

## **DMG Chapter 23: Normal amount payable**

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# Amount Payable 23001 - 23030

## Scope of this Chapter

23001 This Chapter explains how to calculate the normal amount payable for JSA and IS. The rules are different for

1. trade disputes (see DMG 32000 et seq)
2. transitional protection (see DMG 36001 and 37000 et seq).
3. joint claim couples that are sanctioned (see DMG 34057 and 34144)

23002 Other rules apply where people are

1. in hospital (see DMG 24002 et seq)
2. without accommodation (see DMG 24156)
3. members of religious orders (see DMG 24170)
4. prisoners (see DMG 24185 et seq)
5. temporarily separated members of a couple or polygamous marriage (see DMG 24241)
6. absent from GB/UK members of a couple or polygamous marriage (see DMG 24247 et seq)
7. appealing against a decision because of capability for work (see DMG 24370 et seq)
8. entitled to housing costs run-on (see DMG 24390 et seq)
9. from abroad or subject to immigration control (see DMG 24500 et seq).

23003 Guidance on how to calculate the amount payable for a part week is in DMG 33100 et seq.

## JSA

### Meaning of claimant

23004 Claimant means<sup>1</sup>

1. one person who claims JSA or IS **or**
2. in the case of a joint claim for JSA

**2.1** the couple **or**

**2.2** each member of the couple

as the context requires.

1 JS Act 95, s 35(1); IS (Gen) Regs, reg 2(1)

## **Deciding entitlement**

23005 The DM cannot decide entitlement to JSA until all of the information for the claim has been received (see DMG Chapter 03). Claimants will indicate on their claim forms whether they wish to receive

**1.** JSA(Cont) **or**

**2.** JSA(IB).

Claimants who wish to receive JSA(IB) may also meet the qualifying conditions for JSA(Cont).

**Note:** If all of the information for the claim is not received, the DM may award a short term benefit advance .

23006 If claimants indicate that they wish to receive JSA(IB) the DM should calculate

**1.** any entitlement to JSA(Cont), (the personal rate) **and**

**2.** any entitlement to JSA(IB), (the applicable amount).

The DM must then consider the guidance at DMG 23015 - 23020 to decide the amount of JSA to be paid.

## **JSA(Cont) - personal rate**

23007 JSA(Cont) is paid for the claimant only. There are no increases for any partner or dependants. The personal rate is calculated by<sup>1</sup>

**1.** deciding the age-related amount payable to the claimant **and**

**2.** deducting, in each benefit week

**2.1** any earnings<sup>2</sup> (see DMG 26001 et seq and 27000 et seq) **and**

**2.2** pension payments<sup>3</sup> (see DMG 23800 et seq).

**Note:** Where the calculation results in a fraction of a penny, it should be rounded up to the next whole

penny<sup>4</sup>.

1 JS Act 95, s 4(1); 2 JSA Regs, reg 80; 3 reg 81; 4 reg 79(2)

23008 If a claimant receives both earnings and pension payments in the same benefit week it does not matter which deduction is made first. The DM should adopt the most practical order. As pension payments are less likely to vary, these will often be deducted before the earnings.

### **Example 1**

Stephen claims JSA, he is entitled to JSA(Cont). Stephen receives an occupational pension and works for ten hours per week. The amounts received do not vary. As the amounts received do not vary the DM decides to deduct the earnings first and then the occupational pension.

### **Example 2**

Sanjay claims JSA, he is entitled to JSA(Cont). He receives an occupational pension and works P/T on a casual basis. The DM decides to deduct the occupational pension first and deduct the earnings when received.

### **Example 3**

Pam claims JSA, she is entitled to JSA(Cont). Pam receives an occupational pension and works for twelve hours per week. The DM decides to deduct the occupational pension first because after this deduction JSA is not payable to Pam.

23009 JSA(Cont) has two separate age-related amounts. They are for claimants aged

**1.** 16 to 24

**2.** 25 and over<sup>1</sup>.

1 JS Act 95, s 4(2); JSA Regs, reg 79(1)

### **JSA(IB) - applicable amount**

23010 JSA(IB) is paid for the claimant and any family<sup>1</sup>. The applicable amount includes<sup>2</sup>

**1.** the claimant's personal allowance. This may include an amount for a joint-claim couple, partner or, in the case of a polygamous marriage, partners<sup>3</sup> (see DMG 23034) **and**

**2.** if appropriate

**2.1** a personal allowance for any dependants (see DMG 23039)

**2.2** a FP

**2.3** other premiums

**2.4** certain housing costs

**2.5** any transitional element (see DMG 36301).

**Note:** In special circumstances a claimant can have an applicable amount of nil<sup>4</sup>.

1 JS Act 95, s 35; JSA Regs, regs 76, 77 & 78; 2 JS Act, s 4(5); JSA Regs, regs 83 to 87;  
3 regs 84(1) & 86B; 4 JS Act, s 4(12)

23011 Except in TD cases, when deciding a JSA claim the JSA(IB) applicable amount should be awarded in full. Where appropriate it should include

**1. SDP and**

**2. housing costs<sup>1</sup>.**

1 SS CS (D&A) Regs, reg 15

23012 A claimant may be entitled to housing costs from the start of a claim (see DMG 23661). If so, the DM cannot make an award of JSA until the amount of housing costs is known. Where a claimant

**1. makes a claim for JSA and**

**2. is not entitled to housing costs from the start of the claim (see DMG 23647 et seq) and**

**3. will be entitled to housing costs at a later date**

the DM may make an award of JSA for a definite period, up to the day before entitlement to housing costs arises.

23013 The law<sup>1</sup> allows a claim to be treated as made for a definite period where a relevant change of circumstances is expected. Where the DM considers that a definite award is not appropriate, an award may be made for an indefinite period. This is so even if at the date of decision the amount of housing costs is not known<sup>2</sup>.

1 SS (C&P) Regs, reg 17(3); 2 reg 17(1)

23014 The DM should decide whether a definite or an indefinite award is appropriate in the light of all the circumstances of the case. But the presumption that a JSA claim is for an indefinite period is a strong one<sup>1</sup>. A decision awarding JSA for an indefinite period should be superseded when the amount of housing costs is confirmed<sup>2</sup>. See DMG Chapters 01 and 04 for further guidance.

1 R(IS) 8/95; 2 SS Act 98, s 10; SS CS (D&A) Regs, reg 6(2)

## Amount of JSA payable

23015 Where a claimant satisfies both the JSA(Cont) and JSA(IB) conditions of entitlement and has no income, the amount payable is

1. the applicable amount, if it is greater than the personal rate **or**
2. if 1. does not apply, the personal rate<sup>1</sup>.

1 JS Act 95, s 4(6)

### Example

Jamila is a single woman aged 27 who lives at home with her parents. She claims JSA. She satisfies the conditions for JSA(Cont) and is entitled to £55.65 per week. She also satisfies the conditions for JSA(IB) and is entitled to £55.65 per week. The DM awards JSA(Cont) of £55.65 per week.

23016 If, using the comparison in DMG 23015, the amount of JSA payable is the applicable amount, JSA(IB) is made up of two elements<sup>1</sup>

1. an amount equal to the personal rate **and**
2. an amount that is the difference between the
  - 2.1 personal rate **and**
  - 2.2 applicable amount.

1 JS Act 95, s 4(7)

### Example

Karl is a married man aged 50. His wife, Greta is also aged 50. Karl claims JSA. He satisfies the conditions for JSA(Cont) and is entitled to £55.65 per week. He also satisfies the conditions for JSA(IB) and is entitled to £87.30 per week. The DM awards JSA(IB) of £87.30 per week. The DM decides that Karl's entitlement to JSA(IB) is made up of two elements.

1. £55.65 which is the amount that is equal to his personal rate **and**
2. £31.65 which is the amount that is the difference between his personal rate and his applicable amount.

**Note:** where a claimant has been sanctioned (see DMG 34033).

23017 Where a claimant satisfies both the JSA(Cont) and JSA(IB) conditions and has income, the amount payable is

1. the difference between the

**1.1** applicable amount **and**

**1.2** income

if that difference is greater than the personal rate **or**

**2.** if **1.** does not apply, the personal rate<sup>1</sup>.

1 JS Act 95, s 4(8)

### **Example 1**

Ian is a married man aged 52. His wife, Elizabeth is aged 51. Ian claims JSA. Elizabeth works P/T and earns £35 per week. Ian satisfies the JSA(Cont) conditions and is entitled to £59.15 per week. He also satisfies the JSA(IB) conditions and is entitled to £67.80 per week (£92.80 - £25 Elizabeth's wages after £10 earnings disregard). The DM awards JSA(IB) of £67.80 per week.

### **Example 2**

Ellen is a single woman aged 34. She claims JSA and declares that she has capital of £7,982. She satisfies the JSA(Cont) conditions and is entitled to £59.15 per week. She also satisfies the JSA(IB) conditions and is entitled to £51.15 per week (£59.15 less £8 tariff income). The DM awards JSA(Cont) of £59.15 per week.

23018 If, using the comparison in DMG 23017, the amount payable is the difference between the income and the applicable amount, JSA(IB) is made up<sup>1</sup> of an amount

**1.** equal to the personal rate<sup>2</sup> **and**

**2.** an amount that is the difference between the

**2.1** applicable amount less income **and**

**2.2** the personal rate<sup>3</sup>.

1 JS Act 95, s 4(9); 2 s 4(10); 3 s 4(11)

### **Example**

Ian is a married man aged 52. His wife, Elizabeth is aged 51. Ian claims JSA. Elizabeth works P/T and earns £35 per week. Ian satisfies the JSA(Cont) conditions and is entitled to £55.65 per week. He also satisfies the JSA(IB) conditions and is entitled to £62.30 per week (£87.30 - £25 Elizabeth's wages after £10 disregard). The DM awards JSA(IB) of £62.30 per week. The DM decides that Ian's entitlement to JSA(IB) is made up of two elements

**1.** £55.65 which is the amount that is equal to his personal rate **and**

**2.** £6.65 which is the amount that is the difference between his personal rate and his applicable amount less income.

23019 If the claimant only satisfies the JSA(Cont) conditions of entitlement the amount payable is the personal rate (see DMG 23007)<sup>1</sup>.

1 JS Act 95, s 4(1)

23020 If the claimant only satisfies the JSA(IB) conditions of entitlement the amount payable is, if the claimant has

**1.** no income, the applicable amount **or**

**2.** income that does not exceed the applicable amount, the difference between the income and the applicable amount<sup>1</sup>.

1 JS Act 95, s 4(3)

### **Joint claim couples**

23021 Where a couple are entitled to a joint claim jobseeker's allowance and one or each of them is also entitled to JSA(Cont) and neither has an income, the amount payable is

**1.** the applicable amount, if it is greater than the couple's personal rate **or**

**2.** if **1.** does not apply, the couple's personal rate<sup>1</sup>.

1 JS Act 95, s 4A(2)

### **Example**

Karl is a married man aged 30 claiming jointly with his wife, Greta, who is aged 30. Karl satisfies the conditions for JSA(Cont) and is entitled to £55.65 per week. The couple also satisfy the conditions for JSA(IB) and are entitled to £87.30 per week. The DM awards JSA(IB) of £87.30 per week.

23022 If using the comparison in DMG 23021, the amount of JSA payable is the applicable amount, JSA(IB) is made up of

**1.** an amount equal to the couple's personal rate **and**

**2.** an amount that is the difference between the

**2.1** couple's personal rate **and**

## 2.2 applicable amount<sup>1</sup>.

1 JS Act 95, s 4A(3)

### Example

Karl is a married man aged 30 claiming jointly with his wife, Greta, who is aged 30. Karl satisfies the conditions for JSA(Cont) and is entitled to £55.65 per week. The couple also satisfy the conditions for JSA(IB) and are entitled to £87.30 per week. The DM decides that the couple's entitlement to JSA(IB) is made up of two elements

1. £55.65 which is the amount that is equal to Karl's personal rate **and**
2. £31.65 which is the amount that is the difference between the personal rate and applicable amount.

23023 Where a couple are entitled to a joint claim jobseeker's allowance and one or each of them is also entitled to JSA(Cont) and either has an income, the amount payable is

1. the difference between the

**1.1** couple's applicable amount **and**

**1.2** income

if that difference is greater than the couple's personal rate **or**

2. if **1.** does not apply, the couple's personal rate<sup>1</sup>.

1 JS Act 95 s 4A(5)

### Example

Ian is a married man aged 42 claiming jointly with his wife, Elizabeth, who is aged 40. Elizabeth works P/T and earns £35 per week. Ian satisfies the JSA(Cont) conditions and is entitled to £55.65 per week. The couple also satisfies the JSA(IB) conditions and are entitled to £62.30 per week (£87.30 - £25 Elizabeth's wages after £10 disregard). The DM awards JSA(IB) of £62.30 per week. The DM decides that Ian's entitlement to JSA(IB) is made up of two elements

1. £55.65 which is the amount that is equal to his personal rate **and**
2. £6.65 which is the amount that is the difference between his personal rate and the applicable amount less income.

23024 If, using the comparison in DMG 23023, the amount payable is the difference between the income and the couple's applicable amount, JSA(IB) is made up of

**1.** an amount equal to the couple's personal rate **and**

**2.** an amount that is the difference between the

**2.1** applicable amount less income **and**

**2.2** the couple's personal rate<sup>1</sup>.

1 JS Act 95, s 4A(6)

**Note:** See DMG 34951 and 34956 for the amount of benefit payable if one or both members of a joint claim couple are sanctioned.

23025 Where a couple's entitlement consists only of their personal rate<sup>1</sup>, as in DMG 23021 **2.** or 23023 **2.** then the amount payable will be each members personal rate and not a joint claim jobseekers allowance.

1 JS Act 95, s 4A(4) and (7)

### **Example**

Dan is a married man aged 43 claiming jointly with his wife, Sara, who is aged 40. Sara works P/T and earns £43 per week. Dan satisfies the JSA(Cont) conditions and is entitled to £56.20 per week. The couple also satisfies the JSA(IB) conditions and are entitled to £50.15 per week (£83.15 - £33. Sara's wage after £10 disregard). Although still a joint claim couple the DM awards JSA(Cont) of £56.20 per week.

## **IS**

### **Amount of IS payable**

23026 One of the conditions of entitlement for IS is that the claimant should have

**1.** no income **or**

**2.** income that does not exceed the applicable amount<sup>1</sup>.

1 SS CB Act 92, s 124(1)(b)

23027 The amount of IS payable is, if the claimant has

**1.** no income, the applicable amount **or**

**2.** income that does not exceed the applicable amount, the difference between the income and the applicable amount<sup>1</sup>.

## Applicable amount

23028 IS is paid for the claimant and any family<sup>1</sup>. The applicable amount includes<sup>2</sup>

**1.** the claimant's personal allowance. This may include an amount for any partner or, in the case of a polygamous marriage, partners<sup>3</sup> (see DMG 23034) **and**

**2.** if appropriate

**2.1** a personal allowance for any dependants (see DMG 23039)

**2.2** a FP

**2.3** other premiums

**2.4** certain housing costs

**2.5** any TE (see DMG Chapter 36).

**Note:** In special circumstances a claimant may have an applicable amount of nil<sup>4</sup>. An applicable amount may also be reduced in certain circumstances or may be limited to allowable housing costs only (see DMG Chapter 24).

1 SS CB Act 92, s 137; IS (Gen) Regs, regs 14, 15 & 16; 2 reg 17; 3 reg 18(1); 4 SS CB Act 92, s 135(2)

23029 When deciding an IS claim the applicable amount may be awarded without

**1.** housing costs<sup>1</sup> **or**

**2.** SDP<sup>2</sup>

if there is not enough evidence to include these elements.

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

23030 The applicable amount may be revised or superseded if further information about SDP or housing costs is received after the IS claim or question has been decided<sup>1</sup>.

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

## Personal allowances 23031 - 23045

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[Personal allowances for polygamous marriages 23034](#)

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### Claimant's personal allowances

23031 The normal applicable amount will always include

1. a personal allowance for the claimant **and**
2. an amount for the claimant's partner, if the claimant is a member of a couple<sup>1</sup> (and, if appropriate, an amount for any children - see DMG 23039)

1 JSA Regs, reg 83(a) & 86A(a); IS (Gen) Regs, reg 17(1)(a)

23032 The personal allowance may be different if

1. one or both members of a couple are aged 16 or 17 (see DMG 30500 et seq) **or**
2. the claimant is a member of a polygamous marriage (see DMG 23034).

### Structure of allowances

23033 There are separate rates of personal allowance<sup>1</sup> for

1. a single claimant aged

**1.1** 16 or 17

**1.2** 18 to 24

**1.3** 25 or over

2. a lone parent aged

**2.1** 16 or 17

**2.2** 18 or over

**3.** a couple

**3.1** one or both aged 16 or 17

**3.2** both aged 18 or over.

1 JSA Regs, Sch 1, para 1; IS (Gen) Regs, Sch 2, para 1

## Personal allowances for polygamous marriages

23034 In polygamous marriage cases the claimant's applicable amount should include personal allowances for

**1.** the claimant and the eldest partner at the correct couple rate (see DMG 23033 **3.**)<sup>1</sup> **and**

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

**2.1** higher rate for a couple (see DMG 23033 **3.2**) **and**

**2.2** rate for a single claimant aged 25 or over (see DMG 23033 **1.3**)<sup>2</sup>.

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

1 JSA Regs, reg 84(1)(a) & 86B(a); IS (Gen) Regs, reg 18(1)(a);

2 JSA Regs, reg 84(1)(b) & 86B(b); IS (Gen) Regs, reg 18(1)(b)

## Other multiple relationships

23035 DMG 23034 only applies if the claimant is married to all the other members of the relationship. There is no special rule to cover relationships where a person is not married to all, or any of, the other members of the relationship.

23036 If the claimant is not married to all of the other members of the relationship, the DM should treat any unmarried member as a single claimant or, if appropriate, lone parent.

23037 If the claimant is not married to any of the members, the DM should treat each member of the relationship as a single claimant or, if appropriate, lone parent.

### Example 1

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

## Example 2

Alan, Bronwyn and Carol live in the same household. Alan is married to Bronwyn but in his JSA claim states that he is also in a relationship with Carol. Alan is treated as a member of a married couple with his wife Bronwyn and is awarded the personal allowance for a couple. Carol is treated as single.

23038

## Dependant's personal allowances

23039 With the introduction of Child Tax Credits (CTC) in April 2003 the intention was that from 6.4.04 no new awards of IS/JSA child elements would be made. This was delayed and as a consequence child elements of IS/JSA were awarded up to 8.9.05. However, the migration of these claims to CTC has been delayed a number of times and will not now take place.

23040 Where the claimant's applicable amount has included, for a continuous period from 6.4.04, any amount in respect of a child, their applicable amount should include an amount for any

1. child **or**
2. young person

who is a member of the claimant's family (see DMG Chapter 22), who does not have capital over £3000<sup>1</sup> (see DMG Chapter 29) and who was born before 6.4.17.

<sup>1</sup> JSA Regs, reg 76, 77, 78, 83(b) & 84(1)(c); IS (Gen) Regs, reg 14, 15, 16, 17(1)(b) & 18(1)(c)

23041 A personal allowance can be awarded for a child born after 6.4.17, but only where

1. the claimant already has one other child or qualifying young person in their family born before 6.4.17<sup>1</sup> (this would include a child or qualifying young person joining the family after 6.4.17 but who was born on or before 6.4.17)
2. a 3<sup>rd</sup> or subsequent child born after that date can only be included in the claimants award where one of the exceptions in Appendix 9 applies.

<sup>1</sup> The Social Security (Restrictions on amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 reg 5& 6

## Structure of allowances

23042 From 10.4.00 there are two rates of personal allowances for children and young persons<sup>1</sup>. These are from

**1.** birth to the day before the first Monday in the September after the 16th birthday **and**

**2.** the first Monday in the September after the 16th birthday to the day before the 20th birthday.

1 JSA Regs, Sch 1, para 2; IS (Gen) Regs, Sch 2, para 2

23043 When a dependant reaches age 16 the personal allowance does not increase until the first Monday in the September which follows the sixteenth birthday. Although because both categories are paid at the same rate there will be no material change.

23044 - 23045

# **Premiums for income based jobseeker's allowance and income support**

## **23046 - 23399**

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# Premiums 23046 - 23075

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## Categories

23046 [\[See Memo DMG 9/21\]](#) There are nine categories of premium<sup>1</sup> which are

1. family premium (FP)
2. pensioner premium (PP)
3. enhanced pensioner premium (EPP)
4. higher pensioner premium (HPP)
5. disability premium (DP)
6. enhanced disability premium (EDP)
7. severe disability premium (SDP)
8. disabled child premium (DCP)
9. carer premium (CP).

<sup>1</sup> JSA Regs, Sch 1, Parts II, III & IVA; IS (Gen) Regs, Sch 2, Parts II & III

## Rates of premium

23047 [\[See DMG memo 12/23\]](#) DMs should note that

1. PP, HPP, EPP, DCP and CP are paid at one rate.
2. FP is payable at two rates. The higher rate (FP(LP)) is payable if the claimant is a lone parent and has transitional protection (see DMG 23078).
3. DP is payable at two rates. The
  - 3.1 lower rates apply if the claimant is single.
  - 3.2 higher rates apply to couples or members of polygamous marriages.
4. EDP is payable at two rates. The rate depends on whether the claimant, or a member of the claimant's family, satisfies the qualifying conditions.
5. SDP is payable at two rates. The rate depends on whether one or both members of a couple satisfies the qualifying conditions.

23048 - 23050

## Qualifying conditions

23051 Each premium has its own qualifying conditions. See the guidance on individual premiums. To be entitled to a premium the qualifying conditions may apply to

1. the claimant **or**
2. one or more members of the claimant's family.

## Multiple premiums

23052 If the claimant, or a member of a joint-claim couple, is entitled to more than one of the following premiums the DM should award only the highest<sup>1</sup> of

1. PP **or**
2. EPP **or**
3. HPP **or**
4. DP (see DMG 23053).

<sup>1</sup> JSA Regs, Sch 1, para 6 & 20B; IS (Gen) Regs, Sch 2, para 5

23053 The claimant may be entitled to one or more premiums in addition<sup>1</sup> to any premium awarded in DMG 23052. Those premiums are

1. FPat the standard rate (not FP(LP))
2. SDP
3. DP at the enhanced rate (EDP) but not in addition to PP, EPP or HPP
4. DCP
5. CP

1 JSA Regs, Sch 1, para 7 & 20C; IS (Gen) Regs, Sch 2, para 6

## Qualifying benefits

### In receipt of or entitled to a qualifying benefit

23054 [\[See Memo DMG 3/22\]](#) A premium may be awarded because

1. the claimant **or**
2. a family member

is in receipt of or entitled to a qualifying benefit. Entitlement to the premium may end if receipt of or entitlement to the qualifying benefit ceases.

Note: Where a claimant claims that either they or the DP is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to DMA Leeds, for consideration of whether the benefit falls within Art. 5 of Regulation (EC) NO 883/2004

### Meaning of in receipt of

23055 Except for CA, a person is in receipt of a qualifying benefit only

1. if it is paid because of that person's own incapacity or disability **and**
2. for the period for which the benefit is paid<sup>1</sup>.

1 JSA Regs, Sch 1, para 19 & 20L; IS (Gen) Regs, Sch 2, para 12(1)(a)(i) & 14B; R(IS) 10/94

### Example 1

Alistair is a married man. He and his wife, Morag, are under 60. Alistair claims JSA. Morag is in receipt of IBLT because of her incapacity. The DP should be awarded.

### Example 2

Julia is a lone parent in receipt of IS. She receives DLA because of the incapacity of a child who is a family

member. She is not in receipt of a qualifying benefit for the purposes of entitlement to DP, HPP or SDP. The child is in receipt of a qualifying benefit for the purposes of entitlement to DCP.

### **Example 3**

Anthony is in receipt of IBLT for himself and his wife, Maria. Anthony has been in hospital for more than 52 weeks. Maria claims IS. The dependant's element of IBLT which is paid to Maria is not a qualifying benefit for premiums when deciding her IS claim.

### **Withdrawal of qualifying benefit**

23056 There is a change of circumstances if

- 1.** a qualifying benefit is withdrawn **and**
- 2.** the claimant no longer satisfies that or any other of the qualifying conditions for the receipt of the premium.

The DM should supersede the decision and calculate the effective date of the change of circumstances.

### **Concessionary payments of a qualifying benefit**

23057 Concessionary payments are **extra-statutory** payments made by the Secretary of State<sup>1</sup> in place of

- 1.** SS benefits **or**
- 2.** HB **or**
- 3.** Tax credits

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

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 JSA Regs, Sch 1, para 18 & 20K;  
IS (Gen) Regs, Sch 2, para 14A

23058 - 23059

### **Delayed awards of qualifying benefits**

23060 When considering the award of premiums following the delayed award of a qualifying benefit, special rules on revision or supersession apply. Detailed guidance on those rules is given in DMG Chapter 04.

## Treated as in receipt of a qualifying benefit

23061 The rules for treating a person as in receipt of a qualifying benefit are the same for both JSA(IB) and IS.

23062 [See [DMG memo 12/23](#)] People can be treated as in receipt of a qualifying benefit for any period

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

**2.** where CP is being considered and a person is treated as in receipt of CA, for as long as the person being cared for is receiving AFIP<sup>2</sup>**or**

**3.** spent on a course of training or instruction provided or approved by

**3.1** the Secretary of State **or**

**3.2** Scottish Enterprise **or**

**3.3** Highlands and Islands Enterprise<sup>3</sup>**or**

**4** that they are in receipt of a training allowance<sup>4</sup>**or**

1 JSA Regs, Sch 1, para 8(1)(a) & 20D(1)(a); IS (Gen) Regs, Sch 2, para 7(1)(a);

2 JSA Regs, Sch 1, para 8(2) & 20D(2); 3 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2;

IS (Gen) Regs, Sch 2, para 7(1)(b) IS (Gen) Regs, Sch 2, para 7(2); 4 JSA Regs, Sch 1, para 8(1)(b) & 20D(1)(b);

23063

## Breaks in entitlement to JSA(IB) or IS

23064 Breaks in entitlement to JSA(IB) or IS may affect the qualifying conditions for some premiums. For the purpose of FP(LP) and HPP, claimants can be treated as entitled to JSA(IB) or IS for any period during which they

**1.** participate in an EZ programme **and**

**2.** were not entitled to JSA or IS because

**2.1** they were in remunerative work **or**

**2.2** their income exceeded the applicable amount<sup>1</sup>.

1 JSA Regs, Sch 1, para 12(4) & 20F(4); IS (Gen) Regs, Sch 2, para 10(5)

## **JSA(IB) and IS - definitions**

### **“AA”**

23071 Attendance allowance (“AA”) means<sup>1</sup>

**1.** AA<sup>2</sup>

**2.** CAA which is paid with a disablement pension because disablement has been assessed at 100%<sup>3</sup>

**3.** ESDA paid because industrial disablement has been assessed at 100%<sup>4</sup>

**4.** any

**4.1** CAA or

**4.2** ESDA

paid because the claimant is entitled to WC<sup>5</sup>

**5.** an attendance allowance paid under the PB and MDB scheme

**6.** any

**6.1** payments for attendance under the Civilians Personal Injury Scheme<sup>6</sup> or

**6.2** similar payment to **6.1**.

**7.** any payment for attendance which is part of WDisP. This includes severe disablement occupational allowance paid with CAA.

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

<sup>1</sup> JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 SS CB Act 92, s 64; 3 s 104 & 105; 4 s 104 & 105;

<sup>5</sup> Workmen’s Compensation Acts 1925-1945; 6 Personal Injuries (Civilians) Scheme 83, Art 14-16 & 44

### **Blind - treated as**

23072 People should be treated as blind<sup>1</sup> or severely sight impaired where they have regained their sight having previously being

**1.** certified by a consultant ophthalmologist as

**1.1** severely sight impaired **or**

**1.2** blind

for a period of 28 weeks following the date they ceased to be so certified.

1 JSA Regs, Sch 1, para 14(1)(h) & 20H(1)(i); IS (Gen) Regs, Sch 2, para 12(1)(a)(iii);

23073

## **Mobility Supplement**

23074 Mobility supplement means<sup>1</sup>

**1.** supplements under the Armed Forces Disablement and Death Service Pensions Order and any similar order<sup>2</sup> **or**

**2.** a supplement under the Personal Injuries (Civilians) Scheme<sup>3</sup>.

These supplements are known collectively as war pensioner's mobility supplement.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 Naval, Military & Air Forces etc. (Disablement & Death Service Pensions Order 83), art. 26A; 3 Personal Injuries (Civilians) Scheme 83, art. 25A

23075

## Family premium 23076 - 23090

[JSA\(IB\) and IS 23076 - 23077](#)

[Family premium - standard rate 23078](#)

[Family premium - lone parent 23079 - 23090](#)

### JSA(IB) and IS

23076 FP is payable if

1. the claimant is a member of a family **and**
2. the family includes at least one child or young person<sup>1</sup>.

1 JSA Regs, reg 83(d) & 84(1)(e); Sch 1, para 4; IS (Gen) Regs, reg 17(1)(c) & 18(1)(d); Sch 2, para 3

23077 FP is payable at two rates<sup>1</sup>. These are

1. Family Premium standard rate (FP)
2. Family Premium lone parent rate (FP(LP)).

The claimant cannot be awarded **both** FP and FP(LP). One FP or FP(LP) is awarded even if the claimant has more than one dependant.

