

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 14 Amendment 40 – June 2016

1. This letter provides details on Amendment 40; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 40 affects the abbreviaions list, chapters 83, 85 & 86. The changes
 - incorporates DMG memo 4/16 in **Chapter 83**
 - 85021: Added CPC/1970/15 as an example of the tax calculation
 - 85024: Added para & example re: *Leeves*
 - 85025-29: Renumber following above
 - 85063-65: Added PS UKUT 0021 as an example
 - 85091: SP added to list of income and re-number list
 - 85130: Added SP reference
 - 85133: Added SP.
 - 85221: Amended cross-ref
 - 85298: Add SP to Christmas bonus exclusion
 - 85401: Amended cross-ref
 - 85408 & 85411-12: Added SP deferral advice
 - 85443: SP added as notional income in **chapter 85**
 - 86057 & 86609 – added note re: NI & Tax status of actors etc in **chapter 86**

4. The last two amendment packages amending Volume 14 were

Amendment 38 [October 2015]

Amendment 37 [June 2015]

5. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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| | |
|---------|---|
| LCW | Limited capability for work |
| LCWA | Limited capability for work assessment |
| LCWRA | Limited capability for work related activity |
| LEA | Local Education Authority |
| LEC | Local Enterprise Council |
| LEL | Lower Earnings Limit |
| LETS | Local Exchange Trading System |
| LPP | Lone Parent Premium |
| LPRO | Lone Parent run-on |
| LQPM | Legally Qualified Panel Member |
| LRP | Liable Relative Payment |
| LSC | Learning and Skills Council |
| LT | Linking Term |
| LTACP | Living Together as Civil Partners |
| LTAMC | Living Together as Married Couple |
| LTAHAW | Living Together as Husband And Wife |
| | |
| MA | Maternity Allowance |
| MAP | Maternity Allowance Period |
| MB | Maternity Benefit |
| MDB | Miscellaneous Diseases Benefit |
| MG | Maternity Grant |
| MID | Mortgage Interest Direct |
| MIRO | Mortgage Interest run-on |
| MP | Member of Parliament |
| MPP | Maternity Pay Period |
| MSC | Maximum Savings Credit |
| MSP | Member of the Scottish Parliament |
| | |
| NASS | National Asylum Support Service |
| NCET | National Council for Education and Training |
| NCIP | Non-Contributory Invalidation Pension |
| ND | New Deal |
| NDLP | New Deal for Lone Parents |
| NDP | New Deal for Partners |
| NDYP | New Deal for Young People |
| ND18-24 | New Deal for 18-24 year olds |
| ND25+ | New Deal for claimants aged 25 years and over |
| NHS | National Health Service |
| NI | National Insurance |
| NINO | National Insurance Number |
| NMW | National Minimum Wage |

| | |
|------------|---|
| NRP | Non-Resident Parent |
| NVQ | National Vocational Qualification |
| OOT | Own Occupation Test |
| OPB | One Parent Benefit |
| PA | Personal Adviser |
| PAYE | Pay As You Earn |
| PB and MDB | Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme |
| PCA | Personal Capability Assessment |
| PD | Prescribed Disease |
| PETA | Personal Expenses Transitional Addition |
| PFA | Person(s) From Abroad |
| PIE | Period of Interruption of Employment |
| PILON | Pay In Lieu Of Notice |
| PILOR | Pay In Lieu Of Remuneration |
| PIP | Personal Independence Payment |
| PIW | Period of Incapacity for Work |
| PLCW | Period of limited capability for work |
| PLCWA | Period of limited capability for work assessment |
| PO | Post Office |
| POAOB | Payment on Account of Benefit |
| POA | Power of Attorney |
| PP | Pensioner Premium |
| PR | Preserved Right |
| PSIC | Person Subject to Immigration Control |
| P/T | Part-Time |
| PW | Pay-Week |
| PWC | Person With Care |
| PWHL | Permitted Work Higher Limit |
| PW HLS | Permitted Work Higher Limit subsequent period |
| PWK | Permitted Work |
| PWLL | Permitted Work Lower Limit |
| PWP | Permitted Work Period |
| QB | Qualifying Benefit |
| QBP | Qualifying Benefit or Pension |
| QD | Qualifying Days |
| QEF | Qualifying earnings factor |
| QI | Qualifying Income |
| QP | Qualifying Period |

| | |
|--------|---|
| QRW | Qualifying remunerative work |
| QW | Qualifying Week |
| QWfl | Quarterly Work-focused interview |
| RA | Retirement Allowance |
| RBD | Reduced Benefit Direction |
| RCH | Residential Care Home |
| REA | Reduced Earnings Allowance |
| Reg(s) | Regulation(s) |
| Res A | Residential Allowance |
| RISWR | Redundant Iron and Steel Employees re-adaptation scheme |
| RMPS | Redundant Mineworkers Payment scheme |
| RP | Retirement Pension |
| RQC | Relevant Qualifying Condition |
| RVU | Relationship Validation Unit |
| S | Section (of an Act) |
| S2P | State Second Pension |
| SAP | Shared Additional Pension |
| SAYE | Save As You Earn |
| SB | Sickness Benefit |
| SC | Savings Credit |
| Sch | Schedule (as in an Act) |
| SCT | Savings Credit Threshold |
| SDA | Severe Disablement Allowance |
| SDM | Sector Decision Maker |
| SDP | Severe Disability Premium |
| S/E | Self-Employed |
| Sec | Section (of an Act) |
| SED | Scottish Education Department |
| SERPS | State Earnings Related Pension Scheme |
| Sev DP | Severely Disabled Person |
| SF | Social Fund |
| SFFP | Social Fund Funeral Payment(s) |
| SFO | Social Fund Officer |
| SHA | Special Hardship Allowance |
| SI | Statutory Instrument |
| SIR | Standard Interest Rate |
| SJP | Supervised Jobsearch Pilot Scheme |
| SMG | Standard Minimum Guarantee |
| SMP | Statutory Maternity Pay |
| SP | State Pensions |

| | |
|-------------|--|
| SPC | State Pension Credit |
| SpTA | Special Transitional Addition |
| SPW | Supported Permitted Work |
| SRPS | Shipbuilding Redundancy Payment Scheme |
| SS | Social Security |
| SS benefits | Benefits payable under SS(CB) Act 92 |
| SSMG | Sure Start Maternity Grant |
| SSP | Statutory Sick Pay |
| STCP | Skills Training Conditionality Pilot |
| Supp B | Supplementary Benefit |
| SVQ | Scottish Vocational Qualification |
| TA | Transitional Addition |
| TAW | Temporary Allowance for Widow(ers) |
| TBI | Total Benefit Income |
| TD | Trade Dispute |
| TE | Transitional Element |
| TEC | Training and Enterprise Council |
| TFEU | Treaty on the Functioning of the European Union |
| TS | Tribunals Service |
| TU | Trade Union |
| UB | Unemployment Benefit |
| UC | Universal Credit |
| UCP | Urgent Case Payment |
| UEL | Upper Earnings Limit |
| UK | United Kingdom |
| US | Unemployability Supplement |
| UT | Upper Tribunal |
| VAT | Value Added Tax |
| VSO | Voluntary Sector Option of New Deal for young people |
| WA | Widow's Allowance |
| WB | Widow's Benefit |
| WBLA | Work Based Learning for Adults |
| WBLfYP | Work Based Learning for Young People |
| WBTfA | Work Based Training for Adults |
| WBTfYP | Work Based Training for Young People |
| WC | Workmen's Compensation |
| WC(S) | The Workmen's Compensation (Supplementation) Scheme |

| | |
|-----------|---|
| WC (Supp) | Workmen's Compensation (supplementation) scheme |
| WCA | Work capability assessment |
| WDisP | War Disablement Pension |
| WFHRA | Work focused health related assessment |
| Wfi | Work-focused Interview |
| WFP | Winter Fuel Payment |
| WFTC | Working Families Tax Credit |
| WMA | Widowed Mother's Allowance |
| WMA(C) | WMA payable where late husband entitled to Cat C retirement pension |
| WP | Widow's Pension |
| Wp | Work programme |
| WPA | Widowed Parent's Allowance |
| WP(C) | Widow's Pension payable where late husband entitled to Cat C retirement Pension |
| WPT | Widow's Payment |
| WRAC | Work-related activity component |
| WRAG | Work-related activity group |
| WTB | Work and training beneficiary(ies) |
| WTC | Working Tax Credit |
| WtWB | Welfare to Work Beneficiary |
| WWP | War Widow's Pension/War Widower's Pension |
| YT | Youth Training |

Chapter 83 - Assessed income periods

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Chapter 83 - Assessed income periods

Introduction

83000 An assessed income period (AIP) is a period specified by a DM during which the amount of a claimant's retirement provision is fixed subject to deemed increases made in accordance with the relevant legislation¹.

1 SPC Act 02, s 7(4)

Note: No new AIPs will be set on, or after 6.4.16¹. As a consequence, claimants will be expected to report all relevant changes in their circumstances, including their retirement provision. Accompanying changes to existing, fixed period and some indefinite period AIPs are described in this chapter.

1 Pensions Act 14, s 28; Pensions Act 2014 (Commencement No. 5) Order 2015. s 2(2)(b)

83001 - 83004

Duty to specify an AIP

83005 Where a DM makes a relevant decision in the circumstances described in DMG 83006 or 83007, the DM must at the same time specify an AIP¹ unless prevented from doing so in accordance with DMG 83020.

1 SPC Act 02, s 6(1)

Note: This only applies to relevant decisions made before 6.4.16.

83006 The first set of circumstances is where¹

1. a DM determines the amount of a claimant's income for the purposes of a decision on SPC **and**
2. that decision is
 - 2.1 a decision deciding a claim for SPC **or**
 - 2.2 a revision of a decision relating to SPC **or**
 - 2.3 a supersession of a decision relating to SPC **and**
3. the decision takes effect on or after
 - 3.1 the day the claimant attains the age of 65 **or**
 - 3.2 if earlier than the day in 3.1, where the claimant is a member of a couple, the day on which the other member of the couple attains age 65 **and**
4. the decision is not to the effect that the claimant is not entitled to SPC.

1 SPC Act 02, s 6(3)

Note: New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year Periodic Case Review (PCR) set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen.

83007 The second set of circumstances is where¹

1. the amount of the claimant's income is determined on an appeal against a decision that the claimant is not entitled to SPC **and**
2. the FtT decides that the claimant is entitled to SPC **and**
3. the FtT's decision takes effect on or after the dates set out in DMG 83006 3..

