Chapter 54 - Special cases & urgent case payments

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Chapter 54 - Special cases & urgent case payments

Statutes commonly referred to in Chapter 54

|  |  |
| --- | --- |
| **Full Title** | **Abbreviation** |
| Asylum and Immigration Act 1996Employment and Training Act (Northern Ireland) 1950 | A & I Act 96E & T Act (NI) 50 |
| Health and Personal Social Services (Northern Ireland) Order 1972 | HPSS (NI) Order 72 |
| Immigration and Asylum Act 1999  | I & A Act 99  |
| Social Security Administration (Northern Ireland) Act 1992  | SS A (NI) Act 92 |
| Social Security Fraud Act (Northern Ireland) 2001 | SS Fraud Act (NI) 2001 |
| Welfare Reform Act (Northern Ireland) 2007 | WR Act (NI) 07 |

Chapter 54 - Special cases & urgent case payments

Statutory Rules commonly referred to in Chapter 54

|  |  |  |
| --- | --- | --- |
| **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) |
| Employment & Support Allowance Regulations | The Employment and Support Allowance Regulations (Northern Ireland) 2008 No. 280 | ESA Regs (NI) |
| Hospital In-patient Regulations | The Social Security (Hospital In-patient) Regulations (Northern Ireland) 2005 No. 580 | SS (HIP) Regs (NI) |
| Loss of Benefit Regulations | The Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002 No. 79 | SS (Loss of Benefit) Regs (NI) |
|  |  |  |

Chapter 54 - Special cases & urgent case payments

Scope of this Chapter

54001 This Chapter explains how to calculate the amount of Employment and Support Allowance where people are

**1.** a patient (see DMG 54003)

**2**. without accommodation (see DMG 54156)

**3.** members of religious orders (see DMG 54170)

**4.** prisoners (see DMG 54197)

**5.** temporarily separated members of a couple or polygamous marriage (see DMG 54541)

**6.** absent from NI/UK (see DMG 54547)

**7.** subject to a restriction under the loss of benefit provisions (see DMG 54579)

**8.** from abroad or subject to immigration control (see DMG 54600)

**9.** in hardship (see DMG 54612).

54002 The chapter also contains guidance about awarding Employment and Support Allowance in certain urgent cases.

Patients

General

54003 A patient means a claimant (other than a prisoner) who is regarded as receiving free in-patient treatment1. For how entitlement to contribution-based Employment and Support Allowance is affected by being a patient see DMG 54106. For how entitlement to income-related Employment and Support Allowance is affected by being a patient see DMG 54091.

1 SS (HIP) Regs (NI), reg 2(4) & 2(5) & ESA Regs (NI), reg 69(2)

Free in-patient treatment

Deciding free in-patient treatment

54004 To be receiving free in-patient treatment a person must be

**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 1972

Maintained free of charge

54005 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(4); 2 HPSS (NI) Order 1972, art 31; 3 SS (HIP) Regs (NI), reg 2(4)

54006 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 Personal 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 1972, art 33; 2 art 5; 3 HPSS (NI) Order 1972

Burden of proof

54007 The burden of proving that a person is not being maintained free of charge rests with that person1.

1 CS 591/49

 54008 - 54014

Medical or other treatment

54015 To be treated as receiving free in-patient treatment a person must be receiving

**1.** medical treatment, for example

**1.1** surgical treatments

**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** observations

**2.2** therapies

**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.

54016 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment. 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

54017 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

54018 A hospital1 is

**1.** an institution for

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

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

**1.3** people needing medical rehabilitation

**2.** a maternity home

**3.** any institution for dental treatment 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 1972, art 2

54019 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 1972, art 2

54020 Mental disorder means

**1.** mental illness1 **or**

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

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

1 Mental Health (NI) Order 1986, art 3(1)

Similar institution

54021 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.

54022 A hospital or similar institution also includes those

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

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

Examples of hospitals or similar institutions

54023 A hostel or residential care home providing accommodation and social care to former alcoholics or drug addicts is not similar to a hospital.

54024 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.

54025 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.

 54026 - 54027

In-patient

54028 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

54029 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.

54030 Examples of when a person would not be included as an in-patient are where the person is receiving treatment at home during the period a rehabilitation centre is closed for a holiday1.

1 R(I) 14/56

Prescribed legislation

54031 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)

54032 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 for a person who does not need 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 1972, art 14A; 2 arts 15 & 36; 3 art 71(2)

 54033

Services provided under Health and Personal Social Services legislation

54034 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 1972

Imprisonment

54035 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.

54036 A prisoner1 is a person detained in custody

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

**1.1** temporarily removed from prison to hospital unless DMG 54037 **3.** applies **or**

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

**1.3** on temporary release 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.** on remand awaiting trial unless DMG 54037 **3.** applies **or**

**3.** awaiting sentence upon conviction unless DMG 54037 **3.** applies.

1 ESA Regs (NI), reg 69(2); 2 R(I) 9/75

54037 The definition of prisoner does not include a person

**1.** under suspended sentence

**2.** sentenced to community service

**3.** transferred from court or prison to hospital who is detained under prescribed mental health legislation1

 **4.** released on licence

**5.** released on parole.

 **Note :** **3.** applies whether or not the person is subject to an order restricting discharge.

1 Mental Health (NI) Order 1986

54038 - 54040

Community care arrangements

Arrangements by Health and Social Services Boards

54041 As part of a community care programme, Health and Social Services Boards may make a variety of arrangements with residential care homes or hostels for

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

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

The decision maker should consider DMG 54004 to decide whether the person is receiving free in-patient treatment in the home or hostel.