1 JSA Regs, Sch 1, para 4; IS (Gen) Regs, Sch 2, para 3

### Family premium - standard rate

23078 FP at the standard rate is payable if<sup>1</sup> the claimant is

1. a member of a family (other than a lone parent) that includes at least one child or young person **or**
2. a lone parent who does not get FP(LP) because they are entitled to one of the premiums mentioned in DMG 23079 **2.**

1 JSA Regs, reg 83(d) & 84(1)(e); Sch 1, para 4; IS (Gen) Regs, reg 17(1)(c) & 18(1)(d); Sch 2, para 3

## Family premium - lone parent

23079 FP(LP) is payable if<sup>1</sup> the claimant

**1.** is a lone parent **and**

**2.** has transitional protection **and**

**3.** is not entitled to

**3.1** PP **or**

**3.2** EPP **or**

**3.3** HPP **or**

**3.4** DP.

1 JSA Regs, Sch 1, para 4(a); IS (Gen) Regs, Sch 2, para 3(a)

## Underlying entitlement

23080 Where a lone parent has transitional protection but is entitled to one of the preferential premiums mentioned in DMG 23079 **3.**, the lone parent has underlying entitlement to FP(LP). While the preferential premium continues, FP at the standard rate should be awarded. If the preferential premium ceases FP(LP) can be awarded.

## Transitional protection

23081 The law on entitlement to FP(LP) changed on 6.4.98<sup>1</sup>. Claimants who had been entitled, or who had underlying entitlement, to FP(LP) on an IS or JSA(IB) award for a period that spanned the change were transitionally protected. Transitional protection continues until there is a break of more than twelve weeks in entitlement to IS or JSA(IB) as a lone parent. Once transitional protection is lost the claimant can never again qualify for the FP(LP).

1 JSA Regs, Sch 1, para 4(2) to (5); IS (Gen) Regs, Sch 2, para 3(2) to (5)

## Example

Shula is a lone parent whose IS award, which includes FP(LP), ends because she starts remunerative work. Her last day of entitlement is Wednesday 22.4.98. She makes another claim and is awarded IS from Thursday 16.7.98. She retains transitional protection because the gap between the periods of entitlement as a lone parent is exactly twelve weeks.

23082 Transitional protection also applies to a lone parent who had a break in claim, or in lone parent status, which spanned the change in the law on 6.4.98. Transitional protection continues if the lone

parent

**1.** was entitled to FP(LP) (including underlying entitlement), on an IS or JSA(IB) award on any day during the twelve weeks ending on 5.4.98 **and**

**2.** became entitled again no more than twelve weeks later than the last day for which **1.** applied **and**

**3.** since becoming entitled again has not had a break of more than twelve weeks in entitlement to IS or JSA(IB) as a lone parent.

23083 If a period of loss of lone parent status is followed by a period of loss of entitlement to IS or JSA(IB), or vice versa, the total period must not exceed twelve weeks or transitional protection is lost.

### **Example**

Kate, a lone parent getting FP(LP), moves in with a new partner and gives up IS from 27.5.98. Ten weeks later she splits up with her partner but does not re-claim immediately because she has started a F/T job. She gives up the job and re-claims four weeks later. The claims do not link and transitional protection is lost because the total period without FP(LP) entitlement exceeds twelve weeks.

23084 IS and JSA(IB) claims are interchangeable for this purpose. A person can move from IS to JSA(IB) or vice versa and still benefit from the linking rules<sup>1</sup>.

1 JSA Regs, Sch 1, para 4(6); IS (Gen) Regs, Sch 2, para 3(6)

23085 FP(LP) is also payable if<sup>1</sup>

**1.** the claimant is a member of a couple **and**

**2.** the claimant has transitional protection **and**

**3.** the family includes at least one child or young person **and**

**4.** the partner has been absent from the UK for more than

**4.1** four weeks **or**

**4.2** eight weeks, if taking a child abroad for treatment **and**

**5.** the claimant is treated as a lone parent.

See DMG 071940 et seq.

1 JSA Regs, reg 85(1), Sch 5, para 10 & 11; IS (Gen) Regs, reg 21(1), Sch 7, para 11 & 11A

23086 - 23090



# Pensioner premium 23091 - 23097

[Introduction](#) 23091 - 23092

[JSA\(IB\)](#) 23093

[IS](#) 23094

[Mixed age couple](#) 23095 - 23097

## Introduction

23091 Before awarding PP the DM should consider whether HPP conditions are satisfied. If appropriate HPP should be awarded instead of PP.

23092 Age is the only qualifying condition for PP. This condition for JSA(IB) and IS has different definitions, but is fundamentally the same (see Note). The multiple premium rules apply to PP (see DMG 23052).

**Note:** The qualifying condition for an award of a PP in JSA(IB) is that the claimant is under pensionable age, and for IS, that the claimant has not attained the qualifying age for SPC. Since 6.12.18, pensionable age for a man or a woman is the same, and the qualifying age for SPC is defined as pensionable age. From that date there is therefore no longer any difference in the qualifying conditions for a PP in IS or JSA(IB) and no longer any entitlement to any PP if a **claimant** has reached the qualifying age for SPC or pensionable age. (but see DMG 23096)

## JSA(IB)

23093 PP is payable if the claimant is a member of a couple or polygamous marriage where

1. the claimant's partner has attained the qualifying age for SPC but not the age of 75<sup>1</sup> **or**
- 2 a member of a joint-claim couple has attained the qualifying age for SPC but not the age of 75<sup>2</sup>

1 JSA Regs, Sch 1, para 10 & 20(2)(c); 2

para 20E & 20(M)(1)

## IS

23094 PP is payable where the claimant is less than the qualifying age for SPC and the claimant's partner is not less than the qualifying age for SPC but less than 75<sup>1</sup>.

## Mixed age couple

23095 When a claimant reaches pensionable age, they will no longer satisfy the basic conditions for an award and will no longer be entitled to JSA(IB) or IS.<sup>1</sup> If the other member of the couple has not reached pensionable age, they will be unable to claim SPC (a mixed-age couple)<sup>2</sup> (see DMG 77034).

*1. WR Act 12 s.1(3)(c); 2.WR Act 2012 (Commencement No. 31 etc) Order 2019 art 2(2)(a).*

23096 If they are also restricted from claiming UC<sup>1</sup> (ADM M5210), the claimant is treated as satisfying the age-related condition of entitlement for JSA(IB)/IS<sup>2</sup> and a PP will continue to be paid.

*1 UC(TP) Regs, reg 4 & 4A, WR Act 12 (Commencement No. 32 etc.) Order 2019 art 4(11); 2 WR Act 2012(Commencement No.31 etc.) Order. Art 8(4)*

### Example

Flo has LCWRA and is entitled to ESA(IR) and HB for herself and her partner George. Her ESA award includes the higher rate SDP. Flo reaches pensionable age, and entitlement to ESA(IR) and HB would normally terminate as she does not satisfy the age-related conditions of entitlement. As George is under pensionable age, the couple cannot be entitled to SPC. Flo and George are also prevented from claiming UC due to the SDP entitlement. George does not have LCW, so cannot claim ESA(IR) instead of Flo. Flo is treated as satisfying the age-related conditions of entitlement, and as not having reached the qualifying age for SPC, so remains entitled to ESA(IR) and HB, and a PP will be payable.

23097 Once the younger member of the couple reaches the qualifying age for SPC, they cease to be a mixed-age couple, the claimant will no longer be treated as satisfying the age-related condition of entitlement and the award of ESA will end.

# Enhanced pensioner premium 23098 - 23101

[Introduction](#) 23098 - 23099

[JSA\(IB\)](#) 23100

[IS](#) 23101

## Introduction

23098 Before awarding EPP the DM should consider whether HPP conditions are satisfied. If appropriate HPP should be awarded instead of EPP.

23099 Age is the only qualifying condition for EPP. The multiple premium rules apply to EPP (see DMG 23052).

## JSA(IB)

23100 EPP is payable if the claimant has a partner who has attained the age of 75 but not the age of 80<sup>1</sup>. There is only one rate of EPP.

1 JSA Regs, Sch 1, para 11

## IS

23101 EPP is payable if the claimant has a partner who has attained the age of 75 but not the age of 80<sup>1</sup>. There is only one rate of EPP.

1 IS (Gen) Regs, Sch 2, para 9A

# Higher pensioner premium 23102 - 23120

[Introduction](#) 23102

[JSA\(IB\)](#) 23103 - 23105

[IS](#) 23106 - 23112

[Breaks in entitlement to JSA\(IB\)](#) 23113 - 23120

## Introduction

23102 HPP is paid at two rates. The qualifying conditions for the HPP for JSA(IB) and IS have different definitions, but are fundamentally then same (see Note to DMG 23092). The linking rules are the same. The multiple premium rules apply to HPP (see DMG 23052).

## JSA(IB)

23103 HPP is paid to a claimant who is a member of a couple or polygamous marriage if the

**1.** partner is aged 80 or over<sup>1</sup> **or**

**2.** partner or one member of a joint-claim couple<sup>2</sup> is not less than the qualifying age for SPC but less than 80 **and**

**2.1** is in receipt of

**2.1.a** the disability element, or the severe disability element, of WTC<sup>3</sup> **or**

**2.1.b** Mobility Supplement<sup>3</sup> (see DMG 23074) **or**

**2.1.c** "AA"<sup>4</sup> (see DMG 23071) **or**

**2.1.d** DLA (including any DLA paid direct to Motability Finance)<sup>3</sup> **or**

**2.1.e** PIP<sup>5</sup> **or**

**2.1.f** AFIP<sup>6</sup> **or**

**2.2** is provided with, or a grant towards, an invalid carriage by

**2.2.a** the NHS in GB **or**

**2.2.b** the Department of Health and Social Services in Northern Ireland<sup>7</sup> **or**

**2.3.** is entitled to the mobility component of DLA or PIP but that component is not payable because of DMG 23104<sup>8</sup> **or**

**2.4.** is certified as severely sight impaired or blind by a consultant ophthalmologist<sup>9</sup> (see DMG 23072) **or**

**2.5** is in receipt of

**2.5.a** SDA<sup>10</sup> **or**

**2.5.b** IBLT (including IBST paid at an equal rate to IBLT because the partner is terminally ill)<sup>11</sup> **or**

**2.6** was in receipt of IBLT immediately before attaining pensionable age **and**

**2.6.a** that partner is still alive **and**

**2.6.b** HPP or DP had been payable to the claimant or partner before IBLT ceased<sup>12</sup> **or**

**2.7** was entitled to

**2.7.a** “AA”, DLA or PIP which has ceased or is abated because the partner has been in hospital for more than 28 days **and**

**2.7.b** HPP or DP was awarded to the claimant or partner immediately before “AA”, DLA or PIP ceased or was abated<sup>13</sup> **or**

**3.** member of a joint-claim couple is not less than the qualifying age for SPC but less than 80 **and**

**3.1** is entitled to SSP (see DMG 23133) **or**

**3.2** is incapable or treated as incapable of work (see DMG 23135) **or**

**3.3** has limited capability for work **or** is treated as having limited capability for work

for a continuous period of not less than 196 days if the claimant is terminally ill, or 364 days in any other case<sup>14</sup>. DP is applicable from the 197th or 365th day respectively (see DMG 23143 to 23145 for linking rules) **or**

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

*1 JSA Regs, Sch 1, para 12(1)(b)(i); 2 Sch 1, para 20F(1)(a); 3 Sch 1, para 14(1)(a); 4, reg 1(3); 5 Sch 1, para (1)(ca); 6 Sch 1, para 14(1)(cb); 7 Sch 1, para 14(1)(e); 8 Sch 1 para 14(1)(f); 9 Sch 1, para 14(1)*

(h); 10 Sch 1, para 14(1)(b) & 20H(1)(b); 11 Sch 1, para 14(1)(d), 20H(1)(d) & 20H(1)(e); 12 Sch 1, para 14(1)(g)(i) & 20H(1)(h)(i); 13 Sch 1, para 14(1)(g)(ii) & 20H(1)(h)(ii); 14 Sch 1, para 20F(1)(a) & para 20H(1)(e) & (ee)

## **Mobility component of DLA not payable**

23104 Mobility component of DLA or PIP is not payable for any period that the person

**1.** is provided with an invalid carriage or other vehicle by the NHS in GB<sup>1</sup>, unless

**1.1** the person<sup>2</sup>

**1.1.a** has notified the DM that the invalid carriage or other vehicle is no longer required **and**

**1.1.b** has signed a statement saying that the invalid carriage or other vehicle will not be used before it is collected **or**

**1.2** the DM has issued a certificate because the person<sup>3</sup>

**1.2.a** has, or intends to, take out a hire purchase agreement or buy a car **and**

**1.2.b** intends to keep the car for at least six months **and**

**1.2.c** intends to learn to drive the car **and**

**1.2.d** will use, in whole or in part, the mobility component of DLA towards meeting the expense of acquiring the car **or**

**2.** is in receipt of<sup>4</sup>

**2.1** a grant towards the costs of running a private car **or**

**2.2** Mobility Supplement **or**

**2.3** a payment paid out of public funds similar to **2.1** or **2.2**.

**Note:** If any payment in DMG 23103 **2.** is less than the amount of the mobility component of DLA, the mobility component will be paid less the amount of the payment received<sup>5</sup>.

1 SS (C&P) Regs, reg 42(1)(a); 2 reg 42(2); 3 reg 42(4); 4 reg 42(1)(b); 5 reg 42(3)

## **Pensionable age**

23105 Pensionable<sup>1</sup> age is

1. 65 years for a man born before 6.12.53 **or**
2. 60 years for a woman born before 6.4.50 **or**
3. the date in Chapter 20, Appendix 1, for a woman born between 6.4.50 and 5.10.54 **or**  
the 66th birthday for a person born after 5.10.54 but before 6.4.60 or
4. the 67th birthday for a person born after 5.3.61 but before 6.4.77 or
5. the 68th birthday for a person born after 5.4.78.

**Note 1:** See Appendix 1 to Chapter 20 for pensionable age for a woman born from 6.4.53 to 5.12.53 inclusive, Appendix 2 for pensionable age for a person born 6.12.53 to 5.10.54 inclusive, Appendix 3 for pensionable age for a person born 6.4.60 to 5.3.61 inclusive (DMs should note that pensionable age for such a person is linked to their date of birth and there is no common pensionable age for those born within a specified period). See Appendix 4 to Chapter 20 for pensionable age for a person born 6.4.77 to 5.4.78 inclusive.

**Note 2:** A person is over pensionable age if they have reached that age; otherwise they are under pensionable age<sup>2</sup>.

*1 Pensions Act 14, s 22(1);  
SS CB Act 92, s 122(1); Pensions Act 1995, Sch 4,  
Part I, para 1(3) – (10); 2 Pensions Act 14, s 22(1)*

## IS

### Lower rate

23106 HPP is paid to a claimant who is a member of a couple or polygamous marriage where

1. a partner is aged 80 or over<sup>1</sup> **or**
2. one or more of the partners is not less than the qualifying age for SPC but less than 80 and any partner  
**2.1** is in receipt of any of the following benefits

**2.1.a** “AA” (see DMG 23071) **or**

**2.1.b** DLA **or**

**2.1.c** the disability element, or the severe disability element, of WTC **or**

**2.1.d** Mobility supplement (see DMG 23074) **or**

**2.1.e** IBLT (including IBST treated as IBLT, see DMG 23129) **or**

**2.1.f** SDA **or**

**2.1.g** PIP **or**

**2.1.h** AFIP **or**

**2.2** is provided with, or a grant towards, an invalid carriage by the NHS<sup>2</sup> **or**

**2.3** is certified as severely sight impaired or blind by a consultant ophthalmologist<sup>3</sup> (see DMG 23072) **or**

**3.** any partner is not less than the qualifying age for SPC but less than 80 and was in receipt of IBLT which ceased because RP<sup>4</sup> became payable if

**3.1** that partner is still alive **and**

**3.2** HPP or DP was applicable to the claimant or partner before IBLT ceased<sup>5</sup> (but see DMG 23111).

**Note:** In DMG 23106 **2.**, any IBLT or SDA paid to a partner must be paid because of the partner’s own incapacity or disability (see DMG 23055).

1 IS (Gen) Regs, Sch 2, para 10(1)(a); 2 IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; Sch 2, para 12(1)(a)(ii); 3 IS (Gen) Regs, Sch 2, para 12(1)(a)(iii); 4 Pension Act 2014, Pt 1; 5 Sch 2, para 12(1) (c)

### **Mixed age couple JSA(IB) and IS**

23107 When a claimant reaches pensionable age (or has attained the qualifying age for SPC), (see DMG 23105) they will no longer satisfy the basic conditions for an award and will no longer be entitled to JSA(IB)<sup>1</sup> or IS.<sup>2</sup> (see DMG Chapter 20). If the other member of the couple has not reached pensionable age, they will be unable to claim SPC (a mixed-age couple) <sup>3</sup> (see DMG Chapter 77).

1. JS Act 95 s.1(2)(h); 2. SS(C&B) Act 92 s.124(1)(aa); 3. WR Act 2012 (Commencement No. 31 etc)

Order 2019 art 2(2)(a).

23108 If they are also restricted from claiming UC<sup>1</sup> (ADM Chapter M5), the claimant is treated as satisfying the age-related condition of entitlement for JSA(IB) or IS,<sup>2</sup> and a PP/HPP will continue to be paid.

*1 UC(TP) Regs, reg 4 & 4A, WR Act 12 (Commencement No. 32 etc.) Order 2019 art 4(11); 2 WR Act 2012(Commencement No.31 etc.) Order 2019. Art 8(4)*

### **Example**

Jon is married to Maggie and is entitled to JSA(IB) which includes the SDP. Maggie is in receipt of IBLT. Jon reaches pensionable age, and entitlement to JSA(IB) would normally terminate as he does not satisfy the age-related conditions of entitlement. As Maggie is under pensionable age, the couple cannot be entitled to SPC. They are also prevented from claiming UC due to the SDP entitlement.

Jon is treated as satisfying the age-related conditions of entitlement to JSA(IB) so remains entitled to JSA(IB), and a PP or HPP will be payable.

23109 Once the younger member of the couple reaches the qualifying age for SPC, they cease to be a mixed-age couple, the claimant will no longer be treated as satisfying the age-related condition of entitlement and the award of ESA will end.

23110 - 23120

# Disability premium 23121 - 23179

[Introduction](#) 23121

[JSA\(IB\)](#) 23122 - 23126

[IS](#) 23127 - 23179

## Introduction

23121 DP is paid at two rates. The qualifying conditions for JSA(IB) and IS are different. The multiple premiums rule applies to DP (see DMG 23052).

## JSA(IB)

### Lower rate

23122 The lower rate DP is paid to a single claimant or lone parent who is aged less than the qualifying age for SPC<sup>1</sup> and is

**1.** in receipt of

**1.1** the disability element, or the severe disability element, of WTC<sup>2</sup> **or**

**1.2** Mobility Supplement<sup>3</sup> (see DMG 23074) **or**

**1.3** "AA" (see DMG 23071) **or**

**1.4** DLA (including any DLA paid direct to Motability Finance)<sup>4</sup> **or**

**1.5** PIP<sup>5</sup> **or**

**1.6** ADP<sup>6</sup> **or**

**1.7** AFIP<sup>7</sup> **or**

**2.** provided with, or a grant towards, an invalid carriage by the

**2.1** NHS in GB **or**

**2.2** Department of Health and Social Services in Northern Ireland<sup>8</sup> **or**

**3.** entitled to the mobility component of DLA or PIP but that component is not payable because of DMG 23104<sup>9</sup> **or**

4. certified as severely sight impaired or blind by a consultant ophthalmologist or treated as severely sight impaired or blind<sup>10</sup> (see DMG 23072).

*1 JSA Regs, Sch 1, para 13(a); 2 Sch 1, para 14(1)(a); Working Tax Credits (Ent & Max rate) Regs 2002, reg 20(1)(b) & (f); 3 JSA Regs, Sch 1, para 14(1)(a); 4 Sch 1, para 14(1)(c); 5 Sch 1 para 14(1)(ca); 6 Sch 1 para 14(1)(caa) 7 Sch 1, para 14(1)(cd); 8 Sch 1, para 14(1)(e); 9 Sch 1 para 14(1)(f); 10 Sch 1, para 14(1)(h) & (2)*

## Higher rate

23123 The higher rate DP is paid to a claimant who is a member of a couple or polygamous marriage where

**1.** the claimant

**1.1** is aged less than the qualifying age for SPC **and**

**1.2** satisfies any of the conditions at DMG 23122<sup>1</sup> **or**

**2.** the partner, or a member of a joint-claim couple, is aged less than the qualifying age for SPC **and**

**2.1** satisfies any of the conditions in DMG 23122<sup>2</sup> **or**

**2.2** is in receipt of

**2.2.a** SDA<sup>3</sup> **or**

**2.2.b** IBLT (including IBST paid at an equal rate to IBLT because the claimant or partner is terminally ill)<sup>4</sup> **or**

**2.3** is in receipt of

**2.3.a** "AA", DLA, PIP or ADP which has ceased or is abated solely because the partner, or either member of the joint-claim couple, has been in hospital for more than 28 days **and**

**2.3.b** DP was awarded to the claimant or partner immediately before "AA", DLA, PIP or ADP ceased or was abated<sup>5</sup> **or**

**3.** the member of a joint-claim couple is aged less than the qualifying age for SPC **and**

**3.1** is entitled to SSP (see DMG 23133) **or**

**3.2** is incapable or treated as incapable of work (see DMG 23135) **or**

**3.3** has limited capability for work or is treated as having limited capability for work

for a continuous period of not less than 196 days if the claimant is terminally ill, or 364 days in any other case<sup>6</sup>. DP is applicable from the 197th or 365th day respectively (see DMG 23143 to 23145 for linking rules).

*1 JSA Regs, Sch 1, para 13(b) & 20G; 2 Sch 1, para 13(c) & 20G; 3 Sch 1, para 14(1)(b) & 20H(1)(b);  
4 Sch 1, para 14(1)(d) & 20H(1)(d); 5 Sch 1, para 14(1)(g)(ii) & 20H(1)(h)(ii);  
6 Sch 1, para 20G(1) & para 20H(1)(e) & (ee)*

23124 - 23126

## **IS**

### **Lower rate**

23127 The lower rate DP is paid to a single claimant or lone parent<sup>1</sup> who is aged less than the qualifying age for SPC<sup>2</sup> **and**

**1.** in receipt of any of the following benefits<sup>3</sup>

**1.1** "AA" (see DMG 23071)

**1.2** DLA

**1.3** the disability element, or the severe disability element, of WTC

**1.4** Mobility Supplement (see DMG 23074)

**1.5** IBLT including IBST treated as IBLT (see DMG 23129)

**1.6** SDA

**1.7** PIP

**1.8** ADP

**1.9** AFIP **or**

**2.** is provided with, or a grant towards, an invalid carriage by the NHS<sup>4</sup> **or**

**3.** is certified as severely sight impaired or blind by a consultant ophthalmologist or treated as severely sight impaired or blind<sup>5</sup> (see DMG 23072) **or**

**4.** he or she is or is treated as incapable of work and is

**4.1** entitled to SSP (see DMG 23133) **or**

**4.2** incapable of work **or**

**4.3** treated as incapable of work (see DMG 23135)

for a continuous period of not less than 196 days if the claimant is terminally ill, or 364 days in any other case<sup>6</sup>. DP is applicable from the 197th or 365th day respectively (see DMG 23143 to 23145 for linking rules) **or**

**5.** is

**5.1** entitled to SSP (see DMG 23133) for a continuous period of not less than 196 days **and**

**5.2** terminally ill<sup>7</sup> **or**

**6.** was in receipt of “AA”, DLA or PIP which has been suspended or is abated solely because the person for whom that benefit was payable has been in hospital for more than 28 days if DP was payable to the claimant before “AA”, DLA or PIP was suspended or abated<sup>8</sup>.

*1 IS (Gen) Regs, Sch 2, para 11(1)(a); 2 SS CB Act 92, s 124(1)(aa); 3 para 12;  
4 para 12(1)(a)(ii); 5 para 12(1)(a)(iii) & (2); 6 ESA (TP, HB & CTB (EA) (No. 2) Regs reg 23A(4);  
7 IS (Gen) Regs, Sch 2, para 12(1)(b); 8 para 12(1)(d);*

## **Higher rate**

23128 The higher rate DP is payable to a claimant who is a member of a couple or polygamous marriage if the

**1.** claimant

**1.1** is aged less than the qualifying age for SPC<sup>1</sup> **and**

**1.2** satisfies any of the conditions at DMG 23127<sup>2</sup> **or**

**2.** partner

**2.1** is aged less than the qualifying age for SPC **and**

**2.2** satisfies any of the conditions in DMG 23127 **1.** to **3.** or **6.**<sup>3</sup> **or**

**3.** partner was in receipt of IBLT which ceased because of the award of RP<sup>4</sup> **and**

**3.1** the claimant has since remained continuously entitled to IS **and**

**3.2** the DP has been applicable **and**

**3.3** the partner is still alive<sup>5</sup>.

**Note:** In **2.2**, any IBLT or SDA paid to a partner must be paid because of the partner's own incapacity or disability<sup>4</sup> (see DMG 23055).

*1 SS CB Act 92, s 124(1)(aa); 2 IS (Gen) Regs, Sch 2, para 11(1)(b)(i); 3 para 11(1)(b)(ii);  
4 para 12(1)(a)(i); 5 para 12(1)(c)*

### **IBST treated as IBLT - IS**

23129 IBST is treated as IBLT if it is paid at

- 1.** the rate equal to IBLT because the claimant or partner is terminally ill **or**
- 2.** a rate equal to or more than IBLT<sup>1</sup>.

*1 IS (Gen) Regs, Sch 2, para 12(6)*

### **IB to ESA conversion**

23130 See DMG 45531 for details on when the DP is lost where a person moves from IB to ESA on conversion

23131 - 23132

### **Meaning of entitled to SSP**

23133 Entitlement to SSP starts from the first day of incapacity even though SSP is not paid for waiting days and non-working days. For DP purposes the

- 1.** period of entitlement to SSP **and**
- 2.** days which count towards payment of IBLT

are not the same. Do not assume that DP will be payable from the same date as IBLT. DP may be payable before IBLT is awarded.

23134 For DP the DM should determine the first and last day of incapacity. The period of entitlement to SSP is

- 1.** from and including the first day of IfW **and**
- 2.** up to and including the last day

**2.1** of IfW **or**

**2.2** entitlement to SSP.

## Example

Tony is entitled to SSP from 9 September. The normal working week is five days, Monday to Friday. The three waiting days are 9 September to 11 September. SSP is payable from 12 September. Tony returns to work on 12 November. For DP purposes the days of entitlement to SSP are from 9 September to 11 November, that is 64 days.

## Meaning of incapable of work

23135 Only days that a claimant is, or is treated as, incapable of work count for DP<sup>1</sup>. A DM may determine that a claimant is

1. not incapable of work **or**
2. treated as incapable of work.

In cases of doubt consult the relevant DM.

*1 SS CB Act 92, Part XIIA; IS (Gen) Regs, Sch 2, para 12(1)(b)(i)*

23136 Any days that a claimant is not incapable of work do not normally count for DP. This applies even if the claimant continues to be entitled to IS because an appeal is outstanding.

23137

23138 DP should continue if a claimant

1. is found not incapable of work **and**
2. satisfies any other of the conditions for the award of DP, such as receipt of a qualifying benefit.

23139 Where a claimant is found not incapable of work but entitlement is extended to the end of a benefit week<sup>1</sup> the claimant will lose entitlement to their DP for this final week. This is because the change of circumstances actually leads to two superseding decisions, one to remove the DP<sup>2</sup> and one to end entitlement<sup>3</sup>.

*1 IS (Gen) Regs, reg 4ZA(4); 2 SS CS (D&A) Regs, Sch 3A, para 1; 3 para 3*

## Example 1

Jason is incapable of work. He is in receipt of IS, his benefit week runs from a Tuesday to Monday and includes DP. On Wednesday 29 October 2008 the DM decides that he is not incapable of work. Entitlement to IS is superseded and DP removed from Tuesday 28 October 2008 and entitlement is superseded again this time to end entitlement. However, as a result of regulation 4ZA(4) Jason is paid for the whole of the benefit week to 3 November 2008. The following week Jason appeals against the

disallowance and refuses to claim JSA. Pending the outcome of the appeal IS is reinstated. DP is not payable because Jason is not incapable of work.

### **Example 2**

Kevin is incapable of work. He is in receipt of IS which includes DP. The DM decides that he is not incapable of work. This change of circumstances results in two superseding decisions, one decision relates to entitlement and one decision relates to whether the DP is included in the claimants applicable amount. Entitlement to IS is superseded and DP removed from the first day of the final benefit week and entitlement is superseded again this time to end entitlement. Kevin claims JSA. DP is not payable because Kevin is not incapable of work.

### **Example 3**

Brett is incapable of work, he is in receipt of IS and DLA and is awarded the DP. The DM decides that he is not incapable of work. Entitlement to IS is superseded and disallowed. Brett claims JSA. DP is payable as he is in receipt of DLA.

23140

23141 DP is not payable for any days that a claimant is not incapable of work and these days do not count for the DP qualifying period. DMs should note that this applies even if the OOT or the AWT is satisfied.

23142 The DM may determine that claimants are not incapable of work<sup>1</sup> if they

- 1.** fail without good cause to attend or agree to medical examination
- 2.** fail without good cause to return a questionnaire within a prescribed time limit
- 3.** do work of a prescribed description or more than a prescribed amount of work
- 4.** are incapable through their own misconduct
- 5.** fail without good cause to submit for medical or other treatment
- 6.** fail without good cause to observe any prescribed rules of behaviour.

**Note:** **1.**, **2.** and **3.** are for an indefinite period. **4.**, **5.** and **6.** are for a maximum of six weeks.

*1 SS CB Act 92, s 171A, 171D & 171E; SS (IW) (Gen) Regs, regs 16, 17 & 18*

### **Example 1**

Peta is a lone parent entitled to IS because she is incapable of work. She is entitled to the DP. She fails to attend a medical examination. The DM determines that she is treated as capable of work from 21 October onwards. DP is withdrawn from the benefit week in which the change occurs. Entitlement to IS

continues as she is a lone parent.

## Example 2

Cliff is entitled to IS from 10 October due to incapacity for work. The 364 days qualifying period has not yet been served. He fails without good cause to go for a medical examination. The DM determines that he is treated as capable of work from 17 December to 15 January (30 days). This period does not count towards the DP qualifying period, even though the claimant is entitled to IS for this period.

