

**MISCELLANEOUS CHANGES TO THE INCOME RELATED  
BENEFITS - OCTOBER 2009**

**DEEMED INCOME FROM CAPITAL - SPC**

<b>Contents</b>	<b>Paragraphs</b>
Introduction	1 - 2
The changes	3
Service users	4 - 7
Students	8 - 9
Young people	10
Disregards for earnings	
Retainers	11
Disregards for income other than earnings	
Payments from the armed forces and reserve forces compensation scheme	12
Payments in Scotland by a local authority towards the maintenance of a child	13
Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance	14 - 16
Housing Costs	
Entitled because of a lower child support maintenance assessment	17
Income support conditions of entitlement	
Prescribed categories of person	18
Definitions for ESA	19
Work-focused interviews and ESA	20
ESA and absence abroad to receive medical treatment	21

Defective claims to ESA and SPC	22
Disregard of child maintenance and the treatment of liable relative payments	
The child maintenance disregard	23 - 25
Liable relative payments	26 - 30
Period over which a non-periodical liable relative payment should be taken into account	31 - 32
Periodical payments and any other payment made by a liable relative	33 - 39
Payments not treated as liable relative payments	40 - 41
SPC and deemed income from capital	42
Annotations	
Contacts	

## INTRODUCTION

- 1 This memo provides guidance for DMs on the changes to IS, JSA, ESA and SPC legislation introduced by the Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (SI 2009/2655). The changes take effect from
1. 26.10.09<sup>1</sup> for paragraphs 8 - 10, paragraphs 17 - 18 and paragraphs 20 - 22 **and**
  2. the first day of the first benefit week on or after 26.10.09<sup>2</sup> for paragraphs 4 - 7, paragraphs 11 - 16 and paragraph 19 **and**
  3. the first day of the first benefit week on or after 12.4.10<sup>3</sup> with regard to the amendments to the treatment of child maintenance and LRPs (see paragraphs 23 - 41).

*1 Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009, reg 1(1); 2 reg 1(2); 3 reg 1(6)*

- 2 Guidance is also provided on changes to SPC and deemed income from capital introduced by the Social Security (Deemed Income from Capital) Regulations 2009 (SI 2009/1676). This change takes effect from 2.11.09<sup>1</sup> (see paragraph 42).

*1 Social Security (Deemed Income from Capital) Regulations 2009, reg 1*

## THE CHANGES

- 3 The changes described in this memo
  1. provide a disregard for expenses incurred by service users and exempts income associated with service users from the notional income rules
  2. amend from April 2010 the calculation for determining how to take account of some non-periodical LRPs and provide for a complete disregard for payments of child maintenance
  3. provide for a new prescribed category for entitlement to IS
  4. make a change to the time limits to correct a defective claim to ESA and SPC
  5. make amendments to some income disregards
  6. amend the rules in ESA regarding good cause for failure to attend a WFI and the rules regarding absence abroad to receive medical treatment
  7. amend from November 2009 the deemed income from capital limits for SPC
  8. make some other minor amendments.

## SERVICE USERS

- 4 A service user group means<sup>1</sup> any group of individuals that is consulted under certain legislation<sup>2</sup> by or on behalf of
  1. in Scotland a Health Board, Special Health Board or Agency **or**
  2. a landlord authority **or**
  3. a public authority **or**
  4. a best value authority **or**
  5. in Scotland an LA landlord or registered social landlord **or**
  6. a relevant English or Welsh health body **or**
  7. a Local Health Board in Wales **or**
  8. the Commission or the Office of the Health Professions Adjudicator **or**

9. the regulator or registered provider for tenants and social landlords **or**
10. an LA or public authority in GB as a result of a function provided for under an enactment

for the purposes of monitoring and advising on the policies affecting and services provided to users or potential users of those services.

