Chapter 24 - Special cases

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Statutes commonly referred to in Chapter 24

**Full Title Abbreviation**

Health and Personal Social Services HPSS (NI) Order 72 (Northern Ireland) Order 1972

Jobseeker's (Northern Ireland) Order JS (NI) Order 95 1995

Registered Homes (Northern Ireland) Registered Homes (NI) Order 1992 Order 92

Social Security (Northern SS (NI) Order 98 Ireland) Order 1998

Social Security Contributions and Benefits SS C&B (NI) Act 92 (Northern Ireland) Act 1992

Social Security Fraud Act (NI) 2001 SS Fraud Act (NI) 2001

Statutory Rules commonly referred to in Chapter 24

**Short description Full title Abbreviation**

Decision Making The Social Security and SS & CS (D&A)   
and Appeals Child Support (Decisions Regs (NI)  
 Regulations and Appeals) Regulations (Northern Ireland) 1999 No 162

Claims and The Social Security (Claims SS (C&P) Regs (NI)  
Payments and Payments) Regulations  
Regulations (Northern Ireland) 1987 No 465

Hospital In- The Social Security (Hospital SS (HIP) Regs (NI)  
patient In-patient) Regulations  
Regulations (Northern Ireland) 1975 No 109

Housing Benefit The Housing Benefit HB Regs (NI)  
Regulations Regulations (Northern Ireland) 2006 No 405

IS General The Income Support (General) IS (Gen) Regs (NI)  
Regulations Regulations (Northern Ireland) 1987 No 459

JSA Regulations The Jobseeker’s Allowance JSA Regs (NI)  
 Regulations (Northern Ireland) 1996 No 198

Loss of Benefit The Social Security (Loss of SS (Loss of Benefit) Regulations Benefit) Regulations (NI) Regs (NI) 2002

Chapter 24 - Special cases

General

Scope of this Chapter

24001 This Chapter explains how to calculate the amount of Jobseeker’s Allowance or Income Support payable where people are

**1.** in hospital (see DMG 24002)

**2.** members of joint-claim couples where one member fails to attend or fails to satisfy the labour market conditions (see DMG 24145)

1. without accommodation (see DMG 24156)
2. members of religious orders (see DMG 24170)
3. prisoners (see DMG 24197)
4. temporarily separated members of a couple or polygamous marriage (see DMG 24241)
5. absent from Northern Ireland/United Kingdom (see DMG 24247)
6. appealing against a decision that they are not incapable of work (see DMG 24370)
7. entitled to a mortgage interest run-on (see DMG 24390)
8. subject to a restriction under the loss of benefit provisions (see DMG 24400)
9. from abroad or subject to immigration control (see DMG 24500)
10. living in a residential care home, nursing home or independent hospital (see DMG 24163).

People in hospital

General

Contribution based Jobseeker’s Allowance or income-based Jobseeker's Allowance claimant admitted to hospital

24002 A Jobseeker’s Allowance claimant who is admitted to hospital will not normally be able to satisfy the conditions of being available for employment, actively seeking employment and capable of work. But there are special provisions (see DMG Chapters 20 & 21) for treating a claimant as available for employment, actively seeking employment and capable of work for periods of up to two weeks sickness

**1.** twice in any jobseeking period **or**

**2.** if the jobseeking period lasts for more than a year, twice in any year.

Claimants may continue to receive Jobseeker’s Allowance for these periods.

**Note :** The following guidance does not apply to contribution based Jobseeker’s Allowance.

24003 - 24006

Free in-patient treatment

Deciding free in-patient treatment

24007 A person must be in each of the following categories to be receiving free in-patient treatment

**1.** maintained free of charge

**2.** receiving medical or other treatment

**3.** in a hospital or similar institution

**4.** an in-patient

**5.** receiving the treatment

**5.1** under prescribed legislation1 **or**

**5.2** in a hospital or similar institution maintained or administered by the Defence Council.

**Note :** A person who does not meet any one of these conditions is not receiving free in-patient treatment. The decision maker does not need to consider the other conditions.

1 HPSS (NI) Order 72

Maintained free of charge

24008 A person is treated as being maintained free of charge1 in a hospital or similar institution unless

**1.** accommodation and services are being provided for that person as a private patient2 **or**

**2.** the person is meeting the full cost of their maintenance as a private patient in a private hospital3.

1 SS (HIP) Regs (NI), reg 2(2); 2 HPSS (NI) Order 72, Art 31  
3 SS (HIP) Regs (NI), reg 2(2)

24009 In any other circumstances the person is treated as maintained free of charge. For example when

**1.** a payment is made by the patient for an amenity bed but the treatment is provided under the National Health Service1.

**2.** a patient is in paid work outside the hospital during the day and pays an amount to the Health and Social Services Board or Health and Social Services trust based on earnings towards maintenance and incidental costs2.

**3.** a person is a patient in a nursing home being funded under arrangements made by the Health and Social Services Board or Health and Social Services trust3.

1 HPSS (NI) Order 72, Art 33 ; 2 Art 5;  
3 HPSS (NI) Order 72

Burden of proof

24010 The burden of proving that a person is not being maintained free of charge rests with that person1.

1 CS 591/49

24011 - 24014

Medical or other treatment

24015 To be treated as receiving free in-patient treatment a person must be receiving

**1.** medical treatment, for example

**1.1** surgical treatment

**1.2** administration of drugs and injections **or**

**2.** other treatment which includes nursing services by professionally trained staff in the form of

**2.1** observation

**2.2** therapy

**2.3** support appropriate to the person’s needs

**2.4** advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

24016 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, that another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment1.

1 R(S) 26/54

24017 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day1.

1 R(S) 4/84

Hospital or similar institution

Hospital

24018 A hospital1 is any of the following

**1.** an institution for

**1.1** the reception and treatment of persons suffering from illness

**1.2** the reception and treatment of persons during convalescence

**1.3** persons needing medical rehabilitation

**2.** a maternity home that provides obstetric services

**3.** any institution for providing dental treatment and maintained in connection with a dental school

**4.** a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 HPSS (NI) Order 72, Art 2

24019 Illness includes1

**1.** mental disorder **or**

**2.** any injury or disability needing

**2.1** medical treatment **or**

**2.2** dental treatment **or**

**2.3** nursing.

1 HPSS (NI) Order 72, Art 2

24020 Mental disorder means1

**1.** mental illness **or**

**2.** mental handicap **or**

**3.** any other disorder or disability of the mind.

1 Mental Health (NI) Order 86, art 3(1)

Similar institution

24021 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the decision maker should decide as a question of fact whether it is similar to a hospital taking into account

**1.** the purpose of the institution **and**

**2.** the type of treatment provided **and**

**3.** the level of care offered.

24022 A hospital or similar institution also includes those

**1.** maintained by or on behalf of the Department **or**

**2.** maintained by or on behalf of the Defence Council, for example an army, navy or air force hospital.

Examples of hospitals or similar institutions

24023 A hostel or residential care home providing accommodation and social care to former alcoholics or drug addicts is not a similar institution to a hospital.

An institution caring for former alcoholics, drug addicts or psychiatric patients which provides a degree of medical treatment or rehabilitation by trained nursing staff may be a similar institution to a hospital.

A nursing home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the nursing home. But if the provision of nursing care is minimal, for example rarely expected, the nursing home may not be a hospital.

24024 - 24027

In-patient

24028 In-patient is not defined and should be given its ordinary meaning of a patient who occupies a bed in a

**1.** hospital **or**

**2.** similar institution

rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to1.

**Note :** The question of whether a person is an in-patient should be judged on the facts of each case.

1 R(I) 27/59; R(S) 8/51

24029 Examples of when a person would be included as an in-patient are where the person is

**1.** a patient and spends part of each day away from the hospital

**2.** provided with meals by close relatives

**3.** a nurse treated in the nursed sick bay of the hospital in which the nurse works1.

1 R(S) 2/52

24030 Examples of when a person would not be included as an in-patient are where the person is

**1.** receiving treatment at home during the period a rehabilitation centre is closed for a holiday1

**2.** a matron receiving treatment in ordinary living quarters at a hospital2.

1 R(I) 14/56; 2 R(S) 28/52

Prescribed legislation

24031 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation1. Whether a person is to be treated as an in-patient, depends on the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

**1.** the Department **or**

**2.** a Health and Social Services trust.

Hospitals have a variety of functions under Health and Personal Social Services legislation and not all of them mean that a person is receiving free in-patient treatment.