## Linking

23143 Separate periods of entitlement to SSP, IfW or LCW may link for

1. the qualifying period **and**
2. continuing entitlement to DP<sup>1</sup>.

*1 IS (Gen) Regs, Sch 2, para 12(1)(b)*

23144 There are special rules for WtWBs (see DMG 23145). Two or more distinct periods of

1. entitlement to SSP **or**
2. IfW

are treated as one continuous period if they are separated by one or more intervals each not exceeding 56 days. For LCW the intervals must not exceed 12 weeks.

**Note:** Only the periods of incapacity link. The gaps between periods of incapacity do not count towards the DP qualifying period.

## Example

David becomes incapable of work on 8 January 2008. The last day of IfW is 9 March 2008. He claims JSA and then becomes incapable of work again from 30 April 2008. The gap between the periods of IfW is less than 56 days - 10 March to 29 April (51 days). The periods of IfW link and are treated as one continuous period. The DP would normally have been due, on the repeat claim, from 29 April 2009, but the periods of IfW link, so entitlement to the DP is brought forward by the 62 days already served and is now due from 26 February 2009.

23145 Where DMG 23127.4 applies and the claimant or their partner is a WtWB (see DMG Chapters 13 and 14), two or more distinct periods of

1. entitlement to SSP **or**
2. IfW

are treated as one continuous period if they are separated by one or more intervals each not exceeding 104 weeks<sup>1</sup>.

*1 ESA (TP, HB & CTB (EA) (No. 2) Regs reg 23A(4)*

### **Example**

Neil is incapable of work and receives IS with DP. He starts a F/T job on 2 November 2005 and payment of IS is withdrawn. On 7 March 2007 he has to stop work due to ill health and on 8 March reclaims IS as he is again incapable of work. The DM confirms that Neil is a WtWB. The gap between his periods of IfW is less than 104 weeks. The periods link and are treated as one continuous period. DP is awarded from 8 March.

23146 - 23149

### **People abroad and prisoners**

23150 For IS the claimant may be incapable of work if the

**1. OOT or**

**2. PCA**

is satisfied, or treated as satisfied<sup>1</sup>.

*1 SS CB Act 92, Pt XIA*

23151 Enquiries should be made of the relevant DM to find out if the claimant is incapable of work, if the claimant has been

**1. abroad or**

**2. a prisoner.**

If so, these days count for the DP qualifying period and linking purposes.

### **Example 1**

Paul is incapable of work and in receipt of IS and IBST from 13 August. From 18 September to 17 October (30 days) the claimant is a prisoner. The DM decides IBST is disqualified and the days are days of IfW. The period as a prisoner counts towards the qualifying period for DP.

### **Example 2**

Richard is in receipt of IS as he is incapable of work. He satisfies the AWT and is awarded DP. From 6 September Richard is a prisoner. As a prisoner his IS applicable amount is nil. He is incapable of work

during the period as a prisoner. He is discharged on 29 January and claims JSA on 30 January. On 5 March the claimant is incapable of work and is treated as satisfying the PCA. DP is awarded from 5 March because

- 1.** Richard was incapable of work during the period as a prisoner (6 September to 29 January) **and**
- 2.** the period that Richard was in receipt of JSA and not incapable was for 56 days or less (linking rules) (30 January to 4 March) **and**
- 3.** the periods that Richard was incapable of work link (29 January to 5 March).

### **Example 3**

Jan is incapable of work but is not entitled to IB. She is in receipt of IS with DP. Jan provides a medical certificate of her incapacity for six months from 1 May. From 26 May, Jan is a prisoner and her applicable amount is nil. She is discharged on 22 September and reclaims IS on 27 September. Jan has provided suitable medical evidence that she was incapable of work for the time she spent in prison. DP is therefore awarded from 27 September.

### **Late claim**

23152 A claimant who makes a late claim for benefit without good cause is disentitled. For DP purposes, days that a claimant is incapable of work during a period of disentitlement for a late claim are days of IfW.

### **Example**

On 4 November Nicola claims IBST and requests backdating to 12 September. The DM decides that Nicola was incapable of work from 12 September. But good cause has not been shown and Nicola is disentitled to IBST. The days of disentitlement count for DP.

### **Terminally ill**

23153 For IS purposes the DM determines if, and the date from which, a claimant is terminally ill<sup>1</sup>.

*1 SS CB Act, s 30B(4); SS (IW) (Gen) Regs, reg 20*

23154 If a claimant is terminally ill after the start of the qualifying period any days already served will count towards the 196 days (see DMG 23127 **4**).

23155 If the claimant becomes terminally ill after the start of the IfW or entitlement to SSP, but before the 365th day, DP will begin on the later of the

- 1.** 197th day **or**
- 2.** date from which the DM determines the claimant is terminally ill.

## Example 1

Michael is incapable of work and in receipt of IS. The 364 days qualifying period for DP begins 24 October. On 19 December a DM determines Michael has been terminally ill since 27 November. The 196 days qualifying period begins 24 October even though Michael was not terminally ill on that date.

## Example 2

Edward is incapable of work and in receipt of IS. The 364 days qualifying period for DP begins 15 January. On 17 August a DM determines that Edward has been terminally ill since 5 August. More than 196 days in the qualifying period have been served. DP is applicable from 5 August, the date from which the DM decides that Edward is terminally ill.

## Starting a training course

23156 If DMG 23127.4 applies and a claimant who has qualified for DP due to IfW

1. starts a training course provided or approved by the Secretary of State **or**
2. is in receipt of a training allowance

the qualifying conditions should be treated as satisfied during the period of training. The claimant continues to be entitled to the DP<sup>1</sup>.

*1 ESA (TP, HB & CTB (EA) (No. 2) Regs, reg 23A(4)*

23157 - 23171

## Change of claimant for DP

23172 The DM should advise the partner of a claimant to become the claimant if the

1. partner satisfies the incapacity conditions for DP **and**
2. claimant is not entitled to DP.

23173 If there is a change of claimant because DMG 23172 is satisfied, arrears of DP can be paid for a past period if<sup>1</sup> the

1. time for claiming has been extended and the new claim is treated as made on an earlier date<sup>2</sup> (see DMG Chapter 02 for guidance on second claims for IS) **and**
2. partner (the old claimant) was entitled to IS or JSA(IB) or both<sup>3</sup> for the period

**2.1** beginning with the date on which the new IS or JSA claim has been treated as made<sup>4</sup> **and**

**2.2** ending on the day before the actual date of claim **and**

**3.** new claimant satisfies the conditions for the award of DP as in DMG 23127 **4.** throughout the period at **2.**

**Note:** The weekly amount of the arrears is the higher rate of DP<sup>5</sup>.

*1 IS (Gen) Regs, Sch 7, para 19; 2 SS (C&P) Regs, reg 19(4); 3 IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32(a); 4 reg 6(3); 5 IS (Gen) Regs, Sch 7, para 19*

### **Example**

On 30 January Haydn becomes incapable of work and on 2 February claims IS for himself and his partner Pamela. He is not entitled to DP and is awarded IS without DP. On 27 March, Pamela claims IS for the couple on the basis of her own incapacity. She provides evidence that she has been incapable of work for the past two years and asks for her claim to be treated as made on 2 February. Pamela's claim is treated as made on 2 February. She satisfies the conditions for the award of DP throughout the period 2 February to 26 March and Haydn was entitled to IS for that period. Arrears of DP can therefore be considered for the period 2 February to 26 March.

### **DP transitional arrangements because of the introduction of IB**

23174 Guidance on the transitional arrangements for the introduction of IB for

**1.** claimants already in receipt of DP on 12.4.95 **and**

**2.** the qualifying period - days before 13.4.95

is in Appendix 1 to this Chapter.

23175 - 23179

# Enhanced disability premium 23180 - 23199

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## Introduction

23180 [\[See Memo DMG 3/22\]](#) The qualifying conditions to be satisfied for enhanced disability premium (EDP) are the same for IS and JSA(IB). See DMG 23052 for how the multiple premiums rule applies to EDP.

## IS and JSA(IB)

23181 EDP is payable if

**1.** AFIP<sup>1</sup> is in payment

**2.** DLA highest rate care component is payable, or would be payable but for a suspension or abatement as a consequence of hospitalisation, in respect of

**2.1** the claimant **or**

**2.2** the claimant's partner where that partner is aged less than the qualifying age for SPC<sup>2</sup>

**3.** the daily living component of PIP at the enhanced rate is payable in respect of

**3.1** the claimant **or**

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

would be payable to the claimant or claimant's partner if they were not a hospital in-patient<sup>3</sup>

**4.** the daily living component of ADP is payable, or would be payable if they were not a hospital in patient, in respect of

**4.1** the claimant **or**

4.2 the claimant's partner where that partner is aged less than the qualifying age for SPC<sup>4</sup>

**5** CDP highest rate care component is payable in respect of

5.1 the claimant **or**

5.2 the claimant's partner where that partner is aged less than the qualifying age for SPC<sup>5</sup>

**6** they are not entitled to PP, EPP or HPP<sup>6</sup>

1 IS (Gen) Regs, Sch 2, para 13A(1ZA)(a); JSA Regs, Sch 1, para 15A(1ZA)(c) & 20IA(1);

2 IS (Gen) Regs, Sch 2, para 13A(1ZA)(b); JSA Regs, Sch 1, para 7(2) & 20C(2);

3 IS (Gen) Regs Sch 2, para 13A(1ZA)(b) & 3A(1ZA)(c); JSA Regs, Sch 1, para 15A(1ZA)(b) & 20IA(1)(b); 4 IS (Gen) Regs Sch 2, para 13A(1ZA)(d), JSA Regs Sch 1, para 15A(1ZA)(b); 5 IS (Gen) Regs Sch 2, para 13A(1ZA)(ba); JSA Regs Sch 1, para 15A(1ZA)(aa); 6 JSA Regs, Sch 1, para 15A(1ZA)(c), IS (Gen) Regs, Sch 2, para 13A(1) & 13A(1ZA)(a)

## **Admission to care home or independent hospital**

23182 EDP continues in payment for the period the highest rate care component of DLA and CDP continues to be paid, usually 28 days.

23183 Where the claimant is self funding DLA or CDP highest rate care component may continue to be payable beyond 28 days when a person is admitted to a care home or independent hospital. In such a case EDP will continue to be payable until entitlement to the DLA or CDP highest rate care component ceases<sup>1</sup> or the person who satisfies the premium condition becomes a long term patient<sup>2</sup>.

1 IS (Gen) Regs, Sch 2, para 13A(1); JSA Regs, Sch 1, para 15A(1) & 20IA(1)

2 IS (Gen) Regs, Sch 2, para 13A(2); JSA Regs, Sch 1, para 15A(2) & 20IA(2)

## **Children and young persons**

23184 An EDP is not applicable in respect of a child or young person who

**1.** has capital over £3,000<sup>1</sup> **or**

**2.** is a long term patient as described at DMG 23256<sup>1</sup>.

1 IS (Gen) Regs, Sch 2, para 13A(2)(a); JSA Regs, Sch 1, para 15A(2)(a)

23185 The DM may need to work out the child or young person's income to be taken into account<sup>1</sup>. Any such calculation should include the EDP for that child or young person if they satisfy the conditions for EDP. This is in addition to the personal allowance and DCP.

## Liabe relative payments

23186 When working out the period over which non-periodical liable relative payments are taken into account, the calculation should include the EDP<sup>1</sup>.

1 IS (Gen) Regs, reg 57(1)(b)(iia); JSA Regs, reg 121(1)(b)(iia)

## EDP following the death of a child

23187 Where

1. an EDP has been awarded **and**
2. the child in respect of whom it was awarded has died **and**
3. CHB is awarded for an additional eight weeks following the death

an alternative qualifying condition is satisfied for the additional period of eight weeks, alongside the run on of CHB<sup>1</sup>. The award of CHB can be either in the name of the claimant or partner<sup>2</sup>.

1 JSA Regs, Sch 1, paras 15A & 16; IS (Gen) Regs, Sch 2, paras 13A & 14;

2 JSA Regs, Sch 1, para 15A(1A); IS (Gen) Regs, Sch 2, para 13A(1A)

23188 - 23199

# Severe disability premium 23200 - 23240

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## JSA(IB) and IS

### General

23200 [See [DMG memo 12-23](#)] SDP is payable to a severely disabled person<sup>1</sup>. There are two rates of SDP.

*1 IS (Gen) Regs, Sch 2, para 13(1)*

### Combination of SDP with DP or HPP

23201 If the conditions for SDP are met, the appropriate SDP rate should be included in the claimant's applicable amount in addition to any other premium.

### Lower rate

23202 Single claimants, lone parents and claimants who are deemed to have no partner (see DMG 23205) are entitled to the lower rate SDP if

**1.** they are in receipt of<sup>1</sup>

**1.1** "AA" (see DMG 23071) **or**

**1.2** the middle or highest rate of the care component of DLA **or**

**1.3** the daily living component of PIP at the standard or enhanced rate **or**

**1.4** the daily living component of ADP at the standard or enhanced rate **or**

**1.5** AFIP **and**

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

**2.1** normally residing (see DMG 23209) with the claimant **or**

**2.2** who the claimant normally resides with<sup>2</sup> **and**

**3.** CA or UC that includes the CE, is not in payment to anyone for caring for them (see DMG 23236)<sup>3</sup>.

*1 JSA Regs, Sch 1, para 15(1)(a); IS (Gen) Regs, Sch 2, para 13(2)(a)(j); 2 JSA Regs, Sch 1, para 15(1)(b); IS (Gen) Regs, Sch 2, para 13(2)(a)(ii); 3 JSA Regs, Sch 1, para 15(1)(c); IS(Gen) Regs, Sch2, para 13(2)(a)(iii)*

23203 Members of a couple or polygamous marriage are entitled to the lower rate SDP if

**1.** each member of the couple or polygamous marriage is in receipt of

**1.1** “AA” **or**

**1.2** the middle or highest rate of the care component of DLA **or**

**1.3** the daily living component of PIP at the standard or enhanced rate **or**

**1.4** the daily living component of ADP at the standard or enhanced rate **or**

**1.5** AFIP **and**

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

**2.1** normally residing (see DMG 23209) with the claimant **or**

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

**3.** CA or UC that includes the CE, is in payment (see DMG 23236) to someone for caring for one

**3.1** of a couple **or**

**3.2** or more, but not all, of the members of a polygamous marriage<sup>1</sup>.

*1 JSA Regs, Sch 1, para 15(2)(a)-(c) & (d)(ii) and 201(1)(a)-(c) & (d)(ii);  
IS (Gen) Regs, Sch 2, para 13(2)(b)*

## Higher rate

23204 Members of a couple or polygamous marriage are entitled to the higher rate SDP if

**1.** the conditions in DMG 23203 **1.** and **2.** are satisfied **and**

**2.** CA or UC that includes the CE, is not in payment (see DMG 23236) to someone for caring for any member of a

**2.1** couple **or**

**2.2** polygamous marriage<sup>1</sup>.

*1 JSA Regs, Sch 1, para 15(2)(a)-(c) & (d)(i) and 20I(1)(a)-(c) & (d)(i);*

*IS (Gen) Regs, Sch 2, para 13(2)(b)*

### **Claimant who is deemed not to have a partner**

23205 When deciding entitlement to SDP, a claimant is treated as not having a partner if the partner is

**1.** not in receipt of

**1.1** “AA” **or**

**1.2** the middle or highest rate of the care component of DLA **or**

**1.3** the daily living component of PIP at the standard or enhanced rate **or**

**1.4** AFIP **and**

**2.** certified as severely sight impaired or blind by a consultant ophthalmologist or treated as severely sight impaired or blind (see DMG 23072)<sup>1</sup>.

*1 JSA Regs, Sch 1, para 15(3) and 20I(2); IS (Gen) Regs, Sch 2, para 13(2A)*

23206 This means that if the claimant is a member of a

**1.** couple, the claimant must satisfy DMG 23202 to be entitled to SDP **or**

**2.** polygamous marriage, all remaining partners must satisfy DMG 23203 **1.** for the claimant to be entitled to SDP.

### **“AA”, DLA, ADP and CA on admission to hospital**

23207 Special rules apply to the treatment of “AA”, DLA and CA when a disabled person is admitted to hospital (see DMG 23292).

### **Non-dependants**

23208 Non-dependants are<sup>1</sup> people who are aged 18 or over who

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

**2.** the claimant normally resides with (see DMG 23209).

That is, share the accommodation (see DMG 23212). Certain people who normally reside with the claimant are not regarded as non-dependants (see DMG 23220).

*1 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1); R(IS) 12/96*

### **Meaning of normally resides**

23209 Normally resides means usually resides and should be tested over a period to which usually can relate. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

#### **Example 1**

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

#### **Example 2**

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

23210 When considering where a person normally resides the DM should have regard to

- 1.** the total amount of time spent in a place
- 2.** how often time is spent in a place
- 3.** how permanent the stay is thought to be
- 4.** the person's intentions
- 5.** individual circumstances
- 6.** what degree the accommodation is shared
- 7.** the services provided
- 8.** whether the person owns or rents any other accommodation
- 9.** whether the person has any liabilities for services/utilities/tv licence.

#### **Example**

Agnes who is aged 59 claims IS. She has been awarded DLA and no one gets CA, or UC that includes the carer element for caring for her. Agnes owns her own home but for the past two years has slept every

night at her son's house. She keeps her clothes and some of her things at her son's house. She goes home for the day two or three days a week, to clean up and do the garden. But she always returns to her son's to sleep. Agnes is responsible for the bills for her home and she and her son still regard Agnes's house as her home. Agnes's house has never been put up for sale.

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

1. she sleeps at her son's house every night
2. her clothes and some of her things are kept at her son's
3. she only goes back to her own house occasionally and in daylight hours
4. she spends the majority of her time at her son's house.

Agnes is not entitled to SDP.

## **Students**

23211 In a case where a student lives at a university address during term time and lives at their parents' home for some weekends and during the holidays, the DM should have regard to the considerations at DMG 23210 before deciding which address is where they normally reside. Whichever address is chosen will remain the student's normal residence even when they spend time at the other home.

## **Example**

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

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

## **Sharing the accommodation**

23212 People should not be regarded as sharing the accommodation if<sup>1</sup>

1. the only shared area is a

**1.1** bathroom **or**

**1.2** lavatory **or**

**1.3** communal area (see DMG 23213) **or**

**2.** they are separately liable to make payments (see DMG 23214) to the landlord for that accommodation.

*1 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4); R(IS) 12/96*

**Note:** A person should still be regarded as sharing the kitchen even if they do not enter or use it where items for the persons use are stored there or their meals are prepared there. A kitchen is not shared if a person needs to pass through it to gain access to their self contained flat.

23213 A communal area is an area of common access (not a room) including

**1.** halls

**2.** stairways **and**

**3.** rooms of common access in sheltered accommodation<sup>1</sup>.

*1 JSA Regs, reg 2(7); IS (Gen) Regs, reg 3(5)*

### **Meaning of “liable to make payments”**

23214 “Liable to make payments” refers to legal liability. When considering the question of liability, the DM must consider whether

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

**2.** there was an intention to create legal relations.

23215 If the conditions in DMG 23214 are met, the DM must then establish that<sup>1</sup>

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

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

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

*1 R(IS) 11/98*

23216 Whether a person has separate liability to a landlord (see DMG 23212 **2.**) should be determined by reference to the arrangements within the group. But DMs should note that the liability has to be to the same landlord. Reference to some other liability of the person to a third party is not relevant.

## **Example**

Tom claims JSA. He gets DLA and no one gets CA or UC that includes the carer element for caring for him. He lives in a privately rented house which he shares with three other people. They all have their own bedroom but share the kitchen and bathroom. Each are liable to pay the landlord rent for their room.

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

23217 Where a claimant lives in the parent's home, the DM should establish

- 1.** the terms on which the claimant lives there **and**
- 2.** what payments are made **and**
- 3.** the purpose of those payments.

The DM must then consider whether there is a contractual liability.

## **Contractual capacity**

23218 In England and Wales, only an infant, or a person of unsound mind, may not have the capacity to incur legal liability. DMs should accept that a claimant has sufficient capacity unless there is very strong evidence to the contrary.

## **Carer stays overnight**

23219 A carer may stay overnight with the person they are looking after. In such a case the DM should consider whether the carer normally resides with that person and should find out

- 1.** whether the carer has a separate address
- 2.** if the carer has a separate address, whether they use it and if so, how often
- 3.** what address the carer uses as a postal address
- 4.** what address the carer is registered at for CT purposes.

## **People who are not non-dependants**

23220 People who normally reside with the claimant but who are not non-dependants<sup>1</sup> are

- 1.** any person aged under 18
- 2.** any member of the claimant's family (see DMG Chapter 22)

**3.** any child or young person who is not treated as a member of the claimant's household (see DMG Chapter 22)

**4.** a person and their partner who

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

**4.2** is engaged by a

**4.2.a** charitable **or**

**4.2.b** voluntary organization

which makes a charge to the claimant or partner for the person's services. A voluntary organization is a non-profit making organization that is not a public authority or LA<sup>2</sup>

**5.** any person who is not a close relative (see DMG 23222) of the claimant or partner who

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

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

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

**6.** any person who is not a close relative (see DMG 23222) and who is a member of the household of a person to whom **5.** applies

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

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

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

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

**8.1** claimant or partners co-ownership or joint liability arose

**8.1.a** before 11.4.88 **or**

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

**8.2** the saving provision applies<sup>3</sup> (see Appendix 2 to this Chapter)

**9.** a person in receipt of

**9.1** “AA” or

**9.2** the middle or highest rate of the care component of DLA<sup>4</sup> or

**9.3** the daily living component of PIP at the standard or enhanced rate or

**9.4** the daily living component of ADP at the standard or enhanced rate or

**9.5** AFIP

**10.** a person, including a close relative who

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

**10.2** immediately before joining either the claimant or partner satisfied the conditions for SDP<sup>5</sup>

**11.** a person who is blind or treated as blind (see DMG 23072)<sup>6</sup>.

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

**Note 2:** For the purpose of **9.** receipt of the allowance will stop where the person has been a hospital inpatient for a prescribed period, at this point the person will be considered a non dependant.

**Note 3:** The provision in **10.** only applies for the first twelve weeks from the date that person first joined the claimant’s household<sup>7</sup>.

*1 JSA Regs, reg 2 & Sch 1, para 15(1)(b), 15(2)(c) & 20I(1)(c); IS (Gen) Regs, reg 3; Sch 2, para 13(2)(a)(ii) & 13(2)(b)(iii); 2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 3 JSA Regs, Sch 1, para 15(8); IS (Gen) Amdt No 6 Regs; 4 JSA Regs, Sch 1, para 15(4)(a) and 20I(3)(a); IS (Gen) Regs, Sch 2, para 13(3)(a); 5 JSA Regs, Sch 1, para 15(4)(b) and 20I(3)(b); IS (Gen) Regs, Sch 2, para 13(3)(c); 6 JSA Regs, Sch 1, para 15(4)(c) and 20I(3)(c); IS (Gen) Regs, Sch 2, para 13(3)(d); 7 JSA Regs, Sch 1, para 15(6) & 20I(5); IS (Gen) Regs, Sch 2, para 13(4)*

## **Commercial basis**

23221 For a liability to be on a commercial basis<sup>1</sup> (see DMG 23220 **5.**)

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

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

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

1 R(IS) 11/98

## Meaning of close relative

23222 A close relative is<sup>1</sup>

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, **or**
2. if any of the preceding persons is one member of a couple, the other member of that couple **and**
3. similar relationships arising through civil partnerships<sup>2</sup>.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 CP Act 04, s 246

23223 “Brother” and “sister” includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and the brother or sister of any other child of those parents. The adopted child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends on the **legal relationship** not the blood relationship<sup>1</sup>.

## 1 R(SB) 22/87

### Changes to people who are not non-dependants

23224 Since IS started there have been some changes to the groups of people who are not non-dependants. The group has mainly stayed as outlined in DMG 23220. But the major changes are highlighted in Appendix 3 to this Chapter.

### Shared lives

23225 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PIP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will be ignored as non dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the SDP.

**Note:** The claimant will not be entitled to SDP if there are people other than the carer, members of the carer’s household, other shared lives residents or anyone liable to make payments for accommodation to the carer on a commercial basis in the dwelling who cannot be ignored.<sup>1</sup>

1 IS Gen Regs, reg 3(2A)&(4)

## Example

Shirley moved into Fiona and Jason's home under the Shared Lives scheme, she will live as part of their family having her own bedroom and sharing all the other household facilities. Shirley is disabled and receives DLA. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get HB. The DM decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments in respect of her occupation of the dwelling. Shirley is entitled to the SDP

## Admittance to residential care

23226 The following guidance on admittance to temporary or permanent residential care applies only to the award of SDP. See DMG Chapter 61 for guidance on the treatment of “AA” when a disabled person is admitted to residential care.

### Definitions for DMG 23229 - 23235

23227 Temporary residential care means any temporary stay in a care home or independent hospital. For example, respite care in a care home.

23228 Permanent residential care means permanent residence in a care home or independent hospital.

### Single claimant or lone parent

23229 A single claimant or lone parent who does not satisfy the SDP conditions because there is a non-dependant, will not satisfy the SDP conditions while in temporary residential care. As the stay is temporary the claimant continues to normally reside at home<sup>1</sup>.

*1 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1)*

## Example

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

23230 Claimants who live in permanent residential care are normally resident in the home providing that care. Other residents of the home are not non-dependants because they do not normally reside with the claimant as they are separately liable to make payments to a landlord<sup>1</sup> (see DMG 23211 **2**). SDP is payable to a person in permanent residential care if all of the conditions are satisfied.

**Note:** DLA may cease when the person has been in permanent residential care for four weeks

*1 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4)*

### **Example**

Ivor is a single claimant who lives at home with his parents. He is in receipt of DLA and no one receives CA, or UC that includes the carer element, for caring for him. His parents are non-dependants. The SDP conditions are not satisfied.

Ivor goes into permanent residential care. The DM decides that Ivor is entitled to SDP at the lower rate from the date that he moves into permanent residential care. This is because

- 1.** he is in receipt of DLA **and**
- 2.** the other residents of the home are not non-dependants because they do not normally reside with him **and**
- 3.** no one is in receipt of CA, or UC that includes the carer element, for caring for him.

Entitlement to SDP continues as long as all of the above are satisfied.

### **Couples**

23231 When a member of a couple is in temporary residential care the separation from the partner is also temporary. This means that the couple remain members of the same household<sup>1</sup>.

*1 JSA Regs, reg 78(1); IS (Gen) Regs, reg 16(1)*

23232 A special assessment is necessary where one member is in temporary residential care. The claimant's applicable amount should be<sup>1</sup> whichever is the greater of the

- 1.** normal amount for the couple **or**
- 2.** total of the applicable amounts assessed as if the claimant and partner were each a single claimant or lone parent living in their present accommodation.

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

23233 For the purposes of the calculation at DMG 23232 **2.**

- 1.** while in temporary residential care the person is still treated as normally residing at home<sup>1</sup> **and**
- 2.** neither partner is regarded as a non-dependant of the other<sup>2</sup>.

*1 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1); 2 R(IS) 9/02*

### **Example 1**

Peter and Louise live in the same household. They are both named as owners of the property. There are no non-dependants. Both get DLA and someone gets CA for Peter. SDP at the lower rate is payable. Louise goes into temporary residential care.

If they are assessed as a couple, SDP at the lower rate is payable because Louise normally resides at home and CA is in payment for Peter.

If they are assessed as if they are single, SDP is not payable for Peter because CA is in payment. SDP is payable to Louise as she gets DLA, CA is not in payment and there are no non-dependants.

### **Example 2**

Malcolm and Wendy are married and live together in the same household. Malcolm is the tenant of the property. Both Malcolm and Wendy get DLA and CA, or UC that includes the carer element is not in payment. There are no non-dependants. Higher rate SDP is in payment. Malcolm goes into temporary residential care.

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

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

### **Example 3**

Alan and Geraldine are married and live together in the same household with a non-dependant daughter. Alan gets DLA and CA, or UC that includes the carer element, is not in payment. SDP is not in payment because there is a non-dependant daughter and Geraldine is not in receipt of DLA. Alan goes into temporary residential care.

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

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

### **Example 4**

Kenneth and Susan live together in the same household with a non-dependant son. Both get DLA and

CA, or UC that includes the carer element, is not in payment. SDP is not in payment because there is a non-dependant son. Susan goes into temporary residential care.

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

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

23234 A member of a couple admitted to permanent residential care is no longer a member of the same household as the partner<sup>1</sup>. Each person may claim JSA or IS as a single claimant or lone parent.

*1 JSA Regs, reg 78(1) & (3)(d); IS (Gen) Regs, reg 16(1) & (3)(e)*

23235 If a claimant is admitted to permanent residential care the other residents of the home are not non-dependants. This is because they do not normally reside with the claimant, as they are separately liable to make payments to a landlord (see DMG 23212 **2.**)<sup>1</sup>. SDP is payable to a claimant in permanent residential care if all of the conditions are satisfied.

**Note:** DLA may cease when the person has been in permanent residential care for four weeks.

*1 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4)*

### **Example**

Irene and Michael are married and live together in the same household. Irene is in receipt of DLA and no one is in receipt of CA, or UC that includes the carer element, for caring for her. SDP is not payable because Michael does not get “AA” or DLA. Irene is admitted to permanent residential care.

Irene claims benefit for herself as she is no longer a member of Michael’s household. The DM decides that Irene is entitled to SDP at the lower rate because

- 1.** she is in receipt of DLA **and**
- 2.** the other residents of the home are not non-dependants because they do not normally reside with her **and**
- 3.** no one is in receipt of CA, or UC that includes the carer element for caring for her.

Entitlement to SDP continues as long as all of the above are satisfied.

