as attributable to contribution-based Employment and Support Allowance[1].

1 WR Act (NI) 07, sec 6(4)

44050 – 44055

Personal allowances and premiums for income-related Employment and Support Allowance

Personal allowances

Claimant's personal allowances

44056 The normal applicable amount will always include

1. a personal allowance for the claimant **and**

2. an amount for the claimant's partner, if the claimant is a member of a couple[1].

1 ESA Regs (NI), reg 67(a)

44057 The personal allowance may be different if

1. one or both members of a couple are aged 16 or 17 (see Appendix 1) **or**

2. the claimant is a member of a polygamous marriage (see DMG 44061).

Structure of allowances: assessment phase

44058 In the assessment phase there are separate rates of personal allowance for[1]

1. single claimants aged

1.1 less than 25 **or**

1.2 25 or over

2. lone parents aged

2.1 less than 18 **or**

2.2 aged 18 or over

3. couples where

3.1 both aged 18 or over **or**

3.2 one is aged 18 or over and the other is aged under 18 **or**

3.3 one is aged 25 or over and the other is aged under 18 **or**

3.4 one is aged 18 to 24 and the other is aged under 18 **or**

3.5 both are aged 16 or 17.

Appendix 1 provides guidance as to which rate applies.

1 ESA Regs (NI), Sch 4, para 1

Structure of allowances: main phase

44059 In the main phase of Employment and Support Allowance there are no specific age-related personal allowances[1] for single claimants or lone parents. Every claimant without a partner, regardless of age, has the aged 25 or over rate of personal allowance.

1 ESA Regs (NI), Sch 4, para 1(1)(a) & 1(2)(a)

44060 For couples in the main phase there are age-related allowances. Appendix 1 provides guidance as to which rates apply[1].

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

Personal allowances for polygamous marriages

44061 In polygamous marriage cases the claimant's applicable amount should include personal allowances for

1. the claimant and the eldest partner at the correct couple rate (see DMG 44058 **3.** and 44059)[1] **and**

2. for each other partner **the difference** between the

2.1 higher rate for a couple (see DMG 44058 **3.1**) **and**

2.2 rate for a single claimant aged 25 or over (see DMG 44058 **1.2**)[2].

The amount may be different where one or more partners are aged 16 or 17.

1 ESA Regs (NI), reg 68(1)(a); 2 reg 68(1)(b)

44062 – 44064

Other multiple relationships

44065 DMG 44061 only applies if the claimant is married to all the other members of the relationship. There is no special rule to cover relationships where a person is not married to all, or any of, the other members of the relationship.

44066 If the claimant is not married to all of the other members of the relationship, the decision maker should treat any unmarried member as a single claimant or, if appropriate, lone parent.

44067 If the claimant is not married to any of the members, the decision maker should treat each member of the relationship as a single claimant or, if appropriate, lone parent.

Example 1

Alan, Bronwyn and Carol live in the same household but are not married to each other. Alan, who is aged 31, claims Employment and Support Allowance and states that he is in a multiple relationship with both Bronwyn and Carol. He is treated as a single claimant and is awarded the personal allowance for a person aged 25 or over. Bronwyn and Carol are also treated as single.

Example 2

Andy, Brenda and Clare live in the same household. Andy is married to Brenda but in his Employment and Support Allowance claim states that he is also in a relationship with Clare. Andy is treated as a member of a married couple with his wife Brenda and is awarded the personal allowance for a couple. Clare is treated as single.

44068 – 44070

General rules on premiums

Categories

44071 For income-related Employment and Support Allowance the four categories of premium are[1]

1. pensioner premium

2. severe disability premium

3. enhanced disability premium

4. carer premium.

1 ESA Regs (NI), Sch 4, Parts 2 & 3

Rates of premium

44072 Decision makers should note that

1. carer premium is paid at one rate

2. pensioner premium

2.1 for single claimants, is payable at one of two rates depending on whether

2.1.a the claimant is entitled to the support component **or**

2.1.b is not entitled to the support component **or**

2.2 where the claimant is a member of a couple, is payable at one of two rates depending on whether

2.2.a the claimant is entitled to the support component **or**

2.2.b is not entitled to the support component

3. enhanced disability premium is payable at a

3.1 lower rate if the claimant is single **or**

3.2 higher rate if the claimant is a member of a couple or polygamous marriage

4. severe disability premium is payable at one of two rates depending on

4.1 whether the claimant is single **and**

4.2 where the claimant is the member of a couple or polygamous marriage whether Carer's Allowance is in payment in respect of the claimant.

Note: From 3.4.17 the work-related activity component is no longer included in an award of Employment and Support Allowance for claims made on or after that date. See Appendix 9 for where transitional provisions apply.

Qualifying conditions

44073 Each premium has its own qualifying conditions. See the guidance on individual premiums. To be entitled to a premium the qualifying conditions may apply to

1. the claimant **or**

2. a partner of the claimant.

Multiple premiums

44074 A claimant cannot be entitled to the enhanced disability premium as well as the pensioner premium. Where the claimant is entitled to the pensioner premium then the enhanced disability premium cannot also be paid. The claimant will only be entitled to the pensioner premium[1].

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

44075 The claimant may be entitled to

1. severe disability premium (see DMG 44111 et seq) **or**

2. carer premium (see DMG 44166 et seq)

in addition to any premium awarded in DMG 44074[1].

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

Qualifying benefits

In receipt of, or entitled to, a qualifying benefit

44076 **[See DMG Memo Vol 2/77, 4/146, 8/95, 10/74 & 13/120]** A premium may be awarded because the claimant or partner is in receipt of or entitled to a qualifying benefit. Entitlement to the premium may end if receipt of, or entitlement to, the qualifying benefit ceases.

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

Meaning of in receipt of

44077 A person is in receipt of a qualifying benefit only

1. if it is paid because of that person's own incapacity or disability **and**

2. for the period for which the benefit is paid[1].

1 ESA Regs (NI), Sch 4, para 10; R(IS) 10/94

Example 1

Alan is a married man who claims Employment and Support Allowance. His wife, Mary, is in receipt of Carer's Allowance because she cares for him. The carer premium should be awarded as part of Alan's income-related Employment and Support Allowance.

Example 2

Dora's partner, who is aged 57, is in receipt of Disability Living Allowance care component at the highest rate. The enhanced disability premium should be awarded as part of Dora's income-related Employment and Support Allowance.

44078 – 44079

Withdrawal of qualifying benefit

44080 There is a change of circumstances if

1. a qualifying benefit is withdrawn **and**

2. the claimant no longer satisfies that or any other of the qualifying conditions for the receipt of the premium.

The decision maker should supersede the decision and calculate the effective date of the change of circumstances. DMG Chapter 4 provides guidance on supersession.

Concessionary payments of a qualifying benefit

44081 Concessionary payments are **extra-statutory** payments made by the Department and agreed by the Department of Finance and Personnel[1] in place of

1. social security benefits **or**

2. Housing Benefit **or**

3. Tax Credits.

They are made when the policy intention to pay benefit cannot be achieved because of a fault in the law. Any concessionary payments for non-payment of a qualifying benefit should be treated as a payment of that benefit[2].

1 ESA Regs (NI), reg 2(1); 2 Sch 4, para 9

44082 Decision makers should not confuse concessionary payments with other special payments, known as **ex-gratia** payments. **Ex-gratia** payments are made as financial redress for maladministration involving

1. loss of statutory entitlement (caused by official error or maladministration)

2. actual financial loss (involving extra expense)

3. delay (due to official error)

4. consolatory payments (made in very exceptional circumstances).

Make enquiries of Finance Support Branch if the type of payment made is unclear.

Delayed awards of qualifying benefits

44083 When considering the award of premiums following the delayed award of a qualifying benefit, special rules on revision or supersession apply. Detailed guidance on those rules is given in DMG Chapter 4.

Treated as in receipt of a qualifying benefit

44084 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** People can be treated as in receipt of a qualifying benefit for any period

1. that they would be in receipt of a qualifying benefit but that benefit is withdrawn because another overlapping[1] non-qualifying benefit is awarded at a higher rate **or**

2. spent on a course of training or instruction provided or approved by the Department for Employment and Learning[2] **or**

3. that they are in receipt of a training allowance[3]

4. for the purposes of the carer premium

4.1 the person in respect of whose care the allowance has been awarded remains in receipt of

4.1.a Attendance Allowance **or**

4.1.b the middle or highest rate of the care component of Disability Living Allowance **or**

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

4.1.d Air Force Independence Payment[4].

1 SS (OB) Regs (NI); ESA Regs (NI), Sch 4, para 4(1)(a); 2 E & T Act (NI) 50, sec 1(1); Dis P (E) Act (NI), sec 2 & 3; 3 ESA Regs (NI), Sch 4, para 4(b); 4 para 4(2)

Definitions

"Attendance allowance"

[See DMG Memo Vol 1/101, 2/40, 3/89, 4/117, 5/94, 6/81, 8/51, 9/24, 13/54 & 14/52]

44085 "Attendance allowance" means any of the following[1]

1. Attendance Allowance[2]

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

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

4. any

4.1 Constant Attendance Allowance **or**

4.2 Exceptionally Severe Disablement Allowance

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

5. an attendance allowance paid under the pneumoconiosis, byssinosis and miscellaneous diseases benefits scheme

6. any

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

6.2 similar payment to **6.1**

7. any payment for attendance which is part of war disablement pension. This includes severe disablement occupational allowance paid with Constant Attendance Allowance.

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

1 ESA Regs (NI), reg 2(1); 2 SS C&B (NI) Act 92, sec 64; 3 sec 104 & 105; 4 sec 104 & 105; 5 Workmen's Compensation Acts 1925-1945; 6 Personal Injuries (Civilians) Scheme 83, art 14-16 & 43 or 44

Blind or severely sight impaired

44086 A person is blind or severely sight impaired[1] where they have been certified by a consultant ophthalmologist as

1. blind **or**

2. severely sight impaired.

1 ESA Regs (NI), Sch 4, para 6(9)

Treated as blind or severely sight impaired

44087 A person should be treated as blind or severely sight impaired for a period of 28 weeks from the date they regained their eyesight and were no longer certified as described in DMG 44086.

Qualifying age

44088 The qualifying age for State Pension Credit[1] means

1. for a woman - pensionable age **or**

2. for a man - the age which should be pensionable age for a woman born on the same date as the man.

Note: See DMG Chapter 75 for guidance on pensionable age.

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

44089 – 44090

Pensioner premium

44091 Age is the only qualifying condition for pensioner premium.

44092 Pensioner premium is payable if the claimant or partner has reached the qualifying age for State Pension Credit[1]. The two types of pensioner premium are

1. single claimants pensioner premium - for a single claimant[2] **and**

2. couples pensioner premium - for a claimant who is a member of a couple[3]

1 ESA Regs (NI), Sch 4, para 5; 2 Sch 4, para 11(1)(a); 3 Sch 4, para 11(1)(b)

Single claimants

44093 The amount of pensioner premium payable in respect of a single claimant depends upon whether there is

1. entitlement to the support component[1] **or**

2. no entitlement to the support component[2].

1 ESA Regs (NI), Sch 4, para 11(1)(a)(ii); 2 Sch 4, para 11(1)(a)(ii)

Member of a couple

44094 The amount of pensioner premium payable in respect of a claimant who is a member of a couple depends upon whether there is

1. entitlement to the support component[1] **or**

2. no entitlement to the support component[2] **or**

3. no entitlement to either component[3]

1 ESA Regs (NI), Sch 4, para 11(1)(b)(ii); 2 Sch 4, para 11(1)(b)(ii)

44095 – 44100

Enhanced disability premium

General

44101 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** Enhanced disability premium is payable if

1. the support component is included in the claimant's applicable amount[1] **or**

2. Disability Living Allowance at highest rate care component is payable in respect of

2.1 the claimant[2] **or**

2.2 the claimant's partner **where that** partner is aged less than the qualifying age for State Pension Credit[3] **or**

would be payable to the claimant or claimant's partner if they were not a hospital in-patient.

3. the daily living component of Personal Independence Payment at the enhanced rate is payable in respect of

3.1 the claimant **or**

3.2 the claimant's partner where that partner is aged less than the qualifying age for State Pension Credit **or**

would be payable to the claimant or claimant's partner if they were not a hospital in-patient[4].

4. Armed Forces Independence Payment is payable in respect of

4.1 the claimant **or**

4.2 the claimant's partner where that partner is aged less than the qualifying age for State Pension Credit[5].

Example

Rory's award of Incapacity Benefit of £116.35 is converted to contribution-based Employment and Support Allowance including a transitional addition of £16.20 when he is placed in the work-related activity group. Rory is not entitled to Income Support and has no other income. On appeal, the Appeal Tribunal decides that he should have been placed in the support group. In implementing the decision, the decision maker recalculates the transitional addition and awards a transitional addition of

£9.85. Rory is also entitled to income-related Employment and Support Allowance of £5.30 (£71.70 + £34.80 + £15.15 enhanced disability premium - £116.35). His overall Employment and Support Allowance entitlement from the effective date of the conversion decision is £121.65

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

44102 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** The enhanced disability premium is not payable where the claimant

1. is a single person[1] **and**

2. is a patient[2] and has been for more than 52 weeks[3] **or**

3. in the case of a couple or a polygamous marriage where each member is a patient and have been for more than 52 weeks[4].

1 ESA Regs (NI), Sch 4, para 7(2)(a)(i); 2 reg 69(2); 3 Sch 4, para 7(2)(a)(ii); 4 Sch 4, para 7(2)(b)

Admission to a residential care home, nursing home, or independent hospital

44103 Disability Living Allowance highest rate care component may continue to be payable when a person is admitted to a residential care home, nursing home or independent hospital. In such a case enhanced disability premium will continue to be payable until the Disability Living Allowance higher rate care component ceases[1].

1 ESA Regs (NI), Sch 4, para 7(1)

44104 – 44110

Severe disability premium

General

44111 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** Severe disability premium is payable to a severely disabled person[1]. There are two rates of severe disability premium.

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

Combination of severe disability premium with other premiums

44112 If the conditions for severe disability premium are met, the appropriate severe disability premium rate should be included in the claimant's applicable amount in addition to any other premium.

Lower rate

44113 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** Single claimants, lone parents and claimants who are deemed to have no partner (see DMG 44116) are entitled to the lower rate severe disability premium if

1. they are in receipt of

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

1.2 "attendance allowance" **or**

1.3 the daily living rate of Personal Independence Payment **or**

1.4 Armed Forces Independence payment **and**

2. there are no non-dependants aged 18 or over

2.1 normally residing (see DMG 44125) with the claimant **or**

2.2 who the claimant normally resides with **and**

3. Carer's Allowance or Universal Credit that includes the carer's element is not in payment to anyone for caring for them (see DMG 44156)[1].

1 ESA Regs (NI), Sch 4, para 6(2)(a)

44114 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** Members of a couple or polygamous marriage are entitled to the lower rate severe disability premium if

1. each member of the couple or polygamous marriage is in receipt of middle or highest rate of the care component of Disability Living Allowance, Armed Forces Independence payment or Attendance Allowance, the daily living component of Personal Independence Payment **or**

2. there are no non-dependants aged 18 or over

2.1 normally residing (see DMG 44125) with the claimant **or**

2.2 who the claimant normally resides with **and**

3. Carer's Allowance or Universal Credit that includes carer's element is in payment (see DMG 44156) to someone for caring for one

3.1 of a couple **or**

3.2 of more, but not all, of the members of a polygamous marriage[1].

1 ESA Regs (NI), Sch 4, para 6(2)(b)

Higher rate

44115 Members of a couple or polygamous marriage are entitled to the higher rate severe disability premium if

1. the conditions in DMG 44114 **1.** - **2.** are satisfied **and**

2. Carer's Allowance or Universal Credit that includes carer's element is not in payment (see DMG 44156) to someone for caring for any member of a

2.1 couple **or**

2.2 polygamous marriage[1].

1 ESA Regs (NI), Sch 4, para 6(2)(b)

Claimant who is deemed not to have a partner

44116 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** When deciding entitlement to severe disability premium, a claimant is treated as not having a partner if the partner is

1. not in receipt of

1.1 "attendance allowance" **or**

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

1.3 the daily living component of Personal Independence Payment **or**

1.4 Armed Forces Independence payment **and**

2. blind or severely sight impaired or treated as blind or severely sight impaired (see DMG 44086)[1].

1 ESA Regs (NI), Sch 4, para 6(3)

44117 This means that if the claimant is a member of a

1. couple, the claimant must satisfy DMG 44113 to be entitled to severe disability premium **or**

2. polygamous marriage, all remaining partners must satisfy DMG 44114 **2.** for the claimant to be entitled to severe disability premium.

"Attendance allowance", Disability Living Allowance and Carer's Allowance on admission to hospital

44118 Special rules apply to the treatment of "attendance allowance", Disability Living Allowance and Carer's Allowance when a disabled person is admitted to hospital (see DMG 44181).

Non-dependants

44119 Non-dependants are[1] people who are aged 18 or over who

1. normally reside with the claimant **or**

2. the claimant normally resides with (see DMG 44125).

That is, share the accommodation (see DMG 44127). Certain people who normally reside with the claimant are not regarded as non-dependants (see DMG 44139).

1 ESA Regs (NI), reg 71(1); R(IS) 12/96

44120 – 44124

Meaning of normally resides

44125 Normally resides means usually resides and should be tested over a period to which usually can relate. A person who is temporarily absent from their normal home,

continues to normally reside where they usually live and with the people they usually live with.

Example 1

Jack normally lives in his mother's house and is not entitled to severe disability premium because his mother is a non-dependant. He goes into respite care for one week every other month. While he is in respite care Jack still normally resides in his mother's house. He does not qualify for severe disability premium.

Example 2

Mary normally lives alone in her own flat. She is entitled to severe disability premium. Her brother Steven comes to stay with her for a week at a time every three months. He is not a non-dependant because he does not normally live with Mary. She keeps her entitlement to severe disability premium whilst Steven is staying with her.

44126 When considering where a person normally resides the decision maker should have regard to

1. the total amount of time spent in a place

2. how often time is spent in a place

3. how permanent the stay is thought to be

4. the person's intentions

5. individual circumstances

6. what degree the accommodation is shared

7. the services provided

8. whether the person owns or rents any other accommodation

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

Example

Agnes who is aged 59 claims Employment and Support Allowance. She has been awarded Disability Living Allowance middle rate care component and no one gets Carer's Allowance for caring for her. Agnes owns her own home but for the past 2 years has slept every night at her son's house. She keeps her clothes and some of her things at her son's house. She goes home for the day two or three days a week, to clean up and do the garden. But she always returns to her sons to sleep. Agnes is responsible for the bills for her home and she and her son still regard Agnes's house as her home. Agnes's house has never been put up for sale.

The decision maker decides that Agnes normally lives at her son's house because

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

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

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

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

Agnes is not entitled to severe disability premium.

Sharing the accommodation

44127 People should not be regarded as sharing the accommodation if[1]

1. the only shared area is a

1.1 bathroom **or**

1.2 lavatory **or**

1.3 communal area (see DMG 44128) **or**

2. they are separately liable to make payments (see DMG 44129) to the landlord for that accommodation.

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

1 ESA Regs (NI), reg 71(6); R(IS) 12/96

44128 A communal area is an area of common access (not a room) including

1. halls

2. stairways **and**

3. rooms of common access in sheltered accommodation[1].

1 ESA Regs (NI), reg 71(7)

Example

Anna is aged 52 and claims Employment and Support Allowance and has limited capability for work. She gets Disability Living Allowance middle rate care component and no one gets Carer's Allowance for caring for her. She lives in a self-contained granny flat attached to her daughter's house and pays her daughter rent for the flat. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter's house and the front door of the property is shared. Everything else is separate.

The decision maker decides that the hall is the only shared area and is a communal area. Anna does not share the accommodation and does not normally reside with her daughter. She has no non-dependants and is awarded severe disability premium.

Meaning of liable to make payments

44129 "Liable to make payments" refers to legal liability. When considering the question of liability, the decision maker must consider whether

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

2. there was an intention to create legal relations.

44130 If the conditions in DMG 44129 are met, the decision maker must then establish that[1]

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

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

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

1 R(IS) 11/98

44131 Whether a person has separate liability to a landlord (see DMG 44127 **2.**) should be determined by reference to the arrangements within the group. But decision makers should note that the liability has to be to the same landlord. Reference to some other liability of the person to a third party is not relevant.

Example

Tom claims Employment and Support Allowance. He gets Disability Living Allowance highest rate care component and no one gets Carer's Allowance for caring for him. He lives in a privately rented house which he shares with three other people. They all have their own bedroom but share the kitchen and bathroom. Each are liable to pay the landlord rent for their room.

The decision maker decides that Tom does not normally reside with the other residents of the house. They are all separately liable to make payments to the landlord for their accommodation. Tom has no non-dependants and is awarded severe disability premium.

44132 Where a claimant lives in the parent's home, the decision maker should establish

1. the terms on which the claimant lives there **and**

2. what payments are made **and**

3. the purpose of those payments.

The decision maker must then consider whether there is a contractual liability.

44133

Carer stays overnight

44134 A carer may stay overnight with the person they are looking after. In such a case the decision maker should consider whether the carer normally resides with that person and should find out

1. whether the carer has a separate address

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

3. what address the carer uses as a postal address

4. what address the carer is registered at for the purposes of the electoral register.

Students

44135 In a case where a student lives at a university address during term time and lives at their parents' home for some weekends and during the holidays, the decision maker should have regard to the considerations at DMG 44126 before deciding which address is where they normally reside. Whichever address is chosen will remain the student's normal residence even when they spend time at the other address.

Example

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

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

44136 – 44138

People who are not non-dependants

44139 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** People who normally reside with the claimant and are not non-dependants[1] are

1. any person aged under 18

2. any member of the claimant's family (see DMG Chapter 43)

3. any child or young person who is not treated as a member of the claimant's household (see DMG Chapter 43)

4. a person and their partner who

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

4.2 is engaged by a

4.2.a charitable **or**

4.2.b voluntary organisation

which makes a charge to the claimant or partner for the person's services. A voluntary organisation is any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association[2].

5. any person who is not a close relative (see DMG 44141) of the claimant or partner who

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

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

5.3 is separately liable to make payments to the landlord for occupation of the dwelling

6. any person who is not a close relative (see DMG 44141) and who is a member of the household of a person to whom **5.** applies

7. a person or their partner who is not a close relative, except where **8.** applies, who jointly occupies the claimant's dwelling and who is

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

7.2 jointly liable with the claimant or partner to make payments to the same landlord for the occupation of the dwelling

8. a close relative who satisfies **7.** and the

8.1 claimant or partner's co-ownership or joint liability arose

8.1.a before 11.4.88 **or**

8.1.b if later, on or before the date on which the claimant **or** partner first occupied the dwelling[3] **or**

9. a person in receipt of

9.1 "attendance allowance" **or**

9.2 the middle or highest rate of the care component of Disability Living Allowance

9.3 the daily living component of Personal Independence Payment

9.4 Air Force Independence Payment[4]

10. a person, including a close relative who

10.1 joins the claimant's household for the first time to care for the claimant or partner **and**

10.2 immediately before joining either the claimant or partner satisfied the conditions for severe disability premium[5]

11. a person who is blind or severely sight impaired or treated as such (see DMG 44086)[6].