1 SS (HIP) Regs (NI), reg 2(4)

24032 Health and Social Services Boards acting on behalf of the Department can

**1.** arrange for long term health care in a nursing home for a person whom they assess as needing that care1 (in this case the service must be provided free of charge and the Health and Social Services Board is responsible for the full cost) **or**

**2.** contribute to the cost of care through payments to a voluntary organisation, private home owner or home care agency2 for

**2.1** personal care with accommodation in a residential care home **or**

**2.2** other social care (domiciliary and day care etc) for a person who does not need hospital in-patient care from the Health and Personal Social Services **and**

**3.** make grants to voluntary organisations3 towards the cost of care of persons who do not need hospital in-patient care from the Health and Personal Social Services.

**Note :** These powers have been delegated by Health and Social Services Boards to Health and Social Services trusts.

1 HPSS (NI) Order 72, Art 14A; 2 HPSS (NI) Order 72, Arts 15 and 36;  
3 HPSS (NI) Order 72, Art 71(2)

24033

Services provided under Health and Personal Social Services legislation

24034 Examples of services under Health and Personal Social Services legislation are1

**1.** hospital accommodation

**2.** other accommodation for the purpose of any service the Department has the power to provide

**3.** medical services

**4.** nursing services

**5.** facilities which the Department considers appropriate as part of the health service for the

**5.1** prevention of illness **or**

**5.2** care of people suffering from illness **or**

**5.3** after care of people who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

1 HPSS (NI) Order 72

Imprisonment

24035 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment because these wings are administered by the Northern Ireland Office.

Prisoner admitted to hospital

24036 The decision maker should establish the legislation used to admit a prisoner to hospital. A person admitted

**1.** under prescribed mental health legislation1, is not a patient for Income Support purposes and has an applicable amount of nil **or**

**2.** under prescribed mental health legislation2 other than **1.** above is a patient for Income Support purposes and has entitlement to their full applicable amount.

1 IS (Gen) Regs (NI), reg 21(3); Sch 7, para 2A; Mental Health (NI) Order 1986, art 53;  
2 Mental Health (NI) Order 1986

24037 - 24040

Community care arrangements

Arrangements by Health and Social Services Boards

24041 As part of a community care programme, Health and Social Services Boards may make a variety of arrangements with care homes or hostels for

**1.** the continuing care of a patient in one of these homes **or**

**2.** a person in the community to be admitted directly to one of these homes.

The decision maker should consider DMG 24007 to decide whether the person is receiving free in-patient treatment in the home or hostel.

24042 Examples of arrangements made by Health and Social Services Boards under their community care responsibilities are

**1.** managing their own residential homes or hostels

**2.** by Health and Personal Social Services trusts contracting with private and voluntary sector homes for the provision of accommodation and services

**3.** contracting with a voluntary agency to find suitable placements for patients

**4.** any combination of **1.** to **3.**.

24043 - 24047

Points to consider

24048 The decision maker should consider the guidance in DMG 24049 - 24054 when deciding whether the person is receiving free in-patient treatment in the new accommodation.

24049 When deciding whether the new accommodation is a hospital or similar institution the decision maker should consider the definition in DMG 24018 et seq. The decision maker should not compare the new accommodation with the person’s previous hospital accommodation.

24050 If the arrangements between the Health and Social Services Board and the nursing home are under any of the provisions of the prescribed legislation1, DMG 24007 is satisfied.

1 HPSS (NI) Order 72, Art 14A

24051 A Health and Social Services Board may decide to contract for a placement with a care home on the assumption that the person will not be treated as receiving free in-patient treatment for Income Support or income-based Jobseeker’s Allowance purposes. For example, in agreeing to pay the full cost of care the Health and Social Services Board would expect to recover from the resident a contribution based on the financial assessment prescribed in relevant regulations1.

1 HPSS (NI) Order 72, Arts 36 & 99; HPSS (Assessment of Resources) Regs (NI) 93

24052 The arrangement between the Health and Social Services Board and nursing home must also include a continuing commitment. If a placement is arranged without any continuing commitment from the Health and Social Services Board to fund the care, DMG 24007 is not satisfied. For example, a hospital based social worker might help a patient who is about to be discharged to find a suitable nursing home.

24053 If a Health and Social Services Board helps a voluntary sector home by awarding a grant under relevant legislation1 DMG 24007 is not satisfied, but if the Health and Social Services Board has a contractual agreement to pay the full fees for the duration of a placement, this may be evidence that the patient is receiving free in-patient treatment. It is important to confirm that the Health and Social Services Board is not using the charging powers2 to obtain a contribution to the cost of care from the patient where a requirement for continuing health care is indicated.

1 HPSS (NI) Order 72, Art 71(2); 2 Art 36

24054 A Health and Social Services Board can give other assistance to a care home in specific circumstances1 for example they may provide trained nursing staff. If a home reimburses

**1.** the full cost of the assistance to the Health and Social Services Board, DMG 24007 is not satisfied and the person is not receiving free in-patient treatment **or**

**2.** part of the cost of the assistance, the arrangement may be under prescribed legislation2.

1 HPSS (NI) Order 72, Art 14A(2) & 15(1B); 2 Art 15 and 36

24055 - 24060

Existing cases - revision or supersession

24061 The decision maker may decide that a patient who is already living in a nursing home or hostel under arrangements made by a Health and Social Services Board is receiving free in-patient treatment. The provision of guidance is not grounds to revise or supersede an existing decision, and the existing decision continues to apply.

24062 Enquiries should be made to decide whether all the conditions in DMG 24007 are satisfied if

**1.** a person is receiving the applicable amount for a person living in a care home **and**

**2.** the Health and Social Services Board reports that the person is receiving free in-patient treatment.

If all the conditions in DMG 24007 are satisfied the person is receiving free in-patient treatment.

24063 - 24071

Periods of free in-patient treatment

Period of free in-patient treatment

24072 A person is receiving free in-patient treatment for any period that the conditions in DMG 24007 are satisfied. When working out such periods decision makers **should not count**

**1.** the day of admission to hospital **or**

**2.** the day of return to hospital following a period of temporary absence (for example home leave)

as days of free in-patient treatment1.

1 SS (Hospital in-patients) Regs (NI) 1975, reg 2(2A)

24073 Decision makers **should count**

**1.** the day of discharge from hospital **or**

**2.** the day of leaving hospital on temporary absence (for example home leave)

as days of free in-patient treatment.

24074 A period of free in-patient treatment therefore

**1.** begins on the day after the person is admitted to hospital **and**

**2.** ends on the day the person is discharged from hospital.

24075 If a patient is transferred from one hospital to another, the day of transfer is treated as a day in hospital1.

1 R(S) 4/84

**Example**

A person is admitted to hospital on 7 March and is discharged on 15 March.

The period of free in-patient treatment is 8 days.

24076 - 24090

Hospital in-patients - applicable amounts

General

Revision or supersession of premiums

24091 See DMG Chapter 23 for guidance on the effect of hospital admission on premiums.

24092

Housing costs

24093 If the claimant is treated as continuing to occupy a dwelling as the home, the decision maker should consider housing costs (see DMG Chapter 23).

Transitional element

24094 In some cases there may be entitlement to a transitional element (see DMG Chapter 36).

Patients who normally live in a residential care home, nursing home or residential accommodation

24095 From 6.10.03 the special rules for calculating an applicable amount where the patient normally lives in

**1.** a residential care home or nursing home, if the claimant has preserved rights

**2.** residential accommodation

have been abolished.