54042 Examples of arrangements made by Health and Social Services Boards under community care programmes 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.**.

54043 - 54047

Points to consider

54048 The decision maker should consider the guidance in DMG 54049 - 54054 when deciding whether the person is receiving free in-patient treatment in the new accommodation.

54049 When deciding whether the new accommodation is a hospital or similar institution the decision maker should consider the definition in DMG 54018 et seq. The decision maker should not compare the new accommodation with the person's previous hospital accommodation.

54050 If the arrangements with the Health and Social Services Board and the nursing home are under any of the provisions of the prescribed legislation1, DMG 54004 is satisfied.

1 HPSS (NI) Order 1972, art 14A

54051 If a Health and Social Services Board helps a voluntary sector home by awarding a grant or loan under other legislation1, DMG 54004 is not satisfied. But if the Health and Social Services Board have a contractual agreement to pay a grant for future financial years, this may be evidence that the agreement has been made under prescribed legislation, and the person may be receiving free in-patient treatment.

1 HPSS (NI) Order 1972, art 71(2)

54052 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 Employment and Support Allowance purposes. For example they may agree to pay the difference between

**1.** ordinary applicable amounts of income-related Employment and Support Allowance **and**

**2.** the amount charged for the home.

 **Note :** If the agreement is made under prescribed legislation1, the Health and Social Services Board is responsible for the full cost of the accommodation and services no matter what the agreement states.

1 HPSS (NI) Order 1972, arts 36 & 99

54053 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 the home reimburses

**1.** the **full** cost of the assistance to the Health and Social Services Board, DMG 54004 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 1972, arts 14A(2) & 15(1B); 2 arts 15 & 16

54054 The arrangement between the Health and Social Services Board and nursing home must include continuing help. If a placement is found without any continuing commitment from the Health and Social Services Board to fund the care, DMG 54004 is not satisfied. For example a hospital social worker may help a patient who is about to be discharged to find a suitable nursing home.

 54055 - 54060

Existing cases - revision or supersession

54061 The decision maker may decide that a person 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 DMG guidance is not grounds to revise or supersede an existing decision, and the existing decision continues to apply.

54062 Enquiries should be made to decide whether all the conditions in DMG 54004 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 54004 are satisfied the person is receiving free in-patient treatment.

 54063 - 54071

Periods of free in-patient treatment

54072 A person is receiving free in-patient treatment for any period that the conditions in DMG 54004 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 (HIP) Regs (NI), reg 2(5)

54073 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.

54074 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.

54075 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.

 54076 - 54090

Patients - applicable amounts

Effect of hospital admission on premiums

54091 See DMG Chapter 44 for guidance on the effect of hospital admission on premiums.

Housing costs

54092 If the claimant is treated as continuing to occupy a dwelling as the home, the decision maker should consider housing costs (see DMG Chapter 44).

 54093 - 54096

Membership of the family

54097 The decision maker should consider the guidance in DMG Chapter 43 to decide whether a patient is still a member of a family if the patient is a

**1.** member of a couple **or**

**2.** member of a polygamous marriage

 If an income-related Employment and Support Allowance claimant is no longer a member of a family, the decision maker should revise or supersede benefit on the basis of the new circumstances.

 **Example**

Peter and Candy are married. Peter is in receipt of income-related Employment and Support Allowance at the couple rate. Candy is knocked down by a car and is admitted to hospital. She is still in hospital after 52 weeks and there is no sign of recovery. The decision maker decides that Candy is likely to be substantially absent from Peter for more than 52 weeks and consequently supersedes the award of income-related Employment and Support Allowance with the effect that Peter receives the single claimant rate of income-related Employment and Support Allowance.

 54098 - 54105

Contribution-based Employment and Support Allowance cases

54106 The personal rate of a contribution-based Employment and Support Allowance claimant is not affected if the claimant is in hospital. However, no component is payable1 after the claimant has been a patient for a continuous period of more than 52 weeks.

1 ESA Regs (NI), reg 67(2) & (3), 69 & Sch 5, para 13

Income-related Employment and Support Allowance cases - detention under prescribed mental health legislation

54107 The applicable amount of a patient detained or liable to be detained under prescribed mental health legislation1 is nil.

1 Mental Health (NI) Order 1986, art 53

Income-related Employment and Support Allowance cases - 52 weeks cases

54108 Where a single claimant has been a patient for a continuous period of more than 52 weeks then the applicable amount should include only the normal personal allowance for the claimant plus, if appropriate, any transitional addition1 plus any housing costs. No premiums or components will be payable2.

1 ESA (TP & HB) (EA) Regs (NI), Sch 2; 2 ESA Regs (NI), reg 69(1) & Sch 5, para 13

54109 Where both members of a couple have been a patient for a continuous period of 52 weeks then the applicable amount should include only the normal couple allowance plus any housing costs. No premiums or components will be payable1.

1 ESA Regs (NI), reg 69(1) & Sch 5, para 13

 54110 - 54155

Others

People without accommodation - income-related Employment and Support Allowance

Applicable amount for people without accommodation

54156 Where a decision maker decides that a claimant has no accommodation the applicable amount will comprise of the normal personal allowance for the claimant1 plus where relevant, the amount of the support component or work-related activity component2. (The decision maker **cannot** for example include housing costs or premiums.)

