

# Chapter 57 - Severe Disablement Allowance

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# Chapter 57 - Severe Disablement Allowance

## Introduction

57001 SDA was introduced on 29.11.84 as a new non-contributory benefit to replace NCIP and Housewives' NCIP<sup>1</sup>. It ceased to be available to new claimants from 6.4.01 and has been replaced by IB(Y) (see DMG Chapter 56).

*1 SS CB Act 92, s 68(1); SS (SDA) Regs*

## Changes to SDA from 6.4.01 and transitional provisions

57002 SDA is not available to new claimants from 6.4.01. SDA may continue from 6.4.01 for claimants with previous or existing entitlement subject to conditions. The conditions depend on whether the claimant is

1. over age 20 on 6.4.01 (see DMG 57003) **or**
2. under age 20 on 6.4.01 (see DMG 57004).

### Over 20 on 6.4.01

57003 For the purpose of DMG 57002 SDA continues from 6.4.01 providing

1. the claimant is 20 or over on 6.4.01 **and**
2. the PIW began before 6.4.01 **and**
3. there was entitlement to SDA on any day of IfW in that PIW **and**
4. the PIW continues<sup>1</sup>.

A claim to IB received on or after 6.4.01 can be treated as a claim for SDA<sup>2</sup> (see DMG Chapter 02).

**Note:** A person who retains entitlement to SDA has no entitlement to IB(Y).

*1 WRP Act 99 (Commencement No. 9, and Transitional and Savings Provisions)  
Order 2000, Art 4(a); 2 SS (C&P) Regs, reg 9(1) and Sch 1, Part I*

### Under 20 on 6.4.01

57004 For the purpose of DMG 57002 SDA continues in the period 6.4.01 to 5.4.02 providing

1. the claimant is under age 20 on 6.4.01<sup>1</sup> **and**
2. the PIW began before 6.4.01 **and**

3. there is entitlement to SDA on any day of IfW in that PIW **and**
4. the PIW continues<sup>2</sup>.

A claim to IB after 6.4.01 can be treated as a claim for SDA<sup>3</sup> (see DMG Chapter 02). A claimant who receives SDA under these provisions may be treated as entitled to IB(Y) and qualify for IBLT from 6.4.02 (see DMG 57005 and 57006).

*1 SS (IB) Regs, reg 19(1) & (2); 2 WRP Act 99 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000, Art 4(b);  
3 SS (C&P) Regs, reg 9(1) and Sch 1, Part I*

## **Transitional from SDA to IB for persons incapacitated in youth**

57005 Days of entitlement to SDA in the period 6.4.01 to 5.4.02 are treated as days of entitlement to IB(Y) if the claimant

1. was aged under 20 on 5.4.01 **and**
2. continues to be incapable of work (see DMG 57006 where incapacity is not continuous).

If incapacity continues the person is entitled to IBLT from 6.4.02<sup>1</sup>. IB under this paragraph is not reduced by pension payments (See DMG 56135).

*1 SS (IB) Regs, reg 19(1)*

57006 Days of entitlement to SDA in the period 6.4.01 to 6.4.02 may not be continuous. SDA entitlement may depend on satisfaction of the linking provisions (DMG 57059 - 57064). Such days are treated as days of entitlement to IB(Y) if

1. the claimant was under age 20 on 5.4.01 **and**
2. there is a PIW on or after 6.4.02 which links with previous PIW **and**
3. there was entitlement to SDA in the previous PIW.

In such cases IBLT is due from 6.4.02 or the first day of a PIW starting after that date (whether or not there are 364 days in the PIW). IB under this paragraph is not reduced by pension payments<sup>1</sup> (see DMG 56135).

*1 SS (IB) Regs, reg 19(2)*

57007

# General provisions

## Conditions of entitlement

57008 To be entitled to SDA a claimant must

1. where the incapacity starts on or before the 20th birthday
  - 1.1 be incapable of work (see DMG Chapter 13) **and**
  - 1.2 have been incapable of work (see DMG 57016 - 57021) for the QP (see DMG 57013), that is at least 196 consecutive days, which
    - 1.2.a begins no later than the 20th birthday **and**
    - 1.2.b ends immediately before the day for which SDA is claimed<sup>1</sup> **or**
2. where the incapacity starts after the 20th birthday<sup>2</sup>
  - 2.1 be both incapable of work and disabled (see DMG 57037 et seq) **and**
  - 2.2 have been incapable of work and disabled for the QP, that is a period which
    - 2.2.a is at least 196 consecutive days **and**
    - 2.2.b ends immediately before the day for which SDA is claimed<sup>3</sup> **and**
3. satisfy the
  - 3.1 age conditions (see DMG 57080) **and**
  - 3.2 residence and presence conditions (see DMG 57108)<sup>4</sup> **and**
4. not be receiving FTE (see DMG 57124)<sup>5</sup>.

**Note:** The requirement at **1.2** is modified in certain circumstances (see DMG 57069).

*1 SS CB Act 92, s 68(2)(a) & (b); 2 s 68(2)(b)(i); 3 s 68(3)(a) & (b); 4 s 68(4)(a), (c) & (d);  
5 s 68(4)(b)*

57009 Payment can be made for a day or days which are days of IfW

1. which are not part of a PIW(IB) (see DMG 56250 and 57149 et seq) **and**
2. for which the claimant satisfies all the conditions of entitlement including the 196 day QP<sup>1</sup>.

*1 SS (SDA) Regs, reg 7*

57010 The DM needs to find out if a day is part of a PIW when considering

1. whether the incapacity, and if appropriate the disablement conditions are satisfied for the QP (see DMG 57013 et seq)

2. whether the presence and residence conditions are satisfied (see DMG 57108)
3. the conditions that have to be satisfied for a claim made after age 65 (see DMG 57089).