24096

Membership of the family

24097 The decision maker should consider the guidance in DMG Chapter 22 to decide whether a patient is still a member of a family if the patient is a

**1.** lone parent **or**

**2.** member of a couple **or**

**3.** member of a polygamous marriage

**4.** a child or young person.

If a income-based Jobseeker’s Allowance or Income Support claimant is no longer a member of a family, the decision maker should revise or supersede benefit on the basis of the new circumstances.

Rounding

24098 If the applicable amount would include a fraction of a penny, it should be rounded up to the next whole penny1.

1 JSA Regs (NI), Sch 4, para 18; IS (Gen) Regs (NI), Sch 7, para 18

24099 - 24105

Contribution-based Jobseeker’s Allowance cases

Claimant in hospital

24106 The personal rate of a contribution-based Jobseeker’s Allowance claimant is not affected if the claimant is in hospital. But a Jobseeker’s Allowance claimant who is in hospital will not normally be able to satisfy the conditions of being

**1.** available for employment **and**

**2.** actively seeking employment **and**

**3.** capable of work

and may need to claim Income Support or another appropriate benefit, for example Incapacity Benefit.

**Note :** There are special provisions for treating a claimant as available for employment, actively seeking employment and capable of work (see DMG Chapters 20 and 21) for periods of up to 2 weeks sickness twice in any jobseeking period or if the jobseeking period lasts for more than a year, twice in any year.

Income Support cases

Claimant in hospital more than four weeks

24107 The decision maker should consider the severe disability premium should continue when the claimant has been in hospital for four weeks (see DMG Chapter 23).

All Income Support/income-based Jobseeker's Allowance cases

Person in hospital

24108 The normal applicable amount of a claimant may be affected when the claimant or a member of his family has been a patient for a continuous period of more than 52 weeks. At this point the decision maker should consider withdrawing1 any

**1.** higher pensioner premium

**2.** disability premium

**3.** enhanced disability premium

**4.** disabled child premium.

**Note :** But the claimant will not normally be able to satisfy all the conditions for Jobseeker’s Allowance (see DMG 24106) and may need to claim Income Support or another appropriate benefit, for example Incapacity Benefit.

1 JSA Regs (NI), Sch 1, para 12(4), 13(2), 15A(2), 16(2);  
IS (Gen) Regs (NI), Sch 2, para 10(5), 11(2), 13A(2), 14(2)

**Example**

Bert suffered a stroke in 2008 and was admitted to hospital on 1.8.08. Bert went on home leave for a few days over Christmas returning to hospital on 27.12.08. On 1.8.09 a decision maker decides Bert is now entitled to a disability premium, as he has been incapable of work for a period of 364 days. The removal of the disability premium is not considered until after 52 continuous weeks as an in-patient and therefore will not be appropriate until December 2009

24109 - 24144

Others

Members of joint-claim couples fails to attend or satisfy the labour market conditions

24145 Where one member of a joint-claim couple

**1.** fails to attend the New Jobseekers Interview1 **or**

**2.** for a period determined by the Department

**2.1** is not available for employment

* 1. is not activelyseeking employment
  2. does not have a current jobseeker’s agreement2

calculate the applicable amount for the other member as if they are a single claimant for the relevant period.

1 JSA Regs (NI), Sch 4, para 17A(a); 2 JSA Regs (NI), Sch 4, para 17A(b)

One member of joint-claim couple is outside Northern Ireland – new claims

**General**

24146 A joint-claim couple may be entitled to Jobseeker’s Allowance although one member of the couple is outside of Northern Ireland if that person is treated as being in Northern Ireland. A person can be treated as in Northern Ireland for

**1.** four weeks

**2.** up to seven days (see DMG 072154) **or**

**3.** any period abroad in a hospital or similar institution for National Health Service treatment (see DMG 070661 - 070668).

**Treated as in Northern Ireland for four weeks**

24147 For Jobseeker’s Allowance a person who is temporarily absent from Northern Ireland is treated as being in Northern Ireland for four weeks if

**1.** that person is in Great Britain **and**

**2.** the absence is not expected to last more than 52 weeks

but only where the absence occurs at the date of claim1.

1 JSA Regs (NI), reg 50(6B)(a)

**Attending a job interview**

24148 For a joint-claim Jobseeker’s Allowance a person is treated as in Northern Ireland during a temporary absence lasting seven consecutive days1 or less where the absence is to attend a job interview but only where the absence occurs at the date of claim2.

1 JSA Regs (NI), reg 50(6B)(c); 2 reg 50(6B)

**Person receiving a training allowance**

20149 A joint-claim couple where one person is receiving a training allowance can be paid Jobseeker’s Allowance for an absence from Northern Ireland lasting four weeks if that person is in receipt of a training allowance1 but only where the absence occurs at the date of claim2.

1 JSA Regs (NI), reg 50(6B)(b); 2 reg 50(6B)

**Treated as in Northern Ireland for the duration of the absence**

24150 One of a joint-claim couple can be treated as being in Northern Ireland for the duration of their absence1 if

**1.** the absent person was entitled to Jobseeker’s Allowance immediately before leaving Northern Ireland2

**2.** The person is receiving treatment at a hospital or other institution where the treatment is being provided outside Northern Ireland3 under prescribed legislation4.

1 JSA Regs (NI), reg 50(6AA); 2 reg 50(6AA)(a);  
3 reg 50(6AA)(b); 4 HPSS (NI) Order 72; HPSS (NI) Order 91

**Absence during a claim**

24151 Where an absence, described at DMG 24147, 24148 or 24149, occurs during the currency of a joint-claim the joint-claim couple will no longer be members of the same household1 and the joint-claim will end. The person who is still in Northern Ireland will continue to receive Jobseeker’s Allowance as a single person2.

1 JSA Regs (NI), reg 78; 2 reg 83

24152 - 24155

People without accommodation - Income-based Jobseeker's Allowance and Income Support

Applicable amount for people without accommodation

24156 Where a decision maker decides that a claimant has no accommodation the applicable amount should include only the normal personal allowance for the claimant and any partner1. The decision maker **cannot** for example include dependants allowances, housing costs, premiums or transitional element.

**Note :** Contribution based Jobseeker’s Allowance is not affected by this guidance.

1 JSA Regs (NI), reg 85 & Sch 4, para 3 & Sch 4A, para 2; IS (Gen) Regs (NI), reg 21 & Sch 7, para 6

24157 DMG 24156 applies only to people **without** accommodation. The fact that a person may have no fixed address is not relevant to the decision.

Meaning of accommodation

24158 The word “accommodation” is not defined in the Act or regulations, but in this context it means an effective shelter from the elements

**1.** which is capable of being heated **and**

**2.** in which the occupants can sit, lie down, cook and eat **and**

**3.** which is reasonably suited for continuous occupation.

24159 The site of the accommodation may alter from day to day, but it is still accommodation if the structure is habitable. Materials which give only a small amount of protection from the elements, for example

**1.** cardboard boxes

**2.** sleeping bags

**3.** bus shelters

**4.** park benches

do not fall within the description of accommodation.

Motor Cars

24160 Motor cars are designed as a means of transport. They are not intended for use as a dwelling house or living premises and are not suited for continuous occupation. A person who is living in a car cannot be regarded as having accommodation1.

1 R(IS) 23/98

Mobile motor homes

24161 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and are suited for continuous occupation should be regarded as accommodation.

Absence from home

24162 Claimants should be regarded as having accommodation if they are

**1.** temporarily absent from the dwelling occupied as the home **and**

**2.** for the period of their absence, living a lifestyle as though they have no accommodation.

In these circumstances housing costs may be allowed (see DMG Chapter 23).

Residential care homes, nursing homes and independent hospitals

24163 The allowances for residents of residential care homes, nursing homes and independent hospitals1 were abolished in October 2005. Residents are entitled to normal applicable amounts.

1 HPSS (QI&R) (NI) Order 2003

24164 - 24169

Members of religious orders - Income-based Jobseeker's Allowance and Income Support

Meaning of religious order

24170 A religious order is

**1.** a group of people who have

**1.1** given up all their belongings **and**

**1.2** offered their services free for the benefit of the order **and**

**2.** committed to providing all that its members need for their maintenance.

**Note :** Monks and nuns (of the Catholic, Buddhist or any other religion) are the most common examples, but there may be others.

