# Chapter 51 - Income other than earnings

## Contents

### General

#### Introduction

Scope of this chapter ..... 51000
Meaning of claimant ..... 51001
What is income ..... 51002
How much income should be taken into account ..... 51003
Deductions from benefits ..... 51004
Reduction due to a failure to attend a work-focused interview or work-related activity ..... 51005
Overpayment recovery from other income ..... 51006
Deduction of income tax ..... 51008
Questions on the treatment of income ..... 51009

#### Income taken fully into account

**Types of income taken fully into account** ..... 51020

#### Benefits taken fully into account

Bereavement allowance ..... 51022
Carer's Allowance ..... 51023
Contribution-based Employment and Support Allowance ..... 51024
Incapacity Benefit ..... 51031
Industrial death benefit ..... 51032
Industrial injuries disablement benefit ..... 51033
Contribution-based Jobseeker's Allowance ..... 51037
Maternity Allowance ..... 51038
Retirement Pension ..... 51039
Severe Disablement Allowance ..... 51042
War orphan's pension ..... 51043
Widow's benefit (widow's payment, widow's pension) ..... 51044
Working Tax Credit ..... 51045
Workmen's compensation (supplementation) scheme ..... 51046

**Pension payments taken fully into account**

Occupational pensions

Treatment of occupational pensions in income-related Employment and Support Allowance ..... 51050

Treatment of occupational pensions in contribution-based Employment and Support Allowance ..... 51051

Personal pensions

Treatment of personal pensions in income-related Employment and Support Allowance ..... 51052

Treatment of personal pensions in contribution-based Employment and Support Allowance ..... 51053

**Other income taken fully into account**

Annuity income ..... 51060

Cash in lieu of concessionary coal ..... 51062

Departmental ex gratia incapacity allowances ..... 51063

Income from an insurance policy ..... 51064

Income from certain sublets ..... 51070

Payments for attending court ..... 51071

Income from certain disregarded capital ..... 51073

**Income disregarded in part**

**Income that has £10 a week disregarded**

Types of income that have £10 a week disregarded ..... 51080

Weekly limit to £5, £10 and £20 disregards ..... 51081

Pensions paid to victims of National Socialist persecution ..... 51082

War disablement pensions ..... 51083

War widow's or widower's pension ..... 51086

Armed Forces and Reserve Forces Compensation Scheme ..... 51087

Definitions ..... 51088

Payments from the Armed Forces and Reserve Forces Compensation Scheme ..... 51090

Widowed mother's allowance and widowed parent's allowance ..... 51092

**Income with partial disregards** ..... 51097

Civilian war injury pensions ..... 51098

Home income plans

What is a home income plan ..... 51099

What is an annuitant ..... 51100

Payments from home income plans ..... 51101

Notional annuity income ..... 51103

**Income from people living in the claimant's home** ..... 51104

Income from boarders ..... 51105

What is board and lodging accommodation ..... 51106

What is a close relative ..... 51110

Income from subletting ..... 51112

**Other types of income partially disregarded**

Living away from home allowance ..... 51120

Income from certain disregarded capital ..... 51121

National Lottery Sports Award

Meaning of sports award ..... 51125

Amount of disregard ..... 51127

**Maternity, paternity, adoption, parental and sick pay**

Statutory Maternity Pay ..... 51131

Paternity pay and additional paternity pay ..... 51132

Statutory Adoption Pay ..... 51133

Statutory Sick Pay ..... 51134

Statutory shared parental pay ..... 51135

Treatment of Statutory Maternity Pay,
paternity pay, Statutory Adoption Pay
statutory shared parental pay and Statutory Sick Pay ..... 51135

Employer's private maternity, paternity, adoption or sick pay ..... 51136

Lump sum payments of Statutory Maternity Pay ..... 51137

**Payments for housing costs and mortgage protection payments**

Introduction ..... 51140

Meanings of terms used ..... 51141

Payments made direct to a third party when the claimant
could not receive the income direct ..... 51142

Payments made direct to a third party when the claimant
could receive the income direct ..... 51143

How should the decision maker decide when the claimant could expect to get the income ..... 51144

Payments made direct to the claimant ..... 51145

**Mortgage protection policy payments**

How much mortgage protection policy payment should be disregarded ..... 51150

What if the payment from the mortgage protection policy is more than the claimant's housing costs ..... 51151

**Other payments for housing costs**

Types of payment disregarded ..... 51160

How should the decision maker treat payments for housing costs that also attract other disregards ..... 51166

Supersessions and payments for housing costs ..... 51170

**Payments for residential care home, nursing home, Abbeyfield home or independent hospital charges**

Introduction ..... 51190

Residential care homes ..... 51192

Nursing home ..... 51194

Abbeyfield home ..... 51196

Independent hospital ..... 51197

Types of payment ..... 51198

Payments to claimants not in Health and Social Services trust sponsored accommodation ..... 51200

Other payments towards accommodation costs ..... 51202

**Income fully disregarded**

**Types of income fully disregarded** ..... 51210

Adoption allowance ..... 51212

Adoption allowance paid for members of the family ..... 51213

Adoption allowances paid other than for a child who is a member of the family ..... 51214

Residence orders

Northern Ireland Children Order ..... 51216

Local authority payments for children subject to a residence order ..... 51217

Credit insurance policies ..... 51218

Disregard for credit insurance policies ..... 51219
Amount of disregard - credit insurance payments made direct to the claimant ..... 51224
Credit insurance payments made to third parties ..... 51225
Credit insurance payments made direct to the creditor ..... 51226
Jurors or witnesses court attendance allowance ..... 51229

# Benefits fully disregarded

Attendance allowances ..... 51230
The meaning of Attendance Allowance ..... 51231
The Bereavement Support Payment ..... 51232
Disability Living Allowance, Personal Independence Payment and Armed Forces Independence payment ..... 51233
Child Benefit, Child Tax Credit and child dependant increases ..... 51234
Christmas bonus ..... 51235
Compensation for loss of Housing Benefit ..... 51236
Discretionary housing payments ..... 51237
Guardian's Allowance ..... 51238
Housing Benefit ..... 51239
Increases in social security benefits and service pensions for absent dependants ..... 51240
Mobility supplement ..... 51242
Payments from the Social Fund under social security legislation ..... 51243

**Concessionary payments**

Types of concessionary payments that should be disregarded ..... 51244
What are concessionary payments ..... 51245
**Payments under the Supporting People programme** ..... 51250

**Payments for children and people living temporarily with the claimant**

Foster children ..... 51254
Payments for the welfare of children ..... 51256
Payments for people temporarily in the claimant's care ..... 51259

**Payments of expenses**

Payment by an employer of employee's expenses ..... 51263

Payment of a voluntary worker's expenses ..... 51265
Time exchange schemes ..... 51268
Service users ..... 51270
**War widow's, widower's or surviving civil partner's supplementary pensions** ..... 51274

**Other types of income fully disregarded**

Certain payments due before the date of claim ..... 51275
Payments for a reduction in rates or council tax ..... 51276
Dependant's or non dependant's contributions to accommodation and living costs ..... 51277
Education maintenance allowance ..... 51278
Other payments to assist with non-advanced education ..... 51279
Special guardianship payments ..... 51280
Self-employment route ..... 51294
Cost of conversion of foreign money ..... 51295
Gallantry awards ..... 51296
Income frozen abroad ..... 51297
Income in kind ..... 51298
Income treated as capital ..... 51310
Jurors or witnesses court attendance allowance ..... 51311
Payments from a Health and Social Services Board in lieu of community care services ..... 51312
Payments made under employment and training law ..... 51313
Living expenses ..... 51315
Payments to help disabled people get or keep employment ..... 51316
Return to work credit scheme ..... 51317
Discretionary payments for special needs ..... 51318
Vouchers (including child care cheques) ..... 51330
Welfare foods, National Health Service supplies, travelling expenses and assisted prison visits ..... 51332
Work-related activity ..... 51333
The child maintenance disregard ..... 51334
Meaning of child maintenance ..... 51335
Applying the disregard ..... 51336
**Child or young person attending educational establishment** ..... 51338

**Infected Blood Schemes, the Fund, and other specific trusts**

Payments from Infected Blood Schemes, the Fund, and other specific trusts

Infected Blood Schemes ..... 51341

Income from Infected Blood Schemes ..... 51342

The Scottish Infected Blood Support Scheme ..... 51343

Income from the Scottish Infected Blood Support Scheme ..... 51344

Previous Infected Blood Schemes ..... 51345

The Eileen Trust ..... 51356

The Macfarlane Trusts ..... 51357

MFET ..... 51358

The Caxton Foundation ..... 51349

Income from the Eileen Trust, Macfarlane Trusts, MFET and the Caxton Foundation ..... 51350

The Skipton Fund ..... 51351

The London Emergencies Trust ..... 51352

Income from the London Emergencies Trust ..... 51354

The We Love Manchester Emergency Fund ..... 51355

Income from the We Love Manchester Emergency Fund ..... 51356

The Independent Living Fund (2006) ..... 51357

Income from the Independent Living Fund (2006) ..... 51358

The London Bombings Relief Charitable Fund ..... 51359

What is the Fund ..... 51360

Income from the Fund ..... 51361

Payments from money that came from the Trusts

Meaning of the Trusts ..... 51362

What payments should be disregarded ..... 51363

Person with Human Immunodeficiency Virus ..... 51364

Qualifying person ..... 51365

Payments by a qualifying person or person with Human Immunodeficiency Virus to partners, children and young people ..... 51366

Payments by the partner or former partner of the qualifying person or person with Human Immunodeficiency Virus ..... 51367

Payments by a qualifying person or person with Human Immunodeficiency to parents, step parents or guardians ..... 51369

Payments from the estate of a qualifying person or person with Human Immunodeficiency Virus to a parent, step parent or guardian ..... 51375

For how long should the payment be disregarded

Payments to a qualifying person or person with Human Immunodeficiency Virus and partners ..... 51377

Payments to children and young people ..... 51378

Payments to parents and guardians from a qualifying person or person with Human Immunodeficiency Virus ..... 51379

Payments to parents and guardians from the estate of a qualifying person or person with Human Immunodeficiency Virus ..... 51380

Deciding if a disregard applies ..... 51381

Trust payments invested with other money ..... 51383

Qualifying person's or person's with Human Immunodeficiency Virus relationship with former partners ..... 51384

Social fund funeral payments ..... 51385

## Payments with special rules

**Charitable and voluntary payments**

What are charitable payments ..... 51390

What are voluntary payments ..... 51393

Meaning of relevant payment ..... 51396

Certain types of payments

Cash in lieu of concessionary coal ..... 51397

Civil list pensions ..... 51398

Payments from trust funds ..... 51405

Structured settlements ..... 51407

Children's Memorial Trust ..... 51408

Regular charitable or voluntary payments

What are regular payments ..... 51413

When is a payment due to be made ..... 51415

Disregard for relevant payments ..... 51416

Relevant payments that should be taken fully into account ..... 51417

Relevant payments paid in kind ..... 51418

**Capital treated as income**

Capital payable by instalments ..... 51425

When is an instalment treated as capital ..... 51430
Annuity payments ..... 51431

**Notional income**

**Notional income - general**

What is notional income ..... 51456
Types of notional income ..... 51457
Actual and notional income ..... 51458
Treatment of notional income ..... 51459
Notional Income - tasters ..... 51460
Liable relative payments ..... 51461
Service users ..... 51462

**Deprivation of income** ..... 51469
Meaning of deprive ..... 51470
Questions for consideration ..... 51474
Was it the claimant's income ..... 51475
Has a deprivation of income happened ..... 51482
Was the purpose of the deprivation to get or increase the amount of income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance ..... 51484
Timing of the disposal of income ..... 51488

**Income available on application**

General ..... 51496
What types of income should not be treated as notional income available on application ..... 51497
What types of income should be taken into account ..... 51500
Date from which income should be taken into account ..... 51501
Income from an unadministered estate ..... 51506

**Notional income - Carer's Allowance** ..... 51516
Deprivation of income ..... 51517
Income available on application ..... 51525
Income due but not paid ..... 51527
Notional income and changes in circumstances ..... 51528

**Personal and occupational pensions**

General ..... 51535
What is a personal pension ..... 51537
What is an occupational pension ..... 51538
Pension Protection Fund ..... 51539
What is a pension fund holder ..... 51540
Who is a person who derives entitlement ..... 51541
Lump sums on retirement ..... 51542
Pension Flexibilities ..... 51543
Income and Capital Drawdowns ..... 51544
Information and evidence ..... 51547
Notional income - schemes where income withdrawal is allowed
When should a person be treated as having notional income ..... 51551
Amount of notional income ..... 51552
From what date should the decision maker take notional income into account ..... 51553
Notional income - schemes where income withdrawal is not allowed
When should a person be treated as having notional income ..... 51554
Amount of notional income ..... 51555
From what date should the decision maker take notional income into account ..... 51556
Actual income ..... 51557
**Income due but not yet paid** ..... 51563
Income that should not be taken into account if due but not paid ..... 51564
Types of income that may be due but not paid ..... 51569
Evidence required ..... 51570
**Payments of income to third parties** ..... 51576
What is a third party ..... 51578
Meaning of payment in respect of a person ..... 51580
Income paid to the claimant or partner for the other person ..... 51585
Income paid to a third party for the claimant or partner
Benefit paid to a third party ..... 51586
Training payments to third parties ..... 51587

Income payments to a third party ..... 51588
Other payments to a third party ..... 51589
Meaning of ordinary clothing or footwear ..... 51599
Payments by a third party for residential care home, nursing home, Abbeyfield home or independent hospital charges ..... 51601
Third party payments for residential care homes, nursing homes, Abbeyfield homes or independent hospitals and National Health maintenance ..... 51604
Income paid to the claimant or partner for a third party ..... 51606

**Liable relative payments**

**Liability to maintain** ..... 51617
Husbands, wives and civil partners ..... 51618
Children ..... 51619
Sponsored immigrants ..... 51620
Action by the Department in the courts ..... 51621

**Liable relative payments - general**

Treatment as income ..... 51625
Meaning of liable relative payment ..... 51627
Identification of liable relative payments ..... 51628
Liable relative payments from discretionary trusts ..... 51632
Payments made before the date of claim ..... 51633
When the decision maker should not take liable relative payments into account as income ..... 51641
Meaning of liable relative ..... 51642
Meaning of parent ..... 51643
People who can be treated as parents ..... 51644
Meaning of young claimant ..... 51646
Liable relative payments and income tax
Liable relative payments subject to income tax ..... 51647
What should the decision maker do if the claimant receives a tax refund? ..... 51648

## Payments not treated as liable relative payments

Which payments should not be treated as liable relative payments ..... 51656

Payments made because of divorce or separation ..... 51657
Payments made after the death of a liable relative ..... 51662
Gifts made by liable relatives ..... 51663
More than one gift made during a 52 week period ..... 51667
Payments made to or for third parties ..... 51671
Types of payments made to third parties ..... 51673
What is a third party ..... 51674
What should the decision maker do if a payment to a third party is treated as a liable relative payment ..... 51682
What should the decision maker do if a payment to a third party is not treated as a liable relative payment ..... 51683
Payments made for a third party
Types of payments made for third parties ..... 51688
Should the decision maker treat a payment for a third party as a liable relative payment ..... 51689
What should the decision maker do if the payment is not treated as a liable relative payment ..... 51691
Payments in kind ..... 51693
Payments for people who are not members of the household ..... 51695
Payments already taken into account ..... 51696
Payments being recovered ..... 51697
Payments that have been used ..... 51698
Child maintenance ..... 51700

**Liable relative payments - periodical payments**

Introduction ..... 51710
What is a periodical payment ..... 51711
Calculation of weekly amount
Periodical payment made at weekly intervals ..... 51714
Periodical payment made at monthly intervals ..... 51715
Periodical payments made other than weekly or monthly ..... 51716
Payment made up of more than one periodical payment ..... 51717
Period over which a periodical payment should be taken into account
Periodical payments made at regular intervals ..... 51723

Periodical payments due to be made regularly but made irregularly ..... 51724

Periodical payments not due to be made regularly ..... 51725

When should the period start over which a periodical payment is taken into account ..... 51727

On what date should a periodical payment be treated as paid

Periodical payments made before the first benefit week of entitlement ..... 51728

Periodical payments made during the course of an award of income-related Employment and Support Allowance ..... 51729

Payments under agreements or court orders ..... 51730

**Liable relative payments - non-periodical payments**

What is a non-periodical payment ..... 51736

Should all of a payment be taken into account as a non-periodical payment ..... 51738

Periodical payments and any other payment made by a liable relative

Period when non-periodical liable relative payment taken into account ..... 51746

The weekly amount of the non-periodical payment ..... 51748

When should the decision maker start taking a non-periodical payment into account ..... 51749

Periodical payments change while a non-periodical payment is being taken into account ..... 51750

Periodical payments cease while a non-periodical payment is being taken into account ..... 51752

Periodical payments not being made when a non-periodical payment is received

Weekly amount of non-periodical payment for claimants ..... 51756

Period over which a non-periodical payment is taken into account

Non-periodical payments made for the claimant ..... 51757

When should the decision maker start to take the non-periodical payment into account ..... 51758

Date a non-periodical payment is treated as paid

Non-periodical payment made before the first benefit week of the claim ..... 51760

Non-periodical payment made during the course of an award of income-related Employment and Support Allowance ..... 51761

Non-periodical payment made during a period where a previous non-periodical payment is already being taken into account ..... 51762

## Contribution-based Employment and Support Allowance and pension payments

General ..... 51765

**Meaning of pension payments and pension protection fund payments**

Pension payments ..... 51768

Periodical payments and lump sums ..... 51770

Personal pension scheme ..... 51772

Self-invested personal pensions ..... 51777

Occupational pension scheme ..... 51778

Public service pension scheme ..... 51779

Civil Service compensation scheme ..... 51783

Local government premature retirement scheme ..... 51788

In connection with the coming to an end of the employment ..... 51790

Insurance policy providing benefits in connection with physical or mental illness or disability ..... 51798

Pension protection fund periodic payments ..... 51799

Armed Forces redundancy arrangements ..... 51800

**When to take pension payments into account**

Payment of a pension ..... 51802

When the pension is uprated ..... 51803

**Disregarded payments** ..... 51804

Pension payments ..... 51805

Pension protection fund periodic payments ..... 51807

Shortfalls in pension schemes ..... 51808

War pensions ..... 51809

Guaranteed income payments ..... 51810

Permanent health insurance ..... 51811

**Payment in arrears** ..... 51812

**Calculating the amount of the pension**

General ..... 51814

Calculating the weekly pension rate ..... 51823

Disregard of fractions ..... 51826

More than one pension ..... 51827

## Contribution-based Employment and Support Allowance for councillor's allowance

**Deductions from contribution-based Employment and Support Allowance for councillor's allowances**

Introduction ..... 51828

Definitions

Councillor ..... 51830

Councillor's allowance ..... 51832

**The amount of the deduction from contribution-based Employment and Support Allowance**

The weekly limit ..... 51833

The amount of the deduction ..... 51834

The net weekly amount of a councillor's allowance ..... 51835

Basic allowance ..... 51837

Special responsibilities allowance ..... 51838

Childcare and dependent carers' allowance ..... 51839

Expenses ..... 51840

Deductions for Income Tax and National Insurance Contributions ..... 51851

**When to take councillor's allowances into account**

Payment of a councillor's allowance ..... 51852

When the councillor's allowance is uprated ..... 51853

Calculating the weekly rate ..... 51854

# Students

**Students - general** ..... 51860

**Definitions and meaning of terms** ..... 51861

Income-related Employment and Support Allowance - income and capital ..... 51862

Meaning of course and modular course ..... 51864

Course of advanced education ..... 51865

Course of study ..... 51868

Sandwich course ..... 51871

Periods of experience and work experience ..... 51872

Student unable to find placement ..... 51875
Meaning of educational establishment ..... 51876
Academic year ..... 51877
Student loan ..... 51880
Grant ..... 51881
Access funds ..... 51882
Education maintenance allowance ..... 51884
Grant income ..... 51885
Standard maintenance grant and allowances ..... 51886
Contribution ..... 51887
Education authority ..... 51889

**Meaning of student and full-time student**

General ..... 51890
National Health Service funded students
Healthcare professionals ..... 51891
Return to practice courses ..... 51892
Northern Ireland Social Care Council bursaries ..... 51893
Social work bursary ..... 51895
Additional graduate bursary ..... 51896
Teacher training ..... 51898
Open University students ..... 51899
General ..... 51901
Full-time student ..... 51902
Treatment of modular courses ..... 51904
Modular course ..... 51906

**Meaning of full-time**

General ..... 51907
Evidence from educational establishment ..... 51913
Other evidence ..... 51914
Number of hours involved ..... 51915

**Eligibility**

General ..... 51917
Partner only is a full-time student ..... 51918

Contribution-based Employment and Support Allowance ..... 51919
Income-related Employment and Support Allowance ..... 51920
**Financial support available to students - loans and grants** ..... 51921
Loans - eligibility ..... 51922
Designated courses ..... 51923
Personal eligibility ..... 51927
Student loans treated as income ..... 51931
Amount of loan ..... 51932
Post Graduate Master's Degree Loans ..... 51934
Disregards ..... 51936
Disregard for fee loans ..... 51937
Assessed contribution ..... 51938
Calculation of weekly income
Course duration is for one academic year or less ..... 51939
Course duration more than one academic year, any year except final academic year ..... 51940
Final academic year, other than a course of one academic year or less ..... 51942
Disregard ..... 51944
Student from Great Britain ..... 51945
Grants ..... 51946
Amount of grant income
Initial disregard ..... 51947
Higher education bursaries ..... 51949
Special support grant ..... 51950
Disregards for students with child care responsibilities ..... 51953
Extra disregards ..... 51954
Period over which grant income taken into account ..... 51956
Dependant and lone parent grants ..... 51957
National Health Service dependant grants ..... 51958
Other grant income ..... 51959
Period of study for grant income purposes ..... 51960
Grant payable for period of study ..... 51962
Sandwich course ..... 51963
Grant not payable for period of study ..... 51964

Access funds ..... 51965
Regular payments ..... 51967
Lump sum payments ..... 51968
**Overall limit to income disregard** ..... 51969
Income for necessary course expenses ..... 51970
Disregard of partner's contribution ..... 51974
Disregard of student's contribution ..... 51975
**Covenant income and other income and capital** ..... 51976
Covenant income ..... 51977
Student's tax refund ..... 51979
Other types of loan ..... 51980
**Income of former students** ..... 51981
Course completed ..... 51983
Course not completed - treatment of grant income ..... 51984
Period income is taken into account ..... 51985
Calculation of weekly income ..... 51993
Course not completed - treatment of loan and dependant grant income
Relevant payment ..... 51994
Calculation of weekly income ..... 51995
Calculation of weekly income when loan is paid by two or more instalments ..... 51999

**Appendix 1 -** War Pensions

# Chapter 51 - Income other than earnings

## Statutes commonly referred to in Chapter 51

| Short description | Full title | Abbreviation |
|---|---|---|
| Student Support Northern Ireland | Education (Student Support) (Northern Ireland) Order 1998 No. 1760 | Support (NI) Order |
| Welfare Reform Act Northern Ireland | Welfare Reform Act (Northern Ireland) 2007 | WR Act (NI) 07 |

# Statutory Rules commonly referred to in Chapter 51

| 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) |
| Decisions and Appeals Regulations | The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland)1999 No. 162 | SS & CS (D&A) Regs (NI) |
| ESA Regulations | The Employment and Support Allowance Regulations (Northern Ireland) 2008 No. 280 | ESA Regs (NI) |
| Mandatory Awards Regulations | The Education (Mandatory Awards) Regulations 1987 No. 1261, 1988 No. 1360, 1989 No. 1458, 1994 No. 3044, 2003 No, 1994 | Awards Regs |
| Payments on Account, Overpayments and Recovery Regulations | The Social Security (Payments on Account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 No. 142 | SS (POR) Regs (NI) |
| Students Awards Regulations | Students Awards Regulations (Northern Ireland) 2003 No. 459 | Students Awards Regs (NI) |
| Student Support Regulations | Education (Student Support) Regulations (Northern Ireland) 2008 No. 250 | Support Regs (NI) |
| Work-focused Interviews Regulations | The Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2003 No. 274 | SS (Wfi) Regs (NI) |
| The Loans for Mortgage Interest Regulations | The Loans for Mortgage Interest Regulations (Northern Ireland) 2017 No. 176 | LMI Regs (NI) |

# Chapter 51 - Income other than earnings

# General

## Introduction

### Scope of this chapter

51000 This Chapter deals with the calculation of income other than earnings for income-related Employment and Support Allowance as well as student's income. With the exception of payments made to a person carrying out public or local functions, pension protection fund periodic payments, occupational and personal pension payments[1], income other than earnings does not affect the calculation of contribution-based Employment and Support Allowance.

**Note:** For guidance on the treatment of these payments in contribution-based Employment and Support Allowance see DMG Chapter 44.

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

### Meaning of claimant

51001 Claimant[1] means a person who has claimed an Employment and Support Allowance.

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

### What is income

51002 Income is not defined in law. It can normally be separated from capital because a payment of income

**1.** forms part of a series of payments, whether or not they are made regularly **or**

**2.** is made for a period of time **or**

**3.** satisfies both the conditions in **1.** and **2.**.

**Note:** Where capital[1] is being paid by instalments each payment will be capital unless DMG 51425 et seq applies.

*1 Lillystone v. Supplementary Benefits Commission (1982) FLR;*
*Morrell v. Secretary of State for Work and Pensions [2003] EWCA Civ 526*

### How much income should be taken into account

51003 The decision maker should take into account the gross amount of any income[1]. References in this Chapter to income means income other than earnings. When calculating gross income

disregard the sums in DMG 51006 - 51008 and DMG 51080 et seq. No disregards should be made for any other expenses or deductions.

*1 ESA Regs (NI), reg 104(1)*

## Deductions from benefits

51004 Where a payment of social security benefit has a deduction for benefit recovery, the decision maker should take into account the gross amount of benefit[1].

*1 ESA Regs (NI), reg 104(3)*

## Reduction due to a failure to attend a work-focused interview or work-related activity

51005 Where Incapacity Benefit, Severe Disablement Allowance or contribution-based Employment and Support Allowance paid to a claimant's partner has been reduced because the partner has failed to attend a work-focused interview, the amount of Incapacity Benefit, Severe Disablement Allowance or contribution-based Employment and Support Allowance to be taken into account as income is the full amount that would have been payable before the reduction[1] (see DMG 05380).

*1 SS (WfI) Regs (NI) 03, reg 11(11) & ESA Regs (NI), reg 63(5)*

## Overpayment recovery from other income

51006 Except where DMG 51004 applies, when income paid to a claimant is reduced because the paying authority is enforcing recovery of an overpayment, the decision maker should take into account the net amount. This is the amount actually received by the claimant, unless the circumstances in DMG 51007 apply.

**Example**

Ted is in receipt of income-related Employment and Support Allowance. His partner, Libby, works and is in receipt of Working Tax Credit. Her Majesty's Revenue and Customs has awarded Working Tax Credit at a rate of £50 per week. However, due to the recovery of an overpayment which occurred on a previous award of Working Tax Credit, the amount Libby actually receives is £28 per week. When determining the amount of Working Tax Credit to take into account on Ted's award of income-related Employment and Support Allowance, the decision maker takes into account Libby's Working Tax Credit of £28 per week.

51007 If the claimant volunteers to repay an overpayment by offering to have deductions made from his income, the decision maker should consider whether the claimant has deprived himself of that income (see DMG 51469 et seq).

## Deduction of income tax

51008 Any tax actually paid, or due to be paid[1], should be deducted when calculating any income that is to be

**1.** taken fully into account **or**

**2.** disregarded in part[2].

**Note:** Where the amount of tax due to be paid has been assessed under the Her Majesty's Revenue and Customs Tax Self Assessment process then decision makers should consider revision action if it is shown that there is a tax liability or the actual tax liability differs from the forecast provided by the claimant. DMG Chapter 3 provides guidance on revision.

*1 R(IS) 4/05; 2 ESA Regs (NI), Sch 8, para 1*

**Example**

Jack makes a claim for Employment and Support Allowance on 5 June and becomes entitled to income-related Employment and Support Allowance. His partner has been receiving Retirement Pension of £106.50 a week since April. Jack provides a forecast tax liability which estimates that his partner will be liable for £79.00 tax under Her Majesty's Revenue and Customs Tax Self Assessment process on this year's Retirement Pension paid to her. The decision maker calculates the amount of Retirement Pension to be taken into account as:

£106.50 a week Retirement Pension being paid less £1.52 a week tax [£79 ÷ 52] = £104.98. The decision maker takes £104.98 Retirement Pension a week into account.

## Questions on the treatment of income

51009 The decision maker should direct further enquiries if there is any doubt whether income fits into any of the definitions in this Chapter. Enquiries will usually be to the paying authority and should be made before any decision is given.

51010 After deciding whether any disregards apply, the decision maker should calculate

**1.** the period over which the income should be taken into account **and**

**2.** the weekly rate at which the income should be taken into account.

51010 – 51019

# Income taken fully into account

## Types of income taken fully into account

51020 **[See DMG Memo Vol 1/109, 3/97, 5/106, 6/91, 7/45, 8/83, 9/35, 10/73, 12/23, 13/69 & 14/63]** When calculating income other than earnings for income-related Employment and Support Allowance[1] decision makers should take

**1.** annuity income

**2.** bereavement allowance

**3.** Carer's Allowance

**4.** cash in lieu of concessionary coal

**5.** Departmental ex-gratia incapacity allowances

**6.** Incapacity Benefit

**7.** Industrial Death Benefit

**8.** Industrial Injuries Disablement Benefit

**9.** contribution-based Employment and Support Allowance

**10.** contribution-based Jobseeker's Allowance

**11.** Maternity Allowance

**12.** personal pensions

**13.** Retirement Pension

**14.** Severe Disablement Allowance

**15.** War orphan's pension

**16.** Working Tax Credit

**17.** Widow's Pension

**18.** workmen's compensation

fully into account. These are the most common types of income that decision makers deal with, although there are other types too. Detailed guidance is given in DMG 51022 et seq.

*1 ESA Regs (NI), reg 104(1)*

51021 Normally the decision maker should take into account in full

**1.** income from certain disregarded capital (see DMG 51073)

**2.** income from insurance policies (see DMG 51064)

**3.** income from certain sub-lets (see DMG 51070)

**4.** occupational pensions (see DMG 51050)

**5.** payments for people attending court (see DMG 51071 and DMG 51229).

# Benefits taken fully into account

## Bereavement Allowance

51022 **[See DMG Memo Vol 1/109, 3/97, 5/106, 6/91, 7/45, 8/83, 9/35, 10/73, 12/23, 13/69 & 14/63]** Bereavement allowance should be taken into account in full. It is restricted to payment for not more than 52 weeks.

**Note 1:** Widow's Pension may continue to be paid to widows whose husband died before 9.4.01.

**Note 2:** The Bereavement Support Payment replaced Bereavement Allowance for people whose spouse or civil partner died on or after 6.4.17[1]. The regular monthly Bereavement Support Payment is income other than earnings in income-related Employment and Support Allowance and is fully disregarded[2] (see DMG 51232).

*1 BSP Regs (NI); 2 ESA Regs (NI), Sch 8, para 63*

## Carer's allowance

51023 Carer's Allowance should be taken fully into account. It is payable to people who are unable to work because they are caring for a person receiving Attendance Allowance or Disability Living Allowance.

## Contribution-based Employment and Support Allowance

51024 Contribution-based Employment and Support Allowance received by a partner should be taken fully into account.

51025 - 51030

## Incapacity Benefit

51031 Incapacity Benefit should be fully taken into account. Incapacity Benefit is paid to people who are incapable of work

**1.** who are not entitled to Statutory Sick Pay **or**

**2.** whose Statutory Sick Pay has ended.

## Industrial death benefit

51032 Industrial death benefit should be taken fully into account. It is payable to widows or former dependants of people who died before 11.4.88

**1.** following an accident at work **or**

**2.** from a prescribed disease.

Industrial death benefit was abolished from 11.4.88. People getting industrial death benefit before 11.4.88 may continue to receive it.

## Industrial injuries disablement benefit

51033 Industrial injuries disablement benefit should be taken fully into account. The additional allowances

**1.** reduced earnings allowance **and**

**2.** unemployability supplement

may also be paid with industrial injuries disablement benefit. They should be taken fully into account.

**Note:** Unemployability supplement was removed from the industrial injuries disablement benefit scheme on 6.4.87 but may continue in payment to people getting it before that date.

51034 See DMG 51230 for guidance on attendance allowances for the treatment of exceptionally severe disablement allowance and constant attendance allowance paid with industrial injuries disablement benefit.

51035 Disablement gratuity should be treated as capital. But reduced earnings allowance paid with it should be taken fully into account as income.

51036

## Contribution-based Jobseeker's Allowance

51037 Contribution-based Jobseeker's Allowance received by a partner should be taken fully into account. It is payable to people who are unemployed and who have paid enough social security contributions[1].

*1 JS (NI) Order, art 4*

## Maternity Allowance

51038 Maternity Allowance should be taken fully into account. It is payable to women who cannot get Statutory Maternity Pay.

## Retirement Pension

51039 Retirement Pension should be taken fully into account. It is either

**1.** contributory (Category A or B) **or**

**2.** non-contributory (Category C or D).

51040 Retirement Pension may be made up of the following elements

**1.** a basic pension

**2.** an increase of basic pension for dependant spouses or civil partners, dependant children or women looking after children (but see DMG 51240 if the dependant is not a member of the claimant's family)

**3.** an additional pension for people who were in non-contracted out employment

**4.** graduated retirement benefit earned between 1961 and 1975 under the graduated pension scheme

**5.** increments for deferred retirement

**6.** invalidity and age additions.

51041 A pensioner who has been in employment that was contracted out of state earnings related pension scheme may be entitled to

**1.** guaranteed minimum pension instead of additional pension through an occupational pension scheme **and**

**2.** increments to an occupational pension and guaranteed minimum pension if retirement was deferred.

The decision maker should take these payments fully into account as an occupational pension.

## Severe Disablement Allowance

51042 Severe Disablement Allowance should be taken fully into account. It is a non contributory benefit payable after six months of illness. For Employment and Support Allowance purposes, this applies only to the claimant's partner.

## War orphan's pension

51043 War orphan's pension should be taken into account in full.

## Widow's benefit (widow's payment, widow's pension)

51044 **[See DMG Memo Vol 1/109, 3/97, 5/106, 6/91, 7/45, 8/83, 9/35, 10/73, 12/23, 13/69 & 14/63]** Widow's payment, which is paid as a lump sum should be treated as capital. In addition Widow's Pension claimed prior to 9 April 2001 may be paid. The decision maker should take Widow's Pension fully into account.

## Working Tax Credit

51045 Working Tax Credit should be taken fully into account. It is paid to employees or to self-employed earners direct to their bank account. Where appropriate Working Tax Credit includes an element for childcare paid to the main carer.

**Note:** DMG Chapter 48 gives guidance about the date on which Working Tax Credit is treated as paid and also on circumstances where Working Tax Credit is incorrectly paid.

## Workmen's compensation (supplementation) scheme

51046 Workmen's compensation (supplementation) which replaced workmen's compensation for old cases should be taken fully into account. It is paid for industrial injuries and diseases which were caused by employment before the start of the industrial injuries disablement benefit scheme.

51047 Any attendance allowance paid with workmen's compensation (supplementation) should be disregarded. See DMG 51230 et seq for guidance on attendance allowances.

51048 – 51049

# Pension payments taken fully into account

## Occupational pensions

### Treatment of occupational pensions in income-related Employment and Support Allowance

51050 Payments of income from occupational pensions should be taken fully into account subject to the normal rules for calculating the amount of income to be assessed. Occupational pension schemes are set up by employers to provide pensions for employees and their dependants. Payments under the

**1.** British Coal Voluntary Employment Redundancy Scheme **or**

**2.** British Coal Industrial Death and Retirement Scheme **or**

**3.** British Coal Redundant Mineworkers Payment scheme

are included. Occupational pension payments do not include discretionary payments from a fund set up to relieve hardship[1]. This type of payment is a charitable or voluntary payment.

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

### Treatment of occupational pensions in contribution-based Employment and Support Allowance

51051 See DMG 51778 for guidance on the treatment of occupational pensions in contribution-based Employment and Support Allowance.

## Personal pensions

### Treatment of personal pensions in income-related Employment and Support Allowance

51052 Income from personal pension schemes should be fully taken into account. Personal pension schemes provide pensions on retirement for

**1.** self-employed people **or**

**2.** employees who are not members of occupational pension schemes.

Personal pension schemes may also make payments to dependants following the death of the scheme member.

## Treatment of personal pensions in contribution-based Employment and Support Allowance

51053 See DMG 51772 for the guidance on the treatment of personal pensions in contribution-based Employment and Support Allowance.

51054 – 51059

# Other income taken fully into account

## Annuity income **[See DMG Memo Vol 1/115, 5/112, 9/44, 13/73 & 14/68]**

51060 An annuity is an annual income. The most common type of annuity involves a person paying a lump sum of money to an insurance company. In return the insurance company will pay an agreed sum of money each year until the death of the investor.

51061 Annuity income should be taken fully into account apart from

**1.** Home income plans. These are schemes where an annuity is bought with a loan secured on the home. The income is subject to a partial disregard[1].

**2.** Gallantry awards. Income payable because of the award of the

**2.1** Victoria Cross **or**

**2.2** George Cross **or**

**2.3** any similar medal (including foreign honours)

should be disregarded in full[2].