57011 A claimant is not entitled to SDA for any day which is a period of entitlement to SSP<sup>1</sup>.

*1 SS CB Act 92, s 68(5)*

## **Members of HM Forces**

57012 Apart from the following exceptions<sup>1</sup> serving members of HMF (see DMG 57010) are not entitled to SDA. The exceptions are

1. members of territorial or reserve forces<sup>2</sup> who are not in continuous training or instruction for more than 72 hours **or**
2. members of the Royal Irish Regiment who are **not**
  - 2.1 also serving as members of any of the regular naval, military or air forces **or**
  - 2.2 on the F/T permanent staff **or**
  - 2.3 serving or undergoing training or instruction continuously for more than 72 hours.

*1 SS (Ben) (Members of the Forces) Regs, reg 2; 2 SS (Conts) Regs, Sch 3, Part 1*

## Qualifying period

57013 The QP means at least 196 consecutive days ending immediately before the day for which SDA is claimed.

57014 Where incapacity starts before the 20th birthday, claimants have to show they were incapable of work throughout the QP.

57015 Where incapacity starts after the 20th birthday claimants have to show they were **both**

1. incapable of work **and**
2. disabled

throughout the QP.

57016 When considering whether the QP is satisfied the DM should note that

1. whether a person is incapable of work (see DMG Chapter 13) is decided in the same way as for IB<sup>1</sup> (but a day of disqualification or disentitlement to SDA which is also a day when a person is incapable of work counts for the QP<sup>2</sup> which contrasts with the IB<sup>3</sup> rules where such days are not treated as days of incapacity)
2. the QP is 196 days ending immediately before the first day for which the claimant is not disqualified or disentitled
3. in late claim cases the QP is 196 days ending with the day before the three month time bar (see DMG Chapter 02)
4. days when the claimant is
  - 4.1 in prison **or**
  - 4.2 detained in legal custodyare not treated as days of IfW if the period of imprisonment or detention is longer than six weeks<sup>4</sup>
5. days on which a person is treated as incapable of work during the QP because they are doing approved work on a trial basis, are days of IfW<sup>5</sup>.

*1 SS (SDA) Regs, reg 2(3); 2 SS (IB) Regs, reg 4(1); 3 SS (SDA) Regs, reg 7(1) & (1A);  
4 reg 7(2); 5 reg 7(1)(c)*

57017 Days of incapacity in the QP only form part of a PIW where they do so for some other reason, for example, the DM has disallowed a claim for IB because the contribution conditions were not satisfied.



# Incapacity

## General

57018 DMG Chapter 13 gives guidance on the incapacity tests for SS benefits<sup>1</sup>. Unless transitional protection applies these tests apply to claims for SDA made for periods on or after 13.4.95<sup>2</sup>.

**Note:** The OOT or the PCA does not have to be satisfied for the part of the QP or claim before 13.4.95 if the claim is received after 13.4.95. The DM should determine incapacity under the old rules for that period, that is, on acceptable medical evidence.

*1 SS CB Act 92, s 171A, 171B & 171C; 2 s 68 & 171*

57019 If a claimant was getting SDA on 12.4.95, the PCA test is treated as satisfied from 13.4.95 for any day of incapacity in the same spell of incapacity if the claimant provides medical evidence<sup>1</sup> (see DMG Chapter 55).

*1 SS (IB) (Trans) Regs, reg 30 & 31*

57020 A claimant is incapable or treated as incapable for work for SDA in the same way as for IB<sup>1</sup> (see DMG Chapter 56). Exceptions to this are days of

1. disqualification (see DMG 57149) **and**
2. disentitlement (see DMG 57151).

*1 SS (SDA) Regs, reg 7(1) & (1A); SS CB Act 92, s 171*

## Claims for periods before 13.4.95

57021 The DM should consider claims made on or after 13.4.95 for periods starting before that date under

1. the previous test of incapacity **and**
2. then, the transitional arrangements (see DMG Chapter 55).

57022 - 57036



# Disablement

## General

57037 For SDA purposes “disabled” means that there is a loss of

1. physical **or**
2. mental

faculty resulting in disablement of at least 80%<sup>1</sup>.

*1 SS CB Act 92, Sch 6 & s 68(6)*

57038 A DM decides the disablement test<sup>1</sup>.

*1 SS Act 98, s 8(1) & 11(2) & (3)*

57039 - 57040

## Determination of the disablement question by a DM

57041 The DM, may accept that a claimant is at least 80% disabled where evidence shows that during the QP and on the days SDA is claimed for, the claimant is<sup>1</sup>

1. entitled to the care component of DLA at the highest rate<sup>2</sup>
2. assessed on a gross overall assessment as at least 80% disabled for IIDB<sup>3</sup>
3. severely disabled as a result of vaccination<sup>4</sup> including
  - 3.1 a day for which the DM determined that the claimant was severely disabled **and**
  - 3.2 any day later than the day in 3.1
4. assessed as at least 80% disabled (gross assessment) for
  - 4.1 a HMF pension **or**
  - 4.2 civilian disablement pension<sup>5</sup>
5. registered blind or, in Scotland, certified and registered blind<sup>6</sup> (see DMG 57042)
6. in receipt of a grant or provided with an invalid carriage or other vehicle, that is
  - 6.1 a vehicle propelled by a petrol engine **or**
  - 6.2 by electric powersupplied for use on the road and controlled by the occupant<sup>7</sup>
7. already assessed for SDA purposes as at least 80% disabled<sup>8</sup>.

**Note:** Where **2.** applies, in successive accident cases, the DM should avoid counting twice an assessment given for a pre-existing condition.