24171 A religious community should not necessarily be treated as a religious order. For example, a community should not be treated as a religious order if its members

**1.** do paid work outside **or**

**2.** retain a right to their own possessions.

**Example 1**

Teresa is a nun who says she is a member of an order that requires members to give up their personal possessions. The order expects its members to do outside work. Teresa is one of several nuns who work for the education authority in local primary schools.

Teresa loses her job due to cutbacks by the local education and library board, and claims Jobseeker’s Allowance.

The decision maker decides that Teresa is a member of a religious community but not a member of a religious order because its members do paid work outside.

The decision maker awards Jobseeker’s Allowance.

**Example 2**

Assumpta is a 59 year old woman who claims Income Support because she has recently retired from missionary work. She is living in accommodation provided by an Order of Sisters and Brothers of which she is a member. The Order of Sisters and Brothers is a registered charity.

Members of the Order are allowed to keep their personal possessions.

The charter of the order states that no income is provided for the sisters and brothers by the order itself. Each member has to rely on voluntary contributions made by members of the public or people connected with the order.

Assumpta receives $400 a calendar month from 2 women in Canada.

The decision maker decides that Assumpta is a member of a religious community but not a member of a religious order because she is allowed to keep her personal possessions.

The decision maker awards Income Support taking the $400 voluntary payment for Assumpta’s everyday needs into account with a disregard of £20 a week (and after deducting the cost of converting the payment to sterling).

Applicable amount for members of religious orders

Member fully maintained

24172 The applicable amount is nil1 if the claimant is

**1.** a member of a religious order **and**

**2.** fully maintained by the order (that is, it provides full board and lodging, clothing and other needs).

**Note :** Contribution based Jobseeker’s Allowance is not affected by this guidance.

1 JSA Regs (NI), reg 85 & Sch 4, para 4 & Sch 4A, para 3; IS (Gen) Regs (NI), reg 21 & Sch 7, para 7

**Example 1**

Ted is a missionary for a group of priests that refers to itself as a congregation. Its members give up their personal possessions on joining the congregation and are bound by religious vows. They are not allowed to do any paid work outside and are provided with all their needs.

Ted retires to a residential care home that caters for retired priests of the congregation. He claims Income Support.

The decision maker decides that Ted is a member of a religious order.

The order continues to provide all that the claimant needs in the residential care home, but says that it is becoming increasingly difficult to do so.

The decision maker decides that what matters is whether the order is fully maintaining Ted, not whether it finds it difficult to do so. The decision maker decides that Ted is being fully maintained by the order.

**Example 2**

Isobel is a 58 year old nun who is a member of the Poor Clare Religious Order. The local Poor Clare community group to which Isobel belongs does not receive support from the Orders’ central funds instead she is supported from the groups’ community funds derived from donations, legacies and the proceeds from the sale of small items made by the nuns. Isobel is fully maintained by the Order.

24173 The commitment to a religious order is often for life. For example, the applicable amount continues to be nil if a person retires but remains with the order and continues to be fully maintained by it.

**Note:** Income-based Jobseeker's Allowance or Income Support should be calculated in the normal way if a person leaves the order, ceases to be maintained by it and goes to live in separate accommodation.

Member not fully maintained

24174 Income-based Jobseeker's Allowance or Income Support may be awarded if a member of a religious order

**1.** leaves the order’s premises, for example to nurse a sick relative **and**

**2.** is not fully maintained by the order during the absence.

The fact that the member has been fully maintained by the order in the past does not affect the decision on the change of circumstances.

24175 Claims may be received from elderly monks or nuns

**1.** in very poor physical or mental health **and**

**2.** for whom proper care can no longer be provided by the monastery or convent **and**

**3.** whose order can no longer afford to maintain them.

They may be living in a nursing home or private hospital being run by a religious order. Entitlement should be considered in the normal way if they are not being fully maintained by their order.

**Example**

Sarah is an 59 year old nun has been a member of and fully maintained by a religious order for 39 years. She is suffering from Alzheimer’s Disease and her order is no longer able to care for her properly.

The Health and Social Services Board find her a place in a nursing home run by another order. She is expected to contribute to the fees. She claims Income Support.

Her order continues to provide suitable clothing for her but cannot afford to maintain her in the nursing home. The order makes no financial contribution to the claimant’s needs.

The decision maker decides that Sarah is no longer being fully maintained by the order, and awards Income Support.

24176 A member of a religious order may have no apparent income or capital of their own. But the decision maker should consider whether the rules of the order allow

**1.** a member to ask for financial support **or**

**2.** the return of money given to the order on admission.

This information can be obtained from the trust deed of the order, but enquiries should not be made into the order’s financial affairs. The decision maker should submit cases of doubt to Decision Making Services.

24177 A member of a religious order may still be fully maintained by the order even though they may have some funds of their own, out of which they may be contributing to the order1.

1 [2011] EWCA Civ 103

24178 - 24184

Prisoners

Contribution-based Jobseeker’s Allowance

24185 A person who is on temporary release (see DMG Chapter 21) or is detained in custody, will not be able to satisfy the condition of being available for employment, and will not be entitled to contribution based Jobseeker’s Allowance.

Income-based Jobseeker's Allowance

Income-based Jobseeker's Allowance claimant is a prisoner

24186 A person who is on temporary release (see DMG Chapter 21) or is detained in custody, will not be able to satisfy the condition of being available for employment, and will not be entitled to income-based Jobseeker's Allowance. The claimant may need to claim Income Support for housing costs. Any partner may need to claim Income Support or income-based Jobseeker's Allowance.

Detained in custody

24187 A claimant can be treated as available1 if, for a maximum of 96 hours before being released, he is held in police detention under specific legislation2.

**Note :** This only treats the claimant as available for the actual period he is in custody.

1 JSA Regs (NI), reg 14(1)(r); Police and Criminal Evidence (NI) Order 1989, Art 2(3)

**Example**

A man says that he failed to attend the Jobs and Benefits office as required on Thursday 8 June because he was being questioned in police custody from 4pm on Wednesday 7 June until 11am on Saturday 10 June. At 11am he was released and not charged with any offence.

The man was held in police custody for less than 96 hours. He can be treated as available for the whole period he was in custody.

24188 - 24191

Membership of the family - partner or member of a polygamous marriage

24192 Members of a couple or polygamous marriage are not treated as a member of the household1 and are not a member of the family if one, both or all of them are

**1.** detained in custody

**1.1** pending trial **or**

**1.2** pending sentence upon conviction **or**

**2.** serving a sentence imposed by a court **or**

**3.** on temporary release2 which may be allowed for a variety of reasons including

**3.1** home leave **or**

**3.2** attendance at rehabilitation courses **or**

**3.3** work during the daytime.

1 JSA Regs (NI), reg 78(3)(b); 2 Prison Act (NI) 53

24193 If DMG 24192 applies to the partner of a Jobseeker’s Allowance claimant1, the claimant should be treated as

**1.** a single claimant **or**

**2.** a lone parent if there is any child or young person in the family (see DMG Chapter 22 for further guidance on membership of the family).

**Note :** Lone parents may claim Income Support.

1 JSA Regs (NI), reg 78(3)(b)

24194

Membership of the family - child or young person

24195 Children or young people are not treated as a member of the household1 and are not a member of the family if they are

**1.** detained in custody

**1.1** pending trial **or**

**1.2** pending sentence upon conviction **or**

**2.** serving a sentence upon conviction

See DMG Chapter 22 et seq for further guidance on membership of the family.

1 JSA Regs (NI), reg 78(5)(g)

24196 If DMG 24195 applies to a child or young person, the claimant’s applicable amount should be revised or superseded to exclude

**1.** any personal allowance or premium for that child or young person **and**

**2.** if no other dependants remain in the family

**2.1** family premium **and**

**2.2** if the claimant is a lone parent, family premium (lone parent) where applicable.

See DMG Chapter 22 if a child or young person who is in custody or serving a sentence lives with the claimant for part of the benefit week.