Note 1: When considering **7.1** it does not matter if there are other co-owners.

Note 2: 10. only applies for the first 12 weeks from the date that person first joined the claimant's household[7].

Note 3: When considering **9.** receipt of the allowance will stop where the person has been a hospital in-patient for a prescribed period, at this point the person will no longer be in receipt of the allowance and can therefore be considered a non-dependant of the claimant.

1 ESA Regs (NI), reg 71; Sch 4, para 6(2)(a)(ii) & 6(2)(b)(iii); 2 reg 2(1); 3 reg 71(5); 4 Sch 4, para 6(4)(a); 5 Sch 4 , para 6(4)(b); 6 Sch 4, para 6(4)(c); 7 Sch 4, para 6(7)

Commercial basis

44140 For a liability to be on a commercial basis[1] (see DMG 44139 **5.**)

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

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

Payments for gas, electricity, laundry, food and the provision of care are not payments for facilities. Payments for such items do not confer liability and should be ignored in any comparison.

1 R(IS) 11/98

Meaning of close relative

44141 A close relative is[1]

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-son-in-law, step-daughter, step-daughter-in-law, brother, brother-in-law, sister, sister-in-law **or**

2. if any of the preceding persons is one member of a couple, the other member of the couple **and**

3. similar relationships arising through civil partnerships[2].

1 ESA Regs (NI), reg 2(1); 2 CP Act 04, sec 246

44142 "Brother" and "sister" includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and the brother or sister of any other child of those parents. The adopted child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends on the **legal relationship** not the blood relationship[1].

1 R(SB) 22/87

Admittance to residential care

44143 The following guidance on admittance to temporary or permanent residential care applies only to the award of severe disability premium. See DMG Chapter 61 for guidance on the treatment of "attendance allowance" and Disability Living Allowance when a disabled person is admitted to residential care.

Definitions for DMG 44146 - 44155

44144 "Temporary residential care" means any temporary stay in a residential care home, nursing home or independent hospital. For example, respite care in a nursing home.

44145 "Permanent residential care" means permanent residence in a residential care home, nursing home or independent hospital.

Single claimant or lone parent

44146 A single claimant or lone parent who does not satisfy the severe disability premium conditions because there is a non-dependant, will not satisfy the severe disability premium conditions while in temporary residential care. As the stay is temporary the claimant continues to normally reside at home[1].

1 ESA Regs (NI), reg 71(1)

Example

Victoria is a single claimant living with her parents. The conditions for severe disability premium are not satisfied. She goes into temporary residential care. Severe disability premium is not payable because she continues to normally reside at home with her parents.

44147 Claimants who live in permanent residential care are normally resident in the home providing that care. Other residents of the home are not non-dependants because they do not normally reside with the claimant as they are separately liable to make payments to a landlord[1] (see DMG 44127 **2.**). Severe disability premium is payable to a person in permanent residential care if all of the conditions are satisfied.

Note: Disability Living Allowance may cease when the person has been in permanent residential care for 4 weeks.

1 ESA Regs (NI), reg 71(6)

Example

Ivor is a single claimant who lives at home with his parents. He is in receipt of Disability Living Allowance highest rate care component and no one receives Carer's Allowance for caring for him. His parents are non-dependants. The severe disability premium conditions are not satisfied.

Ivor goes into permanent residential care. The decision maker decides that Ivor is entitled to severe disability premium at the lower rate from the date that he moves into permanent residential care. This is because

1. he is in receipt of Disability Living Allowance **and**

2. the other residents of the home are not non-dependants because they do not normally reside with him **and**

3. no one is in receipt of Carer's Allowance for caring for him.

Entitlement to severe disability premium continues as long as all of the above are satisfied.

Couples

44148 When a member of a couple is in temporary residential care the separation from the partner is also temporary. This means that the couple remain members of the same household[1].

1 ESA Regs (NI), reg 156(1) & (2)

44149 A special assessment is necessary where one member is in temporary residential care. The claimant's applicable amount should be[1] whichever is the greater of the

1. normal amount for the couple **or**

2. total of the applicable amounts assessed as if the claimant and partner were each a single claimant or lone parent living in their present accommodation.

1 ESA Regs (NI), Sch 5, para 4

44150 – 44152

44153 For the purposes of the calculation at DMG 44149 **2.**

1. while in temporary residential care the person is still treated as normally residing at home[1] **and**

2. neither partner is regarded as a non-dependant of the other[2].

1 ESA Regs (NI), reg 156(1) & (2); 2 R(IS) 9/02

Example 1

Peter and Louise live in the same household. They are both named as owners of the property. There are no non-dependants. Both get middle rate care component of Disability Living Allowance and someone gets Carer's Allowance for Peter. Severe disability premium at the lower rate is payable. Louise goes into temporary residential care.

If they are assessed as a couple, severe disability premium at the lower rate is payable because Louise normally resides at home and Carer's Allowance is in payment for Peter.

If they are assessed as if they are single, severe disability premium is not payable for Peter because Carer's Allowance is in payment. Severe disability premium is payable to Louise as she gets Disability Living Allowance, Carer's Allowance is not in payment and there are no non-dependants.

Example 2

Malcolm and Wendy are married and live together in the same household. Malcolm is the tenant of the property. Both Malcolm and Wendy get Disability Living Allowance and Carer's Allowance or Universal Credit that includes carer's element is not in payment. There are no non-dependants. Higher rate severe disability premium is in payment. Malcolm goes into temporary residential care.

If they are assessed as a couple, the higher rate severe disability premium is payable. Malcolm normally resides at home and Wendy continues to reside at home.

If they are assessed as if they are single, lower rate severe disability premium is payable for Malcolm who normally resides at home and satisfies the severe disability premium conditions for a single claimant. Wendy is not a non-dependant of Malcolm as she is in receipt of Disability Living Allowance. Lower rate severe disability premium is payable to Wendy who continues to normally reside at home and satisfies the severe disability premium conditions for a single claimant.

Example 3

Alan and Geraldine are married and live together in the same household with a non-dependant daughter. Alan gets highest rate care component of Disability Living Allowance and Carer's Allowance is not in payment. Severe disability premium is not in payment because there is a non-dependant daughter and Geraldine is not in receipt of Disability Living Allowance. Alan goes into temporary residential care.

If they are assessed as a couple, severe disability premium is not payable because Alan normally resides at home and there are non-dependants.

If they are assessed as if they are single, severe disability premium is not payable to Alan because he normally resides at home and there are non-dependants. Severe disability premium is not payable to Geraldine because she continues to reside at home and does not satisfy the severe disability premium conditions.

Example 4

Kenneth and Susan live together in the same household with a non-dependant son. Both get middle rate care component of Disability Living Allowance and Carer's Allowance is not in payment. Severe disability premium is not in payment because there is a non-dependant son. Susan goes into temporary residential care.

If they are assessed as a couple, severe disability premium is not payable because Susan normally resides at home and there are non-dependants at home.

If they are assessed as if they are single severe disability premium is not payable to Susan because she normally resides at home and there are non-dependants at home. Severe disability premium is not payable to Kenneth because he continues to normally reside at home and there are non-dependants.

44154 A member of a couple admitted to permanent residential care is no longer a member of the same household as the partner[1]. Each person may claim benefit as a single claimant or lone parent.

1 ESA Regs (NI), reg 156(1) & (4)(d)

44155 If a claimant is admitted to permanent residential care the other residents of the home are not non-dependants. This is because they do not normally reside with the claimant, as they are separately liable to make payments to a landlord (see DMG 44127 **2.**)[1]. Severe disability premium is payable to a claimant in permanent residential care if all of the conditions are satisfied.

Note: Disability Living Allowance may cease when the person has been in permanent residential care for 4 weeks.

1 ESA Regs (NI), reg 71(6)

Example

Irene and Michael are married and live together in the same household. Irene is in receipt of highest rate care component of Disability Living Allowance and no one is in receipt of Carer's Allowance or Universal Credit that includes carer's element for caring for her. Severe disability premium is not payable because Michael does not get "attendance allowance" or Disability Living Allowance. Irene is admitted to permanent residential care.

Irene claims benefit for herself as she is no longer a member of Michael's household. The decision maker decides that Irene is entitled to severe disability premium at the lower rate because

1. she is in receipt of Disability Living Allowance **and**

2. the other residents of the home are not non-dependants because they do not normally reside with her **and**

3. no one is in receipt of Carer's Allowance for caring for her.

Entitlement to severe disability premium continues as long as all of the above are satisfied.

Severe disability premium and carer benefits

44156 There are two carer related benefits

1. Carer's Allowance

2. the carer element in Universal Credit.

Severe disability premium is not payable if someone is receiving Carer's Allowance or carer element for caring for the claimant or partner[1]. Carer's Allowance or carer element has to actually be in payment before it affects entitlement to severe disability premium. Underlying entitlement to Carer's Allowance does not affect severe disability premium. So both severe disability premium and carer premium can be paid at the same time if carer premium is awarded because of underlying entitlement to Carer's Allowance (see DMG 44166 et seq).

1 ESA Regs (NI), Sch 4, para 6(2)(a)(iii) & (2)(b)

44157 Decision makers should normally treat an award of Carer's Allowance as a proper award until the Carer's Allowance decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting Carer's Allowance **or**

2. the award of Carer's Allowance is in error **or**

3. they know nothing about the Carer's Allowance award **or**

4. the Carer's Allowance claim is fraudulent

the decision maker should ask Disability and Carers Service to investigate whether the Carer's Allowance award is correctly made.

44158 The decision maker can make a decision on the claim or application before the Carer's Allowance decision maker has decided whether the award of Carer's Allowance should be revised or superseded. The Employment and Support Allowance decision should include a determination which

1. makes an assumption that the carer is properly in receipt of Carer's Allowance **and**

2. refuses to award severe disability premium.

Arrears of Carer's Allowance or carer element

44159 An award of Carer's Allowance or Universal Credit which includes the carer element may be backdated for a period before the date on which the Carer's Allowance or

carer element award is first paid. Arrears of Carer's Allowance or carer element due in such circumstances do not affect entitlement to severe disability premium[1]. Severe disability premium is only affected from the date the Carer's Allowance or carer element award is paid.

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

Example

Kevin is a single claimant in receipt of severe disability premium. On 20 November a relative claims Carer's Allowance. Carer's Allowance is awarded on 23 January. It is first paid on 6 March. Arrears are included in the first payment from the date of claim. Severe disability premium is affected from 6 March.

44160 If a person stops getting Carer's Allowance or carer element because a restriction is applied under the loss of benefit provisions[1] they continue to be treated as being in receipt of Carer's Allowance or carer element for the purposes of entitlement to severe disability premium[2].

1 SS Fraud Act (NI) 2001, sec 6; 2 ESA Regs (NI), Sch 4, para 6(2)(a)(iii), (2)(b) & (8)

44161 – 44162

Shared lives scheme

44163 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (Disability Living Allowance / Personal Independence Payment) and pays the carer a weekly contribution, the Trust also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain Housing Benefit. In these circumstances the carers will be ignored as non-dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the severe disability premium.

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

Example

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of the family having her own bedroom and sharing all the other household facilities. Shirley is disabled and receives Disability Living Allowance. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this

payment covers all her meals and all utility costs, she will also get Housing Benefit. The decision maker decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the severe disability premium.

44164 – 44165

Carer premium

General

44166 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** Carer premium is paid at one rate. If the conditions for carer premium are met, carer premium should be included in the claimant's applicable amount in addition to any other premium.

44167 If the conditions for carer premium are met by both members of a couple, carer premium should be included in the claimant's applicable amount for them both.

44168 The conditions for carer premium are that

1. the claimant **or**

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

3. both the claimant and partner

are entitled to a Carer's Allowance.

Note: Carer's premium should **not** be awarded where Carer's Allowance is taken into account as notional income (see DMG Chapter 51). This is because there would be no entitlement to Carer's Allowance.

Carer premium extension period

44169 Where a carer premium has been awarded but the person in respect of

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

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

the qualifying conditions shall be satisfied or treated as satisfied for a period of 8 weeks[1] from the relevant date. (See DMG 44170).

1 ESA Regs (NI), Sch 4, para 8(2)

The relevant date

44170 The relevant date is[1]

1. where the person in respect of whose care the Carer's Allowance has been awarded has died, the

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

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

2. in any other case, the date on which Carer's Allowance ceases.

1 ESA Regs (NI), Sch 4, para 8(3)

Example 1

Daphne is entitled to Employment and Support Allowance which includes the carer premium because her partner is in receipt of Carer's Allowance. Daphne's Employment and Support Allowance is paid on Wednesday in arrears. The person she is caring for dies on Friday 21.8.09. Carer's Allowance is paid to Sunday 18.10.09. The relevant date is 23.8.09. The condition for the award of the carer premium is satisfied for the period 23.8.09 to 17.10.09. The carer premium is withdrawn from week commencing 15.10.09.

Example 2

Sheila is entitled to Employment and Support Allowance which includes the carer premium and is paid on Thursday in arrears. The Disability Living Allowance award for the person she provides care is not renewed and ends in August 2009. Carer's Allowance is paid to Sunday 30.8.09. The relevant date is 30.8.09. The condition for the award of the carer premium is treated as satisfied for the period 30.8.09 to 24.10.09. The carer premium is withdrawn from week commencing 23.10.09.

Claim to Employment and Support Allowance after Carer's Allowance ceases

44171 Where a person ceases to be entitled to Carer's Allowance and subsequently makes a claim for Employment and Support Allowance, the carer premium qualifying condition is treated as satisfied for 8 weeks from[1]

1. where the person in respect of whose care the Carer's Allowance has been awarded has died, the date of death **or**

2. in any other case, the date on which Carer's Allowance ceased.

1 ESA Regs (NI), Sch 4, para 8(4)

Transitional protection

44172 Carers who were aged 65 and over on or before 28.10.02 can continue to be entitled to Carer's Allowance even though they are no longer providing care[1], for example

after the disabled person has died. Where this protection applies and Carer's Allowance is retained the carer can continue to receive carer premium.

1 The Deregulation (Carer's Allowance) Order (NI) S.R. 2002/321, art 4

44173 – 44176

Admission to hospital - effect on premiums

General

44177 **[See DMG Memo Vol 4/157, 5/124, 8/107, 10/85, 12/25, 13/128 & 14/80]** The following paragraphs give guidance on the effects on premiums of admission to hospital. For guidance on the effects of hospital admission on the normal amount payable see DMG Chapter 54.

Enhanced disability premium

44178 Entitlement to an enhanced disability premium ends when

1. a single claimant has **or**

2. both members of a couple have

been a patient for more than 52 weeks[1].

1 ESA Regs (NI), Sch 4, para 7(2)

Severe disability premium

Claimant in hospital - single claimant

44179 Severe disability premium stops when the qualifying benefit ends (usually after 4 weeks)[1].

1 ESA Regs (NI) Sch 4, para 6(2)(a)(i)

Claimant in hospital - couples and polygamous marriages

44180 The lower rate severe disability premium is payable if[1]

1. the conditions for either rate of severe disability premium were satisfied before

1.1 one member of a couple became a patient **or**

1.2 at least one member of a polygamous marriage was not a patient **and**

2. where the conditions for the

2.1 higher rate severe disability premium were satisfied, “attendance allowance” or Disability Living Allowance stops because the patient has been in hospital more than 28 days **or**

2.2 lower rate severe disability premium were satisfied, the patient is treated as still being in receipt of "attendance allowance" or Disability Living Allowance (see DMG 44181).

The lower rate of severe disability premium is payable from the date "attendance allowance" or Disability Living Allowance stops. Normal change of circumstances rules apply.

1 ESA Regs (NI), Sch 4, para 11(2)(b)(i)

Example 1

Brendan is a married man in receipt of Employment and Support Allowance. Brendan and his wife Nicky both satisfy the severe disability premium conditions and the higher rate severe disability premium is payable. Brendan goes into hospital on 14 May and the higher rate severe disability premium continues in payment. Disability Living Allowance stops from 12 June because Brendan has been a patient for more than 28 days. Severe disability premium is also reduced to the lower rate from 12 June subject to the normal change of circumstances rules.

Example 2

Rhona is married and in receipt of Employment and Support Allowance. Rhona is in receipt of Disability Living Allowance middle rate care component and her husband Finlay is in receipt of Attendance Allowance. Their daughter Janet, who lives nearby, receives Carer's Allowance for caring for Finlay. Severe disability premium is awarded to the couple at the lower rate (see DMG 44114). Finlay is admitted to hospital on 22 October and his Attendance Allowance is withdrawn from 19 November. Finlay is still treated as being in receipt of Attendance Allowance (see DMG 44181). Severe disability premium at the lower rate continues in payment.

Example 3

Steve and Sharon are married. Steve is in receipt of Employment and Support Allowance. They both satisfy the severe disability premium conditions and the higher rate severe disability premium is payable. Sharon goes into hospital on 7 January and the higher rate severe disability premium remains in payment. Disability Living Allowance stops from 5 February because Sharon has been a patient for more than 28 days. Severe disability premium is also reduced to the lower rate from 5 February subject to the normal change of circumstances rules.

"Attendance allowance", Disability Living Allowance and Carer's Allowance on admission to hospital

44181 The claimant or partner is treated as being in receipt of "attendance allowance" or Disability Living Allowance where either benefit has been withdrawn only because of the stay in hospital[1]. This does not apply to a single claimant or a lone parent.

1 ESA Regs (NI), Sch 4, para 6(5)(a)

44182 A Carer's Allowance recipient is still treated as being in receipt of Carer's Allowance when it is withdrawn only because of the disabled person's stay in hospital[1]. Severe disability premium does not become payable on the withdrawal of Carer's Allowance in these circumstances. But severe disability premium entitlement should be considered where Carer's Allowance is withdrawn for any other reason.

1 ESA Regs (NI), Sch 4, para 6(5)(b)

Example

Nick is a married man in receipt of Employment and Support Allowance. Both Nick and his wife Meryl are in receipt of middle rate care component of Disability Living Allowance. Sheila is in receipt of Carer's Allowance for caring for Meryl. Severe disability premium has been awarded at the lower rate. Meryl is admitted to hospital on 22 October. Disability Living Allowance and Carer's Allowance are withdrawn from 19 November. Meryl is still treated as in receipt of Disability Living Allowance. Sheila is still treated as in receipt of Carer's Allowance. Severe disability premium at the lower rate continues.

44183 – 44185

Carer premium

General

44186 Carer premium is payable if the carer is entitled to Carer's Allowance (see DMG 44166 et seq). Carer's Allowance can be affected if the

1. carer **or**

2. person being cared for

is a patient.

44187 Breaks in caring can be allowed. Make enquiries of Disability and Carers Service to find out the date that entitlement to Carer's Allowance ends.

Single claimant or lone parent

44188 Carer premium stops 8 weeks after the carer has ceased to be entitled to Carer's Allowance or where it is as a result of the death of the person for whom they were providing care, 8 weeks after the death of that person.

Breaks in caring

44189 Breaks in caring as a result of hospitalisation can be allowed, normally this will be 12 weeks, but confirmation should be sought from Disability and Carers Service of the date that entitlement to Carer's Allowance ends.

Couples or polygamous marriages

44190 Carer premium stops 8 weeks after the carer has ceased to be entitled to Carer's Allowance[1].

1 ESA Regs (NI), Sch 4, para 8(2)

Example

Eddie is in receipt of Employment and Support Allowance. His wife, Doris, is Eddie's carer. Carer's Allowance is in payment and carer premium awarded. Eddie's benefit week ends on a Monday. Doris is admitted to hospital on 18 September. The Carer's Allowance decision maker decides to stop Carer's Allowance from 16 December. Carer premium is withdrawn 8 weeks later.

44191 – 44199

Housing costs for income-related Employment and Support Allowance

Introduction

44200 Until 6.4.18 help for owner occupier payments was included in a claimant's award of an income-related benefit (also referred to as support for mortgage interest). From 6.4.18 support for mortgage interest was changed from a benefit to a loan secured by a charge on the property[1]. See ADM Memo 4/18 for guidance on the transition from support for mortgage interest housing costs to support for mortgage interest loans. See Appendix 7 for advice on support for mortgage interest prior to 6.4.18. Decision makers may wish to contact Decision Making Services, Belfast.

1 LMI Regs (NI) 2017

44201 Housing costs may be paid for claimants entitled to income-related Employment and Support Allowance. There is no entitlement to housing costs for contribution-based Employment and Support Allowance.

Basic conditions of entitlement

44202 Claimants are entitled to housing costs if[1]

1. they or their partner are liable for those costs **and**

2. they or their partner are responsible for those costs **and**

3. they or their partner are treated as living in the home those costs are for **and**

4. those costs are allowable.

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

Claimants without housing costs

44203 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is

1. no liability or responsibility for housing costs **and**

2. no entitlement to housing costs.

Rounding of fractions

44204 Where any calculation relating to this guidance results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded[1].

1 ESA Regs (NI), reg 3(a)

44205 – 44206

Definitions

44207 The following paragraphs explain the meaning of terms used throughout this guidance on housing costs.

Close relative

44208 A close relative[1] is

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-son-in-law, step-daughter, step-daughter-in-law, brother, brother-in-law, sister, sister-in-law **and**

2. similar relationships arising through civil partnerships[2].

1 ESA Regs (NI), reg 2(1); 2 CP Act 04, sec 246

44209 Brother and sister includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and becomes the brother or sister of any other child of those parents. The child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends upon the legal relationship and not the blood relationship[1].

1 R(SB) 22/87

Disabled person

44210 For housing costs purposes, a disabled person is a person who[1]

1. in respect of whom main phase Employment and Support Allowance is payable to the claimant or to a person living with the claimant **or**

2. would, if they were entitled to Income Support, receive the disability premium or higher pensioner premium **or**

3. is aged 75 or over **or**

4. is disabled or severely disabled for the purposes of specified Tax Credits legislation[2] **or**

5. is a claimant or a person living with the claimant who would, but for the application of time limiting, be entitled to Employment and Support Allowance[3] **or**

6. is entitled to Universal Credit and has limited capability for work or limited capability for work-related activity[4].

1 ESA Regs (NI), Sch 6, para 1(3); 2 Tax Credits Act 2002, sec 9(6); 3 ESA Regs (NI) Sch 6, para 1(3)(a)(ii); 4 Sch 6, para 1(3)(e); UC Regs (NI) 16, reg 39 & 40

44211 A disabled person will still be treated as a disabled person even if they are[1]

1. disqualified for receiving benefit because they

1.1 have limited capability for work due to their own misconduct **or**

1.2 fail without good cause to follow medical advice **or**

1.3 fail without good cause to observe the rules of behaviour **or**

2. treated as not having limited capability for work because they

2.1 have limited capability for work due to their own misconduct **or**

2.2 fail without good cause to follow medical advice **or**

2.3 fail without good cause to observe the rules of behaviour.