*1 ESA Regs (NI), Sch 8, para 17; 2 Sch 8, para 12*

## Cash in lieu of concessionary coal

51062 The decision maker should take into account in full[1] cash paid in lieu of concessionary coal to a

**1.** former employee of British Coal **or**

**2.** surviving husband or wife if the employee has died.

Concessionary coal is coal provided free of charge to former employees of British Coal and their dependants.

**Note:** The value of any coal provided should be disregarded as income in kind[2].

*1 R(IS) 4/94; 2 ESA Regs (NI), Sch 8, para 21*

## Departmental ex gratia incapacity allowances

51063 These payments should be taken fully into account. But if they are paid as a lump sum they should be treated as capital. These allowances are paid by the Department to compensate people injured in prison workshops or training courses.

## Income from an insurance policy

51064 Insurance policy income should be taken fully into account except for income from a mortgage protection policy.

51065 - 51069

## Income from certain sublets

51070 Income from subletting parts of the home that are not lived in (for example the garage or garden) should be taken fully into account. See DMG 51112 for sub-letting parts of the home that are lived in.

**Note:** In this guidance home means the dwelling occupied as the home.

## Payments for attending court

51071 Payments to jurors and witnesses for loss of

**1.** earnings **or**

**2.** benefits

should be taken fully into account.

*1 ESA Regs (NI), Sch 8, para 42*

51072

## Income from certain disregarded capital

51073 Generally income from capital is not treated as income but as capital and goes towards increasing the amount of a claimant's capital. Decision makers should, however, take into account, subject to any appropriate income disregards, income derived from

**1.** trusts set up from money paid because of a personal injury while disregarded (see DMG Chapter 52)

**2.** assets of a business partly or wholly owned by the claimant while disregarded (see DMG Chapter 52)

**3.** the dwelling occupied as the home while disregarded - (see DMG Chapter 52) (but not income from boarders or sublets which is partially disregarded)

for as long as the value of the capital is disregarded[1].

*1 ESA Regs (NI), Sch 8, para 22*

51074 - 51079

# Income disregarded in part

## Income that has £10 a week disregarded

### Types of income that have £10 a week disregarded

51080 Disregard the first £10 a week of[1]

**1.** pensions paid to victims of National Socialist persecution

**2.** payments of war disablement pension

**3.** payments of war widow's pension, widowed mother's allowance and widowed parent's allowance

**4.** certain payments from the Armed Forces and Reserve Forces Compensation Scheme.

**Note:** Any remainder is taken fully into account, after any income tax has been disregarded. War widow's pension includes a pension paid to a surviving civil partner.

*1 ESA Regs (NI), Sch 8, para 16*

### Weekly limit to £5, £10 and £20 disregards

51081 In some circumstances the overall weekly disregard should be limited to £20[1] for the family when

**1.** more than one payment listed in DMG 51080 **or**

**2.** covenant income **or**

**3.** a student loan.

are taken into account in the same benefit week.

Covenant income has the first £5 disregarded. Student loans have the first £10 disregarded.

**Note:** This rule does not apply where two payments of the same kind are taken into account in the same benefit week[2]. In these cases each payment has its own disregard.

*1 ESA Regs (NI), Sch 8, para 38; 2 para 39*

### Pensions paid to victims of National Socialist persecution

51082 These pensions have a £10 disregard[1]. They are made under special provision of the laws of the relevant country to victims of Hitler's government.

**Note:** When considering whether a payment qualifies for this disregard could decision makers please contact Decision Making Services via your Specialist Advisory Officer for guidance with full details of the case.

*1 ESA Regs (NI), Sch 8, para 16(g)*

## War disablement pensions

51083 War disablement pension is paid to former members of

**1.** the armed forces **or**

**2.** forces nursing services

because of medical unfitness prior to 6.4.05 caused or aggravated by service but not necessarily the result of combat. See Appendix 1 to this Chapter for details of the law under which war disablement pension is paid.

**Note:** For those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05 the War Pension Scheme is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 51087.

51084 War disablement pension may be made up of[1]

**1.** wounds pension **and**

**2.** disablement pension **and**

**3.** retired pay for a disabled officer.

*1 R(IS) 3/99*

51085 A £10 disregard can be made for[1]

**1.** war disablement pension **and**

**2.** a payment to compensate for non payment of war disablement pension **and**

**3.** a similar payment made by a foreign government.

*1 ESA Regs (NI), Sch 8, para 16(a),(e) & (f)*

## War widow's or widower's pension

51086 War widow's pension/war widower's pension is paid to a widow or widower following a death caused by service or war injury prior to 6.4.05. The decision maker should disregard £10 from

**1.** war widow's pension/war widower's pension **and**

**2.** a payment to compensate for non-payment of war widow's pension/war widower's pension **and**

**3.** similar payments from a foreign government[1].

**Note 1:** Decision makers should take into account in full pensions paid to war orphans or dependants. See Appendix 1 to this Chapter for details of the law under which war widow's pensions/war widower's pensions are paid.

**Note 2:** For deaths occurring on or after 6.4.05 war widow's pension/war widower's pension is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 51087.

*1 ESA Regs (NI), Sch 8, para 16(b), (e) & (f)*

## Armed Forces and Reserve Forces Compensation Scheme

51087 The Armed Forces and Reserve Forces Compensation Scheme replaces the War Pensions Scheme for those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05.

**Note:** The War Pensions Scheme will continue to run parallel to the new scheme for existing beneficiaries and for those who make a new claim for a War Pensions Scheme payment for injury, ill health or a death due to service in the Armed Forces prior to 6.4.05.

### Definitions

51088 The Armed Forces and Reserve Forces Compensation Scheme[1] means the scheme established under specified Armed Forces Legislation[2].

*1 ESA Regs (NI), reg 2(1); 2 Armed Forces (Pensions and Compensation) Act 2004, sec 1(2)*

51089 A guaranteed income payment[1] means a payment made under specified Armed Forces legislation[2].

*1 ESA Regs (NI), reg 2(1); 2 Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, art 14(1)(b) or 21(1)(a)*

### Payments from the Armed Forces and Reserve Forces Compensation Scheme

51090 A £10 disregard applies to

**1.** a guaranteed income payment[1]

**2.** a payment to compensate for the non payment of a guaranteed income payment[2] **and**

**3.** a similar payment made by a foreign government, which is analogous to a guaranteed income payment[3].

*1 ESA Regs (NI), Sch 8, para 16(d); 2 Sch 8, para 16(e) ; 3 Sch 8, para 16(f)*

51091 Where

**1.** a claimant is in receipt of a guaranteed income payment **and**

**2.** that payment has been reduced to less than £10 a week by abatement due to a pension from the Armed Forces Pension Scheme or a payment under the Armed Forces Early Departure Scheme

the claimant can still have a full £10 disregard on the guaranteed income payment and the pension[1].

*1 ESA Regs (NI), Sch 8, para 16(d)*

**Note:** The Armed Forces Pension Scheme means either the Armed Forces Pension Scheme of 1975 or 2005.

**Example**

Simon is in receipt of income-related Employment and Support Allowance. He also receives a guaranteed income payment of £2.50 per week. This is because the payment has been abated by a pension he receives under the Armed Forces Pension Scheme. The decision maker disregards the guaranteed income payment of £2.50 and also £7.50 of the pension. This gives a total weekly disregard of £10.

## Widowed mother's allowance and widowed parent's allowance

51092 A £10 disregard applies to widowed mother's allowance. For claims from people whose partner died on or after 9.4.01, widowed mother's allowance has been replaced by widowed parent's allowance. It is a new benefit paid to bereaved men and women who care for children. A man with dependant children whose partner has died before 9.4.01 can claim widowed parent's allowance after this date. A £10 disregard is applicable to widowed parent's allowance[1].

*1 ESA Regs (NI), Sch 8, para 16(h) & (i)*

51093 - 51096

# Income with partial disregards **[See DMG Memo Vol 1/115, 5/112, 9/44, 13/73 & 14/68]**

51097 Income should be disregarded in part if it is

**1.** a civilian war injury pension

**2.** a home income plan

**3.** income from boarders

**4.** income from subletting

**5.** a living away from home allowance

**6.** an income from certain disregarded capital

**7.** a National Lottery sports award.

## Civilian war injury pensions

51098 Civilian war injury pensions have a disregard that is uprated annually[1].

*1 ESA Regs (NI), Sch 8, para 50 & Personal Injuries (Civilians) Scheme 1983, sec 27(3)*

## Home income plans

### What is a home income plan **[See DMG Memo Vol 1/115, 5/112, 9/44, 13/73 & 14/68]**

51099 Retired people who own their home may take out a loan secured on the home and use the money to buy an annuity which provides an income. The loan may also be for other expenditure such as building an extension. The gross income from the annuity covers the interest on the loan with any balance being used for personal use.

### What is an annuitant

51100 In this guidance an annuitant is a person to whom income from an annuity is payable.

### Payments from home income plans

51101 **[See DMG Memo Vol 1/115, 5/112, 9/44, 13/73 & 14/68]** The decision maker should establish if

**1.** the loan was taken out under a scheme under which at least 90% of the proceeds of the part of the loan intended to buy an annuity have been used to buy an annuity[1] **and**

**2.** the annuity ends with

**2.1** the life of the person to whom the loan was made **or**

**2.2** the life of the survivor of two or more annuitants who include the person to whom the loan was made **and**

**3.** the interest on the loan is payable by the person to whom the loan was made or by one of the annuitants **and**

**4.** at the time the loan was made the person to whom it was made and other annuitant was aged at least 65 **and**

**5.** the loan was secured on a dwelling in Northern Ireland and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling **and**

**6.** the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as the home at the time the interest was paid.

*1 ESA Regs (NI), Sch 8, para 17*

51102 If all the conditions in DMG 51101 are satisfied the decision maker should disregard the

**1.** net weekly interest where income tax is deductible **or**

**2.** gross amount of interest in other cases.

The balance of the annuity income should be taken into account.

## Notional annuity income

51103 If the annuity income **is**

**1.** paid direct to the lender **or**

**2.** not paid to the claimant or the lender

the decision maker should consider if the claimant is treated as possessing notional income (see DMG 51456 et seq)[1].

*1 ESA Regs (NI), reg 106(1), (2), (3) & (4)*

# Income from people living in the claimant's home

51104 The following paragraphs give guidance on the treatment of income from people living in the claimant's home. Decision makers should not apply the disregard for payments from people who normally live with the claimant to

**1.** payments for board and lodging **or**

**2.** payments made by a subtenant under a contract.

## Income from boarders

51105 Where claimants provide board and lodging accommodation within their home the decision maker should

**1.** add together all the payments made for board and lodging for the week

**2.** calculate how much board and lodging income belongs to the claimant (i.e. if the claimant is in partnership only a share of the total payments will be the claimant's income)

**3.** deduct £20 **and**

**4.** deduct 50% of any excess over £20

for each person for whom board and lodging is provided[1].

**Note:** In this paragraph "home" means the dwelling occupied as the home.

*1 ESA Regs (NI), Sch 8, para 20*

**Example**

Anita, who is entitled to income-related Employment and Support Allowance, had two boarders during the week.

**1.** Boarder 1 paid £55 for a 4 night stay.

**2.** Boarder 2 paid £12 a night for a 5 night stay.

The decision maker calculated the income to be taken into account as follows

**Boarder 1**

| | |
|---|---|
| Payments for the week | £55 |
| Deduct £20 | £20 |
| | £35 |
| Deduct 50% of remainder | £17.50 |
| Income from boarder 1 | £17.50 |

| | |
|---|---|
| **Boarder 2** | |
| Payments for the week | £60 |
| Deduct £20 | £20 |
| | £40 |
| Deduct 50% of remainder | £20 |
| Income from boarder 2 | £20 |
| **Total income** | |
| From boarder 1 and boarder 2 | = £37.50 |

## What is board and lodging accommodation

51106 Board and lodging accommodation[1] means

**1.** accommodation provided for a charge that includes

**1.1** providing the accommodation **and**

**1.2** some cooked or prepared meals **or**

**2.** accommodation provided in a hotel, guest house, lodging house (see DMG 51109) or similar establishment.

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

51107 Accommodation provided

**1.** by a close relative (see DMG 51110) **or**

**2.** by any other member of the family **or**

**3.** not on a commercial basis

should not be treated as board and lodging accommodation[1].

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

51108 Any meals provided

**1.** should not be cooked or prepared by the boarder or member of the boarder's family **and**

**2.** should be eaten in the accommodation or associated premises[1].

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

51109 A lodging house

**1.** is not a private house in which rooms are rented, even if services such as the provision and washing of bed linen are provided **and**

**2.** is a place where accommodation is offered on a long-term basis **and**

**3.** is the kind of establishment that may have a sign outside offering accommodation.

## Who is a close relative

51110 When considering board and lodging accommodation "close relative"[1] means a

**1.** parent

**2.** parent-in-law

**3.** son

**4.** son-in-law

**5.** daughter

**6.** daughter-in-law

**7.** step-parent

**8.** step-son

**9.** step-daughter

**10.** brother or sister (including half-brother and half-sister)

**11.** husband and wives of any of the people mentioned above

**12.** civil partner and those who are living together as civil partners or living together as husband and wife with any of the people mentioned above.

*1 ESA Regs (NI), reg 2(1); R(SB) 22/87*

51111 For the purposes of DMG 51110, a child who is adopted becomes

**1.** a child of the adoptive parents **and**

**2.** 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*

## Income from subletting

51112 Where a claimant sublets part of the home the decision maker should[1]

**1.** add together all payments made for the week by that subtenant and/or a member of the subtenant's family **and**

**2.** disregard

**2.1** £20 **or**

**2.2** the whole of the amount paid where the total is less than £20.

**Note:** In this guidance "home" means the dwelling occupied as the home.

*1 ESA Regs (NI), Sch 8, para 19*

**Example 1**

Sally has a subtenant in her home who is liable under a contract to pay her rent. The weekly rent is £50. The subtenant pays £30 on Tuesday and £20 on Saturday. The decision maker

**1.** adds together the payments in the week £30 + £20 = £50 **and**

**2.** deducts £20 = £30.

**Example 2**

Robin has two subtenants in his home. Both subtenants pay £65 a week. The decision maker

**1.** adds together the payments in the week £65 + £65 = £130 **and**

**2.** deducts £40 (£20 for each subtenant) = £90.

51113 - 51119

# Other types of income partially disregarded

## Living away from home allowance

51120 Living away from home allowance is paid by or on behalf of the Department for Communities and the Department for the Economy to people attending training courses. The decision maker should disregard the amount of this allowance except any part of it which is equal to rent or rates, or both, met by Housing Benefit for accommodation the claimant does not normally occupy[1].

*1 ESA Regs (NI), Sch 8, para 14(1)(d)*

## Income from certain disregarded capital

51121 The decision maker should

**1.** take into account as income any payments (including rent) from premises other than the home while the capital value of the premises is disregarded **and**

**2.** treat as capital any other income received from premises apart from income from the home. This includes rent from a property that has no value because of the liabilities secured on it.

**Note:** The disregards explained in DMG 51122 do not apply to income from the home.

51122 The amount to be disregarded is

**1.** any mortgage repayments, including

**1.1** both the interest and capital elements of any repayments **and**

**1.2** endowment policy premiums where it is a term of the mortgage that there is an endowment policy. The decision maker should establish the level of endowment required by the lender to cover the mortgage. See DMG 51123 for the calculation of the deduction for the premium **and**

**1.3** insurance premiums where it is a term of the mortgage that such insurance be held **and**

**2.** rates **and**

**3.** water charges

paid for the property producing the income during the period that the income was received for[1].

*1 ESA Regs (NI), Sch 8, para 22(2)*

51123 Endowments have both an investment and a life insurance element. The endowment may have been chosen to provide

**1.** just the level of investment and life assurance required by the lender to ensure repayment of the mortgage, including in the event of death. If the decision maker establishes that the endowment is this type of endowment, the decision maker should deduct the amount of the premium **or**

**2.** a level of investment and life assurance higher than that required by the lender. The premium for this type of endowment is higher than the endowment in **1.**. If the decision maker establishes that the endowment is this type of endowment the decision maker should

**2.1** establish the level of endowment actually required by the lender to cover the mortgage **and**

**2.2** restrict the amount of the deduction to the amount that would buy the level of endowment actually required by the lender. When deciding this amount, the decision maker may choose to look at the cost of a policy from the same insurance company or a different company.

51124 The disregard applies to income from properties whose capital value is disregarded because they are

**1.** intended to be the claimant's home but have not yet been occupied (see DMG Chapter 52) **or**

**2.** occupied wholly or partly by a partner or relative of

**2.1** a single claimant **or**

**2.2** any other member of the family

who is aged at least 60 or incapacitated (see DMG Chapter 52) **or**

**3.** occupied wholly or partly by the claimant's former partner (see DMG Chapter 52) **or**

**4.** the former marital home (see DMG Chapter 52) **or**

**5.** premises that the claimant is taking reasonable steps to sell (see DMG Chapter 52) **or**

**6.** premises the claimant intends to live in and certain steps are being taken to take possession (see DMG Chapter 52) **or**

**7.** premises the claimant intends making home but cannot move in until essential repairs and improvements have been completed (see DMG Chapter 52).

# National Lottery Sports Award

## Meaning of sports award

51125 “Sports award” means an award

**1.** made by one of the Sports Councils named in the National Lottery legislation **and**

**2.** out of sums allocated to it under that legislation[1].

*1 ESA Regs (NI), reg 2(1); National Lottery etc Act 1993, sec 23(2)*

51126 The Sport Councils named in the National Lottery legislation[1]are the

**1.** English Sports Council[2]

**2.** Scottish Sports Council

**3.** Sports Council for Wales

**4.** Sports Council for Northern Ireland

**5.** UK Sports Council[3].

*1 National Lottery etc Act 1993, sec 23(2); 2 National Lottery etc Act (Amendment of sec 23) Order 1996, art 2; 3 art 2*

## Amount of disregard

51127 Any payments of a sports award should be disregarded except to the extent that the award is made for

**1.** food **or**

**2.** ordinary clothing or footwear **or**

**3.** rent or rates for which Housing Benefit is payable **or**

**4.** household fuel **or**

**5.** water rates for which the claimant or a family member is liable[1].

**Note 1:** "Food" does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person for which the sport award was made[2].

**Note 2:** "Ordinary clothing and footwear" means clothing or footwear for normal daily use. It does not include school uniforms or clothing used solely for sporting activities[3].

*1 ESA Regs (NI), Sch 8, para 56(1) & (2); 2 Sch 8, para 56(3); 3 reg 2(1)*

51128 - 51130

# Maternity, paternity, adoption, parental and sick pay

## Statutory Maternity Pay

51131 Statutory Maternity Pay is payable by employers to female employees as part of, or instead of, normal earnings when they have given up work to have a baby. Women who are not employees are not entitled to Statutory Maternity Pay but may claim Maternity Allowance instead.

## Paternity pay and additional paternity pay

51132 Ordinary and additional Statutory Paternity Pay is payable to male employees during their paternity leave when they have average weekly earnings of at least the lower earnings limit.

## Statutory Adoption Pay

51133 Statutory Adoption Pay is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the lower earnings limit. It is paid at the same rate as standard Statutory Maternity Pay.

## Statutory Sick Pay

51134 Statutory Sick Pay is payable by employers as part of or instead of, normal wages for up to 28 weeks in any period of sickness. People who are not employed are not entitled to Statutory Sick Pay but may claim Employment and Support Allowance instead.

## Statutory shared parental pay

51135 Employees and workers may be entitled to shared parental leave and shared parental pay in respect of babies born or adopted on or after 5.4.15.

## Treatment of Statutory Maternity Pay, paternity pay, Statutory Adoption Pay, statutory shared parental pay and Statutory Sick Pay

51136 **[See DMG Memo Vol 4/155, 5/118, 8/104, 9/53, 10/81, 13/126 & 14/74]** The amount the decision maker should take into account is the gross amount less

**1.** any income tax paid[1] **and**

**2.** any employees' Class 1 National Insurance contributions[2] **and**

**3.** one half of any contribution paid by the claimant to an occupational or personal pension scheme[3].

**Note 1:** A claimant cannot be entitled to Employment and Support Allowance for a day which is a day of incapacity for work for Statutory Sick Pay purposes[4]. However, Statutory Sick Pay may be received by the claimant, for example, where it is paid in arrears whilst the claimant is in receipt of income-related Employment and Support Allowance.

**Note 2:** A claimant's partner could be entitled to Statutory Sick Pay whilst the claimant is entitled to income-related Employment and Support Allowance.

*1 ESA Regs (NI), Sch 8, para 1; 2 para 4(a) & 5(a); 3 para 4(b) & 5(b); 4 WR Act (NI) 07, sec 20(1)*

## Employer's private maternity, paternity, adoption or sick pay

51137 Maternity, paternity, adoption or sick pay from an employer's private scheme should be treated in the same way as Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay or Statutory Sick Pay with disregards made for the items described in DMG 51135.

## Lump sum payments of Statutory Maternity Pay

51138 Some employers may pay Statutory Maternity Pay as a lump sum at the start of the maternity pay period. The decision maker should apply the normal rules when deciding the period Statutory Maternity Pay should be taken into account[1].

*1 ESA Regs (NI), reg 91(2)(a)*

51139

# Payments for housing costs and mortgage protection payments

## Introduction

51140 The following paragraphs explain disregards on payments for housing costs. The type of disregard depends upon the way a payment is made. Decision makers should make sure that there is sufficient evidence available to decide how to apply the disregards.

## Meanings of terms used

51141 In the following paragraphs references to

**1.** "home" means "dwelling occupied as the home" which includes

**1.1** the dwelling and any

**1.1.a** garage

**1.1.b** garden **or**

**1.1.c** outbuildings

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

**1.2** any agricultural land adjoining that dwelling and any land not adjoining it which it is not practicable or reasonable to sell separately

**2.** "qualifying housing cost" means

**2.1** a loan which qualifies under the Loans for Mortgage Interest Regulations[1], see ADM Memo 4/18 **or**

**2.2** any other housing costs (for example service charges) which satisfies the conditions of DMG Chapter 44.

*1 LMI Regs (NI)*

**Note:** From 6.4.18 the regulations which provide for entitlement to owner occupier payments[1] within the Universal Credit, Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and State Pension Credit are repealed[2]. As a result owner occupier payments will no longer be met through those benefits. However transitional arrangements are in place for existing claimants whose housing costs can continue for a prescribed/limited period – see ADM Memo 4/18 for full details.

*1 UC Regs (NI) 16, reg 26(2)(b) & 27(3)(b)(i); IS (Gen) Regs (NI), reg 17(e) & 18(1)(f); JSA Regs (NI), reg 83(f) & 84(1)(g) & 86A; ESA Regs (NI), reg 67(1)(c) & 68(1)(d); SPC Regs (NI), Sch 2, para 1(1)(b) & 1(2)(c) & 8, 9, 11, 12; 2 LMI Regs (NI), reg 18*

**3.** "mortgage protection policy" means an insurance policy taken out to insure against the risk of not being able to maintain repayments on a loan or mortgage

**4.** "third party" means a person or organisation to whom the claimant is liable to make payments for housing or accommodation. This could include a

**4.1.** landlord

**4.2.** building society

**4.3.** insurance company

**4.4.** residential care home, nursing home, Abbeyfield home or independent hospital (see DMG 51192 - 51196 for the meaning of residential care home, nursing home and independent hospital)

**5.** capital repayments include repayments of capital on a "repayment" mortgage or loan as well as payments into

**5.1.** endowment policies

**5.2.** individual savings accounts (ISAs)

**5.3.** personal pension plans

**5.4.** other investment plans

that have been taken out to repay a mortgage or loan.

**Note:** Rooms that are sublet should be treated as part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

## Payments made direct to a third party when the claimant could not receive the income direct

51142 Where a claimant received housing costs within their award as in DMG 51141 **2.2** then the decision maker should take these payments into account but only up to the level of the housing costs included in the applicable amount. Any excess should be ignored[1]. This disregard applies

**1.** to a payment if the claimant could not successfully apply to receive the income direct **and**

**2.** for any period before the claimant could expect to get a payment in a case where the claimant could successfully apply to receive the income direct.

**Note:** The disregards in DMG 51150 et seq do not apply to these payments[2].

*1 ESA Regs (NI), reg 107(3)(c); 2 Sch 8, para 30(2) & 31(2)*

**Example**

Alex is entitled to income-related Employment and Support Allowance. He has a mortgage protection policy that pays £50 a week.

Under the terms of the mortgage protection policy payments must be made direct to the building society. The money is used to meet Alex's mortgage repayments.

Alex's applicable amount includes £25 a week for mortgage interest.

The decision maker treats Alex as having income of £25 a week. The balance of £25 is ignored.

## Payments made direct to a third party when the claimant could receive the income direct

51143 Where a claimant received housing costs within their award as in DMG 51141 **2.2** then the decision maker should treat any payments made direct to a third party as the claimant's income from the date the claimant could expect to get the income[1] if

**1.** an application was made **and**

**2.** the claimant could successfully apply to receive the income direct.

This notional income should be treated as if it is actually received by the claimant[2].

*1 ESA Regs (NI), reg 106(2); 2 reg 109(1)*

### How should the decision maker decide when the claimant could expect to get the income

51144 The decision maker should calculate the date the claimant could expect to receive the income by

**1.** assuming that an application was made on the date the decision maker first becomes aware of the possible income **and**

**2.** adding the estimated time it would take for an application to be processed.

### Payments made direct to the claimant

51145 If the claimant

**1.** receives payments **or**

**2.** is treated as receiving payments

for housing costs direct the decision maker should decide if the income comes from a mortgage protection policy.

51146 **[See DMG Memo Vol 4/143, 5/110, 6/93, 8/91 & 9/42]** Where a payment is made from a mortgage protection policy the decision maker must decide how much of the payment is for a qualifying loan. The decision maker must then decide under what legislation any disregards for the payment should be made. The decision maker should always apply any disregard for a mortgage protection policy payment before considering any other disregards[1].

**Note:** The decision maker will not automatically obtain a statement from a claimant's lender about housing costs. The decision maker should normally accept the claimant's own evidence. Corroboration of the claimant's evidence should only be sought if there are grounds to doubt it.

*1 ESA Regs (NI), Sch 8, para 30(1)*

51147 - 51149

# Mortgage protection policy payments

## How much mortgage protection policy payment should be disregarded

51150 The decision maker should disregard any payments that are used to pay the amount of any loan which

**1.** qualifies under the Loans for Mortgage Interest Regulations[1] (see DMG 51141) **or**

**2.** would qualify for such a loan if an application was made.

**Note:** The claimant only has to have a loan which qualifies for a Loan for Mortgage Interest, they do not have to be in receipt of an amount of a Loan for Mortgage Interest for this disregard to apply.

*1 ESA Regs (NI), Sch 8, para 30*

**Example 1**

Arsene receives income-related Employment and Support Allowance and applies for a loan under the new Loans for Mortgage Interest scheme. He also has a mortgage protection policy. Arsene is assessed as requiring a loan of £50/week under Loans for Mortgage Interest but does not receive a payment as his mortgage protection policy is equal to te amount of that - £50/week. As his loan is a qualifying loan and he uses his mortgage protection policy to meet his mortgage repayments, they are disregarded in the weekly calculation of his income-related Employment and Support Allowance award.

**Example 2**

Thierry receives income-related Employment and Support Allowance and applies for a loan under the new Loans for Mortgage Interest scheme. He also has a mortgage protection policy of £50/week. Thierry is assessed as requiring a loan of £75/week under Loans for Mortgage Interest, taking into account the mortgage protection policy of £50/week. As his loan is a qualifying loan and he uses his mortage protection policy to meet his mortgage repayments, they are disregarded in the weekly calculation of his income-related Employment and Support Allowance award.

## What if the payment from the mortgage protection policy is more than the claimant's housing costs

51151 **[See DMG Memo Vol 4/143, 5/110, 6/93, 8/91 & 9/42]** If the amount payable from the mortgage protection policy is more than the total the claimant has to pay to the third party, the balance will be ignored. This is because the mortgage protection policy is already taken into account in the calculation of payments under the Loans for Mortgage Interest scheme. See ADM Memo 8/18 for full details.

**Example**

Meghan receives Jobseeker's Allowance and applies for a loan under the new Loans for Mortgage Interest scheme. She also has a mortgage protection policy. Meghan is assessed as requiring a loan of £100/week under Loans for Mortgage Interest. She does not receive this loan as her mortgage protection policy is £150/week. As her loan is a qualifying loan and she uses the mortgage protection policy to pay her mortgage repayments, the payment from the mortgage protection policy is completely disregarded for Jobseeker's Allowance purposes.

51152 - 51159

# Other payments for housing costs

## Types of payment disregarded

51160 Payments of income

**1.** intended by the claimant, or person making the payment as a contribution towards certain housing and accommodation costs **and**

**2.** used as a contribution

towards any of the costs in DMG 51163 should be disregarded[1]. This disregard does not apply to payments under an insurance policy to which DMG 51218 applies.

*1 ESA Regs (NI), Sch 8, para 31(1)*

51161 If the payment is from a mortgage protection policy the decision maker should consider the disregards explained in DMG 51150 - 51151 before considering this disregard.

51162 If a payment is made from an insurance policy the decision maker should decide if the policy was taken out to meet housing costs[1]. If the policy was taken out to meet housing costs the decision maker should consider the disregards at DMG 51150 et seq before any other disregards.

*1 R(IS) 13/01*

51163 **[See DMG Memo Vol 4/143, 5/110, 6/93, 8/91 & 9/42]** Disregard

**1.** any payment on a loan secured on the claimant's home which is not a qualifying housing cost (if only part of the loan is not a qualifying housing cost this disregard only applies to the amount of the payment for that part)[1]

**2.** interest payments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount or by a loan payment under the new Loans for Mortgage Interest scheme[2]

**3.** capital repayments for a loan which is a qualifying housing cost where those payments are not met by a loan payment under the new Loans for Mortgage Interest scheme[3]

**4.** insurance policy premiums for

**4.1** mortgage protection policies if the other payments disregarded under this paragraph come from it[4] **and**

**4.2** building insurance policies for the claimant's home[5]

**5.** other housing costs

**5.1** any payment towards

**5.1.a** service charges **and**

**5.1.b** ground rent or rentcharge **and**

**5.2** any payment for a tent

to the extent that it is not met in the applicable amount or by a loan payment under the new Loans for Mortgage Interest scheme[6]

**6.** rent on the home that is not met by Housing Benefit[7]

**7.** accommodation charges[8] but only to the extent that the actual charge exceeds the amount payable by Health and Social Services Boards under certain legislation[9].

**Note 1:** The disregards at **2 and 3** only apply to that part of the loan that is a qualifying housing cost.

**Note 2:** A service charge is a qualifying housing cost if it is payable as a condition of the claimant occupying a property. See DMG Chapter 44 for guidance when a service charge can be met as a housing cost.

*1 ESA Regs (NI), Sch 8, para 31(1)(a); 2 para 31(1)(b); 3 para 31(1)(c); 4 para 31(1)(d)(i); 5 para 31(1)(d)(ii); 6 para 31(1)(b); 7 para 31(1)(e); 8 para 31(1)(e); 9 HPSS (NI) Order 1972, art 36(3)*

**Example 1**

George receives income-related Employment and Support Allowance and has a loan secured on his home which does not qualify under the new Loans for Mortgage Interest scheme. George's father meets the loan repayments in full. The payments from George's father are completely disregarded for the purposes of calculating George's income-related Employment and Support Allowance award.

**Example 2**

Charlotte receives income-related Employment and Support Allowance and has a loan which is a qualifying loan under the new Loans for Mortgage Interest scheme but she chooses not to take up the loan offer. This is because Charlotte's parents are meeting the loan repayments in full for her. These payments are completely disregarded for the purposes of calculating Charlotte's income-related Employment and Support Allowance award.

**Example 3**

William receives income-related Employment and Support Allowance and receives a payment for his mortgage under the new Loans for Mortgage Interest scheme. However, William's loan payments are less than the amount he has to pay because the lender's interest rate is higher than the standard interest rate used to calculate the Loans for Mortgage Interest payments. William's brother makes a contribution to him for the shortfall and he uses this to meet his mortgage repayments in full. The amount given to William by his brother is completely disregarded for the purposes of calculating his income-related Employment and Support Allowance award.

**Example 4**

Kate receives income-related Employment and Support Allowance and a payment for her mortgage under the new Loans for Mortgage Interest scheme. Kate's sister also gives her the money needed to meet her mortgage repayments each month. The money given to Kate by her sister is taken fully into account for the purposes of calculating her award of income-related Employment and Support Allowance as it does not fall to be disregarded under the provisions described in DMG 51163.

51164 The disregards in DMG 51163 do not apply if the decision maker decides the payment is a liable relative payment[1].

*1 ESA Regs (NI), reg 85*

51165 If a payment for a housing cost or part of a housing cost has already been disregarded under DMG 51150 - 51151 the payment for the same cost should not be disregarded again under DMG 51163.

### How should the decision maker treat payments for housing costs that also attract other disregards

51166 The decision maker should include any other disregard that applies to a payment made for housing costs. This includes any

**1.** income tax deducted from the payment **and**

**2.** disregard that applies to charitable and voluntary payments.

51167 - 51169

## Supersessions and payments for housing costs

51170 Special rules on the supersession of disregards of payments for housing costs apply in Employment and Support Allowance[1]. The special rules apply to

**1.** mortgage protection policies **and**

**2.** other payments for housing costs.

*1 SS & CS (D&A) Regs (NI), regs 6(2) & 7(17E)*

51171 Some disregards on payments for housing costs are based on the interest payable on a loan. If the interest payable alters, the disregard has to be revised or superseded.

51172 A supersession caused by a change in interest payable on

**1.** a loan that is a qualifying housing cost **or**

**2.** a loan that is not a qualifying housing cost but is secured on the home

will not be effective until the next appropriate date is reached[1].

*1 SS & CS (D&A) Regs (NI), reg 7(17F)*

51173 The appropriate date in DMG 51172 is the later of

**1.** the date when[1]

**1.1** new or existing housing costs are awarded in full because the claimant or partner is aged at least 60 **or**

**1.2** existing housing costs are awarded at 100% after the claimant has been in continuous receipt of income-related Employment and Support Allowance for 26 weeks **or**

**1.3** new housing costs are awarded at 100% after the claimant has been in continuous receipt of income-related Employment and Support Allowance for 39 weeks **or**

**2.** the date of the next change in standard interest rate[2].

*1 SS & CS (D&A) Regs (NI), reg 7(17F)(a); 2 reg 7(17F)(b)*

**Example**

Frank becomes entitled to income-related Employment and Support Allowance on 1 April. He has a mortgage on his home which was taken out before 2.10.95. Frank has a mortgage protection policy which pays the interest and capital repayments on his mortgage.

The decision maker calculates the amount of the disregard for Frank's mortgage protection policy payments and decides that no income should be taken into account.

On 1 May the interest payable on Frank's mortgage increases. The decision maker supersedes the disregard of Frank's mortgage protection policy payments but the supersession is not effective until 1 October when his existing housing costs have been awarded at 100%.

51174 The special supersession rules only apply to changes in interest payments caused by interest rate changes. Normal supersession rules apply to all other changes of circumstances including

**1.** changes in capital repayments on a loan **and**

**2.** changes in premiums for

**2.1** mortgage protection policies **and**

**2.2** policies designed to repay the loan **and**

**2.3** buildings insurance policies.

**Note:** The amount of premiums for some mortgage protection policies depends on the amount of interest actually payable. Normal supersession rules apply where a change in interest payable causes mortgage protection policy premiums to change.

51175 - 51179

51180 When

**1.** a change of interest payable is not effective until the next appropriate date is reached **and**

**2.** a later change occurs that

**2.1** affects the amount of interest disregarded **and**

**2.2** the special supersession rules do not apply

the amount of interest disregarded because of the second change should be based on the actual interest payable.

**Example**

Liam has a mortgage protection policy. The interest payable on his loan is £15 a week. He receives £10 a week interest in his applicable amount.

On 1 January the decision maker disregards £5 a week.

On 1 February the interest payable increases to £16 a week. The decision maker supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5.

On 1 March the standard interest rate changes. The interest in Liam's applicable amount increases to £12. The actual interest payable remains at £16.

The decision maker supersedes the amount of the disregard. The disregard is reduced to £4 (£16 - £12).

51181 When

**1.** a change in interest payable is not effective until the next appropriate date is reached **and**

**2.** a later change occurs that

**2.1** affects disregarded items other than loan interest **and**

**2.2** special supersession rules do not apply

there will be no grounds to supersede the disregard of interest. The supersession should be restricted to the items directly affected by the change[1].

*1 R(IS) 15/93*

**Example**

Christina receives payments from a mortgage protection policy. The interest payable on her loan is £15 a week. She gets £10 a week in her applicable amount.

From 1 January the decision maker disregards £5 from the mortgage protection policy payment.

On 1 February the interest on the loan increases to £16 a week. The decision maker supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5 a week.

On 1 March mortgage protection policy premiums increase. The decision maker increases the amount of the disregard relating to mortgage protection policy premiums only. The amount of the disregard relating to loan interest is not superseded until the next appropriate date is reached.