**Note 1:** A public authority includes any person whose functions include functions of a public nature<sup>3</sup>.

**Note 2:** An enactment includes legislation made in or under an Act of the Scottish Parliament<sup>4</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SPC Regs, reg 1(2); ESA Regs, reg 2(1); 2 NHS (Scot) Act 78, s 2B; Housing Act 1985, s 105; Disability Discrimination Act 1995, s 49A; Local Government Act 1999, s 3; Housing (Scotland) Act 2001, s 53; National Health Service Act 2006, s 242; National Health Service (Wales) Act 2006, s 183; Health and Social Care Act 2008, s 4, 5 or 108; Housing and Regeneration Act 2008, s 98, 193 or 196; 3 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SPC Regs, reg 1(2); ESA Regs, reg 1(2); 4 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SPC Regs, reg 1(2); ESA Regs, reg 2(1)*

- 5 Any payment in respect of expenses received by a person participating in a service user group is not treated as earnings for the purposes of determining income for IS, JSA(IB), SPC or ESA(IR)<sup>1</sup>. These expenses are income other than earnings but are disregarded when calculating the claimant's income<sup>2</sup>.

*1 JSA Regs, reg 98(2)(h); IS (Gen) Regs, reg 35(2)(f); SPC Regs, reg 17A(3)(f); ESA Regs, reg 95(2)(f); 2 IS (Gen) Regs, Sch 9, para 2A; JSA Regs, Sch 7, para 2A; ESA Regs, Sch 8, para 2A*

### **Example 1**

Asif is an out-patient at his local hospital and attends there on a regular basis for treatment. He is in receipt of ESA(IR). Asif has volunteered to take part in a Patients' Forum which discusses the services and care provided by the hospital. In order to attend the meetings, Asif needs to get a taxi. The expenses for this transport are paid to him by the local Health Trust. The DM decides that the expenses are not earnings and can be disregarded as income other than earnings when calculating Asif's entitlement to ESA(IR).

### **Example 2**

Donna is in receipt of IS. She has volunteered to take part in a service user group at her local hospital. In order to attend, Donna needs a carer to take her there. The transport expenses that Donna's carer incurs taking her to the service user meeting

are reimbursed to Donna by the hospital. The DM disregards these expenses when calculating Donna's entitlement to IS.

- 6 Payments other than expenses received for taking part in a service user group should be treated as earnings<sup>1</sup> for IS, JSA(IB), SPC and ESA(IR) and be attributed in the usual way with the appropriate weekly disregards. DMs will also need to consider whether the remunerative work rule applies (see DMG Chapters 20 and 41).

*1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1); SPC regs, reg 17A(2); ESA Regs, reg 95(1)*

### **Example**

Jenny is in receipt of JSA(IB). She is involved in a tenants association which discusses LA housing issues. In return for attending the meetings, Jenny receives £20 from the LA. The DM decides that the payment is a payment of earnings and falls to be taken into account when calculating Jenny's entitlement to JSA(IB). The payment is subject to the normal weekly earnings disregards.

- 7 The rules on notional income for IS, JSA(IB), SPC and ESA(IR) do not apply to payments of expenses or earnings paid as a result of a claimant's participation in a service user group<sup>1</sup>. Where a DM might normally consider treating a claimant as possessing income which he doesn't actually have, such as in cases of

1. deprivation of income for the purposes of securing entitlement to benefit or increasing the amount of benefit payable
2. income upon application
3. income due but not paid
4. income paid to or in respect of a third party
5. notional earnings

then this will not apply where the possible income in question is payment arising from participation in a service user group.

*1 JSA Regs, reg 105(15A); IS (Gen) Regs, reg 42(8ZA); SPC Regs, reg 18(7A); ESA Regs, reg 106(9), reg 107(8) & 108(5)*

### **Example 1**

Billy is in receipt of ESA(IR). He is also a member of a Patients' Forum which discusses services offered by the local NHS Trust. Billy catches the bus to attend the meetings. Although he is offered a payment by the Patients' Forum to reimburse him

for his bus fares, Billy declines to take the payment. The Patients' Forum also offers to pay Billy a sum of money in recognition of his participation at the Forum. Again, Billy declines to accept the payment. The DM decides that the question of notional income does not arise because the possible income in question payments arising from participation in a service user group.

### **Example 2**

Fiona is in receipt of IS. She attends meetings organised by her LA to discuss the services provided by the LA. Other attendees receive payment for attending the meetings but Fiona does not. The DM decides that the question of notional earnings does not arise because the possible income in question is earnings arising from participation in a service user group.

## **STUDENTS**

- 8 DMG 30211 gives guidance on the prescribed categories of person<sup>1</sup> who are eligible for IS during the period of study and includes reference to the Adult Learning Option. This scheme ceased in September 2008 so references to it are to be removed.