See DMG Chapter 53 for further guidance.

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

44212 – 44215

Dwelling occupied as the home

44216 "Dwelling occupied as the home" means[1]

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

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

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

Example

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

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

Normally occupied

44217 The dwelling normally occupied as the home is the home where the claimant and their family normally live. In this context "normally" means "usually". Periods of residence, or absence, that are of an exceptional nature should be disregarded.

Rooms sublet

44218 Rooms that are sublet in a house are part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

Family

44219 Family[1] means

1. a couple **or**

2. a couple and any child or young person who is

2.1 a member of the same household **and**

2.2 the responsibility of either or both members of the couple **or**

3. a person who is not a member of a couple (this will usually be a lone parent) and any child or young person who is

3.1 a member of the same household **and**

3.2 the responsibility of that person.

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

Housing costs

44220 Housing costs[1] are

1. rents or ground rents on long tenancies

2. service charges

3. payments by way of rent charge

4. payments under co-ownership schemes

5. payments for tenancies or licences of Crown tenants

6. payments for tents and their sites.

1 ESA Regs (NI), Sch 6, para 1(2), 16, 17 & 18

44221 Only those payments in DMG 44220 should be allowed as housing costs. For example, housing costs do not include

1. rent required by a person who

1.1 is making payments under a shared ownership scheme

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

1.3 does not live in that property

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

Note: This list is not exhaustive.

1 R(IS) 19/93

44222 – 44224

Lone parent

44225 A lone parent is a person who is

1. not a member of a

1.1 couple **or**

1.2 polygamous marriage **and**

2. responsible for a child or young person who is a member of the household[1].

Note: See DMG Chapter 43 for the meaning of child and young person.

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

Qualifying age

44226 The qualifying age for State Pension Credit[1] means

1. for a woman - pensionable age **or**

2. for a man - the age which would be pensionable age for a woman born on the same date as the man.

Note: See DMG Chapter 75 for guidance on pensionable age.

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

Water charges

44227 Water charges[1] means any

1. water charges **and**

2. sewerage charges

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

1 ESA Regs (NI), reg 2(1); Water and Sewerage Services (NI) Order 06, Part VII, Ch 1

Steps to follow when deciding housing costs

44228 When deciding a claimant's housing costs, the decision maker should determine

1. if the claimant or partner has a current liability for the housing costs (see DMG 44233)

2. if the amount spent is on the dwelling occupied as the home (see DMG 44216 and 44241 et seq)

3. if the housing costs cannot be met (see DMG 44281)

4. how to apportion the housing costs if

4.1 the dwelling is used for domestic and business use (see DMG 44311) **or**

4.2 responsibility for the housing costs is shared (see DMG 44234)

5. if there are any other eligible housing costs that can be allowed (see DMG 44421 et seq)

6. if a deduction for a non-dependant is necessary (see DMG 44586)

7. the start date of entitlement to housing costs (see DMG 44471 et seq).

44229 – 44232

Liability for housing costs

44233 A person is liable to meet housing costs where the

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

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

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

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

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

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

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

1 ESA Regs (NI), Sch 6, para 4(a); R(IS) 4/00;
2 ESA Regs (NI), Sch 6, para 4(b); R(IS) 12/94; R(IS) 8/01;
3 ESA Regs (NI), Sch 6, para 4(c)

Responsibility for housing costs

44234 A claimant who is liable for a housing cost is responsible for that cost unless someone else has accepted responsibility for it. If responsibility is shared, the claimant is responsible only for their share[1].

1 ESA Regs (NI), Sch 6, para 7(2); R(IS) 4/00

44235 – 44240

Treated as occupying a dwelling as the home

Definitions

44241 The following definitions apply only to this guidance on treating a person as occupying a dwelling as the home.

Medically approved

44242 Medically approved means certified by a medical practitioner[1].

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

Patient

44243 A patient is a person undergoing

1. medical **or**

2. other treatment

as an in-patient in a hospital or similar institution[1].

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

Residential accommodation

44244 Residential accommodation means accommodation which is a residential care home, a nursing home, an Abbeyfield home or an independent hospital[1] (see DMG Chapter 54).

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

Student

44245 A student is a full-time student[1]. For further information see the guidance on students in DMG Chapter 51.

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

Training course

44246 Training course means a course of training or instruction provided wholly or partly by, or on behalf of, or by arrangement with, or approved by or on behalf of a government department[1].

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

44247

Dwelling where claimant normally lives

44248 Unless DMG 44250 - 44263 applies, a claimant should

1. be treated as living in the home where they, or where a claimant is a member of a family, where the claimant and members of their family normally live (see DMG 44217 and DMG 52397) **and**

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

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

44249 To decide where a claimant normally lives the decision maker should

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

2. not treat the claimant as living in more than one home, unless the circumstances in DMG 44256 - 44263 apply **and**

3. where the claimant is liable to make payments on more than one property, and DMG 44256 - 44263 does not apply, treat the claimant as living in the home they normally occupy. Liability to make payments includes liability for rent.

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

Full-time students and claimants on training courses

44250 Single claimants who are full-time students or on a training course, may have different homes in term time and vacations. Such a claimant should be treated as occupying the home for which they are liable to make payments if[1]

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

1.1 a full-time student **or**

1.2 on a training course **and**

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

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

2.2 not attending the course of study or training **and**

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

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

Training course

44251 Single claimants who are a full-time student or on a training course, may have different homes whilst attending the course and not attending the course. Such a claimant should be treated as occupying the home for which they are liable to make payments in respect of, if[1]

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

1.1 on a training course **and**

2. they are liable for the payments in respect of the dwelling on either, but not both, of the homes they live in when

2.1 attending the training **or**

2.2 not attending the training.

1 ESA Regs (NI), Sch 6, para 5(3)

44252 – 44253

44254 Students whose main purpose of living in their home is to attend a course of study will not normally be treated as living there for periods of absence outside the period of study. The exception is when the absence is due to admission to hospital for treatment[1].

1 ESA Regs (NI), Sch 6, para 5(4)

Temporary accommodation

44255 A claimant who

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

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

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

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

Liable for two homes

44256 A person who is liable to make payments on two dwellings should be treated as living in, and allowed housing costs for both dwellings where they

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

1.1 fear of violence in that home **or**

1.2 violence by a former partner or by a close relative

and it is reasonable to meet housing costs on both homes[1] **or**

2. are members of a couple or polygamous marriage and have a partner who is a full-time student or on a training course and it is

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

2.2 reasonable to meet both housing costs[2].

1 ESA Regs (NI), Sch 6, para 5(6)(a); 2 Sch 6, para 5(6)(b)

44257 The question of reasonableness in DMG 44256 should be decided at the date the decision maker considers the issue and in the light of all the circumstances. These may include

1. the length of the absence

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

3. whether there is a hope of resuming occupation

4. whether it is practicable to end the liability

5. the claimant's situation and means of support

6. the extent to which the liability was in practice being met other than through income-related Employment and Support Allowance.

44258 A person can also be treated as living in, and allowed housing costs for, 2 homes for up to 4 benefit weeks from the first day of the benefit week in which the move occurs if[1]

1. they move to a new home, for a reason other than those in DMG 44255 and 44256 **and**

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

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

1 ESA Regs (NI), Sch 6, para 5(6)(c)

44259 – 44260

44261 A claimant can be allowed housing costs for two separate properties if he is treated as living in both dwellings as the home. See DMG 44256 for the criteria where more than one property could be the dwelling occupied as the home.

44262 Claimants are entitled to an additional amount for these housing costs if

1. the claimant or partner is

1.1 liable for those costs (see DMG 44233) **and**

1.2 responsible for those costs **and**

1.3 treated as living in the home that these costs are for (see DMG 44256) **and**

2. those costs are allowable.

Treated as living in the home before moving in

44263 A claimant may be treated as living in their home for up to 4 weeks before the date they moved in where[1]

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

2. they had claimed income-related Employment and Support Allowance before moving in **and**

3. a decision was

3.1 not made on the claim **or**

3.2 made on the claim but no housing costs were included **or**

3.3 made refusing the claim, but another claim was made within 4 weeks of moving in **and**

4. the delay in moving in was reasonable because

4.1 the home was being adapted to meet the needs of a disabled member of the family **or**

4.2 they were waiting for a decision on a connected Social Fund claim and either

4.2.a a member of the family is aged five or under **or**

4.2.b the support component or the work-related activity component is payable **or**

4.2.c the claimant's applicable amount includes pensioner premium or severe disability premium **or**

4.2.d a Child Tax Credit is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation[2] **or**

4.3 when they became liable to pay the housing costs they were

4.3.a a patient **or**

4.3.b in residential accommodation.

1 ESA Regs (NI), Sch 6, para 5(7); 2 Tax Credits Act 2002, sec 9(6)

Temporary absences from home

Trial periods in residential accommodation

44264 Claimants who enter residential accommodation

1. to see whether the accommodation is suitable for their needs **and**

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

3. whose part of the home normally occupied has not been let or sublet

should be treated as living in their home and have their housing costs allowed for up to 13 weeks from the day of entry. The number of weeks for which the absence is treated as temporary is subject to an overall maximum of 52 weeks[1] (see DMG 44271).

1 ESA Regs (NI), Sch 6, para 5(8) & (9)

Example

Nigel has been in hospital for 43 weeks. He receives housing costs for his own home throughout that period. Nigel goes into residential accommodation for assessment. Nigel continues to be treated as temporarily absent from his own home and paid housing costs for that home for a further 9 weeks or until a decision is made that he will not return to live in his own home, whichever is the sooner.

Temporary absences up to 13 weeks

44265 Unless DMG 44264 or 44271 applies, a person should be treated as living in their home for any period of temporary absence of not more than 13 weeks if[1]

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

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

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

1 ESA Regs (NI), Sch 6, para 5(10)

44266 The intention to return to live in the home (see DMG 44265 **1.**) must

1. be unqualified **and**

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

3. not be conditional on a future event.

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

44267 When considering DMG 44265, housing costs may be allowed for up to 13 weeks from the first day of absence. Where the absence is likely to exceed 13 weeks the absence should be treated as permanent from the first day of absence, and housing costs should not be awarded.

44268 – 44270

Temporary absences up to 52 weeks

44271 A person should be treated as living in their home for a period of temporary absence of not more than 52 weeks if[1]

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

2. the part of the home they normally live in has not been let or sublet **and**

3. they

3.1 are required to live as a condition of bail, in either a dwelling, other than the dwelling they occupy as the home **or**

3.2 are patients resident in a hospital or similar institution **and**

3.3 are, or a member of the family is, undergoing

3.3.a medical treatment **or**

3.3.b medically approved convalescence

in the UK or elsewhere in accommodation that is not residential accommodation **or**

3.4 are on a training course in the UK or elsewhere **or**

3.5 are providing medically approved care for another person who is residing in the UK or elsewhere **or**

3.6 are caring for a child whose parent or guardian is temporarily absent from the dwelling that they normally occupy because they are receiving medically approved care or treatment **or**

3.7 are

3.7.a residing in the UK or elsewhere **and**

3.7.b receiving medically approved care in accommodation that is not residential accommodation **or**

3.8 are full-time students to whom DMG 44253 - 44254 and 44256 **2.** do not apply **or**

3.9 are receiving care in residential accommodation other than in DMG 44264 **or**

3.10 have left the home because of fear of violence in it, or from a former member of the family, and DMG 44256 **1.** does not apply **or**

3.11 are detained in custody on remand pending trial or pending sentence upon conviction **and**

4. the absence is unlikely to

4.1 exceed 52 weeks **or**

4.2 substantially exceed 52 weeks in exceptional circumstances (for example, where a claimant has gone into hospital).

1 ESA Regs (NI), Sch 6, para 5(11) & (12)

44272 The intention to return to live in the home (see DMG 44271 **1.**) must

1. be unqualified **and**

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

3. not be

3.1 dependant on a contingency **or**

3.2 conditional on a future event.

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

44273 If DMG 44271 applies, housing costs may be allowed for up to 52 weeks from the first day of absence[1]. But a person may have several periods of temporary absence from home. The absences are treated as temporary if the claimant is not absent from home for more than 52 consecutive weeks.

1 ESA Regs (NI), Sch 6, para 5(12)

44274 The absence should be treated as permanent from the day that it is known that the absence

1. will exceed 52 weeks **or**

2. is likely to

2.1 exceed 52 weeks **or**

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

1 ESA Regs (NI), Sch 6, para 5(11)(d)

Example 1

Jon is in receipt of income-related Employment and Support Allowance. He has to live in a hostel as a condition of bail. He intends to return to live in his own home when he leaves the hostel. His home has not been let or sublet. He has to live in the hostel for 8 weeks. The decision maker determines that Jon is temporarily absent from his home from the date he went to live in the hostel.

Example 2

Christina is in receipt of income-related Employment and Support Allowance and lives alone in her own. In February Christina decides to go and care for her mother who lives in the next town. She expects to be away from her home until August. The decision maker determines that Christina is temporarily absent from home because the care has not been medically approved, housing costs stop from February.

Example 3

Joanne is in receipt of income-related Employment and Support Allowance and lives alone in her own. In December 08 Janet is admitted to hospital suffering from an eating disorder. In November 09 the decision maker advises Joanne that her housing costs are to be removed in the next few weeks because she will have been temporarily absent from her home for 52 weeks. The hospital social worker responded advising that Joanne would be discharged from hospital for 1 night just prior to the December expiry. Joanne returned home for 1 night and was readmitted

to hospital the following day. A further 52 week period of temporary absence could be considered from the date of Joanne's readmission and housing costs continue.

44275 – 44280

Housing costs not met

44281 Housing costs should not be allowed for

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

2. claimants in residential care homes, nursing homes, Abbeyfield homes or independent hospitals, unless their absence from the home that they normally live in is temporary[2] (see DMG 44264 et seq).

1 ESA Regs (NI), Sch 6, para 6(1)(a); 2 Sch 6, para 6(1)(b)

44282 Housing Benefit expenditure[1] means

1. any element for which Housing Benefit may be payable[2] **and**

2. which are not allowable as housing costs in the claimant's applicable amount[3].

1 ESA Regs (NI), reg 2(1); 2 HB Regs (NI), reg 13(1); 3 ESA Regs (NI), reg 67(1)(c) & 68(1)(d)

44283 – 44310

Apportionment of housing costs

Composite hereditaments

44311 A composite hereditament is[1] a property with both

1. domestic **and**

2. business

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

1 ESA Regs (NI), Sch 6, para 7(1)

44312 If a claimant occupies a mixed hereditament, housing costs should be awarded for the part of the property used by the claimant for their own domestic use.

44313 – 44420

Other housing costs

Definitions

44421 The following paragraphs explain the meaning of terms used throughout this guidance on other eligible housing costs.

44422 – 44425

Housing association

44426 A housing association is a non-profit making voluntary body formed with the aim of providing good quality low cost housing[1].

1 ESA Regs (NI), reg 2(1); Housing (NI) Order 92, art 3

44427 – 44432

Rentcharge

44433 Rentcharges are rents charged to people under the conditions by which they own the freehold[1].

Note: In cases of doubt decision makers should refer cases to Decision Making Services via their Specialist Advisory Officer to confirm whether rents fall within the meaning of rentcharge.

1 ESA Regs (NI), Sch 6, para 18(1)(c); Ground Rents Act (NI) 2001, sec 27(1)

Other eligible housing costs

44434 Other eligible housing costs are payments for[1]

1. ground rent

2. service charges (see DMG 44436)

3. rentcharges (see DMG 44437)

4. tents and their sites (see DMG 44445).

1 ESA Regs (NI), Sch 6, para 18(1)

44435

Service charges

44436 Charges should be allowed where they are[1]

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

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

3. for

3.1 the home **or**

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

3.3 common areas for a group of homes **and**

4. for services provided by a landlord, or the agent of a landlord.

1 ESA Regs (NI), Sch 6, para 18(1)(b); 2 Sch 6, para 6; R(IS) 4/92

Rentcharges

44437 Rentcharges should be allowed as other eligible housing costs[1].

1 ESA Regs (NI), Sch 6, para 18(1)(c)

44438 – 44444

Tents

44445 Where claimants occupy tents[1] housing costs should be allowed for the

1. tent(s) occupied as the home **and**

2. sites on which the tents stand.

1 ESA Regs (NI), Sch 6, para 18(1)(d)

Mobile motor homes

44446 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and are suited for continuous occupation should be regarded as accommodation, and as such housing costs can be allowed.

Deductions from other eligible housing costs

44447 Deductions should be made from other eligible housing costs[1] where they include an amount for

1. fuel charges **or**

2. ineligible services charges **or**

3. repairs and improvements.

1 ESA Regs (NI), Sch 6, para 18(2)

Deductions for fuel charges

44448 Where any of the charges for other housing costs in DMG 44434 include an amount for fuel charges, the following deductions should be made[1]

1. a standard fuel deduction for

1.1 heating (other than for hot water) £25.50

1.2 hot water £2.95

1.3 lighting £2.05

1.4 cooking £2.95 **or**

2. if the claimant provides evidence that the

2.1 actual amount **or**

2.2 estimated amount

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

Note: The rates in **1.** may change during annual uprating.

1 ESA Regs (NI), Sch 6, para 18(2)(a); HB Regs (NI), Sch 1, para 6(2)

44449 When considering deductions under DMG 44448, decision makers should note that

1. if the claimant's home is one room, the standard fuel deduction in DMG 44448 **1.** will be

1.1 half the amount in DMG 44448 **1.1** to **1.3 but**

1.2 the full amount in DMG 44448 **1.4 and**

2. a deduction for heating (other than hot water) under DMG 44448 **1.1** should only be made on the amount for heating the claimant's home. Service charges for heating any communal areas are not excluded.

Deductions for ineligible service charges

44450 Where any of the charges for other eligible housing costs in DMG 44434 include an amount for ineligible service charges, the following deductions should be made[1]

1. an amount equal to the amount of the ineligible service charges **or**

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

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

2.2 having regard to the costs of comparable services.

1 ESA Regs (NI), Sch 6, para 18(2)(b); HB Regs (NI), Sch 1, para 1

44451 The ineligible service charges that should be deducted from other eligible housing costs[1] are charges for

1. living expenses for

1.1 meals - including the

1.1.a preparation of meals **or**

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

1.2 laundry - other than the provision of

1.2.a premises **or**

1.2.b equipment

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

1.3 leisure items such as

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

1.3.b television rental, licence and subscription fees - except radio relay charges and charges made for the cost of the installation and maintenance of a television broadcasting service **or**

1.4 cleaning of rooms and windows, except cleaning of

1.4.a communal areas **or**

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

where a payment as in DMG 44452 is not made in respect of such cleaning **or**

1.5 transport **or**

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

3. the provision of an emergency alarm system **or**

4. medical expenses including the cost of treatment or counselling related to a

4.1 mental disorder

4.2 mental handicap

4.3 physical disablement **or**

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

5. nursing or personal care, including assistance

5.1 at meal times **or**

5.2 with personal appearance or hygiene **or**

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

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

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

1 ESA Regs (NI), Sch 6, para 18(2)(b); HB Regs (NI), Sch 1

44452 A payment (as in DMG 44451 **1.4**) is[1] any payment made by the Housing Executive to the claimant, the claimant's partner, or to another person on their behalf.

1 ESA Regs (NI), Sch 6, para 18(2)(b)

44453 – 44456

Connected to the adequacy of the accommodation

44457 Charges for certain services not connected with the provision of adequate accommodation are not eligible. When considering if services are connected to the adequacy of the accommodation (see DMG 44451 **7.**) the decision maker should take a common sense view of charges for communal lounges, paths, walkways, gardens etc and not just the individual needs of the claimant.

Example 1

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

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

Example 2

Fred lives in a group of 50 apartments set in enclosed grounds. Service charges are payable for maintenance of the communal gardens and fountains, repainting of all wooden surfaces, replacing all the boundary fencing, repairing the car park, replacing car park barriers and entry gates, the electricity and gas charges for the communal and administration areas.

The decision maker determines that the charges for garden, fountain maintenance, repainting, electricity, repairing car park, barriers, and entry gate and gas charges are all connected to the adequacy of the accommodation and are eligible.

Example 3

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

Example 4

The painting of the property is arranged by the landlord or agent under the conditions by which the property is occupied. Theresa, the occupier, is obliged to accept the

arrangement. In this situation the charges incurred satisfy the definition of a service charge.

Example 5

Louis, a leaseholder, reimburses the landlord for the payment of insurance premiums, as a condition under which he occupies his home. In the case of damage to the property the premiums ensure the payment of repairs to the property and therefore satisfy the condition of being connected with the adequacy of the accommodation. In this case the insurance premiums can be met as a housing cost.

Deductions for repairs and improvements

44458 The charges for other eligible housing costs in DMG 44434 may include an amount for repairs and improvements (see ADM Memo 4/18, paragraph 97). In such a case the amount for repairs and improvements cannot be allowed and should be deducted[1].

1 ESA Regs (NI), Sch 6, para 18(2)(c)

44459 Where service charges include an amount for repairs and improvements listed in ADM Memo 8/18, paragraph 97, and are undertaken to maintain the fitness for human habitation, they should not be allowed.

Contingency funds

44460 Service charges may contain an element that is paid into some kind of fund or reserve. These are most commonly referred to as

1. contingency funds **or**

2. reserve funds **or**

3. sinking funds.

44461 Payments made into such a fund are “for” the general purposes of the fund, whether or not there has been any expenditure in the year in question. If those purposes include both allowable and non-allowable elements, make a corresponding apportionment of the relevant annual payment to determine how much can be allowed.

Costs payable over 53 weeks or irregularly

44462 Where other housing costs are payable for 52 weeks **but**

1. paid for 53 weeks **or**

2. paid irregularly **or**

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

4. the costs for different periods are different amounts

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

1 ESA Regs (NI), Sch 6, para 18(3)

Payment of costs waived

44463 Other housing costs should continue to be allowed for up to 8 weeks if

1. the claimant or a member of the family pays for reasonable repairs or redecoration to the home **and**

2. that work was not the responsibility of the claimant or any member of the family **and**

3. payment for other housing costs is waived because the work has been done[1].

1 ESA Regs (NI), Sch 6, para 18(4)

Attribution of service charges

44464 Those housing costs attributed to a fixed 52 week period under DMG 44462 are payable from the date the liability arose.

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

Example

The claimant's award of Employment and Support Allowance includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.08 - 31.3.09. The amount for housing costs is due to end on 31.3.09. In February 2009 the claimant sends in an estimate of service charges for the 2009-10 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.09 - 31.3.10. On 9.9.09 the claimant receives an invoice for £243.85, being the balance of finalized service charges for the 2008-09 year, and sends it to the Department. The decision maker supersedes the decision of February 2009 to award housing costs of £10.87 and £4.69 for the period 9.9.09 - 31.3.10, and £4.69 for the period 1.4.10 - 6.9.10, the balance for the 2008 - 09 year charges being paid over a 52 week period.