51182 - 51189

# Payments for residential care home, nursing home, Abbeyfield home or independent hospital charges

## Introduction

51190 DMG 51191 - 51202 gives guidance on the treatment of payments of income towards accommodation charges for

**1.** a residential care home **or**

**2.** a nursing home **or**

**3.** an Abbeyfield home **or**

**4.** an independent hospital.

51191 The treatment of the income depends on

**1.** the type of payment

**2.** whether the Health and Social Services trust has sponsored the claimant in their accommodation.

## Residential care home

51192 A residential care home[1] is an establishment which provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of

**1.** old age and infirmity;

**2.** disablement;

**3.** past or present dependence on alcohol or drugs; **or**

**4.** past or present mental disorder.

*1 ESA Regs (NI), reg 2(1);*
*Health & Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003, art 10*

51193 But an establishment is **not** a residential care home if it is[1]

**1.** a hospital which is vested in the Department or managed by a Health and Social Services trust;

**2.** a private hospital as defined in certain legislation[2];

**3.** an establishment which is used, or is intended to be used, soley as a nursing home;

**4.** a children's home;

**5.** a university, or an institution of further education, college of education or school; **or**

**6.** of a description excepted by regulations.

*1 Health & Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003, art 10(2);*
*2 Mental Health (NI) Order 1986, art 90(2)*

## Nursing home

51194 A nursing home[1] means any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any illness or infirmity.

*1 ESA Regs (NI), reg 2(1);*
*Health & Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003, art 11(1)*

51195 A nursing home does **not** include[1]

**1.** a hospital which is vested in the Department or managed by a Health and Social Services trust;

**2.** a private hospital as defined in prescribed legislation[2];

**3.** a children's home;

**4.** any sanatorium provided at a school or educational establishment and used, or intended to be used, solely by persons at, or members of staff of, that school or establishment or members of their families;

**5.** any first aid or treatment room provided at premises to which certain legislation[3] applies or at a sports ground, show ground or place of public entertainment;

**6.** any premises used, or intended to be used, wholly or mainly

**6.1** by a medical practitioner for the purpose of consultations with his patients; **or**

**6.2** by a dental practitioner or chiropodist for the purpose of treating his patients; **or**

**6.3** for the provision of occupational health facilities;

**7.** any premises used, or intended to be used, wholly or mainly as a private dwelling; **or**

**8.** any other premises excepted from that definition by regulations.

*1 Health & Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003, art 11(2);*
*2 Mental Health (NI) Order 1986, art 90(2); 3 Factories Act (NI) 1965 or Office and Shop Premises Act (NI) 1966*

## Abbeyfield home

51196 An Abbeyfield home[1] is an establishment run by the Abbeyfield Society or any other body affiliated to that Society.

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

## Independent hospital

51197 An independent hospital[1] means a hospital which is not vested in the Department or managed by a Health and Social Services trust unless it is of a description excepted by regulations.

*1 ESA Regs (NI), reg 2(1); Health & Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003, art 2(2)*

## Types of payment

51198 The payments for accommodation may be

**1.** charitable or voluntary (see DMG 51390 et seq) **or**

**2.** other payments.

The decision maker should decide what type of payment is being made.

51199

## Payments to claimants not in Health and Social Services trust sponsored accommodation

51200 This disregard applies where a claimant is residing in

**1.** a residential care home, a nursing home, an Abbeyfield home or an independent hospital **and**

**2.** accommodation that has not been provided by a Health and Social Services trust under certain legislation[1].

**Note:** This disregard does not apply to charitable or voluntary payments which are fully disregarded - see DMG 51416.

*1 HPSS (NI) Order 1972, art 15 & 36*

51201 The decision maker should disregard from any payment intended and used for accommodation charges the difference between the

**1.** claimant's applicable amount **and**

**2.** actual charge made by the home or hospital[1].

*1 ESA Regs (NI), Sch 8, para 33*

**Example**

Andrew receives income-related Employment and Support Allowance. He lives in an independent hospital which provides treatment for drug and alcohol dependency. The Health and Social Services Board are not paying for Andrew's stay. The weekly charge for the hospital is £300. Andrew receives a payment of £250 a week from a trust fund towards his accommodation charges.

The decision maker calculated Andrew's applicable amount as follows

| | |
|---|---|
| personal allowance | £54.65 |

The difference between £54.65 and the charge by the hospital is the amount of the disregard.

| | |
|---|---|
| actual charge | £300.00 |
| less | £54.65 |
| The disregard is | £245.35 |

## Other payments towards accommodation costs

51202 Disregard the amount of the payment intended and used for charges not met by the Health and Social Services Board[1] under certain legislation[2].

**Note:** This would only happen if the charge was greater than the amount allowed by the Health and Social Services Board but not if the claimant chose a more expensive home than the Health and Social Services Board would allow.

*1 ESA Regs (NI), Sch 8, para 31(1)(e); 2 HPSS (NI) Order 1972, art 36(3)*

51203 - 51209

# Income fully disregarded

## Types of income fully disregarded

51210 **[See DMG Memo Vol 4/141, 5/108, 7/48, 8/89, 9/40 & 14/65] [See DMG Memo Vol 4/140, 5/107, 8/88, 9/39, 13/70 & 14/64] [See DMG Memo Vol 5/113, 9/46 & 14/69] [See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** When calculating income for income-related Employment and Support Allowance disregard fully

**1.** any payment from and/or some payments from money that originally came from

**1.1** the Macfarlane Trust

**1.2** the Macfarlane (Special Payments) Trust

**1.3** the Macfarlane (Special Payments) (No. 2) Trust

**1.4** the Independent Living Fund (2006)

**1.5** the Fund

**1.6** the Eileen Trust

**1.7** the Skipton Fund

**1.8** MFET Limited

**1.9** the Caxton Foundation

**1.10** Infected Blood Schemes

**1.11** the Scottish Infected Blood Support Scheme

**1.12** the London Emergencies Trust

**1.13** the We Love Manchester Emergency Fund

**2.** any payment for a reduction of rates

**3.** attendance allowances

**4.** Armed Forces Independence Payment

**5.** The Bereavement Support Payment (see DMG 51232)

**6.** certain payments due to be paid before the date of claim

**7.** Child Benefit

**8.** child maintenance

**9.** Christmas Bonus

**10.** compensation for loss of Housing Benefit

**11.** concessionary payments

**12.** the cost of conversion of foreign money

**13.** Child Tax Credit

**14.** dependant's or non dependant's contributions to accommodation and living costs

**15.** Disability Living Allowance

**16.** discretionary housing payments

**17.** Education maintenance allowance

**18.** Self-employment route

**19.** Guardian's Allowance

**20.** gallantry awards

**21.** Housing Benefit

**22.** income frozen abroad

**23.** income in kind

**24.** income tax refunds

**25.** income treated as capital

**26.** increases in social security benefits for absent dependants

**27.** jurors' or witnesses' court attendance allowance

**28.** Mobility supplement

**29.** a mandatory top-up grant made under section 1 of the Employment and Training Act (NI) 1950 in respect of a claimant's participation in the Preparation for Employment Programme

**30.** payments for foster children

**31.** payment for a person temporarily in the care of the claimant

**32.** payments from a Health and Social Services Board in lieu of Community Care Services

**33.** payment by an employer of employee's expenses

**34.** payment of expenses to voluntary workers and service users

**35.** payments to help disabled people get or keep employment

**36.** payments from the Social Fund under social security legislation

**37.** payments from the Supporting People programme

**38.** certain payments made under employment and training law

**39.** payments made under the Return to Work Credit Scheme

**40.** Personal Independence Payment

**41.** resettlement benefit

**42.** special guardianship payments

**43.** training premium and expenses

**44.** travelling expenses for training schemes

**45.** vouchers including child care cheques

**46.** war widows/widowers, surviving civil partners supplementary pensions

**47.** welfare foods, National Health Service supplies, travelling expenses and assisted prison visits

**48.** work-related activity expenses.

**Note 1:** See DMG 51341 et seq for further guidance on payments listed at **1.1** - **1.9**.

**Note 2:** The Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to Local Authorities in England, the Welsh Independence Living Grant and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact Decision Making Services for advice if a claimant receives funding from any of these replacement schemes.

51211

## Adoption allowance

51212 Adoption agencies[1], that is Health and Social Services Boards, Health and Social Services trusts or registered voluntary adoption societies may pay adoption allowances to help people who might otherwise not be able to afford to adopt children. It may be paid where a

**1.** long-term foster parent wishes to adopt but cannot afford to lose their boarding out allowance **or**

**2.** child's prospects of adoption are lowered because of disability.

Adoption allowances may be paid under approved adoption allowance schemes or in accordance with legislation[2].

**Note:** Each adoption agency has its own scheme. There is usually a rule that ends the allowance when the adopted child or young person stops living with the adopter.

*1 Adoption (NI) Order 87; 2 Adoption Allowance Regs (NI) 96*

### Adoption allowance paid for members of the family

51213 Any adoption allowance paid for a child or young person who is a member of the family is fully disregarded[1].

*1 ESA Regs (NI), Sch 8, para 25*

### Adoption allowances paid other than for a child who is a member of the family

51214 Disregard any payment[1] made under specific legislation[2] in respect of

**1.** a child who is not a member of the family **or**

**2.** the claimant or partner.

*1 ESA Regs (NI), Sch 8, para 25(2); 2 Adoption and Children Act 2002, sec 2(6)(b), 3 & 4*

### Adoption allowances paid in Scotland or Wales for children who are not members of the family

51215 If an adoption allowance is paid in Scotland or Wales for a child or young person who is not treated as a member of the family, for example a child in youth custody, the decision maker should

**1.** disregard in full any amount which is spent on the child or young person **and**

**2.** take into account any amount used by the claimant or partner[1].

*1 ESA Regs (NI), reg 107(4)*

## Residence orders

### Northern Ireland Children Order

51216 Payments made by an authority[1] under specified legislation[2] are fully disregarded[3].

*1 Children (NI) Order 1995, art 2; 2 art 15 & Sch 1, para 17; 3 ESA Regs (NI), Sch 8, para 25(1)(b)*

### Local authority payments for children subject to a residence order

51217 Payments made by a local authority under specified legislation[1] are fully disregarded[2].

*1 Children Act 1975, sec 34(6) & 50; Children Act 1989, sec 15 & Sch 1, para 15;*
*2 ESA Regs (NI), Sch 8, para 25(1)(d)*

## Credit insurance policies

51218 Claimants may receive payments from credit insurance policies. These are policies designed to cover repayments for debts for

**1.** credit cards

**2.** catalogue companies

**3.** personal loans

**4.** other types of credit arrangements.

## Disregard for credit insurance policies

51219 A disregard applies to payments received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on[1]

**1.** a regulated agreement as defined in legislation **or**

**2.** a hire purchase agreement as defined in legislation **or**

**3.** a conditional sale agreement as defined in legislation[2].

**Note:** The disregard does not apply to insurance policies for qualifying housing costs[3]. The disregard for these policies is explained at DMG 51150 - 51151.

*1, 2 & 3 ESA Regs (NI), Sch 8, para 32*

51220 If an agreement is a regulated agreement under legislation, the creditor is required by law to state this in the agreement[1]. The decision maker may conclude that

**1.** if the agreement states that it is regulated under the legislation, then DMG 51219 **1.** is satisfied **and**

**2.** if the agreement **does not** state that it is regulated under the legislation, then DMG 51219 **1.** is not satisfied.

**Note:** The decision maker may depart from these conclusions where the evidence clearly supports another decision.

*1 Consumer Credit (Agreements) Regulations 1983*

51221 If an agreement is not regulated by legislation[1], the decision maker should decide on the facts whether it falls within DMG 51219 **2.** or **3.**.

*1 Consumer Credit Act 1974*

51222 A hire purchase agreement is defined in Part 6 of the Hire-Purchase Act (NI) 1966 as an agreement, other than a conditional sale agreement, under which

**1.** goods are bailed to a person in return for periodical payments **and**

**2.** ownership of the goods pass to this person **if**

**2.1** the terms with the agreement are complied with **and**

**2.2** one or more of the following occurs

**2.2.a** the person exercises an option to buy **or**

**2.2.b** an act specified in the agreement is carried out **or**

**2.2.c** an event specified in the agreement happens[1].

**Note:** "Bailment" is the transfer of possession of goods by the owner to someone else (the bailee). The bailor (owner) retains ownership for the time being.

*1 Hire-Purchase Act (NI) 1966, sec 64(1)*

51223 A conditional sale agreement is defined in legislation[1] as an agreement for the sale of goods under which

**1.** all or part of the purchase price is payable by instalment **and**

**2.** the seller remains the owner of the goods until the conditions of the agreement are fulfilled.

*1 Hire-Purchase Act (NI) 1966, sec 64(1)*

## Amount of disregard - credit insurance payments made direct to the claimant

51224 Payments may be disregarded to the extent that they do not exceed the amounts, calculated on a weekly basis, used to

**1.** maintain the repayments on the agreements in DMG 51219 **and**

**2.** meet any amount due by way of premiums on the insurance policy itself[1].

*1 ESA Regs (NI), Sch 8, para 32(2)*

## Credit insurance payments made to third parties

51225 The disregard may be applied to notional income that the claimant is treated as possessing under DMG 51226 - 51227.[1]

*1 ESA Regs (NI), reg 109(1)*

## Credit insurance payments made direct to the creditor

51226 Payments that are

**1.** made direct to the creditor **and**

**2.** available to the claimant upon application

should be treated as income available upon application. (See DMG 51496 et seq).

51227 Payments that are

**1.** made direct to the creditor **and**

**2.** not available to the claimant upon application

should be treated as income paid to a third party to the extent that they are used for the items listed in DMG 51597. Payments made for items not listed in DMG 51597 should be fully disregarded.

51228 Payments made directly to the claimant that are immediately transferred to the creditor do not fall under the provisions of DMG 51226 - 51227. They should be treated as payments made directly to the claimant.

## Jurors or witnesses court attendance allowance

51229 The decision maker should fully disregard any payment to a

**1.** juror **or**

**2.** witness

for attending court. But payments for loss of earnings or benefits[1] should not be disregarded.

*1 ESA Regs (NI), Sch 8, para 42*

# Benefits fully disregarded

## Attendance allowances

51230 Disregard in full[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.** payments for attendance under the Civilian's Personal Injury Scheme[6] or any similar payment. These payments are made to people who receive a disability premium because of war injuries suffered as civilians or civil defence volunteers

**5.** any payment for attendance which is a part of War Disablement Pension. This includes severe disablement occupational allowance paid with Constant Attendance Allowance.

*1 ESA Regs (NI), Sch 8, para 11; 2 SS C&B (NI) Act 92, sec 64; 3 sec 104 or 105; 4 sec 104 or 105; 5 Personal Injuries (Civilians) Scheme 83, art 14 - 16, 43 or 44*

## The meaning of Attendance Allowance

51231 Decision makers should recognise the difference between

**1.** the term Attendance Allowance which is commonly used to describe one particular benefit (abbreviation AA) **and**

**2.** "Attendance Allowance" which is defined in legislation[1] and includes all the benefits in DMG 51230 (abbreviation "AA").

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

## Bereavement Support Payment

51232 The Bereavement Support Payment replaces the Bereavement Benefit for people whose spouse or civil partner dies on or after 6.4.17[1]. There are two rates of Bereavement Support Payment, the higher rate and the standard rate. The regular monthly Bereavement Support Payment is treated as income other than earnings[2] and is disregarded for the period in respect of which it is paid. Any unspent Bereavement Support Payment remaining at the end of the month will become capital (with no disregard applied). The regular monthly payment does not include any arrears or the higher or standard rate of Bereavement Support Payment that may be payable for the first month of the Bereavement Support Allowance period[3].

**Note:** See DMG Chapter 29 for how Bereavement Support Payment affects capital and DMG Chapter 59 for more information on Bereavement Support Payment.

*1 Pensions (2015 Act)(Commencement No.5) Order (NI) 2017, Art 2; BSP Regs (NI), reg 1(2); 2 IS (Gen) Regs (NI), Sch 9, para 80; JSA Regs (NI), Sch 7, para 76; 3 BSP Regs (NI), reg 3(2) & (5)*

## Disability Living Allowance, Personal Independence Payment and Armed Forces Independence payment

51233 The decision maker should fully disregard

**1.** Disability Living Allowance

**1.1** mobility component[1] **and**

**2.2** care component[2]

**2.** Personal Independence Payment

**2.1** mobility component[3] **and**

**2.2** daily living component[4]

**3.** Armed Forces Independence payment[5].

*1 ESA Regs (NI), Sch 8, para 8; 2 para 11; 3 para 8; 4 para 11; 5 para 62*

## Child Benefit, Child Tax Credit and child dependant increases

51234 The decision maker should fully disregard any

**1.** Child Benefit[1]

**2.** Child Tax Credit[2]

**3.** child dependant increases[3] paid with

**3.1** Carer's Allowance

**3.2** Retirement Pension

**3.3** Incapacity Benefit

**3.4** Severe Disablement Allowance

**3.5** Widowed Mother's Allowance

**3.6** Widowed Parent's Allowance.

*1 ESA Regs (NI), Sch 8, para 7(1); 2 Sch 8, para 7(2); 3 Sch 8, para 7(3)*

## Christmas bonus

51235 Christmas bonus should be disregarded in full[1]. It is paid in the week starting with the first Monday in December to people receiving[2]

**1.** Retirement Pension

**2.** Incapacity Benefit

**3.** Widowed Mother's Allowance, Widowed Parent's Allowance or Widow's Pension

**4.** Severe Disablement Allowance

**5.** Carer's Allowance

**6.** Industrial Death Benefit

**7.** Attendance Allowance/Disability Living Allowance

**8.** Unemployability Supplement

**9.** War Disablement Pension

**10.** War Widow's Pension/War Widower's Pension

**11.** contribution-based Employment and Support Allowance

**12.** State Pension Credit.

*1 ESA Regs (NI), Sch 8, para 36; 2 SS C&B (NI) Act 92, sec 144*

## Compensation for loss of Housing Benefit

51236 The decision maker should fully disregard any payment made by the Department to compensate for the total or partial loss of Housing Benefit[1].

*1 ESA Regs (NI), Sch 8, para 41*

## Discretionary housing payments

51237 Health and Social Services Boards may make discretionary housing payments to Housing Benefit recipients requiring further financial assistance with their housing costs[1]. For Employment and Support Allowance purposes discretionary housing payments should be disregarded[2].

*1 Discretionary Financial Assistance Regulations (NI) 2001, reg 2(1), (S.R. 2001 No. 216);*
*2 ESA Regs (NI), Sch 8, para 59*

## Guardian's Allowance

51238 The decision maker should fully disregard any Guardian's Allowance[1]. It is payable to a person who is entitled to Child Benefit for a child

**1.** whose natural parents are dead **or**

**2.** where one of the natural parents is dead and the other cannot be traced or is serving a long prison sentence.

*1 ESA Regs (NI), Sch 8, para 6*

## Housing Benefit

51239 The decision maker should fully disregard any payments of Housing Benefit[1] to which the claimant is entitled. Housing Benefit may be

**1.** paid direct to the claimant **or**

**2.** paid direct to the landlord **or**

**3.** deducted from the rent payable.

Housing Benefit is paid by the Northern Ireland Housing Executive to help people on low incomes pay their rent.

**Note:** See DMG 51104 et seq where the claimant is a landlord and receives Housing Benefit.

*1 ESA Regs (NI), Sch 8, para 61*

## Increases in social security benefits and service pensions for absent dependants

51240 The decision maker should fully disregard any increase in a social security benefit[1] or a service pension[2] for a

**1.** husband, wife, civil partner or any other adult dependant **or**

**2.** child

who is not a member of the family for Employment and Support Allowance purposes.

**Note:** "Service Pension" in this guidance means a pension or allowance paid in respect of disablement or death due to service in the armed services.

*1 ESA Regs (NI), Sch 8, para 49(1); 2 Sch 8, para 49(2); The Naval, Military and Air Forces etc. (Disablement and Death) Sevice Pensions Order 2006, Part 2 or 3*

51241 Dependency increases can be paid as part of

**1.** Maternity Allowance

**2.** Severe Disablement Allowance

**3.** Retirement Pension

**4.** Unemployability Supplement paid with Disablement Benefit (abolished for new claims in 1987).

Claimants must pay over an amount at least equal to the dependency increase to continue to receive it.

**Note:** Child Benefit for a child who is not a member of the family should be taken into account in full as the income of the Child Benefit claimant.

## Mobility supplement

51242 The decision maker should fully disregard

**1.** Mobility supplement **and**

**2.** War Pensioner's Mobility Supplement **and**

**3.** The mobility component of Disability Living Allowance[1].

Any payment to compensate for the non-payment of these benefits should also be disregarded in full.

*1 ESA Regs (NI), Sch 8, para 8 & 10*

## Payments from the Social Fund under social security legislation

51243 The decision maker should fully disregard any payment made from the Social Fund[1].

**Note:** This disregard does not apply to payments from the European Social Fund.

*1 ESA Regs (NI), Sch 8, para 34*

# Concessionary payments

## Types of concessionary payments that should be disregarded

51244 The decision maker should fully disregard concessionary payments[1] of

**1.** attendance allowances

**2.** Disability Living Allowance mobility component

**3.** Disability Living Allowance care component

**4.** Personal Independence Payment mobility component

**5.** Personal Independence Payment daily living component

**6.** income-based Jobseeker's Allowance

**7.** Income Support

**8.** income-related Employment and Support Allowance

*1 ESA Regs (NI), Sch 8, para 9*

## What are concessionary payments

51245 Concessionary payments[1] are made by the Department in place of

**1.** social security benefits **or**

**2.** Housing Benefit.

They are made when the policy intention to pay benefit cannot be achieved because of a fault in the law. They should be treated in the same way as the benefit they represent.

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

51246 – 51249

# Payments under the Supporting People programme

51250 Payments may be made under the Supporting People programme. The decision maker should fully disregard[1] any payment made by the Northern Ireland Housing Executive to or on behalf of the claimant or partner relating to a service which is

**1.** provided to develop **or**

**2.** sustain the capacity of the claimant or partner

to live independently in his accommodation.

*1 ESA Regs (NI), Sch 8, para 60*

51251 – 51253

# Payments for children and people living temporarily with the claimant

## Foster children

51254 The decision maker should fully disregard payments[1] made by or on behalf of

**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 a child it is looking after[2] **or**

**2.** a voluntary organisation under certain legislation[3] **or**

**3.** a juvenile justice centre[4]

for children who are living with claimants under caring arrangements.

**Note:** These allowances should not be treated as earnings.

*1 ESA Regs (NI), Sch 8, para 27; 2 Children (NI) Order 95, art 27(2)(a); 3 art 75(1)(a)*
*4 Criminal Justice (Children)(NI) Order 1998, art 43(2)*

51255

## Payments for the welfare of children

51256 Certain legislation[1] concerning the welfare of children came into force from 1.9.05. Changes apply to certain children who have been looked after by an authority on or after 1.9.05.

*1 Children (Leaving Care) Act (NI) 2002*

51257 The decision maker should fully disregard[1] payments made by Health and Social Services Boards or Health and Social Services trusts under child-care law[2]

**1.** to promote the welfare of children **and**

**2.** to prevent people being taken into care.

*1 ESA Regs (NI), Sch 8, para 29(1);*
*2 Children (Leaving Care)(2002 Act) (Comm. No.2 & Cql Provs.) Order (NI) 2005, Sch 1, para 3 & Sch 3, para 3; Children (NI) Order 95, art 18, 34C, 34D or 35A*

51258 Where

**1.** a former child (aged over 18) who was in the claimant's care still lives with the claimant **and**

**2.** the Health and Social Services Board or Heath and Social Services trust makes payments under certain child care law[1] to the former child in care **and**

**3.** the former child in care passes the payments on to the claimant

those payments received by the claimant are fully disregarded[2].

*1 Children (NI) Order 95, art 34D; 2 ESA Regs (NI), Sch 8, para 29(2) & (3)*

## Payments for people temporarily in the claimant's care

51259 The decision maker should fully disregard payments to a claimant or partner for a person who

**1.** is not normally a member of the claimant's household **and**

**2.** is temporarily in the claimant's care[1]

when payments are made by a Health and Social Services Board, Health and Social Services trust, a voluntary organisation, the person concerned under specified legislation[2] or a juvenile justice centre[3].

*1 ESA Regs (NI), Sch 8, para 28; 2 HPSS (NI) Order 91, art 36(7);*
*3 Criminal Justice (Children)(NI) Order 98, art 51(1)*

51260 This type of payment is often made to people providing "respite care". This is short-term care provided to give a disabled person's usual carer a break from their caring responsibilities. People providing respite care should not be treated as

**1.** engaged in remunerative work **or**

**2.** receiving earnings from self-employment[1].

*1 ESA Regs (NI), reg 97(2)*

51261 - 51262

# Payments of expenses

## Payment by an employer of employee's expenses

51263 The decision maker should fully disregard payments made by an employer for expenses which are

**1.** wholly **and**

**2.** exclusively **and**

**3.** necessarily

incurred by an employee while performing the duties of the employment[1].

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

51264 The decision maker should treat as earnings any payments of expenses

**1.** above the amount which fits the conditions **or**

**2.** that do not fit the conditions

described in DMG 51263.

## Payment of a voluntary worker's expenses

51265 The decision maker should fully disregard payments towards expenses incurred and advance payments for expenses to be incurred[1] by a person who

**1.** does voluntary work for a

**1.1** charity **or**

**1.2** voluntary organisation **or**

**2.** is a volunteer[2].

**Note:** Volunteers do not have to be engaged by a charitable or voluntary organisation. A Health and Social Services Board, Health and Social Services trust or a public body cannot be a voluntary organisation[3].

*1 ESA Regs (NI), Sch 8, para 2; 2 R(IS) 12/92; 3 ESA Regs (NI), reg 2(1)*

51266 The expenses may be

**1.** incurred in, or for the performance of the work, for example special clothing or equipment **or**

**2.** for personal incidental expenses resulting from the person being a voluntary worker, for example travelling expenses or child care costs.

51267 This disregard applies provided that the person is not

**1.** remunerated for their voluntary activity **or**

**2.** treated as having notional earnings.

See DMG Chapter 49 for guidance on notional earnings.

### Time-exchange schemes

51268 Time-exchange schemes are based on the idea that community members donate time to the community using their specific skills, and receive the same amount of time in return from another community member with a skill they require. Participants may believe they are volunteers but for income-related Employment and Support Allowance purposes it is not voluntary work (which is done without remuneration or expectation of remuneration). The hours worked by the claimant/partner are "banked" with the organisation and accumulate each time they carry out additional work under the "time-exchange" scheme.

51269 Payment of expenses to the claimant/partner for participating in a particular activity will be an exception as it is not in the nature of the scheme to use cash as part of the running of the scheme. If exceptionally, expenses are reimbursed they should be treated as other income and taken fully into account assessing the award of income-related Employment and Support Allowance. This is because participation in "time-exchange" is not volunteering so the treatment of volunteers' reimbursed expenses (see DMG 51265) is not appropriate here.

## Service users

51270 A service user is[1]

**1.** a person who is being consulted by or on behalf of

**1.1** a body which has a statutory duty to provide services in the field of

**1.1.a** health **or**

**1.1.b** social care **or**

**1.1.c** social housing **or**

**1.2** a body which conducts research or undertakes monitoring for the purpose of planning or improving the services in **1.1**

in their capacity as a user, potential user, carer of a user or a person affected by those services **or**

**2.** a person who is being consulted by or on behalf of

**2.1** the Department in relation to social security or child support functions under relevant legislation **or**

**2.2** a body which conducts research or monitoring in order to plan or improve the functions in **2.1**

in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person

**3.** the carer of a person consulted under **1.** or **2.**.

*1 ESA Regs (NI), reg 2(8)*

51271 For the purposes of DMG 51270

**1.** a service user is a person who

**1.1** has used **or**

**1.2** is using **or**

**1.3** may potentially use **or**

**1.4** is otherwise affected by (for example, a carer)

the services referred to in **2. and**

**2.** the services concerned are delivered by a body which has a statutory duty to provide services in the field of

**2.1** health **or**

**2.2** social care **or**

**2.3** social housing **or**

**2.4** social security **or**

**2.5** child support **and**

**3.** a service user is a person who is consulted by the bodies in **2.** or by an alternative body (for example educational establishments or voluntary and charitable organisations) who conduct

**3.1** research **or**

**3.2** monitoring **or**

**3.3** planning

in order to improve services through user involvement.

51272 Any payment of expenses paid to the claimant as a result of participating as a service user is fully disregarded[1].

*1 ESA Regs (NI), Sch 8, para 2A*

**Example 1**

Anton is an out-patient at his local hospital and attends there on a regular basis for treatment. He is in receipt of income-related Employment and Support Allowance. Anton has volunteered to take part in a Patients' Forum which discusses the services and care provided by the hospital. In order to attend the meetings, Anton needs to get a taxi. The expenses for this

transport are paid to him by the local Health Trust. The decision maker decides that the expenses can be disregarded as income when calculating Anton's entitlement to income-related Employment and Support Allowance.

**Example 2**

Donna is in receipt of income-related Employment and Support Allowance. She has volunteered to take part in a service user group at her local hospital. In order to attend, Donna needs a carer to take her there. The transport expenses that Donna's carer incurs taking her to the service user meeting are reimbursed to Donna by the hospital. The decision maker disregards these expenses when calculating Donna's entitlement to income-related Employment and Support Allowance.

51272 - 51273

# War widow's, widower's or surviving civil partner's supplementary pensions

51274 The decision maker should fully disregard any

**1.** supplementary pension paid to a widow, widower or surviving civil partner for the disablement or death of personnel whose service terminated before 31.3.73[1] **and**

**2.** supplementary pension paid to a widow, widower or surviving civil partner under the Personal Injuries (Civilians) Scheme[2] **and**

**3.** supplementary pension paid to the widow, widower or surviving civil partner of a person

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

**3.2** that service ended before 31.3.73 **and**

**3.3** the payment is equal to the amount in **1.**[3].

**Note:** See DMG 51086 for guidance on war widow's or widower's pensions. See Appendix 1 to this Chapter for details of the law under which war widow's or widower's supplementary pensions are paid.

*1 ESA Regs (NI), Sch 8, para 48; 2 para 50; 3 para 51*

# Other types of income fully disregarded

## Certain payments due before the date of claim

51275 The decision maker should fully disregard any payment of income that

**1.** is due to be paid before the date of claim for Employment and Support Allowance **and**

**2.** under normal rules would be taken into account in the same benefit week as a payment of the same kind from the same source[1].

*1 ESA Regs (NI), Sch 8, para 37*

## Payments for a reduction in rates or council tax

51276 The decision maker should disregard in full[1] any payment made because of a reduction of rates or council tax because of transitional relief[2] when the tax was introduced.

*1 ESA Regs (NI), Sch 8, para 43; 2 Rates (NI) Order 1977, art 30A; Local Government Finance Act 92, sec 13 or 80*

## Dependant's or non-dependant's contributions to accommodation and living costs

51277 The decision maker should fully disregard payments for living and accommodation costs from people who normally live with the claimant who are not

**1.** boarders **or**

**2.** subtenants[1].

*1 ESA Regs (NI), Sch 8, para 18*

**Example**

Michael receives income-related Employment and Support Allowance. His daughter Katy is a non-dependant in his household. She pays him £25 a week as a contribution towards the household bills.

The decision maker disregards this payment fully as Katy is not a boarder or subtenant.

## Education maintenance allowance

51278 The decision maker should fully disregard[1] any payment paid under prescribed legislation[2] that is

**1.** education maintenance allowance **or**

**2.** the same as an education maintenance allowance

made to support a young person who remains in non-advanced education after the age of 16. It can be paid for up to 2 years between the ages of 16 and 19. In some cases it may continue to be paid for up to 3 years until the person reaches the age of 20.

*1 ESA Regs (NI), Sch 8, para 13(1); 2 Education & Libraries (NI) Order 1986, art 50 or 51*

## Other payments to assist with non-advanced education

51279 The decision maker should fully disregard[1] any payment paid under prescribed legislation[2] in respect of a course of study attended by a

**1.** child or young person **or**

**2.** person who is in receipt of an allowance as described at DMG 51278 above.

**Note:** Such payments may include, for example, payments to cover scholarships or school expenses.

*1 ESA Regs (NI), Sch 8, para 13(2); 2 Education & Libraries (NI) Order 1986, art 50 or 51*

## Special guardianship payments

51280 The special guardianship scheme is intended to provide more security for a child than long term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Financial support by the Health and Social Services Board may be paid to special guardians in certain circumstances. It is expected the support will normally be made as a single payment to meet a one-off cost. However the Health and Social Services Board may make payments in instalments or periodically to meet needs that are likely to be ongoing.

51281 Any special guardianship payment made under specific legislation[1] in respect of a child or young person who is a member of the family should be fully disregarded[2].

*1 Children Act 1989, sec 14F; 2 ESA Regs (NI), Sch 8, para 25(1)(e)*

51282 - 51293

## Self-employment route

51294 Disregards are available for participants in the self-employment route. Any payments made to a person who is receiving, or who has received assistance under the self-employment route shall be disregarded if it is

**1.** to meet expenses wholly and necessarily incurred whilst carrying out that activity **or**

**2.** used or is intended to be used to maintain repayments on a loan taken out by that person to establish or carry on his business[1].

In order for this disregard to apply, the payments have to be paid to the participant from the special account[2].

*1 ESA Regs (NI), Sch 8, para 54(1); 2 Sch 8, para 54(2)*

## Cost of conversion of foreign money

51295 The decision maker should fully disregard any

**1.** bank charges **or**

**2.** commission

paid when income paid in foreign currency is converted to sterling[1].

*1 ESA Regs (NI), Sch 8 para 24*

**Example**

Klaus claims Employment and Support Allowance.

He receives a pension of 200 euros a month from his former employer in Austria.

When Klaus's bank convert the payment into sterling they charge a commission of £2.

The decision maker disregards the £2 commission from the amount that Klaus receives in sterling.

## Gallantry awards

51296 The decision maker should fully disregard any gallantry awards[1]. These are

**1.** Victoria Cross annuity **and**

**2.** George Cross annuity **and**

**3.** any similar award, including

**3.1** equivalent awards from foreign countries **or**

**3.2** British awards of a lower status than the Victoria Cross or George Cross.

Decision makers should include awards for gallantry below the highest level when considering awards from foreign countries.

*1 ESA Regs (NI), Sch 8, para 12*

## Income frozen abroad

51297 The decision maker should fully disregard income which is

**1.** payable in a foreign country **and**

**2.** cannot be transferred to the UK

for as long as it is frozen abroad[1]. Income will usually be frozen when the foreign country does not allow its currency to be transferred to the UK.

*1 ESA Regs (NI), Sch 8, para 23*

## Income in kind

51298 The decision maker should fully disregard any income in kind except

**1.** support provided to a claimant under specific immigration and asylum law **and**

**2.** notional income[1] **and**

**3.** payments made to a third party in respect of the claimant which are used by the third party to provide benefits in kind to the claimant[2].

**Note 1:** Credits received from participating in a local exchange trading systems scheme (see DMG Chapter 50) are not income in kind. Credits should be taken into account in the appropriate way.

**Note 2:** See DMG 51397 for the treatment of concessionary coal.

*1 ESA Regs (NI), Sch 8, para 21(1); 2 Sch 8, para 21(4)*

**Example 1**

Person A is entitled to income-related Employment and Support Allowance. Her mother works in a shop and the shop owner gives the mother £10 of groceries each week for Person A.

The decision maker decides the £10 a week is income in kind and should be fully disregarded.

**Example 2**

The shop owner (in example 1 above) then changes the arrangement and gives Person A's mother £10 a week to buy groceries for Person A.

Person A's mother uses the £10 to buy food each week for Person A.

The decision maker decides the £10 a week cannot be disregarded as income in kind and it should be taken fully into account as notional income.

51299 **[See DMG Memo Vol 4/141, 5/108, 7/48, 8/89, 9/40 & 14/65] [See DMG Memo Vol 4/140, 5/107, 8/88, 9/39, 13/70 & 14/64] [See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73]** The exceptions at DMG 51298 do not apply[1] when the income in kind comes from

**1.** the Macfarlane Trust

**2.** the Macfarlane (Special Payments) Trust

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

**4.** the Fund

**5.** the Eileen Trust

**6.** the Independent Living Fund (2006)

**7.** MFET Limited

**8.** the Skipton Fund

**9.** the Caxton Foundation

**10.** the Scottish Infected Blood Support Scheme

**11.** the London Emergencies Trust

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

**13.** Infected Blood Schemes **or**

**14.** partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

*1 ESA Regs (NI), Sch 8, para 21(2) & (3)*

51300 - 51309

## Income treated as capital

51310 The decision maker should fully disregard as income any income that is treated as capital[1].

*1 ESA Regs (NI), Sch 8, para 35*

## Jurors or witnesses court attendance allowance

51311 The decision maker should fully disregard any payment to a

**1.** juror **or**

**2.** witness

for attending court. But payments for loss of earnings or benefits[1] should not be disregarded.

*1 ESA Regs (NI), Sch 8, para 42*

## Payments from Health and Social Services Boards in lieu of community care services

51312 The decision maker should disregard any payments received from Health and Social Services Boards which are in lieu of community care services under specific legislation[1].

*1 ESA Regs (NI), Sch 8, para 52; Carers and Direct Payments Act (NI) 2002, sec 8*

**Example**

Person A is in receipt of income-related Employment and Support Allowance. She receives money from her Health and Social Services Board so that she can pay someone to be her home help. The decision maker

**1.** finds out that the money received from the Health and Social Services Board is paid under the correct legislation[1] **and**

**2.** decides that the money received from the Health and Social Services Board should be disregarded.

*1 Carers and Direct Payments Act (NI) 2002*

## Payments made under employment and training law

51313 Decision makers should disregard[1] any payment made under employment and training law[2] except any payment[3]

**1.** made as a substitute for Employment and Support Allowance or for Jobseeker's Allowance

**2.** of a bridging allowance paid under specific legislation[4]

**3.** intended to meet the cost of living expenses while a person is participating in

**3.1** an education **or**

**3.2** training **or**

**3.3** other scheme to enhance employment prospects

**4.** made in respect of the cost of living away from home to the extent that the payment relates to rent or rates for which Housing Benefit is payable in respect of accommodation which is not normally occupied as the home.