1 SPC Act 02, s 6(4)

83008 - 83009

Meaning of relevant decision

83010 A "relevant decision" means¹ a decision determining the amount of a claimant's income for the purposes of

1. a decision as in DMG 83006 1. **or**

2. a FtT decision that the claimant is entitled to SPC as in DMG 83007 2..

1 SPC Act 02, s 6(5)

83011 - 83019

When is a DM prevented from setting an AIP

83020 A DM cannot set an AIP where

1. the relevant decision takes effect at a time when an AIP is already in force¹ **or**
2. in the case of partners, one partner is aged under 60² **or**
3. SPC is awarded, or is awarded at a higher rate because an element of the claimant's retirement provision which is due to be paid stops temporarily.³

1 SPC Act 02, s 6(2); 2 SPC Regs, reg 10(1)(a); 3 reg 10(1)(b)

Note: this does not apply where the change occurs on, or after 6.4.16.

83021 - 83024

Revision

83025 A decision to set an AIP is a decision under a relevant enactment¹. It can therefore be revised in the circumstances prescribed in the legislation².

1 SS Act 98, s 8(4); 2 s 9; SS CS (D&A) Regs

Example

Mick made a claim for SPC on 5.1.11. When making his claim Mick told the DM that his house was up for sale and that he had savings of £3,000. Despite this information (see DMG 83041), the DM set an AIP for 5 years. On 9.3.11 Mick informs the DM that he has moved address because he has sold his house and bought a flat. He also now has capital of £25,000 left from the proceeds of the sale of the house after buying the flat. When looking at the circumstances of the case, the DM realises that an AIP should not have been set. The DM revises the decision setting an AIP on the grounds of official error (see DMG Chapter 03).

83026 - 83029

Supersession

83030 A decision to set an AIP may also be superseded. However the only change of circumstances that will be relevant in relation to AIP decisions is the ending of the AIP¹ (see DMG 83050).

1 SS CS (D&A) Regs, reg 6(8)

83031

How long does an assessed income period last

83032 Unless DMG 83041 applies (but see 83039 for new claims to SPC made on, or after 6.4.16), an AIP is

1. a period of five years **or**
2. an indefinite period

beginning with the day that the relevant decision takes effect¹. DMG 83050 provides guidance on when an AIP will come to an end.

Note: DMG 83043 et seq gives guidance on backdating and setting the AIP.

1 SPC Act 02, s 9

83033 The relevant decision takes effect from the first day for which there would be entitlement to SPC even though payability may not start until the first day of the claimant's benefit week (see DMG 79012).

AIPs of five years

83034 Claimants who are aged **under 75** on the day that the relevant decision takes effect have an AIP of a maximum period of five years beginning with the day that the relevant decision takes effect¹.

1 SPC Act 02, s 9(1)(a)

Note: This only applies to relevant decisions made before 6.4.16. See DMG 83039 for new claims to SPC made on, or after 6.4.16.

Example 1

A claim for SPC is made on 16.04.09 by Lloyd who is a 68 year old man. The DM decides that the first day for which payment can be made is Monday 20.04.09. The DM decides that the AIP runs from 16.04.09 to 15.04.14.

Example 2

A claim to SPC is made on 07.05.09 by Jean who is a 66 year old woman. The DM decides that the first payday is Monday 11.05.09. The DM sets a five year AIP running from 07.05.09 to 06.05.14.

83035 Although an AIP may have been set for up to a period of five years, it can be brought to an end in the circumstances described at DMG 83050. Where an AIP comes to an end on, or after 6.4.16, a new AIP will not be set. A PCR will be set in those awards.

AIPs of an indefinite period

- 83036 To qualify for an AIP of an indefinite period the claimant must be **aged 75 or over** on the day that the relevant decision takes effect (but see 83039 for new claims to SPC made on, or after 6.4.16)¹.

1 SPC Act 02, s 9(1)(b)

Example 1

Ron makes a claim for SPC on 6.4.09 which also happens to be the date of his 75th birthday. After assessing the claim, the DM decides that Ron is entitled to SPC from 6.4.09 and that it is payable from that date. The DM also decides that Ron's AIP will start on 6.4.09 and will have no fixed end date.

Example 2

Asif makes a claim for SPC on 13.5.09. He is aged 77. The DM decides that SPC is payable to Asif from 18.5.09. The DM also decides that Asif's AIP will start on 13.5.09 and will have no fixed end date.

- 83037 Although an AIP may have been set for an indefinite period, it can be brought to an end in the circumstances described at DMG 83050. Where an AIP of an indefinite period is brought to a natural end on, or after 6.4.16, a new AIP will not be set.

Claimants aged 80 or over with an existing award of SPC

- 83038 Where
1. an AIP has come to an end on or after 6.4.09 but before 6.4.14 by the expiry of a period of five years or more (an AIP of between 5 and 7 years may have been set under transitional arrangements) **and**
 2. the claimant is aged 80 or more at that time

the AIP has to be treated as not ending at that time but as continuing indefinitely subject to it being brought to an end in the circumstances described at DMG 83050¹.

1 SPC Act 02, s 9(6)

Example

Ella has been in receipt of SPC for a number of years and is aged 82. Her AIP which had been set for five years was due to end on 20.4.09. The DM treats the AIP as not ending on 20.4.09 and as continuing indefinitely unless it is brought to an end in the circumstances described in DMG 83050.

New Claims from 6.4.16

83039 New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year PCR set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen. AIPs can not be set in these awards.

83040

Retirement provision is likely to change within twelve months

83041 [\[See memo DMG 12/15\]](#) If the DM considers that the claimant's retirement provision is likely to change within the period of twelve months beginning on the day the relevant decision takes effect then

1. the DM does not have to set an AIP¹ **or**
2. if the DM does set an AIP, it has to be for any suitable period shorter than five years (beginning on the date the relevant decision takes effect)²

1 SPC Act 02, s 9(2)(a); 2 s 9(2)(b)

Note: this only applies to relevant decisions made before 6.4.16.

Example 1

The DM calculated Mrs Clarke's retirement provision and decided to award SPC from 15.12.08. However, in the claim form, Mrs Clarke stated that she had recently put her house up for sale. The DM decided not to set an AIP.

Example 2

Mr Jones claimed SPC from 9.1.06 and said he may claim his RP from 17.4.06. He has deferred his RP since 11.4.05. He currently has capital of £9,500.

The DM decides that Mr Jones' retirement provision is unstable because he may get a lump sum which, because of the way it is disregarded, could affect his deemed income from capital. An AIP cannot be set.

Note: The lump sum disregard is applied to the gross amount rather than the net amount actually paid after tax. This means that the disregard can impact on the claimant's other capital by reducing any existing deemed weekly income.

Example 3

On 10.2.06 Mr Jones (in example 2 above) decides to claim his RP immediately. He will no longer have the option to take a lump sum payment, as he deferred his RP for less than a year.

The DM decides Mr Jones' retirement provision is now stable and an AIP is set from 10.2.06

83042 In deciding whether the current retirement provision is going to be typical throughout the following twelve months the DM should take account¹ of the fact that, if an AIP were set, the retirement provision would be subject to the deemed variations described in DMG 83100 - 83102

1 SPC Act 02, s 9(3)

Note: New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year PCR set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen. AIPs can not be set in these awards.

Example

Henry aged 66 makes a claim for SPC on 10.3.09. He asks that his claim be considered from 11.12.08.

The DM decides to backdate the claim by three months to 11.12.08.

On 17.3.09 the DM decides to award SPC to Henry and that it is payable from 15.12.08 (the first payday following 11.12.08).

The DM decides that he can set a five year AIP. He decides that the AIP starts on 11.12.08 and ends on 10.12.13.

Note: New claims to SPC with a TAM date on, or after 6.4.16 will have a 3 year PCR set.

83048 - 83049

When will an AIP end

83050 An AIP of any length will end at any time at which

1. the claimant becomes a member of a couple¹
2. the claimant ceases to be a member of a couple²
3. the claimant attains the age of 65³
4. where the claimant is a member of a couple, the other member of the couple attains the age of 65⁴
5. the claimant no longer satisfies a condition of entitlement to SPC⁵
6. payments of an element of the claimant's retirement provision
 - 6.1 stop temporarily **or**
 - 6.2 the amounts paid are less than the amount due and as a consequence the award of SPC is superseded⁶
7. a claimant who has no partner is provided with accommodation in a care home or an independent hospital on a permanent basis⁷ (see DMG Chapter 77 for the meaning of care home and independent hospital).

Where the AIP (indefinite or fixed length) ends in such a manner as described in DMG 83050 and takes effect on, or after 6.4.16, a new AIP will not be set. In those cases a PCR will be set. There are no provisions for any linking rules and there is no right of appeal where an AIP ends through natural expiry.

Note: See DMG 77012 for the definition of 'couple'.

1 SPC Act 02, s 9(4)(a); 2 s 9(4)(b); 3 s 9(4)(c); 4 s 9(4)(d); 5 SPC Regs, reg 12(a); 6 reg 12(b); 7 reg 12(c)

Example

Owen, a single man, is aged 78 and is in receipt of SPC. When making the award of SPC from 20.4.09, the DM also decided to set an AIP for an indefinite period. Owen informs the DM that his partner to be, also aged 78, is moving in with him on 18.4.16. The DM decides to end Owen's AIP when his partner moves into his household because he has become a member of a couple.

The DM supersedes the award of SPC to take account of the fact that Owen is now a member of a couple. The DM sets a three year PCR for Owen.

Ending of some Fixed Length AIPs

83051 Those awards of SPC with a fixed length AIP which is due to end between 1.4.19 and 5.4.21 will be brought to an end on a date earlier than originally intended¹. Appendix 2 details the dates on which these AIPs will now end². An AIP that ends in this way does not carry a right of appeal.

1 SPC Act 02, s9, 2, SPC Regs, reg 12(d); 2 SPC Regs, Sch IIIA

83052 - 83059

Effect of the assessed income period

83060 Where an AIP has been set, the amount of a claimant's retirement provision is fixed subject only to deemed variations.

The assessed amount

83061 Where the DM determines the claimant's income

1. for the purposes of the relevant decision **and**
2. includes an element of the retirement provision (called the "assessed amount") then the amount of that element has to be
 - 2.1 the amount as originally assessed **or**
 - 2.2 the amount as varied in accordance with DMG 83100 - 83102

for the duration of the AIP¹.