If a further estimate for charges for the 2009-10 year is received, the September 2009 decision may be superseded accordingly.

44465 – 44470

Housing costs - starting dates of entitlement

44471 **[See DMG Memo Vol 8/18]** With the exception of the housing costs payable at the start of a claim (see DMG 44483) all other eligible housing have a qualifying period. The length of the qualifying period depends on whether the housing costs are new or existing housing costs.

44472 – 44482

Housing costs payable at the start of the claim

44483 Where a claimant's partner has reached the qualifying age for State Pension Credit (see DMG Chapter 77), all new or existing housing costs are paid in full from the first day of entitlement to income-related Employment and Support Allowance[1].

1 ESA Regs (NI), Sch 6, para 10(1)(a) & (2)(a)

44484 All claimants should be paid housing costs for tents and their sites[1] (see DMG 44445) from the first day of entitlement to Employment and Support Allowance.

1 ESA Regs (NI), Sch 6, para 10(1)(b) & (2)(b)

44485

Start date for housing costs

44486 **[See DMG Memo Vol 8/18]** The amount of the award for housing costs is[1]

1. nil where claimants have not been continuously entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance or Income Support for 39 weeks[2]

2. for claimants who have been entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance or Income Support for a continuous period of 39 weeks or more or State Pension Credit for any period[3]

2.1 the amount of any

2.1.a ground rent **and**

2.1.b service charges **and**

2.1.c rentcharges.

1 ESA Regs (NI), Sch 6, para 9(1); 2 Sch 6, para 9(1)(b) & para 20(1)(c); 3 Sch 6, para 9(1)(a) & 20(1)(c)

Starting date of entitlement - waiting days

44487 A claimant is not entitled to Employment and Support Allowance when serving waiting days[1] (see DMG 41101 et seq). As a result waiting days do not count towards any housing costs qualifying period.

1 WR Act (NI) 07, Sch 2, para 2

44488 – 44530

Linking rules

Breaks in entitlement

44531 Breaks in entitlement can affect the claimant's housing costs. This is because most eligible housing costs have a qualifying period (see DMG 44471 et seq). But there are special rules under which claimants can be treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit in certain circumstances.

44532 If there are breaks in entitlement, claimants can be treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for periods[1] of

1. 12 weeks or less (see DMG 44533)

2. 26 weeks or less, in certain circumstances (see DMG 44534)

3. more than 26 weeks, in certain circumstances (see DMG 44537)

4. 52 weeks or less (see DMG 44546)

5. 104 weeks or less (see DMG 44550).

1 ESA Regs (NI), Sch 6, para 15

12 week linking periods

44533 Where there are breaks in entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit, claimants are treated as being continuously in receipt of, and entitled to income-related Employment and Support Allowance for any period

1. when entitlement is decided on revision, supersession or appeal **or**

2. of 12 weeks or less during which

2.1 they were not in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **and**

2.2 that period is immediately between 2 periods when

2.2.a they were in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **or**

2.2.b they were treated as in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **or**

2.2.c they are treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for certain reasons because their capital exceeds £16,000 or their income exceeds the applicable amount (see DMG 44570 - 44573) **or**

2.2.d entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit is decided on revision, supersession or appeal[1].

1 ESA Regs (NI), Sch 6, para 15(1)(a) & 15(5)

26 week linking periods

44534 Claimants can be treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for periods of up to 26 weeks where they regain entitlement and have had payments from an insurance policy to insure against the loss of employment and those payments have ceased (see DMG 44535).

Payments from insurance policies against the loss of employment

44535 Claims should be linked together and the weeks between them ignored where[1] the

1. claimant or partner has

1.1 received payments from an insurance policy taken out to insure against the loss of employment and those payments are exhausted **and**

1.2 had a previous award of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit which included housing costs **and**

2. previous award stopped not more than 26 weeks before the date the new claim was made.

1 ESA Regs (NI), Sch 6, para 15(13) & (14)

44536

More than 26 weeks

44537 Claimants can be treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for periods of more than 26 weeks where

1. the claimant or their partner is participating in certain training or attending certain courses (see DMG 44538) **or**

2. they have income from mortgage payment protection insurance (see DMG 44539).

Employment rehabilitation centres and specified training

44538 A claimant should be treated as continuously in receipt of, and entitled to, income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for any period that they[1]

1. are not (or no longer) entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **and**

2. are not entitled because they or their partner are

2.1 participating in arrangements for specified training **or**

2.2 attending a course at an employment rehabilitation centre.

1 ESA Regs (NI), Sch 6, para 15(3) & (5); E & T Act (NI) 50, sec 1(1); Disabled Persons (Employment) Act (NI) 1945, sec 2 & 3

Payments from payment protection insurance

44539 Claimants who

1. are treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit solely because their income is equal to or exceeds their applicable amount (see DMG 44570 et seq) **and**

2. have included in their income payments from an insurance policy taken out to insure against the risk of being unable to meet eligible housing costs

should be treated as entitled throughout any period that payments are made under the terms of the policy[1].

1 ESA Regs (NI), Sch 6, para 15(12)

44540 – 44541

52 week linking periods

44542 A claimant can be treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for periods of up to 52 weeks where the claimant or their partner

1. had already qualified for housing costs before losing entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit because either partner had

1.1 started remunerative work

1.2 started self-employment

1.3 an income from employment that exceeded their applicable amount (see DMG 44545) **or**

2. is participating in a New Deal option or a prescribed government scheme (see DMG 44557).

Qualifying period for housing costs already served

44543 Most eligible housing costs have a qualifying period (see DMG 44471 et seq). Such a qualifying period may have to be served again following a break in entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit. But there is a linking rule for cases where the qualifying period has already been served when entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit ends.

44544 The linking rule applies if[1], immediately before entitlement ended, housing costs

1. were payable on the previous claim (in full or in part) **or**

2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 44586 et seq).

1 ESA Regs (NI), Sch 6, para 15(18)

44545 In such a case, treat the claimant as continuously in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for any period of 52 weeks or less[1] during which they were not entitled because

1. the claimant or partner

1.1 had started employment as an employed or self-employed earner **or**

1.2 had increased their hours in such employment **or**

1.3 was taking active steps to become employed or self-employed under a prescribed government scheme **and**

2. the claimant or partner

2.1 is in remunerative work **or**

2.2 has income that is equal to or exceeds the applicable amount.

1 ESA Regs (NI), Sch 6, para 15(17)

44546 Entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit may end when a claimant or their partner starts on a New Deal option, or a prescribed government scheme[1]. This is because

1. the person may be in remunerative work **or**

2. their income may be equal to or exceed the applicable amount.

1 ESA Regs (NI), Sch 6, para 15(17)(c)

44547 There is a linking rule to ensure that the benefit position of such a person is protected if they return to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit. The linking rule applies if[1] housing costs

1. were payable on the previous claim (in full or in part) **or**

2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 23756 et seq)

immediately before entitlement ended.

1 ESA Regs (NI), Sch 6, para 15(18)

44548 In such a case, treat the claimant as continuously in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for any period of 52 weeks or less[1] during which they were not entitled because the claimant or partner is

1. participating in[2]

1.1 a New Deal option (apart from the employed employment option of New Deal for Young People) **or**

1.2 the self-employed employment option **or**

1.3 the preparation for employment programme[3].

1 ESA Regs (NI), Sch 6, para 15(16)(a) & (17);
2 Sch 6, para 15(17)(c); 3 JSA Regs (NI), reg 75(1)(a)(v)

44549

104 week linking periods

44550 A claimant can be treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for periods of up to 104 weeks[1] where the claimant is a welfare to work beneficiary (see DMG 44552).

1 ESA Regs (NI), Sch 6, para 15(15)

Work or training beneficiaries

44551 Entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit may end when a claimant moves into work following a period of limited capability for work. This is because

1. their income may exceed the applicable amount **or**

2. the person may be in remunerative work.

44552 Special linking rules exist to ensure that the benefit position of such a person is protected if they return to benefit on the grounds of limited capability. To qualify for the special linking rules, a claimant has to

1. be a work or training beneficiary (see DMG Chapter 42)[1] **and**

2. again become a person with limited capability for work[2].

1 ESA Regs (NI), reg 145(2); 2 WR Act (NI) 07, sec 8

44553 In such a case, treat the claimant as continuously in receipt of, and entitled to, income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for any period of 104 weeks or less[1]

1. during which they were not in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **and**

2. that is immediately between two periods when

2.1 they were in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **or**

2.2 they were treated as in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **or**

2.3 they are treated as entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for certain reasons (see DMG 44570 - 44573) **or**

2.4 entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit is decided on appeal or revision.

1 ESA Regs (NI), Sch 6, para 15(1)(a) & (15)

44554 This means that work or training beneficiaries do not lose entitlement to housing costs by having to serve a further qualifying period. Breaks of 104 weeks or less are protected in the same way as other claimants who have a break of up to 12 weeks (see DMG 44533).

44555 – 44556

New Deal options and prescribed government schemes

44557 Entitlement to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit may end when a claimant or their partner starts on a New Deal option or a prescribed government scheme. This is because

1. the person may be in remunerative work **or**

2. their income may be equal to or exceed the applicable amount.

44558 There is a linking rule to ensure that the benefit position of such a person is protected if they return to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit. The linking rule applies if[1] housing costs

1. were payable on the previous claim (in full or in part) **or**

2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 44586 et seq)

immediately before entitlement ended.

1 ESA Regs (NI), Sch 6, para 15(18)

44559 In such a case, treat the claimant as continuously in receipt of income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income

Support or State Pension Credit for any period of 52 weeks or less[1] during which they were not entitled because the claimant or partner is participating in[2]

1. a New Deal option (apart from the employed employment option of New Deal 18-24)

2. the self-employed employment option **or**

3. the preparation for employment programme[3].

1 ESA Regs (NI), Sch 6, para 15(16) & (17); 2 Sch 6, para 15(17)(c); JSA Regs (NI), Sch 2, para 13(14)(c) & 18(1)(c); 3 reg 75(1)(a)(v)

Not entitled on revision, supersession or appeal

44560 A claimant is treated as not in receipt of Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for any period that entitlement is found not to exist on revision, supersession or appeal[1] unless that period falls in a period in DMG 44533 **2.**[2].

1 ESA Regs (NI), Sch 6, para 15(1)(b); 2 Sch 6, para 15(5)

Participation in New Deal

44561 Claimants should be treated as continuously in receipt of and entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit for any period that they[1]

1. are not (or no longer) entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit **and**

2. are not entitled because they or their partner are participating in

2.1 the self-employed employment option **or**

2.2 a waged option of the voluntary sector or environment task force options of New Deal 18-24 **or**

2.3 the preparation for employment programme

2.4 the core gateway programme.

Note: See DMG Chapter 14 for full guidance on New Deal.

1 ESA Regs (NI), Sch 6, para 15(4) & (5)

44562 The time spent on a New Deal option counts towards any qualifying period for housing costs. But that period may have already been served when the person goes on the New Deal option. If so, the person will not have to serve a fresh period if they return

to income-related Employment and Support Allowance, income-based Jobseeker's Allowance, Income Support or State Pension Credit within 12 weeks of leaving that option or scheme (see DMG 44533)[1].

1 ESA Regs (NI), Sch 6, para 15(1)(a) & (5)

Contribution-based Jobseeker's Allowance

44563 A person may have been getting contribution-based Jobseeker's Allowance immediately before going on a New Deal option. Such a person may then be entitled to income-related Employment and Support Allowance at the end of that option. In such a case treat the claimant as entitled to income-related Employment and Support Allowance for the

1. period when they were entitled to contribution-based Jobseeker's Allowance[1] **and**

2. time they spent on the New Deal option[2].

1 ESA Regs (NI), Sch 6, para 15(7); 2 para 15(4) & (5)

Change of claimant

44564 A couple may decide to change claimants when one of them comes to the end of the New Deal option. Treat the new claimant as being in receipt of and entitled to income-related Employment and Support Allowance for the same period as their partner if[1]

1. the claimant is a member of a couple or polygamous marriage **and**

2. immediately before one of them went on a New Deal option the claimant's partner was in receipt of income-related Employment and Support Allowance for both or all of them **and**

3. immediately after the end of that option the claimant has become the claimant because of an election by the members of the couple or polygamous marriage.

1 ESA Regs (NI), Sch 6, para 15(1)(f)

44565 – 44569

Capital exceeds £16,000/income equal to or exceeds applicable amount

44570 Claimants who are not entitled to income-related Employment and Support Allowance only because[1]

1. their capital exceeds £16,000 **or**

2. their income or contribution-based Employment and Support Allowance is equal to or exceeds their applicable amount **or**

3. both **1.** and **2.** apply

should be treated as entitled to income-related Employment and Support Allowance throughout any continuous period of not more than 39 weeks provided that the further conditions in DMG 44571 are satisfied.

Note: The period of not more than 39 weeks can fall between periods of entitlement to income-based Jobseeker's Allowance, State Pension Credit and Income Support[2].

1 ESA Regs (NI), Sch 6, para 15(8) & (9); 2 Sch 6, para 20(1)(c)

44571 The further conditions are that during the period of not more than 39 weeks claimants are

1. entitled to contribution-based Employment and Support Allowance, contribution-based Jobseeker's Allowance, Statutory Sick Pay or Incapacity Benefit **or**

2. registering for work or submitting medical certificates and are entitled to credits

on a day to day basis[1].

1 ESA Regs (NI), Sch 6, para 15(8) & (9)

Lone parents and carers

44572 Lone parents and carers may not be entitled to income-related Employment and Support Allowance, income-based Jobseeker's Allowance or Income Support because

1. their capital exceeds £16,000 **or**

2. their income is equal to or exceeds the applicable amount **or**

3. both **1.** and **2.** apply.

Note: For the meaning of carer see DMG 20116 - 20123.

44573 In such a case treat the claimant as entitled to income-related Employment and Support Allowance throughout any continuous period of not more than 39 weeks[1]

1. following the refusal of a claim for income-related Employment and Support Allowance made by them or on their behalf **and**

2. during which they are not

2.1 engaged in or treated as engaged in remunerative work **or**

2.2 the partner of a person engaged in or treated as engaged in remunerative work **or**

2.3 a full-time student in receipt of Disability Living Allowance (except where they would be entitled to Income Support) **or**

2.4 absent from Northern Ireland, except on a temporary basis (see DMG Chapter 7).

1 ESA Regs (NI), Sch 6, para 15(10) & (11)

Treated as in receipt of and entitled to income-related Employment and Support Allowance on another person's claim

Claimant previously a member of a couple or polygamous marriage

44574 A claimant should be treated as being in receipt of and entitled to income-related Employment and Support Allowance for the same period as a former partner if[1] the claimant

1. was a member of a couple or polygamous marriage **and**

2. had a partner who was in receipt of income-related Employment and Support Allowance for them both for a past period **and**

3. is no longer a member of the couple or polygamous marriage **and**

4. claims income-related Employment and Support Allowance within

4.1 12 weeks **or**

4.2 in the circumstances set out in DMG 44547 et seq, 52 weeks

of ceasing to be a member of that couple or polygamous marriage[1].

1 ESA Regs (NI), Sch 6, para 15(1)(c), 15(15) to 15(18)

Claimant becomes a member of a couple or polygamous marriage

44575 A claimant should be treated as having been in receipt of and entitled to income-related Employment and Support Allowance for the same period as their partner if[1]

1. the claimant's partner has for a past period been paid Income Support as a

1.1 single claimant **or**

1.2 lone parent **and**

2. the claimant claims income-related Employment and Support Allowance within

2.1 12 weeks **or**

2.2 in the circumstances set out in DMG 43547 et seq, 52 weeks

of becoming a member of a couple or polygamous marriage.

1 ESA Regs (NI), Sch 6, para 15(1)(d)

Change of claimant

44576 A claimant should be treated as being in receipt of and entitled to income-related Employment and Support Allowance for the same period as their partner if the

1. claimant is a member of a couple or polygamous marriage **and**

2. claimant's partner has been in receipt of income-related Employment and Support Allowance for both or all of them for a past period **and**

3. claimant has become the claimant as the result of a decision by the members of the couple or polygamous marriage[1].

Note: See DMG 44564 if the change of claimant happens when a New Deal programme ends.

1 ESA Regs (NI), Sch 6, para 15(1)(e)

Change of family

44577 A claimant Angela should be treated as being in receipt of and entitled to income-related Employment and Support Allowance for the same period as person Tony if[1]

1. Angela was a member of Tony's family (Tony not being a former partner) **and**

2. Tony was entitled to income-related Employment and Support Allowance and at least one other member of the family was a child or young person **and**

3. Angela becomes a member of another family which includes that child or young person **and**

4. Angela claims income-related Employment and Support Allowance within

4.1 12 weeks **or**

4.2 in the circumstances set out in DMG 44547 et seq, 52 weeks

of Tony ceasing to be entitled to Employment and Support Allowance.

1 ESA Regs (NI), Sch 6, para 15(1)(g) & 15(15) to (18)

Previous entitlement to other income-based benefits

44578 Where a claimant or partner was previously entitled to either Income Support, income-based Jobseeker's Allowance or State Pension Credit and

1. the previous award of the other income-based benefit included an amount in respect of housing costs **and**

2. there has been no change in circumstance since those housing costs were calculated **and**

3. it is

3.1 12 weeks or less since entitlement to the other income-based benefit ended **or**

3.2 26 weeks or less where DMG 44534 applies

the amount of housing costs which should be awarded for income-related Employment and Support Allowance should be the same as for the previous award of the other income-based benefit[1].

1 ESA Regs (NI), Sch 6, para 3(1) & 3(2)

44579 If there has been a change of circumstances since the previous award of the income-based benefits **and**

1. the change would mean that housing costs will either reduce or increase **and**

2. there has not been a reduction in the amount of the outstanding loan

housing costs for income-related Employment and Support Allowance should take into account that change[1].

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

44580 – 44585

Non-dependant deductions

Introduction

44586 Where non-dependants live with the claimant, a deduction from the allowable housing costs may be appropriate[1]. A deduction should be considered for each non-dependant or group of non-dependants.

1 ESA Regs (NI), Sch 6, para 19

Definition of a non-dependant

44587 With the exception of those people mentioned in DMG 44596, non-dependants[1] are people aged 18 or over who

1. normally reside with the claimant **or**

2. the claimant normally resides with.

1 ESA Regs (NI), reg 2(1) & 71

Meaning of normally resides

44588 A person normally resides where they usually live. Periods of residence or absence that are of an exceptional nature should be disregarded. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

44589 When considering where a person normally resides the decision maker should have regard to

1. the total amount of time spent in a place

2. how often time is spent in a place

3. how permanent the stay is thought to be

4. the person's intentions

5. individual circumstances

6. what degree the accommodation is shared

7. the services provided

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

Example 1

Oonagh and her sister Mairead share a flat on which Oonagh has a mortgage. Mairead goes to stay with their father to look after him while he is recovering from a major operation. She is away for 3 weeks. While Mairead is staying with her father Oonagh falls poorly and claims Employment and Support Allowance. The decision maker decides that Mairead normally lives with Oonagh and is a non-dependant. The time she spends at her father's is exceptional.

Example 2

Donna normally lives alone in her own flat. Her brother Lawrence comes to stay with her for a week at a time every 3 months. He does not normally live with Donna and is not a non-dependant.

Sharing the accommodation

44590 A person resides with another only if they share any accommodation and in this context, people should be regarded as sharing the accommodation unless[1]

1. the only shared area is a

1.1 bathroom **or**

1.2 lavatory **or**

1.3 communal area **or**

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

1 ESA Regs (NI), reg 71(6); R(IS) 12/96

44591 A communal area[1] is an area of common access (not a room) including

1. halls

2. passageways

3. stairways

4. rooms of common use in sheltered accommodation.

1 ESA Regs (NI), reg 71(7)

Example

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

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

44592 – 44595

People who are not non-dependants

44596 People who normally reside with the claimant, or who the claimant normally resides with, and who are not non-dependants are

1. any person aged under 18[1]

2. any member of the claimant's family[2]

3. any child or young person who is living with the claimant but who is not a member of the claimant's household[3] (see DMG Chapter 43)

4. a person or their partner who

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

4.2 is engaged by a

4.2.a charitable **or**

4.2.b voluntary organisation

which makes a charge to the claimant or partner for the person's services. A voluntary organisation is any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association[4]

5. any person who is not a close relative (see DMG 44208) of the claimant or partner, who

5.1 is liable to make payments on a commercial basis to the claimant or partner (see DMG 44140) for occupation of the dwelling[5] **or**

5.2 the claimant or partner is liable to make payments to on a commercial basis (see DMG 44140) for the occupation of the dwelling[6]

6. any person who is not a close relative, who is a member of the household of a person to whom **5.** applies[7]

7. a person, or their partner (not a close relative except where **8.** applies), who jointly occupies the claimant's dwelling and who is

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

7.2 jointly liable with the claimant or partner to make payments to a landlord for the occupation of the dwelling[8]

8. a close relative who satisfies **7.** and the claimant's or partner's co-ownership or joint liability arose

8.1 before 11.4.88 **or**

8.2 if later than 11.4.88, on or before the date on which the claimant or partner first occupied the dwelling[9].

Note: When considering **7.1** it does not matter if there are other co-owners.

1 ESA Regs (NI), Sch 6, para 19(1) & (2); 2 reg 71(2)(a); 3 reg 71(2)(b); 4 reg 71(2)(c) & (d); 5 reg 71(3)(a); 6 reg 71(3)(b); 7 reg 71(3)(c); 8 reg 71(4); 9 reg 71(5)

Amount of deduction

44597 The amount of deductions for non-dependants aged 18 or over depends on the

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

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

See Appendix 5 to this Chapter for the rates of non-dependant deductions. See Appendix 2 for the meaning of remunerative work[2].

1 ESA Regs (NI), Sch 6, para 19(1) & (2); 2 Sch 6, para 2

Non-dependants who have partners

44598 A non-dependant may be a member of a couple or polygamous marriage. In such a case

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

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

1 ESA Regs (NI), Sch 6, para 19(3)

44599 If any one of a couple or polygamous marriage is aged 18 or over a deduction should be made unless a deduction is not appropriate (see DMG 44606).

Calculation of income

44600 The joint income of members of a couple or polygamous marriage should be considered[1].

1 ESA Regs (NI), Sch 6, para 19(4)

Non-dependant of more than one joint occupier

44601 Where people are non-dependants of more than one joint occupier, deductions should be apportioned between the joint occupiers, taking account of the

1. number of joint occupiers **and**

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

Note 1: When apportioning the deduction, decision makers should note that the amount to be apportioned should be rounded to the nearest penny.

Note 2: All members of a couple or polygamous marriage should be regarded as one joint occupier.