*1 ESA Regs (NI), Sch 8, para 14; 2 E & T Act (NI) 1950, sec 1 or 3; 3 ESA Regs (NI), Sch 8, para 14(1); 4 E & T Act (NI) 1950, sec 1(1B)*

51314 Payments made under employment and training law[1] include

**1.** training allowances paid to young people in non-waged work based training (see DMG Chapter 49)

**2.** New Deal allowances (see DMG Chapter 14)

**3.** return to work credit scheme (see DMG 51317)

**4.** an in work emergencies fund payment

**5.** Career Development Loans (see 51440 - 51449)

**6.** in work credit

**7.** lone parent in work credit.

this list is not exhaustive and decision makers should obtain evidence that a payment is made under employment and training law.

*1 E & T Act (NI) 1950, sec 1*

### Living expenses

51315 Living expenses to be taken into account as income are any amount for

**1.** food

**2.** ordinary clothing or footwear[1] (see DMG 51599 - 51600)

**3.** fuel for the claimant's household

**4.** rent or rates for which Housing Benefit is payable

**5.** housing costs included in the applicable amount

**6.** water charges for which the claimant or member of the family is liable[2].

*1 ESA Regs (NI), reg 2(1); 2 Sch 8, para 14(2)*

## Payments to help disabled people get or keep employment

51316 The decision maker should fully disregard payments made under certain legislation[1] to help disabled people get or keep employment[2]. The payments that qualify for this disregard include

**1.** the fares to work scheme operated by the Department for Communities

**2.** the business on their own account scheme operated by the Department for Communities

**3.** the personal reader service operated by the Royal National Institute for the Blind on behalf of the Department for Communities.

**Note:** Payments to assist disabled persons under employment and training law are included within the disregard explained at DMG 51313 - 51315.

*1 Disabled Persons (Employment) Act (NI) 45; 2 ESA Regs (NI), Sch 8, para 47*

## Return to work credit scheme

51317 Any payment made to a claimant's partner under the return to work credit scheme is fully disregarded[1]. The scheme has been set up under employment and training law[2] for people who stop claiming a specified benefit[3] because they have

**1.** found work of at least 16 hours a week **and**

**2.** earnings which do not exceed £15,000 a year.

A return to work credit is a non-taxable payment of £40 a week payable for a maximum of 52 weeks following the end of a person's entitlement to a specified benefit.

**Note:** The disregard for payments made under employment and training law is fully explained at DMG 51313 - 51315.

*1 ESA Regs (NI), Sch 8, para 14; 2 E & T Act (NI) 1950, sec 1;*
*3 SS (IBWfI) Regulations (NI) 2005, reg 2*

## Discretionary payments for special needs

51318 A payment should be disregarded[1] if it is

**1.** discretionary **and**

**2.** made

**2.1** under employment and training law[2] **and**

**2.2** to meet, or help meet, the special needs of a person who is undertaking a qualifying course.

**Note:** Travelling expenses incurred as a result of the claimant's attendance on the course should not be disregarded under this paragraph if the same expenses have already been disregarded under DMG 51947 (student income).

*1 ESA Regs (NI), Sch 8, para 14; 2 E & T Act (NI) 1950, sec 1*

51319 - 51329

## Vouchers (including child care cheques)

51330 The decision maker should fully disregard, in accordance with DMG 51298, any vouchers received by the claimant as income in kind. But decision makers should consider whether

**1.** claimants should be treated as having notional income **or**

**2.** there has been deprivation of income

before applying the disregard[1] (See DMG 49129 for vouchers treated as earnings).

*1 ESA Regs (NI), Sch 8, para 21*

51331 The types of vouchers that claimants might receive are

**1.** education vouchers for four-year-old children

**2.** luncheon vouchers

**3.** child care vouchers

**4.** child care cheques

**5.** gift vouchers from shops.

## Welfare foods, National Health Service supplies, travelling expenses and assisted prison visits

51332 The decision maker should fully disregard

**1.** payments made under specific legislation for healthy start vouchers, free milk and vitamins[1] **and**

**2.** refunds for

**2.1** National Health Service glasses **and**

**2.2** dental treatment **and**

**2.3** patients' travelling expenses made under specific legislation or any similar payments made by the Department[2] **and**

**3.** payments made by the Northern Ireland Office for travel, accommodation and board and lodging costs for assisted prison visits[3].

*1 ESA Regs (NI), Sch 8, para 45; 2 para 44; 3 para 46*

## Work-related activity

51333 Any payment made to the claimant in respect of any travel or other expenses

**1.** incurred **or**

**2.** to be incurred

due to a requirement to take part in a work-related activity is fully disregarded[1].

*1 ESA Regs (NI), Sch 8, para 14A*

## The child maintenance disregard

51334 Any income payment of child maintenance paid by or derived from a liable relative - but not by the claimant or claimant's partner - falls to be fully disregarded as income[1]. The payment has to be in respect of a child or young person who is a member of the claimant's family. Liable relative payments which do not also fall within the meaning of child maintenance should be taken into account as liable relative payments[2]. DMG 51617 et seq provides guidance on liable relative payments.

*1 ESA Regs (NI), Sch 8, para 57; 2 reg 119*

### Meaning of child maintenance

51335 A payment of child maintenance is[1] any payment

**1.** towards the maintenance of

**1.1** a child **or**

**1.2** a young person **and**

**2.** which is under

**2.1** a voluntary agreement **or**

**2.2** child support law[2] **or**

**2.3** a court order **or**

**2.4** a consent order **or**

**2.5** a maintenance agreement registered for execution[3].

*1 ESA Regs (NI), Sch 8, para 57(2); 2 Child Support Act 1991; Child Support (Northern Ireland) Order 1991; 3 Books of Council and Session; Sheriff Court Books*

## Applying the disregard

51336 In order for the disregard to apply the payment of child maintenance must be a payment of income

**1.** made by **or**

**2.** derived from

a liable relative[1]. DMG 51642 provides guidance on who is defined as a liable relative.

**Note:** For the purposes of the disregard the meaning of a liable relative does not include a person who has sponsored the claimant or the child if the child has also been sponsored as a condition of their immigration[2].

*1 ESA Regs (NI), Sch 8, para 57(1); 2 Sch 8, para 57(2)*

**Example**

Person A is in receipt of income-related Employment and Support Allowance and has 2 children who live with her. Person B is Person A's ex-husband and he has agreed to pay £150 a week towards the maintenance of the children. He pays this money on the last day of each month. The decision maker decides that none of this money paid by Person B will be taken into account when calculating Person A's entitlement to income-related Employment and Support Allowance. This is because the payment falls within the meaning of child maintenance and so has to be fully disregarded.

51337

# Child or young person attending educational establishment

51338 Payments made to an educational establishment for a child or young person who is a member of the claimant's family by or on behalf of a third party or by a member of the family out of funds contributed for that purpose by a third party are fully disregarded[1]. Do not calculate a notional income if school fees are paid entirely from the money of a member of the family (for example, from capital). The decision maker should consider if deprivation of capital has occurred in cases where tariff income is taken into account.

*1 ESA Regs (NI), Sch 8, para 26*

51339 - 51340

# Infected Blood Schemes, the Fund, and other specific trusts

## Payments from Infected Blood Schemes, the Fund, and other specific trusts

### Infected Blood Schemes

51341 **[See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84] [See DMG Memo Vol 8/112, 9/64, 13/135 & 14/85]** Infected Blood Schemes, approved for such purposes by the Department, replaced the five existing payment schemes (The Eileen Trust, The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation - see DMG 51347 - 53) for England and Wales from 2.10.17, Northern Ireland from 30.10.17. These schemes provide financial support to people infected with Human Immunodeficiency Virus as a result of contaminated NHS blood or blood products.

### Income from Infected Blood Schemes

51342 Fully disregard[1]

**1.** any income from approved Infected Blood Schemes **and**

**2.** any income from capital that was received from approved Infected Blood Schemes.

**Note:** Income which remains unspent and becomes capital at the end of the period it was paid for is not disregarded.

*1 ESA Regs (NI), Sch 8, para 40(1)*

### The Scottish Infected Blood Support Scheme

51343 The Scottish Infected Blood Support Scheme[1] became operational from 1.4.17. It is administered by National Health Service National Services Scotland, legally known as the Common Services Agency. National Services Scotland is a National Health Service Board accountable to Scottish Ministers. The Scottish Infected Blood Support Scheme combined the five existing blood support schemes into one scheme in Scotland.

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

### Income from the Scottish Infected Blood Support Scheme

51344 Fully disregard[1]

**1.** any income from the Scottish Infected Blood Support Scheme **and**

**2.** any income from capital that was received from the Scottish Infected Blood Support Scheme.

*1 ESA Regs (NI), Sch 8, para 40(1)*

## Previous Infected Blood Schemes

51345 Prior to the introduction of the Infected Blood Schemes at DMG 51341 and the Scottish Infected Blood Support Scheme at DMG 51343, five separate schemes provided financial support to people affected by contaminated National Health Service blood or blood products.

## The Eileen Trust

51346 The Eileen Trust is a charitable trust set up on 29.3.93 to give further help to people who are not haemophiliacs but who contracted Human Immunodeficiency Virus when receiving National Health Service

**1.** blood **or**

**2.** tissue or organ transfers **or**

**3.** blood products.

## The Macfarlane Trusts

51347 The Macfarlane Trusts were set up to provide compensation to haemophiliacs who contracted Human Immunodeficiency Virus when receiving National Health Service

**1.** blood **or**

**2.** tissue or organ transfers **or**

**3.** blood products.

51348 The Macfarlane Trusts are

**1.** The Macfarlane Trust

**2.** The Macfarlane (Special Payments) Trust

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

## MFET Limited

51349 MFET Limited[1] is an organisation funded by the Department. The purpose of MFET Limited is to make payments to people who have acquired Human Immunodeficiency Virus as a result of treatment by the National Health Service with blood or blood products.

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

## The Caxton Foundation

51350 The Caxton Foundation was established on 28.3.11. It administers funds provided by the Department for the benefit of certain persons suffering from hepatitis C and other persons eligible for payments[1].

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

## Income from the Eileen Trust ("The Fund"), Macfarlane trusts, MFET and the Caxton Foundation

51351 Fully disregard[1]

**1.** any income **and**

**2.** any income from capital that was received from schemes in DMG 51346 - 51350.

*1 ESA Regs (NI), Sch 8, para 40(1)*

## The Skipton Fund

51352 The Skipton Fund administers an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C. It includes people infected as a result of National Health Service blood products and other people eligible for payment in accordance with the scheme's provisions[1].

**Note:** Payments from the Skipton Fund will be payments of capital (see DMG Chapter 52).

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

## The London Emergencies Trust
**[See DMG Memo Vol 5/115, 6/96, 9/48 & 14/71]**

51353 The London Emergencies Trust[1] was set up to alleviate hardship for those who have been bereaved or injured as a result of the terror attacks in London on 22.3.17 and 3.6.17. Beneficiaries of the London Emergency Trust may receive lump sum and/or regular payments.

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

## Income from the London Emergencies Trust

51354 Fully disregard[1]

**1.** any income from the London Emergencies Trust **and**

**2.** any income from capital that was received from the London Emergencies Trust.

*1 ESA Regs (NI), Sch 8, para 40(1)*

## The We Love Manchester Emergency Fund

51355 The We Love Manchester Emergency Fund[1] was set up to alleviate hardship for those who have been bereaved or injured as a result of the terror attack in Manchester on 22.5.17.

Beneficiaries of the We Love Manchester Emergency Fund may receive lump sum and/or regular payments.

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

## Income from the We Love Manchester Emergency Fund

51356 Fully disregard[1]

**1.** any income from the We Love Manchester Emergency Fund **and**

**2.** any income from capital that was received from the We Love Manchester Emergency Fund.

*1 ESA Regs (NI), Sch 8, para 40(1)*

## The Independent Living Fund (2006)

51357 The original Independent Living Fund ran from 1988 to 1993. It was replaced with the Independent Living Fund (1993) and the Independent Living (Extension) Fund. With effect from 1.10.07 these funds were replaced by the Independent Living Fund (2006). The fund closed permanently on 30.6.15. Any payments made under any of the replacement schemes (see note at DMG 51210) are not covered by this legislation and will therefore be taken fully into account.

## Income from the Independent Living Fund (2006)

51358 Fully disregard[1] any income from the Independent Living Fund (2006).

**Note:** Income which remains unspent and becomes capital at the end of the period it was paid for is not disregarded.

*1 ESA Regs (NI), Sch 8, para 40*

## The London Bombings Relief Charitable Fund

51359 The London Bombings Relief Charitable Fund[1] was set up to relieve the needs of victims, including families or dependants of victims, of the terrorist attacks in London on 7.7.05. Interim payments were made to relieve the immediate needs of victims followed by further lump sum payments. Recipients may receive more than one lump sum payment.

**Note:** Payments made from the London Bombings Relief Charitable Fund will be payments of capital (See DMG Chapter 52).

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

### What is the Fund

51360 **[See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82]** The Fund is a scheme run by the Department. It makes payments to people who are not haemophiliacs but who contracted Human Immunodeficiency Virus when receiving National Health Service

**1.** blood **or**

**2.** tissue or organ transfers **or**

**3.** blood products.

### Income from the Fund

51361 Fully disregard[1]

**1.** any income from the Fund **and**

**2.** any income from capital that was received from the Fund.

*1 ESA Regs (NI), Sch 8, para 40(1)*

## Payments from money which came from the Trusts

### Meaning of the Trusts

51362 **[See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** "The Trusts"[1] is the term that describes

**1.** the Macfarlane Trusts **and**

**2.** the Fund **and**

**3.** the Eileen Trust **and**

**4.** the Skipton Fund **and**

**5.** the London Bombings Relief Charitable Fund

**6.** MFET Limited **and**

**7.** the Caxton Foundation

**8.** the Scottish Infected Blood Support Scheme **and**

**9.** the London Emergencies Trust **and**

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

**11.** Infected Blood Schemes.

*1 ESA Regs (NI), Sch 8, para 40(7)*

## What payments should be disregarded

51363 **[See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82]** Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 51364 - 51385. In these cases, the person receiving the income is not the person who qualified for the Trust payment. In any other circumstances, payments of income from a Trust payment should be treated under normal rules.

## Person with Human Immunodeficiency Virus

51364 In this guidance the term "person with Human Immunodeficiency Virus" is used to describe

**1.** people with haemophilia **or**

**2.** other people

who qualify for trust payments.

## Qualifying person

51365 **[See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** In this guidance a qualifying person means a person in respect of whom a payment has been made from

**1.** the Fund **or**

**2.** the Eileen Trust **or**

**3.** the Skipton Fund **or**

**4.** the London Bombings Relief Charitable Fund

**5.** MFET Limited **or**

**6.** the Caxton Foundation

**7.** the Scottish Infected Blood Support Scheme **and**

**8.** the London Emergencies Trust **and**

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

**10.** Infected Blood Schemes.

**Note:** A person in respect of whom a payment has been made from the Macfarlane Trust is not included above but is included in the definition at DMG 51362.

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

## Payments by a qualifying person or person with Human Immunodeficiency Virus to partners, children and young people

51366 Disregard any payment made by or on behalf of a qualifying person or person with Human Immunodeficiency Virus from money from a Trust payment made to or for the benefit of

**1.** their partner or their former partner if they are **not**

**1.1** estranged **or**

**1.2** divorced **or**

**1.3** former civil partners **or**

**1.4** estranged, divorced or had their civil partnership dissolved at the date of death if the qualifying person or person with Human Immunodeficiency Virus has died[1] **or**

**2.** any child or young person who

**2.1** is a member of the family of the qualifying person or person with Human Immunodeficiency Virus **or**

**2.2** was at any time a member of the family of the qualifying person or person with Human Immunodeficiency Virus and is now a member of the claimant's family[2].

**Note:** DMG 51377 - 51378 explains for how long the payment is disregarded.

*1 ESA Regs (NI), Sch 8, para 40(2)(a); 2 para 40(2)(b) & (c)*

## Payments by the partner or former partner of the qualifying person or person with Human Immunodeficiency Virus

51367 Fully disregard any payment from a Trust payment made by or on behalf of a partner or former partner of a qualifying person or person with Human Immunodeficiency Virus, providing the qualifying person or person with Human Immunodeficiency Virus and partner or former partner are **not**

**1.** estranged **or**

**2.** divorced **or**

**3.** former civil partners **or**

**4.** estranged, divorced or had their civil partnership dissolved at the date of death of either

**4.1** the qualifying person or person with Human Immunodeficiency Virus **or**

**4.2** the partner or former partner.

51368 This disregard applies if the payment is made to or for the benefit of

**1.** the qualifying person or person with Human Immunodeficiency Virus[1] **or**

**2.** any child or young person[2] who

**2.1** is a member of the family of the qualifying person or person with Human Immunodeficiency Virus **or**

**2.2** was at any time a member of the family of the qualifying person or person with Human Immunodeficiency Virus and is now a member of the claimant's family.

**Note:** DMG 51377 - 51378 explains for how long the payment is disregarded.

*1 ESA Regs (NI), Sch 8, para 40(3)(a); 2 para 40(3)(b) & (c)*

## Payments by a qualifying person or person with Human Immunodeficiency Virus to parents, step parents or guardians

51369 Fully disregard any payment from a Trust payment by a qualifying person or person with Human Immunodeficiency Virus to their

**1.** parent **or**

**2.** step parent[1] **or**

**3.** guardian[2] if the qualifying person or person with Human Immunodeficiency Virus has no parent or step parent and is a

**3.1** child **or**

**3.2** young person **or**

**3.3** student in full-time education.

*1 ESA Regs (NI), Sch 8, para 40(4)(b)(i); 2 para 40(4)(b)(ii)*

51370 This disregard applies if the qualifying person or person with Human Immunodeficiency Virus

**1.** has no partner or former partner from whom that person is **not**

**1.1** estranged **or**

**1.2** divorced **or**

**1.3** former civil partners **and**

**2.** has no child or young person in the family **and**

**3.** has never had a child or young person in their family[1].

**Note:** DMG 51379 explains for how long the payment is disregarded.

*1 ESA Regs (NI), Sch 8, para 40(4)(a)*

51371 - 51374

## Payments from the estate of a qualifying person or person with Human Immunodeficiency Virus to a parent, step parent or guardian

51375 Fully disregard any payment from the estate of a qualifying person or person with Human Immunodeficiency Virus to

**1.** a parent **or**

**2.** a step parent[1] **or**

**3.** a guardian[2] if at the date of death the qualifying person or person with Human Immunodeficiency Virus had no parent or step parent and was a

**3.1** child **or**

**3.2** young person **or**

**3.3** student in full-time education.

*1 ESA Regs (NI), Sch 8, para 40(5)(b)(i); 2 para 40(5)(b)(ii)*

51376 This disregard applies if at the date of death the qualifying person or person with Human Immunodeficiency Virus had

**1.** no partner or former partner from whom that person is **not**

**1.1** estranged **or**

**1.2** divorced **or**

**1.3** former civil partners **or**

**2.** no child or young person in the family **and**

**3.** at no time had a child or young person in the family[1].

**Note:** DMG 51380 explains for how long the payment is disregarded.

*1 ESA Regs (NI), Sch 8, para 40(5)(a)*

# For how long should the payment be disregarded

## Payments to a qualifying person or person with Human Immunodeficiency Virus and partners

51377 Disregard payments made to or for the benefit of

**1.** a qualifying person or person with Human Immunodeficiency Virus[1] **or**

**2.** the partner or former partner of a qualifying person or person with Human Immunodeficiency Virus[2]

for the lifetime of the person who received the payment. Breaks in entitlement to income-related Employment and Support Allowance do not alter this disregard.

*1 ESA Regs (NI), Sch 8, para 40(3)(a); 2 para 40(2)(a)*

## Payments to children and young people

51378 Disregard payments made to or for the benefit of a child or young person as long as they remain

**1.** a child or young person **and**

**2.** in (or they were in) the family of[1]

**2.1** the qualifying person or person with Human Immunodeficiency Virus **or**

**2.2** the partner or former partner of the qualifying person or person with Human Immunodeficiency Virus **and**

**3.** a member of the income-related Employment and Support Allowance claimant's family.

*1 ESA Regs (NI), Sch 8, para 40(2)(b) & (c) & 40(3)(b) & (c)*

## Payments to parents and guardians from a qualifying person or person with Human Immunodeficiency Virus

51379 Disregard payments to a

**1.** parent **or**

**2.** step parent **or**

**3.** guardian

from the date the payment is made until the end of 2 years after the qualifying person or person with Human Immunodeficiency Virus dies[1].

**Note:** In some cases this disregard may last for the length of the Employment and Support Allowance claim, because the person with Human Immunodeficiency Virus may not die whilst the claimant is on income-related Employment and Support Allowance.

*1 ESA Regs (NI), Sch 8, para 40(4)*

## Payments to parents and guardians from the estate of a qualifying person or person with Human Immunodeficiency Virus

51380 Disregard[1] payments to a

**1.** parent **or**

**2.** step parent **or**

**3.** guardian

for a period of 2 years from the date the qualifying person or person with Human Immunodeficiency Virus died.

**Note:** This disregard applies from the date of death not the date the estate makes a payment.

*1 ESA Regs (NI), Sch 8, para 40(5)*

## Deciding if a disregard applies

51381 Once the claimant has declared any payments made from one of the Trusts the decision maker should decide

**1.** if the payment qualifies for a disregard **and**

**2.** the length of any disregard.

51382 Seek further evidence if there is doubt about the

**1.** source of the payment **or**

**2.** relationship of the person receiving the payment with the qualifying person or person with Human Immunodeficiency Virus **or**

**3.** extent that money from the Trust has been kept separately.

## Trust payments invested with other money

51383 If a Trust payment is invested with other money to produce an income, disregard only the proportion that came from the trust payment[1].

*1 ESA Regs (NI), Sch 8, para 40(6)*

**Example**

Michael bought an annuity for £5,000. £4,000 came from the Eileen Trust. The balance came from his own savings.

The annuity produces an income of £50 a month.

The decision maker decides to disregard £40 a month. £10 a month is taken into account as income.

## Qualifying person's or person's with Human Immunodeficiency Virus relationship with former partners

51384 **[See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** The decision maker should be satisfied that a former partner or civil partner is not estranged or divorced or had the civil partnership dissolved. Accept the claimant's statement unless it is considered to be improbable or self-contradictory.

**Example**

Joanne receives a payment of money from the Macfarlane Trust. She is divorced from her former partner Harold, who is a person with Human Immunodeficiency Virus.

The decision maker decides that the payment should not be disregarded.

## Social fund funeral payments

51385 Trust payments will become part of a person's estate upon death. Any assets of a dead person including

**1.** payments of income from the Trusts including Varient Creutzfeldt-Jakob Disease payments **and**

**2.** payments of income from money that originally came from the Trusts or from Varient Creutzfeldt-Jakob Disease payments

are not taken into account as assets of the estate if a claim for a Social Fund Funeral Payment is made.

**Note:** See DMG Chapter 39.

51386 - 51389

# Payments with special rules

## Charitable and voluntary payments

### What are charitable payments

51390 A charitable payment is a payment made under a charitable trust[1]. A charitable trust must

**1.** be wholly and exclusively charitable **and**

**2.** promote a public benefit (that is, it must benefit a sufficient section of the public except where the purpose is the relief of poverty).

Payments from charitable trusts are made at the discretion of the trustees.

*1 R(IS) 4/94; R v. Doncaster Borough Council, Ex Parte Boulton*

51391 Charitable trusts do not have to be

**1.** registered **or**

**2.** administered by a registered charity.

The decision maker should treat payments from registered charities as charitable payments.

51392 Charitable trusts usually provide for

**1.** the relief of poverty

**2.** advancement of education

**3.** advancement of religion

**4.** other purposes which benefit the community.

### What are voluntary payments

51393 A voluntary payment is a payment that

**1.** has a benevolent purpose **and**

**2.** is given without anything being given in return[1].

**Note:** Voluntary payments should not be confused with payments to volunteers. Guidance on payments to volunteers is given at DMG 49210.

*1 R(IS) 4/94*

51394 A voluntary payment is similar to a charitable payment but it will not usually be made from a charitable trust. Voluntary payments are usually paid for the benefit of an individual. But decision makers should recognise that charitable payments may also be made to individuals

**1.** for the relief of poverty **or**

**2.** because a wider purpose is involved.

51395 The decision maker should consider

**1.** the background to **and**

**2.** reasons for

the payment when deciding if it is voluntary.

**Example 1**

Jim claims Employment and Support Allowance. He declares that he gets a payment of £20 a week from his uncle, Peter, towards the cost of running his car.

Peter makes the payment because Jim has been receiving Employment and Support Allowance for some time and needs a car to get around.

Peter makes the payment because of family ties and affection for Jim. Peter does not expect or receive anything in return.

The decision maker decides that the £20 is a voluntary payment.

**Example 2**

Frances claims Employment and Support Allowance. She receives a payment of £10.00 a week from her former employer.

The payment of £10.00 is paid to all former employees who worked for the company for over 20 years.

The payments were awarded by the board of directors following criticism by shareholders of the treatment of former employees with long service.

The decision maker decides the payment is not voluntary. This is because

**1.** the directors of the company are receiving in return for the payment greater satisfaction from the shareholders

**2.** the company's image is improved

**3.** the payments are not made to help needy employees. Many of the people receiving payments are quite well off.

# Meaning of relevant payment

51396 A relevant payment[1] for the purposes of the disregard at DMG 51416 means

**1.** a charitable payment

**2.** a voluntary payment

**3.** a payment (other than in **1.** or **2.**) from a trust whose funds derive from a personal injury award to the claimant (this includes a trust whose funds derive from the Children's Memorial Trust - see DMG 51408)

**4.** a payment under an annuity purchased as a result of

**4.1** any agreement or court order to make payments to the claimant **or**

**4.2** funds that derive from a payment made as a consequence of a personal injury award to the claimant **or**

**5.** a payment (other than a payment covered by **1. - 4.**) received as a result of any agreement or court order to make payments to the claimant as a consequence of a personal injury award.

**Note:** The agreement referred to in **5.** must be reached after the date that the injury occurred[2].

*1 ESA Regs (NI), Sch 8, para 15(3); 2 Malekout v. Secretary of State for Work & Pensions [2010] EWCA Civ 162*

# Certain types of payments

## Cash in lieu of concessionary coal

51397 Payments made by British Coal to

**1.** retired miners **and**

**2.** widows of retired miners

in lieu of concessionary coal are not voluntary[1]. The payments are made because of a national agreement between British Coal and the trade unions. The purpose of the agreement is to ensure good labour relations and the willing services of the workforce. Treat these payments as other income with no disregard.

*1 R(IS) 4/94*

## Civil list pensions

51398 Treat civil list pensions as voluntary payments. They are

**1.** paid at the discretion of the Queen **and**

**2.** voted annually by Parliament.

51399 They are awarded for distinguished service to the nation in

**1.** the arts

**2.** science

**3.** literature.

51400 - 51404

## Payments from trust funds

51405 Claimants may receive payments from trust funds. If income from a trust fund is paid at the discretion of the trustees it should be treated as a voluntary payment. Treat a payment from a charitable trust as a charitable payment.

51406 Income from any trust fund set up with money from a personal injury award is treated in the same way. DMG 51416 gives guidance on the disregard appropriate to relevant personal injury trust payments.

## Structured settlements

51407 A structured settlement may include a contingency fund that would be treated in the same way as any other personal injury lump sum award. However most of the award is used to provide an annuity making periodical payments to the claimant. Payments from these annuities are capital treated as income[1] which fall within the definition of relevant payment at DMG 51396.

*1 ESA Regs (NI), reg 105(4)*

## Children's Memorial Trust

51408 The Children's Memorial Trust was set up as a result of Court action by the parents of deceased children whose organs had been retained by the Alder Hey hospital without parental consent.

51409 Where people can show that they have received a payment from the Children's Memorial Trust under the "Heads of Agreement" in relation to the Court action, that payment will be made in consequence of a personal injury to **them**. Income from a trust set up with money that derived from the Children's Memorial Trust is a relevant payment. DMG 51416 - 51418 gives guidance on the disregard appropriate to relevant personal injury trust payments.

51410 - 51412

# Regular charitable or voluntary payments

## What are regular payments

51413 Regular charitable or voluntary payments are those that are

**1.** made regularly **or**

**2.** due to be made regularly, even if they are not actually made.

**Note:** Voluntary payments should not be confused with payments to volunteers. Guidance on payments to volunteers is given at DMG 49209 - 49211.

51414 Regular payments include those paid or due to be paid at recurring intervals such as

**1.** weekly

**2.** monthly

**3.** annually (for example every Christmas)

**4.** any other pattern.

## When is a payment due to be made

51415 A payment is due to be paid where there is a promise or agreement to make a payment.

# Disregard for relevant payments

51416 Fully disregard[1] any relevant payment unless one of the exceptions at DMG 51417 - 51418 apply.

*1 ESA Regs (NI), Sch 8, para 15(1)*

## Relevant payments that should be taken fully into account

51417 The disregard in DMG 51416 does not apply to

**1.** liable relative payments[1] **or**

**2.** maintenance, that is not a liable relative payment, for

**2.1** a member of the family **or**

**2.2** a former partner **or**

**2.3** the children

of the person making the payment[2] **or**

**3.** a student's covenant or grant income[3].

*1 ESA Regs (NI), reg 85; 2 Sch 8, para 15(2); 3 reg 135*

## Relevant payments paid in kind

51418 **[See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** Fully disregard relevant payments that are paid in kind[1] unless one of the exceptions at DMG 51298 applies. The exceptions at DMG 51298 do not apply when the income in kind comes from

**1.** the Macfarlane Trust

**2.** the Macfarlane (Special Payments) Trust

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

**4.** the Fund

**5.** the Eileen Trust

**6.** the Independent Living Fund (2006)

**7.** MFET Limited

**8.** the Skipton Fund

**9.** the Caxton Foundation

**10.** the Scottish Infected Blood Support Scheme

**11.** the Infected Blood Schemes

**12.** The London Emergencies Trust **or**

**13.** The We Love Manchester Emergency Fund

as explained at DMG 51299.

*1 ESA Regs (NI), Sch 8, para 21*

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

51419 – 51424

# Capital treated as income

## Capital payable by instalments

51425 Where capital is payable by instalments the decision maker should decide if the payments should be treated as capital or income. Capital can be payable by instalments in situations where

**1.** a person lends another person a lump sum of money and the borrower repays that money in regular or irregular payments

**2.** a person receives payments from an investment bond with a life assurance company.

The above list is not exhaustive.

**Example**

Eve has an investment bond with a friendly society. The bond is worth £20,000 but is disregarded by the decision maker because it has a policy of life assurance attached to it (see DMG Chapter 52). The terms of the bond allow Eve to withdraw money on a monthly basis which reduces the surrender value of the bond. The decision maker decides that the money Eve receives is capital payable by instalments.

51426 Add[1]

**1.** the amount of instalments outstanding

**1.1** in the case of a claim - at the earlier of

**1.1.a** the first day for which income-related Employment and Support Allowance is payable **or**

**1.1.b** the date the claim is decided **or**

**1.2** in the case of a supersession - at the date the supersession of the outcome decision is made **and**

**2.** the amount of any other capital held by the claimant or partner.

If the total is more than £16,000 treat each instalment received as income. If the total is less than £16,000 each instalment is capital.

*1 ESA Regs (NI), reg 105 & 110*

51427 - 51429

## When is an instalment treated as capital

51430 Decision makers should make the calculations in DMG 51425 - 51426 every time an instalment of capital is paid. Only the outstanding instalments should be treated as income. Any instalments paid before the date of claim or supersession should be taken into account as capital.

## Annuity payments

51431 Treat any payment from an annuity as income[1]. An annuity is an investment which produces an annual sum of money[2]. Payments may be made monthly or quarterly as well as yearly.

*1 ESA Regs (NI), reg 105(2); 2 R(IS) 10/01*

51432 - 51455

# Notional income

## Notional income - general

### What is notional income

51456 A person may be treated as having an income that is not actually received. This type of income is known as notional income and may take a number of different forms.

### Types of notional income

51457 Notional income may be calculated because of

**1.** deprivation of income

**2.** income available if applied for (including special rules for personal pensions)

**3.** income due but not yet paid

**4.** income for a member of the family paid to a third party

**5.** income for a third party made to a member of the family.

### Actual and notional income

51458 A person may have actual and notional income. Decision makers need not consider notional income if a person's actual income on its own is greater than the applicable amount. If income is less than the applicable amount the decision maker should consider if there is any notional income.

### Treatment of notional income

51459 Calculate notional income in the same way as actual income[1]. The income should be taken into account using normal rules, including applying any appropriate disregard.

*1 ESA Regs (NI), reg 109(1)*

### Notional income - tasters

51460 If a claimant does a taster of a New Deal 18-24 option for 3 days or more in a benefit week notional income is not taken into account[1]. This is because a taster is an employment or training programme for which no training allowance is payable.

**Note:** The notional income rules must be considered if the person is participating in a taster for less than 3 days in any benefit week.

*1 ESA Regs (NI), reg 108(3)(b)*

## Liable relative payments

51461 The guidance in DMG 51469 - 51610 does not apply to liable relative payments[1].

*1 ESA Regs (NI), reg 85*

## Service users

**[See DMG Memo Vol 1/103, 4/121, 5/96, 8/57, 9/26, 13/58 & 14/54]**

51462 The rules on notional income do not apply to payments of expenses or earnings paid as a result of a claimant's participation as a service user[1]. Where a decision maker might normally consider treating a claimant as possessing income which he doesn't actually have, such as in cases of

**1.** deprivation of income for the purposes of securing entitlement to benefit or increasing the amount of benefit payable

**2.** income upon application

**3.** income due but not paid

**4.** income paid to or in respect of a third party

**5.** notional earnings

then this will not apply where the possible income in question is payment arising from participation in a service user group (see DMG 51270).

*1 ESA Regs (NI), reg 106(9), 107(8) & 108(4)*

51463 - 51468

# Deprivation of income

51469 Decision makers should treat claimants as receiving income that they have deprived themselves of for the purpose of gaining entitlement or increasing the amount of income-related Employment and Support Allowance[1], Income Support or income-based Jobseeker's Allowance.

*1 ESA Regs (NI), reg 106(1)*

## Meaning of deprive

51470 The word deprive is an ordinary English word. Its meaning is not a question of law. It should be given a normal everyday meaning[1].

*1 R(SB) 38/85*

51471 Claimants will have deprived themselves of income, if, because of their own actions, they no longer have that income. Claimants will still have deprived themselves of income whether or not another income has replaced the original income[1].

*1 R(SB) 40/85*

51472 Claimants cannot deprive themselves of income that they have already received. If a payment of income is received it is actual income and should be taken into account in the normal way.

51473 A deprivation of income may occur where a claimant's income is reduced to repay an overpaid income. The decision maker should decide if a significant reason for the reduction is to get or increase the amount of income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance. Decision makers should bear in mind that the repayment of a

**1.** legally enforceable **and**

**2.** immediately repayable

debt cannot be for the purpose of increasing or getting income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance[1].

*1 R(SB) 12/91*

## Questions for consideration

51474 The decision maker should consider the questions in DMG 51484 - 51488 where claimants seem to have deprived themselves of income.

## Was it the claimant's income

51475 The decision maker must decide if an income belongs to the claimant. If there is evidence that a person has been receiving an income (possibly on a previous award of benefit), the decision maker should presume the income belongs to the claimant.

51476 - 51480

51481 There may be supporting evidence, such as a letter or document, that shows an income belongs to the claimant. If it is alleged that an income is not the claimant's the claimant must prove the income belongs to someone else.

## Has a deprivation of income happened

51482 Deprivation will have happened if a person

**1.** gives up **or**

**2.** transfers to another person

an income due to be received.

**Example**

Suzanne receives income-related Employment and Support Allowance. She arranges by a deed of gift to transfer income from an occupational pension to her adult daughter. The decision maker decides that Suzanne has deprived herself of the income from the occupational pension.

51483 The claimant has to prove that an income is no longer received. Once the decision maker has shown that a claimant was receiving an income it is up to the claimant to prove it is no longer paid. If the claimant cannot do this the decision maker should decide that the income is still being received. The income should be taken into account as actual income[1].

*1 R(SB) 38/85*

## Was the purpose of the deprivation to get or increase the amount of income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance

51484 There may be more than one reason for a person disposing of an income. Only one of those reasons might be getting or increasing income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance[1].

*1 R(SB) 38/85*

51485 Getting or increasing income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance need not be the most important reason for disposing of an income but it must be a significant reason[1].

*1 R(SB) 40/85*

51486 It is unlikely that there will be direct evidence that a deprivation was for the purpose of getting benefit. Decide on a person's reasons for disposing of an income after considering all the facts of the case. These may include

**1.** the person's explanations

**2.** the timing of the disposal

**3.** the claimant's knowledge of the benefit system

**4.** the likelihood of a benefit claim at the time of the deprivation.

51487 When considering the claimant's intentions in depriving themselves of income the decision maker should consider what account of the claimant's intentions best explains the facts of the case. If the best explanation of the deprivation is that a significant reason for the disposal was getting or increasing income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance the decision maker should calculate a notional income.