1 SPC Act 02, s 7(3)

83062 If, when making the relevant decision, the DM decides that the claimant's income does not include

1. any retirement provision **or**
2. any further elements of retirement provision

then these cannot be included in the claimant's income for the duration of the AIP¹.

1 SPC Act 02, s 7(5)

83063 - 83064

Meaning of retirement provision

83065 Retirement provision means¹ any of the following

1. income from an occupational pension scheme²
2. income from a personal pension scheme²
3. income from an overseas arrangement³
4. income from a retirement annuity contract⁴
5. income from annuities or insurance policies purchased or transferred for the purpose of giving effect to rights under a personal pension scheme or an overseas arrangement⁵
6. income⁶ from an annuity purchased or entered into for the purpose of crediting a former partner with a share of pension rights on divorce⁷
7. any pension payable out of money provided under the Civil List Acts⁸

8. payments made to a person by or on behalf of a former employer on account of early retirement on grounds of ill-health or disability⁹
9. income from annuity contracts other than those mentioned in DMG 83065 4.-6.¹⁰
10. income from capital¹¹
11. any payment made at regular intervals under an equity release scheme¹²
12. any payment made under the Financial Assistance Scheme¹³
13. periodic payments from the Pension Protection Fund¹⁴.

Note: Retirement provision **does not** include¹⁵ state retirement benefits (including the new State Pension) paid in accordance with the Act¹⁶.

*1 SPC Act 02 s 7(6); 2 s 16(1)(f); 3 s 16(1)(g); 4 s 16(1)(h); 5 s 16(1)(i); 6 s 16(1)(j);
7 WRP Act 99, s 29(1)(b); 8 SPC Regs, reg 16; 9 reg 16(1)(l);
10 SPC Act 02, s 7(6)(b); 11 s 7(6)(c); 12 SPC Regs, reg 16; 13 reg 16(n);
14 SPC Act 02, s 7(6)(d); 15 s 7(6)(a); 16 SS CB Act 92*

Meaning of overseas arrangement

83066 An overseas arrangement is¹ a scheme or arrangement which

1. has the effect (or is capable of having the effect) of providing benefits to or in respect of employed earners
 - 1.1 on the termination of employment **or**
 - 1.2 on death **or**
 - 1.3 on retirement **and**
2. is administered wholly or primarily outside GB **and**
3. is not an appropriate scheme as described in the legislation² **and**
4. is not an occupational pension scheme.

1 SPC Act 02 s 16(3); PS Act 93, s 181(1); 2 s 7

83067 Where the claimant is in receipt of a foreign state retirement pension (see DMG 85094) then that income is to be treated in the same way as a domestic retirement pension and therefore cannot form part of the claimant's retirement provision. The treatment of it is unaffected by any AIP¹ which might be in place.

1 SPC Regs, reg 11(2)

83068 For the period 20.3.09 - 12.4.10 it was possible that a foreign state retirement pension could form part of a claimant's retirement provision. Appendix 1 provides guidance on those types of cases.

83069 - 83071

Changes in retirement provision during an AIP

Reductions in retirement provision during an AIP

83150 The rules for fixing a claimant's retirement provision do not prevent a DM from making a decision where a claimant's retirement provision reduces during an AIP and the claimant is entitled to an increase in their SPC.

83151 The DM can make a decision on the claimant's retirement provision at any time during the AIP where the¹

1. decision is a supersession decision **and**
2. supersession results in an increase in the amount of SPC that the claimant is entitled to **and**
3. increase in SPC is due (or partly due) to the change in the claimant's retirement provision.

1 SPC Act 02, s 8(1)

83152 Where a supersession decision is made as in DMG 83151, then the claimant's remaining retirement provision is fixed until the end of the existing AIP¹.

1 SPC Act 02, s 8(3)

Note: where the change occurs on, or after 6.4.16 **and** the AIP ends under existing rules (see DMG 83050), a PCR will be set.

Example

Alice claimed SPC and because her retirement provision was stable the DM set an AIP for five years. Alice's benefit week commenced on a Monday.

Six months later (on 5.12.06) Alice told the DM that her income from one small occupational pension had ceased. Alice had given up £2.80 a week occupational pension she was entitled to in exchange for a one off lump sum payment of £3,000, which she had received on 1.12.06. Alice had no other savings. The DM did a full check of Alice's retirement provision to determine the overall effect.

The DM decided the occupational pension should no longer be taken into account and Alice's SPC increased by £2.80 a week from Monday 4.12.06.

83153 The condition at DMG 83151 **2.** and **3.** is also treated as satisfied if¹

1. the supersession results in a decrease in the amount of SPC the claimant is entitled to **but**

2. the decrease is less (overall) than it would otherwise have been because there has been a change in the income which the claimant is required to report.

Note: This allows for the situation where the claimant's retirement provision decreases and the claimant's other income increases during the same benefit week resulting in an overall decrease in the amount of SPC to be paid.

1 SPC Act 02, s 8(2)

Example 1

Jack claimed SPC and because his retirement provision was stable the DM set an AIP for five years. Jack's benefit week commenced on a Monday

Two years later Jack told the DM about a change in his retirement provision. On 3.11.06 Jack declared that on 31.10.06 he had spent £9,000 from his savings (of £16,500) to pay for essential repairs to his home. He also declared that from 10.11.06 he would receive £30 a week earnings.

The DM did a full check of Jack's retirement provision to determine the overall effect. As a result of the overall changes (£25 earnings to be taken into account and £18 no longer deducted for deemed weekly income) Jack's SPC decreased by £7 a week from Monday 6.11.06.

Example 2

Mary claimed SPC and because her retirement provision was stable an AIP was set for 5 years. Mary's benefit week commenced on a Monday.

Six months later on 20.7.07 Mary reported her savings had increased from £5,500 to £10,600. She also reported that from 21.7.07 she would be receiving £60 a week for providing her niece with board and lodging.

The DM does not action the increase in Mary's savings during her AIP because this would not be a beneficial change to her retirement provision. The DM only actions the change in Mary's other income (under the usual rules for dealing with a non retirement provision income change).

As a result of the additional income from her boarder Mary's SPC decreased by £20 a week (after the BL disregard was applied) from Monday 23.7.07

83154 - 83159

Increases in retirement provision during an AIP

83160 Where the claimant reports a change in retirement provision which would result in the amount of SPC that the claimant is entitled to decreasing then the DM is prevented from making a supersession decision¹. The claimant's retirement provision has to remain fixed until the end of the AIP.

Note: This does not apply to changes reported to **new** awards made on, or after 6.4.16, or those existing awards where the AIP has **already** ended on a date on, or after 6.4.16. Those claimants will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen

1 SPC Act 02, s 7(3) & (5)

Example 1

Leslie is in receipt of SPC with an AIP which has 2 years left to run.

He reports to the DM that his capital has decreased but that the income from his occupational pension has increased significantly. The overall effect of these changes would be that the amount of SPC which Leslie is entitled to would reduce if the changes were put into effect on the award of SPC.

The DM cannot make a supersession decision and Leslie's entitlement to SPC continues unchanged.

Example 2

Walter is in receipt of SPC with a 3 year PCR set.

On 16.5.16 he reports that his savings have increased after he inherited a small lump sum from a deceased relative's estate. As a result, the amount of SPC that Walter is entitled to is reduced.

The DM supersedes Walter's entitlement to SPC and sets a new 3 year PCR.

83161 - 83999

Chapter 85 - Income other than earnings

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What is income

85003 Income for SPC is only what is defined as income¹ in law. Apart from specified exceptions² it includes all SS benefits³. It also includes other specific types of income, income from capital and retirement/state pension and annuity income as listed in DMG 85130 et seq.

1 SPC Act 02, s 15(1); 2 SPC Regs, reg 15(1); 3 SPC Act 02, s 17(1)

85004 Income is¹

1. earnings
2. WTC
3. RP, SP and annuity income
4. income from annuity contracts
5. SS benefits other than those specified²
6. foreign SS benefits similar to those included at 5.
7. WDisPs or WWP
8. foreign WDisPs or WWP
9. payments from the Armed Forces and Reserve Forces Compensation Scheme
10. income from capital
11. any income that is specified³
12. any payment made to the claimant in lieu of any specified income⁴.

1 SPC Act 02, s 15(1); 2 SPC Regs, reg 15(1); 3 reg 15; 4 reg 15(5)(h)

Deemed weekly income from capital

85005 Capital is deemed to provide a weekly income¹ unless the capital asset is disregarded² for income purposes.

1 SPC Regs, reg 15(6); 2 Sch V

85006 Certain types of capital (such as a property held in a discretionary trust) are disregarded only for the purpose of applying the deemed income rule¹, so any actual income the capital asset generates will be taken into account.

Note: DMG chapter 84 gives guidance on how to calculate an amount of deemed weekly income from capital and explains when certain capital is disregarded for income purposes.

1 SPC Regs, Sch V, Part II

Income from capital - when deemed income has been taken into account

85007 Most capital assets, unless disregarded, are deemed to yield a weekly income (see DMG 84911). Where deemed income

1. is taken into account **or**
2. would be taken into account except for the fact that the claimant's capital is below the lower limit of £10,000 for deemed income to apply

any actual income generated from the capital is fully disregarded¹.

1 SPC Regs, Sch IV, para 18

Example 1

When David claimed SPC he told the DM that he owned a share in a second property, which he had inherited from a relative.

He had tried to sell the property but had been unsuccessful, so three months before he claimed SPC he and the other owners sub-let the property to two students on a nine-month contract. David collects the rent monthly and occasionally does minor repairs, when required.

The DM decided that David is not operating a business. The DM also decided that David's share of the property cannot be disregarded for deemed income purposes.

A valuation is requested and David's share of the property is valued at £14,000, so deemed income of £8 a week is taken into account.

However, because deemed income is being taken into account, the income David receives from sub-letting the property is fully disregarded.

Example 2

Janet claims SPC. She owns a share in a holiday home.

Janet's share is valued at £9,000. The DM decides that Janet's share of the property cannot be disregarded for deemed income purposes, however no deemed income is taken into account because Janet's capital is below £10,000.

Janet uses the property mainly for her own holidays, although occasionally it is rented out to friends.

In August Janet declares that she has received £100 because the property was let out to a friend for a week. The DM decides that Janet is not operating a business.

The £100 income Janet received is not taken into account because the capital is not disregarded for deemed income purposes.

85008 - 85014

How much income should be taken into account

85015 The DM should take into account the gross amount of an income. Disregard the sums in DMG 85021 - 85023 and 85200 et seq. when calculating gross income. For SS benefits consider the guidance at DMG 85095. No disregards should be made for any other expenses or deductions.