*1 IS (Gen) Regs, reg 4ZA(3)*

- 9 The definition of "access funds" has been updated to refer to the correct legislation and to remove the reference to "Learner Support Funds"<sup>1</sup>. Guidance at DMG 30088 and DMG 51828 will be amended to reflect the changes.

*1 reg 61(1); JSA Regs, reg 130; ESA Regs, reg 131(1); F & HE Act 92, s 68*

## **YOUNG PEOPLE**

- 10 Certain young people are entitled to JSA(IB) at the end of the CHB extension period. Legislation has been amended<sup>1</sup> to align the treatment of young persons who are estranged from their parents and who have been discharged from detention with other provisions so the period of entitlement begins on the date of discharge rather than the day after.

*1 JSA Regs, reg 60(2)(b)*

## DISREGARDS FOR EARNINGS

### Retainers

- 11 The working age income-related benefit regulations were amended from October 2007 to ignore certain final earnings such as holiday pay and pay in lieu of notice, however, retainers continued to be taken into account in the normal way. Legislation has now been clarified<sup>1</sup> to ensure that retainer payments include statutory guarantee payments and payments made where a person has been suspended on medical or maternity grounds. These payments should not be disregarded.

*1 JSA Regs, Sch 6, para 1; IS (Gen) Regs, Sch 8, para 1 & 2; ESA Regs, Sch 7, para 1 & 2*

## DISREGARDS FOR INCOME OTHER THAN EARNINGS

### Payments from the armed forces and reserve forces compensation scheme

- 12 DMG 28161 - 28162, DMG 51090 - 51091 and DMG 85214 - 85215 provide guidance on the treatment of guaranteed income payments for IS, JSA(IB), ESA(IR) and SPC. From the date at paragraph 1 **2.** of this memo that guidance is amended to cater for situations where a guaranteed income has been abated, either in part or completely so that where
1. a claimant is entitled to a guaranteed income payment **and**
  2. that payment has been reduced to less than £10 a week by abatement due to a pension from the Armed Forces Pension Scheme or a payment under the Armed Forces Early Departure Scheme<sup>1</sup>

the claimant can still have a full £10 disregard on the guaranteed income payment and the pension<sup>2</sup>.

*1 Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, article 31(1)(a); 2 JSA Regs, Sch 7, para 17(d); IS (Gen) Regs, Sch 9, para 16(cc); SPC Regs, Sch IV, para 1(cc); ESA Regs, Sch 8, para 17(d)*

### Payments in Scotland by a local authority towards the maintenance of a child

- 13 DMG 28204 and DMG 51217 provide guidance on the treatment of payments by LAs for children subject to a residence order when calculating income other than earnings for IS, JSA(IB) and ESA(IR). The disregard has been amended to include payments

made in Scotland in respect of children subject to a residence order or where a child in Scotland is living with an adult who is not their parent or foster carer<sup>1</sup>.

*1 JSA Regs, Sch 7, para 26(1)(ba); IS (Gen) Regs, Sch 9, para 25(1)(ba); ESA Regs, Sch 8, para 26(1)(b)*

### **Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance**

14 DMG 28678 - 28679 and DMG 51604 - 51605 provide guidance for IS and ESA(IR) on the disregard of certain third party payments which the claimant is treated as possessing under the notional income rule.

15 JSA(IB) legislation is amended so that there is a matching disregard for JSA claimants. This means that a payment is disregarded<sup>1</sup> if it is

1. made for

1.1 after-care under specified legislation<sup>2</sup> **or**

1.2 accommodation or welfare services referred to in specified legislation<sup>3</sup>  
**and**

2. treated as possessed under the notional income rule at DMG 28676<sup>4</sup>.

*1 JSA Regs, Sch 7, para 64; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25;*

*3 NA Act 48, Part III; SW (Scot) Act 68; 4 JSA Regs, reg 105(11)*

16 Payments that satisfy DMG 28678 include payments or reimbursements by a LA for

1. persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**

2. expectant and nursing mothers<sup>1</sup>.