Income Support

Meaning of prisoner

24197 The applicable amount of an Income Support claimant is affected if the claimant is a prisoner, or DMG 24210 or 24215 applies to a member of the family. A prisoner1 is a person

**1.** detained in custody following sentence to a term of imprisonment by a criminal, civil or military court, and includes a person

**1.1** temporarily removed from prison to hospital unless DMG 24198 **3.** applies **or**

**1.2** living outside the prison under a pre-release employment scheme2 **or**

**1.3** released on temporary licence which may be allowed for a variety of reasons including

**1.3.a** home leave **or**

**1.3.b** attendance at rehabilitation courses **or**

**1.3.c** work during the daytime **or**

**2.** detained in custody on remand awaiting trial orawaiting sentence upon conviction. This includes people temporarily removed from prison to hospital unless DMG 24198 **3.** applies.

1 IS (Gen) Regs (NI), reg 21(3) & Sch 7, para 8; 2 R(I) 9/75

24198 The definition of prisoner does not include a person

**1.** under suspended sentence **or**

**2.** sentenced to community service **or**

**3.** transferred from court or prison to hospital who is detained under mental health legislation1 (DMG 24215).

**Note :** This applies whether or not the person is subject to an order restricting discharge **or**

**4.** released on licence **or**

**5.** released on parole **or**

**6.** on a mandatory probation service programme.

**Note :** Release on licence means release on parole after completion of a specified part of the original sentence.

1 Mental Health (NI) Order 86, art 44 & 53

Meaning of detained in custody

24199 The word “detains” describes the physical confinement of a person1. Detained in custody means any detention where trial proceedings have started, or where trial proceedings have ended with a custodial sentence being imposed, including detention

1. in a prison
2. in a remand centre
3. in a police station when used as a remand overflow
4. of a child or young person under the direction of the District Magistrate
5. in a young offender’s institution
6. abroad.

1 R(S) 10/56

24200 Detention in custody might be

1. after the start of the proceedings, for example remand in custody1 **or**
2. after the proceedings have ended, for example sentence to prison.

1 R(IS) 1/94

24201 Detention in custody does not include a period before proceedings begin where the person is released on bail.

Life sentences

24202 Life sentences (or indeterminate sentences) fall into two categories -

**1.** mandatory life sentences. Where a person is convicted of murder this is the only sentence which can be imposed;

**2.** discretionary life sentences where the judge holds it to be appropriate in the circumstances of the case or where it is held to be necessary, e.g. for public protection.

24203 In both cases the trial judge sets a tariff period which is effectively the “punishment” part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the public. Otherwise they will remain in prison. A trial judge can decline to set a tariff period. In the case of mandatory lifers this is called a ‘whole life order’. It means that a prisoner can never become eligible for a Parole Board review or for release.

24204 A prisoner1 who remains in prison beyond their tariff date does not become eligible for social security benefits - they are still prisoners. Similarly a life sentence prisoner who is transferred to a psychiatric hospital for treatment does not become eligible for social security benefits when the tariff date has been reached. Such a patient would only become eligible for benefit upon release.

1 IS (Gen) Regs (NI), reg 21

25205 - 24209

Period of detention in custody

24210 When working out the period for which a person is detained in custody

1. **count** the day on which the detention starts
2. **do not count** the day of release from detention

as a day on which the person is detained in custody.

24211 A period of detention in custody therefore

1. begins on the day on which the person is detained **and**
2. ends on the day before the person is released from detention.

Applicable amount - Income Support only

Claimant is a prisoner

24212 The applicable amount for a claimant who is a prisoner under DMG 24197 **1.** is nil1.

1 IS (Gen) Regs (NI), Sch 7, para 8(a)

24213

Applicable amount - claimant is a prisoner on remand awaiting trial or sentence

24214 A person who is held on remand awaiting trial or awaiting sentence upon conviction (DMG 24197 **2.**) may be entitled to Income Support1. The applicable amount2 is

**1.** any allowable housing costs **or**

**2.** nil, if there are no allowable housing costs.

1 IS (Gen) Regs (NI), Sch 1B, para 22; 2 Sch 7, para 8(b)

Prisoner admitted to hospital

24215 The decision maker should establish the legislation used to admit a prisoner to hospital. A person admitted

**1.** under prescribed mental health legislation1 is not a patient for Income Support purposes and has an applicable amount of nil **or**

**2.** under prescribed mental health legislation2 other than that in **1.** above is a patient for Income Support purposes and has entitlement to their full applicable amount.

1 IS (Gen) Regs (NI), reg 21; Sch 7, para 2A; Mental Health (NI) Order 1986, art 53;  
2 Mental Health (NI) Order 1986

24216 - 24224

Membership of the family - partner or member of a polygamous marriage

24225 Members of a couple or polygamous marriage are not treated as members of the household1 and are not members of the family if one, both or all of them aredetained in custody

**1.** following sentence to a term of imprisonment by a criminal or civil court, including a person

**1.1** temporarily removed from prison to hospital **or**

**1.2** living outside the prison under a pre-release employment scheme **or**

**1.3** released on temporary licence2 which may be allowed for a variety of reasons including

**1.3.a** home leave **or**

**1.3.b** attendance at rehabilitation courses **or**

**1.3.c** work during the daytime.

**2.** on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital.

See DMG Chapter 22 et seq for further guidance on membership of the family.

1 IS (Gen) Regs (NI), reg 16(3)(b); 2 Prison Act (NI) 53

Partner of a prisoner claiming Income Support

24226 The partner of a prisoner may claim Income Support. The partner claiming Income Support should be treated as

**1.** a single claimant **or**

**2.** a lone parent if there is any child or young person in the family (see DMG Chapter 22 et seq for further guidance on membership of the family).

Membership of the family - child or young person

24227 Children or young people are not treated as a member of the household1 and are not a member of the family if they are

**1.** detained in custody

**1.1** pending trial **or**

**1.2** pending sentence upon conviction **or**

**2.** serving a sentence upon conviction.

See DMG Chapter 22 et seq for further guidance on membership of the family.

1 IS (Gen) Regs (NI), reg 16(5)(f)

24228 If DMG 24215 applies to a child or young person the claimant’s applicable amount should be superseded to exclude

**1.** any personal allowance or premium for that child or young person **and**

**2.** if no other dependants remain in the family

**2.1** family premium **and**

**2.2** if the claimant is a lone parent, family premium (lone parent) where applicable.

See DMG Chapter 22 if a child or young person who is in custody or serving a sentence lives with the claimant for part of the benefit week1.

1 IS (Gen) Regs (NI), reg 16(6)

24229 - 24240

Temporarily separated members of a couple or polygamous marriage - income-based Jobseeker's Allowance and Income Support

Temporary absence - couples

24241 A couple who are temporarily separated continue to be treated as members of the same household, for example, where one member of the couple goes into temporary residential care (respite care). But see DMG Chapter 22 for some exceptions1. A special assessment is needed where

**1.** one member is

**1.1** in a residential care home, nursing home, Abbeyfield home or independent hospital

**1.2** in a rehabilitation centre for alcoholics or drug addicts **or**

**1.3** living away from home to

**1.3.a** take part in training **or**

**1.3.b** attend a course as part of an employment rehabilitation programme2, **or**

**1.4** in a probation or bail hostel **and**

**2.** the other member is

**2.1** in the couple’s normal home **or**

**2.2** a patient **or**

**2.3** in a nursing home **or**

**2.4** in a residential care home.

1 JSA Regs (NI), reg 78; IS (Gen) Regs (NI), reg 16; 2 Disabled Persons (Employment) Act 45, sec 2 & 3;   
E & T Act (NI) 50, sec 1(1)

24242 If DMG 24241 applies, the assessment is the greater of1

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

**2.** the total of the applicable amounts for the claimant and partner assessed **as if** they are both

**2.1**  single claimants (or lone parents as the case may be) **and**

**2.2** living in their present accommodation (see DMG Chapter 23).

**Note :** The couple's income and capital should continue to be taken into account in the normal way. This is so even though the applicable amounts may be assessed as if they are both single (or lone parents).