Note: For guidance on how to calculate a weekly amount see DMG 85030.

Income of the claimant's partner

85016 In a claim for SPC, calculate income of the claimant's partner in the same way as for the claimant¹. The income should then be treated as the claimant's income².

Note: In SPC a member of a couple is referred to as a partner and both members are referred to as partners³.

1 SPC Regs, reg 14; 2 SPC Act 02, s 5; 3 SPC Regs, reg 1(3)

Polygamous marriages

85017 If a claimant or partner **is married** polygamously to two or more members of his household, the income of each of those members should be treated as the claimant's income and should be calculated in the same way¹.

Note: DMG 77115 gives guidance on who may be members of the claimant's household.

1 SPC Regs, Sch III, para 1(4)

Multiple relationships

85018 There is no special rule to cover multiple relationships. If the claimant is

1. **married to any, but not all** of the other members of the relationship - the DM should treat any unmarried member as a claimant who has no partner. The income of each separate claimant who has no partner should be calculated accordingly
2. **not married to any** of the members - the DM should treat each member of the relationship as a claimant who has no partner. This is because when a claimant has a relationship similar to marriage with two or more people, none of them can form an unmarried couple. The income of each separate claimant should be calculated accordingly.

Rounding of fractions

85019 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage¹.

Note: If more than one calculation is involved in deciding the amount of an income, each fraction should be rounded to the claimant's advantage.

1 SPC Regs, reg 24A

Payments made in a foreign currency

85020 Where payments are made in a foreign currency, the value of the payment should be calculated by taking the sterling equivalent on the date the payment was made¹.

1 SPC Regs, reg 17(6)

Deductions of income tax and social security contributions

85021 Any tax paid, or due to be paid¹ and SS contributions should be deducted² when calculating any income other than earnings that is to be

1. taken fully into account **or**
2. disregarded in part.

Note: Where the amount of tax due to be paid has been assessed under the HMRC Tax Self Assessment process then DMs should consider revision action if it is shown that there is a tax liability or the actual tax liability differs from the forecast provided by the claimant. DMG Chapter 03 provides guidance on revision.

1 R(IS) 4/05; 2 SPC Regs, reg 17(10); CPC/1970/2015

Example

Sara makes a claim for SPC on 5 June. Her AMG is £109.45.

Sara has been receiving RP of £110.50 since April.

Under the HMRC Tax Self Assessment process Sara calculates her forecast tax liability for HMRC and estimates that she will be liable for £79 tax on this year's RP.

The DM calculates the amount of RP to be taken into account as follows:

£110.50 a week RP being paid less £1.52 a week tax [£79 divided by 52 and rounded up] = £108.98

The DM takes £108.98 RP into account.

Sara is entitled to 47 pence GC a week.

Overpayment recovery from other income

- 85022 Except where DMG 85095 applies, when income paid to a claimant is reduced because the paying authority is enforcing recovery of an overpayment, the DM should take into account the net amount. This is the amount the claimant actually receives¹ unless the circumstances in DMG 85023 apply.

1 R(IS) 5/99 Leever

Example

Peter is in receipt of SPC. His partner, Lisa, works and is in receipt of WTC. HMRC has awarded WTC at a rate of £50 per week. However, due to the recovery of an overpayment which occurred on a previous award of WTC, the amount Lisa actually receives is £28 per week. When determining the amount of WTC to take into account on Peter's award of SPC, the DM takes into account Lisa's WTC of £28 per week.

- 85023 If a claimant volunteers to repay an overpayment by offering to have deductions made from his income, the DM should consider whether the claimant has deprived himself of that income (see DMG 85408 et seq).

Treatment of income paid incorrectly to the claimant

- 85024 A claimant may have income (including benefit income) that is being taken into account in an income-related benefit award, which is then retrospectively revised. This can often lead to an overpayment of that income but this does not mean that arrears of the income-related benefit in payment also arise. In such cases, the overpaid income is taken into account until the recipient comes under an immediate obligation to repay it, and only then from the date on which an obligation to repay arises¹. For more information on overpayments, see DMG Chapter 9.

1 R(IS) 5/99 (Leever v. CAO)

Example

Ella has been receiving RP since 1.3.10 and SPC since 4.10.10. HMRC provide an updated NI record on 1.6.16 which shows that Ella's RP award has been incorrectly calculated from the outset. On 7.6.16, a DM revises Ella's RP award to a lower amount with effect from 1.3.10. On 27.6.16 a DM decides that the overpaid RP is a non-recoverable overpayment. For SPC purposes, the revised RP award is taken into account from the next payday – 30.6.16, the effect is not retrospective and there are no arrears of SPC to be offset against the overpaid RP.

Treatment of income for part-week payments at the start of entitlement

85025 A claimant may only be paid a GC for a part week at the start of entitlement to SPC in certain circumstances. DMG 79105 provides guidance on the treatment of income for a part-week.

85026 - 85029

Treatment of arrears of income/benefits

Arrears of other income

85063 Where the claimant receives payments of arrears of income (but not arrears of benefits - see DMG 85066), then the DM should decide how much SPC has been paid to the claimant which would not have been paid if the arrears had been paid on time¹. This figure will be the amount of SPC overpaid and may be recovered from the claimant.

1 SSA Act 92, s 74(1)

85064 The DM also has to establish if the current rate of income has changed. If it has, the DM must supersede the award of SPC. The superseding decision must take effect on the first day of the benefit week in which the claimant receives the new amount of income (or if that is not practicable on the first day of the next following benefit week)¹.

1 SS CS (D&A) Regs, Sch 3B, para 2; PS v SSWP (SPC) [2016] UKUT 0021 (AAC)

85065 The weekly amount of the arrears for the purposes of determining the overpayment should be calculated by reference to the period that the arrears covers¹. This means, for example, that if the arrears period is one month then the weekly amount of the payment should be determined in accordance with DMG 85033. If the arrears period is a period of more than one week but DMG 85033 – 85035 does not apply then the payment should be calculated in accordance with DMG 85036 and so on.

1 SPC Regs, reg 17(1)

Example 1

Spiro receives £100 a month income from an occupational pension.

The DM decided not to set an AIP because other elements of the claimant's retirement provision are unpredictable.

In July Spiro tells the DM that his pension has increased to £110 a month from April. He received a payment in July of £140, which included £30 arrears (for April - June). This prompts the DM to undertake a supersession and to take £110 a month into account from July.

The £30 arrears relating to the period April - June is a late payment of income and the DM calculates the overpayment and the amount to recover by looking at the amount of SPC which would not have been paid if the arrears had been paid on time.

Example 2

Alison is entitled to payments under a personal pension scheme and there is no AIP in place.

The first payment of Alison's pension is made on 31 August. This includes a payment which was due on 31 July. This payment would have been payable at an amount of £180 for the period 18 July to 31 July.

The DM calculates an overpayment of SPC based on the £180 which was a late payment of income in respect of 14 days (see DMG 85036).

Arrears of benefit

85066 Any payment of

1. arrears of benefit (but not those benefits to which DMG 85040 applies) **or**
2. compensation for the late payment of benefit **or**
3. in lieu of the payment of benefit **or**
4. by a LA out of money
 - 4.1 in England and Wales provided for by the Supporting People Scheme under certain legislation **or**
 - 4.2 in Scotland under certain housing support legislation

is capital that is disregarded¹. Further guidance is at DMG 84566.

1 SPC Regs, Sch V, para 20(1)

Meaning of benefit

85067 In DMG 85066 benefit means¹

1. AA
2. CAA and ESDA payable because the claimant is entitled to WC
3. CHB
4. CTC
5. CTB
6. DLA
7. ESA(IR)
8. HB
9. IS
10. JSA(IB)
11. SPC
12. SF Payments.

Income taken fully into account

Types of income taken fully into account

85091 When calculating income other than earnings the DM has to take

1. Annuity income (except those annuities listed at DMG 85171)
2. Armed forces death in service awards
3. BA
4. CA
5. ESA(Cont)
6. IB
7. IIDB
8. Certain types of income from capital
9. Inherited royalties/copyright payments
10. JSA(Cont)
11. MA
12. Maintenance payments for the claimant or partner
13. PB and MDB scheme
14. Retirement pension income (including increases for adult dependants) (see DMG 85130 et seq)
15. SDA
16. State Pension
17. War orphan's pension
18. WP
19. WTC
20. Workmen's Compensation (Supplementation)

fully into account. Detailed guidance is given in DMG 85100 et seq.

Foreign social security benefits

85092 All foreign SS benefits similar to those included at DMG 85091 should be taken into account in full¹ including any foreign state retirement pension.

1 SPC Regs, reg 15(2)

Meaning of foreign social security benefit

85093 Foreign SS benefit means¹ any benefit, allowance or other payment which is paid under the law of a country outside the UK and is in the nature of SS.

1 SPC Act 02, s 17(1)

Meaning of foreign state retirement pension

85094 A foreign state retirement pension is¹

1. any retirement pension paid under the law of a country outside the UK **and**
2. in the nature of social security (like a RP paid under UK law).

1 SPC Regs, reg 1(2)

Deductions from benefits

85095 Where the payment of a SS benefit included at DMG 85091 has any deduction other than an adjustment as a result of

1. an overlapping benefit **or**
2. hospital down-rating **or**
3. a reduction in IB in respect of pensions and councillor's allowances **or**
4. a reduction in ESA(Cont) in respect of pensions, Pension Protection Fund periodic payments and councillor's allowances

the DM should take the amount of benefit before the deduction into account¹.

Note: DMG 85021 gives guidance about deductions which are allowed for tax and SS contributions.

1 SPC Regs, reg 15(3) & 15(4)

85096 - 85099

Retirement pension income taken fully into account

85130 Retirement pension income¹ includes RP, SP, occupational and personal pensions and certain other pension related income as explained at DMG 85131 et seq. All retirement pension income should be taken fully into account for SPC.

Note: Deemed increases in retirement pensions and annuities income (but not RP) are explained at DMG 85052 - 85057.

1 SPC Act 02, s 16(1)

Retirement pension

85131 RP should be taken fully into account. For SPC purposes this includes either

1. contributory (Category A or B) RP¹ **or**
2. non-contributory (Category C or D) RP².

1 SPC Act 02, s 16(1)(a); 2 s 16(1)(d)

85132 It also includes the following elements

1. a shared additional pension payable as a result of divorce¹
2. graduated retirement benefit earned between 1961 and 1975 under the graduated pension scheme²
3. age additions³.