### **SDP and CA or UC’s carer element**

23236 SDP is not payable if someone is receiving CA, or UC that includes the carer element, for caring

for

**1.** the claimant in a single person claim **or**

**2.** in couple cases, both the claimant and their partner<sup>1</sup>(or all of their partners in the case of polygamous marriage)

CA or UC that includes the carer element has to actually be in payment before it affects entitlement to SDP unless DMG 23239 applies. Underlying entitlement to CA does not affect SDP.

**Note:** A claimant can be awarded SDP and CP at the same time, including where CP is awarded to the claimant because of underlying entitlement to CA (see DMG 23245 et seq).

*1 JSA Regs, Sch 1, para 15(1)(c), (2)(d) & 20I(1)(d); IS (Gen) Regs, Sch 2, para 13(2)(a)(iii) & (2)(b)*

23237 DMs should normally treat an award of CA as a proper award until the CA decision is revised, superseded or otherwise changed on appeal. If the claimant says that

**1.** they are not being cared for by the person getting CA **or**

**2.** the award of CA is in error **or**

**3.** they know nothing about the CA award **or**

**4.** the CA claim is fraudulent

the DM should ask the CA unit to investigate whether the CA award is correctly made.

23238 Where the disabled person makes an allegation about the carer's integrity, as described at DMG 23237, the IS/JSA DM can make a decision on the claim or application before the CA DM has decided whether the award of CA should be revised or superseded. However, the IS/JSA decision should include a determination which

**1.** makes an assumption that the carer is properly in receipt of CA **and**

**2.** refuses to award SDP.

23239 An award of CA may be backdated for a period before the date on which the CA award is made. Arrears of CA due in such circumstances do not affect entitlement to SDP<sup>1</sup>. SDP is only affected from the date the CA award is paid.

*1 JSA Regs, Sch 1, para 15(7) and 20I(6); IS (Gen) Regs, Sch 2, para 13(3ZA)*

### **Example**

Karim is a single claimant in receipt of SDP. On 20 November a relative claims CA. CA is awarded on 23

January. It is first paid on 6 March. Arrears are included in the first payment from the date of claim. SDP is affected from 6 March.

23240 If a person stops getting CA because a restriction is applied under the loss of benefit provisions<sup>1</sup> they continue to be treated as being in receipt of CA for the purposes of entitlement to SDP<sup>2</sup>.

*1 SS Fraud Act 2001, s 7; 2 IS (Gen) Regs, Sch 2, para 13(2)(a)(iii), (2)(b) & (5);  
JSA Regs, Sch 1, para 15(1)(c), (2)(d), & (9) and 20(1)(d) & (7)*

# Disabled child premium 23241 - 23244

[JSA\(IB\) and IS 23241 - 23244](#)

## JSA(IB) and IS

23241 DCP is paid at one rate. If the conditions for DCP are met, DCP should be included in the claimant's applicable amount in addition to any other premium.

### Qualifying conditions

23242 A DCP should be paid for each child or young person who

1. the claimant or the claimant's partner is responsible for **and**
2. is a member of the claimant's household **and**
3. is disabled **and**
4. does not have capital over £3000<sup>1</sup>
5. is not a long term patient<sup>2</sup>.

*1 JSA Regs, Sch 1, para 16(2)(a); IS (Gen) Regs, Sch 2, para 14(2)(a);*

*2 JSA Regs, Sch 1, para 16(2)(b); IS (Gen) Regs, Sch 2, para 14(2)(b)*

### Meaning of disabled

23243 For DCP purposes children or young persons should be treated as disabled if they are in receipt of

1. CDP **or**
2. DLA **or**
3. PIP **or**
4. ADP **or**
5. AFIP **or**
6. not receiving CDA, DLA, PIP or ADP because they are a hospital in-patient but they continue to be a member of the claimant's family **or**
7. certified as severely sight impaired or blind by a consultant ophthalmologist or treated as severely sight impaired or blind<sup>1</sup> (see DMG 23072).

## **DCP following the death of a child**

23244 Where

- 1.** a DCP has been awarded **and**
- 2.** the child in respect of whom it was awarded has died **and**
- 3.** CHB is awarded for an additional eight weeks following the death

an alternative qualifying condition is satisfied for the additional period of eight weeks, alongside the run on of CHB<sup>1</sup>.

## Carer premium 23245 - 23253

[JSA\(IB\) and IS 23245 - 23247](#)

[Carer premium extension period 23248 - 23253](#)

### JSA(IB) and IS

23245 CP is paid at one rate. If the conditions for CP are met, CP should be included in the claimant's applicable amount in addition to any other premium.

23246 If the conditions for CP are met by both members of a couple, CP should be included in the claimant's applicable amount for them both<sup>1</sup>.

1 JSA Regs, Sch 1, para 20(8), 20 M(5); IS (Gen) Regs, Sch 2, para 15(7)

23247 [See [DMG memo 12/23](#)] The condition for the award of CP being that the claimant or his partner or both of them are entitled to CA<sup>1</sup>.

**Note:** CP should **not** be awarded where CA is taken into account as notional income (see DMG Chapter 28). This is because there would be no entitlement to CA.

1 JSA Regs, Sch 1, para 17, 20J; IS (Gen) Regs, Sch 2, para 14ZA

#### Example 1

Maurice lives with his wife Louise and they are both entitled to CA. They each satisfy the conditions for the award of CP. At the time of Maurice's claim the applicable amount is £140.10 and the rate of CP is £29.50. Their applicable amount is now £199.10 (£140.10 + £29.50 + £29.50).

#### Example 2

The DM decides that Annette deprived herself of CA in order to increase her entitlement to IS. Therefore CA is taken into account as notional income. CP is not included in Annette's applicable amount.

### Carer premium extension period

23248 Where a CP has been awarded but the person in respect of

1. whose care the CA has been awarded dies **or**
2. whom the CP was awarded ceases to be entitled to CA

the qualifying condition shall be satisfied or treated as satisfied for a period of eight weeks<sup>1</sup> from the relevant date. (See DMG 23249).

1 JSA Regs, Sch 1, paras 17(3) & (3A) & 20J(3) & (3A); IS (Gen) Regs, Sch 2, paras 14ZA(3) & (3A)

## **The relevant date**

23249 The relevant date is<sup>1</sup>

**1.** where the person in respect of whose care the CA has been awarded has died, the

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

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

**2.** in any other case, the date on which the person ceased to be entitled to CA.

1 JSA Regs, Sch 1, paras 17(3A) & 20J(3A); IS (Gen) Regs, Sch 2, para 14ZA(3A)

### **Example 1**

Daphne is entitled to IS which includes the CP and is paid on Wednesday in arrears. The person she is caring for dies on Friday 22.8.03. The relevant date is 24.8.03. The condition for the award of the CP is satisfied for the period 24.8.03 to 18.10.03. The CP is withdrawn from week commencing 16.10.03.

### **Example 2**

Sheila is entitled to IS which includes the CP and is paid on Thursday in advance. The DLA award for the person she provides care is not renewed and ends in August 2004. CA is paid to Sunday 29.8.04. The relevant date is 29.8.04. The condition for the award of the CP is treated as satisfied for the period 29.8.04 to 23.10.04. The CP is withdrawn from week commencing 28.10.04.

## **Claim to IS/JSA after CA ceases**

23250 Where a person ceases to be entitled to CA and subsequently makes a claim for IS or JSA, the CP qualifying condition is treated as satisfied for eight weeks from<sup>1</sup>

**1.** where the person in respect of whose care the CA has been awarded has died, the date of death

**2.** in any other case, the date on which CA ceased.

1 JSA Regs, Sch 1, paras 17(4) & 20J(4); IS (Gen) Regs, Sch 2, para 14ZA(4)

## **Transitional protection**

23251 Carers who were aged 65 and over on or before 28.10.02 can continue to be entitled to CA even though they are no longer providing care<sup>1</sup>, for example after the disabled person has died. Where this

protection applies and CA is retained the carer can continue to receive CP.

1 The Regulatory Reform (Carer's Allowance) Order 2002, S.I. 2002/1457, art. 4

### **Example 1**

Ralph, aged 58, is entitled to IS for himself and his partner Kath. Kath is aged 68 and has been entitled to CA in respect of the care she provides her mother since May 1998. Ralph's IS includes CP. Kath's mother dies on 22.8.03 but Kath retains her entitlement to CA (see DMG 60061). Ralph continues to be entitled to the CP in the calculation of his applicable amount.

23252 - 23253

# Admission to hospital - effect on premiums 23254 - 23399

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## Introduction

23254 The following paragraphs give guidance on the effects on premiums of admission to hospital. For guidance on the effects of hospital admission on the normal amount payable see DMG Chapter 24.

23255 The effects on premiums are different for JSA(IB) and IS. The normal change of circumstances rules apply.

## Long-term patient

23256 A long-term patient means a person who

1. is a patient within the meaning of regulations<sup>1</sup> **and**
2. has been a patient within that meaning for a continuous period of more than 52 weeks.

1 JSA Regs, reg 85(4); IS(Gen) Regs, reg 21(3)

## JSA(IB) - short periods of sickness

23257 A JSA claimant who is admitted to hospital will not normally be able to satisfy the conditions of being available for employment, ASE and being capable of work. But there are special provisions (see DMG Chapters 20 and 21) for treating a claimant as satisfying the conditions for up to two weeks continuous sickness

**1.** twice in any JSP **or**

**2.** if the JSP lasts for more than one year, twice in any year.

Claimants may continue to receive JSA for this period.

## **Family premium**

### **JSA(IB) and IS - lone parent**

23258 FP or FP(LP) continues throughout the stay in hospital, or duration of the JSA claim, if the claimant satisfies the conditions for that premium<sup>1</sup>.

1 JSA Regs, Sch 1, Part II; IS (Gen) Regs, Sch 2, Part II

### **JSA(IB) and IS - couple or polygamous marriage**

23259 FP or FP(LP) continues throughout a stay in hospital, or until the end of the JSA claim, if

**1.** either member of the couple **or**

**2.** any member of the polygamous marriage

is responsible for a child or young person who is a member of the family<sup>1</sup>.

1 JSA Regs, Sch 1, Part II; IS (Gen) Regs, Sch 2, Part II

## **Pensioner premium**

### **Single or lone parent**

23260 PP continues until the claim ends<sup>1</sup>.

1 JSA Regs, Sch 1, para 10(a)

### **Couple or polygamous marriage**

23261 PP continues until the claim ends. It is not affected by any period as a patient<sup>1</sup>.

1 JSA Regs, Sch 1, para 10(b) & (c), para 20E; IS (Gen) Regs, Sch 2, para 9

23262

## Enhanced pensioner premium

### Couple or polygamous marriage

23263 EPP continues until the claim ends<sup>1</sup>.

1 JSA Regs, Sch 1, para 11

23264 - 23279

## Higher pensioner premium

### Single claimant or lone parent

23280 HPP stops when the claimant becomes a long term patient<sup>1</sup>.

1 JSA Regs, Sch 1, para 12(5), para 20F(5); IS (Gen) Regs, Sch 2, para 10(6)

### Couples or polygamous marriages

23281 HPP stops after

1. one or both members of the couple are a long term patient **or**
2. at least one member of a polygamous marriage is a long term patient<sup>1</sup> **and**

the person who is the long term patient is the one who satisfied the premium condition.

1 JSA Regs, Sch 1, para 12(5), para 20F(5); IS (Gen) Regs, Sch 2, para 10(6)

## Disability premium

### Single claimant or lone parent

23282 DP stops when the claimant becomes a long term patient<sup>1</sup>

1 JSA Regs, Sch 1, para 13(2); para 20G(2); IS (Gen) Regs, Sch 2, para 11(2)

### Example

Bert suffered a stroke in 2006 and was admitted to hospital on 1.8.06. Bert went on home leave for a few days over Christmas returning to hospital on 27.12.06. On 1.8.07 a DM decides Bert is now entitled to a Disability premium, as he has been incapable of work for a period of 364 days. The removal of the disability premium is not considered until after 52 continuous weeks as an in-patient and therefore will not be appropriate until December 2007.

## **Couples or polygamous marriages**

23283 DP stops after

- 1.** one or both members of the couple are a long term patient **or**
- 2.** at least one member of a polygamous marriage is a long term patient<sup>1</sup> **and**

the person who is the long term patient is the only one who satisfied the premium condition.

1 JSA Regs, Sch 1, para 13(2) & 20G(2); IS (Gen) Regs, Sch 2, para 11(2)

23284

## **Enhanced disability premium**

### **Single claimant, lone parent or child**

23285 EDP stops when the person who satisfies the premium condition becomes a long term patient<sup>1</sup>.

1 JSA Regs, Sch 1, para 15A(2); IS (Gen) Regs, Sch 2, para 13A(2)

## **Couples or polygamous marriages**

23286 EDP stops after

- 1.** one or both members of the couple are a long term patient **or**
- 2.** at least one member of a polygamous marriage is a long term patient<sup>1</sup> **and**

the person who is the long term patient is the one who satisfied the premium condition.

1 JSA Regs, Sch 1, para 15A(2) & 20IA(2); IS (Gen) Regs, Sch 2, para 13A(2)

## **Severe disability premium**

### **JSA(IB) - claimant in hospital**

23287 SDP continues until the JSA claim ends if the conditions for the award of SDP are still satisfied.

### **JSA(IB) - partner or member of a joint-claim couple in hospital**

23288 The lower rate SDP is payable if<sup>1</sup>

- 1.** the conditions for the higher rate SDP were satisfied before

**1.1** the partner became a patient **or**

**1.2** one member of a joint-claim couple became a patient **or**

**1.3** any partner in the polygamous marriage became a patient **and**

**2.** “AA”, DLA or PIP stops because the partner has been in hospital more than 28 days.

The lower rate of SDP is payable from the date “AA”, DLA or PIP stops. Normal change of circumstances rules apply.

1 JSA Regs, Sch 1, para 20(6)(b)(i) and 20M(4)(i)

### **Example**

Nigel is a married man in receipt of JSA. Nigel and his wife, Margaret satisfy the SDP conditions and the higher rate is payable. Margaret goes into hospital on 6 November and the higher rate SDP continues. DLA stops from 4 December because Margaret has been a patient for more than 28 days. SDP is also reduced to the lower rate from 4 December subject to the normal change of circumstances rules.

### **IS - single claimant or lone parent**

23289 SDP stop when the qualifying benefit ends (usually after four weeks)<sup>1</sup>.

**Note;** If entitlement to ADP begins during a period in hospital. or if a claimant transfers to ADP whilst in hospital, it is payable for 28 days. Entitlement to SDP for that period will have to be considered<sup>2</sup>

1 IS (Gen) Regs, Sch 2, para 13(2)(a)(i); 2 DAWAP Regs, reg 28

### **IS - couples and polygamous marriages**

23290 The lower rate SDP is payable if<sup>1</sup>

**1.** the conditions for either rate of SDP were satisfied before

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

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

**2.** where the conditions for the

**2.1** higher rate SDP were satisfied, “AA”, DLA or PIP stops because the patient has been in hospital more than 28 days **or**

**2.2** lower rate SDP were satisfied, the patient is treated as still being in receipt of “AA”, DLA or PIP (see DMG 23292).

The lower rate of SDP is payable from the date “AA”, DLA or PIP stops. Normal change of circumstances rules apply.

1 IS (Gen) Regs, Sch 2, para 15(5)(b)(i)

### **Example 1**

Brendan is a married man in receipt of IS. Brendan and his wife Sharon both satisfy the SDP conditions and the higher rate SDP is payable. Brendan goes into hospital on 14 May and the higher rate SDP continues in payment. DLA stops from 12 June because Brendan has been a patient for more than 28 days. SDP is also reduced to the lower rate from 12 June subject to the normal change of circumstances rules.

### **Example 2**

Rhona is married and in receipt of IS. Both Rhona and her husband Finlay are in receipt of AA. Their daughter Janet, who lives nearby, receives CA for caring for Finlay. SDP is awarded to the couple at the lower rate (see DMG 23203). Rhona is admitted to hospital on 22 October and her AA is withdrawn from 19 November. Rhona is still treated as being in receipt of AA (see DMG 23292). SDP at the lower rate continues in payment.

23291 SDP is not affected by a continuous period as a patient.

1 IS (Gen) Regs, Sch 2, para 13

### **Example**

Roy and Denise are married. Roy is in receipt of IS. They both satisfy the SDP conditions and the higher rate SDP is payable. Denise goes into hospital on 7 January and the higher rate SDP remains in payment. DLA stops from 5 February because Denise has been a patient for more than 28 days. SDP is also reduced to the lower rate from 5 February subject to the normal change of circumstances rules.

### **JSA(IB) and IS - “AA”, DLA, ADP and CA or UC that includes the carer element on admission to hospital**

23292 The claimant or partner is treated as being in receipt of “AA”, DLA, PIP or ADP where the benefit has been withdrawn only because of the stay in hospital<sup>1</sup>. This does not apply to a single claimant or a lone parent.

1 JSA Regs, para 15(5)(a) and 20(4)(a); IS (Gen) Regs, Sch 2, para 13(3A)(a)

23293 A CA/UC recipient is still treated as being in receipt of CA, or UC that includes the carer element, when it is withdrawn only because of the disabled person's stay in hospital<sup>1</sup>. SDP does not become payable on the withdrawal of CA, or UC that includes the carer element, in these circumstances. But SDP entitlement should be considered where CA, or UC that includes the carer element is withdrawn for any

other reason.

1 JSA Regs, Sch 1, para 15(5)(b) and 20I(4)(b); IS (Gen) Regs, Sch 2, para 13(3A)(b)

## Example

Riley is a married man in receipt of IS. Both Riley and his wife Kathleen are in receipt of DLA. Eileen is in receipt of CA for caring for Kathleen. SDP has been awarded at the lower rate. Kathleen is admitted to hospital on 22 October. DLA and CA are withdrawn from 19 November. Kathleen is still treated as in receipt of DLA. Eileen is still treated as in receipt of CA. SDP at the lower rate continues.

23294

## Disabled child premium

### JSA(IB) and IS

23295 DCP continues throughout the stay in hospital when the

1. disabled child or young person remains a member of the claimant's family **and**
2. qualifying benefit

**2.1** is in payment **or**

**2.2** has been withdrawn only because the child or young person is a patient<sup>1</sup>.

**Note:** This applies even if the claimant may also be a patient.

1 JSA Regs, Sch 1, para 16(b); IS (Gen) Regs, Sch 2, para 14(b)

23296 DCP is withdrawn when the child becomes a long term patient<sup>1</sup>.

1 JSA Regs, Sch 1, para 16(2)(b); IS (Gen) Regs, Sch 2, para 14(2)(b)

## Carer premium

### JSA(IB) and IS - general

23297 CP is payable if the carer is entitled to CA (see DMG 23245 et seq). CA can be affected if the

1. carer **or**
2. person being cared for

is a patient.

23298 Breaks in caring can be allowed. Make enquiries of the CA unit to find out the date that entitlement to CA ends.

### **JSA(IB) - claimant in hospital**

23299 CP continues until the JSA claim ends if the conditions for the award of CP are still satisfied.

### **JSA(IB) - partner or member of a joint-claim couple in hospital**

23300 CP stops eight weeks after the partner or the member of a joint-claim couple is no longer entitled to CA<sup>1</sup>.

1 JSA Regs, Sch 1, para 17(3) & 20J(3)

23301 - 23309

### **IS - single claimant or lone parent**

23310 CP stops eight weeks after the carer has ceased to be entitled to CA or where it is as a result of the death of the person for whom they were providing care, eight weeks after the death of that person.

### **Breaks in caring**

23311 Breaks in caring as a result of hospitalisation can be allowed, normally this will be twelve weeks, but confirmation should be sought from the CA unit of the date that entitlement to CA ends.

### **IS - couples or polygamous marriages**

23312 CP stops eight weeks after the carer has ceased to be entitled to CA<sup>1</sup>.

1 IS (Gen) Regs, Sch 2, para 14ZA(3)

### **Example 1**

Eddie is in receipt of IS. His wife, Doris, is Eddie's carer. CA is in payment and CP awarded. Eddie's benefit week ends on a Monday. Doris is admitted to hospital on 18 September. The CA DM decides to stop CA from 16 December. CP is withdrawn eight weeks later.

### **Example 2**

Paul is in receipt of JSA. His wife Maureen is caring for their non-dependant son, Patrick. CA is in payment and CP awarded. Paul claims IS as he is no longer entitled to JSA because he is not capable of work. Maureen continues to care for Patrick. CA and CP continue in payment.

23313 - 23399



## **Housing costs 23400 - 23999**

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# Introduction 23400 - 23406

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## Introduction

23400 Until 6.4.18 help for owner occupier payments was included in a claimant's award of an income related benefit (also referred to as support for mortgage interest (SMI)). From 6.4.18 SMI was changed from a benefit to a loan secured by a charge on the property.<sup>1</sup> See [Memo ADM 08/18](#) For guidance on the transition from SMI housing costs to SMI loans, see Appendix 8. For advice on Support for Mortgage interest prior to 6.4.18, Decision Makers may wish to contact DMA Leeds

1 LMI Regs 2017

The rules for housing costs are usually the same for JSA(IB) and IS. The guidance will show where the rules are different.

## Basic conditions of entitlement

23401 Claimants are entitled to housing costs if they or members of their family are<sup>1</sup>

1. liable for those costs **and**
2. responsible for those costs **and**
3. treated as living in the home those costs are for **and**
4. those costs are allowable.

1 JSA Regs, Sch 2, para 1(1); IS (Gen) Regs, Sch 3, para 1(1)

## Claimants without housing costs

23402 If a claimant is provided with free accommodation, for example under a charitable arrangement, there is no

1. liability or responsibility for housing costs **and**
2. entitlement to housing costs.

## **Rounding of fractions**

23403 Where any calculation relating to this guidance results in a fraction of a penny, it should be rounded up to the next whole penny<sup>1</sup>.

1 JSA Regs, Sch 2, para 19; IS (Gen) Regs, Sch 3, para 19

23404 - 23406

## Definitions 23407 - 23417

[Close relative](#) 23408 - 23409

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[Dwelling occupied as the home](#) 23412 - 23414

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23407 The following paragraphs explain the meaning of terms used throughout this guidance on housing costs.

### Close relative

23408 A close relative is<sup>1</sup>

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-son-in-law, step-daughter, step-daughter-in-law, brother, brother-in-law, sister, sister-in-law **and**
2. similar relationships arising through civil partnerships<sup>2</sup>.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 CP Act 04, s 246

23409 Brother and sister includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and becomes the brother or sister of any other child of those parents. The child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends upon the legal relationship and not the blood relationship<sup>1</sup>.

1 R(SB) 22/87

### Disabled person

23410 For housing costs purposes, a disabled person is a person who<sup>1</sup>

1. receives, or has living with them someone who receives

**1.1 DP or**

**1.2 DCP or**

**1.3 EPP<sup>2</sup> or**

## 1.4 HPP or

2. would, if they were entitled to JSA(IB) or IS, receive the premiums at 1.

3. is disabled or severely disabled for the purposes of specified Tax Credits legislation.

4. from 3.4.17 is a person in respect of whom the support component is payable or they are a member of the work related activity group<sup>3</sup>

5. would, but for the application of time limiting, be entitled to ESA<sup>4</sup>

6. a person who is entitled to UC that

6.1 includes the LCW or LCWRA element<sup>5</sup> or

6.2 would include the LCW element

6.2.a but for the fact that the LCWRA element was included with respect to the person's partner or

6.2.b but for entitlement to the carer element<sup>6</sup>

is also a disabled person<sup>7</sup>

1 JSA Regs, Sch 2, para 1(3); IS (Gen) Regs, Sch 3, para 1(3) ESA Regs, Sch 6, para 1;  
2 JSA Regs, Sch 2, para 1(3)(c); 3 IS Gen Regs Sch 3 para 1(3)((d)(I) , JSA Regs Sch 2 para 1(3)(e)(I); 4 Is Gen  
Regs Sch 3 para 1(3)(d)(ii): JSA Regs Sch 2 para 1 (3)(e)(ii); 5 UC Regs, reg 27(1); 6 UC Regs ,reg 29(4); 7 IS  
Regs, Sch 3 para1;  
JSA Regs, Sch 2 para 1(3); ESA Regs, Sch 6 para 1(3); SPC Regs, Sch II para 1(2)

23411 A disabled person will not cease to be treated as a disabled person if they are<sup>1</sup>

1. disqualified from receiving benefit or

2. treated as capable of work because they

2.1 are incapable of work due to their own misconduct or

2.2 fail without good cause to

2.2.a attend for or

2.2.b submit to

medical or other treatment that may be required or

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

See DMG 23135 et seq for further guidance.

1 JSA Regs, Sch 2, para 1(4); IS (Gen) Regs, Sch 3, para 1(4)

## **Dwelling occupied as the home**

23412 “Dwelling occupied as the home” means<sup>1</sup>

**1.** the dwelling and any

**1.1** garage

**1.2** garden

**1.3** outbuildings

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

**2.** any buildings or land not occupied as the home where it is not practicable or reasonable to sell them separately **and**

**3.** in Scotland, any croft land on which the dwelling is situated.

**Note:** This means only the dwelling currently occupied as the home. It does not include any dwelling which is no longer occupied as the home<sup>2</sup>.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 R(IS) 5/96

### **Example**

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

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

## Normally occupied

23413 The dwelling normally occupied as the home is the home where the claimant and their family normally live. In this context “normally” means “usually”. Periods of residence, or absence, that are of an exceptional nature should be disregarded.

### Example

Julia lives alone in a flat she rents from a private landlord and to whom she pays service charges. She goes to stay with her father while he is recovering from an operation and is away from home for two weeks. While at her father's house, Julia is made redundant and claims JSA. The DM decides that Julia normally lives in her own flat. The time she spends at her father's is exceptional. Housing costs can be considered for her service charges.

## Rooms sublet

23414 Rooms that are sublet in a house are part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

## Housing costs

23415 [\[ADM memo 8/18\]](#) Housing costs are<sup>1</sup>

1. rents or ground rents on long tenancies
2. service charges
3. payments by way of rent charge
4. payments under co-ownership schemes
5. payments for tenancies or licences of Crown tenants
6. payments for tents and their sites.

1 JSA Regs, Sch 2, para 1(2) & 16; IS (Gen) Regs, Sch 3, para 1(2) & 17

23416 Only those payments in DMG 23415 should be allowed as housing costs. For example

1. rent required by a person who
  - 1.1 is making payments under a shared ownership scheme
  - 1.2 owns jointly with the claimant the property occupied by the claimant **and**
  - 4.3 does not live in that property

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

should not be allowed as housing costs.

**Note:** This list is not exhaustive.

1 R(IS) 19/93

## **Water charges**

23417 Water charges means<sup>1</sup> any

**1.** water charges **and**

**2.** sewerage charges

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

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); Water Act 1991, Part V, Ch 1;  
Local Government Finance Act 1992, Sch 11

## **Steps to follow when deciding housing costs 23418 - 23422**

23418 When deciding a claimant's housing costs, the DM should determine

- 1.** if the claimant or partner is liable for the housing costs (see DMG 23423)
- 2.** if the amount spent is on the dwelling occupied as the home (see DMG 23412 and 23430 et seq)
- 3.** if the housing costs cannot be met (see DMG 23460)
- 4.** how to apportion the housing costs if the dwelling is used for domestic and business use (see DMG 23495)
- 5.** if there are any other eligible housing costs that can be allowed (see DMG 23605 et seq)
- 6.** if a deduction for a non-dependant is necessary (see DMG 23756)
- 7.** the start date of entitlement to housing costs (see DMG 23647 et seq).

23419 - 23422

# Liability for housing costs 23423 - 23429

[Introduction](#) 23423

[Trade disputes](#) 23424

[Responsibility for housing costs](#) 23425 - 23429

## Introduction

23423 A person is liable to meet housing costs where the

**1.** liability falls on them, their partner, or in the case of joint-claim couples, the other member of that couple, except where the liability is to another member of the same household<sup>1</sup> **or**

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

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

**2.2** it is reasonable in all the circumstances to treat the claimant as liable for the costs<sup>2</sup> **or**

**3.** costs are shared with other members of the household who are not close relatives of the claimant, the claimant's partner, or the other member of a joint-claim couple **and**

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

**3.2** it is reasonable in the circumstances to treat the claimant as sharing responsibility<sup>3</sup>.

1 JSA Regs, Sch 2, para 2(1)(a); IS (Gen) Regs, Sch 3, para 2(1)(a); R(IS) 4/00;

2 JSA Regs, Sch 2, para 2(1)(b); IS (Gen) Regs, Sch 3, para 2(1)(b); R(IS) 12/94; R(IS) 8/01;

3 JSA Regs, Sch 2, para 2(1)(c); IS (Gen) Regs, Sch 3, para 2(1)(c)

## Trade disputes

23424 Where a member of a family is affected by a TD, the housing costs should be treated as the responsibility of a member of the household who is not affected by the TD<sup>1</sup> (see DMG Chapter 32).

1 JSA Regs, Sch 2, para 2(2); IS (Gen) Regs, Sch 3, para 2(2)

## Responsibility for housing costs

23425 A claimant who is liable for a housing cost is responsible for that cost unless someone else has

accepted responsibility for it. If responsibility is shared, the claimant is responsible only for their share<sup>1</sup>.

1 JSA Regs, Sch 2, para 5(5); IS (Gen) Regs, Sch 3, para 5(5); R(IS) 4/00; 2 JSA Regs, Sch

#### Example

David has a tenancy in joint names with his daughter, Sarah. They are both liable for the rent and service charge payments. Sarah has always paid all of the payments due and continues to do so. David, although liable for the housing costs, does not have any responsibility for them and none are awarded to him.

Several months later Sarah stops making the payments for the rent and service charges. As David is liable for the costs and no one else is accepting responsibility for them, the DM includes the eligible housing costs in David's applicable amount.