1 JSA Regs (NI), Sch 4, para 5; IS (Gen) Regs (NI), Sch 7, para 9

**Example**

A claimant and his wife live together in the same household. The claimant receives Disability Living Allowance and his wife receives Carer’s Allowance for caring for him. The claimant goes into a residential care home for 3 weeks to give his wife a rest.

**Assessment 1 - assess as a couple**

The claimant is entitled to

**1.** the normal applicable amount for a couple

**2.** disability premium at the couple rate

**3.** a carer premium.

The claimant is not entitled to severe disability premium because only one of the couple receives Disability Living Allowance.

**Assessment 2 - assess as single**

The claimant is entitled to

**1.** the normal applicable amount for himself

**2.** disability premium at the single rate.

The claimant is not entitled to severe disability premium because someone is receiving Carer’s Allowance for caring for him

**and**

the claimant’s wife is entitled to

**1.** the normal applicable amount for herself

**2.** a carer premium because she is receiving Carer’s Allowance.

The decision maker compares the amount in the first assessment with the total of the two amounts in the second assessment and awards the higher amount.

Temporary absence - polygamous marriages

24243 Members of a polygamous marriage who are temporarily separated continue to be treated as members of the same household. But see DMG Chapter 22 for some exceptions1. A special assessment is needed where a member of a polygamous marriage is absent from the home in the circumstances in DMG 24241 **1.**2. The claimant’s applicable amount should be the greater of3

**1.** the normal applicable amount for the family **or**

**2.** the total of the applicable amount

**2.1** for the members left at home **and**

**2.2** for each absent member assessed as if they are each

**2.2.a** a single claimant (or lone parent as the case may be) **and**

**2.2.b** living in their present accommodation.

**Note :** The provision in **2.** does not apply when all the members of the marriage are temporarily absent from the home.

1 JSA Regs (NI), reg 78; IS (Gen) Regs (NI), reg 16; 2 JSA Regs (NI), Sch 4, para 6 & Sch 4A, para 5;  
IS (Gen) Regs (NI), Sch 7, para 10; 3 JSA Regs (NI), Sch 4 & reg 84 & Sch 4A; IS (Gen) Regs (NI), Sch 7 & reg 18

24244 - 24246

Absence from Northern Ireland/United Kingdom - members of a couple or polygamous marriage

Introduction

24247 It is a condition of entitlement to Jobseeker’s Allowance and Income Support that a person is in Northern Ireland1. But entitlement can sometimes continue during an absence from Northern Ireland. Guidance on entitlement to Jobseeker’s Allowance and Income Support when a person is absent from Northern Ireland is given in DMG 072150 et seq and 071940 et seq.

1 JS (NI) Order 95, Art 3(2)(i) & Sch 1, para 11; SS C&B (NI) Act 92, sec 123(1); IS (Gen) Regs (NI), reg 4

Claimant receiving treatment outside Northern Ireland

24248 The claimant may go abroad to have pre-arranged National Health Service treatment. If the claimant was entitled to Jobseeker’s Allowance or Income Support immediately before they left Northern Ireland, then

**1.** the claimant is treated as still being in

**1.1** Northern Ireland while they are having the treatment **and**

**1.2** if they are a member of a couple, in the same household1 as their partner at home for the period of the treatment **and**

**2.** Jobseeker’s Allowance or Income Support can continue in payment2.

1 JSA Regs (NI), reg 78; IS (Gen) Regs (NI), reg 16(1);  
2 JSA Regs (NI), reg 50(6AA) & (6C); IS (Gen) Regs (NI), reg 4(3A)

Claimant absent from Northern Ireland

24249 A claimant who is absent from Northern Ireland may be a member of a couple or polygamous marriage. Such a claimant can claim Jobseeker’s Allowance or Income Support for the family for so long as entitlement continues (see DMG 071940 & 072150). The decision maker should calculate the applicable amount according to the circumstances of the family in Northern Ireland1. The family's income and capital should continue to be treated in the normal way.

1 JSA Regs (NI), Sch 4, para 10, 11, 12 & 13; IS (Gen) Regs (NI), Sch 7, para 11, 11A, 12 & 12A

**Example**

Gerhard is in receipt of Income Support for himself, his wife and their two children. On 2nd March he goes abroad temporarily to visit his mother. He continues to satisfy the other conditions of entitlement while he is abroad. Gerhard's entitlement to Income Support can continue for the first four weeks of his absence (3 March to 30 March) (see DMG 071943).

Partner in Northern Ireland claims - couples

24250 Where the claimant is absent from Northern Ireland, a claim for Jobseeker’s Allowance or Income Support may be received from the partner in Northern Ireland. This may be made at any time, even where the relevant period of entitlement in DMG 071943 has not run out. But the new claimant must at all times satisfy the normal conditions of entitlement.

**Note :** The partner will not be entitled if their claim is made during the relevant period or before the absent claimant has agreed to terminate their award. This is because members of a family cannot have entitlements for the same period.

24251 The absent partner should be treated as a member of the family for up to 52 weeks, provided that the absence is temporary (see DMG Chapter 22). Where the absent partner is

**1.** still in the United Kingdom, calculate the applicable amount in the normal way **or**

**2.** absent from the United Kingdom, calculate the applicable amount1 as if

**2.1** the absent partner was still at home, if the period abroad has lasted for the relevant period in DMG 071943 or less **or**

**2.2** the partner in Northern Ireland was a single claimant or lone parent, for any period over that of the relevant period in DMG 071943.

**Note :** The United Kingdom is Great Britain together with Northern Ireland (DMG Chapter 07).

1 JSA Regs (NI), Sch 4, para 10 & 11; IS (Gen) Regs (NI), Sch 7, para 11 & 11A

**Example**

Damon is in receipt of Income Support for himself, his wife Melanie, and their two children. On 16 March, Damon goes abroad temporarily and Melanie claims Income Support for the family. Damon has agreed to give up his entitlement from the 15th. Melanie satisfies the normal conditions of entitlement and Damon is treated as a member of the family while he is temporarily absent from the United Kingdom.

For the first four weeks of Damon's absence, Melanie's applicable amount is calculated as if he was still at home. This means that Melanie is awarded a personal allowance at the couple rate for the period 17 March to 13 April.

From 14 April onwards Melanie's applicable amount is calculated as if she was a lone parent. A personal allowance at the lone parent rate is awarded.

On 21 April, Damon starts temporary remunerative work abroad. This means that Melanie is no longer entitled to Income Support for the family, because she is a member of a married couple and her partner is in remunerative work.

24252 - 24254

Partner in Northern Ireland claims - polygamous marriages

24255 Where the claimant in a polygamous marriage is absent from Northern Ireland, a claim for Jobseeker’s Allowance or Income Support may be received from a partner in Northern Ireland. A claim may be accepted from such a partner **only** when the absent claimant's entitlement to Income Support has ended. The new claimant must then satisfy the normal conditions of entitlement.

24256 Treat the partner in Northern Ireland as a single claimant or lone parent1. Any payments made to the claimant by the spouse/partner while absent from Northern Ireland should be treated as liable relative payments.

1 JSA Regs (NI), reg 78(3)(c); IS (Gen) Regs (NI), reg 16(3)(d)

Partner absent from United Kingdom

24257 The partner of a claimant may be absent from the United Kingdom. The absent partner continues to be a member of the claimant's family for up to 52 weeks if the absence remains temporary (see DMG Chapter 22). The normal conditions of entitlement continue to apply during this period as if the absent partner were still at home.

24258 The normal rules for calculating the family's applicable amount change when the partner's absence from the United Kingdom

**1.** stops being temporary **or**

**2.** exceeds the four or eight week relevant period in DMG 071945

whichever is the sooner.

Amount payable

24259 Where DMG 24258 applies, calculate the applicable amount as if the partner absent from the United Kingdom was no longer a member of the household1. This means that the claimants should be treated as if they are single claimants or lone parents when awarding a personal allowance.