Note: Whilst increases in RP for adult dependants are income for SPC purposes they are not included as retirement pension income.

1 SPC Act 02, s 16(1)(b); 2 s 16(1)(c); 3 s 16(1)(e)

State Pension

85133 SP replaces RP for people reaching pensionable age on, or after 6.4.16. and should be taken fully into account¹.

1 SPC Act 02, s 16(1)(za)

85134 SP does not consist of individual elements like RP (BP, AP & GRB etc.) and will generally be based only on the claimant's NI record. Exceptions to this will be where:

1. the claimant is widowed and inherits a deceased spouse or civil partner's AP, deferred RP or deferred GRB, **and**
2. the claimant receives a transitional rate of SP (for women who paid reduced rate NI) **and**
3. the claimant is awarded a Shared Additional Pension (SAP) upon divorce.
4. Increments (of SP) for deferred retirement.

85135 SP entitlement may be at:

1. the full rate **or**
2. the reduced rate **or**
3. the transitional rate.

See DMG Chapter 74 for more details.

Occupational pensions

85136 Income from occupational pensions should be taken fully into account¹. This includes any payment (other than a payment ordered by a court or made in settlement of a claim) made by or on behalf of a former employer on account of early retirement on grounds of ill health or injury².

1 SPC Act 02, s 16(1)(f); 2 s 16(1)(l)

Meaning of occupational pension scheme

85137 An occupational pension scheme is a pension scheme defined under specific pensions legislation¹ that provides benefits to, or in respect of, people with service in a particular employment or may provide benefits to, or in respect of, other people.

1 SPC Act 02, s 17; PS Act 93, s 1

85138 Occupational pension schemes are set up by employers to provide pensions for employees and their dependants. Payments under the

1. British Coal Voluntary Employment Redundancy Scheme **or**
2. British Coal Industrial Death and Retirement Scheme **or**
3. British Coal Redundant Mineworker's Pension Scheme **or**
4. Police and Fire-fighters' disablement or special widow's pension schemes

are included.

85139 Occupational pension payments do not include discretionary payments from a fund set up to relieve hardship. This type of payment is a charitable or voluntary payment and is ignored for SPC purposes.

Example

Jean is a retired nurse and is claiming SPC.

Every three months she receives a payment of £300 from a charitable trust for nurses.

The DM decides that the payment is a charitable payment and should be ignored for SPC purposes.

- 85140 The DM should take payments fully into account as an occupational pension if a pensioner who has been in employment that was contracted out of S2P is entitled to
1. GMP instead of additional pension through an occupational pension scheme **and**
 2. increments to an occupational pension and GMP if retirement was deferred.

Personal pensions

85141 Income from personal pension schemes should be taken fully into account¹.

Personal pension schemes provide pensions on retirement for

1. S/E people **or**
2. employees who are not members of occupational pension schemes.

1 SPC Act 02, s 16(1)(f)

Meaning of personal pension scheme

85142 A personal pension is a pension scheme that¹

1. is not an occupational pension scheme **and**
2. is established by a person within specified finance legislation².

1 SPC Act 02, s 17; PS Act 93, s 1; 2 Finance Act 2004, s 154(1)

Retirement annuity contracts

85143 Payments from this type of personal pension should be taken fully into account¹.

Before 1.7.88 people could take out retirement annuity contracts. These are similar to a personal pension and were usually taken out by S/E people. People with these pensions are entitled to buy an annuity between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

1 SPC Act 02, s 16(1)(h)

Meaning of retirement annuity contract

85144 Retirement annuity contract means¹ an approved contract or scheme that allows a person to buy an annuity from the age of 60.

1 SPC Act 02, s 16(3)

Retirement annuities purchased on divorce

85145 Income received from an annuity purchased or transferred to meet an ex spouse's liability on divorce¹ should be taken fully into account.

1 SPC Act 02, s 16(1)(j)

Overseas arrangements

85146 Income from an overseas pension arrangement¹ as in DMG 85147 should be taken fully into account.

1 SPC Act 02, s 16(1)(g)

Meaning of overseas arrangement

85147 An overseas arrangement is¹ a scheme or arrangement which

1. has the effect (or is capable of having the effect) of providing benefits to or in respect of employed earners on the termination of employment, death or retirement **and**
2. is administered wholly or primarily outside GB **and**
3. is not included in the description of an appropriate scheme **and**
4. is not an occupational pension scheme.

1 SPC Act 02, s 16(3)

Foreign annuities or insurance policies

85148 Income from annuities or insurance policies that were bought or transferred to provide income under a personal pension scheme or other overseas pension arrangement¹ should be taken fully into account.

1 SPC Act 02, s 16(1)(i)

Civil list pensions

85149 Income from a civil list pension¹ should be taken fully into account.

1 SPC Act 02, s 16(1)(k)

85150 A civil list pension is awarded for distinguished service to the nation in the arts, science or literature. It is

1. paid at the discretion of the Queen **and**
2. voted annually by parliament.

Equity release schemes

85151 Any payment made at regular intervals under an equity release scheme (but not home income plans) should be taken fully into account¹.

Note: Although home income plans are a type of equity release scheme special rules apply to these (see DMG 85221 - 85224).

1 SPC Regs, reg 15(5)(j) & 16

Meaning of equity release scheme

85152 Equity release scheme means¹ a loan made between a person (“the lender”) and the claimant

1. by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals **and**
2. which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home.

1 SPC Regs, reg 1(2)

Example 1

AIP not set

John made a claim for SPC on 10.10.04. On his claim form he said that he was receiving £110 a month from his building society under a scheme to release some of the equity in his home.

The DM decided the payments were from an equity release scheme. The £110 a month was therefore retirement pension income and was taken fully into account.

On 1.12.04 John told the DM that he had just taken an additional £1,500 under the terms of the same equity release scheme.

The DM decided the £1,500 was not part of the regular payments and was a one-off lump sum payment. The £1,500 was a payment of capital.

Example 2

AIP set

Jackie aged 70 claimed SPC on 6.10.03. An AIP was set for five years. The claimant’s AIP ends on 5.10.08.

On 20.11.04 Jackie takes out an equity release scheme. She receives a cash advance of £20,000.

From 20.12.04 Jackie also starts to receive regular monthly payments of £150 a month.

Jackie does not need to report the change in her income or capital until the end of the AIP.

Financial Assistance Scheme

85153 Income from the Financial Assistance Scheme should be taken fully into account¹
The Financial Assistance Scheme provides financial help to some people who have lost out on their non-state pension because

1. the scheme they were a member of was under-funded when it started to wind- up **and**
2. the employer is insolvent or no longer exists.

1 SPC Act 02, s 16(1)(n)

85154 Awards under the Financial Assistance Scheme, top up the amount payable (subject to a maximum amount) under the qualifying pension scheme to a level broadly equal to 90% of the amount that would have been received had the pension scheme not started to wind-up. Tax will be deducted at source. In most cases Financial Assistance Scheme payments for individuals will commence at age 65. The terminally ill and survivors may qualify for payments earlier.

85155 - 85169

Income with partial disregards

85220 The following types of income should be disregarded in part¹

1. home income plans (see DMG 85221)
2. income from boarders (see DMG 85231)
3. income from subletting (see DMG 85239)
4. civilian war injury pensions (see DMG 85241)
5. royalty payments (see DMG 85242)
6. discretionary trusts (see DMG 85245).

1 SPC Regs, Sch IV

Home income plans

What is a home income plan

85221 A home income plan is a type of equity release scheme. Retired people who own their own home may take out a loan secured on the home and use the money to buy an annuity which provides an income. The loan may also be for other expenditure such as building an extension. The gross income from the annuity covers the interest on the loan with any balance being used for personal use.

Note: For guidance on the treatment of income from other types of equity release schemes see DMG 85151.

What is an annuitant

85222 In this guidance, an annuitant is a person to whom income from an annuity is payable.

Payments from home income plans

85223 The DM should establish if the following conditions are satisfied

1. the loan was taken out under a scheme under which at least 90% of the proceeds of the part of the loan intended to buy an annuity have been used to buy an annuity¹ **and**
2. the annuity ends with
 - 2.1 the life of the person to whom the loan was made **or**
 - 2.2 the life of the survivor of two or more annuitants who include the person to whom the loan was made **and**
3. at the time the loan was made the person to whom it was made and other annuitant was aged at least 65² **and**

4. the loan was secured on a dwelling in GB and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling³
and
5. the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as the home at the time the interest was paid⁴ **and**
6. the interest on the loan is paid by the person to whom the loan was made or by one of the annuitants⁵.

*1 SPC Regs, Sch IV, para 10(a); 2 Sch IV, para 10(b); 3 Sch IV, para 10(c);
4 Sch IV, para 10(d); 5 Sch IV, para 10(e)*

85224 If all the conditions in DMG 85223 are satisfied the DM should disregard

1. the net weekly interest where income tax is deductible¹ **or**
2. the gross amount of interest in other cases².

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

1 SPC Regs, Sch IV, para 10(e)(i); 2 Sch IV, para 10(e)(ii)

Notional annuity income

85225 If the annuity income **is**

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

the DM should consider if the claimant is treated as possessing notional income (see DMG 85400 et seq)¹.

1 SPC Regs, reg 18(6)

85226 - 85229

Income from people living in the claimant's home

85230 The following paragraphs give guidance on the treatment of income from people living in the claimant's home other than non-dependants. DMs should not apply the disregard for payments from people who normally live with the claimant to

1. payments for board and lodging **or**
2. payments made by a subtenant under a contract.

Benefits fully disregarded

Bereavement payment

85294 Bereavement payment is a lump sum payment that can be claimed if the spouse or civil partner is under pensionable age and the deceased spouse or civil partner satisfied the requisite contribution condition. It is fully disregarded¹ in the calculation of SPC.

1 SPC Regs, reg 15(1)(n)

Child benefit

85295 CHB should be fully disregarded¹ in the calculation of SPC. It is payable to people in GB who are responsible for a child.

1 SPC Regs, reg 15(1)(j)

Child dependency increases

85296 Any increase for a dependant, other than the claimant's partner, paid in accordance with specified legislation¹ is disregarded in full².

Note: To be gradually abolished under tax credits.

*1 Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, Part 2 or 3;
2 SPC Regs, reg 15(1)(h), Sch IV para 12*

Child's special allowance

85297 Child's special allowance should be fully disregarded¹. It is payable to a divorced woman on the death of her former husband if she has

1. a child whom her former husband was helping to support or was liable to support **and**
2. not remarried.