23426 - 23429

# Treated as occupying a dwelling as the home 23430 - 23459

[Definitions 23430 - 23435](#)

[Dwelling where claimant normally lives 23436 - 23437](#)

[Full-time students and claimant on training courses 23438 - 23439](#)

[Temporary accommodation 23440](#)

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[Treated as living in the home before moving in 23447 - 23449](#)

[Temporary absences from home 23450 - 23459](#)

## Definitions

23430 The following definitions apply only to this guidance on treating a person as occupying a dwelling as the home.

### Medically approved

23431 Medically approved means certified by a medical practitioner<sup>1</sup>.

1 JSA Regs, Sch 2, para 3(13)(a); IS (Gen) Regs, Sch 3, para 3(13)(a)

### Patient

23432 A patient is a person undergoing

**1.** medical or

**2.** other treatment

as an in-patient in a hospital or similar institution<sup>1</sup>.

1 JSA Regs, Sch 2, para 3(13)(b); IS (Gen) Regs, Sch 3, para 3(13)(b)

### Residential accommodation

23433 Residential accommodation is accommodation provided under specified arrangements, specific care home, Abbeyfield Home and independent hospital<sup>1</sup> (see DMG Chapter 24).

1 JSA Regs, Sch 2, para 3(13)(c); IS (Gen) Regs, Sch 3, para 3(13)(c)

## **Student**

23434 A student is for

- 1.** JSA, a F/T student **and**
- 2.** IS, a student on certain F/T courses

For further information see the guidance on students in DMG Chapter 30.

## **Training course**

23435 Training course means a course of training or instruction provided wholly or partly by, or on behalf of, or by arrangement with, or approved by or on behalf of<sup>1</sup>

- 1.** Scottish Enterprise **or**
- 2.** Highlands and Islands Enterprise **or**
- 3.** Skills Development Scotland **or**
- 4.** a government department **or**
- 5.** the Secretary of State.

1 JSA Regs, Sch 2, para 3(13)(d); IS (Gen) Regs, Sch 3, para 3(13)(d)

## **Dwelling where claimant normally lives**

23436 Unless DMG 23438 - 23446 applies, a claimant should

- 1.** be treated as living in the home where they, or members of their family normally live (see DMG 23413 and DMG 29397) **and**
- 2.** not be treated as occupying any other dwelling as the home<sup>1</sup>.

1 JSA Regs, Sch 2, para 3(1); IS (Gen) Regs, Sch 3, para 3(1)

23437 To decide where a claimant normally lives the DM should

- 1.** consider all homes that the claimant has, whether or not the homes are in GB<sup>1</sup> **and**
- 2.** not treat the claimant as living in more than one home, unless the circumstances in DMG 23441 - 23446 apply **and**
- 3.** where the claimant is responsible for housing costs on more than one property, and DMG 23441 et seq does not apply, treat the claimant as living in the home they normally occupy.

## Full-time students and claimants on training courses

23438 Single claimants and lone parents who are F/T students or on a training course, may have different homes in term time and vacations. Such a claimant should be treated as occupying the home for which they are liable to pay housing costs if<sup>1</sup> they are

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

**1.1** a F/T student **or**

**1.2** on a training course **and**

**2.** liable for the housing costs on either, but not both, of the homes they live in when

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

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

they are not absent from the home for which they are liable<sup>2</sup>.

1 JSA Regs, Sch 2, para 3(3); IS (Gen) Regs, Sch 3, para 3(3)

2 JSA Regs, Sch 2, para 3(4); IS (Gen) Regs, Sch 3, para 3(4)

### Example

Paul is a lone parent studying in Exeter. He is renting a flat in Exeter and has rent and service charges to pay. When not studying he lives with his parents in their home in Liverpool. He has no housing costs for this accommodation. Paul cannot be treated as living in his flat in Exeter because he is absent from it.

23439 Students whose main purpose of living in their home is to attend a course of study will not normally be treated as living there for periods of absence outside the period of study. The exception is when the absence is due to admission to hospital for treatment<sup>1</sup>.

1 JSA Regs, Sch 2, para 3(4); IS (Gen) Regs, Sch 3, para 3(4)

## Temporary accommodation

23440 A claimant who

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

**2.** is liable to pay housing costs for either, but not both the home or temporary accommodation

should be treated as living in the dwelling for which they have to pay housing costs<sup>1</sup>.

1 JSA Regs, Sch 2, para 3(5); IS (Gen) Regs, Sch 3, para 3(5)

## **Liable for two homes**

23441 [[See Memo DMG 02/21](#)] A person who is liable to make payments on two dwellings should be treated as living in, and allowed housing costs for both dwellings where they

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

**1.1** in that home **or**

**1.2** by a former member of their family

and it is reasonable to meet housing costs on both homes<sup>1</sup> **or**

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

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

**2.2** reasonable to meet both housing costs<sup>2</sup>.

1 JSA Regs, Sch 2, para 3(6)(a); IS (Gen) Regs, Sch 3, para 3(6)(a); 2 JSA Regs, Sch 2, para 3(6)(b);  
IS (Gen) Regs, Sch 3, para 3(6)(b)

23442 The question of reasonableness in DMG 23441 should be decided at the date the DM considers the issue and in the light of all the circumstances. These may include

**1.** the length of the absence

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

**3.** whether there is a hope of resuming occupation

**4.** whether it is practicable to end the liability

**5.** the claimant's situation and means of support

**6.** the extent to which the liability was in practice being met other than through IS or JSA(IB).

Example

Kath lives with Dave in a house on which she is liable to pay service charges. She gets IS with housing

costs. Dave is violent towards Kath, who leaves the house and moves to a rented flat. Kath starts legal proceedings and intends to return to the house as soon as it is safe for her to do so. The DM decides Kath has a liability to make payments for two homes, treats her as living in both homes and considers it reasonable to meet housing costs for the house (although the provision allows for payment to meet both liabilities, rent is not an eligible housing cost).

23443 A person can also be treated as living in, and allowed housing costs for, two homes for up to four weeks if<sup>1</sup>

- 1.** they move to a new home, for a reason other than those in DMG 23440 and 23441 **and**
- 2.** they are liable for housing costs on both homes **and**
- 3.** the liability to make payments for both homes is unavoidable.

1 JSA Regs, Sch 2, para 3(6)(c); IS (Gen) Regs, Sch 3, para 3(6)(c)

23444 The four weeks under DMG 23443 is payable from the first day of the benefit week in which the move occurs<sup>1</sup>.

1 JSA Regs, Sch 2, para 3(6); IS (Gen) Regs, Sch 3, para 3(6)

23445 A claimant can be allowed housing costs for two separate properties if he is treated as living in both dwellings as the home. See DMG 23441 for the criteria where more than one property could be the dwelling occupied as the home<sup>1</sup>.

1 R(JSA) 9/03

23446 Claimants are entitled to an additional amount for these housing costs if

- 1.** the claimant or partner is
  - 1.1** liable for those costs (see DMG 23423) **and**
  - 1.2** responsible for those costs **and**
  - 1.3** treated as living in the home that these costs are for (see DMG 23441) **and**
- 2.** those costs are allowable.

## **Treated as living in the home before moving in**

23447 A claimant may be treated as living in their home for up to four weeks before the date they moved in where<sup>1</sup>

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

**2.** if a

**2.1** JSA claim, they had claimed JSA before moving in **or**

**2.2** IS claim, they had claimed IS before moving in **and**

**3.** a decision was

**3.1** not made on the claim **or**

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

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

**4.** the delay in moving in was reasonable because

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

**4.2** they were waiting for a decision on a connected SF claim and either

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

**4.2.b** the claimant's applicable amount includes PP, EPP, HPP, DP, SDP or DCP **or**

**4.2.c** a CTC is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation **or**

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

**4.3.a** a patient **or**

**4.3.b** in residential accommodation.

**4.4** they were waiting for a decision on a local welfare provision claim and either

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

**4.4.b** the support component or the WRAC is payable **or**

**4.4.c** the claimant's applicable amount includes PP or SDP **or**

**4.4.d** a CTC is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of specified Tax Credits legislation<sup>2</sup>

## Temporary absences from home

### Trial periods in residential accommodation

23450 Claimants who enter residential accommodation

- 1.** to see whether the accommodation is suitable for their needs **and**
- 2.** with the intention of returning home if the accommodation is unsuitable **and**
- 3.** whose part of the home normally occupied has not been let or sublet

should be treated as living in their home and have their housing costs allowed for up to 13 weeks from the day of entry. The number of weeks for which the absence is treated as temporary is subject to an overall maximum of 52 weeks<sup>1</sup> (see DMG 23454).

1 JSA Regs, Sch 2, para 3(8) & (9); IS (Gen) Regs, Sch 3, para 3(8) & (9)

### Example

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

### Temporary absences up to 13 weeks

23451 Unless DMG 23450 or 23454 applies, a person should be treated as living in their home for any period of temporary absence of not more than 13 weeks if<sup>1</sup>

- 1.** they intend to return to live in the home **and**
- 2.** the part of the home they normally live in has not been let or sublet to another person **and**
- 3.** the period of absence is unlikely to exceed 13 weeks.

1 JSA Regs, Sch 2, para 3(10); IS (Gen) Regs, Sch 3, para 3(10)

23452 The intention to return to live in the home (see DMG 23451 **1.**) must

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

**3.** not be conditional on a future event.

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

23453 When considering DMG 23451, housing costs may be allowed for up to 13 weeks from the first day of absence. Where the absence is likely to exceed 13 weeks the absence should be treated as permanent from the first day of absence, and housing costs should not be awarded.

### **Temporary absences up to 52 weeks**

23454 A person should be treated as living in their home for a period of temporary absence of not more than 52 weeks if<sup>1</sup>

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

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

**3.** they

**3.1** are detained in custody or, as a condition of bail, are required to live in either

**3.1.a** a dwelling, other than the dwelling he occupies as his home **or**

**3.1.b** a hostel **or**

**3.2** are

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

**3.2.b for JSA(IB) only**, treated as capable of work during a short period of sickness **or**

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

**3.3.a** medical treatment **or**

**3.3.b** medically approved convalescence

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

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

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

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

**3.7** are

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

**3.7.b** providing medically approved care

in accommodation that is not residential accommodation **or**

**3.8** are students to whom DMG 23438 and 23439 do not apply **or**

**3.9** are receiving care in residential accommodation other than in DMG 23450 **or**

**3.10** have left the home because of fear of violence in it, or from a former member of the family, and DMG 23451 does not apply **or**

**3.11 for IS claims only**, are detained in custody on remand pending trial or pending sentence upon conviction **and**

**4.** the absence is unlikely to

**4.1** exceed 52 weeks **or**

**4.2** substantially exceed 52 weeks in exceptional circumstances (for example, where an IS claimant has gone into hospital or a JSA claimant has to live in a bail hostel as a condition of bail).

1 JSA Regs, Sch 2, para 3(11) & (12); IS (Gen) Regs, Sch 3, para 3(11) & (12)

23455 The intention to return to live in the home (see DMG 23454 **1.**) must

**1.** be unqualified **and**

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

**3.** not be conditional on a future event out of the claimant's control.

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

23456 If DMG 23454 applies, housing costs may be allowed for up to 52 weeks from the first day of absence<sup>1</sup>. But a person may have several periods of temporary absence from home. The absences are treated as temporary if the claimant is not absent from home for more than 52 consecutive weeks.

1 JSA Regs, Sch 2, para 3(12); IS (Gen) Regs, Sch 3, para 3(12)

23457 The absence should be treated as permanent from the day that it is known that the absence

**1.** will exceed 52 weeks **or**

**2.** is likely to

**2.1** exceed 52 weeks **or**

**2.2** substantially exceed 52 weeks in exceptional circumstances<sup>1</sup>.

1 JSA Regs, Sch 2, para 3(11)(d); IS (Gen) Regs, Sch 3, para 3(11)(d)

### **Example 1**

Jon is in receipt of JSA(IB). He has to live in a hostel as a condition of bail. He intends to return to live in his own home when he leaves the hostel. His home has not been let or sublet. He has to live in the hostel for eight weeks. The DM determines that Jon is temporarily absent from his home from the date he went to live in the hostel.

### **Example 2**

Christina is in receipt of IS and lives alone in her own home. In February Christina decides to go and care for her mother who lives in the next town. She expects to be away from her home until August. The DM determines that Christina is not temporarily absent from home because the care is not medically approved, housing costs stop from February.

### **Example 3**

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

further 52 week period of temporary absence could be considered from the date of Janet's readmission.

23458 - 23459

## Housing costs not met 23460 - 23494

23460 Housing costs should not be allowed for

**1.** HB expenditure<sup>1</sup> **or**

**2.** claimants in care homes, Abbeyfield Home or independent hospitals, unless their absence from the home that they normally live in is temporary<sup>2</sup> (see DMG 23450 et seq)

1 JSA Regs, Sch 2, para 4(1)(a); IS (Gen) Regs, Sch 3, para 4(1)(a); 2 JSA Regs, Sch 2, para 4(1)(b);  
IS (Gen) Regs, Sch 3, para 4(1)(b)

23461 HB expenditure means<sup>1</sup>

**1.** any element for which HB may be payable<sup>2</sup> **and**

**2.** which are not allowable as housing costs in the claimant's applicable amount<sup>3</sup>.

1 IS (Gen) Regs, reg 2(1); 2 SS (HB) Regs, reg 10(1); 3 IS (Gen) Regs, reg 17(1)(e) & 18(1)(f);  
JSA Regs, reg 83(f) & 84(1)(g)

23462 - 23494

# Apportionment of housing costs 23495 - 23599

[Composite hereditaments](#) 23495 - 23599

## Composite hereditaments

23495 A composite hereditament is<sup>1</sup> a property with both

**1. domestic and**

**2. business**

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

1 JSA Regs, Sch 2, para 5(1) & (4); IS (Gen) Regs, Sch 3, para 5(1) & (4); Local Government Finance Act 1988, s 41(1); Abolition of Domestic Rates etc. (Scotland) Act 1987, s 26(1)

23496 If a claimant occupies a composite hereditament, housing costs should be awarded for the part of the property used by the claimant for their own domestic use.

23497 - 23599

## **Other housing costs 23600 - 23646**

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### **Introduction**

23600 The following paragraphs explain the meaning of terms used throughout this guidance on other eligible housing costs.

### **Shared ownership schemes**

23601 Property can be owned jointly by more than one person or organization (see DMG Chapter 29).

This is known as shared ownership and can include many different types of arrangement. DMs should note that for housing costs purposes, shared ownership does not simply mean co-ownership.

23602 A co-ownership scheme in this context is<sup>1</sup> a specific type of scheme under which the

**1.** home is let by a housing association **and**

**2.** money payable to someone ceasing to be a member of the scheme is based directly or indirectly on the value of the property.

**Note:** Such a scheme does not involve the purchase of a share of the property so no house purchase loan is involved.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

23603 A shared ownership scheme is more likely to involve the claimant

**1.** buying a share in the property **and**

**2.** paying rent for the remaining share.

23604

## **Crown tenants**

23605 Crown tenants<sup>1</sup> are tenants or licensees of homes which

**1.** belong to **or**

**2.** are held on trust for

the Crown or a government department. They do not include tenants in homes managed by the Crown Estates Commission or tenants of the Duchies of Cornwall or Lancaster.

**Note:** Greenwich Hospital Estate tenants are Crown tenants.

1 JSA Regs, Sch 2, para 16(1)(e); IS (Gen) Regs, Sch 3, para 17(1)(e); JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

## **Housing association**

23606 A housing association is a non-profit making voluntary body formed with the aim of providing good quality low cost housing<sup>1</sup>.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); Housing Associations Act 1985, s 1(1)

## Long tenancy

23607 A long tenancy is<sup>1</sup> one where the lease is made by deed, registered with the Land Registry and granted for

1. a specific number of years, exceeding 21 **or**
2. a term fixed by law with a covenant or obligation for perpetual renewal (unless DMG 23608 applies).

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

23608 An original lease that is not a long tenancy may have been sublet for a fixed term. Even if there is a covenant or obligation for perpetual renewal it should not be treated as a long tenancy.

23609 In some cases a lease may be granted for life rather than for a set number of years. The law provides<sup>1</sup> for life tenancies to be converted to 90 year leases. Such a tenancy for life should be treated as a long tenancy.

1 Law of Property Act, s 149(6)

## Rent charge

23610 Rent charges, including chief rents, are rents charged to people under the conditions by which they own the freehold<sup>1</sup>.

1 JSA Regs, Sch 2, para 16(1)(c); IS (Gen) Regs, Sch 3, para 17(1)(c); Rent charges Act 1977, s 1

## Other eligible housing costs

23611 Other eligible housing costs are payments for<sup>1</sup>

1. rents or ground rents on long tenancies
2. service charges (see DMG 23613)
3. rent charges (see DMG 23617)
4. co-ownership schemes (see DMG 23618)
5. tenancies or licences of Crown tenants (see DMG 23619)
6. tents and their sites (see DMG 23621).

1 JSA Regs, Sch 2, para 16(1); IS (Gen) Regs, Sch 3, para 17(1)

## Long tenancies

23612 Rents and ground rents, should be allowed where payments are connected to long tenancies<sup>1</sup>.

1 JSA Regs, Sch 2, para 16(1)(a); IS (Gen) Regs, Sch 3, para 17(1)(a)

## Service charges

23613 Charges should be allowed where they are<sup>1</sup>

**1.** not eligible to be met by HB<sup>2</sup> **and**

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

**3.** for

**3.1** the home **or**

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

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

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

**Note 1:** Guidance on the amount of benefit allowed as a housing cost service charge for leasehold residents where their accommodation is modernised under the Decent Homes initiative is at appendix 7.

**Note 2:** In shared ownership schemes (other than co-ownership) all service charges are eligible to be met by HB and are therefore not eligible under this provision.

1 JSA Regs, Sch 2, para 16(1)(b); IS (Gen) Regs, Sch 3, para 17(1)(b);

2 JSA Regs, Sch 2, para 4; IS (Gen) Regs, Sch 3, para 4, R(IS) 4/92

23614 - 23616

## Rent charges

23617 Rent charges, including chief rents, should be allowed as other eligible housing costs<sup>1</sup>.

1 JSA Regs, Sch 2, para 16(1)(c); IS (Gen) Regs, Sch 3, para 17(1)(c)

## Co-ownership schemes

23618 Payments under co-ownership schemes should be treated as other eligible housing costs<sup>1</sup>, payable from the start of the claim (see DMG 23662). Payments made under any other type of shared

ownership scheme should be considered in the normal way but only in respect of the portion of the property owned.

1 JSA Regs, Sch 2, para 16(1)(d); IS (Gen) Regs, Sch 3, para 17(1)(d)

### **Example**

Haydn rents his home through a housing association who are letting the property to Haydn under a co-ownership scheme. If he leaves the scheme, Haydn will receive a percentage of the value of the property. He has to make payments under the co-ownership scheme, for rent, ground rent and service charges. The payments under the co-ownership scheme are allowed as other eligible housing costs and are paid from the start of his claim (see DMG 23662).

### **Crown tenants**

23619 Payments under or relating to the tenancy or licence of a Crown tenant should be allowed as eligible housing costs<sup>1</sup>.

1 JSA Regs, Sch 2, para 16(1)(e); IS (Gen) Regs, Sch 3, para 17(1)(e)

### **Reduction for water charges**

23620 In England and Wales, payments made by Crown tenants may include an amount for water charges. In such a case, the amount to be allowed as eligible housing costs should be reduced<sup>1</sup>

- 1.** where the amount payable for water charges is known, by that amount<sup>2</sup> **or**
- 2.** in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant<sup>3</sup>.

1 JSA Regs, Sch 2, para 16(5); IS (Gen) Regs, Sch 3, para 16(5); 2 JSA Regs, Sch 2, para 16(5)(a); IS (Gen) Regs, Sch 3, para 17(5)(a); 3 JSA Regs, Sch 2, para 16(5)(b); IS (Gen) Regs, Sch 3, para 17(5)(b)

### **Tents**

23621 Where tents<sup>1</sup> are considered to be accommodation (see DMG 24158) housing costs should be allowed for the

- 1.** tents **and**
- 2.** sites on which the tents stand.

1 JSA Regs, Sch 2, para 16(1)(f); IS (Gen) Regs, Sch 3, para 17(1)(f)

## Mobile motor homes

23622 Some mobile motor homes have reached a level of sophistication and are designed for living in. Mobile motor homes that contain the normal range of facilities for domestic life and is suited for continuous occupation should be regarded as accommodation, and as such housing costs can be allowed.

23623

## Deductions from other eligible housing costs

23624 Deductions should be made from other eligible housing costs<sup>1</sup> where they include an amount for

1. fuel charges **or**
2. ineligible services charges **or**
3. repairs and improvements.

1 JSA Regs, Sch 2, para 16(2); IS (Gen) Regs, Sch 3, para 17(2)

## Deductions for fuel charges

23625 Where any of the charges for other housing costs in DMG 23611 include an amount for fuel charges, the following deductions should be made<sup>1</sup>

1. a standard fuel deduction for
  - 1.1 heating (other than for hot water) £25.50
  - 1.2 hot water £2.95
  - 1.3 lighting £2.05
  - 1.4 cooking £2.95 **or**
2. if the claimant provides evidence that the
  - 2.1 actual amount **or**
  - 2.2 estimated amount

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

1 JSA Regs, Sch 2, para 16(2)(a); IS (Gen) Regs, Sch 3, para 17(2)(a); HB Regs, Sch 1, para 5(2)

23626 When considering deductions under DMG 23625, DMs should note that

**1.** if the claimant's home is one room, the standard fuel deduction in DMG 23625 **1.** will be

**1.1** half the amount in DMG 23625 **1.1** to **1.3** but

**1.2** the full amount in DMG 23625 **1.4** and

**2.** a deduction for heating (other than hot water) under DMG 23625 **1.1** should only be made on the amount for heating the claimant's home. Service charges for heating any communal areas are not excluded.

### **Deductions for ineligible service charges**

23627 Where any of the charges for other eligible housing costs in DMG 23611 include an amount for ineligible service charges, the following deductions should be made<sup>1</sup>

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

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

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

**2.2** having regard to the costs of comparable services.

<sup>1</sup> JSA Regs, Sch 2, para 16(2)(b); IS (Gen) Regs, Sch 3, para 17(2)(b); HB Regs, Sch 1, para 1

23628 DMs should note that the rules for what should be deducted as an ineligible service charge have changed in the past. Guidance on the previous rules is at Appendix 6 to this Chapter.

23629 The ineligible service charges that should be deducted from other eligible housing costs<sup>1</sup> are charges for

**1.** living expenses for

**1.1** meals - including the

**1.1.a** preparation of meals **or**

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

**1.2** laundry - other than the provision of

**1.2.a** premises **or**

**1.2.b** equipment

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

**1.3** leisure items such as

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

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

**1.4** cleaning of rooms and windows, except cleaning of

**1.4.a** communal areas **or**

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

where a payment as in DMG 23630 is not made in respect of such cleaning<sup>2</sup> **or**

**1.5** transport **or**

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

**3.** the provision of an emergency alarm system<sup>3</sup> **or**

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

**4.1** mental disorder

**4.2** mental handicap

**4.3** physical disablement **or**

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

**5.** nursing or personal care, including assistance

**5.1** at meal times **or**

**5.2** with personal appearance or hygiene **or**

**6.** general counselling or any other support services<sup>4</sup>, whoever provides those services **or**

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

**Note:** The cleaning of communal areas and the outside of windows (referred to in **1.4**) where no member

of the household is able to clean them can still be allowed where a payment is **not** made

1 JSA Regs, Sch 2, para 16(2)(b); IS (Gen) Regs, Sch 3, para 17(2)(b); HB Regs, Sch 1;  
2 Sch 1, para 1(a)(iv); 3 Sch 1, para 1(c); 4 Sch 1, para 1(f)

23630 A payment (as in DMG 23629 **1.4**) is<sup>1</sup> any payment made by a LA (including, in England, a county council) or Senedd Cymru and Welsh Parliament to the claimant, the claimant's partner, or to another person on their behalf.

1 IS (Gen) Regs, Sch 3, para 17(2)(b), JSA Regs, Sch 2, para 16(2)(b)

### **Connected to the adequacy of the accommodation**

23631 Charges for certain services not connected with the provision of adequate accommodation are not eligible. When considering if services are connected to the adequacy of the accommodation (see DMG 23629 **7.**) the DM should take a common sense view of charges for communal lounges, paths, walkways, gardens etc and not just the individual needs of the claimant.

#### **Example 1**

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

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

#### **Example 2**

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

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

#### **Example 3**

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

#### Example 4

The painting of the property is arranged by the landlord or agent under the conditions by which the property is occupied. Theresa, the occupier, is obliged to accept the arrangement. In this situation the charges incurred satisfy the definition of a service charge.

#### Example 5

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

### Deductions for repairs and improvements

23632 The charges for other eligible housing costs in DMG 23611 may include an amount for repairs and improvements (see [ADM memo 8/18](#) paragraph 97). In such a case the amount for repairs and improvements cannot be allowed and should be deducted.<sup>1</sup>

1 JSA Regs, Sch 2, para 16(2)(c); IS (Gen) Regs, Sch 3, para 17(2)(c)

23633 Where service charges include an amount for repairs and improvements listed in [ADM Memo 8/18](#), paragraph 97, and are undertaken to maintain the fitness for human habitation, they should not be allowed.

#### Example 1

Razak's landlord charges him for the cost of improvements to his driveway. The previous shingle drive has been re-laid using cobbles to enhance the appearance of the property and to avoid loose chippings hitting pedestrians when cars use the driveway. The DM determines that the improvements to the driveway

1. have not been undertaken to maintain the fitness of the home for human habitation **and**
2. are not covered by the list of eligible repairs and improvements.

#### Example 2

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

#### Example 3

The landlord arranges the painting of the property under the conditions by which the property is

occupied. Theresa, the occupier, is obliged to accept the arrangement. In this situation the charges incurred satisfy the definition of a service charge.

23634 - 23635

### **Contingency funds**

23636 Service charges may contain an element that is paid into some kind of fund or reserve. These are most commonly referred to as

**1.** contingency funds **or**

**2.** reserve funds **or**

**3.** sinking funds.

23637 Payments made into such a fund are “for” the general purposes of the fund, whether or not there has been any expenditure in the year in question. If those purposes include both allowable and non-allowable elements, make a corresponding apportionment of the relevant annual payment to determine how much can be allowed.

23638 – 23639

### **Costs payable regularly**

23640 The amount of the invoice should be converted to give a weekly amount

### **Costs payable over 53 weeks or irregularly**

23641 Where other housing costs are payable for 52 weeks **but**

**1.** paid for 53 weeks **or**

**2.** paid irregularly **or**

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

**4.** the costs for different periods are different amounts

the weekly amount is the amount payable for the year divided by 52<sup>1</sup>.

1 JSA Regs, Sch 2, para 16(3); IS (Gen) Regs, Sch 3, para 17(3)

23642 Those housing costs attributed to a fixed 52 week period under DMG 23641 are payable from the

date the liability arose.

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

### **Example**

The claimant's award of IS includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.07 - 31.3.08. The amount for housing costs is due to end on 31.3.08. In February 2008 the claimant sends in an estimate of service charges for the 2008-09 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.08 - 31.3.09. On 9.9.08 the claimant receives an invoice for £243.85, being the balance of finalised service charges for the 2007-8 year, and sends it to the DWP. The DM supersedes the decision of February 2008 to award housing costs of £10.87 and £4.69 for the period 9.9.08 - 31.3.09, and £4.69 for the period 1.4.09 - 6.9.09, the balance for the 2007-08 year charges being paid over a 52 week period. If a further estimate for charges for the 2008-09 year is received, the September 2008 decision may be superseded accordingly.

### **Payment of costs waived**

23643 Other housing costs should continue to be allowed for up to eight weeks if

- 1.** the claimant or a member of the family pays for reasonable repairs or redecoration to the home **and**
- 2.** that work was not the responsibility of the claimant or any member of the family **and**
- 3.** payment for other housing costs is waived because the work has been done<sup>1</sup>.

1 JSA Regs, Sch 2, para 16(4); IS (Gen) Regs, Sch 3, para 17(4)

23644 - 23646

## Housing costs - starting dates of entitlement 23647 - 23699

[Housing costs - starting dates of entitlement 23647 - 23660](#)

[Housing costs payable at the start of the claim 23661 - 23666](#)

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## Housing costs - starting dates of entitlement

23647 With the exception of the housing costs payable at the start of a claim (see DMG 23661) all other eligible housing costs have a QP.

23648 For most new claims made after 1.4.16 the QP is 39 weeks.

**Note:** The temporary measures, which introduced a 13 week QP from 5.1.09 to support home owners, will still apply to claimants who are in a waiting period for housing costs up to and including 31.3.16.<sup>1</sup>

1. SS(Housing Costs Special Arrangement)(Amdt and Modification) Regs 08 & SS (Housing Costs Special Arrangements)(Amdt) Regs 09

23649 -23660

## Housing costs payable at the start of the claim

23661 Where claimants, their partners, or either member of a joint-claim couple, are not less than the qualifying age for SPC<sup>1</sup>, all housing costs are paid in full from the first day of entitlement to JSA(IB) or IS<sup>2</sup>. Housing costs are also paid in full from the first day of entitlement to SPC. See DMG 78170 et seq for guidance on SPC.

1 SS CB Act 92, s 124(1)(aa); 2 JSA Regs, Sch 2, para 8(1)(a) ; IS (Gen) Regs, Sch 3, para 9(1)(a)

23662 All claimants should be paid housing costs for

**1.** co-ownership schemes (see DMG 23618)

**2.** crown tenancies (see DMG 23619)

**3.** tents and their sites<sup>1</sup> (see DMG 23621)

from the first day of entitlement to JSA(IB) or IS.