1 JSA Regs (NI), Sch 4, para 10, 11, 12 & 13; IS (Gen) Regs (NI), Sch 7, para 11, 11A, 12 & 12A

24260 The income and capital of the whole family is taken into account in the normal way for up to 52 weeks of any temporary absence (DMG 24257). This is so even though no personal allowance is in payment for the absent partner.

24261 After 52 weeks, or when the absence stops being temporary, the absent partner is no longer treated as a member of the household. Any payments from the absent partner should then be treated as liable relative payments.

**Example**

Paul is in receipt of Income Support for himself, his wife Lynda, and their son Dale. Their only other income is Child Benefit and a personal pension payment of £40 per week made to Lynda. On 7 June, Lynda goes abroad temporarily and Paul carries on claiming Income Support. Lynda is treated as a member of the family while she is temporarily absent from the United Kingdom.

For the first four weeks of Lynda's absence, Paul's applicable amount is calculated as if she was still at home. This means that Paul is awarded a personal allowance at the couple rate for the period 8 June to 5 July.

From 6 July onwards Paul's applicable amount is calculated as if he was a lone parent. A personal allowance at the lone parent rate is awarded. The pension payment made to Lynda continues to be taken into account in the normal way. This is because Lynda continues to be treated as a member of Paul's family during her temporary absence.

24262 - 24369

Reduction in Income Support - appeal against a decision because of capability for work

24370 The applicable amount of an Income Support claimant should be reduced where the

**1.** decision maker has decided that the claimant is not incapable of work under the personal capability assessment **and**

**2.** claimant has made and is continuing with an appeal against the decision maker's decision1.

1 IS (Gen) Regs (NI), reg 22A(1)

24371 The reduction is 20% of the single person’s rate as prescribed1.

**Claimant groups Appropriate single age  
 reduction**

i Single under 18 Less than 18 rate

ii Couple both under 18 Less than 18 rate

iii Single between 18 and 25 18 - 25 rate

iv Couple one member under 18 the other 18 - 25 rate  
 between 18 and 25

v Single 25 or over Over 25 rate

vi Couple not falling under iv where one Over 25 rate  
 member aged 18 or over

1 IS (Gen) Regs (NI), reg 22A(1)(a)

24372 The amount of the reduction should be rounded, where it is not a multiple of 5p, to the nearest 5p (2.5p being rounded down).

24373 No reduction should be made on the first application of the personal capability assessment if on 12.4.95 the claimant1

**1.** had been incapable of work for a continuous period of 28 weeks and was still incapable on that date **or**

**2.** was in receipt of Invalidity Benefit or Severe Disablement Allowance.

1 IS (Gen) Regs (NI), reg 22A(3)

Transitional provisions

24374 The decision maker should not make a reduction1 if the

**1.** decision under the personal capability test against which the claimant has appealed was made after 12.4.95 but before 2.10.95 **and**

**2.** claimant’s appeal has still not been determined.

1 IS (Gen) (JSA Consequential Amdt) Regs (NI) 96, reg 27(3)

Savings provision

24375 The decision maker should not make a reduction if the claimant’s appeal is against an incapacity decision made before 13.4.951.

1 DWA & IS (Gen) (Amdt) Regs (NI) 95, reg 5

Claimant entitled to disability premium

24376 Disability premium may be affected if the decision maker decides that the claimant is not incapable of work (see DMG Chapter 23). This applies whether or not the claimant’s Income Support is reduced as in DMG 24371.

24377 - 24389

Housing costs run-on

24390 A person may be entitled to Income Support in respect of housing costs for a limited period after they start remunerative work (see DMG 20530).

Applicable amount

24391 In these cases the applicable amount is the lowest of1

1. the applicable amount in respect of housing costs **or**
2. the amount of Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance to which the claimant was entitled prior to commencing remunerative work **or**
3. if the claimant was in receipt of training allowance, the amount of Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which he would have been entitled to in respect of housing costs.

1 IS (Gen) Regs (NI), Sch 7, para 17A(1)

Changes to the applicable amount

24392 The applicable amount in respect of housing costs run-on may only be varied if1

**1.** there are changes to

**1.1** a personal allowance **or**

**1.2** premiums **or**

**1.3** an applicable amount paid in a special case

**2.** the amount of housing costs in the applicable amount changes as a result of

**2.1** the claimant being entitled to income support for a continuous period of 26 weeks or more **or**

**2.2** a change to the Standard Interest Rate **or**

**2.3** a non-dependant deduction either becoming or ceasing to become applicable.

1 IS (Gen) Regs (NI), Sch 7, para 17A(2) & (3)

24393 - 24399

**Restriction under the loss of benefit provisions**

**General**

24400 Restriction on the payment of benefit following convictions for benefit fraud offences came into force on 1.4.021.

1 SS Fraud Act (NI) 2001; SS (Loss of Benefit) Regs (NI) 2002

24401 The restrictions affect both Income Support and Jobseeker’s Allowance for joint claim couples. General guidance on how to apply the restrictions is contained in DMG Chapter 8 at DMG 8400 et seq. The following guidance concerns provisions which affect Income Support and Jobseeker’s in particular.

**Joint claim couples - Jobseeker’s Allowance**

24402 **[See DMG Memo Vol 1/92, 3/82, 4/106, 9/18 & 13/47]** Where on the determination day (see DMG 8408) the offender is a member of a joint-claim couple in receipt of joint-claim Jobseeker’s Allowance, the first day of the disqualification period (see DMG 8410) is 28 days after the determination day1. However this can be no later than 5 years and 28 days after the date of the second conviction2 where the second offence was committed after 31.3.08.

1 SS (Loss of Benefit) Regs (NI), reg 2(2)(b); 2 reg 2(7)

24403 **[See DMG Memo Vol 1/92, 3/82, 4/106, 9/18 & 13/47]** Where the Department decides to award a joint-claim Jobseeker’s Allowance to a joint-claim couple which includes the offender, the first day of the disqualification period is 28 days after the day the Department decides to make the award1. However, again this cannot be later than 5 years and 28 days after the date of the second conviction2 where the second offence was committed after 31.3.08.

1 SS (Loss of Benefit) Regs (NI), reg 2(2)(b); 2 reg 2(7)

Family member of offender - Income Support and Jobseeker’s Allowance

24404 **[See DMG Memo Vol 1/92, 3/82, 4/106, 9/18 & 13/47]** Where on the determination day (see DMG 8408) the offender is a member of the family of a person in receipt of Income Support or Jobseeker’s Allowance the first day of the disqualification period (see DMG 8210) is 28 days after the determination day1. However this can be no longer than 5 years and 28 days after the date of the second conviction2 where the second offence was committed after 31.3.08.

1 SS (Loss of Benefit) Regs (NI), reg 2(2)(c); 2 reg 2(7)

24405 **[See DMG Memo Vol 1/92, 3/82, 4/106, 9/18 & 13/47]** Where the Department decides to award Income Support or Jobseeker’s Allowance to a member of the offender’s family the first day of the disqualification period is 28 days after the day the Department decides to make the award1. However, again this cannot be later than 5 years and 28 days after the date of the second conviction2 where the second offence was committed after 31.3.08.

1 SS (Loss of Benefit) Regs (NI), reg 2(2)(c); 2 reg 2(7)

**Amount payable - Income Support**

24406 Income Support payable to an offender or to an offender’s family member will be reduced by 20% of a single claimant’s personal allowance rate during the disqualification period (see DMG 8410) if

1. the offender or a member of the offender’s family is pregnant or seriously ill1 **or**
2. the offender’s applicable amount has been reduced pending the outcome of an appeal against an incapacity for work decision that the offender is not incapable of work (whether or not the appeal is successful)2.

In all other cases the reduction will be 40%3. Decision makers should note that a claimant’s payment must not be reduced below 10 pence per week.

1 SS (Loss of Benefit) Regs (NI), reg 3(1)(a); 2 reg 3(1)(b); 3 reg 3(1)(c)

24407

**Amount payable - Jobseeker’s Allowance**

24408 Jobseeker’s Allowance is not payable to offenders during the disqualification period1 (see DMG 8410). During this period offenders will have access to hardship applications (see DMG Chapter 35).