1 ESA Regs (NI), Sch 6, para 19(5)

44602 – 44605

Non-dependant deduction not appropriate

44606 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** Deductions should not be made if

1. the claimant or any partner is[1]

1.1 **certified by a consultant ophthalmologist** as blind or severely sight impaired **or**

1.2 within 28 weeks of ceasing to be so certified **or**

1.3 receiving for themselves or their partner

1.3.a "attendance allowance" **or**

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

2. non-dependants are[2]

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

2.2 in receipt of a training allowance in connection with a youth training scheme[3] **or**

2.3 full-time students

2.3.a in a period of study **or**

2.3.b not in remunerative work during the recognised summer vacation relevant to their course **or**

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

2.5 from 3.4.17, under 25, in receipt of Employment and Support Allowance and their assessment phase has not ended[4] **or**

2.6 people for whom claimants have a deduction made in the calculation of any rent rebates or allowances in Housing Benefit **or**

2.7 people who jointly occupy the claimant's home and are

2.7.a co-owners with the claimant or the claimant's partner **or**

2.7.b jointly liable with the claimant or partner to make payments to a landlord

regardless of when the co-ownership or joint liability started **or**

2.8 not living with the claimant because they

2.8.a have been patients for more than 52 weeks (see DMG Chapter 54) **or**

2.8.b are prisoners (see DMG Chapter 54)

2.9 in receipt of State Pension Credit

2.10 entitled to Universal Credit **and**

2.10.a is aged less than 25 and

2.10.b does not have any earned income[5].

Note 1: For non-dependant purposes in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period.

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

1 ESA Regs (NI), Sch 6, para 19(6); 2 Sch 6, para 19(7);
3 Sch 6, para 19(7)(b); E & T Act (NI) 50, sec 1(1); Dis P (Employment) Act (NI), sec 2 & 3;
4 ESA Regs (NI), Sch 6, para 19(7)(1); 5 Sch 6, para 19(7)(ha)

Deduction appropriate - Universal Credit non-dependents

44607 Where a non-dependent is entitled to Universal Credit and is

1. aged 25 or over **or**

2. aged less than 25 and has earned income

a deduction at the rate described in Appendix 3 will be appropriate.

Participation in New Deal for 18 to 24 year olds

44608 If a non-dependant goes on to New Deal 18-24 a deduction from allowable housing costs should be considered as normal.

44609 – 44610

Calculation of a non-dependant's gross weekly income

44611 **[See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84] [See DMG Memo Vol 8/112, 9/64, 13/135 & 14/85]** When calculating the gross weekly income of a non-dependant disregard[1] any

1. Attendance Allowance

2. Disability Living Allowance

3. payments, including payments in kind (see DMG Chapter 51), made under, or derived from

3.1 the Macfarlane Trust

3.2 the Macfarlane (Special Payments) Trust

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

3.4 the Fund (see DMG 51343)

3.5 the Eileen Trust

3.6 the Independent Living Fund (2006)

3.7 MFET Limited

3.8 the Skipton Fund

3.9 the Caxton Foundation

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

3.11 any income from capital received from Infected Blood Schemes

4. Personal Independence Payment

5. Armed Forces Independence payment.

1 ESA Regs (NI), Sch 6, para 19(8)

44612 The decision maker is entitled to request evidence from claimants regarding the gross weekly income of a non-dependant and, in the absence of that evidence, an adverse assumption may be made. However, any assumption with regards to the gross weekly income must be realistic and take into account the circumstances of the case.

Example

Henry is in receipt of income-related Employment and Support Allowance. He shares his home with his adult daughter, Ginny, who works 20 hours a week in a clothes shop. Ginny refuses to let Henry know how much she earns. As a result Henry can't provide a figure for the decision maker to calculate the appropriate non-dependant deduction. The decision maker decides that the appropriate non-dependant deduction should be based on what a shop worker would earn for a 20 hour week.

44613 – 44620

Questions that cannot be decided immediately

44621 Where a decision maker is

1. deciding an Employment and Support Allowance claim **or**

2. determining an issue on Employment and Support Allowance housing costs

the applicable amount should include any housing costs that can be determined immediately on the evidence available[1]. Where there is insufficient evidence Employment and Support Allowance can be awarded without housing costs.

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

44622 If there are several housing costs on the claim the applicable amount should include only those housing costs where there is sufficient information to make a decision.

44623 The decision may be revised or superseded if further information about any of the claimant's housing costs is received after the Employment and Support Allowance claim or question has been decided[1].

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

44624 – 44630

Entitlement to the components

Income-related Employment and Support Allowance and contribution-based Employment and Support Allowance

General

44631 Both contribution-based and income-related Employment and Support Allowance attract entitlement to the support component[1].

Note: From 3.4.17 the work-related activity component is no longer included in an award of Employment and Support Allowance for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

Example

Cindy, who is 23, claims and is entitled to Employment and Support Allowance from 21.4.17 at the assessment phase rate for claimants aged under 25. Following application of the work capability assessment, Cindy is found to have limited capability for work and is placed in the work-related activity group. Cindy's award of Employment and Support Allowance is superseded to increase the applicable amount to the main phase rate from 28.7.17. The work-related activity component is not included.

1 WR Act (NI) 07, sec 2(1)(b) & 4(2)(b)

44632 The support component is based on the claimant's entitlement. There is no couple rate and the circumstances of any partner are not relevant to the claimant's entitlement to the support component[1].

1 ESA Regs (NI), reg 67(3)

44633 Except for prescribed circumstances, there is no entitlement to the components during the assessment phase. Once entitlement to a component is established and it is in payment then the claimant is on main phase Employment and Support Allowance[1].

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

The support component

44634 The conditions of entitlement to the support component[1] are that

1. the assessment phase has ended[2] unless the circumstances in DMG 44636 applies

2. the claimant has limited capability for work-related activity[3] (see DMG Chapter 42) **and**

3. any other conditions as may be prescribed[4].

Note 1: For the purposes of **2.** no component is payable after a continuous period of more than 52 weeks as a patient (see DMG 54109).

Note 2: For the purposes of **3.** no conditions have yet been prescribed.

1 WR Act (NI) 07 sec 2(2) & 4(4); 2 sec 2(2)(a) & 4(4)(a); 3 sec 2(2)(b) & 4(4)(b); 4 sec 2(2)(c) & 4(4)(c)

44635

Entitlement to a component before the end of the assessment phase

44636 The condition that the assessment phase must end before the support component can be paid does not apply in a relevant linked case[1]. A relevant linked case is a case where[2]

1. on a repeat claim, the periods of limited capability for work link[3] **and**

2. the conditions in paragraph DMG 44637, 44638, 44640 or 44642 apply.

1 ESA Regs (NI), reg 7(1)(b); 2 reg 7(1A); 3 reg 145(1)

Note: A relevant linked case does not happen where the period of limited capability for work arises as a result of the application of reg 147A(2)[1].

1 ESA Regs (NI), reg 7(2)

Case 1

44637 Where

1. in the previous period of limited capability for work, the claimant was entitled to Employment and Support Allowance including the support component **and**

2. that entitlement ended other than following application of the work capability assessment

3. a repeat claim is made where the period of limited capability for work links with the previous entitlement

the claimant is entitled to the support component from the first day of entitlement to Employment and Support Allowance on the new claim, even though the work capability assessment has not been carried out[1]. See DMG 44644 where the claimant was previously entitled to the support component.

1 ESA Regs (NI), reg 7(1B)(a)

Example 1

Constance is entitled to income-related Employment and Support Allowance including the support component. On 23.11.12 she is joined by her partner Oliver, who is in full-time work, and her Employment and Support Allowance entitlement is terminated. She remains entitled to National Insurance credits on the basis that she would have limited capability for work if she were entitled to Employment and Support Allowance. On 18.1.13 the relationship breaks down and Oliver leaves the household. Constance makes a repeat claim for Employment and Support Allowance. The decision maker treats her as having limited capability for work and awards her Employment and Support Allowance including the support component from 19.1.13 and refers her for the work capability assessment.

Example 2

Gabriel has been entitled to Employment and Support Allowance, including the support component, since 14.6.10. He is referred for a further routine work capability assessment. The award is terminated from 7.6.12 after the decision maker determines that Gabriel failed without good cause to return the questionnaire and is treated as not having limited capability for work. Gabriel makes a further claim for Employment and Support Allowance on 25.7.12 which is accompanied by evidence of limited capability for work and the questionnaire.

The decision maker awards him Employment and Support Allowance including the support component from 25.7.12. Gabriel is referred for a medical examination as part of the normal work capability assessment process.

Case 2

44638 Where

1. the claimant was entitled to Employment and Support Allowance for 13 weeks or longer **and**

2. that entitlement ended because the claimant was

2.1 found not to have limited capability for work **or**

2.2 was treated as not having limited capability for work **and**

3. a repeat claim is made where the period of limited capability for work links with the previous entitlement

the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, limited capability for work and limited capability for work-related activity[1]. This does not include being treated as having limited capability for work pending the work capability assessment[2].

1 ESA Regs (NI), reg 7(1B)(b), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(b)(iv) & 30

44639 If it is determined that the claimant has, or is treated as having , limited capability for work, the decision awarding Employment and Support Allowance is revised to pay the support component from the first day of entitlement[1]. No component is included if the decision maker determines that the claimant does not have, or cannot be treated as having limited capability for work-related activity.

1 SS & CS (D&A) Regs (NI), reg 3(5F)

Example 1

Miriam's award of Employment and Support Allowance began on 25.1.12. It is terminated from 5.6.12 when the decision maker finds that she does not have limited capability for work following application of the work capability assessment. On 27.6.12 Miriam makes a further claim for Employment and Support Allowance, which includes evidence of a new health condition. The decision maker awards Employment and Support Allowance at the assessment phase rate.

Following application of the work capability assessment, the decision maker determines that Miriam has limited capability for work, but does not have limited capability for work-related activity. Miriam is placed in the work-related activity group but the decision awarding Employment and Support Allowance is not revised as she is not entitled to the support component.

Example 2

Tom has been entitled to Employment and Support Allowance since January 2012. He starts work on 21.5.12. The decision maker determines that the work is not exempt work and treats Tom as not having limited capability for work, terminating the Employment and Support Allowance award. Tom gives up the job and claims Employment and Support Allowance from 11.8.12. The decision maker awards Employment and Support Allowance at the assessment phase rate.

Following application of the work capability assessment, the decision maker determines that Tom has limited capability for work and limited capability for work-related activity. The decision awarding Employment and Support Allowance is revised to pay the support component from 11.8.12.

Case 3

44640 Where

1. the claimant was entitled to Employment and Support Allowance for 13 weeks or longer **and**

2. that entitlement ended before it was determined whether the claimant had, or was treated as having had, limited capability for work (other than being treated as having limited capability for work pending the work capability assessment) **and**

3. a repeat claim is made where the period of limited capability for work links with the previous entitlement

the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, limited capability for work and limited capability for work-related activity[1]. This does not include being treated as having limited capability for work pending the work capability assessment[2].

1 ESA Regs (NI), reg 7(1B)(c), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(c)(iv) & 30

44641 If it is determined that the claimant has, or is treated as having, limited capability for work and limited capability for work-related activity, the decision awarding Employment and Support Allowance is revised to pay the support component from the first day of entitlement[1]. No component is included if the decision maker determines that the claimant does not have, or cannot be treated as having, limited capability for work-related activity.

1 SS & CS (D&A) Regs (NI), reg 3(5F)

Example 1

Paul's entitlement to Employment and Support Allowance began on 7.11.11 and terminates when he returns to work on 14.5.12. The work capability assessment had not been completed by the time his award ended. On 26.7.12 Paul makes a further claim to Employment and Support Allowance following an accident at work. The decision maker awards Employment and Support Allowance at the assessment phase rate.

Following application of the work capability assessment, the decision maker determines that Paul has limited capability for work and limited capability for work-related activity. The decision awarding Employment and Support Allowance is revised to pay the support component from 26.7.12.

Example 2

Gavin has been entitled to Employment and Support Allowance since 13.4.17 and is in the assessment phase. His award is terminated from 20.6.17 after he notifies that he is going to New Zealand from 23.5.17 to stay with his daughter. He does not expect to return for about six months.

On 5.9.17 Gavin claims Employment and Support Allowance again, after returning to Northern Ireland earlier than planned. He provides evidence of limited capability for work and is referred for the work capability assessment. The decision maker determines that Gavin has limited capability for work, but does not have limited capability for work-related activity. Gavin's award is not changed as the conditions of entitlement to the support component are not satisfied.

Case 4

44642 Where

1. in the previous period of limited capability for work, the claimant was entitled to Employment and Support Allowance including the support component **and**

2. that entitlement ended because the claimant was

2.1 found not to have limited capability for work **or**

2.2 treated as not having limited capability for work **and**

3. a repeat claim is made where the period of limited capability for work links with the previous entitlement

the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, limited capability for work[1]. This does not include being treated as having limited capability for work pending the work capability assessment[2].

1 ESA Regs (NI), reg 7(1B)(d), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(d)(iii) & 30

44643 If it is determined that the claimant has, or is treated as having, limited capability for work and limited capability for work-related activity, the decision awarding Employment and Support Allowance is revised to pay the component from the first day of entitlement[1]. No component is included if the decision maker determines that the claimant does not have, or cannot be treated as having, limited capability for work-related activity.

1 SS & CS (D&A) Regs (NI), reg 3(5F)

Example

Lydia's award of Employment and Support Allowance included the support component. She was referred for a further routine work capability assessment, and the decision maker finds that Lydia does not have limited capability for work. The award of Employment and Support Allowance is terminated from 22.5.12. Lydia makes a new claim from 7.8.12 and provides evidence of a new health condition. The decision maker awards Employment and Support Allowance at the assessment phase rate.

Following application of the work capability assessment, the decision maker determines that Lydia has limited capability for work and limited capability for work-related activity. The decision maker revises the decision awarding Employment and Support Allowance to include the support component from 7.8.12.

Treated as having limited capability for work-related activity

44644 Where a claimant

1. was previously entitled to Employment and Support Allowance including the support component[1] **and**

2. makes a further claim where the periods of limited capability for work link[2] **and**

3. is not required to serve the assessment phase[3] as in DMG 44637

they are treated as having limited capability for work-related activity[4].

1 WR Act (NI) 07, sec 2(2) or 4(4); 2 ESA Regs (NI), reg 145(1) & (2); 3 reg 7(1B)(a); 4 reg 35A

Incapacity Benefit Reassessment: termination of transitional addition

44645 DMG 45846 gives guidance on treating the transitional addition as suspended rather than terminated where

1. an award of Employment and Support Allowance made following conversion from an existing award **and**

2. a repeat claim for Employment and Support Allowance is made **and**

3. the periods of limited capability for work link[1].

1 ESA (TP & HB)(EA) Regs (NI), reg 21(3), (4) & (5)

44646 In 12 week linking cases, the transitional addition is treated as suspended[1] where

1. the circumstances in paragraph DMG 44645 apply **and**

2. the previous award was terminated

2.1 other than where the decision maker determined that the claimant did not have, or was treated as not having, limited capability for work[2] **or**

2.2 where the decision maker determined that the claimant did not have, or was treated as not having, limited capability for work, and on the repeat claim it is determined that the claimant has, or is treated as having, limited capability for work, other than pending the work capability assessment[3].

1 ESA (TP & HB)(EA) Regs (NI), reg 21(3), (4); 2 reg 21(5)(c)(i); 3 reg 21(5)(c)(ii); ESA Regs (NI), reg 30

Example 1

Leo's award of Income Support was converted to income-related Employment and Support Allowance. The award includes the support component and a transitional addition. His entitlement is terminated from 14.6.12 when he is joined by his partner Yvette, who is in full-time remunerative work. Leo continues to be entitled to National Insurance credits. The relationship breaks down, and Yvette leaves the household. Leo makes another claim for income-related Employment and Support Allowance on 25.7.12. The decision maker awards him income-related Employment and Support Allowance including the support component and the transitional addition from 25.7.12.

Example 2

Clifford's award of Income Support was converted to income-related Employment and Support Allowance including the support component and a transitional addition. Following a routine application of the work capability assessment, the decision maker determines that Clifford does not have limited capability for work. The award of Employment and Support Allowance is terminated from 17.4.12. Clifford makes a new claim for Employment and Support Allowance from 26.6.12, providing evidence that his health condition has deteriorated. The decision maker awards Employment and Support Allowance at the assessment phase rate from 26.6.12 pending application of the work capability assessment. Following application of the work capability assessment, the decision maker determines that Clifford has limited capability for work and limited capability for work-related activity. The decision maker

revises the awarding decision to pay the support component and the transitional addition from 26.6.12.

Backdating of entitlement to the support component

44647 Where the assessment phase has lasted for a period greater than 13 weeks then entitlement to the support component may be backdated[1]. No component is included if the decision maker determines that the claimant does not or cannot be treated as having limited capability for work-related activity.

Note: From 3.4.17 the work-related activity component is no longer included in an award of Employment and Support Allowance for claims made on or after that date. See Appendix 6 for where transitional provisions apply.

1 WR Act (NI) 07, sec 2(4)(b) & 4(6)(b)

44648 Once a determination has been made as to whether the claimant has

1. limited capability for work and limited capability for work-related activity **or**

2. limited capability for work but does not have limited capability for work-related activity

the decision maker should award the support component[1] for both **1.** and **2.** the assessment phase has now ended[2]. The claimant is now entitled to main phase Employment and Support Allowance[3].

1 WR Act (NI) 07, sec 2(2), 2(3), 4(4) & 4(5); 2 ESA Regs (NI), reg 4; 3 reg 2(1)

The appropriate component

44649 The decision maker awards[1]

1. the support component if DMG 44648.**1** applies **or**

2. no component if DMG 44648.**2** applies.

1 SS & CS (D&A) Regs (NI), reg 6(2)(q); ESA Regs (NI), reg 67(3)

The date to which entitlement to the support component is backdated

44650 The backdating of the support component is to the day which would have been the first day of the main phase if the claimant's assessment phase had actually lasted 13 weeks. This means that the award of a component will take effect from the 92nd day of entitlement to Employment and Support Allowance[1]. This also applies where the assessment phase is made up of linked periods.

1 SS & CS (D&A) Regs (NI), reg 7(37)

Example 1

Toby's award of Employment and Support Allowance begins on 1st May. There is a delay in carrying out the test for limited capability for work and Toby isn't finally assessed until 16th August. Following the assessment the decision maker decides that Toby is entitled to the support component and this is backdated to 31st July. This is because this is the day that would have been the first day of the main phase for Toby if the assessment phase had actually lasted 13 weeks.

Example 2

Sara's award of Employment and Support Allowance began on 1st May before coming to an end on 15th May. Sara then reclaims Employment and Support Allowance from 1st June. The assessment for limited capability for work isn't carried out until 7th September. Following the assessment, the decision maker decides that Sara is entitled to the support component and this is backdated to 17th August. This is because this is the day that would have been the first day of the main phase for Sara following a 13 week assessment phase running from 1st May to 14th May and then 1st June to 16th August.

Contribution-based Employment and Support Allowance and pension payments

Deductions from contribution-based Employment and Support Allowance for pension payments

Introduction

44651 The guidance on this subject has been moved to Chapter 51

44652 – 44899

Statutory Payments

Statutory Sick Pay

44900 A claimant is not entitled[1] to Employment and Support Allowance in respect of a day if, for the purposes of Statutory Sick Pay, that day

1. is a day of incapacity for work in relation to employed earners' employment[2], **and**

2. falls within a period of entitlement to Statutory Sick Pay[3].

1 WR Act (NI) 07, sec 20(1); 2 sec 20(1)(a); 3 sec 20(1)(b)

44901 A partner's entitlement to Statutory Sick Pay does not prevent entitlement for the claimant. See Chapter 51 for the effect of a partner's Statutory Sick Pay on a claimant's entitlement to income-related Employment and Support Allowance.

Statutory Maternity Pay and contribution-based Employment and Support Allowance

44902 A woman is not entitled[1] to contribution-based Employment and Support Allowance for any day within the maternity pay period where she is entitled to Statutory Maternity Pay unless

1. on the day immediately before the first day in the maternity pay period[2] she is in a period of limited capability for work[3] **and**

2. she satisfies the contribution conditions for contribution-based Employment and Support Allowance[4] **and**

3. on any day during the maternity pay period she is in a period of limited capability for work[5] **and**

4. that day is not a day where she is treated as not having limited capability for work[6].

1 WR Act (NI), sec 20(2); 2 ESA Regs (NI) reg 80(1)(a); 3 reg 80(1)(a)(i); 4 reg 80(1)(a)(ii); 5 reg 80(1)(b)(i); 6 reg 80(1)(b)(ii)

44903 Where DMG 44902 applies the woman is entitled to contribution-based Employment and Support Allowance for any day in the maternity pay period where contribution-based Employment and Support Allowance is payable[1]. The amount of contribution-based Employment and Support Allowance which is payable is reduced by the amount of Statutory Maternity Pay to which she is entitled. The balance, if any, of

contribution-based Employment and Support Allowance is payable for the week or part-week[2].

1 ESA Regs (NI), reg 80(2); 2 reg 80(3)

Statutory Adoption Pay and contribution-based Employment and Support Allowance

44904 A claimant is not entitled[1] to contribution-based Employment and Support Allowance for any day within the adoption pay period unless on the day immediately before the first day of the adoption pay period[2]

1. that claimant is in a period of limited capability for work[3] **and**

2. satisfies the contribution conditions for contribution-based Employment and Support Allowance[4] **and**

3. on any day during the adoption pay period that claimant is in a period of limited capability for work[5] **and**

4. that day is not a day where that claimant is treated as not having limited capability for work[6].

1 WR Act (NI) 07 sec 20(4); 2 ESA Regs (NI), reg 81(1); 3 reg 81(1)(a)(i); 4 reg 81(1)(a)(ii); 5 reg 81(1)(b)(i); 6 reg 81 (1)(b)(ii)

44905 Where DMG 44904 applies the claimant is entitled to contribution-based Employment and Support Allowance for any day in the adoption pay period where contribution-based Employment and Support Allowance is payable[1]. The amount of contribution-based Employment and Support Allowance which is payable is reduced by the amount of Statutory Adoption Pay to which the claimant is entitled. The balance, if any, of contribution-based Employment and Support Allowance is payable for the week or part-week[2].

1 ESA Regs (NI), reg 81(2); 2 reg 81(3)

Additional Statutory Paternity Pay and contribution-based Employment and Support Allowance

44906 A claimant is not entitled[1] to contribution-based Employment and Support Allowance for any day within the additional paternity pay period unless

1. on the day immediately before the first day of the additional paternity pay period[2] that claimant is treated as being in a period of limited capability for work[3] **and**

2. satisfies the contribution conditions for contribution-based Employment and Support Allowance[4] **and**

3. on any day during the additional statutory paternity pay period, that the claimant is in a period of limited capability for work[5], **and**

4. that day is not a day where that claimant is treated as not having limited capability for work[6].