Note: Child's special allowance was abolished from 6.4.87. Where it was in payment before that date claimants could continue to receive it².

1 SPC Regs, reg 15(1)(f); 2 SS CB Act 92 s 56(6)

Christmas bonus

85298 Christmas bonus should be disregarded in full¹. It is paid in the week starting with the first Monday in December to people getting the following benefits²

1. RP & SP
2. IB

3. WMA, WPA or WP
4. SDA
5. CA
6. IDB
7. AA/DLA
8. US
9. WDisP
10. WWP
11. SPC
12. ESA(Cont).

1 SPC Regs, reg 15(1)(k); 2 SS CB Act 92, s 148

Council tax benefit

85299 The DM should fully disregard any payment of CTB¹. CTB usually reduces the bill sent by LAs but some claimants may receive cash payments.

1 SPC Regs, reg 15(1)(m)

Guardian's allowance

85300 GA should be fully disregarded¹. It is payable to a person who is entitled to CHB for a child

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

1 SPC Regs, reg 15(1)(g)

Housing benefit

85301 The DM should fully disregard any payments of HB¹. HB may be

1. paid direct to the claimant **or**
2. paid direct to the landlord **or**
3. deducted from the rent payable.

HB is paid by LAs to help people on low incomes pay their rent.

Note: See DMG 85230 et seq where the claimant is a landlord and receives HB for people living in his home.

1 SPC Regs, reg 15(1)(l)

Notional income

General

What is notional income

85400 A person may be treated as having an income that he does not actually have¹. This type of income is known as notional income and may take different forms.

1 SPC Act 02, s 15(6)(a)

Types of notional income

85401 Notional income may be attributed because of¹

1. deprivation of income (DMG 85408 - 85426)
2. retirement pension income available but not applied for (DMG 85440 - 85478)
and
3. income for the claimant paid to a third party (DMG 85500 - 85506).

1 SPC Regs, reg 18

Actual and notional income

85402 A person may have both actual and notional income. DMs need not consider notional income if a person's actual income on its own is greater than the claimant's AMG. If actual income is less than the AMG the DM should consider if there is notional income.

Treatment of notional income

85403 Calculate notional income in the same way that actual income is calculated in this Chapter. Any notional income should be added to any actual income. The total should then be taken into account using normal rules, including applying any appropriate disregard.

85404 - 85407

Deprivation of income

85408 DMs should treat claimants as receiving income that they have deprived themselves of for the purpose of gaining entitlement to or increasing the amount of SPC payable¹, unless the circumstances in DMG 85409 - 85410 or 85426 - 85434 apply.

1 SPC Regs, reg 18(6)

Deferral of retirement pension entitlement

85409 From April 2005 pensioners can choose to be paid either an increased pension or a lump sum payment where they have deferred their entitlement to RP, shared additional pension or graduated retirement pension. Deferral has to be for at least twelve months (after 6.4.05) for the lump sum option to be available. Where someone dies whilst deferring, the surviving spouse or civil partner will have the same choice in relation to the inherited increase or lump sum.

85410 The rule regarding deprivation of income at DMG 85408 shall not apply¹ if a claimant

1. elects for an increase in their pension or benefit following deferral under specified pensions legislation² **and**
2. changes their election in accordance with specific regulations³ in favour of a lump sum.

Note: The deferral referred to at 1. above applies to the claimant's own deferral or that of their late spouse or civil partner.

*1 SPC Regs, reg 18(6) & (7); 2 SS CB Act 92, Sch 5 or 5A; Graduated Retirement Benefit Regulations, Sch 1;
3 SS CB Act 92, Sch 5 or 5A*

Deferral of State Pension entitlement

85411 Pensioners can choose to postpone or suspend (defer) their entitlement to SP¹. Generally (unlike RP), there is no lump sum payment option, however a lump sum payment under SP can be received in the following circumstances:

1. the person's partner has died; **and**
2. the deceased had reached pension age before 6.4.16; **and**
3. they had deferred their pension and had died whilst deferring.

1 Pensions Act 14, s 16

85412 The rule regarding deprivation of income at DMG 85408 shall not apply¹ if a claimant

1. elects for an increase in their pension or benefit following deferral under SP legislation² **and**
2. changes the election in accordance with specific regulations³ in favour of a lump sum.

Note: The deferral referred to at **1.** applies to the claimant's own deferral or that of their late spouse or civil partner.

1 SPC Regs, reg 18(6), (7ZA) & (7ZB); 2 Pensions Act 14, s 8(2) & (9); SP Regs, reg 15 & 16; 3 reg 6 & 18(7)

Deprivation

85413 The DM must be satisfied that a significant reason for the deprivation was to get or increase SPC.

Example

George is retired. He claims SPC but the DM refuses the claim on income grounds because George has an occupational pension.

George claims SPC again. The DM finds out that George has arranged for his occupational pension payments to be transferred to another person.

The DM decides that the transfer of the pension was done for the purpose of getting SPC and takes into account a notional income equal to the amount of the occupational pension.

Meaning of deprive

85414 The word deprive is an ordinary English word. Its meaning is not a question of law. It should be given a normal everyday meaning¹.

1 R(SB) 38/85

85415 Claimants will have deprived themselves of income, if, because of their own actions, they no longer have that income. Claimants will still have deprived themselves of income whether or not another income has replaced the original income¹.

1 R(SB) 40/85

85416 Claimants cannot deprive themselves of income that they have already received. If a payment of income is received, it is actual income and should be taken into account in the normal way.

85417 A deprivation of income may occur where a claimant's income is reduced to repay an overpaid income. The DM should decide if a significant reason for the reduction is to get or increase the amount of SPC. DMs should bear in mind that the repayment of a

1. legally enforceable **and**
2. immediately repayable

debt cannot be for the purpose of increasing or getting SPC¹.

1 R(SB) 12/91

Questions for consideration

85418 The DM should consider the questions in DMG 85419 - 85426 where claimants seem to have deprived themselves of income.

Was it the claimant's income

85419 The DM must decide if an income belongs to the claimant. If there is evidence that the person has been receiving an income (possibly on a previous claim), the DM should presume the income belongs to the claimant.

85420 There may be supporting evidence, such as a letter or document that shows an income belongs to the claimant. If it is alleged that an income is not the claimant's, the claimant must prove that the income belongs to someone else.

Has a deprivation of income happened

85421 Deprivation will have happened if a person

1. gives up **or**
2. transfers to another person

an income due to be paid.

Example

Suzanne received SPC. She arranges by deed of gift to transfer income from an occupational pension to her adult daughter. The DM decides that Suzanne has deprived herself of the income from the occupational pension.

85422 The claimant has to prove that an income is no longer paid to him. Once the DM has shown that a claimant was being paid an income it is up to the claimant to prove it is no longer being paid. If the claimant cannot do this, the DM should decide that the income is still being received. The income should be taken into account as actual income¹.

1 R(SB) 38/85

Was the purpose of the deprivation to get or increase the amount of SPC

85423 There may be more than one reason for a person disposing of an income. Only one of those reasons might be getting or increasing SPC¹.

1 R(SB) 38/85

85424 Getting or increasing SPC need not be the most important reason for disposing of an income but it must be a significant reason¹.

1 R(SB) 40/85

85425 It is unlikely that there will be direct evidence that a deprivation was for the purpose of getting benefit. Decide on a person's reasons for disposing of an income after considering all the facts of the case. These may include

1. the person's explanations
2. the timing of the disposal
3. the claimant's knowledge of the benefit system
4. the likelihood of a benefit claim at the time of the deprivation.

85426 When considering claimant's intentions in depriving themselves of income the DM should consider what account of the claimant's intentions best explains the facts of the case. If the best explanation of the deprivation is that a significant reason for the disposal was getting or increasing SPC the DM should calculate a notional income.

Timing of the disposal

85427 DMs should carefully consider the timing of the disposal of income as

1. a claim for SPC made shortly after the disposal of an income may indicate that getting or increasing SPC was a significant reason for the disposal
2. a claim for SPC made a long time after the disposal of an income is less likely to indicate that getting or increasing SPC was a significant reason for the disposal. But if there is evidence that a claimant was considering claiming SPC at a later date, deprivation may still have been for getting or increasing benefit.

Example

Rosemary is retired and in poor health.

She transfers a payment from an annuity to her daughter by deed of gift. She goes to live in a care home nine months later and claims SPC.

The DM decides that

1. Rosemary deprived herself of the income **and**
2. that the need to claim SPC at a later date was an important factor in the deprivation.

Trivial commutation of small pensions

85428 In certain circumstances people who are in receipt of a small private or occupational pension may choose to give up periodical payments in exchange for a lump sum payment. A claimant has not deprived themselves of income¹ where

1. his rights to benefits under a registered pension scheme² are extinguished and as a consequence he receives a payment from the scheme **and**
2. that payment is a trivial commutation lump sum as defined in specific legislation³.

1 SPC Regs, reg 18(9); 2 Finance Act 2004, s 150(2); 3 s 29, para 7

85429

Service users

85430 People who participate in a service user group are often called “service users”. A service user means¹

1. a person who is being consulted by or on behalf of
 - 1.1 a body which has a statutory duty to provide services in the field of
 - 1.1.a health **or**
 - 1.1.b social care **or**
 - 1.1.c social housing **or**
 - 1.2 a body which conducts research or undertakes monitoring for the purpose of planning or improving the services in **1.1**in their capacity as a user, potential user, carer of a user or a person affected by those services **or**
2. a person who is being consulted by or on behalf of
 - 2.1 the Secretary of State in relation to social security or child support functions under relevant legislation² **or**
 - 2.2 a body which conducts research or monitoring in order to plan or improve the functions in **2.1**in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person
3. the carer of a person consulted under **1.** or **2.**

1 SPC Regs, reg 1(3A); 2 E & T Act 73, s 2

85431 For the purposes of 85430

1. a service user is a person who
 - 1.1 has used **or**
 - 1.2 is using **or**
 - 1.3 may potentially use **or**
 - 1.4 is otherwise affected by the services referred to in **2. and**
2. the services concerned are delivered by a body which has a statutory duty to provide services in the field of
 - 2.1 health **or**
 - 2.2 social care **or**
 - 2.3 social housing **or**
 - 2.4 social security **or**
 - 2.5 child support **and**
3. a service user is a person who is consulted by the bodies in **2.** or by an alternative body (for example, educational establishments or voluntary and charitable organisations) who conduct
 - 3.1 research **or**
 - 3.2 monitoring **or**
 - 3.3 planningin order to improve services through user involvement.