 **Note :** Contribution-based Employment and Support Allowance is not affected by this guidance.

1 ESA Regs (NI), Sch 5, para 1
2 WR Act (NI) 2007, sec 4(2)(b)

54157 DMG 54156 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

54158 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.

54159 The site of the accommodation may alter from day to day, but it is still accommodation if the structure is habitable. Material which gives 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

54160 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

54161 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

54162 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 44).

 54163 - 54169

Members of religious orders - income-related Employment and Support Allowance

Meaning of religious order

54170 A religious order is

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

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

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

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

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

 54171

Applicable amount for members of religious orders

Member fully maintained

54172 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 Employment and Support Allowance is not affected by this guidance.

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

 **Example**

 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 enters a home that caters for priests of the congregation and becomes ill. He claims Employment and Support Allowance.

 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.

54173 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-related Employment and Support Allowance 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

54174 Income-related Employment and Support Allowance 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.

54175 Claims may be received from 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 a 59 year old nun who 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 Employment and Support Allowance.

 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 Employment and Support Allowance.

54176 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 through their Specialist Advisory Officer to Decision Making Services.

54177 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

 54178 - 54196

Prisoners

Meaning of prisoner

54197 A prisoner1 is a person detained in custody

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

**1.1** temporarily removed from prison to hospital unless DMG 54198 **3.** applies **or**

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

**1.3** on temporary release 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.** on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital unless DMG 54198 **3.** applies.

1 ESA Regs (NI), reg 69(2); 2 R(I) 9/75

54198 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 prescribed mental health legislation1 (see DMG 54212)

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

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

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

1 Mental Health (NI) Order 1986, arts 53 & 54

Meaning of detained in custody

54199 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

54200 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

54201 Detention in custody does not include a period before proceedings begin where the person is released on bail.

 54202 - 54209

Period of detention in custody

54210 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.

54211 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.

Prisoner admitted to hospital

54212 The decision maker should establish the legislation used to admit a prisoner to hospital. A person admitted

**1.** under prescribed mental health legislation1 is a special case patient for Employment and Support Allowance purposes and has an applicable amount of nil2 **or**

**2.** under prescribed mental health legislation3 other than that in **1.** above is a patient for Employment and Support Allowance purposes and has entitlement to their full applicable amount **or**

**3.** under any other legislation is a prisoner and the Employment and Support Allowance applicable amount is nil.

1 Mental Health (NI) Order 1986, art 53; 2 ESA Regs (NI), Sch 5, para 12; 3 Mental Health (NI) Order 1986

Applicable amount - income-related Employment and Support Allowance

Claimant is a prisoner

54213 The applicable amount for a claimant who is a prisoner under DMG 54197 **1.** is nil1.

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

 **Note :** See DMG Chapter 53 for guidance on how imprisonment effects contribution-based Employment and Support Allowance.

Claimant is a prisoner on remand awaiting trial or sentence

54214 A person who is held on remand awaiting trial or sentence upon conviction (see DMG 54197 **2.**) may be entitled to Employment and Support Allowance1. The applicable amount is

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

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

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

 **Example**

 Jackie is entitled to income-related Employment and Support Allowance while she is on remand awaiting sentencing, with her applicable amount being the amount of her housing costs. On 21.4.10 she is sentenced to a term of imprisonment. The decision maker supersedes the award of income-related Employment and Support Allowance and decides that Jackie has no entitlement to it from 21.4.10 because her applicable amount is nil. There is also a determination that Jackie is treated as not having limited capability for work from 22.4.1.0 (see DMG 42581).

54215 If the claimant is entitled to contribution-based Employment and Support Allowance and income-related Employment and Support Allowance the decision maker should consider both.

 **Example**

 Christian is entitled to contribution-based Employment and Support Allowance and income-related Employment and Support Allowance which includes an amount for housing costs. On 12.4.10 he is detained in legal custody. The decision maker suspends payment of contribution-based Employment and Support Allowance. The decision maker also supersedes the award of income-related Employment and Support Allowance and decides that Christian’s applicable amount for income-related Employment and Support Allowance is the amount of his housing costs. On 6.9.10 Christian is sentenced to a term of imprisonment. The decision maker decides that Christian should be disqualified for receiving contribution-based Employment and Support Allowance from 12.4.10 because he has been sentenced to a period of imprisonment for a period exceeding six weeks. There is also a determination that Christian is treated as not having limited capability for work for contribution-based Employment and Support Allowance purposes from 12.4.10. In addition, the decision maker supersedes the award of income-related Employment and Support Allowance and decides that Christian has no entitlement to it from 6.9.10 because his applicable amount is nil. There is also a determination that Christian is treated as not having limited capability for work for income-related Employment and Support Allowance purposes from 7.9.10 (see DMG 42581).

 54216 - 54224

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

54225 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 are detained 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** on temporary release2 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.** on remand awaiting trial or awaiting sentence upon conviction. This includes people temporarily removed from prison to hospital.

 Where the partner or member of a polygamous marriage is not treated as a member of the family then the claimant should be treated as a single claimant.

1 ESA Regs (NI), reg 156(4)(b); 2 Prison Act (NI) 1953

Partner of a prisoner claims Employment and Support Allowance

54226 The partner of a prisoner may claim Employment and Support Allowance. The partner claiming Employment and Support Allowance should be treated as a single claimant.