*1 NHS and Community Care Act 1990, s 42; NA Act 48, s 21(1)*

## **HOUSING COSTS**

### **Entitled because of a lower child support maintenance assessment**

17 Claimants should be treated as continuously in receipt of JSA(IB), ESA(IR) or IS where<sup>1</sup>

1. they regain entitlement to JSA(IB), ESA(IR) or IS because of a lower maintenance assessment which
  - 1.1 replaced an interim maintenance assessment **or**
  - 1.2 was due to a change in child support law **and**
2. they have care of a child **and**
3. they had qualified for 100% housing costs before JSA(IB), ESA(IR) or IS stopped **and**
4. JSA(IB), ESA(IR) or IS stopped on or before 11 April 2010 **and**
5. the period that JSA(IB), ESA(IR) or IS is not paid for is 26 weeks or less.

*1 JSA Regs, Sch 2, para 13(2); IS (Gen) Regs, Sch 3, para 14(2); ESA Regs, Sch 6, para 15(2)*

## **INCOME SUPPORT CONDITIONS OF ENTITLEMENT**

### **Prescribed categories of person**

- 18 From 26.10.09, a single person or lone parent can get IS if they have a child placed with them prior to adoption<sup>1</sup> by an adoption agency<sup>2</sup>.

*1 IS (Gen) Regs, Sch 1B, para 2A; 2 Adoption and Children Act 2002; Adoption and Children (Scotland) Act 2007*

## **DEFINITIONS FOR ESA**

- 19 In DMG Chapter 44 guidance is expanded to include a definition of the qualifying age for SPC. This means<sup>1</sup>
1. for a woman - pensionable age **or**
  2. for a man - the age which would be pensionable age for a woman born on the same date as the man.

*1 ESA Regs, reg 2(1)*

## **WORK-FOCUSED INTERVIEWS AND ESA**

- 20 DMG 53042 provides guidance on the factors that a DM may consider when determining whether a claimant had good cause in not attending a WFI. DMG 53042 9. refers to the physical or mental condition of the claimant making it “impossible” for the claimant to attend the WFI. This is now changed so that the DM may consider whether the physical or mental condition of the claimant made it impracticable - not impossible - to attend at the time and place of the WFI<sup>1</sup>.

*1 ESA Regs, reg 61(3)(i)*

## **ESA: ABSENCE ABROAD TO RECEIVE MEDICAL TREATMENT**

- 21 DMG 071141 provides guidance on continued entitlement to ESA when a claimant goes abroad to receive medical treatment, or accompanies a dependent child going abroad to receive medical treatment. The conditions have been amended to remove the need for the claimant to obtain prior permission from the Secretary of State before leaving GB<sup>1</sup>.

*1 Social Security (Miscellaneous Amendment) (No. 4) Regulations 2009, reg 11(15)*

## **DEFECTIVE CLAIMS TO ESA AND SPC**

- 22 Regulations<sup>1</sup> on defective claims for ESA and SPC are amended so as to make it clear that the time for correcting a defective claim to ESA or SPC starts to run from the date the claimant is first advised of the defect.

*1 SS (C & P) Regs, reg 4(7)(b), 4D(6E) & (11), 4G(5), 4H(7)*

## **DISREGARD OF CHILD MAINTENANCE AND THE TREATMENT OF LIABLE RELATIVE PAYMENTS**

### **The child maintenance disregard**

- 23 From the first day of the claimant’s first benefit week on or after 12.4.10<sup>1</sup> the special rules of attribution for LRPs and child maintenance no longer apply to payments of child maintenance. Any payment of child maintenance paid by or derived from an LR - but not by the claimant or claimant’s partner - falls to be fully disregarded for the purposes of IS, JSA(IB) and ESA(IR)<sup>2</sup>. LRPs which do not fall within the meaning of

child maintenance continue to be taken into account<sup>3</sup>. **As a reminder, guidance to DMs will be issued in the form of another DMG memo nearer to 12.4.10.**

*1 Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009, reg 1(6); 2 JSA Regs, Sch 7, para 70; IS (Gen) Regs, Sch 9, para 73; ESA Regs, Sch 8, para 60; 3 JSA Regs, reg 117; IS (Gen) Regs, reg 54; ESA Regs, reg 119*

24 A payment of child maintenance is<sup>1</sup> any payment

1. towards the maintenance of

1.1 a child **or**

1.2 a young person **and**

2. which is under

2.1 a voluntary agreement **or**

2.2 child support law<sup>2</sup> **or**

2.3 a court order **or**

2.4 a consent order **or**

2.5 a maintenance agreement registered with the Scottish courts<sup>3</sup>.