## Timing of the disposal of income

51488 Decision makers should carefully consider the timing of a disposal of income as a claim for income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance made shortly after the disposal of an income may indicate that getting or increasing income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance was a significant reason for the disposal. A claim for income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance made a long time after the disposal of an income is less likely to indicate that getting or increasing income-related Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance was a significant reason for the disposal. But if there is evidence that a claimant was considering claiming Employment and Support Allowance, Income Support or income-based Jobseeker's Allowance at a later date, deprivation may still have been for getting or increasing benefit.

**Example**

Rosemary transfers a payment from an annuity to her daughter by deed of gift. A month later, after her entitlement to Statutory Sick Pay ends, she claims income-related Employment and Support Allowance. The decision maker decides that Rosemary deprived herself of the income and that the need to claim income-related Employment and Support Allowance at a later date was an important factor in the deprivation.

51489 - 51495

# Income available on application

## General

51496 Decision makers should treat an income that

**1.** would be paid to the claimant or partner if applied for **and**

**2.** has not been applied for[1]

as notional income.

*1 ESA Regs (NI), reg 106(2)*

## What types of income should not be treated as notional income available on application

51497 The decision maker should not take into account as notional income available on application

**1.** income payable under a discretionary trust fund[1]

**2.** income from a trust set up using money paid because of a personal injury[2]

**3.** Employment and Support Allowance[3]

**4.** Jobseeker's Allowance[4]

**5.** Working Tax Credit[5]

**6.** Child Tax Credit[6]

**7.** payments from a personal pension, occupational pension, or the Pension Protection Fund when the person is under the qualifying age for State Pension Credit (see DMG 77032)[7]

**8.** an award of damages for personal injury which is administered by the court[8]

**9.** a student loan where

**9.1** the full amount of the loan has not been made in respect of that full academic year **and**

**9.2** the educational institution has confirmed in writing that the student has suspended their course due to

**9.2.a** a health condition **or**

**9.2.b** disability **and**

**9.3** the student is incapable of continuing the course[9].

*1 ESA Regs (NI), reg 106(2)(a); 2 reg 106(2)(b); 3 reg 106(2)(c); 4 reg 106(2)(d); 5 reg 106(2)(e); 6 reg 106(2)(f); 7 reg 106(2)(g); 8 reg 106(2)(h) & Sch 9, para 42(1)(a) & 42(2)(a); 9 reg 106(2)(gb)*

51498 Apply any appropriate disregards to notional income[1]. Do not take into account any income that would be fully disregarded but has not been applied for.

*1 ESA Regs (NI), reg 109(1)*

51499 Only take an income into account if it can be shown beyond doubt that an application or claim for it would succeed. The decision maker should

**1.** gather evidence **and**

**2.** consider all the qualifying conditions for the income.

It should not be assumed that one or more qualifying conditions are satisfied.

**Example**

Claudette claims income-related Employment and Support Allowance. She is sick as a result of an industrial accident but has not claimed Disablement Benefit. The decision maker decides that there are doubts about whether Claudette satisfies the conditions for claiming Disablement Benefit. Disablement Benefit is not taken into account as income available upon application.

## What types of income should be taken into account

51500 All types of income, except those mentioned in DMG 51497, may be taken into account. Examples of incomes that might be available upon application are

**1.** social security benefits

**2.** councillors' attendance allowance

**3.** personal and occupational pensions for people who are of the qualifying age for State Pension Credit.

## Date from which income should be taken into account

51501 Take into account income available on application from the date it could be expected to be received if an application was made[1].

*1 ESA Regs (NI), reg 106(2)*

51502 Calculate the date on which income could be expected to be received by

**1.** assuming an application was made on the date the decision maker first became aware of the notional income **and**

**2.** adding the estimated time it would take for an application to be processed once made.

**Example 1**

Martin receives income-related Employment and Support Allowance and has a Mortgage Protection Policy. The decision maker discovers on 1 November that he has a voluntary arrangement to have payments made direct to the building society.

The insurance company tell the decision maker that it would take about a month for the payment to be redirected from the building society to Martin.

The decision maker decides to take into account notional income from the Mortgage Protection Policy from 1 December.

**Example 2**

Alastair is 61 and receives income-related Employment and Support Allowance. On 1 November the decision maker discovers that Alastair could apply for his occupational pension from a former employer. He has not yet applied because he would get a bigger pension at the age of 62.

Alastair's former employer tells the decision maker that payment of a pension of £230 a calendar month would have started on 1 December if an application had been made on 1 November.
The decision maker decides to take into account a weekly notional income of £53.07 from 1 December.

51503 - 51505

## Income from an unadministered estate

51506 The decision maker may decide that a person should be treated as receiving notional income from the estate of a dead person.

51507 A person who is entitled to income from an unadministered estate can

**1.** enforce their right to the income through the courts if there is a will **or**

**2.** take out letters of administration if there is no will.

51508 Delays in paying income from an estate are often caused by legal action over debts or problems with the will. The decision maker must consider this when deciding if

**1.** an income will become available **and**

**2.** when it would be paid if an application was made.

51509 If the decision maker knows that the claimant or a member of the family might receive income from a dead person's estate the case should be referred to Decision Making Services (via their Specialist Advisory Officer) for advice if there is a long delay.

51510 Usually the decision maker should wait for a year after the

**1.** granting of probate or letters of administration **or**

**2.** the deceased person's death if a grant of probate or administration has not been made

before referring the case to Decision Making Services.

51511 If the only reason for the delay in receiving income is a failure of the person to apply for it promptly the decision maker should calculate notional income.

51512 - 51515

# Notional income - Carer's Allowance

51516 DMG 51517 - 51528 gives guidance on how to apply the notional income provisions in cases

**1.** where

**1.1** severe disability premium has been withdrawn or reduced because Carer's Allowance is in payment to the carer **and**

**1.2** the carer then chooses to give up Carer's Allowance **and**

**2.** where it appears that a carer may be entitled to Carer's Allowance but Carer's Allowance is not in payment.

## Deprivation of income

51517 If carers do something that means Carer's Allowance stops being paid, this is deprivation of income[1]. This may include

**1.** telling the decision maker they no longer wish Carer's Allowance to be paid to them **or**

**2.** changing their circumstances so they no longer qualify for Carer's Allowance.

Where there has been a deprivation of Carer's Allowance, the purpose of the deprivation should then be considered[2].

*1 & 2 ESA Regs (NI), reg 106(1)*

51518 A carer should be treated as possessing income where Carer's Allowance has been given up for the purpose of gaining entitlement to, or increasing the amount of Employment and Support Allowance[1] for the carer, the carer's partner or any other member of the carer's family (see DMG Chapter 43).

**Note:** The carer does not have to be the Employment and Support Allowance claimant.

*1 ESA Regs (NI), reg 106(1)*

51519 Carers should **not** be treated as possessing Carer's Allowance which they have given up solely to secure or increase income-related Employment and Support Allowance for someone who is **not** a member of the income-related Employment and Support Allowance family. In these circumstances decision makers should consider whether DMG 51525 applies.

51520 Guidance on establishing the purpose of a deprivation is at DMG 51482 et seq. Decision makers should note that it is not enough that securing or increasing income-related Employment and Support Allowance is a natural consequence of giving up Carer's Allowance. A positive intention to secure or increase income-related Employment and Support Allowance has to be shown[1].

*1 R(SB) 9/91, para 8*

51521 - 51524

## Income available on application

51525 If Carer's Allowance is not to be taken into account under the deprivation rule, the decision maker should also consider the available on application rule (see DMG 51496 et seq)[1].

*1 ESA Regs (NI), reg 106(2)*

51526 Carer's Allowance may be taken into account using this rule where there is no doubt that

**1.** a fresh claim **or**

**2.** an application to the decision maker for payments to resume

will lead to payments being made to the carer. Guidance on the date from which notional income is assumed under this rule is at DMG 51499 et seq.

## Income due but not paid

51527 Carer's Allowance should not be assumed under this rule[1]. Carer's Allowance is an exception (see DMG 51564 **4.8**)[2].

*1 & 2 ESA Regs (NI), reg 106(2)*

## Notional income and changes in circumstances

51528 After notional Carer's Allowance is taken into account, the carer's circumstances may change. Notional income is calculated as if the income in question is really in payment[1]. This means that notional Carer's Allowance should only stop where the change

**1.** would have caused Carer's Allowance to stop, had it really been in payment **and**

**2.** has not been contrived by the carer to secure or increase benefit as in DMG 51518.

**Note:** This applies to notional income under either DMG 51518 or 51526.

*1 ESA Regs (NI), reg 109(1)*

51529 – 51534

# Personal and occupational pensions

## General

**[See DMG Memo Vol 5/102, 9/31 & 14/58]**

51535 **[See DMG Memo Vol 1/113, 2/68, 5/109, 9/41, 12/24 & 14/66]** There are rules for calculating income that is

**1.** available on application from a personal or occupational pension **or**

**2.** is treated as being available from a personal or occupational pension.

51536 These rules apply to people who have reached the qualifying age for State Pension Credit. The decision maker should ignore potential income from

**1.** personal pension schemes **or**

**2.** occupational pension schemes **or**

**3.** the Board of the Pension Protection Fund

for people under the qualifying age for State Pension Credit[1]. The weekly amount of any notional income to be taken into account should be calculated as if it is actual income[2].

*1 ESA Regs (NI), reg 106(2)(g); 2 reg 109(1)*

### What is a personal pension

51537 A personal pension is a pension scheme which means[1]

**1.** a personal pension scheme as stated in pensioners law[2]

**2.** an annuity contract or trust scheme approved under tax law[3] **and**

**3.** a personal pension scheme approved under tax law[4].

*1 ESA Regs (NI), reg 2(1); 2 Pensions Schemes (NI) Act 93, sec 1;*
*3 Income and Corporation Taxes Act 1988, sec 620, 621 & 622(3); Finance Act 2004, Sch 36;*
*4 Income and Corporations Taxes Act 1988, Part XIV, Chapter IV; Finance Act 2004, Sch 36*

### What is an occupational pension

51538 An occupational pension is any pension or other periodical payment under an occupational pension scheme, but does not include any discretionary payment out of a fund established for relieving hardship in particular cases[1].

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

## Pension Protection Fund

51539 The Pension Protection Fund Board was set up to compensate members of defined benefit (final salary) occupational pension schemes where the employer goes out of business and the scheme is left with insufficient funds. Compensation may be made as regular payments of income and lump sum payments (just as the former pension scheme would have paid). Payments from the Pension Protection Fund are treated in the same way as payments from occupational pensions schemes.

## What is a pension fund holder

51540 Where reference is made to a pension fund holder, this means the

**1.** trustee **or**

**2.** manager **or**

**3.** administrator

of a personal pension scheme[1].

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

## Who is a person who derives entitlement

51541 The term “person who derives entitlement” is used to describe people who may be paid a pension at the discretion of the pension fund holder. When the original pensioner dies the pension fund holder has discretion to decide what to do with the fund. People, such as widows, widowers or surviving civil partners of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

## Lump sums on retirement

51542 At the point that

**1.** an annuity is bought **or**

**2.** an income is taken

from the personal pension fund a lump sum of up to 25% of the fund may be taken. Treat this payment as capital. Do not take it into account as notional capital available on application[1].

*1 ESA Regs (NI), reg 115(2)(d)*

## Pension Flexibilities

51543 Since April 2015, people have had greater flexibility in how they access their pension savings, generally known as “pension flexibilities”. These flexibilities allow an individual to be able to choose what they want to do with their defined contribution fund or money purchase benefits scheme (sometimes referred to as a “pension pot”. If they want to they could

**1.** draw out all of the funds in the pension pot

**2.** purchase an annuity (see DMG 51060)

**3.** opt for a drawdown arrangement (where lump sums or regular amounts can be draw down from the pension pot) without any restriction either in the form of a cap or a minimum income amount

**4.** do nothing and leave the fund untouched.

## Income and Capital Drawdowns

51544 Whilst a claimant’s pension pot is held by the pension provider then that sum falls to be disregarded as capital. If the claimant has withdrawn money from their pension pot (known as a “drawdown”) then a determination has to be made as to how this is to be treated. Where a claimant chooses to withdraw amounts on a regular basis then those amounts fall to be treated as income and taken into account as such.

51545 Where a claimant chooses to

**1.** take ad-hoc withdrawals **or**

**2.** take the whole sum

then the amount withdrawn falls to be treated as capital (see DMG Chapter 52).

51546 For the purposes of notional income for claimants, or their partners as appropriate, who have reached the qualifying age for State Pension Credit (see DMG 77032), the claimant’s pension pot is required to be re-valued

**1.** after every drawdown of capital

**2.** after every drawdown of income which exceeds the applicable notional income amount (see DMG 51550) **or**

**3.** upon the claimant’s request.

**Example**

John is in receipt of State Pension Credit. He has a pension pot of £40,000 which he doesn’t wish to access at the moment but might do at a later stage. The decision maker calculates that as an annuity income, this would produce £2,000 per annum or £38.46 per week. This is based on 100% of the rate of annuity that the fund would generate (see DMG 28631). The

figure £38.46 is taken into account as notional income. John then decides to draw down £8,000 as capital, leaving £32,000 in his pension pot. The decision maker reassesses the notional income figure based on 100% of the rate of annuity that the remaining amount in the fund would generate.

## Information and evidence

51547 Pension fund holders must provide the decision maker with information about

**1.** the rate of annuity available from the pension fund **and**

**2.** the amount of income that would be available if the funds were held in a scheme that produces an income.

This information is based on tables prepared by the Government[1]. The rate of annuity is 100% of the rate of annuity that could be generated by the fund. Decision makers must consider evidence from pension fund holders when deciding the amount of notional income[2]. Do not make a decision until the pension fund holder has been given sufficient time to provide evidence.

*1 SS (C&P) Regs (NI), reg 7(6); 2 ESA Regs (NI), reg 106(6) & (7)*

51548 Decision makers must consider the evidence of the pension fund holder but are not bound to accept it. Consider all the evidence on the amount of notional income before making a decision. The decision should be based on the most convincing evidence available.

51549 - 51550

## Notional income - schemes where income withdrawal is allowed

### When should a person be treated as having notional income

51551 Treat a claimant, who has reached the qualifying age for State Pension Credit or over as having[1]

**1.** any income from an occupational pension scheme, a personal pension scheme or the Board of the Pension Protection Fund which

**1.1** has not been claimed **and**

**1.2** he might expect to be entitled to if a claim for it was made

**2.** income from an occupational pension scheme which the claimant has elected to defer.

*1 ESA Regs (NI), reg 106(3)*

## Amount of notional income

**[See DMG Memo Vol 5/102, 9/31 & 14/58]**

51552 The amount of the notional income is

**1.** where no income is drawn, 100% of the rate of annuity that may be withdrawn from the fund **or**

**2.** where some income is drawn, the difference between the rate of annuity and the income actually withdrawn.

**Example**

Adam is over the qualifying age for State Pension Credit and his wife Delores is in receipt of income-related Employment and Support Allowance. Adam has a pension pot of £50,000 which he doesn't want to access at the moment but might do at a later stage. The decision maker determines that as an annuity income, this would produce £2,500 per annum or £48.07 per week. This is based on 100% of the rate of annuity that the fund would generate. This amount is taken into account as a notional income and is deducted from the award of Employment and Support Allowance. Adam and Delores then later decide to put the £50,000 into a flexi draw down fund and take an actual income of £50 per week. The decision maker now decides that the amount of income to take into account each week is £50. There is no notional amount to take into account.

## From what date should the decision maker take notional income into account

51553 Take notional income into account from the date that the person could expect to get the income if an application was made[1]. To calculate this date

**1.** assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**

**2.** add the estimated time it would take the pension fund holder to process an application for the maximum amount of income.

*1 ESA Regs (NI), reg 106(3)*

**Example**

Bernard receives income-related Employment and Support Allowance. He is 61.

On 1 November the decision maker receives evidence that Bernard is entitled to a personal pension but has not bought an annuity or drawn an income.

The pension fund holder states that Bernard's scheme can provide an income. In Bernard's case the maximum amount of income, based on the Government tables, is £23 a week.

Once an application is made it would take the pension fund holder 6 weeks to arrange for the maximum income to be paid.

The decision maker decides that Bernard should be treated as having a notional income of £23 a week from 13 December.

# Notional income - schemes where income withdrawal is not allowed

## When should a person be treated as having notional income

51554 Treat a claimant who has at least reached the qualifying age for State Pension Credit as having income when[1] entitled to money purchase benefits under an occupational or personal pension scheme and he fails to purchase an annuity with the funds available in that scheme where

**1.** he defers, in whole or part, the payment of any income which would have been payable to him by his pension fund holder **or**

**2.** he fails to take any necessary action to secure the whole of the income which would be payable to him by his pension fund holder, if he applied for it **or**

**3.** income withdrawal is not available to him under that scheme

**Note:** Money purchase benefits has the same meaning as in specific pensions law[2]. This type of scheme does not pay benefits related to a person's final salary. Contributions paid in are invested and the benefits paid depend on how well the investments perform.

*1 ESA Regs (NI), reg 106(4); 2 Pension Schemes (NI) Act 1993*

## Amount of notional income

51555 The amount of notional income is the amount that a person could have received, without buying an annuity, if the pension funds were held in a scheme that did allow income withdrawal[1].

*1 ESA Regs (NI), reg 106(7)*

## From what date should the decision maker take notional income into account

51556 Take notional income into account from the date that the person could expect to get the income if an application was possible[1]. To calculate this date

**1.** assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**

**2.** add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for 100% of the rate of annuity that the fund would generate

*1 ESA Regs (NI), reg 106(5)*

**Example**

Mark receives income-related Employment and Support Allowance. His partner Fiona is 61. On 1 November the decision maker receives evidence that Fiona is entitled to money purchase benefits under an occupational pension scheme.

The pension fund holder provides evidence, based on the Government tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The decision maker estimates that it would take 6 weeks for a typical pension fund holder to arrange for the maximum income to be paid from a fund.

The decision maker decides that Fiona should be treated as having a notional income of £30 a week from 13 December.

### Actual income

51557 Take into account in full in the normal way any income that is

**1.** paid under an annuity bought with funds from a personal or occupational pension **or**

**2.** withdrawn from a personal or occupational pension scheme.

51558 - 51562

## Income due but not yet paid

51563 Treat income

**1.** that is due to the claimant or partner **and**

**2.** has not been paid

as belonging to that person[1]. This does not apply to the income listed in DMG 51564.

*1 ESA Regs (NI), reg 107(1)*

## Income that should not be taken into account if due but not paid

51564 Decision makers should not take certain income into account, even though it may be due but not paid. That income is

**1.** earnings which are due on termination of employment by reason of redundancy[1]

**2.** income payable under a discretionary trust fund **or**

**3.** income payable under a trust set up from a payment made because of a personal injury[2] **or**

**4.** payments, including increases for dependents, of[3]

**4.1** Incapacity Benefit

**4.2** Maternity Allowance

**4.3** Widow's Benefit

**4.4** Bereavement Allowance and Widowed Parent's Allowance

**4.5** Retirement Pension

**4.6** Attendance Allowance

**4.7** Severe Disablement Allowance

**4.8** Carer's Allowance

**4.9** Disability Living Allowance

**4.10** Disablement Benefit

**4.11** Reduced Earnings Allowance

**4.12** War Disablement Pension and War Widow's Pension/War Widower's Pension that is not paid as a gratuity and any payment that the decision maker accepts is similar

**4.13** Training allowance

**4.14** European Union benefits **or**

**4.15** contribution-based Jobseeker's Allowance

which are normally recovered from or reduced by the amount of income-related Employment and Support Allowance that has been paid because they have not been paid when they were due **or**

**5.** income from an occupational pension scheme that has not been paid because the trustees or managers of the scheme

**5.1** have suspended or stopped payments because of insufficient resources[4] **or**

**5.2** have insufficient resources to meet in full the scheme's liabilities to its beneficiaries[5].

**Note:** Any benefit in the form of a grant, gratuity or widows payment should not be taken into account if due but not paid[6]. These payments should normally be treated as capital.

*1 ESA Regs (NI), reg 107(2)(c); 2 reg 107; 3 reg 107(1)(b); 4 107(2)(a); 5 reg 107(2)(b); 6 SS (POR) Regs (NI), reg 8(1) & 9*

51565 "Resources" in DMG 51564 means the funds out of which the benefits of the occupational pension scheme are paid. This includes

**1.** money from an insurance policy **and**

**2.** an annuity contract

taken out for the purposes of the scheme.

51566 - 51568

## Types of income that may be due but not paid

51569 Examples of income that may be due but not paid include

1. pension payments which have stopped because of a strike by a company's pension section **or**
2. payments of income that have been interrupted because of a postal strike.

### Evidence required

51570 The decision maker should decide if an income is due but not paid. Ask to see written evidence that income has not been paid even though it may be due. Disallow a new claim if the claimant refuses to

1. provide written evidence **or**
2. give permission to the decision maker to obtain written evidence.

This is because the claimant will have failed to establish entitlement[1].

*1 R(IS) 4/93*

51571 - 51575

## Payments of income to third parties

**[See DMG Memo Vol 1/104, 4/123, 5/98, 6/85 & 9/27]**

51576 The decision maker should apply special rules to income paid to a third party[1]. The treatment of third party income[2] depends on whether it is

1. paid to the claimant and partner **and**
2. how it is used.

*1 ESA Regs (NI), reg 107(3); 2 R(IS) 4/01*

51577 The special rules in DMG 51580 - 51586 apply when

1. a third party receives a payment for the claimant or their partner **or**
2. a claimant receives a payment for a third party.

## What is a third party

51578 The term “third party” can include organisations such as Health and Social Services Boards, residential care homes, nursing homes, Abbeyfield homes and independent hospitals as well as people. Third parties can be

1. people who are not the claimant or their partner
2. claimants and partners.

51579 The Department for Communities and the Department for the Economy may make payments direct to provide for a person's participation in assisting them to find employment or other programmes. These payments are not taken into account as notional resources under third party rules. This applies to both income and capital payments[1].

*1 ESA Regs (NI), reg 107(5) & 115(5)*

## Meaning of payment in respect of a person

51580 Payment includes a part of a payment[1]. A payment can be made "in respect" of a person even if it is not made specifically or solely for that person.

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

**Example**

A company decides to sponsor adult learners at a local university by paying £5,000 towards their fees.

Half way through the year Candy, whose husband receives income-related Employment and Support Allowance, starts attending the university. Even though the payment was not specifically for Candy she is now a member of the group for which it was made.

The payment, therefore, is made for Candy.

51581 If pension payments are made to a third party such as a trustee in bankruptcy, the payment is made in respect of[1] the claimant if it is used to assist in maintaining the claimant and reduce the need for him to be supported by income-related benefits.

*1 R(IS) 2/03*

**Example**

James receives income-related Employment and Support Allowance. His partner Kathy is 62 and retired. She previously was self-employed but was made bankrupt 3 years ago.

Kathy's pension annuity is being paid to her trustee in bankruptcy under the provisions of the Insolvency Act, to reduce her indebtedness.

The pension payments are not made in respect of the claimant's partner because they cannot be used towards her maintenance.

51582 - 51584

## Income paid to the claimant or partner for the other person

51585 An income paid to either the claimant for their partner or to the partner for the claimant should be treated as the income of the person it is paid for.

**Example**

Graham receives income-related Employment and Support Allowance. His partner Margaret receives a payment from a trust fund for Graham.

The decision maker treats the payment as being Graham's income.

# Income paid to a third party for the claimant or partner

## Benefit paid to a third party

51586 Benefit for the claimant or a partner may be paid to a third party.

The following benefits should be treated as the income of the claimant or partner

**1.** social security benefits

**2.** Statutory Sick Pay

**3.** Statutory Maternity Pay

**4.** a benefit under the Workmen's Compensation (supplementation) scheme **or**

**5.** a benefit under the pneumoconiosis, byssinosis and miscellaneous diseases benefit scheme

**6.** war disablement pension

**7.** war widow's pension, war widower's pension or surviving civil partner's war pension

**8.** a pension paid to a force's widow or surviving civil partner under specific provisions[1] **or**

**9.** another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen

if the third party pays it to or uses it on behalf of the claimant or partner[2].

*1 Armed Forces (Pensions and Compensation) Act 2004; 2 ESA Regs (NI), reg 107(3)*

**Example**

Simon is entitled to income-related Employment and Support Allowance. His wife Janet lives with him. Janet receives money from a benevolent fund from a former employer. Her employer pays the money to Janet's mother as Janet is unable to manage her financial affairs. Janet's mother gives the money to Simon. The decision maker treats the money as Janet's income.

## Training payments to third parties

**[See DMG Memo Vol 1/104, 4/123, 5/98, 6/85 & 9/27]**

51587 A payment should not be treated as notional income under the third party payment rule where it is made

**1.** under certain legislation[1] **and**

**2.** for a person's participation in

**2.1** an employment programme[2] **or**

**2.2** a training scheme[3] **or**

**2.3** a qualifying course[4]

DMG Chapter 34 provides guidance on training schemes and employment programmes.

*1 E & T Act (NI) 1950, sec 1; 2 ESA Regs (NI), reg 107(5)(c)(i); 3 reg 107(5)(c)(ii); 4 reg 107(5)(c)(iii)*

## Income payments to a third party

51588 A claimant should not be treated as possessing notional income where a payment is

**1.** paid

**1.1** to a third party **and**

**1.2** in respect of the claimant or their partner **and**

**1.3** under relevant legislation[1] **and**

**1.4** in respect of the claimant's participation in the Preparation for Employment Programme

**2.** not used for

**2.1** food **or**

**2.2** ordinary clothing and footwear **or**

**2.3** fuel for the household that the claimant normally occupies **or**

**2.4** accommodation costs covered by income-related Employment and Support Allowance **or**

**2.5** rent or rates for which Housing Benefit is payable **or**

**2.6** water charges for which the claimant or partner is liable[2].

*1 E & T Act (NI) 1950, sec 1; 2 ESA Regs (NI), reg 107(3)(c)*

## Other payments to a third party

51589 Except where DMG 51590 - 51592 apply, a claimant is treated as possessing certain payments paid to a third party in respect of[1] (see DMG 51581) the claimant or partner. These payments are

**1.** occupational pensions and payments from the Pension Protection Fund

**2.** pensions or any other periodical payments under a personal pension scheme[2].

*1 R(IS) 2/03; 2 ESA Regs (NI), reg 107(3)(b)*

51590 A claimant is not treated as possessing a payment under DMG 51589 where[1]

**1.** they have been made bankrupt before 29.5.00 **and**

**2.** pension payments are paid to the claimant's trustee in bankruptcy and not the claimant.

This is because before 29.5.00 pension payments were included in a bankrupt person's estate that was assigned to the trustee in bankruptcy.

**Note:** From 29.5.00 the law changed to exclude from their estate any rights of a person made bankrupt under approved pension arrangements. This means that such pension payments can be treated as income of a person made bankrupt on or after 29.5.00.

*1 R(IS) 4/02*

51591 A claimant is not treated as possessing a payment under DMG 51589 where

**1.** the payment is made

**1.1** for a person in respect of whom a bankruptcy order has been made **and**

**1.2** to the trustee in bankruptcy or any other person acting on behalf of the creditors **and**

**2.** neither the person for whom the payment has been made has actual or notional income apart from that payment[1].

*1 ESA Regs (NI), reg 107(5)(d)*

51592 A claimant is also not treated as possessing a payment under DMG 51589 where

**1.** the estate of the person for whom the payment is made

**1.1** is subject to a sequestration order **or**

**1.2** has a judicial factor on it **and**

**2.** the payment is made to a person acting on behalf of the creditors **and**

**3.** neither the person for whom the payment has been made has actual or notional income apart from that payment[1].

*1 ESA Regs (NI), reg 107(5)(d)*

51593 - 51596

51597 Income other than a benefit may be paid to a third party. The decision maker should treat this type of income as the notional income of the claimant or partner for whom it is payable, to the extent it is used for that person's[1]

**1.** food

**2.** ordinary clothing or footwear

**3.** fuel, for the household that the claimant normally occupies

**4.** accommodation costs covered by income-related Employment and Support Allowance

**5.** rent or rates for which Housing Benefit is payable

**6.** water charges for which the claimant or partner is liable.

Ignore any part of the income not used on these items.

**Note:** If the income paid to the third party in the first instance is a payment in kind it would be excluded from this notional income rule.

*1 ESA Regs (NI), reg 107(3)(c)*

51598 **[See DMG Memo Vol 4/141, 5/108, 7/48, 8/89, 9/40 & 14/65] [See DMG Memo Vol 4/140, 5/107, 8/88, 9/39, 13/70 & 14/64] [See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84]** Disregard the payment to the third party[1]

**1.** whatever it is used for, if it is made from

**1.1** the Macfarlane Trusts **or**

**1.2** the Eileen Trust **or**

**1.3** MFET Limited **or**

**1.4** the Fund **or**

**1.5** the Independent Living Fund (2006) **or**

**1.6** the Skipton Fund **or**

**1.7** the Caxton Foundation **or**

**1.8** the Scottish Infected Blood Support Scheme **or**

**1.9** the London Emergencies Trust **or**

**1.10** the We Love Manchester Emergency Fund **or**

**1.11** Infected Blood Schemes

**2.** if it is for the purchase and supply of concessionary coal under specified legislation[2]. The Department of Enterprise, Trade and Investment is now responsible for the purchase and supply of concessionary coal. Coal is purchased through contracts and supplied to ex-coal workers and their families. The payment from the Department of Enterprise, Trade and Investment to the contractor is a payment to a third party and is disregarded.

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

*1 ESA Regs (NI), reg 107(5)(a); 2 The Coal Industry Act 94, sec 19(1)(a); ESA Regs (NI), reg 107(5)(b)*

### Meaning of ordinary clothing or footwear

51599 The expression "ordinary clothing or footwear"[1] means clothing or footwear for normal daily use. It does not include

**1.** school uniforms **or**

**2.** clothing or footwear used solely for sport, for example football boots.

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

51600 The decision maker should consider the wide needs of all claimants when applying the test of "for normal daily use".

**Example 1**

Person A receives income-related Employment and Support Allowance. She receives a payment from a local charity to buy wellington boots for herself.

The decision maker decides that as it would be unreasonable for Person A to wear wellington boots in all weather conditions they are not for normal daily use.

**Example 2**

Person A receives income-related Employment and Support Allowance. She receives a payment for orthopaedic shoes.

The decision maker decides that orthopaedic shoes may be normal for Person A but are not normal for adults in general. The decision maker decides that the orthopaedic shoes are not for normal daily use.

**Example 3**

Person A receives income-related Employment and Support Allowance. She receives a payment for an ordinary pair of shoes. The decision maker decides that the shoes are for normal daily use.

## Payments by a third party for residential care home, nursing home, Abbeyfield home or independent hospital charges

51601 Treat payments made by a third party, who is not the claimant or a member of the claimant's family, towards the cost of charges for a

**1.** residential care home **or**

**2.** nursing home **or**

**3.** Abbeyfield home **or**

**4.** independent hospital

for the claimant or partner as the income of the claimant or partner[1].

*1 ESA Regs (NI), reg 107(6)*

51602 This rule applies when the

**1.** claimant lives in or is temporarily absent from a residential care home, nursing home, Abbeyfield home or independent hospital **and**

**2.** payment is made to the residential care home, nursing home, Abbeyfield home or independent hospital.

The decision maker should calculate the amount of income and treat it as if it was actual income[1].

*1 ESA Regs (NI), reg 109*

51603

## Third party payments for residential care homes, nursing homes, Abbeyfield homes or independent hospitals and National Health maintenance

51604 A payment is disregarded[1] if it is

**1.** made for

**1.1** after-care **or**

**1.2** accommodation **or**

**1.3** other personal social services

referred to in specified legislation[2] **and**

**2.** treated as possessed under the notional income rule at DMG 51601[3].

*1 ESA Regs (NI), Sch 8, para 55; 2 HPSS (NI) Order 1972, art 15 & 36; 3 ESA Regs (NI), reg 107(6)*

51605 Payments that satisfy DMG 51604 include payments or reimbursements by a Health and Social Services Board for

**1.** persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**

**2.** expectant and nursing mothers[1].

*1 HPSS (NI) Order 1972, art 36*

## Income paid to the claimant or partner for a third party

51606 **[See DMG Memo Vol 4/141, 5/108, 7/48, 8/89, 9/40 & 14/65] [See DMG Memo Vol 4/140, 5/107, 8/88, 9/39, 13/70 & 14/64] [See DMG Memo Vol 4/152, 5/116, 8/101, 9/50, 13/124 & 14/73] [See DMG Memo Vol 4/156, 5/121, 8/106, 9/56, 13/127 & 14/77 (Revised)] [DMG Memo Vol 4/158, 5/126, 8/108, 9/61, 13/131 & 14/82] [See DMG Memo Vol 4/161, 5/128, 8/111, 9/63, 13/134 & 14/84] [See DMG Memo Vol 8/112, 9/64, 13/135 & 14/85]** Take into

account in full any income paid to the claimant or claimant's partner for a third party who is not a member of the family if

**1.** the income is kept by **or**

**2.** is not paid over to the third party by

the person who received it. Ignore any income that is paid over to the third party[1].

*1 ESA Regs (NI), reg 107(4)*

51607 Fully disregard any payment from

**1.** the Macfarlane Trusts

**2.** the Eileen Trust

**3.** MFET Limited

**4.** the Fund

**5.** the Independent Living Fund (2006) but see note

**6.** the Skipton Fund

**7.** the Caxton Foundation

**8.** the Scottish Infected Blood Support Scheme

**9.** the London Emergencies Trust

**10.** the We Love Manchester Emergency Fund

**11.** Infected Blood Schemes.

regardless of who keeps it or how it is used.

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

51608 The decision maker should decide using, available evidence

**1.** whether **and**

**2.** how much

income has been kept by the claimant or partner.

51609 Treat income as having been kept when

**1.** there is no intention of

**1.1** paying it over to **or**

**1.2** using it for

the third party **or**

**2.** if after having the income for a reasonable period of time the claimant or partner has

**2.1** not started paying it over **or**

**2.2** not started using it for the third party **or**

**2.3** has no plans for paying it over or using it for the third party.

51610 The decision maker should consider

**1.** the type of income **and**

**2.** how often the income is paid **and**

**3.** why the income is paid

when deciding if a reasonable period of time has passed.

**Example 1**

Person A receives income-related Employment and Support Allowance.

Person A receives income for his cousin Person B who is a long-term patient in a local hospital.

The income is paid weekly and Person A has been receiving it for 4 weeks.

Person A has no good reason for not having passed the money to Person B.

The decision maker decides that in the circumstances 4 weeks was a reasonable period in which to expect that the money would have been handed over to Person B. Person A is treated as having the full amount of income.

**Example 2**

Person A receives income-related Employment and Support Allowance. His partner, Person B receives an income for her aunt.

She has received 3 monthly payments but has not passed any money to her aunt because she has been busy looking after an elderly person.

The decision maker decides that in the circumstances of the case that a reasonable time had passed for Person B to have handed over the payments.

Person B is treated as having the full amount of the income.

**Example 3**

Person A claims income-related Employment and Support Allowance. He receives a weekly income on behalf of his sister Person B.

Person A and Person B live 30 km (20 miles) apart. Person A has not paid any money over to Person B for 10 weeks.

Person A has no private transport. He says he has not been well enough to travel by bus or post the money.

The decision maker decides in the circumstances of the case a reasonable period of time had not passed for Person A to have handed over the money.

He is treated as not having any of the income.

51611 – 51616

# Liable relative payments

# Liability to maintain

51617 Certain people are liable to maintain claimants or members of the family under legislation[1].

*1 SS A (NI) Act 92, sec 74(6)-(8) & 100(3)*

## Husbands, wives and civil partners

51618 Under legislation

**1.** a man is liable to maintain his wife or civil partner **and**

**2.** a woman is liable to maintain her husband or civil partner.

These liabilities end on divorce or dissolution of a civil partnership.

## Children

51619 Under legislation parents are liable to maintain their children. It does not matter if the parents have never been married. This liability lasts until the child is

**1.** 16 **or**

**2.** 20 if the child is in education.

**Note:** Under child support legislation the upper child age limit for child support maintenance liability purposes is until the child is 19 if they are in education.

## Sponsored immigrants

51620 Under legislation[1], a person who on or after 23.5.80, either

**1.** alone **or**

**2.** with some other person

has undertaken to be responsible for the maintenance and accommodation of another person under immigration law[1] is liable to maintain that person.

*1 Immigration Act 71*

## Action by the Department in the courts

51621 If people who are liable to maintain are not maintaining Employment and Support Allowance claimants and members of the family the Department may apply to a court for a maintenance order[1]. If liabilities are not met the Department has the power to start criminal proceedings against the person who is not paying[2].

*1 SS A (NI) Act, sec 101(1); 2 sec 100(1)*

51622 – 51624

# Liable relative payments - general

## Treatment as income

51625 Payments of liable relative payments are payments of income[1] which fall to be taken into account (but see DMG 51641).

*1 ESA Regs (NI), reg 120*

51626 There are special rules for the treatment of liable relative payments[1]. The normal rules for the treatment of

**1.** income **and**

**2.** notional income (including deprivation of income) **and**

**3.** capital (except for the calculation of the capital limit) **and**

**4.** student's income

do not apply to liable relative payments. Follow the guidance in this section when dealing with liable relative payments.

**Note:** If a payment is not a liable relative payment it should still be considered under the normal income/capital rules.