- 1 SS (SDA) Regs, reg 10; 2 SS CB Act 92, s 72(3) & (4); SS (SDA) Regs, reg 10(1)(b);  
3 SS CB Act 92, s 103(1) & Sch 7, para 9(1); SS (SDA) Regs, reg 10(1)(c);  
4 Vaccine Damage Payments Act 1979; SS (SDA) Regs, reg 10(1)(d);  
5 Services Pension Order; Personal Injuries (Civilians) Scheme 1983, Part III; SS (SDA) Regs, reg 10(1)(e);  
6 NA Act 48, s 29; SS (SDA) Regs, reg 10(1)(f) & (ff);  
7 NHS Act 06, Sch 1, para 9 & 10; NHS (Scot) Act 78, s 46;  
SS (SDA) Regs, reg 10(1)(g), (gg) & (2A); 8 reg 10(1)(h)*

57042 Where DMG 57041 **5.** applies, in Scotland, certified means that a consultant ophthalmologist has completed a form for the register which is maintained by or on behalf of a regional or islands council. The DM can accept evidence of registration with

1. a LA in England and Wales **or**
2. the regional or islands council in Scotland

regardless of where claimants may be living at the time, as long as their names remain on a register.

## Savings provision

57043 If a claimant was entitled to SDA before 1.4.97 and was

1. entitled to
  - 1.1 AA **or**
  - 1.2 mobility allowance **or**
  - 1.3 the mobility component of DLA at the higher rate **or**
  - 1.4 the care component of DLA at the highest or middle rate **or**
  - 1.5 a mobility supplement under a Service Pensions Instrument or a Personal Injuries (Civilians) Scheme<sup>1</sup> **or**
2. registered as partially sighted

and the passport benefit or registration continues throughout in the same PIW, the DM can continue to accept that they are at least 80% disabled<sup>2</sup>.

- 1 Naval, Military & Air Forces etc. (Disablement & Death Service Pensions Order) 1983, art. 26A;  
Personal Injuries (Civilians) Scheme 1983, art. 25A; 2 SS (IfW & SDA) Amdt Regs, reg 4*

57044 A WtWB who was accepted as at least 80% disabled in the IPPIW is accepted as a least 80% disabled for any day in a cumulative period of not more than 91 days for which they make a claim for SDA. The period must begin within a linking term and end not later than 13 weeks from the end of it<sup>1</sup> (see DMG Chapter 13 and Chapter 56).

- 1 SS (SDA) Regs, reg 7(1B), 10(1)(hh) & 10(2A); SS (IW) (Gen) Regs, reg 13A*

## Example

The claimant is entitled to SDA, assessed as 80% disabled from 1.1.97 to 1.1.99 and therefore exempt from the PCA. She sends in a final medical certificate and notifies that she started work on 14.12.98. The DM decides that she is not entitled to SDA from 14.12.98 because she is treated as capable of work. The last day in the immediate past PIW is 13.12.98. Her linking term from 14.12.98 to 12.12.99. She claims SDA from 5.6.99. Because she is disabled in the immediate past PIW and claims within the linking term she is entitled to SDA from 5.6.99. She is accepted as disabled and treated as incapable from 5.6.99 to 3.9.99 (91 days). From 4.9.99 either the OOT or PCA apply as appropriate and she has to satisfy the disablement test.

57045 - 57047

## Referral to the medical adviser

57048 The DM will refer the claim to a medical adviser for an opinion if disablement cannot be accepted as in DMG 57041. The medical adviser will look at all the evidence presented, carry out medical examinations and seek further evidence, where appropriate. The medical adviser will give an opinion on the degree of disablement on

1. medical reports alone if satisfied that the claimant's disablement is at least 80%<sup>1</sup> **or**
2. an examination of the claimant<sup>2</sup>.

*1 SS (SDA) Regs, reg 10(1)(i); 2 reg 10(1)(h); SS Act 98, s 11*

57049 The medical adviser will give an opinion on the percentage of disablement. The DM should then apply any rounding as in DMG 57056.

57050 DMs should note that

1. the medical adviser's opinion is not binding on them<sup>1</sup>
2. the claimant can ask for an explanation and ask for a copy of the medical adviser's report
3. the claimant can ask for the original decision to be revised or superseded<sup>2</sup>
4. if the claimant provides further medical evidence that may change the decision, they can refer the case to Medical Services for advice<sup>3</sup>
5. the claimant can appeal to a FtT against the assessment of the disablement<sup>4</sup>.

*1 SS Act 98, s 8 & 11; 2 s 9(1)(b) & 10(1); 3 s 19; 4 s 12*

## Period of assessment

57051 The medical adviser will give an opinion on disablement for the period a claimant has been and is expected to remain disabled. The period begins not later than<sup>1</sup>

1. the first claim day if
  - 1.1 the claim for SDA links
    - 1.1.a with an earlier period of entitlement **and**
    - 1.1.b the 196 day QP does not need to be satisfied again<sup>2</sup> **or**
  - 1.2 disablement has already been assessed as at least 80% for the 196 days immediately before the claim **or**
2. the day after a last assessment of at least 80% ends if this is within the 196 days before the claim **or**
3. 196 days before the first claim day unless **1.2** or DMG 57052 applies.

*1 SS CB Act 92, Sch 6, para 4; 2 s 68(3)(b) & 11(b)*

57052 If an assessment of less than 80% ends within the 196 days before the claim the DM should not make a decision for a period which has already been decided (see DMG Chapter 01). So the date of the next assessment should begin on the day after the last assessment ends, unless there has been a request for a revision or supersession or an appeal against the last assessment.

57053 The period of assessment ends no later than age 65. This is because claimants do not need to satisfy the disablement condition (see DMG 57088) beyond age 65<sup>1</sup>.