*1 JSA Regs, Sch 7, para 70(2); IS (Gen) Regs, Sch 9, para 73(2); ESA Regs, Sch 8, para 60(2); 2 Child Support Act 1991; Child Support (Northern Ireland) Order 1991; 3 Books of Council and Session; Sheriff Court Books*

25 In order for the disregard to apply the payment of child maintenance must be

1. made by **or**

2. derived from

an LR<sup>1</sup>. DMG 28741 and DMG 51642 provide guidance on who is defined as an LR.

**Note:** For the purposes of the disregard the meaning of an LR does not include a person who has sponsored the claimant as a condition of their immigration<sup>2</sup>.

*1 JSA Regs, Sch 7, para 70(1); IS (Gen) Regs, Sch 9, para 73(1); ESA Regs, Sch 8, para 60(1);*

*2 JSA Regs, Sch 7, para 70(2); IS (Gen) Regs, Sch 9, para 73(2); ESA Regs, Sch 8, para 60(2)*

### **Example**

Betty is in receipt of IS and has 2 children who live with her. Dai is Betty's ex-husband and he has agreed to pay £150 a week towards the maintenance of the children. He pays this money on the last day of each month. The DM decides that none of this

money paid by Dai will be taken into account when calculating Betty's entitlement to IS. This is because the payment falls within the meaning of child maintenance and so has to be fully disregarded.

## **Liabe relative payments**

- 26 The definition of LRP does not include any payment which falls within the meaning of child maintenance as described above<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54; ESA Regs, reg 119*

- 27 DMG 28811 provides guidance on the definition of a periodical LRP for IS and JSA(IB) whilst DMG 51711 provides guidance on the definition of a periodical LRP for ESA(IR). The new full disregard for child maintenance means that the definition of a periodical payment has changed.

- 28 From the first day of the claimant's benefit week on or after 12.4.10, a periodical payment is<sup>1</sup>

1. a payment made or due to be made at regular intervals **or**
2. a payment that forms part of an established pattern **or**
3. a payment that substitutes or replaces a payment in **1.** and **2.** whether or not it is
  - 3.1 a complete multiple of those payments **or**
  - 3.2 made in advance or arrears **or**
4. any payment that is less than the rate of IS, JSA(IB) or ESA(IR) that would have been payable if it had not been made.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54; ESA Regs, reg 119*

- 29 A payment that was due to be paid before the first benefit week of the claim but was paid after that benefit week is not a periodical payment<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54; ESA Regs, reg 119*

- 30 The full disregard for child maintenance also means that the calculation for the treatment of non-periodical LRPs has changed. DMG 28840 et seq provides guidance on the treatment of non-periodical LRPs for IS and JSA(IB). DMG 51736 et seq provides guidance on the treatment of non-periodical LRPs for ESA(IR). From the first day of the claimant's first benefit week on or after 12.4.10 this guidance is amended

so that the references to the child maintenance disregard are removed from the various calculations.

### **Period over which a non-periodical liable relative payment should be taken into account**

31 If a non-periodical payment is made<sup>1</sup> then it is taken into account for the number of weeks obtained by dividing the payment by the total of<sup>2</sup>

1. £2 and
2. the amount of IS, JSA(IB) or ESA(IR) which would have been paid had the LRP not been made.

Any fraction is to be treated as a fraction of a week<sup>3</sup>. The weekly amount of the payment is equal to the divisor used to determine the period for which the payment is taken into account<sup>4</sup>.

*1 JSA Regs, reg 121(1); IS (Gen) Regs, reg 57(1); ESA Regs, reg 123(1); 2 JSA Regs, reg 121(2) & (3); IS (Gen) Regs, reg 57(2) & (3); ESA Regs, reg 123(2) & (3); 3 JSA Regs, reg 121(9); IS (Gen) Regs, reg 57(9); ESA Regs, reg 123(9);*

*4 JSA Regs, reg 122(5); IS (Gen) Regs, reg 58(5); ESA Regs, reg 124(5)*

#### **Example**

Hannah is currently receiving IS of £35 a week. She receives a payment from her ex-partner of £120. The DM determines that this is a non periodical LRP. To decide the period over which it is taken into account the DM divides £120 by

1. £2 plus
2. £35

The payment of £120 is therefore divided by £37 (£2 + £35).