 54227 - 54540

Temporarily separated members of a couple or polygamous marriage - income-related Employment and Support Allowance

Temporary absence - couples

54541 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 43 for some exceptions1. But a different applicable amount applies where

**1.** one member is

**1.1** in a residential care home, nursing home, an Abbeyfield home or an independent hospital other than as a patient **or**

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

1 ESA Regs (NI), reg 156; 2 E &T Act (NI) 1950, sec 1(1);
Disabled Persons (Employment) Act (NI) 1945, sec 2 & 3

54542 If DMG 54541 applies, the applicable amount 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 **and**

**2.2** living in their present accommodation (see DMG Chapter 44).

 **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.

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

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

 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

54543 Members of a polygamous marriage who are temporarily separated continue to be treated as members of the same household. But see DMG Chapter 43 for some exceptions. A different applicable amount is needed where a member of a polygamous marriage is absent from the home in the following circumstances

 **1.** in a residential care home, a nursing home, an Abbeyfield home or an independent hospital other than as a patient **or**

 **2.** in a rehabilitation centre for alcoholics or drug addicts **or**

 **3.** living away from home to attend a course of training or instruction **or**

 **4.** in a probation or bail hostel.

54544 Where DMG 54543 applies the claimant's applicable amount should be the greater of1

**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 **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 ESA Regs(NI), Sch 5 & reg 68

 54545 - 54546

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

Introduction

54547 It is a condition of entitlement to Employment and Support Allowance that a person is in Northern Ireland1. But entitlement can sometimes continue during an absence from Northern Ireland2. Guidance on entitlement to Employment and Support Allowance when a person is absent from Northern Ireland is given in DMG 071140 et seq.

1 WR Act (NI) 07, sec 1(3)(d); 2 ESA Regs (NI), reg 151

Claimant absent from Northern Ireland

54548 A claimant who is absent from Northern Ireland may be a member of a couple or polygamous marriage. Such a claimant can claim Employment and Support Allowance for themselves or a partner so long as entitlement continues (see DMG 071140). 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 ESA Regs (NI), Sch 5, para 6, 7, 8 & 9

 **Example**

 Gerard is in receipt of income-related Employment and Support Allowance for himself and his wife. On 2 March he goes abroad temporarily to visit his mother. He continues to satisfy the other conditions of entitlement while he is abroad. Gerard's entitlement to Employment and Support Allowance can continue for the first 4 weeks of his absence (3 March to 30 March) (see DMG 071140).

Partner in Northern Ireland claims - couples

54549 Where the claimant is absent from Northern Ireland, a claim for Employment and Support Allowance 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 071140 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.

1 ESA Regs (NI), reg 69

54550 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 43). Where the absent partner is

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

**2.** absent from the UK, 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 071140 et seq 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 071140.

 **Note :** The UK (see DMG 070880) is Great Britain (defined in DMG 070702) together with Northern Ireland.

1 ESA Regs (NI), Sch 5, para 6 & 7

 **Example**

 Damon is in receipt of Employment and Support Allowance for himself and his wife Melanie. On 16 March, Damon goes abroad temporarily and Melanie claims Employment and Support Allowance as she becomes ill. Melanie satisfies the normal conditions of entitlement and Damon is treated as a member of the family while he is temporarily absent from the UK.

 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 on the basis that she is a single person.

 54551 - 54554

Partner in Northern Ireland claims - polygamous marriages

54555 Where the claimant in a polygamous marriage is absent from Northern Ireland, a claim for Employment and Support Allowance may be received from a partner in Northern Ireland. The new claimant must then satisfy the normal conditions of entitlement.

54556 Treat the partner in Northern Ireland as a single claimant1. Any payments made to the claimant by the partner while absent from Northern Ireland should be treated as liable relative payments.

1 ESA Regs (NI), reg 156(4)(c)

Partner absent from United Kingdom

54557 The partner of a claimant may be absent from the UK. The absent partner continues to be a member of the claimant's family for up to 52 weeks if the absence remains temporary1 (see DMG Chapter 43). The normal conditions of entitlement continue to apply during this period as if the absent partner were still at home.

1 ESA Regs (NI), reg 156(3)(b)

54558 The normal rules for calculating the applicable amount change when the partner's absence from the UK stops being temporary.

Amount payable

54559 Where DMG 54558 applies, calculate the applicable amount as if the partner absent from the UK was no longer a member of the household1. This means that the claimants should be treated as if they are either a single claimant or lone parent when awarding a personal allowance.

1 ESA Regs (NI), Sch 5, para 6, 7, 8 & 9

54560 The income and capital of the partner is taken into account in the normal way for up to 52 weeks of any temporary absence. This is so even though the claimant is being paid at the single person rate1.

1 ESA Regs (NI), reg 156(3)(b); reg 83

54561 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 payments1.

1 ESA Regs (NI), reg 156(3)(b)

54562 The applicable amount for the first 4 weeks when one member of the couple is abroad is the normal applicable amount for the couple. After 4 weeks the applicable amount is determined as if the claimant was single or a lone parent1. This is extended to 26 weeks if the couple or a member of the couple takes a child or young person abroad for treatment2.

1 ESA Regs (NI), Sch5, para 6; 2 para 7

 **Example**

 Paul is in receipt of income-related Employment and Support Allowance for himself and his wife Lynda. Lynda receives a pension payment of £40 per week. On 7 June, Lynda goes abroad temporarily and Paul carries on claiming Employment and Support Allowance. Lynda is treated as a member of the couple while she is temporarily absent from the UK.

 For the first 4 weeks of Lynda's absence, Paul's applicable amount is calculated as if she was still at home. This means that Paul is awarded Employment and Support 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 single claimant. 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.