*1 ESA Regs (NI), reg 85*

## Meaning of liable relative payment

51627 A liable relative payment[1] is a payment that is

**1.** a periodical payment made by a liable relative

**2.** any other payment made by or derived from a liable relative.

*1 ESA Regs (NI), reg 119*

## Identification of liable relative payments

51628 A liable relative payment is not restricted to a payment from a person who is liable to maintain under the Acts. In particular a payment to a divorced husband, wife or to a person who has had a civil partnership dissolved is a liable relative payment even though there is no liability to maintain under the Acts. If the decision maker has doubts whether a payment is a liable relative payment details should be requested from

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

**2.** the claimant.

51629 Both income and capital payments can be taken into account as liable relative payments. If it is decided that a capital payment is a liable relative payment it is treated as income[1]. Liable relative payments may be

**1.** periodical payments **or**

**2.** non-periodical payments.

*1 ESA Regs (NI), reg 120(a)*

51630 - 51631

## Liable relative payments from discretionary trusts

51632 Payments from discretionary trusts should be taken into account only if they are actually paid.

## Payments made before the date of claim

51633 Decision makers should consider if payments received before the date that income-related Employment and Support Allowance is payable are liable relative payments. For example, liable relative payments may have been made to

**1.** young claimants before they left the parental home **or**

**2.** people who have separated from their partners.

51634 If a person has recently left their partner or a young claimant has recently left the parental home, decide

**1.** if any payments have been made **and**

**2.** if they are liable relative payments.

51635 If liable relative payments have been made, decide

**1.** the period over which they should be taken into account **and**

**2.** the effect on income-related Employment and Support Allowance.

51636 – 51640

## When the decision maker should not take payments into account as income

51641 The decision maker may

**1.** arrange to collect payments if income-related Employment and Support Allowance is in payment **and**

**2.** decide not to treat the payment as the claimant's income.

Decision makers should disregard these payments when calculating the claimant's income[1].

*1 ESA Regs (NI), reg 121*

## Meaning of liable relative

51642 Liable relative is defined as[1]

**1.** a spouse or civil partner of the

**1.1** claimant **or**

**1.2** member of the claimant's family

**2.** a former spouse or civil partner of the

**2.1** claimant **or**

**2.2** member of the claimant's family

**3.** a parent of

**3.1** a child or young person who is a member of the claimant's family **or**

**3.2** a young claimant

**4.** a person who it is reasonable to treat as the father of a

**4.1** child who is a member of the claimant's family **or**

**4.2** young person who is a member of the claimant's family **or**

**4.3** young claimant

because of contributions towards their maintenance. This applies even though a court has not found the person to be the father

**5.** a person who has, on or after 23.5.80, agreed to maintain

**5.1** the claimant **or**

**5.2** a member of the claimant's family

as a condition of their immigration.

**Note:** Not all Liable relatives are people who are liable to maintain under social security law.

*1 ESA Regs (NI), reg 119*

## Meaning of parent

51643 In DMG 51644 references to parents include people who are not the

**1.** natural **or**

**2.** adoptive

parents of a child, young person or young claimant.

## People who can be treated as parents

51644 People who have accepted a

**1.** child **or**

**2.** young person **or**

**3.** young claimant

as a member of their family can be treated as parents. An example of this would be a stepfather or stepmother.

51645 A person who is treated as a parent is not liable to maintain a

**1.** child **or**

**2.** young person **or**

**3.** young claimant.

If a person in this position is making payments treat them as a liable relative. Treat any payments made as liable relative payments. If payments cease the decision maker will not be able to seek their reinstatement.

## Meaning of young claimant

51646 A young claimant is a person who is aged 16 - 19 years who is an income-related Employment and Support Allowance claimant[1].

*1 ESA Regs (NI), reg 119*

## Liable relative payments and income tax

### Liable relative payments subject to income tax

51647 The decision maker should take into account the amount of a liable relative payment after any tax has been deducted by Her Majesty's Revenue and Customs.

### What should the decision maker do if the claimant receives a tax refund?

51648 If the claimant receives a tax refund for a

**1.** periodical liable relative payment **or**

**2.** non-periodical liable relative payment

it should be treated as a periodical or non-periodical liable relative payment as appropriate.

51649 Use the date that the claimant received the tax refund when deciding the date the liable relative payment was made. The decision maker should

**1.** decide the date the refund was received **and**

**2.** then apply the normal rules for deciding the date on which a

**2.1** non-periodical liable relative payment **or**

**2.2** periodical liable relative payment

is paid.

51650 - 51655

# Payments not treated as liable relative payments

## Which payments should not be treated as liable relative payments

51656 The following payments should not be treated as liable relative payments[1]

**1**. certain payments made because of separation, divorce or the dissolution of a civil partnership

**2.** payments made after the death of a liable relative

**3.** certain gifts

**4.** certain payments to or for third parties

**5.** payments in kind

**6.** payments for children and young people who are not members of the family

**7.** certain payments that have already been taken into account

**8.** certain payments that have been recovered under prevention of duplication of payments rules

**9.** certain payments that have already been used

**10.** payments of disregarded child maintenance.

Further guidance is given in DMG 51657 et seq.

*1 ESA Regs (NI), reg 119*

## Payments made because of divorce or separation

51657 Do not treat as a liable relative payment any payment made because of the rearrangement of the family's property to give each partner a share of assets. For this rule to apply the payment must be made because of

**1.** an agreement to separate **or**

**2.** proceedings for judicial separation, divorce, nullity of marriage or dissolution of a civil partnership.

51658 It does not matter if the payment was made before or after the agreement to separate or the court proceedings to end a marriage or civil partnership.

51659 The payment must be part of a chain of events leading from the rearrangement of property[1]. The payment itself must not be the property rearrangement.

*1 R(SB) 1/89*

51660 It is not necessary for an asset to have been sold before the payment is made. Examples of this include

**1.** the setting up of a trust **or**

**2.** transfer of property, such as a house[1].

*1 R(SB) 1/89*

51661 If it is decided a payment made because of the rearrangement of property is not a liable relative payment it should be treated as capital or income as appropriate.

## Payments made after the death of a liable relative

51662 Do not treat as a liable relative payment any payment made after the death of the liable relative. These payments should be treated as

**1.** other income **or**

**2.** capital

as appropriate.

## Gifts made by liable relatives

51663 Do not treat as a liable relative payment the first £250 of a payment made as a gift. These payments should be treated as

**1.** other income **or**

**2.** capital

as appropriate.

**Example**

Rachel is separated from her husband and is in receipt of income-related Employment and Support Allowance. Her son David receives a gift of money from his father. The gift is less than £250 and is to celebrate David's birthday.

The decision maker decides that the payment is not a liable relative payment and goes on to consider how to treat the payment under the normal income and capital rules.

51664 - 51666

## More than one gift made during a 52 week period

51667 If two or more gifts are received during a 52 week period starting on the date that the first payment was made

**1.** do not treat the first £250 of the total gifts as a liable relative payment **and**

**2.** treat the excess over £250 as a liable relative payment.

51668 The start of the 52 week period can be before the start of entitlement to income-related Employment and Support Allowance. When a 52 week period ends a further 52 week period will begin on the first day of the benefit week in which the next gift payment is made.

51669 - 51670

## Payments made to or for third parties

51671 A payment made

**1.** to a third party in respect of the claimant or the claimant's partner or made or derived from a person falling within DMG 51642 **5.** (agreement to maintain as a condition of immigration) **or**

**2.** to the claimant or claimant's partner in respect of a third party or made or derived from a person falling within DMG 51642 **5.** (agreement to maintain as a condition of immigration)

is not to be treated as either a liable relative payment unless DMG 51672 applies[1].

*1 ESA Regs (NI), reg 119*

51672 **[See DMG Memo Vol 1/100, 5/93, 6/80, 9/23 & 14/51]** If the payment is in respect of

**1.** food

**2.** ordinary clothing or footwear

**3.** fuel

**4.** rent or rates

**5.** housing costs

**6.** water charges

then the payment made to, or in respect of, a third party should be treated as being a liable relative payment.

**Note:** Ordinary clothing and footwear means[1] that worn for normal daily use but does not include school uniform. Housing costs[2] means those costs which can be met as part of the claimant's applicable amount (see DMG Chapter 44).

*1 ESA Regs (NI), reg 119; 2 reg 119*

**Example 1**

Anna is in receipt of income-related Employment and Support Allowance. Her ex-partner has agreed to pay £85 a month to the electricity supplier in respect of Anna's fuel bills. This monthly payment is paid direct to the company. The decision maker decides that this payment is a liable relative payment and takes it into account against Anna's income-related Employment and Support Allowance entitlement.

**Example 2**

Gill is in receipt of income-related Employment and Support Allowance. Her young son attends a stage school every Saturday. Gill's ex-husband, Mike, pays the stage school fees directly to the school. The decision maker decides that the payment from Mike is not a liable relative payment.

# Types of payments made to third parties

51673 Liable relatives may make payments direct to a third party rather than to the claimant. The most common types of these payments are

**1.** payments made direct to a fuel company for the claimant's fuel bills **and**

**2.** payments for housing costs made direct to

**2.1** a building society **or**

**2.2** a landlord **and**

**3.** payments of school fees direct to a school that is not a boarding school **and**

**4.** payments towards

**4.1** hire purchase commitments **or**

**4.2** loans.

## What is a third party

51674 A third party is

**1.** a person **or**

**2.** a group of people such as a company or some other organisation.

Any third party payment must be made to a person or organisation.

**Example**

Colin is separated from his wife. He receives income-related Employment and Support Allowance.

His wife makes payments to Colin of £5 a week. She states the payment is to buy food for Colin's dog.

The decision maker decides that the payment is made to Colin and is not a payment to a third party as the dog is not a person or organisation.

51675 - 51681

### What should the decision maker do if a payment to a third party is treated as a liable relative payment

51682 If the decision maker decides that a third party payment is a liable relative payment it should be taken into account as a

**1.** periodical payment **or**

**2.** non-periodical payment

as appropriate.

### What should the decision maker do if a payment to a third party is not treated as a liable relative payment

51683 If the decision maker decides that a third party payment is not a liable relative payment the normal rules for payments of income and capital to third parties should be considered.

51684 - 51687

## Payments made for a third party

### Types of payments made for third parties

51688 Payments may be made to

**1.** the claimant **or**

**2.** a member of the family

for a third party. This may happen when a person continues to pay maintenance to a parent for a child or young person who is no longer a member of the family.

### Should the decision maker treat a payment for a third party as a liable relative payment

51689 The decision maker must decide if a payment received by the claimant or member of the family for someone else should be treated as

**1.** a payment for the claimant **or**

**2.** a payment for the third party.

**Note:** Payments for children or young people who are treated as not being members of the claimant's household should not be treated as liable relative payments[1].

*1 ESA Regs (NI), reg 119*

51690

### What should the decision maker do if the payment is not treated as a liable relative payment

51691 If the decision maker decides that the payment should not be treated as a liable relative payment the payment should be considered under normal income and capital rules for payments for third parties.

51692 If the person for whom the claimant receives a payment claims income-related Employment and Support Allowance the decision maker should not take the payment into account in both assessments.

## Payments in kind

51693 Do not treat any payment in kind as a liable relative payment. Consider any payment in kind under the normal rules for income and capital.

51694

## Payments for people who are not members of the household

51695 Do not treat as a liable relative payment any payment to or for a

**1.** child **or**

**2.** young person

who is treated as not being a member of the claimant's household. Consider the guidance for payments of income or capital for third parties (see DMG 51606).

## Payments already taken into account

51696 Do not treat as a liable relative payment non-periodical payments that have already been taken into account on a previous award or decision on Employment and Support Allowance.

## Payments being recovered

51697 Do not treat as liable relative payments non-periodical payments that

**1.** have been **or**

**2.** are being

recovered under prevention of duplication of payment rules[1].

*1 SS A (NI) Act 92, sec 72(1)*

## Payments that have been used

51698 Do not treat as liable relative payments non-periodical payments that have been used by the claimant at the time that the decision maker's decision on the payment is made. This rule does not apply to claimants who have deprived themselves of money from payments to get or increase the amount of the benefit now being considered.

51699 Deprivation for the purposes of getting or increasing Jobseeker's Allowance or Income Support should not be considered if Employment and Support Allowance is the benefit under consideration.

## Child maintenance

51700 Do not treat as liable relative payments, payments of child maintenance that have been disregarded[1]. (See DMG 51334)

*1 ESA Regs (NI), reg 119*

51701 – 51709

# Liable relative payments - periodical payments

## Introduction

51710 The way in which liable relative payments are taken into account depends upon whether it is a periodical payment or a non-periodical payment.

## What is a periodical payment

51711 A periodical payment is

**1.** a payment made or due to be made at regular intervals **or**

**2.** a payment that forms part of an established pattern **or**

**3.** a payment that substitutes or replaces a payment in **1.** and **2.** whether or not it is

**3.1** a complete multiple of those payments **or**

**3.2** made in advance or arrears **or**

**4.** any payment that is the same or less than the rate of income-related Employment and Support Allowance that would have been payable if it had not been made[1].

**Note:** Decision makers must consider entitlement to contribution-based Employment and Support Allowance when considering the amount of Employment and Support Allowance that would have been payable if the payment had not been made.

*1 ESA Regs (NI), reg 119*

51712 A payment that was due to be paid before the first benefit week of the claim but was paid after that benefit week is not a periodical payment.

51713 Periodical payments are usually made at weekly or monthly intervals under

**1.** a court order **or**

**2.** an agreement between the claimant and the person making the payment.

# Calculation of weekly amount

## Periodical payment made at weekly intervals

51714 If a periodical payment is

**1.** made **or**

**2.** due to be made

at weekly intervals the weekly amount to be taken into account is the amount of each of the payments[1].

*1 ESA Regs (NI), reg 124(1)*

## Periodical payment made at monthly intervals

51715 If a periodical payment is made or due to be made at monthly intervals the weekly amount is calculated by

**1.** multiplying the amount of the payment by 12 **and**

**2.** dividing the result by 52[1].

*1 ESA Regs (NI), reg 124(2)*

**Example**

Donna receives income-related Employment and Support Allowance. She receives periodical payments of £120 a month.

The decision maker calculates the weekly amount by multiplying £120 by 12 and dividing the result by 52.

Calculation

$$\frac{£120 \times 12}{52} = £27.69$$

## Periodical payments made other than weekly or monthly

51716 If a periodical payment is made or is due to be made at intervals other than

**1.** weekly **or**

**2.** monthly

the weekly amount to be taken into account is calculated by dividing the amount of the payment by the number of weeks (including part weeks) in the interval between the payments[1].

*1 ESA Regs (NI), reg 124(3)*

**Example**

Nigel receives income-related Employment and Support Allowance. He receives a liable relative payment of £500 on the first day of every third month.

He receives £500 on 1.9.09 and a further £500 on 1.12.09.

The decision maker decides that the payment for 1.9.09 - 30.11.09 is for 13 weeks.

The weekly amount is calculated as follows

$\frac{£500}{13}$ = £38.46

The decision maker decides that the payment for 1.12.09 - 28.2.10 is for 12 weeks and 6 days.

The weekly amount is calculated as follows

$\frac{£500}{12\ 6/7}$ = £38.88 (12 weeks and 6 days)

### Payment made up of more than one periodical payment

51717 If a lump sum is received instead of all or part of a series of periodical payments calculate the weekly amount in the same way as the weekly amount of the payments it represents would be calculated[1]. This applies whether or not

**1.** the payment is a complete multiple of the payments it represents **or**

**2.** the payments are made in advance or arrears.

*1 ESA Regs (NI), reg 124(4)*

**Example**

Marie receives income-related Employment and Support Allowance. She is due to receive payments of £10 a week.

Over a 13 week period she receives 2 payments of £40 and 1 payment of £50.

The decision maker decides that the payments made represent a series of periodical payments.

The weekly amount taken into account is £10.

51718 - 51722

## Period over which a periodical payment should be taken into account

### Periodical payments made at regular intervals

51723 If periodical payments are made at regular intervals take each payment into account for a period equal to the length of time between payments[1].

*1 ESA Regs (NI), reg 122(1)(a)*

### Periodical payments due to be made regularly but made irregularly

51724 If periodical payments are due to be made at regular intervals but are not being made regularly calculate the number of weeks (including part weeks) by dividing the amount of the payment by the weekly amount of the payment[1].

*1 ESA Regs (NI), reg 122(1)(b)*

**Example**

Mario receives income-related Employment and Support Allowance.

He is due to receive liable relative payments of £30 a week under a court order.

The payments are not made regularly.

He receives a payment for £200.

$\frac{£200}{30} = 6\ ^{2}/_{3}$

It is taken into account over 6 $^{2}/_{3}$ weeks. This means that the decision maker takes £30 a week into account for 6 weeks and the balance of £20 into account for week 7.

### Periodical payments not due to be made regularly

51725 If a periodical payment is not

**1.** made **or**

**2.** due to be made

at regular intervals take it into account for one week[1]. This applies to cases where a liable relative who is not usually making payments makes an occasional payment.

*1 ESA Regs (NI), reg 122(1)(c)*

51726 If an occasional payment is more than the amount of income-related Employment and Support Allowance in payment treat it as a non-periodical payment.

### When should the period start over which a periodical payment is taken into account

51727 The period over which a periodical payment should be taken into account begins on the date the payment is treated as paid[1].

*1 ESA Regs (NI), reg 122(2)*

## On what date should a periodical payment be treated as paid

### Periodical payments made before the first benefit week of entitlement

51728 Treat periodical payments due to be made before the first benefit week of the claim as paid on the same weekday as the first day of the benefit week[1]. The decision maker should decide

the claimant's benefit week before deciding the date from which the payment should be taken into account.

*1 ESA Regs (NI), reg 125(1)(a)*

**Example**

Catriona claims Employment and Support Allowance on 10.12.08. Her benefit week ending day is a Thursday.

She received a periodical payment of £200 for a period of a month on 1.12.08.

The decision maker decides that Catriona's benefit week starts on a Friday.

The payment is taken into account for a month from 5.12.08, which is the Friday in the week that the payment was received.

## Periodical payments made during the course of an award of income-related Employment and Support Allowance

51729 Treat a periodical payment made during the course of an award of income-related Employment and Support Allowance as paid on the first day of the benefit week in which it is due to be paid. If it is not practicable to do this it should be taken into account in the next or a subsequent benefit week[1]. It is not practicable to take a payment into account during the benefit week in which it was received when benefit has already been paid for that week.

*1 ESA Regs (NI), reg 125(1)(b)*

## Payments under agreements or court orders

51730 Where an agreement or court order is in force decide the date that payments are due to be paid by reference to the agreement or order currently in force. This includes cases where the amount due to be paid under the agreement or court order is varied.

**Example 1**

Andrew is due to make payments under a court order of £50 a week to Sarah. Sarah is in receipt of income-related Employment and Support Allowance.

During 2009 Andrew has fallen into arrears with his court order.

The court has made a new order requiring the arrears to be paid on 1.1.10.

The decision maker decides that the due date for the arrears is now 1.1.10 and not the date the arrears were originally due to be paid.

**Example 2**

Corinne is in receipt of income-related Employment and Support Allowance. Her ex-partner Adam has agreed to pay her £30 a week.

Over the last 2 weeks Adam has not made any payments to Corinne.

After a discussion Corinne and Adam come to a new agreement whereby Adam will pay the £60 arrears by increasing his regular payment of £30 a week to £40 a week starting from 1 June.

The decision maker decides that the due date for the arrears is now 1 June and not the date the arrears were originally due to be paid.

51731 - 51735

# Liable relative payments - non-periodical payments

## What is a non-periodical payment

51736 Treat any liable relative payment that is not a periodical payment as a non-periodical payment or "other payment"[1].

*1 ESA Regs (NI), reg 119*

51737 Examples of non-periodical payments include one-off payments for specific items. But if the payment is for less than the amount of Employment and Support Allowance that would otherwise be payable it should be treated as a periodical payment.

**Example 1**

Clayton is the father of Amina's child.

He makes a payment of £120 for a baby buggy.

Amina claims Employment and Support Allowance. The amount of income-related Employment and Support Allowance that is payable without the payment for the baby buggy is £74.

The decision maker decides that the payment is a non-periodical payment.

**Example 2**

Roger is the father of Linda's child.

He makes a one off payment of £35 for Linda and her child.

Linda claims Employment and Support Allowance. The amount of income-related Employment and Support Alllowance that is payable without the payment is £40.

The decision maker decides the payment is a periodical payment.

## Should all of a payment be taken into account as a non-periodical payment

51738 Decision makers should not always take the full amount of a payment into account as a non-periodical payment. Calculate the amount as follows

**1.** take into account as a liable relative payment the amount of the payment **less**

**2.** any amount that has been taken into account under any previous Employment and Support Allowance decision **or**

**3.** any amount that has been or is currently being recovered by the decision maker under prevention of duplication of payment rules[1] **or**

**4.** any amount that the claimant has spent unless that amount was spent for the purpose of getting or increasing Employment and Support Allowance.

*1 SS A (NI) Act 92, sec 72(1)*

51739 Consider all the circumstances surrounding the payment when calculating the amount of a non-periodical payment. Decision makers should not take into account as a liable relative payment any part of a payment spent

**1.** clearing outstanding debts that occurred during the marriage or relationship **or**

**2.** paying an amount owed to a solicitor.

51740 - 51745

## Periodical payments and any other payment made by a liable relative

### Period when non-periodical liable relative payment taken into account

51746 Where a liable relative makes a periodical payment and at the same time an additional payment then the decision maker has to determine whether the weekly periodical payment as calculated in accordance with DMG 51714 - 51717 is less than the total of[1]

**1.** £2 **and**

**2.** the amount of income-related Employment and Support Allowance which would have been paid had the periodical payment not been made.

*1 ESA Regs (NI), reg 123(4) & (10)*

51747 If the periodical payment is less than the total in DMG 51746 then the decision maker should take the additional payment into account for a period determined by applying the formula[1]

$$\frac{A}{B - C}$$

Where[2]

A = the amount of the non-periodical payment

B = the total of £2 and the amount of income-related Employment and Support Allowance which would have been paid had the periodical payment not been made.

C = the weekly amount of the periodical payment.

Any fraction has to be treated as a fraction of a week[3].

*1 ESA Regs (NI), reg 123(5); 2 reg 123(10); 3 reg 123(9)*

**Example**

Marie has an applicable amount of £65.45 but receives income-related Employment and Support Allowance of £40.45 a week because she is in receipt of a periodical liable relative

payment of £25 a week. She receives a non-periodical liable relative payment of £500 in addition to the periodical liable relative payment of £25 a week.

The decision maker decides that the periodical payment of £25 is less than £67.45 (the total of £2 + £65.45).

The decision maker then has to determine the period for which the additional payment of £500 is to be taken into account. The decision maker applies the formula in DMG 51747 where

A = £500

B = £67.45 (£2 + £65.45)

C = £25

This gives an answer of 11.77 (£500 ÷ (£67.45 - £25)). The decision maker takes the payment into account for 11 weeks at £42.45 and 1 week at £33.05. The weekly amount of the payment in addition to the periodical liable relative payment ends Marie's entitlement to Employment and Support Allowance.

## The weekly amount of the non-periodical payment

51748 The weekly amount of the non-periodical payment is equal to the divisor used to calculate the period for which it is taken into account[1]. This will be the total of

**1.** £2 and the amount of income-related Employment and Support Allowance which would have been paid had the periodical payment not been made **less**

**2.** the weekly amount of the periodical payment in payment.

*1 ESA Regs (NI), reg 124(5)*

## When should the decision maker start taking a non-periodical payment into account

51749 The period during which the non-periodical payment should be taken into account should begin on the date the payment is treated as paid[1].

*1 ESA Regs (NI), reg 123(8)*

## Periodical payments change while a non-periodical payment is being taken into account

51750 If subsequent periodical payments change, the balance (if there is any) of the non-periodical payment has to be taken into account. The number of weeks for which it is taken into account is determined by the formula[1]

$$\frac{D}{B - E}$$

Where[2]

B = the total of £2 and the amount of income-related Employment and Support Allowance which would have been paid had the periodical payment not been made

D = the balance (if any) of the non-periodical payment

E = the weekly amount of any subsequent periodical payment.

*1 ESA Regs (NI), reg 123(7); 2 reg 123(10)*

**Example**

Marie has had her award of income-related Employment and Support Allowance ended in the circumstances explained in the example to DMG 51747. Two weeks later she contacts the Department to reclaim Employment and Support Allowance and says that her regular periodical payment of £25 has now changed to just £5.

The decision maker has to re-determine the period for which the non-periodical payment is to be taken into account. The decision maker performs the calculation in DMG 51750 where

B = £67.45 (£2 + £65.45)

D = £415.10 (£500 – ( 2 x £42.45))

E = £5

This gives a period of 6.64 weeks (£415.10 ÷ (£67.45 - £5)). The decision maker therefore continues to take the non-periodical payment into account but for a period of 7 weeks not 12 as originally determined.

51751 The period for which a change is said to occur begins on the first day of the benefit week in which the change took place[1]. However, the day on which the non-periodical payment is treated as paid is still the first day of the benefit week in which it was received (see DMG 51749).

*1 ESA Regs (NI), reg 123(8)*

## Periodical payments cease while a non-periodical payment is being taken into account

51752 Where the liable relative stops making periodical payments, the remaining balance (if there is one) of any non-periodical payment has to be taken into account. In order to determine the number of weeks for which the non-periodical payment is taken into account, the decision maker should divide that remaining balance (if there is one) by[1]

**1.** £2 **and**

**2.** the amount of income-related Employment and Support Allowance which would have been paid had the liable relative payment not been made.

*1 ESA Reg (NI)s, reg 123(6) & (3)*

51753 The calculation to re-determine the period over which the non-periodical payment is taken into account begins on the first day of the benefit week in which the payment ceased[1].

*1 ESA Regs (NI), reg 123(8)*

**Example**

Marie has had her income-related Employment and Support Allowance award ended in the circumstances described in the example to DMG 51747. 2 weeks after her award of income-related Employment and Support Allowance has ended, Marie informs the decision maker that she is no longer in receipt of the periodical payment of £25 and reclaims Employment and Support Allowance.

The decision maker has to determine the period for which the non-periodical payment is to be taken into account. The balance of the payment is £415.10. This figure is divided by the aggregate of

£2 + £65.45 = £67.45

then

£415.10 ÷ £67.45 = 6.15

The decision maker determines that the non-periodical payment should be taken into account at a rate of £67.45 for a further 6 weeks and the balance of £10.40 (£415.10 - (6 x £67.45)) would be treated as income if Marie reclaims income-related Employment and Support Allowance in week 7.

51754 - 51755

# Periodical payments not being made when a non-periodical payment is received

## Weekly amount of non-periodical payment for claimants

51756 If a non-periodical payment is made and periodical payments are not being made, the amount that should be taken into account each week is[1] the total of

**1.** £2 **and**

**2.** the amount of income-related Employment and Support Allowance which would have been paid had the liable relative payment not been made.

*1 ESA Regs (NI), reg 124(5) & 123(3)*

# Period over which a non-periodical payment is taken into account

## Non-periodical payments made for the claimant

51757 If a non-periodical payment is made[1] then it is taken into account for the number of weeks obtained by dividing the payment by the total of[2]

**1.** £2 **and**

**2.** the amount of income-related Employment and Support Allowance which would have been paid had the liable relative payment not been made.

Any fraction is to be treated as a fraction of a week[3].

*1 ESA Regs (NI), reg 123(1); 2 reg 123(2) & (3); 3 reg 123(9)*

**Example**

Jess is currently in receipt of income-related Employment and Support Allowance of £35 a week. She receives a payment from her ex-partner of £120. The decision maker determines that this is a non-periodical payment. To decide the period over which it is taken into account the decision maker divides £120 by

**1.** £2 **and**

**2.** £35.

The payment of £120 is therefore divided by £37 (£2 + £35).

This gives 3.24 (£120 ÷ £37). The decision maker takes the payment into account for the first 3 weeks at a weekly rate of £37.00. The balance of £9 is taken into account in the 4th week. If Jess becomes re-entitled to income-related Employment and Support Allowance in week 4, the decision maker will have to take into account the balance of £9.

## When should the decision maker start to take the non-periodical payment into account

51758 The period over which the non-periodical payment should be taken into account begins on the date the payment is treated as paid[1].

*1 ESA Regs (NI), reg 123(8)*

51759

# Date a non-periodical payment is treated as paid

## Non-periodical payment made before the first benefit week of the claim

51760 If a non-periodical payment is made before the first benefit week of the claim treat it as paid on the day in the week in which it is paid that corresponds to the first day of

the benefit week. This rule does not apply if the payment is made during a period in which a previous non-periodical payment is being taken into account[1].

*1 ESA Regs (NI), reg 125(2)(a) & (3)*

## Non-periodical payment made during the course of an award of income-related Employment and Support Allowance

51761 If a non-periodical payment is made during the period of an award it should be treated as paid on the first day of

**1.** the benefit week in which it was paid **or**

**2.** a subsequent benefit week if it is not practicable to take the payment into account straight away[1].

Consider the method of payment of Employment and Support Allowance when deciding if it is not practicable to take a payment into account straight away. See DMG 51729 for examples.

These rules do not apply if the payment is made during a period in which a previous non-periodical payment is being taken into account.

*1 ESA Regs (NI), reg 125(2)(a) & (b)*

## Non-periodical payment made during a period where a previous non-periodical payment is already being taken into account

51762 If a non-periodical payment is made during the period in which a previous non-periodical payment is being taken into account treat it as paid on the first day following that period[1].

*1 ESA Regs (NI), reg 125(3)*

51763 - 51764

# Contribution-based Employment and Support Allowance and pension payments

## Deductions from contribution-based Employment and Support Allowance for pension payments

### General

51765 The guidance in DMG 51766 to 51859 refers only to deductions from contribution-based Employment and Support Allowance.

51766 Pension payments and pension protection fund periodic payments that are

**1.** made to a claimant for any week **and**

**2.** more than £85 each week

are deducted from the claimant's personal rate, when calculating the amount of contribution-based Employment and Support Allowance payable to the claimant for each benefit week or part-week. The amount deducted is half the excess over £85[1].

*1 WR Act (NI) 07, sec 2(1)(c) & 3; ESA Regs (NI), reg 74(1)*

**Example**

Kim receives pension payments totalling £90 each week. The pension payments exceed the £85 maximum by £5. This means that £2.50 is deducted in each benefit week from the amount of contribution-based Employment and Support Allowance that she is entitled to because this is half of the £5 excess.

51767 The law provides for

**1.** when pension payments and pension protection fund periodic payments are to be taken into account[1] (see DMG 44711 et seq) **and**

**2.** certain payments to be disregarded[2] (see DMG 44716) **and**

**3.** the calculation of a weekly amount where pensions are paid for periods other than a week[3] (see DMG 44749 et seq).

*1 ESA Regs (NI), reg 77; 2 reg 75; 3 reg 79*

# Meaning of pension payments and pension protection fund payments

## Pension payments

51768 Pension payments are[1] periodical payments (see DMG 51770 et seq) paid to or for a person

**1.** under a personal pension scheme (see DMG 51772 et seq) **or**

**2.** in connection with the ending of the person's employment as an earner (see DMG 51790) under

**2.1** an occupational pension scheme (see DMG 51778) **or**

**2.2** a public service pension scheme (see DMG 51779 et seq)

**3.** under an insurance policy[2] providing benefits in connection with physical or mental illness or disability (see DMG 51798).

*1 WR Act (NI) 07, sec 3(3); 2 ESA Regs (NI), reg 72*

51769 Payments as in DMG 51768 **2.** may be, but are not confined to, pensions that the employer has contributed to. These include

**1.** payments made under a scheme arranged by the employer where the money is provided exclusively by the claimant

**2.** payments made by the UK or other governments where provision is made for them in law, for example pensions to former Crown employees

**3.** pensions from employment overseas (see DMG 51817)

**4.** the compensation element of a retired local government officer's pension[1]

**5.** payments under the Civil Service Compensation Scheme (see DMG 51783 et seq)

**6.** payments under the Civil Service Pension Scheme.

*1 Local Government (Early Termination of Employment) (Discretionary Compensation) Regs (NI) 2007*

## Periodical payments and lump sums

51770 Periodical payments are those that are paid at regular intervals.

51771 A lump sum payment is not a periodical payment. This applies even where the claimant has chosen to receive a lump sum instead of a periodical payment[1]. But where

**1.** a person is entitled to a lump sum payment **and**

**2.** the rules of the scheme allow the lump sum to be paid in instalments **and**

**3.** the person chooses to receive it in this way

the instalments are periodical payments.

*1 R(U) 5/85*

## Personal pension scheme

51772 Personal pension scheme[1] means a

**1.** personal pension scheme as stated in pensions law[2]

**2.** an annuity contract or trust scheme approved under tax law[3]

**3.** personal pension scheme approved under tax law[4].

*1 ESA Regs (NI), reg 2(1); 2 Pension Schemes (NI) Act 1993, sec 1;*
*3 Income and Corporation Taxes Act 1988, Part XIV, Chapter III, sec 620, 621 or 622(3); Finance Act 2004, Sch 36*
*4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV*

51773 A personal pension scheme for employed or self-employed earners is[1] any scheme or arrangement

**1.** where the earner has arranged with the scheme's trustees or managers to become a member of the scheme **and**

**2.** that

**2.1** provides **or**

**2.2** is capable of providing

benefits in the form of pensions or otherwise **and**

**3.** where benefits are payable on

**3.1** death **or**

**3.2** retirement to or for employed earners.

*1 WR Act (NI) 07, sec 3(4); Pension Schemes (NI) Act 93, sec 1*

51774 Personal pension schemes under DMG 51772 **2.** are contracts or trust schemes established before 4.1.88 that provide for a life annuity later in life[1].

*1 Income and Corporation Taxes Act 1988, Part XIV, Chapter III, sec 620, 621 or 622(3); Finance Act 2004, Sch 36, para 1(1)(f) & WR Act (NI) 07, sec 3(4)*

51775 If the member of the scheme used the personal pension to contract-out of the state earnings related pension scheme (SERPS), the part of the pension that

**1.** comes from Department for Communities rebates **and**

**2.** is used to replace the state earnings related pension scheme

can only be drawn from age 60.

51776 The decision maker should refer the case to Decision Making Services via their decision making team leader, if

**1.** they are unable to decide whether a pension is paid under a personal pension scheme **and**

**2.** the pension payment does not satisfy any other part of DMG 51768.

## Self-invested personal pensions

51777 Self-invested personal pensions are subject to the normal rules for registered pension schemes[1]. With self-invested personal pensions people can purchase an annuity or can receive an income by drawdown or an unsecured pension. Payments from self-invested personal pensions are payments under a personal pension scheme[2].

*1 Finance Act 2004, sec 154(1); 2 SS C&B (NI) Act 92, sec 30DD(6); Pension Schemes (NI) Act 93, sec 1*

## Occupational pension scheme

51778 An occupational pension scheme is[1] any scheme or arrangement that

**1**. is comprised in one or more instruments (for example trust deeds) or agreements (for example informal arrangements) **and**

**2**. has, or is capable of having, effect on one or more types of employment **and**

**3**. provides benefits, for example pensions, payable on

**3.1** termination of service **or**

**3.2** death **or**

**3.3** retirement

for earners with qualifying service.

*1 WR Act (NI) 07, sec 3(4); Pension Schemes (NI) Act 93, sec 1; R(JSA) 1/01; R(JSA) 6/02*

## Public service pension scheme

51779 A public service pension scheme[1] is an occupational pension scheme that is

**1.** established under legislation, by royal prerogative or under a royal charter **and**

**1.1** all its particulars are set out in the legislation, royal warrant or charter **or**

**1.2** it cannot come into force or be amended without the government's approval **or**

**2.** established with the government's approval **or**

**3.** prescribed by legislation[2].

*1 WR Act (NI) 07, sec 3(4); Pension Schemes (NI) Act 93, sec 1;*
*2 Occupational Pension Schemes (Public Service Pension Schemes) Regs 1978*

51780 Pension schemes that are also public service pension schemes include pension schemes for

**1.** civil servants **or**

**2.** employees subject to the Northern Ireland Local Government Officers superannuation scheme **or**

**3.** teachers **or**

**4.** the Armed Forces **or**

**5.** police officers.

51781 If decision makers have difficulty in determining whether a pension scheme is a public service pension scheme they should arrange to get

**1.** the claimant's consent to contact the manager of the scheme **and**

**2.** a statement from the manager of the scheme as to whether the pension scheme is a public service pension scheme within the meaning of the relevant law[1].

**Note:** If a pension scheme is not a public service pension scheme it may still fall within the definition of an occupational pension scheme (see DMG 44674).

*1 Pension Schemes (NI) Act 93, sec 1*

51782 Most public service schemes include provision for injury or contracting a disease (for example Police and Fire Service schemes). Such pensions may be paid on a minimum income guarantee basis. This means that the pension tops up existing income to a certain level. The pension rate may therefore be affected by the amount of contribution-based Employment and Support Allowance entitlement. In such cases the decision maker should take into account the gross amount of pension i.e. before any adjustment has been made for contribution-based Employment and Support Allowance. This ensures that the gross amount of the pension is offset against any contribution-based Employment and Support Allowance, and the pension provider takes the subsequent balance of any contribution-based Employment and Support Allowance payable into account. There is no disadvantage to the claimant, and means that in cases where the amount of pension paid to the claimant is equal to the level of guarantee, the claimant's total income remains unchanged. The pension provider needs to be informed of the correct amount of contribution-based Employment and Support Allowance payable.

**Example**

The amount of pension is £120.00 per week, and the amount of guarantee is £120.00 per week. Contribution-based Employment and Support Allowance entitlement is £100.15 which is reduced by £17.50 (half the excess over £85) to £82.65. The pension is then paid at £37.35 to bring the guaranteed income back to £120.00.