*1 SS CB Act 92, s 68(11)(b); SS (SDA) Regs, reg 5(a) & (b)*

## The medical adviser's assessment

57054 The medical adviser makes the assessment in accordance with the law<sup>1</sup> and uses a schedule of prescribed degrees of disablement to be attached to certain specified injuries as a benchmark to measure the degree of disability in each individual case<sup>2</sup>.

**Note:** Where the injury is not specified in the schedule, the medical adviser will consider which of the benchmarks relates to the loss of incapacity. For example, if a person had either arm amputated just below the shoulder, they would be assessed as 80%. If a stroke or bad arthritis means that a person cannot use one arm then they also may be assessed as 80%. Should there only be partial loss of use then the assessment will be less than 80%.

*1 SS CB Act 92, Sch 6; 2 SS (Gen Ben) Regs 82, Sch 2*

- 57055 Where an assessment is made the
1. degree of disablement is given in the form of a percentage (see DMG 57049) **and**
  2. period taken into account by the assessment is specified<sup>1</sup> (see DMG 57050 - 57053).

*1 SS CB Act 92, Sch 6, para 5(1)*

- 57056 The DM should round the percentage given in DMG 57055 1. so that
1. a percentage which is not a whole number is rounded to the
    - 1.1 nearest whole number **or**
    - 1.2 highest whole number if it falls equally between two whole numbers<sup>1</sup>
  2. a percentage which is between 5 and 100 and not a multiple of 10 is treated
    - 2.1 if it is a multiple of 5, as being the next multiple of 10 **or**
    - 2.2 in any other case as being the nearest percentage which is a multiple of 10 (for example 26% is rounded up to 30%, 24% is rounded down to 20%)<sup>2</sup>
  3. a percentage which is less than 5% is disregarded<sup>3</sup>.

Where 3. applies the DM should decide that the claimant is not disabled. However, where there are various disabilities assessed as less than 5% they shall be added together to give a total percentage.

*1 SS CB Act 92, Sch 6, para 5(2)(a); 2 Sch 6, para 5(2)(b); 3 Sch 6, para 5(3)*

### **Considering the evidence**

- 57057 The DM decides entitlement to benefit from
1. a certificate or letter from the GP<sup>1</sup> **and**
  2. the medical adviser's opinion **and**
  3. any other relevant evidence.

The DM can decide entitlement without the evidence of 1.<sup>2</sup>

**Note 1:** One of the main provisions in law<sup>3</sup> is that disablement has to be made without reference to the special circumstances of the customer, other than comparison to a person of the same age and sex whose physical and mental condition is "normal". For example references to a persons inability to go shopping or whether they undertake any hobbies are irrelevant.

**Note 2:** The scheduled assessments take into account all the effects of a particular injury or condition, including pain and mental distress. Assessments should not normally be increased for these factors.

*1 SS (Med Ev) Regs, reg 2(1)(c); 2 R(IB)5/98; 3 SS CB Act 92, Sch 6*

57058 The normal principles apply to considering the evidence (see DMG Chapter 03). Unsupported evidence can be accepted from the person unless it is self-contradictory or improbable<sup>1</sup>. The DM is not bound to follow a particular doctor's opinion<sup>2</sup> but has to decide on the balance of probabilities which opinion is correct<sup>3</sup>. Medical opinions on disablement are not conclusive and can be challenged by contrary, direct or circumstantial evidence<sup>4</sup>.

*1 R(I) 2/51; R(SB) 33/85; 2 R(S) 1/64; 3 R(S) 4/56; 4 R(S) 4/60*

# Linking

## General

57059 Claimants previously entitled to SDA do not have to satisfy the 196 day QP again if, within the same PIW<sup>1</sup> (see DMG Chapter 56)

1. they become incapable of work **or**
2. incapable of work and disabled<sup>2</sup>.

*1 SS (SDA) Regs, reg 2(3); 2 reg 6*

57060 This means that a claimant who qualified before on the incapacity test alone

1. only has to satisfy that test for any period of incapacity in the same PIW **and**
2. does not have to satisfy the presence and residence tests again for any day in the same PIW (see DMG Chapter 07).

## Effect of DPTC entitlement

57061 A day of entitlement to DPTC is treated as a day on which a claimant is both incapable of work and disabled if<sup>1</sup>

1. the work in which a person is normally engaged has ceased **and**
2. there is entitlement to DPTC in the week which includes the day employment ends **and**
3. SDA was the qualifying benefit for entitlement to DPTC **and**
4. on the first day after employment ends the claimant is incapable of work and this day is two years or less since the last day of entitlement to SDA.

*1 SS CB Act, s 68(10)*

57062 This means that a claimant entitled to SDA immediately before receiving DPTC can qualify for SDA again without satisfying a further QP if the first day after employment ends is within two years of the last SDA entitlement. DMs should note that the claimant must satisfy the relevant incapacity and disability requirements although they are not required to satisfy a further QP.

57063 A claimant may remain entitled to SDA during a period of entitlement to DPTC if the work being performed falls within an exempt category (see DMG Chapter 13).

## Effect of specified training

57064 A day on which a claimant was in training for work is treated as a day on which a claimant is both incapable of work and disabled if<sup>1</sup>

1. the training has ended **and**
2. the claimant was entitled to SDA within the 56 days immediately before the course started **and**
3. the first day after training ended
  - 3.1 is a day the claimant is incapable of work **and**
  - 3.2 is two years or less since the last day of entitlement to SDA.

*1 SS CB Act 92, s 68(10A)*

57065 Training for work means<sup>1</sup>

1. training laid down by legislation<sup>2</sup> **or**
2. any training received on a course of 16 hours or more a week which mainly teaches occupational or vocational skills<sup>3</sup>.