 54563 - 54578

Restriction under the loss of benefit provisions

General

54579 There is a restriction on the payment of benefit following convictions for benefit fraud offences1.

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

54580 The restrictions affect income-related Employment and Support Allowance. 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-related Employment and Support Allowance in particular.

Conviction, administrative penalty or caution for benefit offence

54581 Where on the determination day (see DMG 8423) the offender or a member of the family of an offender is a person in receipt of Employment and Support Allowance1, the first day of the disqualification period (see DMG 8430) is the day following the first pay day after the end of the period of 28 days beginning with the determination day.

1 SS (Loss of Benefit) Regs (NI), reg 1A(2)(a) & (c)

54582 In any other case, including where Employment and Support Allowance is awarded after the determination day to the offender or a member of the offender’s family, the first day of the disqualification period is the first day after the end of the period of 28 days beginning with the determination day1.

1 SS (Loss of Benefit) Regs (NI), reg 1A(6)

Second or subsequent conviction for benefit offence

54583 Where there is a second or subsequent conviction as described in DMG 8406 and, on the determination day, the offender is in receipt of Employment and Support Allowance or has a family member in receipt of Employment and Support Allowance, the first day of the disqualification period (see DMG 8430) is the day following the first pay day after the end of the period of 28 days beginning with the determination day1.

1 SS (Loss of Benefit) Regs (NI), reg 2(3)

54584 In any other case, including where Employment and Support Allowance is awarded after the determination day, the first day of the disqualification period is the first day after the end of the period of 28 days beginning with the determination day on which the Department decides to award Employment and Support Allowance

 **1.** to the offender **or**

 **2.** to the offender’s family member1.

1 SS (Loss of Benefit) Regs (NI), reg 2(6)

Amount payable

54585 Income-related Employment and Support Allowance payable to an offender or to an offender’s partner will be reduced by 20% of the relevant single claimant’s personal allowance rate for Income Support during the disqualification period (see DMG 8210) if the offender or partner is pregnant or seriously ill1. In all other cases the reduction will be 40%2 of the relevant single claimant’s personal allowance rate for Income Support. 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)(c)

54586 In any week where payment has already been restricted due to a breach of a Community Order no further payment restrictions should be applied1.

1 SS (Loss of Benefit) Regs (NI), reg 3(4)

 54587 - 54599

Persons from abroad and persons subject to immigration control

General

Persons from abroad

54600 A person from abroad is defined as a claimant who has failed the habitual residence test1. See DMG Chapter 7 for guidance on the habitual residence test.

1 ESA Regs (NI), reg 70

54601 The applicable amount of a person from abroad is nil1.

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

Persons subject to immigration control

54602 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 07) **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

54603 A person subject to immigration control is excluded from income-related Employment and Support Allowance1 unless they fall within one of the categories in DMG 54604.

*1 Immigration and Asylum Act 1999, sec 115*

Person subject to immigration control entitled to normal income-related Employment and Support Allowance

54604 A person subject to immigration control can be considered for income-related Employment and Support Allowance under the normal rules1 if they are

**1.** a sponsored immigrant who has been in the UK for 5 years **or**

**2.** a national of a country which has **ratified**

 **2.1** the European Convention on Social and Medical Assistance **or**

 **2.2** the Council of Europe Social Charter (see DMG Chapter 07) **and** is lawfully present in the UK.

**Note :** Persons who have come to the UK in order to seek asylum are not “lawfully present”. However a national of a country which has ratified the European Convention on Social and Medical Assistance or Council of Europe Social Charter will still have to satisfy the right to reside test2.

*1 SS (Immigration and Asylum) Consequential Amendment Regulations (NI) 2000, reg 2(1) & Sch Part 1
2 ESA Regs (NI), reg 70(2)*

Persons subject to immigration control entitled to urgent case payments

54605 A person subject to immigration control can be considered for urgent case payments under the normal rules if they are1

1. a person with limited leave whose funds from abroad have been temporarily interrupted
2. a sponsored immigrant whose sponsor has died
3. an asylum seeker with transitional protection.

**Note :** See DMG 54700 et seq for guidance on urgent case payments.

*1 Immigration & Asylum Act 1999, sec 115*

Couples

54606 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 54604 but the partner is a person subject to immigration control, the applicable amount will be1

 **1.** the claimant’s personal allowance (but not the partner) **and**

 **2.** any appropriate premium for the claimant (but **not** the partner) **and**

 **3.** either the work-related activity component or the support component **and**

 **4.** housing costs.

 **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 a severe disability premium it should be paid at the couple rate.

*1 ESA Regs (NI), Sch 5, para 10(a)*

 54607 - 54609

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

54610 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 54604, 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) **and**

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

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

 **4.** either the work-related activity component or the support component **and**

 **5.** housing costs.

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

Income and capital of a partner who is a person subject to immigration control

54611 If a claimant is married polygamously to two or more members of the household, the income and capital of each partner should be calculated in the same way as for the claimant1. The income or capital should then be treated as belonging to the claimant.

 **Note :** In certain circumstances special rules apply2 to the income of a member of a polygamous marriage who is a partner aged less than 18 (see DMG Chapter 51).

1 ESA Regs (NI), reg 83(3); 2 reg 83(5)

**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 £60. Hussain claims Employment and Support Allowance.

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 Employment and Support Allowance claim.

Person in hardship

54612 DMG 53099 describes what a person in hardship is. The amount of Employment and Support Allowance payable in hardship cases is reduced by 20% of the claimant’s applicable amount1.