This gives 3.24 ( $£120 \div £37$ ) so the payment will be attributed over 4 weeks. The DM takes into account £37 a week for the first 3 weeks. The balance of £9 falls to be taken into account in the 4th week. The weekly amount of the LRP exceeds Hannah's applicable amount and her entitlement to IS ends for 3 weeks. If Hannah reclaims IS in week 4 the DM will have to take into account the balance of the LRP of £9.

32 The period begins from the date that the payment is treated as paid under DMG 28875 - 28877 or DMG 51760 - 517611

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(8); ESA Regs, reg 123(8)*

## Periodical payments and any other payment made by a liable relative

33 Where an LR makes a periodical payment and at the same time an additional payment is made then the DM has to determine whether the weekly periodical payment as calculated in accordance with DMG 28814 - 28821 or DMG 51710 - 51717 is less than the total of<sup>1</sup>

1. £2 and
2. the amount of IS, JSA(IB) or ESA(IR) which would have been paid had the periodical LRP not been made.

*1 JSA Regs, reg 121(4); IS (Gen) Regs, reg 57(4); ESA Regs, reg 123(4)*

34 If the periodical payment is less than the total in paragraph 33 then the DM should take the additional payment into account for a period determined by applying the formula<sup>1</sup>

$$\frac{A}{B - C}$$

Where<sup>2</sup>:

A = the amount of the non-periodical payment

B = the total of £2 and the amount of IS, JSA or ESA which would have been paid had the periodical LRP not been made

C = the weekly amount of the periodical payment

Any fraction has to be treated as a fraction of a week<sup>3</sup>.

*1 JSA Regs, reg 121(5); IS (Gen) Regs, reg 57(5); ESA Regs, reg 123(5); 2 JSA Regs, reg 121(10); IS (Gen) Regs, reg 57(10); ESA Regs, reg 123(10); 3 JSA Regs, reg 121(9); IS (Gen) Regs, reg 57(9); ESA Regs, reg 123(9)*

### Example

Mary has an applicable amount of £59.15 but receives IS of £34.15 a week because she is in receipt of a periodical LRP of £25 a week. She receives a non-periodical LRP of £500 in addition to the periodical LRP of £25 a week.

The DM determines that the periodical payment of £25 is less than £61.15 (the total of £2 + £59.15).

The DM then has to determine the period for which the additional payment of £500 is to be taken into account. The DM applies the formula in paragraph 34 where:

$$A = £500$$

$$B = £61.15 (£2 + £59.15)$$

$$C = £25$$

This gives an answer of 13.83 (£500 ÷ (£61.15 - £25)). The DM takes the payment into account for 13 weeks at £36.15 and 1 week at £30.05. The weekly amount of the payment in addition to the periodical LRP ends Mary's entitlement to IS.

- 35 The period begins from the date that the payment is treated as paid under DMG 28875 - 28877 or DMG 51760 - DMG 517611.

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(8); ESA Regs, reg 123(8)*

- 36 If subsequent periodical payments vary, the balance (if there is any) of the non-periodical payment has to be taken into account. The number of weeks (including a part of a week) for which it is taken into account is determined by the formula<sup>1</sup>

$$\frac{D}{B - E}$$

Where<sup>2</sup>

B = the total of £2 and the amount of IS, JSA or ESA which would have been paid had the periodical LRP not been made

D = the balance (if any) of the non-periodical payment

E = the weekly amount of any subsequent periodical payment.

*1 JSA Regs, reg 121(7); IS (Gen) Regs, reg 57(7); ESA Regs, reg 123(7);*

*2 JSA Regs, reg 121(10); IS (Gen) Regs, reg 57(10); ESA Regs, reg 123(10)*

### **Example**

Mary has had her award of IS ended in the circumstances explained in the example to paragraphs 33 and 34. Two weeks later she contacts the DWP to say that her regular periodical payment of £25 has now changed to just £5.

The DM has to re-determine the period for which the non-periodical payment is to be taken into account. The DM performs the calculation in paragraph 36 where:

$$B = £61.15 (£2 + £59.15)$$

$$D = £427.70 (£500 - (2 \times £36.15))$$

$$E = £5$$

This gives a period of 7.61 weeks ( $£427.70 \div (£61.15 - £5)$ ). The DM therefore continues to take the non-periodical payment into account but for a period running into 8 weeks not 14 as originally determined.