*1 SS CB Act 92, s 30C(6); 2 E & T Act 73, s 2(1); Enterprise & New Towns (Scotland) Act 1990;  
3 SS (IB) Regs, reg 3*

57066 This means that a claimant entitled to SDA within the 56 days immediately before starting training for work can qualify for SDA again without satisfying a further QP if the first day after training for work ends within two years of the last SDA entitlement.

57067 Special provisions (see DMG Chapter 55) apply to claimants who<sup>1</sup>

1. attend a specified training course (as defined under old legislation)<sup>2</sup> in the 57 days immediately before 13.4.95 **and**
2. were entitled to SDA in the 57 days immediately before the start of the course **and**
3. become incapable of work within the 57 days beginning on the day after the last day of attendance on the course.

*1 SS (IB) (Trans) Regs, reg 28A; 2 SS (U, S & IVB) Regs, reg 7(1)(f)*

57068 Where the conditions in DMG 57066 are satisfied, the claimant is treated as incapable of work and disabled throughout the period between the two SDA claims<sup>1</sup>.

*1 SS (IB) (Trans) Regs, reg 28A*

# Qualification by the incapacity test alone

## Modification rule

57069 Claimants who

1. have been incapable of work since their 20th birthday or before **and**
2. have then had periods of being capable of work<sup>1</sup>

are treated as incapable of work during their periods of being capable of work and do not have to satisfy the disablement condition, subject to the further conditions in DMG 57070.

*1 SS (SDA) Regs, reg 7(3)*

57070 The further conditions in DMG 57069 are that claimants

1. who were incapable of work for at least 196 consecutive days
  - 1.1 beginning on or before reaching the age of 20 **and**
  - 1.2 for at least 196 consecutive days immediately before the relevant day (the day for which SDA is claimed) **and**
2. who were capable of work for a period or periods totalling not more than 182 days and these periods of capacity were
  - 2.1 after the 196 days in 1.1 but before the 196 days in 1.2 **and**
  - 2.2 after reaching the age of 15 years and 24 weeks.

57071 - 57075



## Women claimants

57076 As a result of an ECJ decision<sup>1</sup>, women can qualify for SDA (see DMG Chapter 07) from 13.1.94 on the incapacity test alone if<sup>2</sup> they

1. have been continuously incapable of work since 29.11.84 **and**
2. they would have been entitled to NCIP before 29.11.84 if they had not had to satisfy the incapacity for household duties test.

*1 Case 31/90, Johnson v. CAO; 2 SS (SDA) Regs, reg 20(1A)*

57077 For periods before 13.1.94, women could qualify for SDA on the incapacity test alone if they satisfied certain conditions<sup>1</sup> (see DMG Chapter 07).

*1 Directive 79/7 EEC*

57078 If there are no medical statements covering the period from 29.11.84 the claimant's evidence should include

1. current evidence of incapacity (for claims made on or after 13.4.95 claimants must satisfy the PCA or OOT) **and**
2. statements on
  - 2.1 when incapacity began
  - 2.2 what her illness is
  - 2.3 what she was doing immediately before she became ill.

Unless there is reason for doubt the DM should accept the evidence in **1.** and **2.** as confirmation of IfW since 29.11.84.

57079 If entitlement and payment of arrears include 12.4.95 the PCA will be treated as satisfied without applying it as long as the claimant continues to provide evidence of incapacity (see DMG Chapter 55)<sup>1</sup>. If entitlement is established on or before 12.4.95 but payment is restricted to a period starting on or after 13.4.95 the PCA must be applied.

*1 SS (IB) (Trans) Regs, reg 31(5)(c)*



# Age limits

## General

57080 The DM should note that

1. a claimant cannot be entitled to SDA before the age of 16<sup>1</sup>
2. the qualifying conditions during the QP may be satisfied before age 16 (see DMG 57006)
3. there is no upper age limit for continued entitlement to SDA (see DMG 57086).

*1 SS CB Act 92, s 68(4)(a)*

57081 A person whose rate of RP is below the SDA rate with age related addition may continue to receive the difference as SDA.

57082 - 57085

## Claimants over age 65

### Periods on or after 28.10.94

57086 To be entitled to SDA after reaching age 65, claimants must show that they were

1. entitled **or**
2. treated as entitled to SDA

immediately before age 65<sup>1</sup>.

*1 SS CB Act 92, s 68(4)(d)*

57087 Claimants who have reached age 65 are treated as having been entitled to SDA immediately before age 65 if<sup>1</sup> they

1. would have satisfied the conditions of entitlement to SDA or NCIP but for the overlapping benefits provisions<sup>2</sup> **or**
2. were entitled to NCIP.

*1 SS (SDA) Regs, reg 4; 2 SS (OB) Regs, reg 4*

57088 Once entitlement to SDA over age 65 is established it can continue whether or not the incapacity and disablement conditions are satisfied<sup>1</sup>.

*1 SS (SDA) Regs, reg 5*

## Claims made after age 65

57089 A claimant over age 65 is entitled to SDA if

1. a claim to NCIP, housewives' NCIP, or SDA which included the day before age 65 was made within the prescribed time (including any extension for good cause for delay) **and**
2. either
  - 2.1 there was entitlement to benefit for that day **or**
  - 2.2 a claim as in 1. was made and there would have been entitlement to benefit but for the overlapping benefits provisions **or**
  - 2.3 a previous successful claim after pensionable age was made before 2.9.85 and the claimant can benefit under savings provisions (see DMG 57106) **or**
  - 2.4 the claim made now extends to at least the day before 65 and good cause for delay can be accepted **and**
    - 2.4.a entitlement to benefit on that day is established **or**
    - 2.4.b the conditions for entitlement to benefit for that day would be satisfied but for the overlapping benefit provisions.