1 WR Act (NI) 07, sec 20(6); 2 ESA Regs (NI), reg 82(1)(a); 3 reg 82(1)(a)(i); 4 reg 82(1)(a)(ii); 5 reg 82(1)(b)(i); 6 reg 82(1)(b)(ii)

44907 Where DMG 44906 applies the claimant is entitled to contribution-based Employment and Support Allowance for any day in the additional paternity pay period where contribution-based Employment and Support Allowance is payable[1]. The amount of contribution-based Employment and Support Allowance which is payable is reduced by the amount of Additional Statutory Paternity Pay to which the claimant is entitled. The balance, if any, of contribution-based Employment and Support Allowance is payable for the week or part-week[2].

1 ESA Regs (NI), reg 82(2); 2 reg 82(3)

44908

Shared Parental Pay and contribution-based Employment and Support Allowance

44909 A claimant is not entitled[1] to contribution-based Employment and Support Allowance for any day within the shared parental pay period unless

1. on the day immediately before the first day of the shared parental pay period[2] that claimant is treated as being in a period of limited capability for work[3] **and**

2. satisfies the contribution conditions for contribution-based Employment and Support Allowance[4] **and**

3. on any day during the shared parental pay period the claimant is in a period of limited capability for work[5] **and**

4. that day is not a day where that claimant is treated as not having limited capability for work[6].

1 WR Act (NI) 07, sec 20(7); 2 ESA Regs (NI), reg 82A(1)(a); 3 reg 82A(1)(a)(i); 4 reg 82A(1)(a)(ii); 5 reg 82A(1)(b)(i); 6 reg 82A(1)(b)(ii)

44910 Where DMG 44909 applies the claimant is entitled to contribution-based Employment and Support Allowance for any day in the Shared Parental Pay period where contribution-based Employment and Support Allowance is payable[1]. The amount of

contribution-based Employment and Support Allowance which is payable is reduced by the amount of Shared Parental Pay to which the claimant is entitled. The balance, if any, of contribution-based Employment and Support Allowance is payable for the week or part-week[2].

1 ESA Regs (NI), reg 82A(2); 2 reg 82A(3)

Note: Statutory shared parental pay period means the weeks in respect of which statutory shared parental pay is payable to a person under prescribed legislation[1].

1 SS C&B (NI) Act 92, sec 167ZZ2(2)

44911 – 44999

Appendix 1

Income-related Employment and Support Allowance applicable amounts: personal allowances

Introduction

1 The rate of personal allowance payable in income-related Employment and Support Allowance depends upon

1. whether the claimant is single or is a member of a couple

2. the age of the claimant and any partner

3. whether any special circumstances apply to the couple

4. whether the claimant is in the assessment phase or the main phase

Assessment phase

Personal allowances for single claimants (not lone parents)

2 The rate of the personal allowance paid to a single person who is not a lone parent in the assessment phase depends on the person's age. A single person may be entitled to the

1. aged less than 25 years old personal allowance for a single claimant[1] **or**

2. aged 25 years or older personal allowance for a single claimant[2].

1 ESA Regs (NI), Sch 4, para 1(1)(c); 2 Sch 4, para 1(1)(b)

Aged less than 25 years old

3 A single claimant aged less than 25 is entitled to this personal allowance[1].

1 ESA Regs (NI), Sch 4, para 1(1)(c)

Aged 25 years or older

4 A single claimant aged 25 years or older is entitled to this personal allowance[1].

1 ESA Regs (NI), Sch 4, para 1(1)(b)

Personal allowances for lone parents (not single claimants)

5 The rate of the personal allowance paid to a lone parent in the assessment phase depends on the lone parent's age. A lone parent may be entitled to the

1. aged less than 18 years old personal allowance for a lone parent[1] **or**

2. aged 18 years or older personal allowance for a lone parent[2].

1 ESA Regs (NI), Sch 4, para 1(2)(c); 2 Sch 4, para 1(2)(b)

Aged less than 18 years old

6 A lone parent aged less than 18 years old is entitled to this personal allowance[1].

1 ESA Regs (NI), Sch 4, para 1(2)(c)

Aged 18 years or older

7 A lone parent aged 18 years or older is entitled to this personal allowance[1].

1 ESA Regs (NI), Sch 4, para 1(2)(b)

Personal allowances for couples and members of a polygamous marriage

Members of couples

8 The personal allowance for couples in the assessment phase where both members are not yet 18 or, one of the couple is aged 18 or over depends on the couple's circumstances. A couple may be entitled to a

1. couple's allowance (see para 12 and para 13) **or**

2. single person's allowance (see paras 14, 15 and 16).

Members of polygamous marriages

9 Claimants who are members of a polygamous marriage should be treated in the same way as those claimants who are members of a couple. The decision maker should not allow an amount for a partner who is not yet 18 years old unless that partner[1]

1. is treated as responsible for a child **or**

2. would, as a single person, be entitled to income-related Employment and Support Allowance **or**

3. would be entitled to income-based Jobseeker's Allowance for any period in DMG 30514 **or**

4. has a Department's Jobseeker's Allowance severe hardship direction.

1 ESA Regs (NI), reg 68(2)

10 The decision maker should decide the appropriate personal allowance for the claimant and one partner. The partner chosen for this decision should be

1. any partner aged 18 or over **or**

2. if **1.** does not apply, any partner who satisfies para 6 **or**

3. if **1.** or **2.** does not apply, any partner.

11 The applicable amount should include[1]

1. personal allowances for the claimant and the partner chosen as in para 10 **and**

2. personal allowances for each other partner that is the difference between

2.1 the higher rate for a couple **and**

2.2 the rate for a single claimant aged 25 or over **and**

3. any premium, housing costs or transitional element.

1 ESA Regs (NI), reg 68(1)

Couple entitled to personal allowance for a couple where both members are aged less than 18

12 A claimant is entitled to this personal allowance in the assessment phase if the claimant is a member of a couple where both members are aged less than 18 and[1]

1. one of the couple is treated as responsible for a child **or**

2. had they not been members of a couple each member would qualify for income-related Employment and Support Allowance **or**

3. had they not been members of a couple the claimant's partner would be entitled to Income Support **or**

4. the claimant's partner would be entitled to income-based Jobseeker's Allowance

4.1 for any period in DMG 30514 **or**

4.2 because the partner is the subject of a Department's Jobseeker's Allowance severe hardship direction.

1 ESA Regs (NI) Sch 4, para 1(3)(d)

Couple entitled to personal allowance normally paid to couples where both aged 18 or over

13 A claimant is entitled to this personal allowance in the assessment phase if one member of the couple is aged 18 or over and the other member is aged less than 18 who[1]

1. if not a member of a couple would be entitled to Income Support **or**

2. if not a member of a couple would be entitled to income-related Employment and Support Allowance **or**

3. would be entitled to income-based Jobseeker's Allowance for any period in DMG 30514 **or**

4. is the subject of a Department's Jobseeker's Allowance severe hardship direction.

1 ESA Regs (NI), Sch 4, para 1(3)(b)

Couple entitled to the single person aged 25 or over personal allowance

14 A claimant is entitled to this personal allowance in the assessment phase if

1. the claimant is aged 25 or over **and**

2. the claimant's partner is aged less than 18[1] **and**

2.1 would not, if a single person, be entitled to income-related Employment and Support Allowance

2.2 would not, if a single person, be entitled to Income Support **and**

2.3 would not be entitled to income-based Jobseeker's Allowance as a young person **and**

2.4 is not the subject of a Department's Jobseeker's Allowance severe hardship direction.

1 ESA Regs (NI), Sch 4, para 1(3)(e)

Couple entitled to an aged less than 25 year old personal allowance

15 A claimant is entitled to this personal allowance in the assessment phase if the claimant is aged 18 to 24 and the claimant's partner is aged less than 18 and the claimant's partner[1]

1. would not, if a single person, be entitled to Income Support **and**

2. would not be entitled to income-based Jobseeker's Allowance as a young person **and**

3. is not the subject of a Department's Jobseeker's Allowance severe hardship direction.

1 ESA Regs (NI), Sch 4, para 1(3)(h)

16 A claimant is entitled to this personal allowance in the assessment phase if both members of the couple are aged less than 18 and para 12 does not apply[1].

1 ESA Regs (NI), Sch 4, para 1(3)(i)

Both members aged 18 or older

17 A couple in the assessment phase where both members are aged 18 or more are entitled to this allowance[1].

1 ESA Regs (NI), Sch 4, para 1(3)(a)

Main phase

Personal allowances for single claimants (not lone parents)

18 The rate of the personal allowance paid to a single claimant who is not a lone parent in the main phase is a standard rate[1]. It does not depend

1. on any special circumstances **or**

2. the claimant's age

1 ESA Regs (NI), Sch 4, para 1(1)(a)

Personal allowances for lone parents (not single claimants)

19 The rate of the personal allowance paid to a lone parent in the main phase is a standard rate[1]. It does not depend

1. on any special circumstances **or**

2. the claimant's age

1 ESA Regs (NI), Sch 4, para 1(2)(a)

Members of couples

20 The personal allowance for couples in the main phase where both members are not yet 18 or, one of the couple is aged 18 or over, depends on the couple's circumstances. A couple may be entitled to a

1. couple's allowance (see paragraph 22 and paragraph 23) **or**

2. single person's allowance (see paragraphs 24 and 25).

21 The guidance on polygamous marriages at paragraphs 9 - 11 also applies in the main phase.

Couple entitled to personal allowance for couples where both are aged 18 or over

22 A claimant is entitled to this personal allowance in the main phase if both members of the couple are aged 18 or over[1].

1 ESA Regs (NI), Sch 4, para 1(3)(a)

Couple entitled to personal allowance for a couple where both members are aged less than 18

23 A claimant is entitled to this personal allowance in the main phase if the claimant is a member of a couple where both members are aged less than 18 and[1]

1. one of the couple is treated as responsible for a child **or**

2. had they not been members of a couple each member would qualify for income-related Employment and Support Allowance **or**

3. had they not been members of a couple the claimant's partner would be entitled to Income Support **or**

4. the claimant's partner would be entitled to income-based Jobseeker's Allowance

4.1 for any period in DMG 30514 **or**

4.2 because the partner is the subject of a Department's Jobseeker's Allowance severe hardship direction.

1 ESA Regs (NI), Sch 4, para 1(3)(c)

Couple entitled to the single person aged 25 or over personal allowance

24 A claimant is entitled to this personal allowance in the main phase if

1. the claimant's partner is aged less than 18[1] **and**

2. would not, if a single person be entitled to income-related Employment and Support Allowance

3. would not, if a single person, be entitled to Income Support **and**

4. would not be entitled to income-based Jobseeker's Allowance as a young person **and**

5. is not the subject of a Department's Jobseeker's Allowance severe hardship direction.

1 ESA Regs (NI), Sch 4, para 1(3)(f)

25 A claimant is entitled to this personal allowance in the main phase if

1. both members of the couple are aged less than 18 **and**

2. paragraph 23 does not apply[1].

1 ESA Regs (NI), Sch 4, para 1(3)(g)

Appendix 2

The remunerative work rule for non-dependant housing cost deductions

1 This guidance sets out the remunerative work rule as it applies for non-dependant deductions when calculating the amount of housing costs in income-related Employment and Support Allowance[1].

1 ESA Regs (NI), Sch 6, para 2

Introduction

2 Remunerative work[1] is work for which payment is made, or which is done

1. in expectation of payment **and**

2. in which the person is engaged for not less than

2.1 16 hours a week **or**

2.2 16 hours a week on average where the hours of work fluctuate.

1 ESA Regs (NI), Sch 6, para 2(1)

Does the person have employment

3 Decision makers should decide that a person is not in remunerative work if they do not have any employment and are between jobs. Decision makers will need to decide whether employment has ended if someone has been engaged in remunerative work.

4 Decision makers should decide that a person is still in employment and not between jobs if

1. the contract of employment (which can be written or verbal) is still current **or**

2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because

2.1 there is an express agreement (written or verbal) **or**

2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

Off-shore oil workers

5 Off-shore oil workers may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

6 It is a question of fact for the decision maker whether the work is continuing or not. The decision maker will need to consider, amongst other things, whether there is a continuing relationship between the person and the employer. Frequent resumption of work with the same employer may be an indication that work is continuing (see paragraph 4 **2.2**).

Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognisable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. The decision maker has to decide whether Dennis is in remunerative work at a time when he is not working. On looking at the facts of Dennis' past work for the company, the decision maker is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The decision maker decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

Treated as in or not in remunerative work

7 A person engaged in remunerative work may be **treated** as **not** being in remunerative work (see paragraphs 141 et seq)[1]. Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work[2] (see paragraphs 126 et seq).

1 ESA Regs,Sch 6, para 2(5); 2 para 2(4)

Work done for payment or in expectation of payment

8 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The decision maker should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it **or**

2. it is done in expectation of payment[1].

Remunerative does not mean profitable (see paragraph 11).

1 ESA Regs (NI), Sch 6, para 2(1); R(IS) 1/93

Payment in kind

9 "Payment" includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

Example 1

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work.

Example 2

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

Expectation of payment

10 Work "done in expectation of payment" means more than a mere hope that payment will be made at a future date[1]. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

Self-employed earners

11 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the time. The decision maker need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why[1].

1 CA, CAO v Ellis (R(IS) 22/95)

Sale of goods

12 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

Note: Also that payment may be derived from takings.

Business start up

13 An allowance payable under certain schemes to assist people to become self-employed is not payment for work[1].

Note: That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

1 CA, CAO v. Smith

14 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

Example

Annie and her husband run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

Company directors

15 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director[1]. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a self-employed earner.

1 R(IS) 5/95

16 - 20

Establishing hours of work

Introduction

21 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count. See paragraph 42 for guidance on teachers.

Counting the hours

Flexible working schemes

22 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

Overtime

23 Overtime for which payment is made or expected counts towards the weekly total.

Night duty

24 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if

1. payment made or expected is less than for normal daytime duties

2. the time on the night duty is spent sleeping.

Example

Michelle works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than for her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The decision maker decides that Michelle is in remunerative work.

Evidence of hours

25 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

26 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a self-employed earner follow the guidance at paragraph 28 to establish any additional hours worked.

Musicians

27 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

Example 1

A musician teaches at a school for 6 hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

Example 2

A musician is engaged to perform music. The performances last for 12 hours a week. She practices the performances for 10 hours a week. She is engaged in remunerative work.

Self-employed

28 Include all the hours necessary to run the business, for example, time spent in

1. trips to wholesalers and retailers

2. visits to potential customers

3. advertising or canvassing

4. cleaning the business premises

5. cleaning and maintaining items used in the business, for example a taxi or driving school car

6. providing estimates

7. book-keeping

8. research work, for example where the person is a writer.

29 Where a self-employed person is running a business which is

1. building up **or**

2. winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

30 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

Example

Peter, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of ten customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the decision maker concluded that he worked six hours a day, five days a week, a total of 30 hours a week.

31 If a self-employed person has been doing undisclosed work or working more hours than is claimed, the decision maker must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.

32 - 41

Teachers

42 The conditions of employment of schoolteachers in grant aided schools in Northern Ireland are laid down in an Order[1] and Regulations[2]. They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables

2. assessing and reporting on pupils

3. helping to administer and organise the school

4. advising pupils and ensuring their discipline, health and safety

5. discussing pupils' progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the decision maker is unsure whether a teacher is obliged to do a particular activity, consult the Order or Regulations or job description.

1 Education & Libraries (NI) Order 86, art 69;
2 Teachers (Terms & Conditions of Employment) Regs (NI) (No.267) & (No.299)

43 Before either the Order or Regulations came into force, teachers were generally required by their contracts to carry out the duties now laid down[1]. Members of the teaching profession not covered by the Order or Regulations (for example higher education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work **or**

2. any such work is included in the hours of work laid down in the contract.

1 Sim v Rotherham Metropolitan Borough Council [1986] 3WLR 851; R(U) 5/88;
Teachers (Terms & Conditions of Employment) Regs (NI) Sch 3

44 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person's own evidence if it seems reasonable. If a person states that the time spent on non-teaching duties is anything up to one third of the time spent teaching, accept this without question.

45 It may be reasonable to accept a larger proportion than a third depending on the

1. teacher's experience

2. subjects being taught

3. method of teaching

4. amount of homework to be marked

5. number of pupils.

In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

46 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

Paid breaks

47 Paid breaks do count when establishing the hours of remunerative work. If an employer pays a person earnings in respect of a meal or refreshment break then those hours count towards the weekly remunerative work limit[1].

1 ESA Regs (NI), Sch 6, para 2(7)

48 - 57

Calculating average hours

58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours[1].

1 ESA Regs (NI), Sch 6, para 2(2)

Identifying a recognisable cycle

59 See if there is any pattern of work over a period of time. This is known as a recognisable cycle[1]. A recognisable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

Example 1

week 1	X hours
week 2	Y hours
week 3	X hours
week 4	X hours
week 5	Y hours
week 6	X hours

There is a recognisable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

Example 2

month 1	A hours
month 2	B hours
month 3	A hours
month 4	B hours

There is a recognisable cycle of two months.

Example 3

week 1 X hours

week 2 X hours

week 3 Y hours

eek 4 W hours

week 5 V hours

There is no recognisable cycle.

Note: A cycle may include weeks in which no work is done[2].

1 ESA Regs (NI), Sch 6, para 2(2)(a); 2 Sch 6, para 2(2)(a)(i)

Permanent or indefinite contract

60 A recognisable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

Example

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. The decision maker decides that Julia's contract establishes a cycle from its outset.

Fixed term contracts and casual workers

61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)[1]. Decision makers should decide each case on its facts. The decision maker will need to consider whether 2 complete cycles would be necessary if 1 year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. Decision makers should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

Example

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He does not work for the Christmas holiday but says that he has been asked to return to work after the holidays. Bill tells the decision maker that he expects to return to work as he did the previous January. The decision maker decides that Bill has established a recognisable cycle of work and that it has not been broken. Bill is in remunerative work because on average he works 16 hours or more a week.

Extra work

62 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle[1].

1 R(JSA) 5/02

Example

Celeste is employed as a shop assistant by a students union. The terms of her employment contract are "Monday to Friday, 8.15 am to 1.15 pm term time only". Celeste agrees to do extra work stocktaking during the first week of the summer holidays. The decision maker is asked to decide whether she is in remunerative work on the day after she finishes the extra work. The decision maker decides that Celeste's contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

Probation

63 A recognisable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

Example

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a 6 month probationary period, specifies that he is expected to work during term times and not during school holidays. The decision maker decides that he is in a recognisable cycle from the outset of the contract and, on average, works 16 hours or more a week. He is in remunerative work.

64 - 69

Recognisable cycle established

70 Where there is a recognisable cycle calculate the average hours over one complete cycle[1]. Include, where the cycle involves periods when the person does no work, those periods, but disregard any other absences.

1 ESA Regs (NI), Sch 6, para 2(2)(a)

Periods when a person does not work

[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]

71 Periods when a person does not work can fall into the following categories

1. periods of absence because of sickness, maternity leave, paternity leave or adoption leave

2. periods of unauthorised absence "without good cause"

3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer

4. periods during which someone can be properly regarded as on holiday.

Note: For periods during which someone is not working because they are between jobs they are not in remunerative work, see paragraphs 2 - 5.

Sickness, maternity leave, paternity leave, adoption leave and periods of unauthorised absence

[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]
[See DMG Memo Vol 4/155, 5/118, 8/104, 9/53, 10/81, 13/126 & 14/74]

72 When someone is absent from work due to sickness, maternity leave, paternity leave or adoption leave (see paragraph 141) the decision maker should decide that they are not in remunerative work during such absences[1]. When someone has a period of absence without good cause the decision maker should treat such an absence in the same way as proper holidays[2] (see paragraph 79).

1 ESA Regs (NI), Sch 6, para 2(5); 2 para 2(4)

Holidays or periods of no work

73 The decision maker should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid[1]. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

1. spread over a year in equal instalments **and**

2. enhanced to take account of a lack of holiday entitlement

should not be taken into account when deciding whether someone has paid holidays.

1 R(JSA) 5/03

74 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99[1].

1 Working Time Regulations (NI) 1998 SR No. 386

Calculating the number of hours for which a person is engaged in work

75 **[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]** If the decision maker has decided that a person is still in employment (see paragraphs 2 - 5) (and they are not absent from work due to sickness, maternity leave, paternity leave or adoption leave) they will need to calculate the number of hours for which the person is engaged in work.

76 If the person works the same number of hours each week when not on holiday, that is the number of hours worked in each week.

77 If the person's hours of work fluctuate, the decision maker should take an average

1. as per paragraph 90 if there is no cycle of work **or**

2. as per paragraph 79 if there is a cycle of work.

78

Calculating the average hours

79 **[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]** Legislation[1] requires that in cycle cases where the hours of work fluctuate the average should be calculated by taking into account periods in which the person does not work but disregarding other absences. Decision makers should only deduct periods of holiday, absences without good cause, sickness, maternity leave, paternity leave and adoption leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle. Periods of no work should not be deducted. Put another way, it is only periods of holiday, absences without good cause, sickness, maternity leave, paternity leave and adoption leave which are "other absences to be disregarded".

1 ESA Regs (NI), Sch 6, para 2(2)(a)

80 - 87

No recognisable cycle established

Estimating future hours

88 Where

1. a person has just started work or is about to start work **or**

2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work **or**

3. because of absences from work a recognisable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week[1].

1 ESA Regs (NI), Sch 6, para 2(3)

89 Average the estimated hours over a period long enough to cover the expected pattern of work[1]. Consider the case where there is sufficient evidence to average the actual hours worked.

1 R(IS) 8/95

Averaging past hours

90 Where the person has been in work before the date of claim and a recognisable cycle has not been established calculate average weekly hours over

1. the 5 weeks immediately before the date of claim[1] **or**

2. a longer or shorter period immediately before the date of claim if the 5 week period in **1.** does not give a fair average.

"Immediately before" in this context means the end of the last complete week before the date of claim.

1 ESA Regs (NI), Sch 6, para 2(2)(b)

91 Include in the calculation at paragraph 90 any periods of non-working within the normal pattern of employment (rest periods)[1].

1 R(IS) 12/95

92 Examples of circumstances in which it may not be appropriate to use the 5 week period in paragraph 90 **1.** are where the

1. 5 weeks contain a period of absence which distorts the average **or**

2. 5 weeks do not show the person's normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**

3. person is paid at intervals of longer than a week.

In either of the circumstances in **1.** or **2.** a period of less than 5 weeks as in paragraph 90 **2.** might give a fairer result. Extending the period beyond the last 5 weeks would still include the distortions so in these circumstances estimate future hours as in paragraph 88.

93 If the decision maker bases a weekly average of hours over a period of more or less than 5 weeks, as in paragraph 90 **2.**, the alternative period must still be a period immediately before the date of claim.