1 ESA Regs (NI), Sch 5 para 14

54613 - 54699

Urgent cases

Introduction

Changes from 25.1.10

54700 The provisions1 enabling payment of urgent case payments were revoked2 for new claims made on or after 25.1.103. However, there are transitional provisions which apply to people who were in receipt of urgent case payments on 24.1.10 because of

 **1.** interruption of funds from abroad4 (see DMG 54701) **or**

 **2.** income due but not paid5 (see DMG 54702 - 54703).

1 ESA Regs (NI), reg 162 - 164; 2 Social Security (Miscellaneous Amendments) Regulations (NI) 2010, reg 2(1);
3 reg 1(2); 4 SS (I&A) Cql Amdts Regs (NI), reg 2(5);
5 Social Security (Miscellaneous Amendments) Regulations (NI) 2010, reg 2(2)

Transitional provisions

Interruption of funds from abroad

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

54701 A person is entitled to urgent case payments if they, during a period of limited leave, are temporarily without funds from abroad. From 25.1.10 there will be a 42 day maximum period1 of entitlement to these payments during any one period of limited leave.

1 SS (I&A) Cql Amdts Regs (NI), reg 2(5)

Income due but not paid

54702 Where a person is in receipt of urgent case payments because

 **1.** income that the claimant is treated as having is not readily available to the claimant **and**

 **2.** the urgent case payment is more than the normal amount of income-related Employment and Support Allowance that would be payable **and**

 **3.** the decision maker is satisfied that the claimant or their family will suffer hardship if an urgent case payment is not made

 they will continue to receive urgent case payments for so long as **1.**, **2.** and **3.** apply1.

1 Social Security (Miscellaneous Amendments) Regulations (NI) 2010, reg 2(4)

54703 People will not be able to receive urgent case payments again in the future once DMG 54702 has first ceased to apply to them after 24.1.101.

1 Social Security (Miscellaneous Amendments) Regulations (NI) 2010, reg 2(1)

General

54704 The rest of this Chapter gives guidance on urgent case payments as they applied before 25.1.10.

54705 Decision makers should note that urgent case payments only apply to income-related Employment and Support Allowance. This is because no provision has been made for urgent case payments to be made to claimants who receive contribution-based Employment and Support Allowance.

54706 In urgent cases, there are special rules on how to

**1.** calculate the applicable amount1, including the applicable amount applying to couples and polygamous marriages

**2.** treat income2

**3.** treat capital3.

1 ESA Regs (NI), reg 163; 2 reg 164(1); 3 reg 164(2)

54707 Decision makers should note that urgent case payments are

**1.** payments of income-related Employment and Support Allowance and to qualify for urgent case payments the claimant must satisfy all the normal conditions of entitlement

**2.** not normally recoverable unless recovery can be made under the normal recovery provisions for

**2.1** overpayments1 (see DMG 9003 et seq) **or**

**2.2** prevention of duplication of payments2 (see DMG 9320 et seq).

1 SS A (NI) Act 92, sec 69; 2 sec 72

 **Example 1**

 Agnes is awarded an urgent case payment because her occupational pension is paid late due to a strike at the pensions office. When Agnes receives the pension, the decision maker considers recovery under the prevention of duplication of payments provisions.

 **Example 2**

 Bruno is awarded an urgent case payment when an income is paid late because of a postal strike. Bruno fails to declare that he has capital available to him which would have removed any hardship. The decision maker considers recovery under the overpayment provisions, even though the income has not yet been paid.

Who can receive urgent case payments before 25.1.10

54708 Before 25.1.10 claimants may be entitled to urgent case payments if they are treated as having income that is due but has not been paid1 (see DMG 54720 et seq).

 **Note :** See DMG 54702 - 54703 for guidance on transitional provisions.

1 ESA Regs (NI), reg 162(2)

 54709 - 54719

Income due but not paid

General

54720 From 25.1.10, urgent case payments are no longer payable where there is income due but not paid1. However, transitional provisions apply (see DMG 54702 - 54703). Before then a claimant may be treated as having income that is due but has not been paid (notional income - see DMG Chapter 51). Such a claimant can qualify for an urgent case payment if the

**1.** income that the claimant is treated as having is not readily available to the claimant2 **and**

**2.** urgent case payment is more than the normal amount of income-related Employment and Support Allowance that would be payable3 **and**

**3.** decision maker is satisfied that the claimant or their family will suffer hardship if an urgent case payment is not made4.

1 SS (Misc Amdts) Regs (NI) 2010, reg 2(1); 2 ESA Regs (NI), reg 162(3); 3 reg 162(3)(a); 4 reg 162(3)(b)

54721 To work out whether an urgent case payment would be more than the normal amount of income-related Employment and Support Allowance, the decision maker should compare

**1.** the urgent case payment, without taking the income that is due but not paid into account **and**

**2.** normal income-related Employment and Support Allowance, taking the income that is due but not paid into account.

 If the urgent case payment is less, the decision maker should consider normal income-related Employment and Support Allowance.