## Civil Service Compensation Scheme

51783 Civil servants may be entitled to annual payments as compensation[1] if their employment ends because of

**1.** compulsory redundancy **or**

**2.** voluntary early retirement or severance

in a redundancy situation.

*1 R(JSA) 1/01; R(JSA) 2/01*

51784 Until 1996, payments made to civil servants taking early retirement or redundancy were made as part of the Principal Civil Service Pension Scheme (Northern Ireland). The Principal Civil Service Pension Scheme (Northern Ireland) also provided benefits to those who retired at the normal retirement age. But on 1.1.96, a separate scheme, called the Civil Service Compensation Scheme (Northern Ireland) was introduced.

51785 The Civil Service Compensation Scheme (Northern Ireland) provides benefits to civil servants whose employment ends before the normal retirement age. The Principal Civil Service Pension Scheme (Northern Ireland) continues to provide benefits to those who retire at the normal retirement age.

51786 Under the Civil Service Compensation Scheme (Northern Ireland), annual compensation payments may be made to civil servants. The Civil Service Compensation Scheme (Northern Ireland) also allows civil servants to change the mix of their

**1.** lump sum **and**

**2.** annual compensation payments **and**

**3.** preserved pension.

51787 The Civil Service Compensation Scheme (Northern Ireland) is a public service pension scheme[1] and annual compensation payments from it are payments from a public service pension scheme. This means that half of the excess of the £85 weekly limit (see DMG 51766) is taken into account in contribution-based

Employment and Support Allowance.

*1 R(JSA) 2/01*

## Local government premature retirement scheme

51788 Some pensionable local government employees who

**1.** are made redundant **or**

**2.** volunteer for redundancy **or**

**3.** cease work in the interests of the efficient exercise of the employers' functions

receive payments under the local government premature retirement scheme[1].

*1 Local Government (Early Termination of Employment) (Discretionary Compensation) Regs (NI) 2007*

51789 The scheme entitles employees[1] to annual payments as compensation for their employment ending as in DMG 51788. These are calculated on the same basis as their annual retirement

pension under the superannuation legislation[2]. The compensation payment is a payment from a public service pension scheme.

*1 Local Government (Early Termination of Employment) (Discretionary Compensation) Regs (NI) 2007;*
*2 Local Government (Superannuation) Regs (NI) 1992*

## In connection with the coming to an end of the employment

51790 A pension must be paid in connection with the end of employment of the person who it is paid for, to fall within DMG 51768 **2.**. Occupational or public service pensions that are paid where the employment has not ended do not fall within DMG 51768 **2.**. For example, war pensions paid

**1.** because of disablement **and**

**2.** regardless of whether the employment is continuing.

51791 In this context "employment" includes any trade, business, profession, office or vocation[1]. Employment in the Armed Services falls within this definition.

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

51792 Retired officers who are entitled to a war pension receive it as a disablement addition to their service pension. This disablement addition is

**1.** awarded by the Service Personnel and Veterans Agency **and**

**2.** paid by the Paymaster General in the same cheque as the person's service pension.

51793 If the claimant is a retired officer with a service pension, the decision maker should

**1.** find out the amount of any disablement addition **and**

**2.** deduct it from the total payment received.

51794 Gallantry awards are sometimes paid to former members of the Forces in addition to their service pensions. Payment is

**1.** made from the date of the award **and**

**2.** a reward for conduct rather than a period of service.

These awards are not paid in connection with the coming to an end of an employment and are **not** pension payments.

51795 Pension payments may be payable to the claimant from the former employer of a deceased partner or other relative. Such payments should be disregarded (see DMG 51805).

51796 The amount of a service pension may be increased if the claimant has been invalided out of the Forces. The full amount should be taken into account.

51797 Police officers who retire because of permanent disability may be entitled to an ill health award[1] in addition to a pension under a public service pension scheme. If they are permanently

disabled through an injury received while carrying out their duties, they are also entitled to an injury pension. It is a condition for the receipt of both payments that the officer ceases to be a member of a police force. The payments are therefore made in connection with the coming to an end of a police officer's employment and are payments as in DMG 51768 **2.2**.

*1 Police Pension Regs (NI) 2009*

## Insurance policy providing benefits in connection with physical or mental illness or disability

51798 A payment under a permanent health insurance policy is a pension payment for the purposes of contribution-based Employment and Support Allowance[1]. It means[2] any periodical payment

**1.** made to a former employee **and**

**2.** which was arranged by an employer under an insurance policy **and**

**3.** which provides benefits to the former employee in connection with physical or mental illness or disability **and**

**4.** is payable on the termination of employment

*1 ESA Regs (NI), reg 72(1); 2 reg 72(2)*

## Pension protection fund periodic payments

51799 Pension protection fund periodic payments are defined as[1]

**1.** any periodic compensation payments made in relation to a person, payable under the pension compensation provisions set out in specified legislation[2]

**2.** any periodic payments made in relation to a person, payable under specific legislation[3]

other than payments made to the claimant as a beneficiary on the death of a person entitled to such payments[4].

*1 WR Act (NI) 07, sec 3(3); 2 Pensions Act 04, sec 162(2); Pensions (Northern Ireland) Order 05, art 146(2); 3 Pensions Act 04, sec 166; Pensions (Northern Ireland) Order 05, art 150; 4 ESA Regs (NI), reg 75(b)*

## Armed Forces redundancy arrangements

51800 Pensions payable to service personnel who retire from the Armed Forces are paid under a public service pension scheme.

51801 Pensions paid to service personnel who have been made redundant

**1.** are calculated on the length of qualifying service completed, plus an additional number of years **and**

**2.** fall within the definition of public service pension schemes.

# When to take pension payments into account

## Payment of a pension

51802 Where

**1.** a claimant is entitled to a pension payment **and**

**2.** the payment is **paid** to the claimant

the pension payment should be taken into account from the first day of the benefit week in which the payment is made[1].

*1 ESA Regs (NI), reg 77*

**Example**

Donald claims Employment and Support Allowance and is entitled to contribution-based Employment and Support Allowance from Thursday 7 November. His benefit week ends on a Thursday. He receives a pension payment of £100 a week, starting on Monday 11 November. Only half of the excess of the amount above £85 can be deducted from contribution-based Employment and Support Allowance. In the benefit week 8 November to 14 November £7.50 is deducted from his contribution-based Employment and Support Allowance.

## When the pension is uprated

51803 A claimant's rate of pension may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the new rate is paid[1].

*1 ESA Regs (NI), reg 78*

**Example**

Donna claims Employment and Support Allowance, her benefit week ends on a Thursday and she is entitled to contribution-based Employment and Support Allowance. She receives a pension payment of £90 a week. Her contribution-based Employment and Support Allowance is reduced by £2.50 each benefit week. She receives an increase of £5 a week in her pension starting on Monday 11 November. The increase in the pension payment is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

**1.** 1 November to 7 November, £2.50 is deducted from her contribution-based Employment and Support Allowance

**2.** 8 November to 14 November, £5 is deducted from her contribution-based Employment and Support Allowance.

# Disregarded payments

51804 Certain payments may be received by the claimant but do not fall to be deducted from contribution-based Employment and Support Allowance[1].

*1 WR Act (NI) 07, sec 3(2)(a); ESA Regs (NI), reg 75*

## Pension payments

51805 Payments may be payable to the claimant under

**1.** a personal pension scheme **or**

**2.** an occupational pension scheme **or**

**3.** a public service pension scheme **and**

because a person who was a member of the scheme has died.

51806 Any payments in DMG 51805 are known as survivors' benefits and should be disregarded in full[1].

*1 ESA Regs (NI), reg 75(a)*

**Example**

Peter's wife Jane is a member of an occupational pension scheme. Following Jane's death a reduced pension payment is paid by the scheme to Peter. This pension is not taken into account when working out the amount of contribution-based Employment and Support Allowance payable to Peter.

## Pension protection fund periodic payments

51807 Any pension protection fund periodic payment made to the claimant as a result of the death of a person who was entitled to this type of payment is disregarded[1].

*1 ESA Regs (NI), reg 75(b)*

## Shortfalls in pension schemes

51808 Where a full pension cannot be paid to a claimant because of a deficit or because of insufficient resources in the pension scheme then the shortfall is not taken into account[1].

*1 ESA Regs (NI), reg 75(c)*

## War pensions

51809 Any pension payment under a pensions scheme in respect of death due to military or war service is not to be deducted from contribution-based Employment and Support Allowance[1].

*1 ESA Regs (NI), reg 75(d); Income Tax (Earnings and Pensions) Act 2003, sec 639(2)*

## Guaranteed income payments

51810 Any guaranteed income payment[1] under the Armed Forces and Reserve Forces Compensation Scheme is not to be deducted from contribution-based Employment and Support Allowance[2].

*1 ESA Regs (NI), reg 2(1); 2 reg 75(e)*

## Permanent health insurance

51811 Where the claimant

**1.** receives a payment under a permanent health insurance scheme **and**

**2.** had contributed over 50% of the premium

then the payment is not deducted from contribution-based Employment and Support Allowance[1].

*1 ESA Regs (NI), reg 75(f)*

# Payment in arrears

51812 Pension payments are often made in arrears, and can be

**1.** weekly **or**

**2.** monthly **or**

**3.** quarterly **or**

**4.** any other period.

Subject to DMG 51802 - 51806, any pension payments deducted from contribution-based Employment and Support Allowance should start from the **first** day of the benefit week in which the payment is made to the claimant[1].

*1 ESA Regs (NI), reg 77 & 78*

51813 A pension payment **must actually be made** before the decision maker deducts an amount from contribution-based Employment and Support Allowance.

**Example**

William claims Employment and Support Allowance and is entitled to contribution-based Employment and Support Allowance from Thursday 8 November. His benefit week ends on a Thursday. He is entitled to a pension payment of £95 a week from Monday 5 November of which he receives his first payment (£380) on Monday 26 November. Only half of the excess of the weekly pension amount above £85 can be deducted from contribution-based Employment and Support Allowance. Contribution-based Employment and Support Allowance is awarded at the full rate from 8 November but from the benefit week 23 November to 29 November and thereafter £5 [(£95 - £85) ÷ 2] is deducted from his contribution-based Employment and Support Allowance.

In the following May, William receives his regular pension payment in arrears of £380 and a payment of arrears of £420 covering a period of 202 days. The payment of arrears of £420 gives a weekly amount of £14.55 [(£420 x 7) ÷ 202 = £14.55] to add to his regular pension payment of £95 giving a weekly amount of £109.55. As a result, £12.27 [(£109.55 - £85) ÷ 2] is deducted from his contribution-based Employment and Support Allowance. Following this deduction period, when the next regular payment of £380 is received the deduction from his contribution-based Employment and Support Allowance reverts to £5 [(£95 - £85) ÷ 2] from the first day of the benefit week in which the regular payment of £380 is received.

# Calculating the amount of the pension

## General

51814 Except for DMG 51816, the amount of the pension payment is the gross amount payable. Where income tax is deducted at source, the amount to be taken into account is the amount before tax is deducted[1].

*1 R(U) 8/83*

51815 Some claimants

**1.** have to make **or**

**2.** choose to make

certain payments from their pensions. The payments may be to the employer or a third party. With the exception of compulsory payments to buy or repay an element of their current pension, any payments deducted before the pension is paid should be ignored. The amount of pension to be taken into account is the amount before deductions are made. The claimant's liability to make the payments is separate from the liability to pay the pension. The deductions at source are simply a convenient method of ensuring that the claimant's obligations or wishes are met. Examples of these payments include

**1.** repaying a debt to a former employer

**2.** payments to someone because of a court order

**3.** subscriptions to a trade union or other association

**4.** payments into a further pension scheme.

51816 Where the rules of the claimant's pension scheme provide for compulsory deductions, for example to buy or repay an element of their current pension, the amount deducted should be disregarded in calculating the amount of pension. This is because "payments" refers to the amount the claimant is actually entitled to receive. So a payment made under a binding obligation, for example to acquire additional pension rights, should be disregarded in calculating the amount of the pension.

**Example**

Jim is employed by an electricity company for 29 years and 2 months. He retires voluntarily. For superannuation purposes he is treated as having completed 30 years service. Under the rules of the superannuation scheme, a monthly deduction of £35.00 is made from his gross occupational pension of £450.50 for the purchase of the 10 additional months. He is also paying £20.00 a month to a debt collecting agency under a court order.

Jim cannot avoid the reduction to his pension payments. While he must buy additional pension rights under the rules of the scheme, he would normally repay his other debts from any net

income he receives. The payments made under the court order are not to be disregarded. The decision maker takes into account a pension payment of £415.50 a month[1].

*1 R(U) 4/83*

51817 Sometimes pension payments are received by the claimant in a currency other than sterling. To work out the sterling equivalent, decision makers should use the selling rate that applies

**1.** on the date on which payment is due **and**

**2.** not the date on which it is actually converted.

No allowance should be made for commission or other expenses incurred in converting currency [1].

*1 R(SB) 28/85*

51818 Because exchange rates fluctuate, the decision maker will need to give a fresh decision each time a pension payment is made, for the period it covers (subject to DMG 51802 - 51806). For the purposes of working out a sterling equivalent only, it does not matter that the pension is not available in sterling until some time after the pension is due.

51819 - 51822

## Calculating the weekly pension rate

51823 Where payments are paid to the claimant weekly then it is the weekly rate that should be deducted from contribution-based Employment and Support Allowance as per DMG 51765[1].

*1 ESA Regs (NI), reg 74(1)*

51824 If payments are not paid weekly, they should be converted into a weekly amount[1]. To do this

**1.** monthly payments should be multiplied by 12 and the result divided by 52[2] (a month means a calendar month[3])

**2.** quarterly payments (3 monthly) should be multiplied by 4 and then divided by 52[4]

**3.** annual payments should be divided by 52[5]

**4.** payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment[6].

*1 ESA Regs (NI), reg 79(1); 2 reg 94(1)(b)(i); 3 CG 66/49 (KL);*
*4 ESA Regs (NI), reg 94(1)(b)(ii); 5 reg 94(1)(b)(iii); 6 reg 94(1)(b)(iv)*

51825 The weekly amount of a payment may be averaged[1] if the payment varies. The decision maker should average over

**1.** a complete cycle if there is a recognisable cycle of work (this is unlikely to apply to contribution-based Employment and Support Allowance recipients in receipt of a pension) **or**

**2.** 5 weeks **or**

**3.** another period if this means a more accurate weekly amount can be calculated.

*1 ESA Regs (NI), reg 79(1) & reg 94(6)*

## Disregard of fractions

51826 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage[1].

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

## More than one pension

51827 Where a claimant is receiving more than one pension the decision maker should

**1.** calculate the weekly rate of each pension separately **and**

**2.** add the weekly rates together

before working out the excess over the maximum sum[1].

*1 ESA Regs (NI), reg 79(2)*

# Contribution-based Employment and Support Allowance and councillor's allowances

## Deductions from contribution-based Employment and Support Allowance for councillor's allowances

## Introduction

51828 The guidance in DMG 51829 to 51856 refers only to deductions from contribution-based Employment and Support Allowance. For treatment of income-related Employment and Support Allowance and councillor's allowances see DMG Chapter 41 & 49.

51829 A person who is in work is treated as not entitled to Employment and Support Allowance. This does not apply where that work is as a councillor[1]. However, any allowances received for performing the duties of a councillor may however affect the amount of contribution-based Employment and Support Allowance payable[2].

*1 ESA Regs (NI), reg 40(2)(a); 2 WR Act (NI) 07, sec 3(1)(c)*

## Definitions

### Councillor

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

51830 A councillor[1] is a member of a district council[2].

*1 ESA Regs (NI), reg 2(1); 2 Local Government Act (Northern Ireland) 1972, sec 1(3)*

51831 The official duties and responsibilities of a councillor are known as approved duties and will vary from council to council. Each council must draw up a scheme[2] for payment of allowances to councillors. This will give information on the official duties of its councillors and the allowances paid for those duties. The official duties may include attendance at

**1.** a meeting of the council **and**

**2.** a sub-committee of the council **and**

**3.** a meeting for any other body to which the council makes appointments **and**

**4.** other meetings authorised by the council.

*1 R(IS) 6/92; 2 Local Government (Payments to Councillors) Regs (NI) 99, reg 6*

## Councillor's allowance

51832 A councillor's allowance[1] is a payment of an allowance under certain legislation[2].

*1 ESA Regs (NI), re 2(1); 2 Local Government Act (Northern Ireland) 1972, sec 36*

# The amount of the deduction from contribution-based Employment and Support Allowance

## The weekly limit

51833 The net weekly limit of a councillor's allowance before it can affect contribution-based Employment and Support Allowance is calculated by[1]

**1.** multiplying the amount of the national minimum wage[2] by 16[3] **and**

**2.** rounding the amount calculated in **1.** which includes an amount of less than

**2.1** 50p up to the nearest 50p[4] **or**

**2.2** £1 but more than 50p up to the nearest £1[5].

A net weekly payment of a councillor's allowance below this limit will not reduce the amount of contribution-based Employment and Support Allowance payable. It is only when the net amount of the councillor's allowance exceeds this limit that a reduction is made from contribution-based Employment and Support Allowance.

*1 ESA Regs (NI), reg 76(1); 2 reg 2(1); National Minimum Wage Regulations 1999, reg 11; 3 ESA Regs (NI), reg 76(1); 4 reg 76(3)(i); 5 reg 76(3)(ii)*

## The amount of the deduction

51834 The amount to be deducted from the claimant's award of contribution-based Employment and Support Allowance is the excess over the net weekly limit[1].

*1 ESA Regs (NI), reg 76(1)*

**Example**

Ruth is entitled to contribution-based Employment and Support Allowance. She is also a councillor and receives a net weekly councillor's allowance of £104.50. The amount of the reduction in her contribution-based Employment and Support Allowance is

£7.00 (£104.50 - £97.50)

The decision maker makes a weekly deduction of £7.00 from Ruth's contribution-based Employment and Support Allowance.

## The net weekly amount of a councillor's allowance

51835 It is the net weekly amount of a councillor's allowance that may affect the amount of contribution-based Employment and Support Allowance payable. The net amount means the amount after reductions for any payment by way of expenses

**1.** wholly **and**

**2.** exclusively **and**

**3.** necessarily

incurred in the performance of duties as a councillor (see DMG 44791 et seq). When calculating the net weekly amount, decision makers should add all the allowances paid to the councillor in the week[1].

*1 ESA Regs (NI), reg 76(2)*

51836 The allowances paid for official duties may include

**1.** basic allowance

**2.** special responsibilities allowance

**3.** childcare and dependent carers' allowance

**4.** travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see DMG 51840 et seq).

## Basic allowance

51837 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

**1.** for the time they devote to their work **and**

**2.** to cover costs for which no other payment is made, for example, the use of a councillor's home and telephone. The amount actually used for expenses will vary in each case.

## Special responsibilities allowance

51838 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the district council, but it will usually be paid quarterly.

## Childcare and dependent carers' allowance

51839 District councils may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor.

## Expenses

51840 The decision maker should disregard any reimbursement to the councillor by the district council, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties[1], for example travel and subsistence allowances[2]. If the district council cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

*1 ESA Regs (NI), reg 76(2); 2 R(IS) 6/92*

51841 After expenses in DMG 51840 have been disregarded, the decision maker should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the district council. The councillor must justify the amount of each expense, and the amount of expense incurred should be no more than necessary to satisfy the minimum acceptable standard from someone in the councillor's position.

**Example**

Sophie attends 3 school summer fairs, in her capacity as a district councillor. At each one she donates a small gift for a raffle. She provides evidence of her allowance for the month of July, and claims the amount she spent on the gifts as an expense. The decision maker decides that such an expense is no more than the necessary minimum from a person in the claimant's position, and decides that the expense was wholly, exclusively and necessarily incurred in the performance of her duties as a councillor.

51842 The decision maker should

**1.** add together all of the allowances that are paid **and**

**2.** deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's **official** duties[1].

*1 ESA Regs (NI), reg 76(2); R(IS) 16/93*

51843 For the purposes of DMG 51842, if the expenses are wholly, necessarily and exclusively incurred in the performance of **constituency work**, those expenses should only be deducted from the basic allowance. This is because this allowance is paid to every councillor and not for any specific duties.

51844 Postage and stationery expenses that arise from the role of being a councillor rather than official duties should only be deducted from the basic allowance.

51845 Secretarial expenses should only be deducted from the basic allowance.

51846 Dependants' care costs cannot be deducted as an expense. This is because they are expenses incurred in order to enable councillors to perform their duties rather than necessary for the performance of them.

51847 Clothing and footwear expenses wholly, exclusively and necessarily incurred in the performance of a councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use. Decision makers may need to apply averages and estimates over a period to calculate a weekly deduction.

51848 Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see DMG 51840). This is different to the normal treatment of travelling expenses. When councillors travel from home to the council office or any other work place, for example surgeries, and governors' meetings it is not just travelling to work it is part of the work itself.

51849 Subscriptions to trade unions or other political or professional bodies should be deducted from the basic allowance.

51850 Additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance (see DMG 51840). The decision maker should establish what proportion of the total household bill can be regarded as arising from the councillor's work. Unless the decision maker is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence.

## Deductions for Income Tax and National Insurance contributions

51851 Income Tax and National Insurance contributions do not count as expenses incurred in the performance of duties as a councillor. Decision makers should not make a reduction from the gross amount paid in councillor's allowances in respect of any deductions for Income Tax and National Insurance contributions[1].

*1 R(IB) 3/01*

**Example**

Derek receives an allowance in respect of his work as a councillor. The amount he is paid is £104.50 a week after £20 is deducted in respect of Income Tax and National Insurance contributions. The decision maker decides that the net amount of allowance for the purposes of deciding the amount of contribution-based Employment and Support Allowance is £124.50. This means that the amount of reduction in Derek's contribution-based Employment and Support Allowance is

£27.00 (£124.50 - £97.50)

The decision maker makes a weekly deduction of £27.00 from Derek's contribution-based Employment and Support Allowance.

# When to take councillor's allowances into account

## Payment of a councillor's allowance

51852 Where

**1.** a claimant is entitled to a councillor's allowance **and**

**2.** the payment is **paid** to the claimant

the allowance should be taken into account from the first day of the benefit week in which the payment is made[1].

*1 ESA Regs (NI), reg 77*

**Example**

Bill claims Employment and Support Allowance and is entitled to contribution-based Employment and Support Allowance from Thursday 3 November. His benefit week ends on a Thursday. He receives a net councillor's allowance of £102.50 a week, starting on Monday 7 November. Only excess of the amount above £97.50 can be deducted from contribution-based Employment and Support Allowance. In the benefit week 4 November to 10 November £5.00 is deducted from Bill's contribution-based Employment and Support Allowance.

## When the councillor's allowance is uprated

51853 A claimant's rate of councillor's allowance may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the increase or decrease is paid[1].

*1 ESA Regs (NI), reg 78*

**Example**

Hillary claims Employment and Support Allowance, her benefit week ends on a Thursday and she is entitled to contribution-based Employment and Support Allowance. She receives a councillor's allowance of £96.50 a week. Her contribution-based Employment and Support Allowance is reduced by £1.50 each benefit week. She receives an increase of £5 a week in her allowance starting on Monday 11 November. The increase in the allowance is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

**1.** 1 November to 7 November, £1.50 is deducted from her contribution-based Employment and Support Allowance

**2.** 8 November to 14 November, £6.50 is deducted from her contribution-based Employment and Support Allowance.

## Calculating the weekly rate

51854 Where a councillor's allowance is paid to the claimant weekly then it is the weekly rate that should be deducted from contribution-based Employment and Support Allowance as per DMG 51834[1].

*1 ESA Regs (NI), reg 76(1)*

51855 If the councillor's allowance is not paid weekly, then it should be converted into a weekly amount as follows[1]

**1.** monthly payments should be multiplied by 12 and the result divided by 52[2]. A month means a calendar month[3]

**2.** quarterly payments (3 monthly) should be multiplied by 4 and then divided by 52[4]

**3.** annual payments should be divided by 52[5]

**4.** payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment[6].

*1 ESA Regs (NI), reg 79(1); 2 reg 94(1)(b)(i); 3 CG 66/49 (KL);*
*4 ESA Regs (NI), reg 94(1)(b)(ii); 5 reg 94(1)(b)(iii); 6 reg 94(1)(b)(iv)*

51856 The weekly amount of a councillor's allowance may be averaged[1] if the income varies or the regular pattern of work means that the claimant does not work every week. The decision maker should average over

**1.** a complete cycle if there is a recognisable cycle of work **or**

**2.** 5 weeks **or**

**3.** another period if this means a more accurate weekly amount can be calculated.

*1 ESA Regs (NI), reg 79(1) & reg 94(6)*

51857 - 51859

# Students

## Students - general

### Introduction

51860 This section deals with the calculation and treatment of certain income that is usually paid only to students. For income-related Employment and Support Allowance the income of a claimant, or a partner, may be taken into account[1]. Any income paid because a claimant or partner is a student may affect the amount payable.

*1 ESA Regs (NI), reg 83(1)*

# Definitions and meaning of terms

51861 Claimant[1] means a person who has claimed an Employment and Support Allowance.
Partner[2] means where the claimant is

**1.** a member of a couple, the other member of that couple **or**

**2.** married polygamously, the other members of the marriage.

*1 WR Act (NI) 07, sec 24(1); 2 ESA Regs (NI), reg 2(1)*

## Income-related Employment and Support Allowance - income and capital

51862 A reference to a student is a reference to that person alone. It does not include the student's partner. If the student is the claimant's partner, the student's income is treated as the claimant's[1]. This happens once the weekly amount to be taken into account has been worked out.

*1 WR Act (NI) 07, Sch 1, Part 2, para 6(2)*

51863 A student or a member of their family may have income which is not subject to the special student rules. When considering this income a reference to the claimant may be taken to be a reference to a partner[1]. There may also be a question about capital. Do not treat the capital of a child or young person as the claimant's[2].

*1 ESA Regs (NI), reg 83(1); 2 reg 83(2)*

## Meaning of course and modular course

51864 See DMG Chapter 41 for the definition of course and modular course.

## Course of advanced education

51865 Course of advanced education[1] means

**1.** a course leading to a

**1.1** postgraduate degree or comparable qualification

**1.2** first degree or comparable qualification

**1.3** diploma of higher education

**1.4** higher national diploma **or**

**2.** any other course of a standard above that of

**2.1** advanced General National Vocational Qualification or equivalent

**2.2** General Certificate of Education advanced level (A-levels)

**2.3** a Scottish national qualification (higher or advanced higher).

*1 ESA Regs (NI), reg 131*

51866 - 51867

## Course of study

51868 A course of study[1] means any course of study including a sandwich course. It does not matter whether a grant is made for attending or undertaking the course.

A person who has started a course of study should be treated as attending or undertaking it until

**1.** the last day of the course (see DMG Chapter 41) **or**

**2.** such earlier date as they

**2.1** abandon the course (see DMG Chapter 41) **or**

**2.2** are dismissed from it (see DMG Chapter 41).

*1 ESA Regs (NI), reg 14*

51869 - 51870

## Sandwich course

51871 See DMG Chapter 41 for the definition of sandwich course.

### Periods of experience and work experience

51872 Periods of experience means periods of work experience which form part of a sandwich course[1].

*1 ESA Regs (NI), reg 131*

51873 Periods of work experience are associated with the full-time study but are done outside an educational establishment. The experience has to be

**1.** industrial **or**

**2.** professional **or**

**3.** commercial[1].

*1 Support Regs (NI), reg 2(1)*

51874 If the course includes[1]

**1.** the study of one or more modern languages for at least half the time spent studying **and**

**2.** periods of residence in a country whose language is a part of the course

periods of work experience means any periods of overseas residence when the student is in gainful employment.

*1 Support Regs (NI), reg 2(1)*

### Student unable to find placement

51875 A student may not be able to find a placement in the period of work experience. This does not automatically mean that they have stopped being a student. The decision maker should consider whether the student has abandoned or been dismissed from the course (see DMG Chapter 41).

## Meaning of educational establishment

51876 The term educational establishment is not defined and so must be given its ordinary everyday meaning. Schools, colleges and universities are clearly such places. But other less obvious places may also be included. For example, the training division of a large organisation specially set up for that purpose.

A person is attending an educational establishment if they are receiving

**1.** training **or**

**2.** instruction **or**

**3.** schooling

in an organisation, or at an establishment, set up for any of those purposes.

**Note:** For Open University students see DMG 51899.

## Academic year

51877 Academic year[1] means a period of 12 months starting on

**1.** 1 January for courses starting in winter

**2.** 1 April for courses starting in spring

**3.** 1 July for courses starting in summer

**4.** 1 September for courses starting in autumn.

**Note:** If a student begins a course in August or September and continues to attend throughout autumn, the beginning of the academic year will be the autumn rather than the summer.

*1 ESA Regs (NI), reg 131*

51878 - 51879

## Student loan

51880 A student loan[1] is a loan made for a student's maintenance under specific law[2]. The Student Loan Company administers student loans.

*1 ESA Regs (NI), reg 131; 2 Support (NI) Order 98, art 3; Teaching & Higher Education Act 98, sec 22; ED (Scot) Act 80, sec 73(f), 73B & 74*

## Grant

51881 Grant means[1] any kind of educational grant or award and includes any

**1.** scholarship

**2.** studentship

**3.** exhibition

**4.** allowance

**5.** bursary.

Decision makers should note that it does not include any payment derived from access funds or any payment of education maintenance allowance.

*1 ESA Regs (NI), reg 131*

## Access funds

51882 Access funds are grants, loans or other payments made under specific law[1] that are paid on a discretionary basis to assist students in financial difficulties[2].

*1 Education and Libraries (Northern Ireland) Order 1993, art 30; Further Education (Northern Ireland) Order 1997, art 5; F & HE Act 92, sec 68; Ed (Scot) Act 80, sec 73(a), (c) & sec 74(1); 2 ESA Regs (NI), reg 131*

**[See DMG Memo Vol 1/74, 2/17, 4/89, 5/76, 6/60, 8/15, 9/6 & 14/40]**

51883 Access funds also include

**1.** in England - 'Learner Support Funds' which may be made available to students under specific law[1]. For those in further education they are paid out of funds provided by the Secretary of State for Education, the Chief Executive of Skills Funding for England[2]

**2.** in Wales - 'Financial Contingency Funds' made available by the National Assembly for Wales[2].

*1 L & S Act 2000, sec 5, 6 & 9; 2 ESA Regs (NI), reg 131*

**Note:** Access funds do not include Assembly Learning Grants. Financial Contingency Funds are made available to prevent the financial hardship of students who are not eligible for an Assembly Learning Grant.

## Education maintenance allowance

51884 Education maintenance allowance consists of means-tested payments paid under specific law[1] to support young people who remain in non-advanced education after the age of 16. Payments can be made for up to 2 years to support young people between the ages of 16 and 19, but in some cases an allowance may continue to be paid for up to 3 years between the ages of 16 and 20.

*1 Education and Libraries (NI) Order, art 50 & 51*

## Grant income

51885 Grant income[1] means any income by way of a grant and normally includes any assessed contribution whether paid or not. However where

the student is either

**1.** a lone parent **or**

**2.** a person to whom specified legislation[2] applies

there is an exception and only the grant and any contribution actually paid is included as grant income.

**Note:** Any such contribution paid by way of a covenant is also included as grant income.

*1 ESA Regs (NI), reg 131; 2 regs 14-18*

## Standard maintenance grant and allowances

51886 In Northern Ireland, England and Wales, the standard maintenance grant is the amount set in law[1]. In Scotland it is the amount given as the 'allowance' by the Student Awards Agency for Scotland. For bursaries paid under specific law[2] and provided by a college of further education or a local education authority, it is the amount given in the nearest equivalent to the guide.

*1 Students Awards Regs (NI) 2003, Sch 6, para 2(2)(a); Awards Regs Sch 2(2) & (3); ESA Regs (NI), reg 131;*
*2 Education (Scot) Act 1980, sec 73(f), 73B & 74; ESA Regs (NI), reg 131*

## Contribution

51887 The contribution[1] is the income of the student or any other person that the Department, an education authority or the Scottish Ministers, takes into account when considering the amount of grant or loan payable[2].

*1 ESA Regs (NI), reg 131; 2 Students Awards Regs (NI), reg 11; Support Regs (NI), reg 90*

51888 In Scotland only, the contribution[1] is also the amount that the Scottish Ministers or an education authority, consider that the student, their spouse, civil partner or parents or parent's partner could reasonably be expected to make towards the student's expenses when considering the amount of allowance or bursary payable.

The amount of support awarded to a student is reduced by the amount of assessed contribution.

*1 Education (Scot) Act 80; ESA Regs (NI), reg 131*

## Education authority

51889 An education authority is[1]

**1.** a government department **or**

**2.** an education and library board[2] **or**

**3.** in England and Wales, a local education authority, which means[3] a

**3.1** joint education board

**3.2** county council

**3.3** metropolitan district council **or**

**4.** in Scotland, an education authority as defined under specified legislation[3] **or**

**5.** any body which is defined as a research council in certain law[4] **or**

**6.** any similar government department, authority, board or body of

**6.1** the Channel Islands **or**

**6.2** the Isle of Man **or**

**6.3** any other country outside the UK.

*1 ESA Regs (NI), reg 131; 2 Education and Libraries (NI) Order 1986, art 3;*
*3 Local Government (Scotland) Act 1973, sec 123; 4 Science and Technology Act 65*

# Meaning of student and full-time student

## General

51890 The decision maker must decide whether a person is a student. That broadly means a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance (see DMG Chapter 41) is not a student[1]. A person who has reached pension age is not a student.

*1 ESA Regs (NI), reg 131*

## National Health Service funded students

### Healthcare professionals

51891 National Health Service students may be undertaking a variety of healthcare professional courses e.g. nursing, midwifery, physiotherapy etc. To be eligible for a National Health Service bursary the student must be accepted for a National Health Service funded place. A National Health Service student undertaking a

**1.** diploma course may receive a non-means tested bursary. Such a student is not entitled to a student loan.

**2.** degree-level course may be entitled to a means tested bursary and is eligible to apply for a student loan.

### Return to practice courses

51892 Those taking part in refresher training known as 'return to practice' are students if they are undergoing a course of study at an educational establishment. Any allowances paid to such students over the duration of the course should be treated as grant income and taken into account as such.

51893

## Northern Ireland Social Care Council bursaries

51894 The Northern Ireland Social Care Council awards 2 types of bursary which are

**1.** non-income assessed bursary known as social work bursary

**2.** additional graduate bursary.

### Social work bursary

51895 This is a non-income assessed grant which is paid as an incentive to train. It consists of 3 elements, grant, tuition fees and a practice learning opportunity. The grant element is payable

over 52 weeks at 3 rates depending on where the student lives. It is offered to both full and part-time students with part-time students receiving 50% of the grant. Decision makers should take the grant into account over 52 weeks[1] (see DMG 51956 et seq) disregarding[2] the items listed at DMG 51947 and DMG 51953[3] as appropriate. Tuition fees are either paid in full or the balance that has not been met by the Education and Library Board is paid all direct to the University. Decision makers should disregard any amount paid for tuition fees[2] (see DMG 51947 **1.**). Any amount payable to a student intended for travelling expenses should be disregarded[4].

*1 ESA Regs (NI), reg 132(4)(b); 2 reg 132(2); 3 reg 132(3); 4 reg 132(2)(g)*

### Additional graduate bursary

51896 This is paid to graduates on post-graduate courses who are in receipt of the social work bursary. It is an income assessed grant available to full-time students only. This bursary is paid for 30 weeks to cover the period of the course. There is also an additional days grant which is calculated weekly for courses that extend beyond 30 weeks. However where courses are for 45 weeks or more the bursary is automatically awarded for 52 weeks. Extra allowances may also be payable with the additional graduate bursary eg Adult Dependents Allowance and Parents Learning Allowance. These allowances are usually payable over 52 weeks.

51897 Where the income from the additional graduate bursary is payable for the period of study, the decision maker should take that income into account over the period of study[1]. Where the income is payable for a different period (the automatic 52 weeks) it should be taken into account for that period[2]. Income from the extra allowances as mentioned in DMG 51904 should be taken into account for the period for which they are payable. The decision maker should disregard[3] any amount for items listed at DMG 51947.

*1 ESA Regs (NI), reg 132(4)(a); 2 reg 132(4)(b); 3 reg 132(2)*

## Teacher training

51898 A person undertaking or attending teacher training is a student where a course of study is being undertaken at an educational establishment. Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

## Open University students

51899 A claimant who is on an Open University course will fall within the definition of a student[1]. Such courses are not full-time and are normally followed at times that would fit in with employment. Most of the course material is done in the person's home and not at an educational establishment however they are still undertaking a course of study[2]. Any award made as a direct result of their participation on the course should be treated as student income in the normal way.

*1 ESA Regs (NI), reg 131; 2 R(IS) 1/96*

51900

## General

51901 A student is a person who is attending or undertaking a course of study at an educational establishment. A person who gets a training allowance is not a student[1].