## Women aged 65 before 28.10.94

57090 As a result of an ECJ decision<sup>1</sup> a woman is entitled to SDA (see DMG Chapter 07) if

1. she reached 65 before 28.10.94 **and**
2. immediately before 65 she would have been entitled to SDA or NCIP (if she was 65 before 29.11.84) if she had not been over pensionable age (60)<sup>2</sup>.

**Note:** In deciding whether the woman would have had entitlement to NCIP the DM should disregard the additional household duties test which applied to married or cohabiting women.

*1 CA & House of Lords Secretary of State v. Thomas/Cooze/Beard/Murphy & Morley; Case 328/91 Secretary of State v Thomas/Cooze/Beard/Murphy & Morley; SS (SDA) Regs, reg 4A(1); 2 reg 4A(2)*

## Men aged 65 before 28.10.94

57091 A man is entitled to SDA after 65 without having to satisfy the incapacity or disablement test if<sup>1</sup>

1. he reached 65 before 28.10.94 **and**
2. he was entitled to SDA or NCIP immediately before 65.

*1 SS (SDA) Regs, reg 5A*

## Periods before 28.10.94 claimants over pensionable/retiring age

57092 Before 28.10.94

1. pensionable age was 60 for women and 65 for men **and**
2. retiring age was 65 for women and 70 for men.

**Note:** The DM may accept pensionable age as 65 for women and retiring age as 65 for men where the claimant is covered by EC legislation<sup>1</sup> (see DMG Chapter 07).

*1 Directive 79/7/EEC*

57093 When considering entitlement to SDA for periods before 28.10.94 for claimants over pension or retiring age the DM should note that

1. to be entitled to SDA over pensionable age claimants must have been entitled or treated as entitled to SDA immediately before that age
2. between pensionable age and retiring age claimants had to continue to satisfy the incapacity and disablement tests
3. after retiring age claimants continued to be entitled to SDA whether or not the incapacity and disablement conditions were satisfied, if there was entitlement to SDA immediately before retiring age
4. if there was no entitlement to SDA immediately before **retiring** age but there was entitlement immediately before **pensionable** age, SDA could continue after retiring age if
  - 4.1 the incapacity condition was satisfied **and**
  - 4.2 claimants
    - 4.2.a did not have to satisfy the disablement test because they were under 20 at start of the incapacity **or**
    - 4.2.b were deemed disabled because they were previously entitled to NCIP
5. where claimants had to satisfy the disablement test there was no entitlement to SDA after retiring age because a
  - 5.1 determination of disablement by a DM (see DMG 57041) **or**
  - 5.2 assessment of disability by a medical expertcould not be made for a period beyond the day on which retiring age was reached<sup>1</sup>.

*1 SS CB Act 92, Sch 6, para 4*

57094 - 57104

## Claims made before 2.9.85

- 57105 The conditions that apply to claims made before 2.9.85 are that
1. from 2.9.85 no claimant is entitled to any benefit unless
    - 1.1 the conditions relating to that benefit are satisfied **and**
    - 1.2 a claim is made for it
      - 1.2.a in the prescribed manner **and**
      - 1.2.b within the prescribed time
  2. the prescribed time may be extended where good cause is shown for delay
  3. there can be no entitlement to benefit for any period more than twelve months before the date on which the claim is made<sup>1</sup> (see DMG Chapter 02).

*1 SSA Act 92, s 1(1) & (4)*

## Savings provisions

- 57106 Before 2.9.85 claimants could be entitled to NCIP, Housewives' NCIP or SDA immediately before pensionable age even though they had
1. not made a claim to the benefit for any day before that age **or**
  2. made a late claim which had been disqualified or prevented by the twelve months time bar<sup>1</sup>.

*1 Insurance Officer v. McCaffrey [1984] 1 WLR 1353; [1985] 1 All ER 5HL*

- 57107 Savings provisions protect<sup>1</sup> the entitlement of persons who benefited from the pre-2.9.85 provisions. The effects of these provisions are that where
1. an award of benefit was made before 2.9.85 for a period before that date, claimants continue to be entitled to SDA from 2.9.85 if other conditions for the benefit continue to be satisfied **and**
  2. claimants who previously benefited under DMG 57106 claim on or after 2.9.85 they keep their benefit even if a later break in entitlement breaks the PIW.

*1 SS Act 85, s 32(4)*

## Example

On a claim made before 2.9.85 a claimant is accepted as entitled to benefit for the day before pension/retiring age was reached. This entitlement applies even if a claim has not been made for that day. On any later claim the DM should again accept that the claimant was entitled to benefit immediately before pension/retiring age.

# Residence and presence

## General

57108 To be entitled to SDA for any day claimants must satisfy the residence and presence conditions<sup>1</sup> (see DMG Chapter 07).

57109 Special provisions (see DMG Chapter 07) apply to

1. members of the forces and their families
2. mariners
3. aircrew
4. people employed on the continental shelf.

57110 Once claimants are entitled to SDA they do not have to satisfy the residence and presence conditions (see DMG Chapter 07) for any further day in the same PIW<sup>2</sup>.

*1 SS (SDA) Regs, reg 3(1) & (2); 2 reg 3(3)*

57111 - 57123



# Full-time education

## General

57124 Claimants cannot be entitled to SDA if they are receiving FTE<sup>1</sup>.

*1 SS CB Act 92, s 68(4)*

## Meaning of full-time education

57125 Claimants are treated as receiving FTE for any period during which

1. they are between 16 and 19 years of age **and**
2. attend a course of education for at least 21 hours a week.