It should be either

1. more than the 5 week period in paragraph 90 **1.**, in which case it will include those 5 weeks **or**

2. less than the 5 week period in paragraph 90 **1.**, in which case it will be a part of those 5 weeks immediately before the date of claim.

94 The approaches outlined in paragraph 88 and paragraph 90 are alternatives. There is no provision for the decision maker to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

Short-time workers

95 Employers experiencing a fall in business may put their employees on short-time working. This can be

1. a reduction in hours worked each day **or**

2. no work on certain days of the week **or**

3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in paragraphs 88 - 89 and estimate future hours[1] at the start of short-time working until average hours over a past period can be calculated[2]. Periods of no work should be included in the average.

1 ESA Regs (NI), Sch 6, para 2(3); R(IS) 8/95; 2 ESA Regs (NI), Sch 6, para 2(2)(a) & (b)

96 - 106

Changes to the normal hours

107 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**

2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**

3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather and the decision maker decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over

3.1 the cycle of work if there is now a recognisable cycle[1] **or**

3.2 the 5 week period or other more suitable period immediately before the date of application for supersession[2].

1 ESA Regs (NI), Sch 6, para 2(2)(a); 2 para 2 (2)(b)

Seasonal workers

108 The normal remunerative work rules apply to self-employed seasonal workers except where the business ceases to operate during the off-season. If it does, the person is no longer self-employed and cannot be in remunerative work. Accept that a business has ceased to operate where no activities in connection with the business are undertaken during the off-season (see DMG Chapter 50).

Business ceases during off-season

109 A person is not in remunerative work once the business has ceased to operate.

Business continues during the off-season

110 Where the business continues during the off-season a person will be treated as engaged in remunerative work throughout the year if the hours, or average hours, are 16 or more a week[1] for the person.

1 ESA Regs (NI), Sch 6, para 2(1)

Averaging the hours

111 Calculate average hours over

1. if there is a recognisable cycle - one complete cycle of work (this will usually be one year where a business continues to operate throughout the year). Include periods in which the person does no work, but exclude other absences such as holidays or sickness[1] **or**

2. if there is no recognisable cycle - over the 5 week period, or other more suitable period, immediately before the date of claim[2].

Include in the calculation time spent on all activities connected with the business.

1 ESA Regs (NI), Sch 6, para 2(2)(a); 2 Sch 6, para 2(2)(b)

Agency and casual workers

112 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

113 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

114 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

See DMG Chapter 49 for guidance on when employment ends. If the question of non-dependants arises after employment is terminated, the person will not be in remunerative work.

115 - 125

People treated as in remunerative work

Introduction

126 People can be treated as in remunerative work even though they are absent from remunerative work[1]. However see paragraph 141 for details of when this rule does not apply[2].

1 ESA Regs (NI), Sch 6, para 2(4); 2 Sch 6, para 2(5)

127 Treat people as in remunerative work for any period during which they are[1]

1. absent without good cause **or**

2. absent by reason of a recognised, customary or other holiday.

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

Absent without good cause

128 "Good cause" is for the decision maker to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorised the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause. Examples of good cause include where the absence is due to

1. bereavement or sudden serious illness in the family **or**

2. a disaster at home **or**

3. suspension from work, whether or not on full pay **or**

4. a requirement to attend court.

Recognised, customary or other holiday

129 A person should be treated as in remunerative work for any period of absence because of a recognised, customary or other holiday[1]. This is the case even if there is no permanent contract of employment. But this will not apply where the

1. absence is not a holiday (see paragraph 73) **or**

2. work is not remunerative as in paragraph 1 et seq **or**

3. person goes on holiday after employment ends.

See DMG Chapter 41 for guidance on what is a recognised, customary or other holiday.

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

130 - 140

People treated as not in remunerative work

Leave or absence from work

[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]
[See DMG Memo Vol 4/155, 5/118, 8/104, 9/53, 10/81, 13/126 & 14/74]

141 A person shall be treated as not being in remunerative work[1] on any day on which they are

1. on maternity leave **or**

2. on paternity leave **or**

3. on adoption leave **or**

4. absent from work because of illness.

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

142

Meaning of adoption leave

143 Adoption leave[1] means a period of absence from work on ordinary or additional adoption leave in accordance with legislation[2].

1 ESA Regs (NI), reg 2(1); 2 Employment Rights (NI) Order 1996, art 107A or 107B

Categories of people at work but treated as not in remunerative work

144 In certain circumstances[1] a person who is in remunerative work should be treated as not being in remunerative work. These are where the person is

1. engaged in childminding in the childminder's home[2] **or**

2. engaged by a charity or voluntary organisation or is a volunteer[3] **or**

3. engaged on a training scheme[4] **or**

4. receiving assistance under the self-employment route[5] **or**

5. engaged in specific occupations[6] **or**

6. performing duties as a councillor[7] **or**

7. engaged as a foster parent or in providing respite care[8] **or**

8. engaged in an activity which attracts a sports award[9].

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

1 ESA Regs (NI), Sch 6, para 2(6); 2 reg 43(1)(a); 3 reg 43(1)(b); 4 reg 43(1)(c); 5 reg 43(1)(d); 6 reg 43(1)(e); 7 reg 43(1)(f); 8 reg 43(1)(g); 9 reg 43(1)(h)

145 In addition, there are other circumstances[1] where a person should be treated as not being in remunerative work, **regardless** of the type of work undertaken. These are where the person is

1. disabled[2] **or**

2. affected by a trade dispute[3] **or**

3. caring for another person[4] **or**

4. living in a residential care home, a nursing home, an Abbeyfield home or an independent hospital[5]

1 ESA Regs (NI), Sch 6, para 2(8); 2 reg 43(2)(a); 3 reg 43(2)(b); 4 reg 43(2)(c); IS (Gen) Regs (NI), Sch 1B, para 4; 5 ESA Regs (NI), reg 43(2)(d)

Childminders

146 People who are childminders are treated as not being in remunerative work as long as the childminding is done in their home[1]. If the childminding is done in the employer's home the hours worked will count towards the remunerative work exclusion.

1 ESA Regs (NI), reg 43(1)(a)

Charity or voluntary workers and volunteers

147 People are treated as not being in remunerative work where they are engaged by a charity or voluntary organisation or are volunteers **and**

1. the only payment

1.1 received **or**

1.2 due to be paid

is for expenses incurred **and**

2. they receive no remuneration or profit **and**

3. they are not treated as having notional earnings[1] (see DMG Chapter 49).

1 ESA Regs (NI), reg 43(1)(b) & Sch 8, para 2

Meaning of voluntary organisation

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

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

Meaning of volunteer

149 A volunteer is a person who is engaged in voluntary work otherwise than for a relative where the only payment

1. received **or**

2. due to be paid

to that person is in respect of any expenses reasonably incurred in connection with the work[1].

1 ESA Regs (NI), reg 43(4)

Engaged on a training scheme

150 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance is being paid[1].

1 ESA Regs (NI), reg 43(1)(c)

Note: For people in the self-employment option of 18-24 of the New Deal for lone parents see DMG 14410.

People receiving assistance under the self-employed route

151 People are treated as not being in remunerative work where they are receiving assistance under the self-employed route[1] (see DMG 14001).

1 ESA Regs (NI), reg 43(1)(d)

Meaning of self-employed route

152 For the meaning of self-employed route see DMG 14000.

Engaged in specific occupations

153 People are treated as not being in remunerative work where they are

1. a part-time fire and rescue officer[1] as specified under certain legislation **or**

2. auxiliary coastguards for coastal rescue activities[2] **or**

3. working part-time in the manning or launching of a lifeboat[3] **or**

4. members of a territorial or reserve force[4].

1 ESA Regs (NI), reg 43(1)(e)(i); Fire & Rescue Services (NI) Order 2006, art 3;
2 ESA Regs, reg 43(1)(e)(ii); 3 reg 43(1)(e)(iii); 4 reg 43(1)(e)(iv)

Councillors

154 People who perform duties as a councillor are treated as not being in remunerative work[1].

1 ESA Regs (NI), reg 43(1)(f)

Meaning of councillor

155 A councillor[1] means a member of a district council[2].

1 ESA Regs (NI), reg 2(1); 2 Local Government Act (NI) 1972, sec 1(3)

156

Foster parents and people providing respite care

Foster parents

157 A claimant's partner who receives payments from

1. a Health and Social Services Board or Health and Social Services trust under its duty to provide

1.1 accommodation **and**

1.2 maintenance

for fostering a child[1] **or**

2. a

2.1 voluntary organisation under certain legislation[2] **or**

2.2 juvenile justice centre[3]

for children who are living under caring arrangements

is treated as not being in remunerative work[4].

1 Children (NI) Order 95, art 27(2)(a); 2 art 75(1)(a); 3 Criminal Justice (Children) (NI) Order 1998, art 43(2); 4 ESA Regs (NI), reg 43(1)(g) & Sch 8, para 27

158

People providing respite care

159 People who provide respite care are treated as not being in remunerative work[1] if

1. the person requiring care is being cared for in the claimant's home **and**

2. the person requiring care is not normally a member of the claimant's household **and**

3. the only payments received are specified payments[2] from a

3.1 Health and Social Services Board **or**

3.2 Health and Social Services trust **or**

3.3 voluntary organisation **or**

3.4 person concerned under specified legislation[3] **or**

3.5 juvenile justice centre[4].

1 ESA Regs (NI), reg 43(1)(g); 2 Sch 8, para 28; 3 HPSS (NI) Order 91, art 36(7); 4 Criminal Justice (Children) (NI) Order 98, art 51(1)

Sports awards

160 People are treated as not being in remunerative work[1] if

1. they are engaged in an activity for which a sports award has been or is to be made[2] **and**

2. no other payment is made or expected to be made to them in respect of the activity[3].

1 ESA Regs (NI), reg 43(1)(h); 2 reg 43(1)(h)(i); 3 reg 43(1)(h)(ii)

Meaning of sports award

161 A sports award[1] is an award made by one of the Sports Councils named in National Lottery legislation[2] and out of sums allocated under that legislation.

1 ESA Regs (NI), reg 2(1); 2 National Lottery etc. Act 1993, sec 23(2)

Disabled workers

162 People are treated as not being in remunerative work where they are mentally or physically disabled[1] and as a result of that disability

1. earn 75 per cent or less of what a person without that disability working the same number of hours would reasonably be expected to earn[2] **or**

2. work 75 per cent or less of the hours that a person without that disability would reasonably be expected to do in the same work or in a similar job in the area[3].

1 ESA Regs (NI), reg 43(2)(a); 2 reg 43(2)(a)(i); 3 reg 43(2)(a)(ii)

163 The person's own evidence of reduced earnings or hours should normally be accepted. However, if necessary, decision makers should obtain further evidence for comparison purposes. This may include information from private employment agencies, social services departments or charities for the disabled.

People affected by a trade dispute

164 Where the person is involved in a trade dispute and they are treated as not being in remunerative work unless the payments listed at DMG Chapter 41 are being taken into account[1].

1 ESA Regs (NI), reg 43(2)(b)

Caring for another person

165 People are treated as not being in remunerative work where they are[1]

1. regularly and substantially engaged in caring for another person and that person

1.1 is in receipt of "attendance allowance" or the care component of Disability Living Allowance at the highest or middle rate[2] **or**

1.2 has claimed "attendance allowance" or Disability Living Allowance **or**

1.3 has

1.3.a made an advance claim for **and**

1.3.b an award of **and**

1.3.c not completed the qualifying period for

"attendance allowance" or the care component of Disability Living Allowance at the highest or middle rate[3] **or**

1.4 has

1.4.a made an advance claim for **and**

1.4.b an award of **and**

1.4.c completed the qualifying period for

"attendance allowance" or the care component of Disability Living Allowance at the highest or middle rate and the award is in payment **or**

2. both entitled to and in receipt of Carer's Allowance[4] and caring for another person.

Note: See DMG Chapter 41 for guidance on deciding whether or not a person is regularly and substantially caring.

1 ESA Regs (NI), reg 43(2)(c); IS (Gen) Regs (NI), Sch 1B, para 4; 2 SS C&B (NI) Act 92, sec 72(3); 3 sec 65(6)(a); SS (C&P) Regs (NI), reg 13A; 4 SS C&B (NI)Act 92, sec 70

166 Where para 165 **1.2** above applies people are treated as not in remunerative work until the earlier of[1]

1. the date the claim for "attendance allowance" or Disability Living Allowance is decided **or**

2. 26 weeks from the date of claim for "attendance allowance" or Disability Living Allowance.

1 IS (Gen) Regs (NI), Sch 1B, para 4(a)(ii) & (iii)

People living in a residential care home, nursing home Abbeyfield home or an independent hospital

167 People who

1. are in employment **and**

2. live in certain types of accommodation

are treated as not being in remunerative work[1].

1 ESA Regs (NI), reg 43(2)(d)

168 Paragraph 167 applies only to a person who

1. lives in (whether permanently or temporarily) or is temporarily absent from

1.1 a residential care home **or**

1.2 a nursing home **or**

1.3 an Abbeyfield home **or**

1.4 an independent hospital **and**

2. requires personal care because of

2.1 old age **or**

2.2 disablement **or**

2.3 past or present dependence on alcohol or drugs **or**

2.4 past or present mental disorder **or**

2.5 a terminal illness.

Appendix 3

Housing costs - amount of non-dependant deductions

1 This appendix provides the rates of the non-dependant deductions[1]. See Appendix 2 for guidance on remunerative work.

1 ESA Regs (NI), Sch 6, para 19(1) & (2)

Rates from 8.4.13

2 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £87.75

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £126.00	£13.60
2.2	£126.00 to £185.99	£31.25
2.3	£186.00 to £241.99	£42.90
2.4	£242.00 to £321.99	£70.20
2.5	£322.00 to £400.99	£79.95
2.6	£401.00 or more	£87.75

3. any other non-dependant aged 18 or over for whom deductions are relevant - £13.60.

Rates from 7.4.14

3 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £91.15

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £128.00	£14.15
2.2	£128.00 to £187.99	£32.45

2.3 £188.00 to £244.99 £44.55

2.4 £245.00 to £325.99 £72.95

2.5 £326.00 to £405.99 £83.05

2.6 £406.00 or more £91.15

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.15.

Rates from 6.4.15

4 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £93.80

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £129.00 £14.55

2.2 £129.00 to £188.99 £33.40

2.3 £189.00 to £245.99 £45.85

2.4 £246.00 to £327.99 £75.05

2.5 £328.00 to £407.99 £84.45

2.6 £408.00 or more £93.80

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.55.

Rates from 11.4.16

5 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £94.50

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £133.00 £14.65

2.2 £133.00 to £194.99 £33.65

2.3 £195.00 to £252.99 £46.20

2.4 £253.00 to £337.99 £75.60

2.5 £338.00 to £419.99 £86.10

2.6 £420.00 or more £94.50

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.65.

Rates from 10.4.17

6 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £94.50

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £136.00 £14.80

2.2 £136.00 to £199.99 £34.00

2.3 £200.00 to £258.99 £46.65

2.4 £259.00 to £345.99 £76.35

2.5 £346.00 to £429.99 £86.95

2.6 £430.00 or more £95.45

3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.80.

Rates from 6.4.18

7 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £98.30

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1 Less than £139.00 £15.25

2.2 £139.00 to £203.99 £35.00

2.3 £204.00 to £264.99 £48.05

2.4 £265.00 to £353.99 £78.65

2.5 £354.00 to £438.99 £89.55

2.6 £439.00 or more £98.30

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.25.

Rates from 8.4.19

8 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £100.65

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £143.00	£15.60
2.2	£143.00 to £208.99	£35.85
2.3	£209.00 to £271.99	£49.20
2.4	£272.00 to £362.99	£80.55
2.5	£363.00 to £450.99	£91.70
2.6	£451.00 or more	£100.65

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.60.

Rates from 6.4.20

9 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £102.35

2. the decision maker is satisfied that the non-dependant in remunerative work has a gross weekly income of

2.1	Less than £149.00	£15.85
2.2	£149.00 to £216.99	£36.45
2.3	£217.00 to £282.99	£50.05
2.4	£283.00 to £376.99	£81.90
2.5	£377.00 to £468.99	£93.25
2.6	£469.00 or more	£102.35

3. any other non-dependant aged 18 or over for whom deductions are relevant - £15.85.

Appendix 4

Housing costs - unsafe structural defects

This Appendix contains a list of structural elements that are considered to come within the meaning of unsafe structural defects. But decision makers should note that

1. all work connected with items on the list is not automatically entitled to help as an unsafe structural defect, however help may be available under a different repairs and improvements provision

2. the list is not exhaustive - other work could come within the meaning of the repair of an unsafe structural defect when considered on its merits

3. the costs of survey work reasonably necessary or incidental to the carrying out of actual physical remedial work should be included.

Relevant structural elements

1. foundations, including damp proof courses

2. external load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door

3. party walls, excluding any applied finish, window, glazed screen or door

4. party floors, excluding any applied finish, bedding or floorboards

5. load bearing roof components, including ceiling joists

6. private balcony floors, excluding any applied finish or bedding

7. communal balconies, excluding handrails, balustrades and any applied finish or fittings

8. communal staircases, excluding handrails, balustrades and any applied finish or fittings

9. internal load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door

10. parapet walls

11. chimney stacks

12. structures on the structure, such as motor rooms and water tank enclosures

13. roof coverings where the section of the roof affected, or the nature of the defect, is such as to require the replacement of all or a significant part of the roof

14. door frames, but not external or internal doors

15. window frames, but not sashes or glass to windows which may qualify under a different provision

16. lift shafts.

Appendix 5

Housing costs - leasehold major works

Introduction

1 The following guidance explains about the amount of benefit allowed as a housing cost for leasehold residents where their accommodation is modernised under the Decent Homes initiative.

Background

2 The Decent Homes initiative was extended by the Public Service Agreement in response to a challenge from the government to increase the number of households in the private sector living in decent homes. This includes homes of former local authority tenants who have purchased their property under the right to buy scheme.

3 In order to be decent a home should meet the current statutory minimum standard for housing, be in a reasonable state of repair and have reasonably modern facilities and services.

4 The building components that should be in a reasonable state of repair include external walls, roof structure and coverings, windows and doors, heating systems, plumbing and electrics. Modern facilities are indicated by kitchens less than 20 years old and bathrooms less than 30 years old and, for blocks of flats, there should be adequate size and layout of common areas.

5 Landlords are achieving the Decent Homes standard by a programme of regeneration and refurbishment with building works carried out on their leasehold housing stock.

Costs

6 The cost of the structural work and refurbishments will be charged to leaseholders through service charges. A service charge is, as decided in R(IS) 4/91, a charge which the claimant is obliged to pay in terms of their occupancy agreement for services rendered in terms of that agreement.

7 Some residents may choose to meet their service charge costs by obtaining a home improvement loan. From 6.4.18 these loans can no longer be considered as housing costs (see ADM Memo 8/18).

Service Charge

8 To determine what part of the service charge is eligible to be met as a housing cost the claimant will provide the annual service charge account which should include an itemised breakdown of the total expenditure including the reason that each item or structure has been replaced or refurbished. For example:

Items	**Major Building works**	**Costs**	**Unit cost/ dwelling**	**Reason for work**
Electrical installations	Replace mains distribution board, rising and lateral mains cables	£13,040	£1,630	Updating old systems and wiring
Rainwater goods	Replace guttering and down pipes	£2,400	£300	Leaking, broken and in disrepair

Note: To be representative of different sized dwellings the unit cost may be presented on the annual account as a fraction or a percentage of the total cost.

9 Having identified the amount charged for a year the decision maker should convert the total costs for the claimant's portion of the refurbishment works into a weekly amount (dividing by 52) and then from that weekly total deduct any ineligible costs. The resulting sum represents the weekly amount of eligible service charge.

Ineligible costs

10 Ineligible costs[1] which should be deducted from the weekly amount arise in three circumstances. These are

1. where the costs are inclusive of any items mentioned in paragraph 6(2) of Schedule 1 to the Housing Benefit Regulations (Northern Ireland) 2006 (payments in respect of fuel charges)

2. where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit Regulations (Northern Ireland) 2006 (ineligible service charges) the amount attributable to those ineligible service charges

3. any amount for repairs and improvements.

1 JSA Regs (NI), Sch 2, para 16(2); IS (Gen) Regs (NI), Sch 3, para 17(2); ESA Regs (NI), Sch 6, para 18(2); SPC Regs (NI), Sch 2, para 13(2)

11 The ineligible charges[1] mentioned in paragraph 10 **1.** above concern payments in respect of fuel charges and are unlikely to arise under the Decent Homes improvements.

1 HB Regs (NI), Sch 1, para 6(2)

12 There are several ineligible service charges[1], mentioned in paragraph 10 **2.** above, which includes any charges that are not connected with the provision of adequate accommodation, however these are unlikely to arise under the Decent Homes improvements.

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

13 "Repairs and improvements", mentioned in paragraph 10 **3.** above, means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling

1. Provision of a fixed bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including the provision of hot water not connected to a central heating system;

2. Repairs to existing heating systems;

3. Damp proof measures;

4. Provision of ventilation and natural lighting;

5. Provision of drainage facilities;

6. Provision of facilities for preparing and cooking food;

7. Provision of insulation of the dwelling occupied as a home;

8. Provision of electric lighting and sockets;

9. Provision of storage facilities for fuel or refuse;

10. Repairs of unsafe structural defects;

11. Adapting a dwelling for the special needs of a disabled person; **or**

12. Provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 20 who is part of the same family as the claimant.

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

1. The upkeep/maintenance of communal pathways, gardens[1], repair of a lift and repointing of brickwork are all connected with the provision of adequate accommodation. The costs of a car park barrier, a car park attendant[2], the installation of a pergola and the repair of a clock tower are all connected with the provision of adequate accommodation.

2. Works which are to be funded out of the service charge can be for the avoidance of the need for the repair of unsafe structural defects. For example, timely replacement of slackening roofing tiles will prevent the roof timbers becoming rotted to the point of collapse through water penetration[3].

3. Where there are windows there is natural light already and no need to provide it[3].

4. Provision is something not already in existence or the replacement of something which no longer functions[3].

5. Re-pointing is not a damp proof measure, redecoration is not a repair or improvement and so their associated costs are not deducted from the service charge[4].

6. By preventing the entry of rainwater a roof may prevent damp, damp proofing may not be the predominant purpose of a roof and although a roof repair might have the predominant purpose of preventing damp a roof renewal would not[5].

1 CIS/1496/95; 2 CIS/2205/00; 3 R(IS) 2/07; 4 CIS/667/02; 5 CIS/2132/98

15 The final weekly amount of the service charge is then attributed to a 52 week period from the date the liability arose[1].

Note: The attribution period for this service charge is independent of any prior service charge that is already in payment so the dates are unlikely to be the same.