*1 ESA Regs (NI), reg 131*

## Full-time student

51902 A full-time student is a person who is not a qualifying young person or child under specified legislation[1] and is

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

**2.** aged 19 or over, but under pension age, who is attending or undertaking a full-time course of study at an educational establishment **or**

**3.** on a sandwich course[2].

*1 SS C&B (NI) Act, sec 138; 2 ESA Regs (NI), reg 131*

51903 A full-time student is treated as attending or undertaking a full-time course of study from the first day of the course until

**1.** the last day of the course **or**

**2.** such earlier date as the student

**2.1** abandons the course **or**

**2.2** is dismissed from it[1].

*1 ESA Regs (NI), reg 131*

## Treatment of modular courses

51904 A student attending or undertaking part of a modular course on a full-time basis is treated as a full-time student from the day that part of the course begins until

**1.** the last day he is registered as attending or undertaking that part as a full-time course of study **or**

**2.** such earlier date as the student

**2.1** abandons the course **or**

**2.2** is dismissed from it[1].

*1 ESA Regs (NI), reg 131(2)(a)(ii)*

51905 The period described in DMG 51904 above includes any period

**1.** that the student attends or undertakes the course to retake exams or a module. The student must have been undertaking the original part of the course or modules as a full-time course of study

**2.** of vacation falling within the period or immediately following it. This does not include a vacation immediately following the last day of the course[1].

*1 ESA Regs (NI), reg 131(3)(b)*

## Modular course

51906 In these circumstances a modular course means a course of study consisting of 2 or more modules. The student must complete a specified number of modules before they are considered to have completed the course[1].

*1 ESA Regs (NI), reg 131(4)*

# Meaning of full-time

## General

51907 The decision maker has to consider whether a person is a full-time student.

51908 The term full-time applies to the course itself and not to a person's attendance on it[1]. It is the time spent by a notional reasonable student that is considered. A person who attends a full-time course on a part-time basis is still a student.

*1 R(SB) 40/83; R(SB) 41/83*

51909 Each case must be decided on its facts[1]. The decision maker must look at the sequence of studies and activities that make up the course itself. The nature of the course is not affected by[2]

**1.** a person's reasons for attending it **or**

**2.** a person's readiness to abandon it, for example, to accept an offer of employment **or**

**3.** what a particular person happens to be doing.

*1 R(SB) 40/83; R(SB) 41/83; 2 R(SB) 2/91*

51910 In modular courses a sequence of studies is established once a person has decided which modules to take. This sequence can be distinguished from the work that the person is putting in at any given time. When deciding whether a course is full-time, all of the studies and activities involved in it should be taken into account. This includes both supervised and unsupervised study and activity, whether done on or off college premises.

51911 Do not compare the total hours involved with what may be regarded as a full working week. One approach is to look at the total time the course might require of an average student. It may take up a substantial part of a week, after allowing for reasonable rest and recreation. The course might then be regarded as full-time.

51912 The decision maker should determine whether the course is modular or non-modular. Whether a modular course counts as a full-time course is a question of fact. If the educational establishment's description is not conclusive, other relevant evidence may include

**1.** the educational establishment's regulations

**2.** the educational establishment's registration procedures

**3.** the course regulations

**4.** the course handbook

**5.** other relevant information given to the student about his status.

## Evidence from educational establishment

51913 See DMG Chapter 41 regarding evidence from educational establishments.

## Other evidence

51914 See DMG Chapter 41 regarding obtaining other evidence.

## Number of hours involved

51915 See DMG Chapter 41 regarding the number of hours involved.

51916

# Eligibility

## General

51917 Being in education affects entitlement to income-related Employment and Support Allowance[1]. However, a claimant who is

**1.** in education **and**

**2.** entitled to Disability Living Allowance

may have entitlement to income-related Employment and Support Allowance[2].

See DMG Chapter 41 for how education affects entitlement to Employment and Support Allowance.

*1 WR Act (NI) 07, Sch 1, Part 2, para 6(1)(g); 2 ESA Regs (NI), reg 18*

## Partner only is a full-time student

51918 If the claimant is not a student but their partner is, the claimant is eligible for Employment and Support Allowance. This is subject to the normal conditions of entitlement.

### Contribution-based Employment and Support Allowance

51919 Only a claimant's own earnings (if they exceed the exempt work limits) and pension payments can affect the amount of contribution-based Employment and Support Allowance payable[1]. A partner's loan or grant income can have no effect.

*1 ESA Regs (NI), reg 74*

### Income-related Employment and Support Allowance

51920 Income of a claimant or their partner can affect the amount of income-related Employment and Support Allowance payable[1]. Any loan or grant income paid to the partner should be taken into account.

*1 ESA Regs (NI), reg 83*

# Financial support available to students - loans and grants

51921 In the case of students and their partners, some of the normal rules on income are modified[1]. This means that their income may be treated differently.

*1 ESA Regs (NI), reg 87*

## Loans - eligibility

**[See DMG Memo Vol 1/85, 3/79, 4/101, 5/85, 6/69, 8/28, 9/15 & 14/45]**

51922 Loans are generally available to students on courses of higher education.

### Designated courses

51923 Courses must[1]

**1.** last for at least

**1.1** one academic year **or**

**1.2** at least 6 weeks in the case of flexible postgraduate courses for teacher training **and**

**2.** be designated **and**

**3.** be at institutions receiving support from public funds **and**

**4.** be one of

**4.1** a full-time course **or**

**4.2** a sandwich course **or**

**4.3** a part-time course for the initial training of teachers **and**

**5.** not be a designated distance learning course.

*1 Support Regs (NI), reg 6(1)*

51924 A course is designated[1] if it is a

**1.** first degree course

**2.** course for the Diploma of Higher Education

**3.** course for the Certificate of Higher Education

**4.** course for the further training of youth and community workers

**5.** course for the Higher National Diploma or Higher National Certificate of BTEC or Scottish Qualifications Authority

**6.** course leading to an initial teacher qualification

**7.** course for which entry does not normally require a first degree (or equivalent) that

**7.1** is in preparation for a professional examination of a standard higher than

**7.1.a** General Certificate of Education Advanced levels

**7.1.b** Scottish highers

**7.1.c** BTEC and Scottish Qualifications Authority National Awards (as distinct from Higher National Certificate and Higher National Diploma) **or**

**7.2** provides education of a standard higher than courses in **7.1**, but not higher than a first degree course.

*1 Support Regs (NI), reg 6 & Sch 3*

51925 Institutions receiving support from public funds[1] means that the monies are provided by Parliament. **Except** where the funds have been provided by a local council. A course is provided by an institution[2] if it supplies the teaching and supervision that makes up the course.

*1 Support Regs (NI), reg 2; 2 reg 6(4)(a)*

51926 Loans are generally available for sandwich courses. They are available for the whole of the course. They are not reduced because of the student's periods of experience.

51927 - 51930

## Student loans treated as income

**[See DMG Memo Vol 1/85, 3/79, 4/101, 5/85, 6/69, 8/28, 9/15 & 14/45]**

51931 Student loans are treated as income[1]. Students are treated as possessing a student loan for an academic year where

**1.** a student loan has been paid to them for that year[2] **or**

**2.** they could acquire a loan in respect of that year by taking reasonable steps to get one[3].

**Note:** If there is a condition of entitlement to a student loan that could not be met by taking reasonable steps the decision maker should not treat the student as having a student loan. If, exceptionally, the decision maker needs advice on whether or not a student has taken reasonable steps to acquire a loan, refer the case to Decision Making Services (via their Specialist Advisory Officer).

*1 ESA Regs (NI), reg 137; 2 reg 137(4)(a); 3 reg 137(4)(b)*

## Amount of loan

51932 The maximum amount that can be advanced to a student depends on

**1.** where the student is studying **and**

**2.** whether the student has reached the final year of the course **and**

**3.** whether the student lives in the parental home.

Where in any academic year a student loan is made to a student, the decision maker should take into account as income

**1.** the maximum amount of student loan the student could get by taking all reasonable steps[1] to do so (even if the student applies for less than the maximum loan) **and**

**2.** unless an exception at DMG 51938 applies[2], the amount of any contribution whether or not it is paid to the student[3].

*1 ESA Regs (NI), reg 137(5)(a); 2 reg 137(5)(a)(ii); 3 reg 137(5)(a)(i)*

51933 Where a student loan has not been made for an academic year, the decision maker should take into account as income the maximum loan that the student could get if

**1.** the student took all reasonable steps to obtain the maximum amount[1] **and**

**2.** no deduction was made from the loan because of a means test[2].

*1 ESA Regs (NI), reg 137(5)(b)(i); 2 reg 137(5)(b)(ii)*

## Postgraduate Master's Degree Loans

**[See DMG Memo Vol 5/115, 6/96, 9/48 & 14/71]**

51934 Postgraduate master's degree loans were introduced for eligible full-time or part-time courses starting in September 2016 for students living in England. The loan is not specifically paid for tuition fees and/ or maintenance costs. It is paid directly to the student and it will be at the student's discretion what they use it for.

Social Security legislation in Great Britain was amended at the time to prescribe how these loans should be treated. From 15.07.2020 Northern Ireland social security regulations are now also amended to ensure that these loans can be treated correctly for benefit purposes for those claimants who then transfer from one designated postgraduate course to another designated postgraduate course in Northern Ireland to study.

Eligible students can apply for a loan of up to £10,906 for courses that began in the 2019 – 20 academic year.

**Note:** The loan will be divided equally across each year of the course (typically in three installments of 33%, 33% and 34% for courses lasting three years for example).

For income purposes, 30% of the maximum postgraduate master's degree loan will be the amount taken into account in the calculation of income-related Employment And Support Allowance[1]. This figure reflects the amount which will typically be available to spend on maintenance costs, taking account of typical master's course tuition fees.

*1 ESA Regs (NI), reg 131, 132, 137 & 141*

51935 If a claimant is eligible for a new postgraduate loan but has failed to take all reasonable steps to acquire it they will usually be treated as if they are in receipt of the maximum postgraduate master's loan to which they would be entitled[1] for:

**1.** that academic year **or**

**2.** where the course lasts for two or more academic years, the maximum amount that would be paid in each academic year (see note at 51934).

*1 ESA Regs (NI), reg 137(4)(b) & (4A)*

**Note:** For any other type of student funding not covered by this guidance, please contact Decision Making Services for advice.

## Disregards

51936 **[See DMG Memo Vol 9/4]** The amount of student loan to be taken into account under DMG 51931 and DMG 51932 should be reduced by[1] a fixed amount for

**1.** travel costs **and**

**2.** the cost of books and equipment

whether or not the student has to meet the cost of those items.

The disregard is £303 for travel costs and £390 for books and equipment.

*1 ESA Regs (NI), reg 137(6)*

**Example**

Leslie is undertaking a part-time course of study for which she receives a loan of £500. After taking into account the disregards for travelling costs and books and equipment the decision maker fully disregards the loan.

### Disregard for fee loans

51937 Changes to the student support system[1] mean that loans for course fees will be paid directly to the university or college. Decision makers should disregard[2] a loan for fees, known as a fee loan or a fee contribution loan paid under specified legislation[3].

*1 Student Support Regs (NI), regs 18 - 23 & 33 - 34; 2 ESA Regs (NI), reg 139; 3 Support (NI) Order, art 3; Teaching & Higher Education Act 98, sec 22; Education (Scot) Act 80, sec 73(f)*

## Assessed contribution

51938 The education authority may decide that the student, their spouse, civil partner, parents or parent's partner should contribute to the loan. The contribution is assessed according to the income of the student, their spouse, civil partner, parent or parent's partner. The amount of loan awarded is then cut by the assessed contribution[1].

The amount of contribution assessed by the education authority may not be paid to the student in part or in full. But the full amount of the contribution should still be treated as possessed by the student unless[2] the student is entitled to a Disability Living Allowance.

*1 ESA Regs (NI), reg 131; 2 reg 137(5)(a)(ii)*

# Calculation of weekly income

## Course duration is for one academic year or less

51939 Where a student loan is made in respect of any academic year and the course is for one academic year or less, the student loan should be divided equally between the weeks in the period beginning with

**1.** the first benefit week that begins on or after the start of the academic year **or**

**2.** if the student starts attending the course in August or the course is for less than an academic years duration, the first benefit week that begins on or after the start of the course

and ending with the last benefit week that ends on or before the last day of the course[1].

*1 ESA Regs (NI), reg 137(3)(a)*

## Course duration more than one academic year, any year except final academic year

51940 Where a student loan is made in respect of an academic year that begins other than on 1 September the decision maker should divide the student loan equally between the period which

**1.** starts at the beginning of the first benefit week starting on or after the first day of the academic year **and**

**2.** ends on the last day of the last benefit week which ends on or before the last day of the academic year **and**

excludes any complete benefit weeks which fall entirely within the quarter where, in the opinion of the Department, the longest holiday period is taken[1].

**Note:** Quarter[2] means one of the periods in the academic year from

**1.** 1 January to 31 March **or**

**2.** 1 April to 30 June **or**

**3.** 1 July to 31 August **or**

**4.** 1 September to 31 December.

*1 ESA Regs (NI), reg 137(3)(b); 2 Support Regs (NI), reg 2(1)*

51941 Where a student loan is made in respect of an academic year that begins on 1 September the decision maker should divide the student loan equally between the weeks in the period beginning with the earlier of the first day of the first benefit week

**1.** in September **or**

**2.** that begins on or after the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of June[1].

*1 ESA Regs (NI), reg 137(3)(e)*

## Final academic year, other than a course of one academic year or less

51942 Where a student loan is made in respect of a final academic year of a course of more than 1 year that begins other than on 1 September the decision maker should divide the student loan equally between the period beginning with

**1.** the first benefit week that begins on or after the start of the academic year **and**

**2.** ending with the last benefit week that ends on or before the last day of the course[1].

*1 ESA Regs (NI), reg 137(3)(d)(i)*

51943 Where a student loan is made in respect of an academic year that begins on 1 September the decision maker should divide the student loan equally between the weeks in the period beginning with the first benefit week that begins on or after the earlier of

**1.** 1 September **or**

**2.** the first day of the autumn term

and ending with the last benefit week that ends on or before the last day of the course[1].

*1 ESA Regs (NI), reg 137(3)(d)(ii)*

## Disregard

51944 When the weekly amount has been calculated the decision maker should disregard up to £10 a week. This is subject to the overall limit on the disregarded income of students (see DMG 51969).

**Example 1**

Dilip is attending a course which lasts for less than a year. The course starts on 8.12.08 and ends on 18.4.09. He is a Tuesday benefit week ending. He has a student loan which, after deducting the appropriate disregards, is taken into account from 10.12.08 until 14.4.09.

**Example 2**

Martha starts the final year of her course on 7.10.09 and ends it on 6.6.10. She is a Thursday benefit week ending. The decision maker takes her student loan into account from 4.9.09 until 3.6.10 after deducting the appropriate disregards.

**Example 3**

Ellis is in his second year of a course. The autumn term begins on 14.10.09. Ellis is a Monday benefit week ending. The decision maker takes his student loan into account, after deducting the appropriate disregards, from 1.9.09 until 28.6.10.

**Example 4**

Nasser's university course starts on 13.1.09. The main holiday period is between 30.6.09 and 12.10.09. He is a Wednesday benefit week ending. After deducting the appropriate disregards the decision maker calculates the weekly income by dividing the loan equally between the periods 8.1.09 to 1.7.09 and 27.8.09 and 30.12.09. The decision maker takes the weekly amount into account from 15.1.09 because Nasser does not become a student until 12.1.09.

**Note:** A student loan should not be taken into account until the student commences their course of study because prior to this day they are not a student. As the weekly amount is calculated by apportioning the loan to full benefit weeks it should similarly be attributed to full benefit weeks.

## Student from Great Britain

51945 A student from Great Britain may be eligible for a student loan under Great Britain law[1]. The qualifying conditions are the same as in the rest of the UK. Treat any loan for which the student is eligible in the same way.

*1 Teaching & Higher Education Act 1998, sec 22; Education (Scot) Act 1980, sec 73(f), 73B & 74; Student Allowances (Scot) Regs, reg 4(1)(c)*

## Grants

51946 A student may receive a grant from a number of different sources. Grants, bursaries or allowances etc may be paid in respect of various types of study such as Nursing and Teacher training. Students who are paid under specific law[1] may be entitled to supplementary grants, as current or old system students

**1.** for extra costs incurred because they are disabled students[2]

**2.** for travel costs[3]

**3.** for childcare[4]

**4.** for living costs[5]

**5.** for adult dependants[6]

**6.** for Parents' Learning Allowance[7].

**Note:** This list is not exhaustive.

*1 Support Regs (NI), reg 37-38; 2 reg 41; 3 reg 50; 4 reg 46; 5 reg 39; 6 reg 45; 7 reg 47*

# Amount of grant income

## Initial disregard

51947 The decision maker should disregard from the student's grant income any payment

**1.** intended to meet tuition or examination fees[1]

**2.** intended to meet additional expenses a disabled student has for attending a course[2]

**3.** intended to meet additional expenses connected with term time residential study away from the student's educational establishment[3]

**4.** on account of the student maintaining a home at a place other than where they live during the course[4]

**5.** on account of any other person if[5] that person lives outside the UK and there is no applicable amount for them

**6.** intended to meet the cost of books and equipment[6]

**7.** intended to meet travel expenses caused by the student's attendance on the course[7]

**8.** intended for the maintenance of a child dependant[8]

**9.** intended for the child care costs of a child dependant[9].

**Note: 4.** applies only to the extent that the student's rent or rates is not met by Housing Benefit.

*1 ESA Regs (NI), reg 132(2)(a); 2 reg 132(2)(b); 3 reg 132(2)(c) ; 4 reg 132(2)(d); 5 reg 132(2)(e); 6 reg 132(2)(f); 7 reg 132(2)(g); 8 reg 132(2)(h); 9 reg 132(2)(i)*

51948 Disregard amounts under DMG 51947 only if the grant is specifically intended to be used for one of those purposes.

## Higher education bursaries

51949 The higher education bursary[1] was introduced in 2002. The bursury is aimed at students in low income households and is paid for help with living costs. Decision makers should **not** disregard[2] the amount of higher education bursary paid **except** where the payment is in respect of a care leaver and made under Part III of the Children Act 1989.

*1 Support Regs (NI), reg 62; 2 ESA Regs (NI), reg 132(2)*

## Special support grant

51950 **[See DMG Memo Vol 6/98 & 9/59]** The Special Support Grant[1] was introduced from 1.9.06. The grant is to defray the cost of books, equipment, travel or childcare incurred for the purpose of attending that course. Decision makers should disregard[2] the amount of Special Support Grant paid to students from 1.9.06.

*1 Support Regs (NI), reg 60; 2 ESA Regs (NI), reg 132(2)*

51951 Where a student is in receipt of the maximum Special Support Grant and the Higher Education Establishment charges the full £3,145 tuition fees, then the Higher Education Establishment must pay the student a bursary to at least make up the difference between the Special Support Grant and the £3,145 fee. As this bursary is for tuition fees it should be disregarded[1] in full whatever its value. In addition, a Higher Education Establishment may award other grants and bursaries and these may be disregarded if they fall within the disregards listed at DMG 51947.

*1 ESA Regs (NI), reg 132(2)(a)*

51952

## Disregards for students with child care responsibilities

51953 In Northern Ireland, a Department for the Economy Parents' Learning Allowance is available to full-time students with child care responsibilities. Decision makers should disregard this allowance in full[1].

*1 ESA Regs (NI), reg 132(2)*

## Extra disregards

51954 **[See DMG Memo Vol 9/4]** Where a student does not have a student loan and is not treated as having a student loan, the decision maker should disregard from the grant a fixed amount for

**1.** travelling expenses (£303) **and**

**2.** books and equipment (£390).

*1 ESA Regs (NI), reg 132(3)*

**Example 1**

Georgia is a student nurse attending a diploma course. She is not entitled to a student loan. She receives a National Health Service bursary which includes £200 for travelling expenses but no additional amount for books and equipment. The decision maker disregards a total, of £893 from Georgia's allowance. This is made up of an amount awarded specifically to meet travelling expenses - £200; extra disregard for travelling costs - £303; extra disregard for books and equipment - £390.

**Example 2**

Isobella is a student teacher completing her last year of teacher training in a school. She receives a training bursary which does not specifically include any amount for travelling costs or books and equipment. She is not entitled to a student loan. The decision maker disregards a total of £693 from Isobella's income. This is made up of extra disregard for travelling costs - £303 plus the extra disregard for books and equipment - £390.

51955

# Period over which grant income taken into account

51956 The amount of grant income to be taken into account should be spread equally over the relevant period. The length of that period depends on

**1.** what elements of grant are involved **and**

**2.** whether the grant is paid for the period of study.

## Dependant and lone parent grants

51957 The decision maker should take these grants into account

**1.** for the same period as the loan **or**

**2.** for the period a loan would have been taken into account had the student taken reasonable steps to get one[1].

*1 ESA Regs (NI), reg 132(6)*

**Example**

Gregg is a student with 2 children who started his course in November 2008. He receives a loan for living expenses. He is also entitled to an extra amount for the children and because he is a lone parent, this is a non-repayable grant. The decision maker takes the extra grant income into account for the same period as the loan.

## National Health Service dependant grants

51958 A grant or bursary paid for dependants, under relevant law[1], to a National Health Service student should be taken into account over

**1.** 52 weeks **or**

**2.** 53 weeks, if there are 53 benefit weeks (including part-weeks) in the year[2].

**Note:** These grants are apportioned over the number of benefit weeks in the year rather than over the period of study.

*1 H&PSS (NI) Order 72, art 44(2); 2 ESA Regs (NI), reg 132(5)*

## Other grant income

51959 Other grant income should be taken into account equally between the weeks in the period

**1.** of study, where it is paid for the period of study **or**

**2.** for which it is payable.

## Period of study for grant income purposes

51960 Period of study has two different meanings. One for grant income purposes[1] and one for eligibility[2] (see DMG Chapter 41). Decision makers should not confuse the two definitions.

*1 ESA Regs (NI), reg 131; 2 reg 2(1)*

51961 For grant income purposes[1], each year of a course has a separate period of study. That period

**1.** starts with

**1.1** the first day of the course, in the first or only year **or**

**1.2** the first day of that year's course, in any later year **and**

**2.** ends with

**2.1** the last day of the course, in the last or only year **or**

**2.2** the day before the summer holiday, where the grant is not for study throughout the whole year **or**

**2.3** the day before the start date of the next year's course where

**2.3.a** the grant is for study throughout the year **or**

**2.3.b** if the student does not have a grant, where a loan would have been assessed as payable throughout the year.

*1 ESA Regs (NI), reg 131(1)*

**Example**

Jenny is on a standard 3 year degree course commencing in the Autumn. Her grant is not for study throughout the whole year. She has 3 periods of study. These are

**1.** the first year - the first day of the course to the day before the summer holiday separating the first and second years

**2.** the second year - the first day of that year's course to the day before the summer holiday separating the second and third years

**3.** the third (final) year - the first day of that year's course to the last day of the course.

## Grant payable for period of study

51962 Grant income may be payable for the period of study. If so the decision maker should take the income into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period of study and ending with the last benefit week which ends on or before the last day of the period of study[1].

*1 ESA Regs (NI), reg 132(4)(a)*

### Sandwich course

51963 Where a student is on a sandwich course, any periods of experience should be excluded from the period of study. Grant income is then spread equally between the weeks in the period beginning with the benefit week that begins on or after the last day of the period of experience and ends with the last benefit week which ends on or before the last day of the period of study[1].

*1 ESA Regs (NI), reg 132(7)*

### Grant not payable for period of study

51964 Grant income may be awarded for a specific period. In these cases the grant income should be taken into account equally between the weeks in the period beginning with the first benefit week that begins on or after the first day of the period for which the grant is payable and ending with the last benefit week which ends on or before the last day of the period for which the grant is payable[1].

*1 ESA Regs (NI), reg 132(4)(b)*

## Access funds

51965 Students who are in financial difficulties may receive payments from access funds (see DMG 51882). Treatment of these payments depends upon

**1.** when the payment is made

**2.** what the payment is intended for **and**

**3.** whether the payment is a

**3.1** regular payment **or**

**3.2** single lump sum.

51966 The decision maker should fully disregard an access fund payment where it is made[1]

**1.** before the first day of the course in anticipation of the person becoming a student **or**

**2.** on or after the earlier of

**2.1** 1 September **or**

**2.2** the first day of the course **and**

**2.3** the student loan has not been received **and**

**2.4** the payment is intended to help them manage financially until they receive their loan.

*1 ESA Regs (NI), reg 138(4)*

### Regular payments

51967 Any access fund payment should be fully disregarded unless it is intended and used for

**1.** food

**2.** ordinary clothing or footwear

**3.** household fuel

**4.** rent or rates for which Housing Benefit is payable

**5.** housing costs met in the applicable amount

**6.** water charges.

**Note:** The decision maker should disregard £20 from any payments that are intended and used for the above items. This is subject to the overall limit on disregarded income[1] (see DMG 51969 et seq).

*1 ESA Regs (NI), reg 138(3)*

## Lump sum payments

51968 Any lump sum payment from an access fund should be treated as capital[1]. Where a lump sum payment is intended and used for items other than those listed at DMG 51967 the decision maker should disregard the capital for 52 weeks from the date of payment[2].

*1 ESA Regs (NI), reg 142(2); 2 reg 142(3)*

# Overall limit to income disregard

51969 A student may have income other than grant income, covenant income or a student loan. The amount of any disregard will depend on

**1.** what type of income is paid **and**

**2.** whether it is paid for a specific purpose.

Do not disregard any part of a student's grant income or covenant income as a charitable or voluntary payment[1].

*1 ESA Regs (NI), reg 135*

## Income for necessary course expenses

51970 The income may be specifically intended (in whole or in part) to meet the cost of any item

**1.** set out in DMG 51947 **and**

**2.** necessary as a result of attendance on the course.

51971 In such a case disregard[1]

**1.** the total amount specifically intended for the purposes at **1.** and **2.** above **less**

**2.** the total amount of any grant and covenant income already disregarded for the particular item.

*1 ESA Regs (NI), reg 136(1)*

51972 Where the income does not include an amount specifically intended for books and equipment, a disregard cannot be made for those items.

51973 If after the disregard in DMG 51971 there is a balance to take into account, the normal rules on attribution of income apply (see DMG Chapter 48).

## Disregard of partner's contribution

51974 The student's loan or grant income may include an assessed contribution from their partner. The decision maker should disregard this amount when considering the income of the partner[1].

**Note:** The student may complain because their partner does not have an income on which the assessment was based. The decision maker should advise such a student to contact the authority responsible for the grant. The authority may then reassess the amount of their grant.

*1 ESA Regs (NI), reg 140*

## Disregard of student's contribution

51975 Where the student's own income is taken into account when assessing the loan or grant the decision maker should disregard this amount when calculating the student's income[1]. The amount to be disregarded under DMG 51946 and this paragraph should be spread equally between the period that the loan or grant income has been taken into account. It should be applied to the income of the spouse or the partner respectively. It cannot all be applied to the student's own income.

*1 ESA Regs (NI), reg 141*

# Covenant income and other income and capital

51976 Where a student has other income, the normal rules apply. This is subject to the overall limit on disregarded income (see DMG 51969). Where a student has capital other than a student loan (see DMG 51922 et seq), normal rules apply.

## Covenant income

51977 Covenant income is[1] income payable to a student under a Deed of Covenant by a person whose income is

**1.** taken into account **or**

**2.** likely to be taken into account

in assessing the student's grant or award.

*1 ESA Regs (NI), reg 131(1)*

51978 There are special rules which cover the assessment and attribution of covenant income. If a student declares that they are in receipt of covenant income the decision maker should forward the case urgently to Decision Making Services (via the Decision Making team leader). Decision makers are, however, unlikely to see this type of case as the Income Tax advantages associated with Deeds of Covenant were abolished some years ago.

## Student's tax refund

51979 Treat any refund of tax taken from a student's income as capital[1]. This is not restricted to tax taken from grant income. It applies to any income-related tax refund.

*1 ESA Regs (NI), reg 142*

## Other types of loan

51980 Students may have loans that are not made under the relevant law[1]. The treatment of these loans depends on whether they are capital or income.

*1 Support (NI) Order, art 3; Teaching & Higher Education Act 98, sec 22; Education (Scot) Act 80, sec 73(f), 73B & 74; Students' Allowances (Scot) Regs 07, reg 4(1)(c)*

# Income of former students

51981 A person stops being a student for Employment and Support Allowance from the day after the

**1.** last day of the course **or**

**2.** date they abandon or are dismissed from the course[1].

*1 ESA Regs (NI), reg 131(2)*

51982 From the date that the person stops being a student the treatment of income depends on whether the course has been completed.

## Course completed

51983 When a student has completed a course the decision maker should disregard from the day after the last day of the course[1] any

**1.** grant or covenant income

**2.** loan

**3.** income assessed contribution.

*1 ESA Regs (NI), Sch 8, para 53*

## Course not completed - treatment of grant income

51984 A person has not completed the course if they have abandoned or were dismissed from it. Special rules[1] apply to income that

**1.** is grant income (that is not taken into account in DMG 51985 et seq) **and**

**2.** was paid to a person who ceased to be a student before the end of the period for which the income was payable **and**

**3.** has to be repaid because the person ceased to be a student before the end of the period for which the income was payable.

*1 ESA Regs (NI), reg 91(3), 94(7) & 104(7)*

## Period income is taken into account

51985 Other than where DMG 51984 applies, grant income is taken into account over a period that

**1.** begins on the date that the income was treated as paid **and**

**2.** ends on the earlier of

**2.1** the date when the repayable grant income is repaid **or**

**2.2** the last day of the term or holiday in which the person ceased to be a full-time student **or**

**2.3** where the grant is paid in instalments, on the day before the next instalment would have been paid had the person remained a full-time student[1].

*1 ESA Regs (NI), reg 91(3)*

51986 Students who have not completed the course, and have to repay grant income who

**1.** are already receiving income-related Employment and Support Allowance, will continue to have the same weekly grant income deducted from the day they stopped being a student (see DMG 51995)

**2.** make a new claim to Employment and Support Allowance, will have the net weekly grant income attributed from the date that the last payment of grant income was treated as paid

until the date established at DMG 51985 **2**.

51987 When considering the date income is treated as paid the guidance at DMG Chapter 48 applies. The decision maker will first need to establish the due date of the last grant payment which will usually be the last instalment.

51988 A decision on the due date of a grant instalment must be based on evidence from the paying authority. The decision maker can get this

**1.** directly from the authority **or**

**2.** from documents produced by them.

51989 If the paying authority gives a due date this should generally be followed. Notices of award or authorities' general literature may say that payments are to be made available on a set date. This date should usually be accepted as the due date.

51990 It may not be possible to get specific evidence of the due date from the paying authority. The due date should then be accepted as the date of the actual payment.

51991 In Northern Ireland the Student Loans Company administers payments on behalf of the local Education and Library Board. Payments of student grants are usually paid directly into the student's bank account. If a payable order for the maintenance element of mandatory awards is sent to the college or university for collection at the beginning of each term, take such a payment as being due on the first day of the relevant term.

51992

## Calculation of weekly income

51993 The weekly grant income of a former student to be taken into account for the period in DMG 51985 is equal to the amount which would have applied if the person was still a student[1]. This means that the

**1.** appropriate deductions and disregards apply (see DMG 51947 et seq)

**2.** weekly amount is calculated in the same way (see DMG 51956 et seq).

The amount of income to be taken into account for each benefit week is calculated on the basis that the person is still a student and none of the income has been repaid[2]. The weekly amount is not reduced by repayments of the grant.

*1 ESA Regs (NI), reg 94(7) & 132; 2 reg 104(7)*

## Course not completed - treatment of loan and dependant grant income

### Relevant payment

51994 A relevant payment is either a student loan or an amount for the maintenance of dependants, or both[1], paid to a student.

*1 ESA Regs (NI), reg 104(6)*

### Calculation of weekly income

51995 If a claimant abandons or is dismissed from the course of study before the final instalment of a relevant payment has been paid, the decision maker should calculate the weekly amount to take into account using the formula[1].

$$\frac{A - (B \times C)}{D}$$

Where

**1.** **A** is the total amount of relevant payment which the claimant would have received, less the appropriate deduction for travel costs, books and equipment, had he remained a student until the last day of the term in which he abandoned or was dismissed from the course.

**2.** **B** is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course.

**3.** **C** is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been

taken into account had the claimant been entitled to an income-related Employment and Support Allowance).

**4.** **D** is the number of benefit weeks in the assessment period. This is the number of weeks in the period[2]

**4.1** beginning with the benefit week that includes the day on which the course was abandoned, or the claimant was dismissed, **and**

**4.2** ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable.

**Note:** A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December[3].

*1 ESA Regs (NI), reg 104(5); 2 reg 104(6); 3 Support Regs (NI), reg 2(1)*

51996 The weekly amount calculated as in DMG 51995 should be taken into account for the period in DMG 51995 **4.**[1].

*1 ESA Regs (NI), reg 104(5)*

**Example**

Erin abandons her course of study on 25.2.10 in her second year after £2,020 of her students loan allocation has been paid. Had she remained a student for the full year she would have been entitled to a loan of £3,020 which is paid in three instalments; £1,020 in October, £1,000 in January and £1,000 in April. She is a Tuesday benefit week ending.

The decision maker calculates a weekly amount of NIL to take into account from 24.2.10 to 6.4.10;

A = £1,327 (£2,020 - £303 - £390)

B = 25 (number of weeks between 2.9.09 and 23.2.10)

C = £54.11 (£3,020 - £303 - £390 = £2,327/43 = £54.11 per week which would have been taken into account (before a £10 disregard) had she remained a student).

D = 6 (number of weeks between 24.2.10 and 6.4.10)

$$\frac{£1327 - (25 \times £54.11)}{6} = \text{NIL}$$

51997 A student who has prematurely stopped being a student may voluntarily repay some or all of their student loan. In such a case there are no grounds to revise or supersede the award. This is because the repayment of a student loan is not a relevant change of circumstances[1].

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

51998 Where the former student repays the loan because the loan company has requested repayment, the claimant is under a certain and immediate liability to repay. Under such

circumstances the decision maker should not treat the loan as income from the date that such a liability arises.

## Calculation of weekly income when loan is paid by two or more instalments

51999 When a student loan is paid by two or more instalments and a student abandons or is dismissed from the course, the decision maker should calculate the weekly amount to take into account by using the formula[1]

$$\frac{A - (B \times C)}{D}$$

Where

**1.** **A** is the total amount of the relevant payments which the person received or would have received from the first day of the academic year to the day the person abandoned or was dismissed from the course, less the appropriate deduction for travel costs, books and equipment.

**2.** **B** is the number of benefit weeks from the benefit week immediately following the one which includes the first day of the academic year to the benefit week immediately before the one which includes the day on which the claimant abandoned or was dismissed from the course.

**3.** **C** is the weekly amount of the relevant payment, before a £10 disregard, that would have been taken into account as income had the claimant remained a student. (This is the weekly amount, before disregard, that would have been taken into account had the student been entitled to Employment and Support Allowance.)

**4.** **D** is the number of weeks in the assessment period. This is the number of weeks in the period[2]

**4.1** beginning with the benefit week which includes the day on which the claimant abandoned or was dismissed from the course **and**

**4.2** ending on the earlier of the benefit week which includes

**4.2.a** the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued **or**

**4.2.b** the last day of the last quarter for which an instalment of the relevant payment was payable.

**Note:** A quarter is one of the periods from 1 January to 31 March, 1 April to 30 June, 1 July to 31 August and 1 September to 31 December[3].

*1 ESA Regs (NI), reg 104(5A); 2 reg 104(6); 3 Support Regs (NI), reg 2(1)*

**Example**

Alan abandons his course of study on 9.2.09 in his second year after receiving £2,000 of his student loan allocation. He was entitled to a student loan of £3,570 and this was being paid in monthly instalments of £400 on the 1st of each month from 1st October to 1st May with a final payment of £370 due on 1st June. He is a Wednesday benefit week ending.

The decision maker calculates that there is nothing to be taken into account from the student loan:

A = £1,325 (£2,000 - £295 - £380)

B = 22 (number of weeks from 4.9.08 to 4.2.09)

C = £68.92 (£3,570 - £295 - £380 = £2,895/42 weeks (4.9.08 to 24.6.09) = £68.92 per week which would have been taken into account had he remained a student)

D = 4 (number of weeks between 5.2.09 and 4.3.09)

$$\frac{£1,325 – (22 \times £68.92)}{4} = \text{Nil}$$

# Appendix 1

# War Pensions

## War widow's, widower's or surviving civil partner's supplementary pensions

1 Any

**1.** supplementary pension paid under article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (pensions to widows, widowers or surviving civil partners) **or**

**2.** similar payment made by the Secretary of State for Defence to a person not entitled to a pension under the order in **1.**.

2 A pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983.

3 Any payment made to a widow, widower or surviving civil partner of a person

**1.** whose death was connected to service similar to service as a member of the armed forces **and**

**2.** which is equal to a payment made under article 23(2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (pensions to widows, widowers or surviving civil partners) **and**

**3.** whose service ended before 31.3.73 under the following dispensing instruments

**3.1** The Order in Council of 19th December 1881

**3.2** The Royal Warrant of 27 October 1884

**3.3** The Order by His Majesty of 14th January 1922.

## War disablement pension, war widow's pension and war widower's pension

The following instruments are specified[1] for the meaning of war disablement pension, war widow's pension and war widower's pension.

1 Defence (Local Defence Volunteers) Regulations 1940.

2 War Pensions (Coastguards) Scheme 1944.

3 War Pensions (Naval Auxiliary Personnel) Scheme 1964.

4 Pensions (Polish Forces) Scheme 1964.

5 War Pensions (Mercantile Marine) Scheme 1964.

6 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard.

7 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after 27.4.52.

8 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment.

9 Personal Injuries (Civilians) Scheme 1983.

10 Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983.

*1 ESA Regs (NI), reg 2(1); Income Tax (Earnings and Pensions) Act 2003, sec 639(2)*