85432 Service user may sometimes be described as

1. experts-by-opinion
2. patients
3. potential patients
4. clients
5. carers
6. focus groups.

85433 A body that seeks to improve services through user consultation may describe the process as

1. service user and care user involvement
2. public involvement
3. participation
4. co-operation

5. Local Involvement Networks (LINKs).

Example 1

The General Social Care Council (GSCC) is required under legislation to promote high standards in the training of social care workers. It does this through inspection and regulation. Roger has had the help of a social worker in the past. Roger and other individuals have been invited to attend a training programme for social workers as visitors to monitor and advise on the training policies of the GSCC from the perspective of people who have used social work services. The DM determines that Roger is a service user.

Example 2

The National Institute for Health & Care Excellence (NIHCE) is a statutory body. Its guidance helps support providers and commissioners deliver high quality care in health and care settings. Key to NIHCE's work is its ability to engage with stakeholders, such as NHS patients, social care service users, carers, etc. in order to produce relevant and meaningful guidance.

Helen has a diagnosis of chronic obstructive pulmonary disease (COPD). As part of developing a clinical guideline on COPD, NIHCE has asked Helen to join the guideline development group to ensure that the patient's perspective is taken into account during the development of the guideline. The DM determines that Helen is a service user.

85434 Where the claimant

1. is a participant in a service user group **and**
2. has possibly deprived him/herself of an income arising from his/her participation in the service user group

the DM cannot treat the claimant as possessing that income¹.

1 SPC Regs, Reg 18(7A)

Example

Andrew is in receipt of SPC. He attends his local hospital as an out-patient on a regular basis. Andrew has volunteered to take part in a Patients' Forum which discusses the services and care provided by the hospital. As an acknowledgment for attending the Patients' Forum the local Health Trust pay participants £40 each time they attend. Andrew decides to decline this payment because he does not want this to be taken into account when calculating his entitlement to SPC. The DM decides that the deprivation rule in DMG 85408 does not apply to Andrew and so there is no notional income to take into account.

85435 - 85439

Retirement pension income available on application

General

85440 **[See memo DMG 12/15]** There are special rules for treating retirement pension income

1. that would be paid to the claimant if he applied for it **and**
 2. that has not been applied for
- as notional income¹.

1 SPC Regs, reg 18(1)-(5)

Retirement pension - notional income

85441 A claimant who has reached qualifying age (see DMG 77032), but who does not claim RP, has to be treated as possessing the amount of RP which he could expect to receive if he had applied for it¹, but only from the date it could be expected to be acquired if a claim was made.

1 SPC Regs, reg 18(1)

Example

On 1 November John who, has reached the qualifying age, made a claim for SPC and confirmed he was not receiving any RP.

On 6 November the Pension Service advised that John would be entitled to £80 a week RP if he made a claim for it.

The DM estimated the time it would take for a typical claim for RP to be dealt with and put into payment.

The DM decided that John should be treated as having a notional income of £80 a week from 13 November.

85442 For SPC purposes RP includes¹

1. contributory (Category A or B) RP **or**
2. non-contributory (Category C or D) RP **and**
3. a shared additional pension payable as a result of divorce
4. graduated retirement benefit earned between 1961 and 1975 under the graduated pension scheme **or**
5. any age additions.

Note: Increases in RP for adult dependants are taken into account as income but they are not included as notional income where state pension has not been claimed. This is because they are not treated as retirement pension income.

1 SPC Act 02, s 16(1)(a)-(e), SPC Regs, reg 18(1)(a)

State Pension – notional income

85443 A claimant who has reached the qualifying age for SPC but who does not claim SP, has to be treated as possessing the amount of SP which they could expect to receive if they had claimed it¹. However, this is only from the date it could be expected to be acquired if a claim was made.

1 SPC Regs, reg 18(1)

85444 SP does not consist of individual elements like RP (BP, AP & GRB etc.) and will generally be based only on the claimant's NI record. For SPC purposes, SP is either

1. contributory (Cat A or B) **or**
2. non-contributory (Cat C) in limited circumstances only.

Exceptions to this will be where:

1. the claimant is widowed and inherits a deceased spouse or civil partner's AP, deferred RP or deferred GRB, **and**
2. the claimant receives a transitional rate of SP (for women who paid reduced rate NI) **and**
3. the claimant is awarded a Shared Additional Pension (SAP) upon divorce.
4. Increments (of SP) for deferred retirement.

Example

On 9 May Kara, who has reached the qualifying age, makes a claim to SPC. She confirms she is not receiving SP.

On 13 May, the Pension Centre advises that Kara would be entitled to a weekly SP of £155.65 if she claimed it.

The DM estimates the time that it would take for a typical claim to SP to be processed and put into payment.

The DM decides that Kara should be treated as having a notional income of £155.65 a week from 23 May.

Deferring retirement pension

85445 The rules on deferring RP allow people who have deferred claiming their pension for at least twelve months from April 2005 to have the choice between taking extra RP or a lump sum payment for the additional RP accrued.

85446 Where a claimant to whom DMG 85441 applies

1. has deferred their RP for at least twelve months **and**
2. would have been entitled to make an election under specific RP legislation¹

he shall be treated as having the amount of RP income² which he might expect to be entitled to if he had elected to receive a lump sum.

1 SS CB Act 92, Sch 5 or 5A; Graduated Retirement Benefit Regs, Sch 1; 2 SPC Regs, reg 18(1B)

Example

Alice has claimed SPC. She has confirmed that she is currently deferring her entitlement to RP.

Alice has deferred her RP for 18 months.

The DM received evidence that Alice would be entitled to £100 RP a week if she opted to take a lump sum payment for the deferral period, instead of additional RP that she would be entitled to.

The DM decided to treat Alice as having a notional income of £100 a week.

Deferring retirement pension whilst an overlapping benefit is in payment

85447 Where a claimant to whom DMG 85441 applies is in receipt of an overlapping benefit or allowance - the amount of RP income he shall be treated as having¹ is the RP he is entitled to minus the amount of the benefit or allowance in payment.

1 SPC Regs, reg 18(1CA)

85448 Where a claimant to whom DMG 85441 applies is in receipt of an overlapping benefit or allowance - which would result in an adjustment to be made to the amount of RP payable - he shall be treated as having¹ the RP income minus the adjustment which would be made to it.

1 SPC Regs, reg 18(1CB)

Example

Jack is an SPC claimant. He has been deferring his RP for two years.

Jack receives £46.95 a week CA that is taken fully into account.

The DM receives evidence that Jack would be entitled to £80 a week RP if he claimed it and opted to take a lump sum payment for the period he has deferred.

The DM decided to treat Jack as having notional RP income of £33.05 a week (£80 RP less £46.95 CA).

85449 - 85452

Occupational pension schemes - notional income

85453 A claimant who has reached qualifying age for SPC (see DMG 77032) and has entitlement to an occupational pension but who has elected to defer payment should be treated as possessing the amount of occupational pension he could expect to receive if he applied for it¹, but only from the date it could be expected to be acquired if a claim was made.

Note: See DMG 85455 et seq. where a claimant fails to secure money purchase benefits under an occupational pension scheme.

1 SPC Regs, reg 18(1D)

Example

Asif belongs to an occupational pension scheme. The retirement age for the scheme is 60. However, it is possible to defer drawing the pension for four years after this age in return for receiving a larger income. It is also possible to apply for the occupational pension from the age of 55 but payments would be made at a reduced rate.

Asif decides to take his payments at the age of 60. The DM decides that Asif has not deferred payment of his occupational pension because he has taken the pension at the retirement age for the scheme.

Personal pensions

General

85454 A personal pension is a fund that provides an income on retirement for employees¹ or the S/E². This may be done by

1. buying an annuity **or**
2. taking an income from the pension fund.

Taking an income from the pension fund allows the purchase of an annuity to be delayed up to the age of 75. The amount of income paid from the fund is recalculated every three years. At the age of 75 an annuity must be purchased.

1 PS Act 93, s 1; 2 Income and Corporation Taxes Act 1988, Part XIV, chapter IV

Personal pensions/occupational pensions where income withdrawal is allowed - notional income

85455 Treat a person who has reached qualifying age for SPC (see DMG 77032) who

1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that allows income withdrawal **and**

2. has not bought an annuity **and**
 - 2.1 has deferred taking all or part of the income from the fund **or**
 - 2.2 has failed to do everything necessary to get all or part of the income from the fund that would be payable if he applied for it

as having a notional income¹.

1 SPC Regs, reg 18(2)(a)(i) & (ii)

Amount of notional income

85456 **[See memo DMG 12/15]** The amount of the notional income is the maximum amount of income that may be withdrawn from the fund¹ (see DMG 85465 et seq).

1 SPC Regs, reg 18(3)

From what date should the DM take notional income into account

85457 Take notional income into account from the date that the person could expect to get the income if an application was made¹. To calculate this date

1. assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take the pension fund holder to process an application for the maximum amount of income.

1 SPC Regs, reg 18(2)

Example

Bernard receives SPC.

On 1 November the DM receives evidence that Bernard is entitled to a personal pension but has not bought an annuity or drawn an income.

The pension fund holder states that Bernard's scheme can provide an income. In Bernard's case the maximum amount of income, based on the Government's tables, is £23 a week.

Once an application is made it would take the pension fund holder six weeks to arrange for the maximum income to be paid.

The DM decides that Bernard should be treated as having a notional income of £23 a week from 13 December.

Personal pensions/occupational pensions where income withdrawal is not allowed - notional income

85458 Treat a person who has reached qualifying age for SPC (see DMG 77032) who

1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that does not allow income withdrawal **or**

2. has a retirement annuity contract

and has not bought an annuity, as having a notional income¹.

1 SPC Regs, reg 18(2)(a)(iii) & (b)

Amount of notional income

- 85459 The amount of notional income is the amount that a person could have received without buying an annuity, if the pension funds or retirement annuity contract were held in a scheme that did allow income withdrawal¹ (see DMG 85465 et seq).

1 SPC Regs, reg 18(4)

From what date should the DM take notional income into account

- 85460 Take notional income into account from the date that a person could expect to get the income if an application was possible¹. To calculate this date

1. assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for the maximum amount of income.

1 SPC Regs, reg 18(2)

Example

Fiona is an SPC claimant. On 1 November the DM receives evidence that Fiona has a retirement annuity contract.

The pension fund holder provides evidence, based on the Government tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The DM estimates that it would take six weeks for a typical pension fund holder to arrange for the maximum income to be paid from a fund.