57126 When calculating the duration of a period of FTE the DM should disregard any temporary interruption of the education<sup>1</sup>.

*1 SS (SDA) Regs, reg 8(2)*

57127 A person over 19 should not be treated as receiving FTE<sup>1</sup>. DMs should note that a claimant is over 19 from and including the 19th birthday.

*1 SS (SDA) Regs, reg 8(3)*

## Incapacity tests

57128 Claimants must satisfy the OOT or PCA if the course of education is less than 21 hours a week. Claimants undergoing education

1. which is not suitable for people who have no disabilities **or**
2. for less than 21 hours a week

are not necessarily incapable of work.

57129 Where

1. the DM has disallowed a claim to SDA because the claimant is in FTE (see DMG 57124) **and**
2. the claimant appeals against the decision

the DM must include the question of incapacity in the submission in case the FtT finds that the claimant is not in FTE.

## Calculation of hours of attendance

57130 In calculating the number of hours of attendance at a course of education, the DM should take into account time spent in following the particular course, not the time spent at a particular place of education.

57131 The DM should include time spent on

1. classroom instruction suitable for people of the same age and sex with no disabilities (see DMG 57133 et seq)
2. supervised study
3. examinations
4. practical work
5. taking part in any exercise, experiment or project which is part of the course.

57132 The DM should **exclude** time spent on

1. instruction or tuition not suitable for people of the same age and sex with no physical or mental disabilities<sup>1</sup> (see DMG 57133 et seq)
2. unsupervised private study whether
  - 2.1 at home **or**
  - 2.2 on the premises of the educational establishment
3. morning assemblies
4. normal meal and relaxation breaks.

*1 SS (SDA) Regs, reg 8(1)*

# Instruction or tuition which is “not suitable”

## General

- 57133 The words “instruction” or “tuition” cover the content as well as the method. Instruction or tuition which is not suitable for ordinary students includes
1. the teaching of special skills required by people with disabilities **and**
  2. the methods of teaching, where these would not be suitable for people of the same age and sex who do not have a disability<sup>1</sup>.

*1 R(S) 2/87*

- 57134 A course of education includes
1. attendance at an ordinary school or college including grammar, comprehensive and 6th form college
  2. attendance at a special school or training centre designed specifically for people with disabilities
  3. home tuition arranged by the LEA.

57135 Students attending special schools may be in FTE. Similarly students attending ordinary schools may not be in FTE.

- 57136 The DM should consider the circumstances of each claimant to decide whether
1. the course content and method of teaching for each subject is suitable for people without disabilities **and**
  2. the course amounts to 21 or more hours a week.

## Course content

57137 It may be clear that the entire course content is either

1. suitable **or**
2. not suitable

for students with no disabilities of the same age or sex as the claimant.

Many claimants may receive a mixture of **1.** and **2.** The DM should consider each lesson to determine whether the content is or is not suitable for people without disabilities.

57138 Examples of what the DM should exclude when calculating the time spent on the course include

1. activities connected with the student's disability (life skills or independence training)
2. curriculum levels intended for a younger person.

57139 Where

1. students are following the normal subject curriculum for people of that age and sex with no disabilities **and**
2. the time spent is 21 or more hours

there is no entitlement to SDA even though the number of subjects undertaken is limited by the disability.

### **Method of teaching**

57140 It will be clear in some cases that the method of teaching is not suitable for people of the same age and sex without disabilities, for example

1. a profoundly deaf person using radio links or sign language **or**
2. a blind person using braille.

57141 In deciding whether the claimant is receiving FTE, the DM should exclude time spent on instruction

1. which is slower **or**
2. where the hours for each subject are far greater

than would be necessary for people without disabilities.

57142 - 57145

# Disqualifications

57146 Unless DMG 57147 applies, DMs should disqualify claimants for receiving SDA<sup>1</sup> for a period of up to six weeks as they determine<sup>2</sup> if claimants

1. have become incapable of work through their own misconduct<sup>3</sup> **or**
2. fail without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) which
  - 2.1 is recommended by a doctor or a hospital or similar institution **and**
  - 2.2 would be likely to make them capable of work<sup>4</sup> **or**
3. without good cause
  - 3.1 behave in a way calculated to delay recovery **or**
  - 3.2 are absent from the place where they reside without leaving word where they may be found<sup>5</sup>.

**Note:** DMG 13730 et seq gives guidance on misconduct, treatment and the rules of behaviour when considering IfW. That guidance also applies when considering disqualification.

*1 SS (IW) (Gen) Regs, reg 18(2)(a); 2 reg 18(2); 3 reg 18(1)(a); 4 reg 18(1)(b); 5 reg 18(1)(c)*

57147 DMG 57146 1. does not apply where the person's incapacity is due to

1. pregnancy **or**
2. a sexually transmitted disease<sup>1</sup>.

*1 SS (IW) (Gen) Regs, reg 18(1)(a)*

57148 Claimants are also disqualified for receiving SDA because of

1. absence from GB<sup>1</sup> unless certain provisions apply (see DMG Chapter 07 Part 6) **or**
2. imprisonment or detention in legal custody<sup>2</sup> (see DMG Chapter 12).

*1 SS CB Act 92, s 113(1)(a); 2 s 113(1)(b)*

57149 For SDA purposes, periods of disqualification of more than six weeks can still be days of IfW. This is because the IB rules (apart from those applying to days of training for work preventing such a day from being treated as a day of IfW for IB<sup>1</sup>) do not apply to SDA<sup>2</sup>.

*1 SS (IB) Regs, reg 4; 2 SS (SDA) Regs, reg 7(1)*

57150 Days of disqualification in a disqualification period longer than six weeks do not count for deciding whether one day is in the same PIW as another<sup>1</sup> (see DMG Chapter 56). This is because the IB provisions do apply to the calculation of PIWs.