1 JSA Regs, Sch 2, para 8(1)(b) & (2)(b); IS (Gen) Regs, Sch 3, para 9(1)(b) & (2)(b)

23664 - 23666

## **Start date for housing costs**

23667 The amount of the award for housing costs is<sup>1</sup>

**1.** nil where claimants have not been continuously entitled to JSA(IB) or IS for 39 weeks<sup>2</sup>

**2.** for claimants who have been entitled to JSA(IB) or IS for a continuous period of 39 weeks or more<sup>3</sup>,

**2.1** the amount of any

**2.1.a** rent or ground rent relating to a long tenancy **and**

**2.1.b** service charges **and**

**2.1.c** rent charges.

1 JSA Regs, Sch 2, para 6, IS (Gen) Regs, Sch 2, para 6; 2 JSA Regs, Sch 2, para 7(1)(b); IS (Gen) Regs, Sch 3, para 8(1)(b);

3 JSA Regs, Sch 2, para 7(1)(a); IS (Gen) Regs, Sch 3, para 8(1)(a)

## **JSA(IB) starting date of entitlement - waiting days**

23668 A claimant is not entitled to JSA when serving waiting days<sup>1</sup>. As a result waiting days do not count towards any housing costs qualifying period.

1 JS Act 95, Sch 1, para 4

23699

## **Housing costs - sanctions JSA(IB) only**

23670 If a JSA claimant is sanctioned (see DMG Chapter 34) that claimant is still entitled to JSA, but JSA is not paid.

23671 Sanctioned periods will count towards the qualifying periods for new and existing housing costs as long as the claimant has been continuously entitled to JSA(IB) for the qualifying period.

## **Housing costs - hardship JSA(IB) only**

23672 JSA claimants may be entitled to a hardship payment (see DMG Chapter 35) if they

- 1.** are not available **or**
- 2.** are not ASE **or**
- 3.** have not got a valid JSAg **or**
- 4.** a question has been passed to the ESDM on **1.** to **3.** **or**
- 5.** are sanctioned.

Hardship payments are payments of JSA(IB).

23673 Some JSA claimants are not entitled to a hardship payment straightaway (see DMG Chapter 35). Such claimants who are not entitled to hardship payments, are not entitled to JSA(IB).

23674 JSA hardship payments will count towards the qualifying periods for new and existing housing costs as long as the claimant has been continuously entitled to JSA(IB) for the QP.

**Note:** Once the QP is satisfied, normal linking rules apply.

23676 - 23699

## Linking rules 23700 - 23755

[Breaks in entitlement to JSA\(IB\), ESA\(IR\) or IS](#) 23700 - 23701

[Previous entitlements](#) 23702 - 23707

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[Lone parents and carers - JSA\(IB\) and IS](#) 23741 - 23742

[Treated as in receipt of and entitled to JSA\(IB\) or IS on another persons claim](#) 23743 - 23755

## Breaks in entitlement to JSA(IB), ESA(IR) or IS

23700 Breaks in entitlement to JSA(IB), ESA(IR) or IS can affect the claimant's housing costs. This is because most eligible housing costs have a QP (see DMG 23647 et seq). But there are special rules under which claimants can be treated as entitled to JSA(IB) or IS in certain circumstances.

23701 If there are breaks in entitlement, claimants can be treated as entitled to JSA(IB), ESA(IR) or IS for periods<sup>1</sup> of

1. twelve weeks or less (see DMG 23708)
2. 26 weeks or less, in certain circumstances (see DMG 23709)
3. more than 26 weeks, in certain circumstances (see DMG 23712)
4. 52 weeks or less (see DMG 23715).

<sup>1</sup> JSA Regs, Sch 2, para 13 & 18(1)(c); IS (Gen) Regs, Sch 3, para 14;

## Previous entitlements

23702 Where a person moves from

1. IS to JSA
2. JSA to IS
3. SPC to JSA
4. being the partner of a person who was previously in receipt of SPC to IS or JSA<sup>1</sup>
5. being either member of a joint claim couple who was previously in receipt of SPC to JSA<sup>2</sup>

they can receive the same amount of housing costs current when entitlement to the first benefit ended<sup>3</sup>.

1 JSA Regs, Sch 2, para 1A(1ZA); IS (Gen) Regs, Sch 3, para 1A(1A);

2 JSA Regs, Sch 2, para 1A(1B); 3 Sch 2, para 1A(1)(a); IS (Gen) Regs, Sch 3, para 1A(1)(a)

23703 The provisions above apply if, immediately before entitlement ended, housing costs

1. were payable on the previous claim<sup>1</sup> (in full or in part) **and**
2. the circumstances affecting the calculation of those housing costs remain unchanged<sup>2</sup>.

1 JSA Regs, Sch 2, para 1A(1ZA)(a); IS (Gen) Regs, Sch 3, para 1A(1A)(a);

2 JSA Regs, Sch 2, para 1A(1ZA)(b); IS (Gen) Regs, Sch 3, para 1A(1A)(b)

23704 Breaks in entitlement between claims are ignored for any period

1. of 12 weeks or less **or**
2. up to 26 weeks where

**2.1** payments from an insurance policy to insure against loss of employment have ceased<sup>1</sup>.

1 JSA Regs, Sch 2, para 1A(1A); IS (Gen) Regs, Sch 3, para 1A(1A)

23705 - 23707

## Twelve week linking periods

23708 Where there are breaks in entitlement to JSA(IB), ESA(IR) or IS, claimants are treated as being

continuously in receipt of, and entitled to JSA(IB) or IS for any period

**1.** when entitlement is decided on revision, supersession or appeal **or**

**2.** of twelve weeks or less during which

**2.1** they were not in receipt of JSA(IB), ESA(IR) or IS **and**

**2.2** that period is immediately between two periods when

**2.2.a** they were in receipt of JSA(IB), ESA(IR) or IS or a combination of the two **or**

**2.2.b** they were treated as in receipt of JSA(IB), ESA(IR) or IS **or**

**2.2.c** they are treated as entitled to JSA(IB), ESA(IR) or IS for certain reasons because their capital exceeds £16,000 or their income exceeds the applicable amount (see DMG 23734 - 23742) **or**

**2.2.d** entitlement to JSA(IB), ESA(IR) or IS is decided on revision, supersession or appeal<sup>1</sup>.

1 JSA Regs, Sch 2, para 13(1)(a), 13(4) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(a), 14(3A) & 14(15); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

## **26 week linking periods**

23709 Claimants can be treated as entitled to JSA(IB), ESA(IR) or IS for periods of up to 26 weeks where they regain entitlement and have had payments from an insurance policy to insure against the loss of employment and those payments have ceased (see DMG 23710).

## **Payments from insurance policies against the loss of employment**

23710 Claims should be linked together and the weeks between them ignored where<sup>1</sup> the

**1.** claimant or a member of their family has

**1.1** received payments from an insurance policy taken out to insure against the loss of employment and those payments are exhausted **and**

**1.2** had a previous award of JSA(IB), ESA(IR) or IS which included housing costs **and**

**2.** previous award stopped not more than 26 weeks before the date the new claim was made.

1 JSA Regs, Sch 2, para 13(10), 13(11) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(8) & (9); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

23711

## More than 26 weeks

23712 Claimants can be treated as entitled to JSA(IB), ESA(IR) or IS for periods of more than 26 weeks where

1. the claimant or their partner is participating in certain training or attending certain courses (see DMG 23713) **or**
2. they have income from mortgage payment protection insurance (see DMG 23714).

## Employment rehabilitation centres and specified training

23713 A claimant should be treated as continuously in receipt of, and entitled to, JSA(IB), ESA(IR) or IS for any period that they<sup>1</sup>

1. are not (or no longer) entitled to JSA(IB), ESA(IR) or IS **and**
2. are not entitled because they, their partner, or in the case of a joint-claim couple the other member of that couple, are
  - 2.1 participating in arrangements for specified training **or**
  - 2.2 attending a course at an employment rehabilitation centre.

<sup>1</sup> JSA Regs, Sch 2, para 13(3) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(3) & (3A); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; E & T Act 73, s 2

## Payments from payment protection insurance

23714 Claimants who

1. are treated as entitled to JSA(IB), ESA(IR) or IS solely because their income exceeds their applicable amount (see DMG 23735, 23737 and 23742) **and**
2. have included in their income payments from an insurance policy taken out to insure against the risk of being unable to meet eligible housing costs.

should be treated as entitled throughout any period that payments are made under the terms of the policy<sup>1</sup>.

<sup>1</sup> JSA Regs, Sch 2, para 13(9); IS (Gen) Regs, Sch 3, para 14(6)

## 52 week linking periods

23715 A claimant can be treated as entitled to JSA(IB), ESA(IR) or IS for periods of up to 52 weeks<sup>1</sup> where the claimant or their partner

1. had already qualified for housing costs before losing entitlement to JSA(IB), ESA(IR) or IS<sup>2</sup> (see DMG 23716)
2. is participating in an ND option, an EZ scheme, or a prescribed government scheme<sup>3</sup> (see DMG 23719).

1 JSA Regs, Sch 2, para 13(13)(a); IS (Gen) Regs, Sch 3, para 14(11)(a); ESA Regs, Sch 6, para 15(16)(a)

2 JSA Regs, Sch 2, para 13(15); IS(Gen) Regs, Sch 3, para 14(13); ESA Regs, Sch 6, para 15(18)

3 JSA Regs, Sch 2, para 13(14)(c); IS (Gen) Regs, Sch 3, para 14(12)(c); ESA Regs, Sch 6, para 15(17)(c)

### Qualifying period for housing costs already served

23716 Most eligible housing costs have a QP (see DMG 23647 et seq). Such a QP may have to be served again following a break in entitlement to JSA(IB), ESA(IR) or IS. But there is a linking rule for cases where the QP has already been served when entitlement to JSA(IB), ESA(IR) or IS ends.

23717 The linking rule applies if<sup>1</sup>, immediately before entitlement ended, housing costs

1. were payable on the previous claim (in full or in part) **or**
2. would have been payable (in full or in part) but for a non-dependant deduction (see DMG 23756 et seq).

1 IS (Gen) Regs, Sch 3, para 14(13); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32;  
JSA Regs, Sch 2, para 13(15) & (18)(1)(c); ESA Regs, Sch 6, para 15(18)

23718 In such a case, treat the claimant as continuously in receipt of JSA(IB), ESA(IR) or IS for any period of 52 weeks or less<sup>1</sup> during which they were not entitled because

1. the claimant or partner
  - 1.1 had started employment as an employed or S/E earner **or**
  - 1.2 had increased their hours in such employment **or**
  - 1.3 was taking active steps to become employed or S/E under a prescribed government scheme<sup>2</sup>**and**
2. the claimant or partner
  - 2.1 was in remunerative work **or**

**2.2** had income that exceeds the applicable amount. For IS this includes cases where the income was equal to the applicable amount<sup>3</sup>.

1 IS (Gen) Regs, Sch 3, para 14(12); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; JSA Regs, Sch 2, para 13(14) & 18(1)(c); 2 reg 19(1)(r)(i) to (iii); ESA Regs, Sch 6, para 15(17);  
3 IS (Gen) Regs, Sch 3, para 14(12)(c)

### **New deal options, employment zone and prescribed government schemes**

23719 Entitlement to IS, ESA(IR) or JSA(IB) may end when a claimant or their partner starts on an ND option, an EZ programme or a prescribed government scheme. This is because

- 1.** the person may be in remunerative work **or**
- 2.** their income may exceed the applicable amount.

23720 There is a linking rule to ensure that the benefit position of such a person is protected if they return to IS, ESA(IR) or JSA(IB). The linking rule applies if<sup>1</sup> housing costs

- 1.** were payable on the previous claim (in full or in part) **or**
- 2.** would have been payable (in full or in part) but for a non-dependant deduction (see DMG 23756 et seq) immediately before entitlement ended.

1 IS (Gen) Regs, Sch 3, para 14(13); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; JSA Regs, Sch 2, para 13(15) & 18(1)(c); ESA Regs, Sch 6, para 15(18)

23721 In such a case, treat the claimant as continuously in receipt of IS, ESA(IR) or JSA(IB) for any period of 52 weeks or less<sup>1</sup> during which they were not entitled because the claimant or partner is participating in<sup>2</sup>

- 1.** an ND option (apart from the employed employment option of NDYP)
- 2.** an EZ programme **or**
- 3.** the EO(S/E) **or**
- 4.** the intensive activity period (IAP) of ND25+<sup>3</sup>.

1 IS (Gen) Regs, Sch 3, para 14(12); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; JSA Regs, Sch 2, para 13(14) & 18(1)(c); ESA Regs, Sch 6, para 15(17);  
2 IS (Gen) Regs, Sch 3, para 14(12)(c); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; JSA Regs, Sch 2, para 13(14)(c) & 18(1)(c); ESA Regs, Sch 6, para 15(17)(c); 3 reg 75(1)(a)(iv)

## 104 week linking periods

23722 A claimant can be treated as entitled to JSA(IB), ESA(IR) or IS for periods of up to 104 weeks<sup>1</sup> where the claimant (for IS or ESA) or their partner (for IS or JSA) is a WtWB (see DMG 23723).

1 JSA Regs, Sch 2, para 13(12); IS (Gen) Regs, Sch 3, para 14(10)

## Welfare to work beneficiaries

23723 Entitlement to JSA(IB) or IS may end when a claimant or their partner moves into work following a period of incapacity. This is because

1. their income may exceed the applicable amount **or**
2. the person may be in remunerative work **or**
3. for IS only, the claimant may no longer be in a prescribed category of person.

23724 On 5.10.98 special linking rules were introduced to ensure that the benefit position is protected if the person returns to benefit within the period prescribed. To qualify for the special linking rules

1. in IS a person<sup>1</sup> has to
  - 1.1 be a WtWB **and**
  - 1.2 again become incapable of work
2. in JSA a partner<sup>2</sup> has to
  - 2.1 be a WtWB **and**
  - 2.2 again become incapable of work
3. in ESA a claimant<sup>3</sup> has to
  - 3.1 be a WtWB<sup>4</sup> **and**
  - 3.2 again become incapable of work<sup>5</sup>.

1 IS (Gen) Regs, Sch 3, para 14(10); 2 JSA Regs, Sch 2, para 13(12); 3 ESA Regs, Sch 6, para 15(15);  
4 SS (IW) (Gen) Regs, reg 13A(1); 5 SS CB Act 92, Part XIA

23725 In such a case, treat the claimant as continuously in receipt of, and entitled to, IS or JSA(IB) for any period of 104 weeks or less<sup>1</sup>

1. during which they were not in receipt of IS or JSA(IB) **and**

**2.** that is immediately between two periods when

**2.1** they were in receipt of IS or JSA(IB), or a combination of the two **or**

**2.2** they were treated as in receipt of IS or JSA(IB) **or**

**2.3** they are treated as entitled to IS or JSA(IB) for certain reasons (see DMG 23734 - 23742) **or**

**2.4** entitlement to IS or JSA(IB) is decided on appeal or review.

1 IS (Gen) Regs, Sch 3, para 14(1)(a) & (10); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32;  
JSA Regs, Sch 2, para 13(1)(a), 13(12) & 18(1)(c)

23726 This means that WtWBs do not lose entitlement to housing costs by having to serve a further QP. Breaks of 104 weeks or less are protected in the same way as other claimants who have a break of up to twelve weeks (see DMG 23708).

23727

## **Not entitled on revision, supersession or appeal**

23728 A claimant is treated as not in receipt of JSA or IS for any period that entitlement is found not to exist on revision, supersession or appeal unless that period falls in a period in DMG 23708 **2.<sup>1</sup>**

1 JSA Regs, Sch 2, para 13(1)(b), 13(4) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(b) & 14(3A);  
IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

## **Participation in new deal and employment zone schemes**

23729 Claimants should be treated as continuously in receipt of and entitled to JSA(IB) or IS for any period that they<sup>1</sup>

**1.** are not (or no longer) entitled to JSA(IB) or IS **and**

**2.** are not entitled because they, their partner, or the other member of a joint-claim couple, are participating in

**2.1** the EO(S/E) **or**

**2.2** a waged option of the voluntary sector or environment task force options of NDYP **or**

**2.3** the intensive activity period (IAP) of ND25+ **or**

**2.4** an EZ scheme **or**

## 2.5 flexible new deal.

**Note:** See DMG Chapter 14 for full guidance on ND.

1 JSA Regs, Sch 2, para 13(3A), 13(4) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(3ZA) & (3A);  
IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

23730 The time spent on an ND option or EZ scheme counts towards any QP for housing costs. But that period may have already been served when the person goes on the ND option or EZ scheme. If so, the person will not have to serve a fresh period if they return to JSA(IB) or IS within twelve weeks of leaving that option or scheme (see DMG 23708)<sup>1</sup>.

1 JSA Regs, Sch 2, para 13(1)(a), 13(4) & (18)(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(a) & (3A); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

### **JSA(Cont)**

23731 A person may have been getting JSA(Cont) immediately before going on to an ND option or EZ scheme. Such a person may claim JSA(IB) at the end of that option or scheme. Where appropriate the claimant can be treated as entitled to JSA(IB) for the

1. period when they were entitled to JSA(Cont)<sup>1</sup> (see DMG 23737) **and**
2. time they spent on the ND option or EZ scheme<sup>2</sup>.

1 JSA Regs, Sch 2, para 13(5)(bb); 2 para 13(3A) & (4)

23732 A person may have been getting JSA(Cont) immediately before going on an ND option or EZ scheme. Such a person may claim IS at the end of that option or scheme. In such a case treat the claimant as entitled to IS for the

1. period when they were entitled to JSA(Cont) (see DMG 23737)<sup>1</sup> **and**
2. time they spent on the ND option or EZ scheme<sup>2</sup>.

1 IS (Gen) Regs, Sch 3, para 14(3B); 2 para 14(3ZA) & (3A)

### **Change of claimant**

23733 A couple may decide to change claimants when one of them comes to the end of the ND option or EZ scheme. Treat the new claimant as being in receipt of and entitled to JSA(IB) or IS for the same period as their partner if<sup>1</sup>

1. the claimant is a member of a couple or polygamous marriage **and**

**2.** immediately before one of them went on an ND option or EZ scheme, or flexible new deal, the claimant's partner was in receipt of JSA(IB) or IS for both or all of them **and**

**3.** immediately after the end of that option or scheme the claimant has become the claimant because of an election by the members of the couple or polygamous marriage.

1 JSA Regs, Sch 2, para 13(1)(ee) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(ee);  
IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

## **Capital exceeds £16,000/income exceeds applicable amount**

23734 The rules are different for JSA and IS with the exception of cases involving

- 1.** lone parents and carers (see DMG 23741) **and**
- 2.** claimants who receive payments from payment protection insurance (see DMG 23714).

### **JSA(IB)**

23735 Claimants who would not be entitled to JSA(IB) only because<sup>1</sup>

- 1.** their capital exceeds £16,000 **or**
- 2.** their income is equal to or exceeds their applicable amount **or**
- 3.** both **1.** and **2.** apply

should be treated as entitled to JSA(IB) throughout any continuous period of not more than 39 weeks provided that the further conditions in DMG 23736 are satisfied.

**Note 1:** The period of not more than 39 weeks can fall between periods of entitlement to JSA(IB), ESA(IR) and IS<sup>2</sup>.

**Note 2:** It is not necessary for a claim to have been made for a person to benefit from this provision.

1 JSA Regs, Sch 2, para 13(5) & (6); 2 para 18(1)(c)

23736 The further conditions are that during the period of not more than 39 weeks claimants are

- 1.** entitled to JSA(Cont), SSP or IB **or**
- 2.** registering for work and entitled to credits **or**
- 3.** submitting medical certificates and entitled to credits

on a day to day basis<sup>1</sup>.

## **JSA(Cont)**

23737 Claimants who are not entitled to JSA(IB) because their JSA(Cont) personal rate

**1.** is equal to **or**

**2.** more than

their JSA(IB) applicable amount should be treated as entitled to JSA(IB) throughout any continuous period of up to 39 weeks provided that the further conditions in DMG 23736 are satisfied<sup>1</sup>.

1 JSA Regs, Sch 2, para 13(5)(bb)

23738 Before the first day of the benefit week that includes 28.10.96, days of entitlement to JSA(Cont) in the circumstances in DMG 23737 did not count towards this linking provision.

## **IS**

23739 Claimants who are not entitled to IS only because<sup>1</sup>

**1.** their capital exceeds £16,000 **or**

**2.** their income is equal to or exceeds their applicable amount **or**

**3.** both **1.** and **2.** apply

should be treated as entitled to IS throughout any continuous period of not more than 39 weeks provided that the further conditions in DMG 23740 are satisfied.

**Note 1:** The period of not more than 39 weeks can fall between periods of entitlement to JSA(IB) and IS<sup>2</sup>.

**Note 2:** It is not necessary for a claim to have been made for a person to benefit from this provision.

1 IS (Gen) Regs, Sch 3, para 14(4) & (5); 2 IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

23740 The further conditions are that during the period of not more than 39 weeks claimants are

**1.** entitled to JSA(Cont), ESA(Cont), SSP or IB **or**

**2.** registering for work or submitting medical certificates and are entitled to credits **or**

**3.** treated as being in receipt of JSA(IB) or IS

on a day to day basis<sup>1</sup>.

## **Lone parents and carers - JSA(IB) and IS**

23741 Lone parents and carers may not be entitled to JSA(IB) or IS because<sup>1</sup>

- 1.** their capital exceeds £16,000 **or**
- 2.** their income is equal to or exceeds the applicable amount **or**
- 3.** both **1.** and **2.** apply.

1 JSA Regs, Sch 2, para 13(5)); IS (Gen) Regs, Sch 3, para 14(4)

23742 In such a case treat the claimant as entitled to JSA(IB) or IS throughout any continuous period of not more than 39 weeks<sup>1</sup>

- 1.** following the refusal of a claim made by them or on their behalf **and**
- 2.** during which they are not
  - 2.1** engaged in or treated as engaged in remunerative work **or**
  - 2.2** the partner of a person engaged in or treated as engaged in remunerative work **or**
  - 2.3** a F/T student (except where they would be entitled to IS) **or**
  - 2.4** absent from GB, except on a temporary basis (see DMG 071940 and 072132 et seq).

1 JSA Regs, Sch 2, para 13(7) & (8); IS (Gen) Regs, Sch 3, para 14(5A) & (5B)

## **Treated as in receipt of and entitled to JSA(IB) or IS on another person's claim**

### **Claimant previously a member of a couple or polygamous marriage**

23743 A claimant should be treated as being in receipt of and entitled to JSA(IB) or IS for the same period as a former partner if<sup>1</sup> the claimant

- 1.** was a member of a couple or polygamous marriage **and**
- 2.** had a partner who was in receipt of JSA(IB), SPC or IS for them both for a past period **and**
- 3.** is no longer a member of the couple or polygamous marriage **and**
- 4.** claims JSA or IS within

**4.1** twelve weeks **or**

**4.2** in the circumstances set out in DMG 23717 et seq, 52 weeks

of ceasing to be a member of that couple or polygamous marriage<sup>1</sup>.

1 JSA Regs, Sch 2, para 13(1)(c), 13(12) to 13(15) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(c), 14(10) to 14(13); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

### **Claimant becomes a member of a couple or polygamous marriage**

23744 A claimant should be treated as having been in receipt of and entitled to JSA(IB) or IS for the same period as their partner, or the other member of a joint-claim couple, if<sup>1</sup>

**1.** the claimant's partner or the other member of a joint-claim couple has for a past period been paid JSA(IB), SPC or IS as a

**1.1** single claimant **or**

**1.2** lone parent **and**

**2.** the claimant claims JSA or IS within

**2.1** twelve weeks **or**

**2.2** in the circumstances set out in DMG 23717 et seq, 52 weeks

of becoming a member of a couple or polygamous marriage.

1 JSA Regs, Sch 2, para 13(1)(d), 13(1)(dd) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(d); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

### **Change of claimant**

23745 A claimant should be treated as being in receipt of and entitled to JSA(IB) or IS for the same period as their partner if the

**1.** claimant is a member of a couple or polygamous marriage **and**

**2.** claimant's partner has been in receipt of JSA(IB), SPC or IS for both or all of them for a past period **and**

**3.** claimant has become the claimant as the result of a decision by the members of the couple or polygamous marriage<sup>1</sup>.

**Note:** See DMG 23733 if the change of claimant happens when a ND programme or EZ scheme ends.

1 JSA Regs, Sch 2, para 13(1)(e) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(e);

## **Change of family**

23746 A claimant X should be treated as being in receipt of and entitled to JSA(IB) or IS for the same period as person Y if<sup>1</sup>

- 1.** X was a member of Y's family (Y not being a former partner) **and**
- 2.** Y was entitled to JSA(IB), SPC or IS and at least one other member of the family was a child or young person **and**
- 3.** X becomes a member of another family which includes that child or young person **and**
- 4.** X claims JSA or IS within
  - 4.1** twelve weeks **or**
  - 4.2** in the circumstances set out in DMG 23717 et seq, 52 weeks or 104 weeks

of Y ceasing to be a entitled to JSA(IB) or IS.

1 JSA Regs, Sch 2, para 13(1)(f), 13(12) to (15) & 18(1)(c); IS (Gen) Regs, Sch 3, para 14(1)(f) & 14(10) to (13); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32

# Non-dependant deductions 23756 - 23778

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## Introduction

23756 Where non-dependants live with the claimant, a deduction from the allowable housing costs may be appropriate<sup>1</sup>. A deduction should be considered for each non-dependant or group of non-dependants, but only one deduction can be applied to each non-dependant.<sup>2</sup>

*1 JSA Regs, Sch 2, para 17; IS (Gen) Regs, Sch 3, para 18. 2. JSA Regs, Sch 2, para 17(2A); IS Gen Regs, Sch 3 para 18(2A)*

## Definition of a non-dependant

23757 With the exception of those people mentioned in DMG 23764, non-dependants<sup>1</sup> are people aged 18 or over who

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

*1 JSA Regs, reg 2(1); IS (Gen) Regs, reg 3(1)*

## Meaning of normally resides

23758 A person normally resides where they usually live. Periods of residence or absence that are of an

exceptional nature should be disregarded. A person who is temporarily absent from their normal home, continues to normally reside where they usually live and with the people they usually live with.

23759 When considering where a person normally resides the DM should have regard to

1. the total amount of time spent in a place
2. how often time is spent in a place
3. how permanent the stay is thought to be
4. the person's intentions
5. individual circumstances
6. what degree the accommodation is shared
7. the services provided
8. whether the person owns or rents any other accommodation
9. whether the person has any liabilities for services/utilities/tv licence.

### **Example 1**

Oonagh and her sister Mairead share a flat on which Oonagh has a mortgage. Mairead goes to stay with their father to look after him while he is recovering from a major operation. She is away for three weeks. While Mairead is staying with her father Oonagh is made redundant and claims JSA. The DM decides that Mairead normally lives with Oonagh and is a non-dependant. The time she spends at her father's is exceptional.

### **Example 2**

Mary normally lives alone in her own flat. Her brother Steven comes to stay with her for a week at a time every three months. He does not normally live with Mary and is not a non-dependant.

### **Sharing the accommodation**

23760 A person resides with another only if they share any accommodation and in this context, people should be regarded as sharing the accommodation unless<sup>1</sup>

1. the only shared area is a

**1.1** bathroom **or**

**1.2** lavatory **or**

### **1.3 communal area or**

**2.** they are separately liable to make payments to the landlord for that accommodation.

*1 JSA Regs, reg 2(6); IS (Gen) Regs, reg 3(4); R(IS) 12/96*

23761 A communal area is<sup>1</sup> an area of common access (not a room) including

- 1.** halls
- 2.** passageways
- 3.** stairways
- 4.** rooms of common use in sheltered accommodation.

*1 JSA Regs, reg 2(7); IS (Gen) Regs, reg 3(5)*

### **Example**

Katja lives in a self-contained granny flat attached to her daughter's house. She has her own bathroom, kitchen, bedroom and living room. Access to the flat is from the hall of her daughter's house and the front door of the property is shared. Everything else is separate.

The hall is the only shared area and is a communal area. Katja does not share the accommodation and does not normally reside with her daughter.

23762 - 23763

### **People who are not non-dependants**

23764 The following people who normally reside with the claimant, or who the claimant normally resides with, are not non-dependants

- 1.** any person aged under 18<sup>1</sup>
- 2.** any member of the claimant's family<sup>2</sup>
- 3.** any child or young person who is not treated as a member of the claimant's household<sup>3</sup> (see DMG Chapter 22)
- 4.** a person or their partner who
  - 4.1** lives in, to care for the claimant or partner **and**
  - 4.2** is engaged by a

**4.2.a** charitable or

**4.2.b** voluntary organization

which makes a charge to the claimant or partner for the person's services. A voluntary organization is a non-profit making organization that is not a public authority or LA<sup>4</sup>

**5.** any person who is not a close relative (see DMG 23408) of the claimant or partner, who

**5.1** is liable to make payments on a commercial basis to the claimant or partner (see DMG 23221) for occupation of the dwelling<sup>5</sup> or

**5.2** the claimant or partner is liable to make payments to on a commercial basis (see DMG 23221) for the occupation of the dwelling<sup>6</sup>

**6.** any person who is not a close relative, who is a member of the household of a person to whom **5.** applies<sup>7</sup>

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

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

**7.2** jointly liable with the claimant or partner to make payments to a landlord for the occupation of the dwelling<sup>8</sup>

**8.** a close relative who satisfies **7.** and the claimant's or partner's co-ownership or joint liability arose

**8.1** before 11.4.88 or

**8.2** if later than 11.4.88, before the date on which the claimant or partner first occupied the dwelling<sup>9</sup>.

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

*1 JSA Regs, Sch 2, para 17(1) & (2); IS (Gen) Regs, Sch 3, para 18(1) & (2); 2 JSA Regs, reg 2(2)(a);*

*IS (Gen) Regs, reg 3(2)(a); 3 JSA Regs, reg 2(2)(b); IS (Gen) Regs, reg 3(2)(b);*

*4 JSA Regs, reg 2(2)(c) & (d); IS (Gen) Regs, reg 3(2)(c) & (d); 5 JSA Regs, reg 2(3)(a);*

*IS (Gen) Regs, reg 3(2A)(a); 6 JSA Regs, reg 2(3)(b); IS (Gen) Regs, reg 3(2A)(b);*

*7 JSA Regs, reg 2(3)(c); IS (Gen) Regs, reg 3(2A)(c); 8 JSA Regs, reg 2(4); IS (Gen) Regs, reg 2(2B);*

*9 JSA Regs, reg 2(5); IS (Gen) Regs, reg 3(2C)*

## Amount of deduction

23765 The amount of deductions for non-dependants aged 18 or over depends on the

1. circumstances of the non-dependant **and**
2. amount of the non-dependant's gross weekly income<sup>1</sup>.