1 JSA Regs (NI), Sch 2, para 16(3); IS (Gen) Regs (NI), Sch 3, para 17(3); ESA Regs (NI), Sch 6, para 18(3); SPC Regs (NI), Sch 2, para 13(3)

Example

The leasehold residents of a 2 storey flat complex have had their building modernised under the Decent Homes programme at a cost of £90,400, the work involved the prudent renewal of the communal electrical wiring, windows and doors, the lift, replacing all the roof tiles, external redecoration, the perimeter fencing and the upgrading of the roof space insulation. The costs are levied as a service charge and each of the 8 residents are required to contribute an appropriate share of the costs. In this case each person's share of the costs amounted to £11,300 which comprised

of £1,100 for wiring, £2,800 for windows and doors, £2,000 for lift renewal, £3,200 for roof tiles, £500 towards redecoration, £900 for fencing and £800 towards insulation.

Resident 1, Juliet, is liable for the service charge (she does not obtain a loan to meet the service charge). The decision maker decides that the £11,300 is a service charge[1] and that this converts to a weekly amount of £217.31 a week (£11,300 divided by 52). From the weekly amount there should be deducted the costs of any works considered to be, not connected with the provision of adequate accommodation or a repair or improvement. The decision maker considers that, all the works are connected with the provision of adequate accommodation (therefore there is nothing to deduct as described by paragraph 10 **2.** above). The decision maker considers the roof renewal is not a damp proof measure[2] and therefore not a repair or improvement, the rewiring is not the provision of electrical lighting or sockets[3] and not a repair or improvement, the replacement of windows and doors is not the provision of natural lighting or ventilation[4], the upgrading of roof space insulation with better rated material is not the provision of insulation and neither redecoration[5], the lift replacement, nor fencing are included in the exhaustive list of potential repair or improvements. As there is nothing in the works to indicate that what is contemplated is anything more than the prudent renewal of protective decoration or the replacement of potentially unserviceable items with similar items, then there is nothing that is a repair or improvement (as described by paragraph 10 **3.** above) and therefore nothing to deduct. The cost of the building works is met in full giving a housing cost service charge of £217.31 a week.

1 R(IS) 4/91; 2 CIS/2132/1998; 3 CSJSA/160/98; 4 CIS/2901/04; 5 CSJSA/106/98

Typical Repairs

16 The following table contains a list of some of the typical building repair and refurbishments carried out on leasehold accommodation under the Decent Homes initiative including corresponding columns highlighting eligibility where the costs are met by either a loan or a service charge.

Typical repairs		**Service charge**
Roof	a. Major Repair	No
	b. Renewal	Yes
	c. Replacement	Yes
	d. Chimney stack repairs	Yes
Roof safety	This may include fitting roof safety rails, or roof safety harness's, allowing regular inspection and maintenance	Yes
Insulation	a. Roof insulation b. Wall insulation	Yes if not provision
Building frame repairs	Cladding to the exterior of the building to prevent damage to the structure, insulates protects building from the elements	Yes
Concrete repairs	This may include cleaning, painting and protective coating, or repairs (including the concrete frame)	Yes
External walls	a. Brickwork cleaning	Yes
	b. Repairs to brickwork, pointing, repairs to rendered surfaces	
	c. Replace wall ties	
Balconies walkways	a. Repairs to balcony balustrades and handrails	Yes
	b. Repairs to common walkways and balconies	
Windows	a. Replacement	Yes
	b. Replacement of single glaze with double glaze	

Typical repairs		Service charge
Communal doors	Repair and replacement of communal doors, ensuring compliance with fire regulations	Yes
External redecoration	Carry out the redecoration to all external elements of the existing fabric of the building, including use of anti-graffiti paint where appropriate	Yes
Communal area repairs & decoration	a. Carry out redecoration of all communal internal areas including corridors and stairways, using fire retardant and/or anti-graffiti paint where appropriate	Yes
	b. Replacement of communal flooring	
Rainwater goods	Repair/replace guttering and down pipes	Yes if not provision
Drains	a. Rod and Jetting wash through all existing drainage and inspection chambers	Yes
	b. Replace communal waste/soil pipes	Yes if not provision
	c. Major repair or replacement	
Electrical Installations	a. Replace mains distribution board	Yes
	b. Replace rising and lateral mains cables	
	c. Replace bulk head lighting to communal staircases & balcony soffits	Yes if not provision
	d. Replace communal corridor lighting	
TV Aerial	a. Replace analogue aerial with digital, may include replacing cabling serving all units	Yes
	b. Installation of satellite dish to receive additional channels	Yes

Typical repairs		**Service charge**
Ventilation	a. Maintenance and cleaning of communal shafts & flues	Yes
	b. Replace communal extractor fans	Yes if no provision
Entry Systems and Access	a. Installation or renewal of entry systems, which may include cabling and handsets in each property	Yes
	b. Works to comply with Disability Discrimination Act	Yes
Entry Systems and Access	a. Installation or renewal of entry systems, which may include cabling and handsets in each property	Yes
	b. Works to comply with Disability Discrimination Act	Yes
Damp works	All methods of damp proofing, which may include:	
	a. Insertion of chemical damp proof course	No
	b. Laying a waterproof membrane on the basement floor	No
Refuse/ recycling systems	Replacement or repair of refuse/recycling systems and or hopper heads	Yes if not provision
Bin chambers	Repairs to communal bin chambers	Yes
Lifts	a. Replacement of lift car, control panel and components	Yes
	b. Replace lift motor room equipment	Yes
	c. Major overhaul	Yes
	d. Installing lifts and shafts	Yes

Typical repairs		Service charge
Dry rot works	May include:	
	May include:	Yes
	a. Chemical treatment of problem areas	
	b. Replacement of structural timbers such as joists	No
Water pumps	May include:	
	a. Installation of pumps due to reduced water mains pressure	Yes
	b. Replacement of an existing pump	Yes
Fire safety	a. Install, repair or replace communal fire detection systems	No
	b. Installation or renewal of smoke detectors	No
	c. Replacement of dry risers to tower blocks (essential part of fire fighting)	Yes
	d. Install, repair or replace fire escapes	Yes
Lightning protection	Installation or replacement of lightning conductor	Yes
Asbestos removal	Removal of asbestos under controlled conditions	Yes
Communal Heating	a. Major overhaul or replacement of communal heating systems or individual elements	No
	b. Installation of communal heating systems	Yes

Typical repairs		**Service charge**
Estate works	a. Estate lighting	Yes if not provision
	b. Controlled access and security	Yes
	c. Repairs to estate roads or paths	Yes
	d. Provision and refurbishment of recreational areas	Yes
	e. Landscaping	Yes
	f. Boundary walls and fences	Yes
Associated costs	Costs essential to the works, **costs** which may include:	
	a. Surveys	Yes
	b. Preliminaries e.g. site set up costs	Yes
	c. Fees	Yes
	d. Access equipment e.g. scaffolding	Yes
	e. Health and safety	Yes

Appendix 6

Removal of work-related activity component: savings

1 From 3.4.17, the work-related activity component can no longer be included in an award of Employment and Support Allowance for claims made on or after that date. This means that, where an Employment and Support Allowance claimant

1. is found to have, or is treated as having limited capability for work **and**

2. does not have, or is not treated as having, limited capability for work-related activity **and**

3. enters the main phase

no component is included in the Employment and Support Allowance award[1].

1 ESA Regs (NI), reg 67(3) & Sch 4, para 1 & 12

2 The removal of the work-related activity component does not apply where any of the circumstances in paragraphs 3 - 12 apply[1].

1 ESA (Conseq Amdt etc) Regs (NI), Sch 2, para 2

Meaning of claim

3 A claim means making a claim for Employment and Support Allowance in accordance with specified provisions[1]. See DMG Chapter 02 for detailed guidance on making a claim for Employment and Support Allowance.

1 SS (C&P) Regs (NI), reg 4ZC; 4G, 4H & 4F

4 Decision makers should note that an award of Employment and Support Allowance made pending the outcome of an appeal against a decision embodying a determination that the claimant does not have limited capability for work is made without the need to make a claim[1]. However, the claimant may be protected from the removal of the work-related activity component as in paragraphs 8 or 11.

1 SS (C&P) Regs (NI), reg 3(j)

Example

Lionel's award of Employment and Support Allowance is terminated from 29.3.17 after he is found not to have limited capability for work. The decision maker refuses to revise the disallowance following a mandatory reconsideration, and Lionel appeals

to the Appeal Tribunal. He is awarded Employment and Support Allowance from 27.4.17 pending the outcome of the appeal. On 5.9.17 Lionel's appeal succeeds, and the Appeal Tribunal places him in the work-related activity group. The Appeal Tribunal's decision is implemented to award Employment and Support Allowance with the work-related activity component up to 26.4.17, and the decision maker revises the decision awarding Employment and Support Allowance from 27.4.17 to include the work-related activity component from the same date.

Claim made before 3.4.17

5 Where

1. the claimant has made or is treated as having made a claim for Employment and Support Allowance before 3.4.17 **and**

2. that claim results in an award of Employment and Support Allowance

the removal of the work-related activity component does not apply[1].

1 ESA (Conseq Amdts etc) Regs (NI), Sch 2, para 2

6 The guidance at paragraph 5 applies whether the award of Employment and Support Allowance is made

1. immediately following that claim **or**

2. following mandatory reconsideration **or**

3. on appeal.

Example 1

Catherine claims Employment and Support Allowance on 28.3.17. She is awarded Employment and Support Allowance from 4.4.17. On 26.7.17 following the work capability assessment, the decision maker determines that Catherine has limited capability for work, but does not have limited capability for work-related activity. Catherine's award of Employment and Support Allowance is superseded to include the work-related activity component from 4.7.17.

Example 2

Brian claims Employment and Support Allowance and is awarded from 5.8.16 at the assessment phase rate. He is treated as not having limited capability for work from 18.4.17 when the decision maker determines that Brian does not have good cause for a failure to attend the medical examination. Brian applies for a mandatory reconsideration, and when the decision is not revised, lodges an appeal to the Appeal

Tribunal. The Appeal Tribunal allows the appeal, and Brian's award of Employment and Support Allowance is reinstated when he sends in backdated fit notes again. Following the work capability assessment, Brian is found to have limited capability for work, and the decision awarding Employment and Support Allowance is superseded to award the work-related activity component from 4.11.16.

7 The guidance at paragraph 6 also applies where it is determined that the claimant has, or is treated as having, limited capability for work and limited capability for work-related activity, and later following a repeat work capability assessment, it is determined that the claimant has limited capability for work, but no longer has limited capability for work-related activity.

Example

Shani's award of Employment and Support Allowance from 2016 includes the support component. Following a routine repeat work capability assessment, on 20.4.17 the decision maker determines that Shani has limited capability for work but no longer has limited capability for work-related activity. Shani's award is superseded from 20.4.17 to remove the support component and include the work-related activity component.

Claimants previously found to have limited capability for work before 3.4.17

8 Where a claimant

1. is awarded Employment and Support Allowance on or after 3.4.17 and has, or is treated as having limited capability for work **and**

2. a previous award of Employment and Support Allowance ended within 12 weeks of the current period of limited capability for work **and**

3. the combined period of limited capability for work began before 3.4.17

the removal of the work-related activity component does not apply[1]

1 ESA (Conseq Amdts etc) Regs (NI), Sch 2, para 4

Example 1

Edmund has been entitled to Employment and Support since November 2016 at the assessment phase rate. His award is terminated on 30.3.17 after he is found not to have limited capability for work. He makes a further claim for Employment and Support Allowance on 5.6.17 after developing a new health condition. After the work capability assessment, Edmund is found to have limited capability for work, but not

limited capability for work-related activity. As the periods of limited capability for work link, Edmund's award includes the work-related activity component from 5.6.17.

Example 2

Anne's award of Employment and Support Allowance is terminated on 30.3.17 when she starts work. Anne finds the work too difficult because of her health condition, and she makes a further claim for Employment and Support Allowance on 5.6.17. Following the work capability assessment, Anne is found to have limited capability for work but not limited capability for work-related activity. As the periods of limited capability for work link, Anne's award of Employment and Support Allowance includes the work-related activity component.

Incapacity Benefit reassessment cases

9 Where

1. the claimant is entitled to Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of disability **and**

2. the conversion process begins (whether before or after 3.4.17) **and**

3. the claimant is found to have, or is treated as having, limited capability for work or limited capability for work-related activity (whether for old style or new style Employment and Support Allowance)

the removal of the work-related activity component does not apply[1].

Note: See DMG Chapter 45 for detailed guidance on Incapacity Benefit reassessment and the conversion process.

1 ESA (Conseq Amdts etc) Regs (NI), Sch 2, para 4; ESA (TP & HB)(EA) Regs (NI), reg 4

Example 1

Richard is entitled to Incapacity Benefit, and on 15.3.17 is notified that the conversion process has begun. Following the work capability assessment, Richard is found to have limited capability for work and limited capability for work-related activity, and his award is converted to contribution-based Employment and Support Allowance including the support component. Later, Richard's health condition improves, and after a repeat work capability assessment, on 26.10.17 he is found to have limited capability for work but not limited capability for work-related activity. Richard's award is superseded to remove the support component and include the work-related activity component.

Example 2

Bridget is entitled to Severe Disablement Allowance and Income Support, and on 6.4.17 she is notified, that the conversion process has begun. Following the work capability assessment, the decision maker determines Bridget has limited capability for work, and her award is converted to an award of Employment and Support Allowance with the work-related activity component from 12.7.17.

Claim made within the prescribed time for claiming before 3.4.17

10 Where

1. a claim for Employment and Support Allowance is made on or after 3.4.17 **and**

2. the claim is made within the prescribed time for claiming from a date before 3.4.17

the removal of the work-related activity component does not apply[1].

1 ESA (Conseq Amdts etc) Regs (NI), Sch 2, para 2; SS (C&P) Regs (NI), reg 19(1) & Sch 4, para 16

Example

Eoin claims Employment and Support Allowance and provides a fit note to say he is not fit for work from 11.1.17. He is awarded Employment and Support Allowance from 18.1.17. Following application of the work capability assessment, the decision maker determines that Eoin has limited capability for work and supersedes the awarding decision to add the work-related activity component from 26.4.17.

Assessment phase begins before 3.4.17

11 Where

1. a claim for Employment and Support Allowance is made on or after 3.4.17 **and**

2. the assessment phase begins before 3.4.17 under specified legislation[1]

the removal of the work-related activity component does not apply[2].

1 ESA Regs (NI), reg 5; ESA (Conseq Amdts etc) Regs (NI), Sch 2, para 6

Example

George is entitled to Jobseeker's Allowance and begins a Jobseeker's Allowance extended period of sickness on 21.1.17. His condition does not improve as expected, and on 6.4.17 he claims Employment and Support Allowance. George is found to have limited capability for work but not limited capability for work-related activity. The period of Jobseeker's Allowance extended period of sickness is treated as a period of Employment and Support Allowance entitlement, and George's assessment phase begins on 21.1.17. His award of Employment and Support Allowance from 6.4.17 includes the work-related activity component from 22.4.17.

Previously entitled to Maternity Allowance

12 Where

1. the claimant has been entitled to Maternity Allowance[1] and the end of that award is no longer than 12 weeks before a new claim for Employment and Support Allowance **and**

2. immediately before the award of Maternity Allowance began, the claimant was previously entitled to Employment and Support Allowance before 3.4.17

the removal of the work-related activity component does not apply[2].

Note: See DMG Chapter 62 for guidance on Maternity Allowance.

1 SS C&B Act (NI) 92, sec 35; 2 ESA (Conseq Amdts etc) Regs (NI), Sch 2, para 7

Example

Adele is entitled to Maternity Allowance from 5.9.16. She was entitled to income-related Employment and Support Allowance immediately before that date. However, she is not entitled to income-related Employment and Support Allowance while she is entitled to Maternity Allowance. Her entitlement to Maternity Allowance ends on 4.6.17. Adele makes a further claim for Employment and Support Allowance on 19.6.17. Her award of Employment and Support Allowance includes the work-related activity component.

Appendix 7

Transitional end day

1 From 6.4.18 the regulations which provide for entitlement to payments in respect of loans and loans for repairs and improvements[1] within the Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and State Pension Credit regulations are omitted[2]. As a result these support for mortgage interest payments will no longer be met through those benefits. Payment towards other housing costs, for example service charges, will continue. Certain transitional arrangements are in place for existing claimants whose housing costs can continue to be met (beyond 6.4.18) but only until the transitional end day[3].

1 IS (Gen) Regs (NI), reg 17(1)(e) & 18(1)(f); JSA Regs (NI), reg 83(f) & 84(1)(g) & 86A; ESA Regs (NI), reg 67(1)(c) & 68(1)(d); SPC Regs (NI), Sch II, para 1(1)(b) & (2)(c) & 8, 9, 11 & 12; 2 LMI Regs (NI), reg 18; 3 reg 19

Loan offer made before 6.4.18

2 Where the loan offer is made before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 8 below **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends[1].

Note: The following paragraphs contain detailed options. Decision makers should be vigilant when establishing the transitional end day.

1 LMI Regs (NI), reg 19(1)

3 For the purposes of paragraph 2 **1.** the day referred to is the later of

1. for claimants of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit, where 6.4.18 is not the first day of the claimant's benefit week, the first day of the first benefit week that begins after 6.4.18 **or**

2. the day immediately following the day which is the earliest[1] to occur of the following

2.1 the day the decision maker receives notification that the claimant does not wish to accept the offer of loan payments **or**

2.2 where the decision maker

2.2.a receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 9 below **or**

2.2.b has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant[3].

1 LMI Regs (NI), reg 19(2); 2 reg 19(3); 3 reg 2(1)

Example

William is in receipt of Income Support that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6.4.18). From this date William is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

4 For the purposes of paragraph 3 **2.2.a** the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received[1].

1 LMI Regs (NI), reg 19(3)(b)

Loan offer made on or after 6.4.18

5 Where the loan offer does not occur before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 6 below **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends[1]

3. the day immediately following the day the decision maker receives notification that the claimant does not wish to receive loan payments[1].

1 LMI Regs (NI), reg 19A(1)

6 For the purposes of paragraph 5 **1.** the day referred to is

1. 7.5.18[1] **or**

2. where the loan payments offer date is before 7.5.18 **and**

2.1 the decision maker receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2.2 the decision maker has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[2].

Note: Where the day described in paragraph **2.1** or **2.2** above is not the first day of the claimant's assessment period, the day referred to here is the first day of the first assessment period that begins after that date[2].

1 LMI Regs (NI), reg 19A(2)(a); 2 reg 19A(2)(b)

7 For claimants of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit, where 7.5.18 or the day described at paragraph 5 **3.** is not the first day of the claimant's benefit week, the first day of the first benefit week that begins after that day[1].

Note: The loan payments offer date is the day on which the loan agreement is sent to the claimant.

1 LMI Regs (NI), reg 19A(3)

8 Where

1. before 19.3.18 the decision maker has asked the claimant to provide information needed to

1.1 establish whether the claimant wishes to receive an offer of a loan payment **or**

1.2 be able to send the loan agreement and associated documents **and**

2. the claimant has not provided that information

then the preceding paragraphs 10 to 12 do not apply and the owner occupier payments are removed, subject to paragraph 14, from 6.4.18[1].

1 LMI Regs (NI), reg 19A(4)

9 Where paragraph 13 applies (and this is not because the claimant lacks capacity) and the 6.4.18 is not the first day of the claimants assessment period then the removal of the owner occupier payments from benefit entitlement is effective from the first day of the first assessment period that begins after that date[1].

1 LMI Regs (NI), reg 19A(5)

Persons who lack capacity - identified before 6 April 2018

10 Where, before 6.4.18 the decision maker

1. is satisfied that the claimant lacks capacity to make some or all the decisions about entering into the loan agreement **or**

2. suspects that the claimant may lack such capacity

then claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below[1].

1 LMI Regs (NI), reg 20(1)

11 The date referred to in paragraph 15 falls on the day that is the earlier of

1. the day described in paragraph 17 or paragraph 19 **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends[1].

1 LMI Regs (NI), reg 20(2)

12 For the purposes of paragraph 16 **1.** that day is the later of

1. 5.11.18 **or**

2. where, before 6.4.18, the decision maker suspects the claimant lacks capacity but prior to 5.11.18 the decision maker's suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the decision maker formed that belief[1] **or**

3. where an application for a decision of a type described in the Note below is made before the later of

3.1 5.11.18 **or**

3.2 the day prescribed in paragraph 17 **2.**

the relevant day is the day immediately following[2]

3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision **or**

3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn[3].

1 LMI Regs (NI), reg 20(3)(b); 2 reg 20(3)(c); 3 reg 20(4)

Note: In England and Wales the relevant person is the Court of Protection or Public Guardian and the decision they need to determine would concern registering a lasting power of attorney, appointing a deputy or making an order in order that someone has

the power to act on the claimant's behalf in respect of entering in the loan agreement. In Scotland the relevant person is the Sheriff or Court of Session and the decision they need to determine would concern the making of an intervention order, the appointment of a guardian or the appointment of a judicial factor in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement[1].

1 LMI Regs (NI), reg 20(7); Adults with Incapacity(Scotland) Act 2000, s 53; Judicial Factors Act 1849; Mental Capacity Act 2005; s16(2)

Example 1

Bert receives State Pension Credit which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5.11.18, the later of the dates outlined in paragraph 12 **3.**, which is the earlier of the dates in paragraph 26. Owner occupier payments will continue until that date.

Example 2

Ernest receives State Pension Credit which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Financial Deputy. Owner occupier payments continue. On 30.10.18, Jim advises the decision maker that he has been appointed. The transitional end date for Ernest is 6 weeks after that determination which in this particular case is 11.12.18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

13 Where more than one application for a decision (as described in the Note to paragraph 12) is made within the intervening period cited at 12 **3.** then the periods described in paragraph 12 **3.** do not start to run until the relevant person has decided the last application or that all the applications are withdrawn[1]. Similarly where there is one application for a decision referred to in the Note but it is made within the intervening period to more than one relevant person then the day will be the later of the days[2].

1 LMI Regs (NI), reg 20(5); 2 reg 20(6)

14 Where, before 6.4.18, the decision maker suspects the claimant lacks capacity but prior to 5.11.18 the decision maker's suspicion becomes a belief that the claimant

does not in fact lack capacity then the relevant day is the day immediately following the earlier of

1. the day described in paragraph 15 **or**

2. the day on which the decision maker is notified that the claimant does not wish to receive loan payments[1].

1 LMI Regs (NI), reg 20(8)

15 For the purposes of paragraph 14 **1.** the relevant day is the earlier of

1. where the decision maker receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2. where the decision maker has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends[1].

Note: Where the day described in paragraph **1.** or **2.** above is not the first day of the claimant's assessment period, the day referred to here is the first day of the first assessment period that begins after that date[1].

1 LMI Regs (NI), reg 20(9)

16 For claimants of Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit, where 5.11.18 or the day described at paragraph 14 **2.** or paragraph 15 is not the first day of the claimant's benefit week, the first day of the first benefit week that begins after that day[1].

1 LMI Regs (NI), reg 20(10)

The content of the examples in this document (including use of imagery) is for illustrative purposes only.