Meaning of hardship

54722 DMG 53099 describes what a person in hardship is.

54723 There may be hardship if the claimant or the claimant’s family is denied some or all of the essentials of life such as

**1.** food

**2.** clothing

**3.** heating **or**

**4.** shelter.

54724 There may be hardship in any type of case, but it is more likely in cases involving

**1.** young children

**2.** pensioners

**3.** lone parents **or**

**4.** claimants whose normal income-related Employment and Support Allowance would include a severe disability premium.

54725 The decision maker should decide whether there is hardship by considering all the circumstances of the case, including

**1.** the amount of income due but not paid

**2.** the length of time the claimant has been or is likely to be without the income **and**

**3.** whether the claimant or any member of the family are in poor health.

 **Note :** The lack of even a small amount of income may lead to hardship in some cases.

 54726 - 54749

Claiming urgent case payments

54750 Decision makers should note that

**1.** there is no special procedure for claiming urgent case payments

**2.** people do not have to make a separate claim for an urgent case payment

**3.** a claim for Employment and Support Allowance includes a claim for any entitlement a claimant may have under the urgent cases provisions.

54751 If the claim is from a person who has not received an income, the decision maker should consider whether the conditions in DMG 54720 are satisfied. If these conditions are

**1.** not satisfied, an urgent case payment is not payable and the decision maker should consider normal income-related Employment and Support Allowance **or**

**2.** satisfied, the decision maker should consider income-related Employment and Support Allowance under the urgent case provisions.

54752 The question of an urgent case payment may come up when income-related Employment and Support Allowance is already in payment. For example a claimant may report that an occupational pension payment has not been received because of a strike at the company’s pension section. If this happens the decision maker should

**1.** consider whether the conditions in DMG 54720 et seq are satisfied **and**

**2.** supersede the existing income-related Employment and Support Allowance award following the urgent case payments provisions.

54753

When entitlement to an urgent case payment starts

54754 Urgent case payments are payments of income-related Employment and Support Allowance. Entitlement starts in income-related Employment and Support Allowance from the 4th day of the claim1. This is because the claimant normally has to serve three waiting days (see DMG Chapter 41).

**Note :** The decision maker may consider a crisis loan if the claimant requests payment before the first pay-day.

1 ESA Regs (NI), reg 144

Period for which an urgent case payment is paid

54755 Urgent case payments are paid for as long as the conditions are satisfied.

54756 Once the urgent case payment has been awarded there is no change in the amount payable unless there are grounds for revision or supersession, for example a supersession following a change of circumstances.

 54757 - 54769

Calculating urgent case payments

Applicable amounts

Normal rules

54770 A claimant’s weekly applicable amount is1

**1.** 90% of the normal allowance for the claimant and any partner2 (in polygamous marriage cases 90% of the personal allowance for the claimant and each of the claimant’s partners)

**2.** any premium3

**3.** any component4 **and**

**4.** normal housing costs5.

 **Note :** Claimants appealing against a decision refusing or terminating Employment and Support Allowance where there has been a determination that they do not have limited capability for work will not receive any component6.

1 ESA Regs (NI), reg 163(a); 2 reg 163(a)(i); 3 reg 163(a)(ii);
4 reg 163(a)(iii); 5 reg 163(a)(iv); 6 reg 163(c)

 54771 - 54779

Claimants in residential care homes, nursing homes, Abbeyfield homes or independent hospitals

54780 The rules are the same whether or not the claimant is resident in a residential care home, nursing home, Abbeyfield home or independent hospital. Decision makers should follow the guidance in DMG 54770 when considering applicable amounts for residents in these homes.

Applicable amount in special cases

54781 A special applicable amount applies to the claimant or any partner who is

**1.** without accommodation1

**2.** a temporarily separated member of a couple or polygamous marriage2

**3.** a member of a couple or polygamous marriage where a member is absent from UK3

**4.** a member of a religious order4

**5.** a prisoner5.

 **Note :** If the claimant is a member of a religious order or a prisoner and the applicable amount is nil, no further calculation is necessary.

1 ESA Regs (NI), Sch 5, para 1; 2 Sch 5, para 4 & 5; 3 Sch 5, para 6 - 9; 4 Sch 5, para 2; 5 Sch 5, para 3

54782 The special applicable amount is

**1.** 90% of the special cases amount for the claimant and any partner1

**2.** any premium2

**3.** any component3 **and**

**4.** normal housing costs4.

1 ESA Regs (NI), reg 163(b)(i); 2 reg 163(b)(ii); 3 reg 163 (b)(iii); 4 reg 163(b)(iv)

Applicable amount when appealing a decision refusing or terminating Employment and Support Allowance following the work capability assessment

54783 The special applicable amount is

**1.** 90% of the personal allowance for the claimant and any partner (including polygamous marriages)1

**2.** any premiums2

**3.** normal housing costs3

 **Note :** No component is payable.

1 ESA Regs (NI), reg 163(c)(i); 2 reg 163(c)(ii); 3 reg 163(c)(iii)

Rounding

54784 Where the calculation of the applicable amount results in a fraction of a penny the fraction should be rounded up to the next whole penny1.

1 ESA Regs (NI), reg 3

How to treat income

54785 There are special rules on income when calculating urgent case payments. The decision maker should take all income that the claimant has or is treated as having fully into account1 with the exceptions in DMG 54786 - 54789.

1 ESA Regs (NI), reg 164

54786 The decision maker should disregard tariff income when calculating an urgent case payment1.

1 ESA Regs (NI), reg 164(1)(b)

54787 The income due but not paid should be disregarded1.

1 ESA Regs (NI), reg 164(1)(d)

54788 Certain types of income are normally treated as capital1 (see DMG Chapter 52). However, when calculating an urgent case payment the decision maker should take

**1.** charitable and voluntary payments that are not paid or not due to be paid regularly2

**2.** bounties paid at intervals of at least one year from the following employments3

**2.1** part-time fire and rescue officer **or**

**2.2** auxiliary coastguards for coastal rescue activities **or**

**2.3** working part-time in the manning or launching of a lifeboat **or**

**2.4** members of a territorial or reserve force

**3.** refunds of income tax deducted from earnings from self-employment or employed earners employment4

**4.** holiday pay paid more than four weeks after employment has ended5

into account as income.