1 SS (Loss of Benefit) Regs (NI), reg 1(2)

24409 Payment restrictions1 apply to an offender who is a member of a joint-claim couple during the disqualification period. In these cases, unless the couple qualify for hardship, the other member of the couple may receive the equivalent of a single person’s rate, dependant on the following circumstances

**1.** where the other member satisfies the conditions for contribution-based Jobseeker’s Allowance they will receive contribution-based Jobseeker’s Allowance **or**

**2.** the other member of the couple will receive income-based Jobseeker’s Allowance at a rate equivalent to a single person’s applicable amount.

This only applies so long as the other member of the couple is not subject to any labour market sanctions or payment restrictions due to a breach of a Community Order2.

1 SS (Loss of Benefit) Regs (NI), reg 4; 2 SS Fraud Act (NI) 2001, sec 7(2)

24410 – 24499

Person from abroad and persons subject to immigration control - income-based Jobseeker’s Allowance and Income Support

General

24500 Prior to 3.4.00 the definition of a person from abroad included asylum seekers. The applicable amount for a person from abroad was nil but many asylum seekers qualified for urgent case payments.

24501 The Asylum and Immigration Act 1999 removed entitlement for the vast majority of asylum seekers. The National Asylum Support Service was set up within the Home Office to provide support.

**Persons from abroad**

24502 A person from abroad is now defined as someone who has failed the habitual residence test1. See DMG Chapter 7 for guidance on the habitual residence test.

*1 JSA Regs (NI), reg 85A(1); IS (Gen) Regs (NI), reg 21AA(1)*

24503 The applicable amount of a person from abroad is nil1.

*1 JSA Regs (NI), Sch 4, para 14; IS (Gen) Regs (NI), Sch 7, para 15*

24504 - 24506

Persons subject to immigration control

24507 A person subject to immigration control means a person who is **not** an European Economic Area national and who1

1. requires leave to enter or remain in the UK but does not have it
2. has leave subject to the condition “no recourse to public funds”
3. is a sponsored immigrant (see DMG Chapter 7) **or**
4. has had limited leave extended only because he has appealed a decision to vary or refuse to vary that leave.

1 Immigration and Asylum Act 1999, sec 115

24508 A person subject to immigration control is excluded from Income Support and income-based Jobseeker's Allowance1 unless they fall within one of the categories in DMG 24509.

*1 Immigration and Asylum Act 1999, sec 115*

Person subject to immigration control entitled to normal Income Support/income-based Jobseeker’s Allowance

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

24509 The following persons subject to immigration control can be considered for Income Support/income-based Jobseeker's Allowance under the normal rules

1. a person with limited leave to remain whose funds from abroad are temporarily suspended, but their entitlement is limited to a period of 42 days1
2. certain asylum seekers2.

*1 IS (Gen) Regs (NI), reg 22B & Sch 1, para 21  
2 SS (Immigration and Asylum) Consequential Amendment Regulations (NI) 2000, reg 2(5) & Sch 1B, para 21*

Persons subject to immigration control entitled to urgent case payments

24510 Persons subject to immigration control can no longer be considered for urgent case payments1.

*1 SS (Miscellaneous Amendments) Regs (NI) 2010, reg 2(1)*

**Lone parent is not a person subject to immigration control but child or young person is a person subject to immigration control**

24511 If

1. a lone parent is not a person subject to immigration control, or falls within one of the categories in DMG 24509, **and**
2. a child or young person in the family is a person subject to immigration control

an amount should be included in the applicable amount for that child or young person1 (see DMG 23039).

1 JSA Regs (NI), reg 83(b) & (d); IS (Gen) Regs (NI), reg 17(1)(b) & (c)

**Lone parent is a person subject to immigration control but child or young person is not a person subject to immigration control**

24512 A lone parent that is a person subject to immigration control is not entitled to benefit and so will not be entitled to any applicable amounts for a child or young person that is not a person subject to immigration control.

Couples

Claimant is not a person subject to immigration control but partner is a person subject to immigration control

24513 If the claimant is a member of a couple and is not a person subject to immigration control or falls within one of the categories in DMG 24509 but the partner is a person subject to immigration control, the applicable amount will be1

**1.** the claimant’s personal allowance **and**

**2.** for any child or young person who is a member of the claimant’s family and either not a person subject to immigration control or in one of the categories in DMG 24509 (see DMG 23039)

**2.1** the appropriate child or young person’s allowance **and**

**2.2** a family premium **and**

**2.3** a disabled child premium, if appropriate **and**

**3.** any appropriate premium **and**

**4.** housing costs **and**

**5.** any transitional element.

**Note :** There is no modification of the premiums where the claimant’s partner is a person subject to immigration control therefore if the claimant qualifies for disability premium it should be paid at the couple rate.

1 JSA Regs (NI), Sch 4, para 14A(a); IS (Gen) Regs (NI), Sch 7, para 14A(a)

Claimant and partner are not persons subject to immigration control but child or young person is a person subject to immigration control

24514 If

1. the claimant and partner are not persons subject to immigration control **and**
2. a child or young person in the family is a person subject to immigration control

an amount should be included in the applicable amount for that child or young person1 (see DMG 23039).

1 JSA Regs (NI), reg 83(d); IS (Gen) Regs (NI), reg 17(1)(c)

24515 - 24530

Polygamous marriages

Claimant is not a person subject to immigration control and one or more but not all of the partners is a person subject to immigration control

24531 If the claimant is a member of a polygamous marriage and is not a person subject to immigration control, or falls within one of the categories in DMG 24509, but one or more of the partners is a person subject to immigration control, the applicable amount will be1

**1.** the personal allowance for the claimant and one partner who is not a person subject to immigration control (including special cases)2 **and**

**2.** an amount for any other partner who is not a person subject to immigration control **and**

**3.** for any child or young person who is a member of the claimant’s family and either not a person subject to immigration control or in one of the exempt categories (see DMG 23039)

**3.1** the appropriate child or young person’s allowance **and**

**3.2** a family premium **and**

**3.3** a disabled child premium, if appropriate **and**

**4.** any appropriate premium for the claimant and the partner in **1.** **and**

**5.** housing costs **and**

**6.** any transitional element.

1 JSA Regs (NI), Sch 4, para 13A(b); IS (Gen) Regs (NI), Sch 7, para 14A(b)

Claimant and all of partners are not persons subject to immigration control but child or young person is a person subject to immigration control

24532 If

**1.** the claimant and all of the partners are not persons subject to immigration control **and**

**2.** a child or young person in the family is a person subject to immigration control

an amount should be included in the applicable amount for that child or young person1 (see DMG 23039).

1 JSA Regs (NI), 84(1)(c); IS (Gen) Regs (NI), reg 18(1)(c)

Income and capital of a partner, child or young person who is a person subject to immigration control

24533 If a claimant is married polygamously to two or more members of the household, the

**1.** income and capital of each partner **and**

**2.** income of a child or young person who is a member of the claimant’s family

should be calculated in the same way as for the claimant1. The income or capital should then be treated as belonging to the claimant2.

**Note :** The decision maker should consider the special rules on the income of a child or young person.

1 JSA Regs (NI), reg 88(4); IS (Gen) Regs (NI), reg 23(3);  
2 JS (NI) Order 95, Art 15(2); SS C&B (NI) Act 92, sec 132(1)

**Example**

Hussain is a member of a polygamous marriage and has 3 wives, Fatima, Parveen and Yasmin. Yasmin has limited leave to enter the UK and her passport is not endorsed that she is prohibited from working. Yasmin works 12 hours per week and earns £35. Hussain claims Income Support.

The decision maker decides that

**1.** Hussain, Fatima, Parveen and Yasmin are members of a polygamous marriage **and**

**2.** Yasmin is a person subject to immigration control who is not entitled to an urgent case payment **and**

**3.** Hussain is entitled to a personal allowance for himself and Fatima and a separate personal allowance for Parveen, no benefit is payable for Yasmin **and**

**4.** Yasmin’s wages should be taken into account on Hussain’s Income Support claim.

24534 - 24999