- 37 The period for which a variation is said to occur begins on the first day of the benefit week in which the change took place<sup>1</sup>. However, the day on which the non-periodical payment is treated as paid is still the first day of the benefit week in which it was received (see DMG 28876 and DMG 51761).

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(8); ESA Regs, reg 123(8)*

- 38 Where the LR stops making periodical payments, the remaining balance (if there is one) of any non-periodical payment has to be taken into account. In order to determine the number of weeks (including a part of a week) for which the non-periodical payment is taken into account, the DM should divide that remaining balance (if there is any) by<sup>1</sup>

1. £2 and
2. the amount of IS, JSA(IB) or ESA(IR) which would have been paid had the LRP not been made

*1 JSA Regs, reg 121(6) & (3); IS (Gen) Regs, reg 57(6) & (3); ESA Regs, reg 123(6) & (3)*

- 39 The calculation to re-determine the period over which the non-periodical payment begins on the first day of the benefit week in which the payment ceased<sup>1</sup>.

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(8); ESA Regs, reg 123(8)*

### **Example**

Mary has had her IS award ended in the circumstances described in paragraphs 33 and 34. 2 weeks after her award has ended, Mary informs the DWP that she is no longer in receipt of the periodical payment of £25.

The DM has to determine the period for which the non-periodical payment is to be taken into account. The balance of the payment is £427.70. This figure is divided by the aggregate of:

$$£2 + £59.15 = £61.15$$

then

$$£427.70 \div £61.15 = 6.99$$

The DM determines that the non-periodical payment should be taken into account at a rate of £61.15 for a further 6 weeks and the balance of £60.80 (£427.70 - (6 x £61.15)) would be treated as income if Mary reclaims IS in week 7.

## **Payments not treated as liable relative payments**

- 40 DMG 28776 and DMG 51671 describe when a payment made to or for third parties is not to be treated as an LRP. From the first day of the claimant's first benefit week on or after 12.4.10<sup>1</sup> this guidance is amended<sup>1</sup>.

*1 Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009, reg 1(6)*

- 41 A payment made

1. to a third party in respect of the claimant or the claimant's partner or made or derived from a person falling within DMG 28741 **5.** or DMG 51642 **5.**  
(agreement to maintain as a condition of immigration)
2. to the claimant or claimant's partner in respect of a third party or made or derived from a person falling within DMG 28741 **5.** or DMG 51642 **5.**  
(agreement to maintain as a condition of immigration)

is not to be treated as an LRP unless DMG 28777 or DMG 51672 applies<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54; ESA Regs, reg 119*

## **SPC AND DEEMED INCOME FROM CAPITAL**

- 42 From 2.11.09, the amount of capital held by the claimant above which deemed weekly income is calculated has been increased to £10,000 for all claimants<sup>1</sup>.

*1 SPC Regs, reg 15(6)*

## **ANNOTATIONS**

Please annotate the number of this memo (37/09) against DMG paragraphs: 02137; 02142; 02156; 02161; 071141; 20081; 23438; 23710; 26014; 26616; 26642; 28204; 28350 (Heading); 28568 (Heading); 28574; 28678; 28679; 28710 (Heading);

28724 (Heading); 28753; 28760 (Heading); 28776; 28786; 28787; 28791; 28793;  
28810 (Heading); 28811; 28840 (Heading); 28856; 28858; 28860; 28862; 28866;  
28868; 28880 (Heading); 30088; 30211; 30692; 44085 (Heading); 44207 (Heading);  
44253; 44535; 49017; 49167; 49648; 51090; 51091; 51093; 51210 (Heading); 51217;  
51456 (Heading); 51461; 51617 (Heading); 51625 (Heading); 51650; 51656  
(Heading); 51671; 51710 (Heading); 51711; 51736 (Heading); 51746; 51748; 51750;  
51752; 51756; 51757; 51765 (Heading); 51828; 53042; Chapter 84 Appendix 1;  
84911; 85007; 85214; 85215; 85400 (Heading); 86032 (Heading); 86033.

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 26/08](#) - Obtaining legal advice and guidance from DMA Leeds.

**DMA Leeds: October 2009**