See Appendix 4 to this Chapter for the rates of non-dependant deductions.

*1 JSA Regs, Sch 2, para 17(1) & (2); IS (Gen) Regs, Sch 3, para 18(1) & (2)*

## Non-dependants who have partners

23766 A non-dependant may be a member of a couple or polygamous marriage. In such a case

1. only one deduction should be made **and**
2. where different amounts would apply to each partner or additional spouse, the higher of those deductions should be applied<sup>1</sup>.

*1 JSA Regs, Sch 2, para 17(3); IS (Gen) Regs, Sch 3, para 18(3)*

23767 If any one of a couple or polygamous marriage is aged 18 or over a deduction should be made unless a deduction is not appropriate (see DMG 23770).

## Calculation of income

23768 The joint income of members of a couple or polygamous marriage should be considered<sup>1</sup>.

*1 JSA Regs, Sch 2, para 17(4); IS (Gen) Regs, Sch 3, para 18(4)*

## Non-dependant of more than one joint occupier

23769 Where people are non-dependants of more than one joint occupier, deductions should be apportioned between the joint occupiers, taking account of the

1. number of joint occupiers **and**
2. part of the housing costs for which they are each responsible<sup>1</sup>.

**Note 1:** All members of a couple or polygamous marriage should be regarded as one joint occupier.

**Note 2:** If a joint owner does not actually occupy the dwelling, then the remaining owner would be liable for the full non-dependant deduction.

## **Non-dependant deduction not appropriate**

23770 Deductions should not be made if

**1.** the claimant or any partner is<sup>1</sup>

**1.1** blind or treated as blind for the purpose of entitlement to HPP and DP **or**

**1.2** receiving for themselves

**1.2.a** "AA" **or**

**1.2.b** the care component of DLA **or**

**1.2.c** the daily living component of ADP **or**

**1.2.d** the daily living component of PIP **or**

**1.2.e** AFIP

**2.** non-dependants are<sup>2</sup>

**2.1** living with the claimant but the dwelling normally occupied as the home is elsewhere **or**

**2.2** in receipt of a training allowance in connection with a youth training scheme<sup>3</sup> **or**

**2.3** F/T students

**2.3.a** in a period of study **or**

**2.3.b** not in remunerative work during the recognized summer vacation relevant to their course **or**

**2.4** under 25 and in receipt of JSA(IB) or IS<sup>4</sup> **or**

**2.5** from 3.4.17, under 25, in receipt of ESA and is not a member of the work-related activity group or a member of the support group<sup>5</sup>.

**2.6** people for whom claimants have a deduction made in the calculation of any rent rebates or allowances **or**

**2.7** people who jointly occupy the claimant's home and are

**2.7.a** co-owners with the claimant or the claimant's partner **or**

**2.7.b** jointly liable with the claimant or partner to make payments to a landlord

regardless of when the co-ownership or joint liability started **or**

**2.8** not living with the claimant because they

**2.8.a** have been patients for more than 52 weeks (see DMG Chapter 24) **or**

**2.8.b** are prisoners (see DMG Chapter 24).

**2.9** in receipt of SPC.

**2.10** is entitled to UC **and**

**2.10.a** is aged less than 25 **and**

**2.10.b** does not have any earned income<sup>6</sup>

*1 JSA Regs, Sch 2, para 17(6); IS (Gen) Regs, Sch 3, para 18(6); 2 JSA Regs, Sch 2, para 17(7); IS (Gen) Regs, Sch 3, para 18(7); 3 E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 1990, s 2; 4 JSA Regs, Sch 2, para 18(1)(c); IS (Gen) (JSA Consequential Amdts) Regs 96, reg 32; 5 IS Gen Regs Sch 3, para 18(7)(l) 6 IS (Gen) Regs, Sch 3, para 18(7)(l) :7 JSA Regs, Sch 2 para 17(j); IS Regs, Sch 3 para 18(j);*

**Note 1:** For non-dependant purposes in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period.

**Note 2:** Where a person under **1.2** has been an inpatient for a sufficient period of time they will no longer be receiving AA or DLA and as such the non-dependant will no longer be exempt from attracting a non-dependant deduction.

## **Deduction appropriate – UC non-dependants**

23771 Where a non-dependant is entitled to UC and is

**1.** aged 25 or over **or**

**2.** aged less than 25 and has earned income

a deduction at the rate described in Appendix 4 will be appropriate.

## **Participation in new deal for young people**

23772 If a non-dependant goes on to NDYP a deduction from allowable housing costs should be

considered as normal.

23773 - 23774

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## **Calculation of a non-dependant's gross weekly income**

23775 [[See Memo 07-23](#)] When calculating the gross weekly income of a non-dependant disregard<sup>1</sup> any

**1.** AA

**2.** DLA

**3.** CDP

**4.** PIP

**5.** ADP

**6.** AFIP

**7.** payments, including payments in kind (see DMG Chapter 28), made under, or derived from

**7.1** any Grenfell Tower Payments

**7.2** child abuse payments or Windrush payment

**7.3** the Macfarlane Trust

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

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

**7.6** the Fund

**7.7** the Eileen Trust

**7.8** the Independent Living Fund (2006) (but see **note**)

**7.9** MFET Limited

**7.10** the Skipton Fund

**7.11** the Caxton Foundation.

**7.12** the London Emergencies Trust (LET) and the We Love Manchester Emergency Fund

(WLMEF)

7.13 any income from capital received from Infected Blood Schemes (IBS)

**Note 1:** The Independent Living Fund (2006) closed on 30.6.15 with some funding responsibilities transferring to LA's in England, the Welsh Independent Living Grant in Wales and the Independent Living Fund Scotland for Northern Ireland and Scotland. Please contact DMA Leeds for advice if a claimant receives funding from any of these replacement schemes.

*1 JSA Regs, Sch 2, para 17(8); IS (Gen) Regs, Sch 3, para 18(8)*

23776 - 23778

## Questions that cannot be decided immediately 23779 - 23799

[Insufficient information to determine housing costs - IS only 23779 - 23799](#)

### Insufficient information to determine housing costs - IS only

23779 Where a DM is

1. deciding an IS claim **or**
2. determining an issue on IS housing costs

the applicable amount should include any housing costs that can be determined immediately on the evidence available<sup>1</sup>. Where there is insufficient evidence IS can be awarded without housing costs.

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

23780 If there are several housing costs on the IS claim the applicable amount should include only an amount for those that can be determined. The applicable amount should not include any amount for those housing costs where there is insufficient information to make a decision.

23781 The decision may be revised or superseded if further information about any of the claimant's housing costs is received after the IS claim or question has been decided<sup>1</sup>.

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

23782 - 23799

## **Deductions from JSA(Cont) for pension payments 23800 - 23999**

23800 The guidance on this subject has been moved to DMG Chapter 28

23801 - 23999

## Appendix 1: Claimant already in receipt of DP on 12.4.95

[Claimant already in receipt of DP on 12.4.95](#)

[Days before 13.4.95 - qualifying period](#)

### Claimant already in receipt of DP on 12.4.95

1. DP continues after 12.4.95 if the claimant is

**1.** entitled to SSP **or**

**2.** incapable of work

subject to the linking rules (see DMG 23143).

#### Example 1

Henri is entitled to DP on 12.4.95 and entitlement to DP continues due to incapacity for work. Henri fails without good cause to observe the prescribed rules for behaviour and is treated as capable of work for six weeks from 21.8.95 to 1.10.95. DP is not applicable for the period of the disqualification. The break in the periods of incapacity for work is 56 days or less and the periods link. DP is applicable from 2.10.95 - the day after the disqualification ends<sup>1</sup>.

1 DWA & IS (Gen) Amdt Regs, reg 15(2) & (3)

#### Example 2

Earl is entitled to DP on 12.4.95 and entitlement to DP continues. Earl is found not incapable of work from 5.7.95. Entitlement to IS is reviewed and disallowed. Earl appeals, IS continues and DP is withdrawn. On 9.12.95 the SSAT upholds the AOs decision. On 29.1.96 a claim on the grounds of incapacity for work is made and the AWT is satisfied. DP is not reinstated. A new qualifying period begins on 29.1.96. The periods of incapacity do not link. The break is more than 56 days (5.7.95 -28.1.96).

**Note:** If the AT had allowed the appeal, arrears of DP would be due from 5.7.95.

### Days before 13.4.95 - qualifying period

2. Days of incapacity for work or entitlement to SSP before 13.4.95 count towards the 196/364 days qualifying period if

**1.** the claimant satisfied the incapacity conditions that applied before 13.4.95 **and**

**2.** the days were continuous<sup>1</sup>.

**Example 1**

Sean is incapable of work continuously from 13.2.95 to 13.6.95. The period spans 13.4.95. The days before 13.4.95 count towards the qualifying period.

**Example 2**

As example 1 but Sean is incapable of work again from 23.8.95. The gap between the periods of incapacity for work is more than 56 days (14.6.95 - 22.8.95). The periods do not link and the qualifying period starts again from 23.8.95.

**Example 3**

Lisa is incapable of work from 9.1.95 to 3.4.95. She is incapable of work again from 22.5.95. The days of incapacity before 13.4.95 do not count towards the qualifying period because Lisa was not continuously incapable of work up to and including 12.4.95. This applies even though the gap between the periods of incapacity was 56 days or less.

# Appendix 2 : Disability premium transitional arrangements because of the introduction of Incapacity Benefit - Income Support only

[Introduction](#)

[First qualifying condition](#)

[Second qualifying condition](#)

[The circumstances where the qualifying provision applies](#)

[Changes of tenancy, ownership or home](#)

[The circumstances where the savings provision ceases to apply](#)

## Introduction

1 This provision enables certain claimants to retain their SDP entitlement despite the amendment of 11.11.91 to the definition of non-dependant (see Appendix 3).

2 This provision applies to both JSA(IB) and IS. IS claimants with SDP entitlement from this provision who move to JSA will retain their SDP entitlement as long as the other conditions are satisfied<sup>1</sup>.

1 JSA Regs, Sch 1, para 15(8)

3 There are two qualifying conditions that govern the savings provision.

## First qualifying condition

4 To satisfy the first qualifying condition the claimant must have

**1.** made a claim for IS which had not been decided by 21.10.91 but if it had been, would have included SDP<sup>1</sup> **or**

**2.** an IS award current at 21.10.91 which included SDP<sup>2</sup> **or**

**3.** before 21.10.91, made a written request for a review of a decision awarding IS because the claimant and a close relative had become **either**<sup>3</sup>

**3.1** co-owners of their home<sup>4</sup> **or**

**3.2** co-tenants<sup>5</sup>.

In most cases the grounds for review will be that a relevant change of circumstances has occurred<sup>6</sup>.

**Note:** The DM (previously the AO) should decide that the claimant has become either a co-owner or co-tenant of the home with a close relative.

1 IS (Gen) Amdt No. 6 Regs, reg 4(8)(a)(i); 2 reg 4(8)(a)(ii); 3 reg 4(8)(a)(iii); 4 reg 4(8)(a)(iii)(aa);  
5 reg 4(8)(a)(iii)(bb); 6 SS A Act 92, s 25(1) & (3)

5 To decide if the conditions at paragraph 4.3 are satisfied it is not relevant that

1. there are other co-owners **or**
2. there are other tenants **or**
3. prior to 21.10.91, SDP had been awarded<sup>1</sup>.

1 IS (Gen) Amdt No. 6 Regs, reg 4(8)(a)(iii)(bb)

## **Second qualifying condition**

6 To satisfy the second qualifying condition the claimant and the close relative must have been

1. co-owners of their home<sup>1</sup> **or**
2. co-tenants<sup>2</sup>

before 21.10.91.

1 IS (Gen) Amdt No. 6 Regs, reg 4(8)(b)(i); 2 reg 4(8)(b)(ii)

7 To decide if the second qualifying condition is satisfied it is not relevant that there are other

1. co-owners **or**
2. co-tenants<sup>1</sup>.

1 IS (Gen) Amdt No. 6 Regs, reg 4(8)(b)

8 Where claimants satisfy the second qualifying condition but their circumstances change, this provision may still apply if they become

1. a co-owner of the home with the close relative where formerly they were co-tenants<sup>1</sup> **or**
2. a co-tenant with a close relative of the home they formerly co-owned<sup>2</sup>. The conditions will still be satisfied where a different close relative or home is involved<sup>3</sup>.

1 IS (Gen) Amdt No. 6 Regs, reg 4(9)(a); 2 reg 4(9)(b); 3 reg 4(9)(c)

## The circumstances where the savings provision applies

9 The saving provision applies where, in the week beginning 14.10.91, the claimant

**1.** satisfied both the qualifying conditions above<sup>1</sup> **or**

**2.** did not satisfy one or both of the qualifying conditions **and**

**2.1** had satisfied both of the qualifying conditions in one of the eight weeks preceding 21.10.91 (that is 26.8.91 to 20.10.91)<sup>2</sup>

**2.2** would have satisfied both the qualifying conditions had the amendment not been made, in a week not later than eight weeks since both conditions were satisfied<sup>3</sup> **or**

**3.** was not in receipt of IS because the claimant was in remunerative work if

**3.1** the period of remunerative work did not exceed the permitted period of twelve consecutive weeks<sup>4</sup> and started but had not ended before 21.10.91<sup>5</sup> **and**

**3.2** the claimant satisfied both the qualifying conditions in the week immediately before the permitted period<sup>6</sup> **and**

**3.3** had the amendment not been made, the claimant would have satisfied both qualifying conditions in the week immediately before the permitted period ended<sup>7</sup> **or**

**4.** satisfied both of the qualifying conditions immediately before taking part in a training course provided, or approved, by the DM (previously known as AO), or was attending an employment rehabilitation centre course if <sup>8</sup>

**4.1** the claimant began the training, or joined the course, before 21.10.91 and was continuing with it at that date<sup>9</sup> **and**

**4.2** had the amendment not been made, the claimant would have satisfied both the qualifying conditions in the week immediately following the last day of attendance at the training or course<sup>10</sup>.

1 IS (Gen) Regs, reg 4(3); 2 reg 4(4)(a); 3 reg 4(4)(b); 4 reg 6; 5 reg 4(5)(a); 6 reg 4(5)(b); 7 reg 4(5)(c);  
8 ET Act 73, s 2; Enterprise & New Towns (Scotland) Act 90; 9 IS (Gen) Amdt No. 6 Regs, reg 4(6)(a);  
10 reg 4(6)(b)

## Changes of tenancy, ownership or home

10 Where claimants satisfy the second qualifying condition but their circumstances change, the savings provision may still apply if they continue to be a co-tenant or co-owner with a close relative.

11 It is irrelevant that the co-ownership or tenancy

**1.** is with the relative, or a different close relative **or**

**2.** relates to the same, or a different, home.

Claimants who satisfy the condition because they were co-tenants, may continue to be treated as satisfying it if they become a co-owner. (This also applies if a co-owner becomes a co-tenant)<sup>1</sup>.

**Note:** Breaks of up to eight weeks between periods of co-tenancy and co-ownership do not affect the savings provision even if entitlement to SDP ceases during that period.

1 IS (Gen) Amdt No. 6 Regs, reg 4(a)

### **Example**

Matthew has retained SDP through the savings provision because he was a co-tenant with his widowed mother. On 29 November his mother dies and he goes to live with his unmarried brother. The brothers' tenancy is put into their joint names from 17 December. Although Matthew is not entitled to SDP from 30 November to 16 November the savings provision applies. He re-qualifies for SDP from 17 December.

### **No entitlement to severe disability premium**

12 It is possible for the savings provision to continue even if there is no entitlement to SDP.

### **Example**

Pamela keeps her SDP because of the savings provision but CA is then paid and she loses her SDP. If CA stops she can still get the premium back, if the savings provision rules still apply.

### **The circumstances where the savings provision ceases to apply**

13 Once the claimant or the claimant's partner is entitled to SDP because of the savings provision, the entitlement continues until the claimant or their partner

**1.** cease to be entitled to IS or JSA<sup>1</sup> **or**

**2.** is unable to satisfy, or be treated as satisfying, the second qualifying condition<sup>2</sup>

for a period of eight consecutive weeks.

1 IS (Gen) Amdt No. 6 Regs, reg 5(2)(a); JSA Regs, Sch 1, para 15(8); 2 IS (Gen) Amdt No. 6 Regs, reg 5(2)(b)

14 When calculating the eight week period the DM (previously the AO) should disregard any periods spent in

**1.** remunerative work, not exceeding the permitted period<sup>1</sup> **or**

**2.** training<sup>2</sup> **or**

**3.** attending an employment rehabilitation centre course.

1 IS (Gen) Regs Amdt No. 6 Regs, reg 5(3)(a); 2 reg 5(3)(b)

## **Appendix 3: Severe disablement premium - changes to the definition of a non-dependant from 11.4.88 to 1.12.94**

### **Introduction**

1 The following guidance explains the major changes to the definition of a non-dependant from 11.4.88 to 11.11.91. The changes all refer to the groups of people who would not be a non-dependant for SDP purposes. The changes were made following decisions from the SS Commissioners, the Court of Appeal and the House of Lords.

### **Meaning of non-dependant between 11.4.88 and 8.10.89**

2 Between 11.4.88 and 8.10.89 a person was not a non-dependant if they jointly occupied the dwelling with the claimant<sup>1</sup>. In this context "jointly occupies" has a technical meaning<sup>2</sup>. This involves a legal relationship between two or more people and

- 1.** a third party **or**
- 2.** an item of property.

1 IS (Gen) Regs, reg 3(2)(c); 2 Fulwood v. Chesterfield B.C. 92 L.G.R. 160; R(IS) 12/96

### **Meaning of non-dependant between 10.4.89 and 30.9.90**

3 Between 10.4.89 and 30.9.90 a person was not a non-dependant if the claimant was liable to make payments (see DMG 23213) for the occupation of the dwelling<sup>1</sup>. Liability refers to a legal liability. There are different rules for England, Wales and Scotland.

1 IS (Gen) Regs, reg 3(2)(d)

### **England, Wales and non-incapax cases in Scotland (para 5)**

4 For there to be a legal liability the

- 1.** person must legally have to make payments, for example, because of a contract **and**
- 2.** payments must only be for the occupation of the dwelling **and**
- 3.** contract can only end if payments have not been made.

### **Incapax cases in Scotland**

5 In Scotland

1. certain mentally handicapped claimants **or**

2. claimants who cannot give meaningful and useful instructions about their affairs

cannot enter into contracts.

6 An incapax, the term used to describe the claimants in paragraph **5.**, can still satisfy the liability test using the Scots Law doctrines of

1. Recompense **or**

2. Negotiorum Gestio.

7 Recompense will be the more commonly used of the two doctrines and means the making up of a financial loss. The DM (previously the AO) should consider whether

1. there is an intention to charge (if there is no intention to charge, Recompense cannot be applied) **and**

2. payment is expected from the incapax for occupation of the dwelling **and**

3. expense is incurred because of the incapax's occupation of the dwelling **and**

4. financial gain and loss are involved **and**

5. the amounts are reasonable in the circumstances.

The liability test is satisfied if all of these conditions are met.

8 Negotiorum Gestio is unusual. It means securing the right of a person to be paid back all expenditure reasonably and exclusively paid out on behalf of the incapax. It applies where

1. a person manages the affairs of those who, temporarily or permanently, are unable to manage their affairs themselves **and**

2. it is reasonable to conclude that power for this would have been given had it been possible to ask for it.

9 The claimant satisfies the doctrine of Negotiorum Gestio if

1. there have been expenses related to the occupation of the dwelling **and**

2. the expenses have been for the good of the incapax **and**

3. the person providing the care can provide proof of their spending **and**

4. the person giving the expense or care did so without thought of receiving anything in return.

10 The DM should be satisfied that<sup>1</sup> the

**1.** owner intends to charge the incapax for the occupation of the dwelling **and**

**2.** amounts are realistic and regular

before accepting that there is an intention to charge.

1 IS (Gen) Regs, reg 3(2)(d)

### **Meaning of non-dependant between 1.10.90 and 10.11.91**

11 Between 1.10.90 and 10.11.91 a person was not a non-dependant if any previously established liability was on a commercial basis. For the liability to be on a commercial basis the payment should be broadly in line with what a lodger might pay for similar accommodation.

### **Meaning of non-dependant between 11.11.91 and 1.12.94**

12 Between 11.11.91 and 1.12.94 the people who were not non-dependants are the same as they are now. Basically the changes on 11.11.91 introduced DMG 23220 **7.** & **8.** and an SDP saving provision (see Appendix 2).

13 The amendment from 2.12.94 changed the definition of a non-dependant from "someone who normally resides with the claimant", to "someone who normally resides with the claimant or with whom the claimant normally resides".

## Appendix 4: Housing costs - amount of non-dependant deductions

[See DMG Memo 02/24]

[Rates from 6.4.18](#)

[Rates from 8.4.19](#)

[Rates from 6.4.20](#)

[Rates from 12.4.21](#)

[Rates from 11.4.22](#)

[Rates from 10.3.23](#)

1 This appendix provides the rates of the non-dependant deductions<sup>1</sup>.

1 JSA Regs 95, Sch 2, para 17(1); IS (Gen) Regs, Sch 3, para 18(1)

### Rates from 6.4.18

2 Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £98.30
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

**2.1** Less than £139.00    £15.25

**2.2** £139.00 to £203.99    £35.00

**2.3** £204.00 to £264.99    £48.05

**2.4** £265.00 to £353.99    £78.65

**2.5** £354.00 to £438.99    £89.55

**2.6** £439.00 or more    £98.30

**3.** any other non-dependant aged 18 or over for whom deductions are relevant - £15.25.

## **Rates from 8.4.19**

7 Deductions apply where

**1.** non-dependants aged 18 or over are in remunerative work - £100.65

**2.** the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

**2.1** Less than £139.00 £15.60

**2.2** £139.00 to £203.99 £35.85

**2.3** £204.00 to £264.99 £49.20

**2.4** £265.00 to £353.99 £80.55

**2.5** £354.00 to £438.99 £91.70

**2.6** £439.00 or more £100.65

**3.** any other non-dependant aged 18 or over for whom deductions are relevant - £15.60.

## **Rates from 6.4.20**

4 Deductions apply where

**1.** non-dependants aged 18 or over are in remunerative work - £102.35

**2.** the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

**2.1** Less than £149.00 £15.85

**2.2** £149.00 to £216.99 £36.45

**2.3** £217.00 to £282.99 £50.05

**2.4** £283.00 to £376.99 £81.90

**2.5** £377.00 to £468.99 £93.25

**2.6** £469.00 or more £102.35

**3.** any other non-dependant aged 18 or over for whom deductions are relevant - £15.85.

## **Rates from 12.4.21**

4 Deductions apply where

**1.** non-dependants aged 18 or over are in remunerative work - £102.85

**2.** the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

**2.1** Less than £149.00 £15.95

**2.2** £149.00 to £216.99 £36.65

**2.3** £217.00 to £282.99 £50.30

**2.4** £283.00 to £376.99 £82.30

**2.5** £377.00 to £468.99 £93.70

**2.6** £469.00 or more £102.85

**3.** any other non-dependant aged 18 or over for whom deductions are relevant - £15.95.

## **Rates from 11.4.22**

8 Deductions apply where

**1.** non-dependants aged 18 or over are in remunerative work - £106.35

**2.** the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

**2.1** Less than £154.00 £16.45

**2.2** £154.00 to £223.99 £37.80

**2.3** £224.00 to £291.99 £51.85

**2.4** £292.00 to £388.99 £84.85

**2.5** £389.00 to £483.99 £96.60

**2.6** £484.00 or more £106.05

**3.** any other non-dependant aged 18 or over for whom deductions are relevant - £16.45.

### **Rates from 10.4.23**

8 Deductions apply where

**1.** non-dependants aged 18 or over are in remunerative work - £116.75

**2.** the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of

**2.1** Less than £162.00 £18.10

**2.2** £162.00 to 235.99 £41.60

**2.3** £236.00 to £307.99 £57.10

**2.4** £308.00 to £409.99 £93.40

**2.5** £410.00 to £510.99 £106.35

**2.6** £511.00 or more £116.75

**3.** any other non-dependant aged 18 or over for whom deductions are relevant - £18.10.

## Appendix 5 : Housing costs - unsafe structural defects

This Appendix contains a list of structural elements that are considered to come within the meaning of unsafe structural defects. But DMs should note that

- 1.** all work connected with items on the list is not automatically entitled to help as an unsafe structural defect, however help may be available under a different repairs and improvement provision.
- 2.** the list is not exhaustive - other work could come within the meaning of the repair of an unsafe structural defect when considered on its merits
- 3.** the costs of survey work reasonably necessary or incidental to the carrying out of actual physical remedial work should be included

### Relevant structural elements

- Foundations, including damp proof courses
- External load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door
- Party floors, excluding any applied finish, bedding or floorboards
- Load bearing roof components, including ceiling joists
- Private balcony floors, excluding any applied finish or bedding
- Communal balconies, excluding handrails, balustrades and any applied finish or fittings
- Communal staircases, excluding handrails, balustrades and any applied finish or fittings
- Internal load bearing walls, columns, beams, slabs, frames and any infill panels, but excluding any applied finish, window, glazed screen or door
- Parapet walls
- Chimney stacks
- Structures on the structure, such as motor rooms and water tank enclosures
- Roof coverings where the section of the roof affected, or the nature of the defect, is such as to require the replacement of all or a significant part of the roof
- Door frames, but not external or internal doors

- Window frames, (but not sashes or glass to windows, which may qualify under a different provision)
- Lift shafts

## **Appendix 6: Housing costs - ineligible service charges - previous rules and guidance**

1 The following guidance explains the changes that were made to the definition of ineligible service charges before 1.4.00. The changes all refer to whether service charges for counselling and other support services fell to be deducted from other housing costs as ineligible service charges.

2 The rules that apply from 1.4.00 onwards are at DMG 23613 et seq.

### **Meaning of ineligible service charges before 18.8.97**

3 Before 18.8.97, a deduction was made from other housing costs for the following ineligible service charges<sup>1</sup>

#### **1. living expenses for**

##### **1.1 meals - including the**

**1.1.a preparation of meals or**

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

##### **1.2 laundry - other than provision of**

**1.2.a premises or**

**1.2.b equipment**

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

##### **1.3 leisure items such as**

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

**1.3.b television rental and licence fees - except television and radio relay charges or**

##### **1.4 cleaning of rooms and windows, except**

**1.4.a where the claimant or any member of their household is unable to clean them or**

**1.4.b where the cleaning is for a communal area or**

##### **1.5 transport or**

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

**3.** provision of an emergency alarm system except where such a system is in accommodation

**3.1** specifically designed or adapted for elderly, sick or disabled people **or**

**3.2** which is particularly suitable for such people, having regard to

**3.2.a** its size

**3.2.b** heating system **and**

**3.2.c** other major features or facilities **or**

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

**4.1** mental disorder

**4.2** mental handicap

**4.3** physical disablement

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

**5.** nursing or personal care - including assistance

**5.1** at meal times **or**

**5.2** with personal appearance or hygiene **or**

**6.** general counselling or other support services, who ever provides those services, except those which

**6.1** relate to the provision of adequate accommodation **or**

**6.2** are provided by the landlord or someone employed by the landlord where a majority of their time is spent providing a service (other than this one) which would be eligible **or**

**7.** charges not specified in **1.** to **6.** but which are not connected with the provision of adequate accommodation.

1 JSA Regs, Sch 2, para 16(2)(b); IS (Gen) Regs, Sch 3, para 17(2)(b); SS (HB) Regs, Sch 1

### **Meaning of ineligible service charges from 18.8.97 to 31.3.00**

4 On 18.8.97<sup>1</sup> the meaning of “ineligible service charges” changed following a Court judgment<sup>2</sup>. The judge noted that in deciding whether charges for general counselling or other support services related to

“the provision of adequate accommodation” (see paragraph 3 **6.**) the phrase

**1.** should be interpreted narrowly

**2.** incorporates only those services that would preserve the condition of the accommodation’s fabric as the landlord undertakes to provide it **and**

**3.** does not encompass dealing with problems about whether the tenant might **3.1** lose the property

**3.1** make a mess of the property **or**

**3.2** aggravate the neighbours.

1 HB (Gen) Amdt (No. 2) Regs 1997, reg 2; DC decision in R v. HB Review Boards for Sutton, Swansea and Ors.

5 From 18.8.97 to 31.3.00, a deduction should be made in respect of charges made for general counselling or other support services, whoever provided those services, **except** those which<sup>1</sup>

**1.** relate to the provision of adequate accommodation **or**

**2.** are provided by

**2.1** the landlord **or**

**2.2** someone employed by the landlord

where a majority of their time is spent providing a service (other than any services eligible under this paragraph or under **3.**) which would be eligible **or**

**3.** are provided to a claimant in supported accommodation by

**3.1** the landlord **or**

**3.2** someone on the landlord’s behalf

and are payable as a condition on which the claimant’s right to occupy the accommodation depends.

1 HB (Gen) Regs

6 “Supported accommodation” means<sup>1</sup> accommodation which was occupied or available for occupation on 18.8.97 and which was at that date and continues to be

**1.** a resettlement place (for persons without a settled way of life) where the landlord is assisted with a grant under certain law<sup>2</sup>

**2.** accommodation provided by

**2.1** a housing authority

**2.2** a registered social landlord<sup>3</sup>

**2.3** a charity

**2.4** a voluntary organization

**2.5** in England - a non-metropolitan county council<sup>4</sup>

**2.6** in Scotland

**2.6.a** a registered housing association **or**

**2.6.b** a recognised body<sup>5</sup>

where care, support or supervision is provided by, or on behalf of, that body to the occupants of that accommodation

**3.** accommodation occupied by HB claimants protected under certain law<sup>6</sup>, who are provided with care, support, or supervision by, or on behalf of, the landlord.