1 ESA Regs (NI), reg 164(1)(c); 2 reg 112(7); 3 reg 112(1); 4 reg 112(2); 5 reg 112(3)

54789 When calculating an urgent case payment the decision maker should disregard

**1.** payments, including payments of income or income in kind, made under1

**1.1** the Macfarlane Trust

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

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

**1.4** the Fund

**1.5** the Eileen Trust

**1.6** Independent Living Fund (2006)

**2.** payments from money that came from one of the Trusts or Funds in **1.1** to **1.6**2 (see DMG Chapter 51) but not

**2.1** payments out of a person's estate to that person's parent, step-parent or guardian or

**2.2** income from the payments in **1.**

**3.** concessionary payments made to compensate for the non-payment of urgent case payments in income-related Employment and Support Allowance3

**4.** Social Fund payments4

**5.** any payment made by the Department to compensate for any loss of entitlement to Housing Benefit5.

1 ESA Regs (NI), reg 164(1)(a)(i); 2 reg 164(1)(a)(ii) & Sch 8, para 40; 3 reg 164(1)(a)(ii) & Sch 8, para 9;
4 reg 164(1)(a)(ii) & Sch 8, para 34; 5 reg 164(1)(a)(ii) & Sch 8, para 41

 **Example**

 A claimant receives £5000 from money that came from the Macfarlane Trust. The DM disregards the payment.

 The claimant puts the money in an investment account. The income from the investment is not disregarded when considering an urgent case payment.

 54790 - 54799

How to treat capital

54800 If the claimant receives capital made by or derived from any of the trusts or funds in DMG 54789 **1.** see DMG Chapter 52 for further guidance.

54801 The decision maker should follow the normal rules for calculating a claimant’s capital (see DMG Chapter 52). However, some types of capital that would be disregarded under the normal rules should be taken into account when calculating an urgent case payment1. These types of capital are

**1.** the proceeds from the sale of one home which are to be used to buy another2

**2.** business assets from self-employment if the assets are in liquid form3, for example cash in hand or money in current accounts

**3.** arrears of, or concessionary payment to compensate for arrears due to the non-payment of4

**3.1** Attendance Allowance

**3.2** care component of Disability Living Allowance

**3.3** mobility component of Disability Living Allowance

**3.4** Working Tax Credit

**3.5** Child Tax Credit

**3.6** Income Support

**3.7** income-based Jobseeker’s Allowance

**3.8** income-related Employment and Support Allowance

**3.9** mobility supplement or any payment intended to compensate for the non-payment of such a supplement.

**4.** concessionary payments to compensate for arrears due to the non-payment of Housing Benefit

**5.** any sum deposited with a housing association as a condition of occupying the home and which is to be used to buy another home5

**6.** refunds of the tax on loan interest for loans6 used to

**6.1** buy the dwelling lived in as the home **or**

**6.2** pay for repairs or improvements to the home

**7.** a training bonus , but only for the period of 52 weeks beginning on the date of receipt of the payment7

**8.** mobility supplement or any payment intended to compensate for the non payment of such a supplement

 **Note 1:** Actual arrears of Housing Benefit should be disregarded for 52 weeks from the date of receipt.

 **Note 2:** Payments made by the decision maker to compensate for any loss of entitlement to Housing Benefit should be disregarded.

1 ESA Regs (NI), reg 164(2); 2 reg 164(2) & Sch 9, para 3; 3 reg 164(2) & Sch 9, para 10; 4 reg 164(2) & Sch 9, para 11;
5 reg 164(2) & Sch 9, para 13; 6 reg 164(2) & Sch 9, para 24; 7 reg 164(2) & Sch 9, para 32

Effect of capital on urgent case payments

54802 Capital as calculated in DMG 54801 must be taken into account against the amount of the urgent case payment calculation. If capital is more than the urgent case payment calculation, no urgent case payment is payable. If the capital is less than the amount of the urgent case payment calculation, the difference is payable1.

1 ESA Regs (NI), reg 164(2)

54803 Where entitlement to urgent case payments ceases because of the receipt of capital, the last day of entitlement is the day before the day that the capital is received. If this day is not the last day of the claimant's benefit week, a part week calculation is necessary. If the claimant makes a further claim, the earliest date that benefit can be re-awarded from is the beginning of the next benefit week.

 **Example**

 Stanley receives a loan from a friend on Thursday 27.11.08. The loan is treated as capital. The amount of the loan exceeds his weekly urgent case payment applicable amount. His benefit week is Wednesday to Tuesday. His last day of entitlement is Wednesday 26.11.08. He is entitled to a part week payment of one day's benefit in respect of benefit week 26.11.08 to 2.12.08.

 Stanley spends the money loaned to him and reclaims urgent case payments. The decision maker is satisfied that the deprivation of capital rules do not apply and re-awards benefit from 3.12.08.

Arrears of urgent case payments

54804 Arrears of urgent case payments, including Jobseeker’s Allowance urgent case payments should be disregarded in the calculation of capital1.

1 ESA Regs (NI), reg 164(2) & Sch 9, para 11

 54805 - 54999