The DM decides that Fiona should be treated as having a notional income of £30 a week from 13 December.

Note: where the notional income rules have been applied and the claimant subsequently takes steps to obtain that income, the guidance at DMG 85460 will no longer apply. The DM should establish the date the claimant begins to take steps to obtain that income and remove the notional income from that date.

Meaning of money purchase benefits

- 85461 The term money purchase benefits means¹ where pension benefits are determined by the amount of the payment or payments made by or on behalf of the member of the pension scheme rather than average salary benefits.

1 SPC Regs, reg 18(5), PS Act 93, s 181(1)

What is a pension fund holder

85462 A pension fund holder, with respect to an occupational pension scheme, personal pension scheme or retirement annuity contract means¹

1. trustees **or**
2. managers **or**
3. administrators

of the scheme or contract concerned.

1 SPC Regs, reg 1(2)

Who is a person who derives entitlement

85463 The term person who derives entitlement is used to describe people who may be paid a pension at the discretion of the pension fund holder. When the original pensioner dies the pension fund holder has discretion to decide what to do with the fund.

85464 People such as widows or widowers of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

Information and evidence

85465 Pension fund holders must provide the DM with information about

1. the maximum amount of income available from the pension fund **and**
2. the amount of income that would be available if the funds were held in a scheme that produces an income.

85466 This information is based on tables prepared by the Government¹. DMs should consider evidence from pension fund holders when deciding the amount of notional income. Do not make a decision until the pension fund holder has been given sufficient time to provide evidence.

1 SS (C&P) Regs, reg 7(6)

85467 DMs should consider the evidence of the pension fund holder but are not bound to accept it. Consider all the evidence on the amount of notional income before making a decision. The decision should be based on the most convincing evidence available.

Lump sums on retirement

85468 At the point that

1. an annuity is bought **or**
2. an income is taken

from the personal pension fund, a lump sum of up to 25% of the fund may be taken. Treat this payment as capital.

85469 - 85475

Actual income

- 85476 Take into account in full in the normal way, any income that is
1. paid under an annuity bought with funds from
 - 1.1 a personal or occupational pension scheme **or**
 - 1.2 a retirement annuity contract **or**
 2. withdrawn from a personal or occupational pension scheme.

Provision under a retirement annuity contract

85477 Before 1.7.88 people could buy retirement annuity contracts. People with these pensions are entitled to buy an annuity at any time between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

Note: DMG 85144 explains what a retirement annuity contract is.

Retirement annuity contract - notional income

85478 If a claimant who has reached qualifying age for SPC (see DMG 77032) fails to purchase an annuity with the funds available under his retirement annuity contract notional income should be taken into account¹. DMG 85459 explains how much income should be taken into account.

1 SPC Regs, reg 18(2)(b)

85479 - 85499

Treatment of particular kinds of payments from employment

Introduction

86050 The SPC legislation¹ provides some examples of what earnings can include. But there are other payments which may count as earnings. Guidance on types of earnings paid during a period of employment is in DMG 86054 - 86102.

1 SPC Regs, reg 17A(2)

Employment ended

86051 Some payments are made to employees because their employment has ended. How payments made to employees affect a claim for SPC will depend on

1. whether the payment was in respect of work which ended before the claim for SPC **or**
2. whether the work ends whilst the claimant is in receipt of SPC.

Employment continuing

86052 Earnings received in respect of work which is either

1. ongoing at the time of the SPC claim **or**
2. commences whilst the claimant is in receipt of SPC

should be taken into account when calculating the claimant's entitlement to GC and SC.

86053 Payments of earnings made where employment is continuing at the time of the claim or which commences during a claim for SPC will be taken into account in the same way as other income, subject to any appropriate earnings disregard.

Accommodation provided by employer

86054 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored.

Actors and entertainers

86055 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

86056 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E

earner, to have periods of employment as an employed earner at the same time as his overall self-employment.

86057 The fact that an actor or entertainer has periods of employment during which class 1 National Insurance contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to SPC to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

Note: from 6 April 2014, HMRC treat actors and entertainers as self-employed for NI (and generally tax) purposes¹ and they now pay Class 2 or 4 contributions.

1 Social Security (Categorisation of Earners) (Amendment) Regulations 2014

Example 1

Sarah is an actress. Her acting engagements are sporadic, and she is not currently working. She continues to look for work and remains on her agent's books. She has been booked for some future engagements, but nothing substantial, and has not worked for several weeks. She says that she could find more substantial acting work at any time, that being the nature of work. In the year prior to the current claim, the claimant has had a number of engagements in advertising and the theatre as well as three separate, short term, engagements with the BBC to appear in three separate dramatic productions. Her most substantial earnings were derived from these engagements with the BBC. She states that she was actually employed by the BBC under a contract of service and says that the fact that she paid class 1 contributions supports this contention. As such she argues that her earnings from the BBC should not be included when working out her earnings from self-employment. The DM

1. decides that the claimant is gainfully employed as a S/E earner (see DMG 86217 - 86220)
2. considers the terms under which the claimant was engaged by the BBC and decides that as she was engaged to perform a specific role on particular occasions for a fixed fee, she was employed under a contract for services and as such the earnings fall to be taken into account with her other earnings from self-employment
3. decides that the sporadic nature of the employment is the normal pattern of the business and calculates her average weekly earnings over the preceding year.

Example 2

Craig is an actor. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually,

he was engaged by a theatre company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as an employed earner, employed under a contract of service, and paid class 1 contributions

The DM decides that Craig's employment with the theatre company was under a contract of service for the 26 weeks when he was engaged by them, and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

Advance of earnings or loans

86058 Any advance of earnings or other loan made by the employer is capital for SPC purposes.

Example

Jeffrey earns £50 a week which is due to be paid every fourth Friday. He was last paid £200 on 7 November. On 17 November, he gets an advance of £100 from his employer. The £100 is a payment of capital. The full £200 paid on 5 December is then taken into account (5 December to 1 January = 4 weeks x £50).

Bonus or commission

86059 Payments of bonus or commission should be treated as earnings. See DMG 86005 et seq for guidance on how earnings are taken into account.

Royalties and copyright fees

86060 Payments as described in DMG 86061 are income other than earnings for SPC purposes (see DMG Chapter 85). These include payment for

1. taking part in radio or television plays, commercials and documentaries
2. repeat showings of plays, commercials and documentaries
3. interviews with press reporters
4. published items.

86061 This paragraph applies to¹

1. royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trademark **or**
2. any payment in respect of any
 - 2.1 book registered under the Public Lending Right Scheme 1982 **or**
 - 2.2 work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982

where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work covered by **2.2** above.

1 SPC Regs, reg 15(5)(f) & (g)

86062 Although the payments described in DMG 86061 are not earnings they shall be treated as though they are earnings for the purposes of SPC, the DM should apply the appropriate earnings disregard¹.

Note: The disregard of these payments only applies to payments in respect of the claimant's or their partner's own work. The disregard does not apply if the royalties have been inherited (see DMG Chapter 85).

1 SPC Regs, reg 17(5) & (9)

Directors of limited companies

86063 A limited company, of whatever size, is separate from its employees and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company, and is an employed earner.

1 R(SB) 57/83

Establishing a director's income

86064 The income of a director can include

1. payments for services as a director or any other employment with the company
2. share dividend
3. debenture interest.

Payments as a director or other employee

86065 Directors have no legal right to receive payment for their services as a director, but can still be voted payment. Or they may be entitled to payments under the company's Articles of Association. Any payments voted to a director or to which they are so entitled should be taken into account as earnings.

86066 A director may also be employed by the company for another reason, for example as a sales manager. Such a person has a contract of employment with the company and is entitled to a salary. Any salary should be taken into account as earnings.

86067 If a director in a small company does no other work in it, the services provided will be limited and the amount of payment expected will be small. If the director also does other work in the company, then more payment will be expected.

86068 Many small companies operate with only two directors, for example the claimant and partner. Such companies normally obtain contracts and pay employees a salary for work done. Any earnings paid to the claimant will usually be for work done as an employee of the company.

Example

Shaun is S/E as an amusement arcade owner. He made a claim for SPC in October because the summer season had ended. Shaun stated that

1. he and his creditors regarded the business as a going concern. This is because he anticipated that his business would start up again in the following April when the holiday trade would re-commence
2. in April, when the holiday trade would re-commence he intends to start work again in the amusement arcade
3. he still undertakes some activities in the business. He is currently redecorating the arcade. He plans to renovate and maintain the electrics and make minor repairs before April. He also plans to update the alarm system. He is also looking to update some of the machines in the arcade
4. his accountant only submits figures from April to September each year. It is normal for him to only work between April and September each year.

The DM considers the guidance at DMG 86217 - 86220 and decides, in this case, that Shaun remains gainfully employed as a S/E earner. As there had been no changes that had affected the normal pattern of trading the DM determines that the assessment period for the earnings should be one year.

86601 - 86604

Sub-contractors

86605 A sub-contractor is a S/E person who enters into a contract with another contractor to do a particular job, and is most commonly found in the construction industry.

Example

A firm of builders contract to build a house extension for Tony. They sub-contract the electrical work to Rob. Rob is a S/E sub-contractor and not an employee of either the building firm or Tony.

When Rob completes the work he moves to a different contract that may be for further work with the building firm or for a different contractor.

86606 If a S/E sub-contractor claims SPC the DM should consider

1. the guidance at DMG 86217 - 86220 **and**
2. if the S/E sub-contractor remains gainfully employed as a S/E earner.

Example

Stanley is 62 and claims SPC. He is a S/E electrician. He sub-contracts for other contractors. Stanley has claimed SPC because he has just finished one contract and work on the next contract is not due to start for another couple of weeks.

Stanley states that

1. he still regards himself as S/E and his business as a going concern, he has only claimed because he has no work at the moment
2. there are good prospects of work in the future
3. he is advertising for work all of the time and further contracts are in the pipeline
4. there have been other occasions where there has been a break between contracts.

The DM considers the guidance at DMG 86217 - 86220 and determines, in this case, that Stanley remains gainfully employed as a S/E earner.

Actors and entertainers

86607 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

86608 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed earner at the same time as his overall self-employment.

86609 The fact that an actor or entertainer has periods of employment during which class 1 National Insurance contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to SPC to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

Note: from 6 April 2014, HMRC treat actors and entertainers as self-employed for NI (and generally tax) purposes¹ and they now pay Class 2 or 4 contributions.

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