1 HB (Gen) Regs, Sch 1, para 7; 2 JS Act, s 30; 3 Housing Act 1996, Part I; 4 Local Government Act 1972, s 1; 5 Law Reform (Misc Provisions) (Scotland) Act 1990, s 1(7); 6 HB (Gen) Amdt Regs 1995, reg 10(1)(a)

7 Accommodation which would otherwise fall within the meaning of “supported accommodation” may not have been available for occupation on 18.8.97. Treat such accommodation as available for occupation<sup>1</sup> if it was not available solely by reason of temporary closure due to

**1.** refurbishment **or**

**2.** cleansing **or**

**3.** pest control.

1 HB (Gen) Regs, Sch 1, para 7

## Appendix 7: Housing costs - leasehold major works

### Introduction

1 The following guidance explains about the amount of benefit allowed as a housing cost for leasehold residents where their accommodation is modernised under the Decent Homes initiative.

### Background

2 The Decent Homes initiative was extended by the Public Service Agreement in response to a challenge from the government to increase the number of households in the private sector living in decent homes. This includes homes of former LA tenants who have purchased their property under the right to buy scheme.

3 In order to be decent a home should meet the current statutory minimum standard for housing, be in a reasonable state of repair and have reasonably modern facilities and services.

4 The building components that should be in a reasonable state of repair include external walls, roof structure and coverings, windows and doors, heating systems, plumbing and electrics. Modern facilities are indicated by kitchens less than 20 years old and bathrooms less than 30 years old and, for blocks of flats, there should be adequate size and layout of common areas.

5 Landlords are achieving the Decent Homes standard by a programme of regeneration and refurbishment with building works carried out on their leasehold housing stock.

### Costs

6 The cost of the structural work and refurbishments will be charged to leaseholders through service charges. A service charge is, as decided in R(IS) 4/91, a charge which the claimant is obliged to pay in terms of their occupancy agreement for services rendered in terms of that agreement.

7 Some residents may choose to meet their service charge costs by obtaining a home improvement loan. From 6.4.18 these loans can no longer be considered as housing costs (see [ADM memo 8/18](#))

### Service Charge

8 To determine what part of the service charge is eligible to be met as a housing cost the claimant will provide the annual service charge account which should include an itemised breakdown of the total expenditure including the reason that each item or structure has been replaced or refurbished. For example

Items	Major building works	Costs	Unit cost/dwelling	Reason for work
Electrical installations	Replace mains distribution board, rising and lateral mains cables	£13,040	£1,630	Updating old systems and wiring
Rainwater goods	Replace guttering and down pipes	£2,400	£300	Leaking, broken and in disrepair

**Note:** to be representative of different sized dwellings the unit cost may be presented on the annual account as a fraction or a percentage of the total cost.

9 Having identified the amount charged for a year the DM should convert the total costs for the claimant's portion of the refurbishment works into a weekly amount (dividing by 52) and then from that weekly total deduct any ineligible costs. The resulting sum represents the weekly amount of eligible service charge.

### **Ineligible costs**

10 Ineligible costs<sup>1</sup> which should be deducted from the weekly amount arise in three circumstances. These are

1. where the costs are inclusive of any items mentioned in paragraph 6(2) of Schedule 1 to the Housing Benefit regulations 2006 (payments in respect of fuel charges)
2. where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit Regulations 2006 (ineligible service charges) the amount attributable to those ineligible service charges;
3. any amount for repairs and improvements.

*1 JSA Regs, Sch 2, para 16(2); IS (Gen) Regs, Sch 3, Para 17(2);  
ESA Regs, Sch 6, Para 18(2); SPC Regs, Sch 2, para 13(2)*

11 The ineligible charges<sup>1</sup> mentioned in paragraph 10 **1.** above concern payments in respect of fuel charges and are unlikely to arise under the Decent Homes improvements.

*1 HB Regs 06, Sch 1, para 6(2)*

12 There are several ineligible service charges<sup>1</sup>, mentioned in paragraph 10 **2.** above, which includes any charges that are not connected with the provision of adequate accommodation,

however these are unlikely to arise under the Decent Homes improvements.

*1 Sch 1, para 1*

13 “Repairs and improvements”, mentioned in paragraph 10 **3.** above, means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling–

- 1.** Provision of a fixed bath, shower, wash basin, sink or lavatory and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- 2.** Repairs to existing heating systems;
- 3.** Damp proof measures;
- 4.** Provision of ventilation and natural lighting;
- 5.** Provision of drainage facilities;
- 6.** Provision of facilities for preparing and cooking food;
- 7.** Provision of insulation of the dwelling occupied as a home;
- 8.** Provision of electric lighting and sockets;
- 9.** Provision of storage facilities for fuel or refuse;
- 10.** Repairs of unsafe structural defects;
- 11.** Adapting a dwelling for the special needs of a disabled person; **or**
- 12.** Provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 20 who is part of the same family as the claimant.

14 Commissioners have addressed some of the issues encountered when determining the eligible and ineligible aspects of the service charge. The Commissioners have decided that:

- 1.** the upkeep/maintenance of communal pathways, gardens<sup>1</sup>, repair of a lift and repointing of brickwork are all connected with the provision of adequate accommodation. The costs of a car park barrier, a car park attendant<sup>2</sup>, the installation of a pergola and the repair of a clock tower are all connected with the provision of adequate accommodation.

2. works which are to be funded out of the service charge can be for the avoidance of the need for the repair of unsafe structural defects. For example, timely replacement of slackening roofing tiles will prevent the roof timbers becoming rotted to the point of collapse through water penetration<sup>3</sup>.
3. where there are windows there is natural light already and no need to provide it<sup>3</sup>.
4. provision is something not already in existence or the replacement of something which no longer functions<sup>3</sup>.
5. re-pointing is not a damp proof measure, redecoration is not a repair or improvement and so their associated costs are not deducted from the service charge<sup>4</sup>.
6. by preventing the entry of rainwater a roof may prevent damp, damp proofing may not be the predominant purpose of a roof and although a roof repair might have the predominant purpose of preventing damp a roof renewal would not<sup>5</sup>.

*1 CIS/1496/95; 2 CIS/2205/0; 3 R(IS)2/07; 4 CIS/667/02; 5 CIS/2132/98*

15 The final weekly amount of the service charge is then attributed to a 52 week period from the date the liability arose<sup>1</sup>.

**Note:** the attribution period for this service charge is independent of any prior service charge that is already in payment so the dates are unlikely to be the same.

*1 JSA Regs, Sch 2, para 16(3); IS (Gen) Regs, Sch 3, Para 17(3);  
ESA Regs, Sch 6, Para 18(3); SPC Regs, Sch 2, para 13(3)*

### **Example**

The leasehold residents of a 2 storey flat complex have had their building modernised under the Decent Homes programme at a cost of £90,400, the work involved the prudent renewal of the communal electrical wiring, windows and doors, the lift, replacing all the roof tiles, external redecoration, the perimeter fencing and the upgrading of the roof space insulation. The costs are levied as a service charge and each of the 8 residents are required to contribute an appropriate share of the costs. In this case each persons share of the costs amounted to £11,300 which comprised of £1,100 for wiring, £2,800 for windows and doors, £2,000 for lift renewal, £3,200 for roof tiles, £500 towards redecoration, £900 for fencing and £800 towards insulation.

Resident 1, Juliet, is liable for the service charge (she does not obtain a loan to meet the

service charge). The DM decides that the £11,300 is a service charge<sup>1</sup> and that this converts to a weekly amount of £217.31 a week (£11,300 divided by 52). From the weekly amount there should be deducted the costs of any works considered to be not connected with the provision of adequate accommodation or a repair or improvement. The DM considers that all the works are connected with the provision of adequate accommodation (therefore there is nothing to deduct as described by paragraph 10 **2.** above). The DM considers the roof renewal is not a damp proof measure<sup>2</sup> and therefore not a repair or improvement, the rewiring is not the provision of electrical lighting or sockets<sup>3</sup> and not a repair or improvement, the replacement of windows and doors is not the provision of natural lighting or ventilation<sup>4</sup>, the upgrading of roof space insulation with better rated material is not the provision of insulation and neither redecoration<sup>5</sup>, the lift replacement, nor fencing are included in the exhaustive list of potential repair or improvements. As there is nothing in the works to indicate that what is contemplated is anything more than the prudent renewal of protective decoration or the replacement of potentially unserviceable items with similar items, then there is nothing that is a repair or improvement (as described by paragraph 10 **3.** above) and therefore nothing to deduct. The cost of the building works is met in full giving a housing cost service charge of £217.31 a week.

*1 R(IS) 4/91; 2 CIS/2132/1998; 3 CSJSA/160/98; 4 CIS/2901/04; 5 CSJSA/106/98*

## Typical repairs

16 The following table contains a list of some of the typical building repair and refurbishments carried out on leasehold accommodation under the decent homes initiative including corresponding columns highlighting eligibility where the costs are met by either a loan or a service charge.

Typical repairs		service charge
<b>Roof</b>	a. Major Repair	No
	b. Renewal	Yes
	c. Replacement	Yes
	d. Chimney stack repairs	Yes
<b>Roof safety</b>	This may include fitting roof safety rails, or roof safety harness's,	Yes

allowing regular inspection and maintenance

<b>Insulation</b>	a. Roof insulation	Yes if not provision
	b. Wall insulation	
<b>Building frame repairs</b>	a. Cladding to the exterior of the building to prevent damage to the structure, insulates protects building from the elements	Yes
<b>Concrete repairs</b>	This may include cleaning, painting and protective coating, or repairs (including the concrete frame)	Yes
<b>External walls</b>	a. Brickwork cleaning	Yes
	b. Repairs to brickwork, pointing, repairs to rendered surfaces	Yes
	c. Replace wall ties	Yes
<b>Balcony walkways</b>	a. Repairs to balcony balustrades and handrails	Yes
	b. Repairs to common walkways and balconies	Yes
<b>Windows</b>	a. Replacement	Yes
	b. Replacement of single glaze with double glaze	Yes
<b>Communal doors</b>	a. Repair and replacement of communal doors, ensuring compliance with fire regulations	Yes
<b>External redecoration</b>	Carry out the redecoration to all external elements of the existing fabric of the building, including use of anti-graffiti paint where appropriate	Yes
<b>Communal area repairs &amp; decoration</b>	a. Carry out redecoration of all communal internal areas including corridors and stairways, using fire retardant and/or anti-graffiti paint where appropriate	Yes
	b. Replacement of communal flooring	Yes
<b>Rainwater goods</b>	a. Repair/replace guttering and down pipes	Yes if not provision
<b>Drains</b>	a. Rod and Jetting wash through all existing drainage and inspection chambers	Yes

	b. Replace communal waste/soil pipes	Yes if not provision
	c. Major repairs or replacement	
<b>Electrical Installations</b>	a. Replace mains distribution board	Yes
	b. Replace rising and lateral mains cables	Yes
	c. Replace bulk head lighting to communal staircases & balcony soffits	Yes if not provision
	d. Replace communal corridor lighting	
<b>TV aerial</b>	a. Replace analogue aerial with digital, may include replacing cabling serving all units	Yes
	b. Installation of satellite dish to receive additional channels	Yes
<b>Ventilation</b>	a. Maintenance and cleaning of communal shafts & flues	Yes
	b. Replace communal extractor fans	Yes if not provision
<b>Entry Systems and Access</b>	a. Installation or renewal of entry systems, which may include cabling and handsets in each property	Yes
	b. Works to comply with Disability Discrimination Act	Yes
<b>Damp works</b>	All methods of damp proofing, which may include:-	
	a. Insertion of chemical damp proof course	No
	b. Laying a waterproof membrane on the basement floor	No
<b>Refuse/recycling systems</b>	a. Replacement or repair of refuse/recycling systems and or hopper heads	Yes if not provision
<b>Bin chambers</b>	a. Repairs to communal bin chambers	Yes

<b>Lifts</b>	a. Replacement of lift car, control panel and components	Yes
	b. Replace lift motor room equipment	Yes
	c. Major overhaul	Yes
	d. Installing lifts and shafts	Yes
	May include:-	
<b>Dry rot works</b>	a. Chemical treatment of problem areas	Yes
	b. Replacement of structural timbers such as joists	No
	May include:-	
<b>Water pumps</b>	a. Installation of pumps due to reduced water mains pressure	Yes
	b. Replacement of an existing pump	Yes
<b>Water supply</b>	a. Replacement of the water main serving the building	Yes
	b. Replacement of communal water tanks	Yes
<b>Fire safety</b>	a. Install, repair or replace communal fire detection systems	No
	b. Installation or renewal of smoke detectors	No
	c. Replacement of dry risers to tower blocks (essential part of fire fighting)	Yes
	d. Install, repair or replace fire escapes	Yes
<b>Lightning protection</b>	a. Installation or replacement of lightning conductor	Yes
<b>Asbestos removal</b>	a. Removal of asbestos under controlled conditions	Yes
<b>Communal Heating</b>	a. Major overhaul or replacement of communal heating systems or individual elements	No
	b. Installation of communal heating systems	Yes

	a. Estate lighting	Yes if not provision
	b. Controlled access and security	Yes
<b>Estate works</b>	c. Repairs to estate roads or paths	Yes
	d. Provision and refurbishment of recreational areas	Yes
	e. Landscaping	Yes
	f. Boundary walls and fences	Yes
	Costs essential to the works, which may include	
	Surveys	Yes
<b>Associated costs</b>	Preliminaries e.g. site set up costs	Yes
	Fees	Yes
	Access equipment e.g. scaffolding	Yes
	Health and safety	Yes

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**

## Appendix 8: Transitional End day

### [Introduction](#)

### [Loan offer made before 6.4.18](#)

### [Loan offer made on or after 6.4.18](#)

### [Persons who lack capacity - identified before 6.4.18](#)

#### **Introduction**

1. From 6.4.18 the regulations which provide for entitlement to payments in respect of loans and loans for repairs and improvements<sup>1</sup> within the IS, JSA(IB), ESA(IR) and SPC regulations are omitted<sup>2</sup>. As a result these SMI payments will no longer be met through those benefits. Payment towards other housing costs, for example, service charges, will continue. Certain transitional arrangements are in place for existing claimants whose housing costs can continue to be met (beyond 6.4.18) but only until the transitional end day<sup>3</sup>

1 IS Gen Regs, reg 17(e) & 18(1)(f); JSA Regs, reg 83(f) & 84(1)(g) & 86A; ESA Regs, reg 67(1)(c) & 68(1)(d); SPC Regs, Sch II, Para 1(1)(b) & 1(2)(c) & 8, 9, 11, 12; 2 LMI Regs, reg 18 3. reg 19

#### **Loan offer made before 6.4.18**

2. Where the loan offer is made before 6.4.18 the transitional end day will be the earlier of

1 the day described at paragraph 3 below **or**

2 the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>

**Note:** the following paragraphs contain detailed options. DMs should be vigilant when establishing the transitional end day.

*1 LMI Regs, reg 19(1)*

3. For the purposes of paragraph 2.1 the day referred to is the later of

1 for claimants of IS, JSA(IB), ESA(IR) or SPC, where 6.4.18 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after 6.4.18 **or**

2 the day immediately following the day which is the earliest<sup>1</sup> to occur of the following

2.1 the day the DM receives notification that the claimant does not wish to accept the offer of loan payments **or**

2.2 where the DM

2.2.a receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day described in paragraph 9 below **or**

2.2.b has not received the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

**Note:** The loan payments offer date is the day on which the loan agreement is sent to the claimant<sup>3</sup>.

**Example:**

William is in receipt of IS that includes owner-occupier payments, his benefit week ends each Wednesday. The transitional end day is Thursday 12 April (the day after the first benefit week that ends after 6.4.18). From this date William is no longer entitled to mortgage payments but he will get loan payments from this date (because he had returned all the appropriate signed documents).

*1 LMI Regs, reg 19(2); 2 reg 19(3); 3 reg 2(1)*

4. For the purposes of paragraph 3.2.2.a the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received<sup>1</sup>.

*1 LMI Regs, reg 19(3)(b)*

**Loan offer made on or after 6.4.18**

5. Where the loan offer does not occur before 6.4.18 the transitional end day will be the earlier of

1. the day described at paragraph 6 below **or**

2. the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>

3. the day immediately following the day the DM receives notification that the claimant does not wish to receive loan payments<sup>1</sup>.

6. For the purposes of paragraph 5.1 the day referred to is

1. 7.5.18<sup>1</sup> **or**

2. where the loan payments offer date is before 7.5.18 **and**

2.1 the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2.2 the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>2</sup>.

Note: Where the day described in paragraph 2.1 or 2.2 above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date<sup>2</sup>

1 LMI Regs, reg 19A(2)(a); 2 reg 19A (2)(b)

7. For claimants of IS, JSA(IB), ESA(IR) or SPC, where 7.5.18 or the day described at paragraph 5.3 is not the first day of the claimants benefit week, the first day of the first benefit week that begins after that day<sup>1</sup>

**Note:** The loan payments offer date is the day on which the loan agreement is sent to the claimant.

1 LMI Regs, reg 19A(3)

8. Where

1 before 19.3.18 the DM has asked the claimant to provide information needed to

1.1 establish whether the claimant wishes to receive an offer of a loan payment or

1.2 be able to send the loan agreement and associated documents and

2 the claimant has not provided that information

then the preceding paragraphs 5 to 7 do not apply and the support for mortgage interest regulations are removed, subject to paragraph 9, from 6.4.18<sup>1</sup>.

1 LMI Regs, reg 19A(4)

9. Where paragraph 8 applies (and this is not because the claimant lacks capacity) and the 6.4.18 is not the first day of the claimants benefit week then the removal of the owner occupier payments from benefit entitlement is effective from the first day of the first benefit week that begins after that date<sup>1</sup>.

*1 LMI Regs, reg 19A(5)*

### **Persons who lack capacity – identified before 6.4.18**

10. Where, before 6.4.18 the DM

1 is satisfied that the claimant lacks capacity to make some or all the decisions about entering into the loan agreement. **or**

2 suspects that the claimant may lack such capacity

then claimants who are already getting owner-occupier payments will continue to benefit from owner-occupier payments until the date specified below<sup>1</sup>.

*1 LMI Regs, reg 20(1)*

11. The date referred to in paragraph 10 falls on the day that is the earlier of

1 the day described in paragraph 12 or paragraph 14 **or**

2 the day immediately following the day on which entitlement to a qualifying benefit ends<sup>1</sup>.

*1 LMI Regs, reg 20(2)*

12. For the purposes of paragraph 11.1 that day is the later of

1 5.11.18 **or**

2 where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5.11.18 the DMs suspicion becomes belief, the day immediately following the last day of a period of 6 weeks beginning with the day the DM formed that belief<sup>1</sup> **or**

3 where an application for a decision of a type described in the Note below is made before the later of

3.1 5.11.18 **or**

3.2 the day prescribed in paragraph 12.2

the relevant day is the day immediately following<sup>2</sup>

3.2.a the last day of a 6 week period beginning with the day on which a relevant person (see Note below) makes a decision **or**

3.2.b the last day of a 6 week period beginning with the day on which the relevant person receives notification that the application for such a decision is withdrawn<sup>3</sup>.

*1 LMI Regs, reg 20(3)(b); 2 reg 20(3)(c); 3 reg 20(4)*

**Note:** In England and Wales the relevant person is the Court of Protection or Public Guardian and the decision they need to determine would concern registering a lasting power of attorney, appointing a deputy or making an order in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement. In Scotland the relevant person is the Sheriff or Court of Session and the decision they need to determine would concern the making of an intervention order, the appointment of a guardian or the appointment of a judicial factor in order that someone has the power to act on the claimant's behalf in respect of entering in the loan agreement<sup>1</sup>.

*1 LMI Regs, reg 20(7); Adults with Incapacity(Scotland) Act 2000, s 53; Judicial Factors Act 1849; Mental Capacity Act 2005; s16(2);*

### **Example 1**

Bert receives SPC which includes an amount towards his mortgage interest. On 2 April his daughter Rosie advises that Bert has dementia and she has an enduring power of attorney, dated December 2017. Bert therefore lacks capacity to make any decisions about the loan payment offer notification he received in January. The transitional end date for Bert is the 5.11.18, the later of the dates outlined in paragraph 12.3, which is the earlier of the dates in paragraph 11. Owner occupier payments will continue until that date.

### **Example 2**

Ernest receives SPC which includes an amount towards his mortgage interest. In March his son Jim advises that Ernest has dementia and is unlikely to have capacity to make any decisions about applying for a loan payment and advises that he has recently applied to be appointed as a Financial Deputy. Owner occupier payments continue. On 30.10.18 Jim advises the DM that he has been appointed. The transitional end date for Ernest is 6 weeks after that determination which in this particular case is 11.12.18, at which point the owner occupier payments end. As all the appropriate loan payment application forms had been returned Ernest now has entitlement to a loan payment.

13 Where more than one application for a decision (as described in the Note to paragraph 12) is made within the intervening period cited at 12.3 then the periods described in paragraph 12.3 do not start to run until the relevant person has decided the last application or that all the applications are withdrawn<sup>1</sup>. Similarly where there is one application for a decision referred to in the Note but it is made within the intervening period to more than one relevant person then the day will be the later of the days<sup>2</sup>.

14 Where, before 6.4.18, the DM suspects the claimant lacks capacity but prior to 5 November the DM's suspicion becomes a belief that the claimant does not in fact lack capacity then the relevant day is the day immediately following the earlier of

1 the day described in paragraph 15 **or**

2 the day on which the DM is notified that the claimant does not wish to receive loan payments<sup>1</sup>

*1 LMI Regs, reg 20(8)*

15 For the purposes of paragraph 14.1 the relevant day is the earlier of

1 where the DM receives the fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, then the day referred to is the last day of a 4 week period where that period begins on the day the fully completed loan agreement and associated documents are received **or**

2 where the DM has not received a fully completed loan agreement and appropriate documents within the period of 6 weeks beginning with the loan payments offer date, the day on which that 6 week period ends<sup>1</sup>.

**Note:** Where the day described in paragraph **1. or 2.** above is not the first day of the claimant's benefit week, the day referred to here is the first day of the first benefit week that begins after that date<sup>1</sup>.

*.1 LMI Regs, reg 20(9)*

16 For claimants of IS, JSA(IB), ESA(IR) or SPC, where 5.11.18 or the day described at paragraph 14.2 or paragraph 15 is not the first day of the claimant's benefit week, the first day of the first benefit week that begins after that day<sup>1</sup>.

*1 LMI Regs, reg 20(10)*



# Appendix 9 - Dependants personal allowance

[Exceptions](#)

[Multiple births](#)

[Adoptions](#)

[Non-parental caring arrangements](#)

[Non-consensual conception](#)

[Continuation of existing exception](#)

[Order of children](#)

## Exceptions

1. There are 5 categories that fall into the exceptions, and for whom a child personal allowance will be payable<sup>1</sup>

1. multiple births (paragraph 2)
2. adoptions (paragraph 3 - 4)
3. non-parental caring arrangements (paragraph 5-6)
4. non-consensual conception (paragraph 7 -9)
5. continuation of existing exception (paragraph 10)

1 The Social Security (Restrictions on amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 reg 5& 6

## Multiple births

2. An exception applies where

1. the claimant is a parent (other than an adoptive parent) of the child **and**
2. the child was one of two or more children born as a result of the same pregnancy **and**

3. the claimant is responsible for at least two of the children born as a result of that pregnancy **and**

4. the child is not the first in the order of multiple birth children established under paragraph 11.

## **Adoptions**

### **3 An exception applies where**

**1.** the child or young person has been

**1.1** adopted by **or**

**1.2** placed for adoption with

the claimant under legislation.

4. The exception at paragraph 3 does not apply where the claimant or, if the claimant is a member of a couple, the other member

1. was immediately prior to the child's adoption, a step parent of the child **or**

2. has at any time been a parent of the child **or**

3. adopted the child under a convention adoption order or an external adoption **or**

4. had already adopted the child under the law of any country or territory outside the British Islands

## **Non-parental caring arrangements**

### **5 An exception applies where the claimant is**

1. a friend or family carer of the child **or**

2. responsible for a child who is also a parent of a child<sup>1</sup>.

*1. UC Regs, Sch 12, para 4*

**Example:** Kevin and Penny have two children Jack aged 10 and Jill aged 15, Jill's son Alex is born on 20.12.17. As Kevin is responsible for Jill (who is the parent of Alex) he is entitled to a child allowance for Jack and Jill and also for Alex (under the UC non-parental caring exception criteria)

6. For the purposes of paragraph 5.1 the term friend or family carer means a person who is responsible for the child, but is not that child's parent or step parent **and**

1. is named in a child arrangements order, under legislation<sup>1</sup>, as a person with whom the child is to live **or**

2. is a guardian or special guardian<sup>2</sup> of the child **or**

3. is entitled to a guardian's allowance<sup>3</sup> in respect of that child **or**

4. in Scotland

4.1 has a kinship care order<sup>4</sup> in respect of that child

4.2 is a guardian<sup>5</sup> of that child

4.3 one or more of the parental responsibilities or parental rights<sup>6</sup> are vested by a permanence order made in respect of that child under legislation<sup>7</sup> **or**

5. fell within any of the above (1. to 4.) immediately prior to the child's 16<sup>th</sup> birthday and has since continued to be responsible for that child<sup>8</sup> **or**

6. has taken care of the child in circumstances in which it is likely that child would otherwise be looked after by a local authority<sup>9</sup>.

**Note:** the family carer should provide evidence from a social worker to support the declaration that the child would otherwise be looked after by a local authority.

*1 Children Act 1989, s8; 2 s5 & s14A; 3 C & B Act, s77; 4 Children and Young People (Scotland) Act 2014, s72(1); 5 Children (Scotland) Act 1995, s7; 6 s1 or 2; 7 Adoption and Children (Scotland) Act 2007, s80; 8 UC Regs, Sch 12, para 4(2)(g); 9 para 4(2)(h)*

## **Non-consensual conception**

7. An exception applies where

1. the claimant is the child's parent **and**

2. the DM determines (see paragraph 9) that

2.1. the child is likely to have been conceived as a result of sexual intercourse to which the parent did not agree by choice or did not have the freedom and capacity to agree by choice **and**

2.2. the parent is not living at the same address as the other party to that sexual intercourse<sup>1</sup>.

**Note:** For **2.2** the DM should accept the claimant's statement if it confirms that they were not living at the same address as the other party.<sup>2</sup>

*1 UC Regs, Sch 12, para 5(1); 2 para 5(4)*

8 The freedom or capacity to agree by choice, as prescribed at paragraph **7.2.1** includes, at or around the time the child was conceived, such circumstances in which

1. the parents were personally connected **and**

2. one parent was repeatedly or continuously engaging in behaviour towards the other parent that was controlling or coercive **and**

3. that behaviour had a serious effect on the recipient.<sup>1</sup>

**Note 1:** the parents are personally connected if they are in an intimate personal relationship with each other or they were living together and were members of the same family or they were living together and have previously been in an intimate personal relationship with each other<sup>2</sup>.

**Note 2:** the behaviour will have had a serious effect where it causes fear, on at least two occasions, that violence will be used against the parent or it causes serious alarm or distress which has a substantial adverse effect on the parent's day to day activities<sup>3</sup>.

*1 UC Regs, Sch 12, para 5(2); 2 para 5(5); 3 para 5(6)*

9. The DM can only make the determination described at paragraph **7.2.1** where

1. a parent provides evidence (that evidence will probably take the form of a completed pro forma) from an approved person that show

1.1 they had contact with that approved person or another approved person **and**

1.2 their circumstances are consistent with those of a person to whom **1.** and **2.1** of paragraph 7 would apply **or**

2. there has been

**2.1** a conviction for an offence of rape under legislation<sup>1</sup>

**2.2** a conviction for an offence of controlling or coercive behaviour in an intimate or family relationship under legislation<sup>2</sup>

**2.3** a conviction for any offence under the law of a country outside GB that the DM considers to be comparable to either offence mentioned above

**2.4** an award under the Criminal Injuries Compensation Scheme in respect of a relevant criminal injury

and the DM considers it likely that the offence or injury (**2.1** to **2.4** above)

**2.5** was caused by one parent or

**2.6** diminished the other parents freedom or capacity to agree to the sexual intercourse

which resulted in the conception of the child<sup>3</sup>.

**Note 1:** no time limit is placed on when the report needs to be made to the approved person after the actual incident that resulted in the pregnancy, in order to be eligible for the exception.

**Note 2:** There is no requirement to provide evidence from an approved person where the DM is satisfied that the same evidence had already been provided to HMRC in relation to a CTC exception.<sup>4</sup>

*1 Sexual Offences Act 2003, s1 & Sexual Offences (Scotland) Act 2009, s1; 2 Serious Crime Act 2015, s76; 3 UC Regs, Sch 12, para 5(3); 4 UC (TP) Regs, reg 42(2)*

## **Continuation of existing exception**

**10 The DM does not have to consider whether the claimant falls within the continuation exception<sup>1</sup> because it envisages breaks in a claim and any such previous break in the claimant's entitlement would have removed access to any and all child allowances.**

## **Order of children**

11 Disregarding any child or qualifying young person who falls into one of the exceptions in paragraphs 2 to 10 above, or those born before 6.4.17, the order of children or qualifying young persons in the claimant's household is established by reference to their date of birth, taking the earliest date first<sup>1</sup>.

*1UC Regs, reg 24B (1)*

12. Where the same date is established, under paragraph 11 above, in relation to two or more children or qualifying young persons for whom the claimant is responsible, the order of the children or qualifying young people in the claimant's family should be determined by the DM to ensure the greatest number of children qualify for the child allowance<sup>1</sup>

*1 UC Regs, reg 24B(2)*