*1 SS (SDA) Regs, reg 2(3)*



# Disentitlement

57151 DMs should note that

1. claimants are disentitled to SDA if they do not make a claim in the prescribed manner and time (see DMG Chapter 02)
2. for SDA purposes a day of disentitlement can be a day of IfW because the IB rules (apart from those applying to days of training for work preventing such a day from being treated as a day for work for IB<sup>3</sup>) do not apply to SDA<sup>4</sup>.

*1 SS A Act 92, 2 s 1(2)(b); 3 SS (IB) Regs, reg 4; 4 SS (SDA) Regs, reg 7(1)*

57152 - 57200



# Rate of benefit

## General

57201 DMs should note that

1. rates of personal SDA and increases for dependants are prescribed<sup>1</sup>
2. they decide the rate of benefit payable
3. SDA is uprated following an uprating order<sup>2</sup>
4. the daily rate of SDA is one-seventh of the weekly rate<sup>3</sup>.

**Note:** SDA may be increased by an age related addition (see DMG 57301 et seq).

*1 SS CB Act 92, Sch 4; 2 SS A Act 92, s 150; 3 SS CB Act 92, s 68(8)*

57202 - 57220

## Payment of SDA during the MPP

### General

57221 A woman who satisfies the conditions of entitlement to SDA and SMP may be entitled to both benefits during the MPP (see DMG 57231). The DM should reduce the amount of SDA payable for any

1. day **or**
2. days in a week

by the amount of SMP payable in the same week (see DMG 57241)<sup>1</sup>.

*1 SS CB Act 92, s 68(9)*

57222 - 57230

## Entitlement to SDA and SMP

57231 During the MPP

1. a day cannot be a day of incapacity for PIW purposes for SDA<sup>1</sup> (see DMG Chapter 56)
2. a woman can however be entitled to SDA because it is not a condition of entitlement to SDA that a day of incapacity forms part of a PIW.

**Note:** The normal conditions of entitlement including the QP have to be satisfied for each day claimed (see DMG 57006).

*1 SS CB Act 92, Sch 13, para 1*

57232 - 57240

### **Reduction of SDA by SMP**

57241 Where

1. SDA is payable to a woman for one or more days in a week **and**
2. SMP is payable to her on any day in the same week

the DM should reduce the amount of SDA including any increase for dependants by the amount of SMP leaving only the balance, if any, payable<sup>1</sup>.

*1 SS CB Act 92, s 68(9)*

57242 Where DMG 57241 applies the DM should note that

1. SDA is reduced by the amount of SMP which is payable to the woman whether or not it was actually paid at the time
2. entitlement to SMP arises only for complete weeks and the DM should take into account the whole of this amount in adjusting SDA due for a complete week or part of a week
3. the gross amount of SMP before any deductions is taken into account in adjusting the SDA due
4. where SMP is paid other than weekly, for example
  - 4.1 monthly **or**
  - 4.2 4 weekly

the DM can only make a reduction of SDA in weeks when SMP is payable, regardless of the period covered by the payment of SMP.

57243 - 57260

### **Reduction of SDA by councillors' allowances**

57261 Work as a councillor is disregarded in deciding entitlement to SDA (see DMG Chapter 13). Though the council duties performed do not affect benefit entitlement, the allowances

1. may affect the amount of benefit payable<sup>1</sup> **and**
2. should be calculated in the same way as for IB (see DMG Chapter 56).

*1 SS (SDA) Regs, reg 8A*

## Panel members and DLA Advisory Board members

57262 The rules for SDA claimants who are

1. panel members appointed under specified legislation<sup>1</sup> or
2. DLA Advisory Board members

are the same as for IB<sup>2</sup>. Full guidance is given in DMG Chapter 13.

*1 Qualifications for Appointments of Members to the FiT & UT Order, art 2(3); 2 SS (IW) Regs, reg 17(7)*

57263 - 57299



# Age related addition

## Rates of age related addition

57300 The weekly rate of SDA is increased by an age related addition

1. which is payable to claimants under 60 on the day they qualified for the allowance<sup>1</sup> **and**
2. the weekly rate<sup>2</sup> of which depends on the claimant's age on the qualifying day (see DMG 57301).

<b>Age on qualifying day</b>	<b>Rate of age related addition</b>
Under age 40	Higher
Age 40-49	Middle
Age 50-59	Lower
Age 60 or over	No age related addition payable

*1 SS CB Act 92, s 69(1); 2 Sch 4*

## The qualifying day

57301 The qualifying day for an age related addition

1. is the first day of IfW in the period of at least 196 consecutive days of
  - 1.1 incapacity **or**
  - 1.2 incapacity and disablement

before the first day in the current period of entitlement to SDA<sup>1</sup> (see DMG 57006).

*1 SS CB Act 92, s 69(2)*

57302 The current period of entitlement means a period of one or more consecutive days of entitlement to SDA beginning immediately after the last period of one or more consecutive days for which a person was not entitled to SDA<sup>1</sup>.

*1 SS CB Act 92, s 69(3)*

57303 If a WtWB becomes entitled to SDA within a LT the qualifying day for any age related addition is the same as for the earlier period in the same PIW (see DMG Chapter 13 and Chapter 56).

57304 The qualifying day may, in certain cases be changed (see DMG 57307 - 57311) so that the rate of age related addition can be based on a day earlier than the one decided as in DMG 57302.

57305 - 57306

## Changing the qualifying day

57307 For age related addition purposes the qualifying day is a day earlier than the one decided as in DMG 57301 where<sup>1</sup>

1. the claimant was previously entitled to NCIP<sup>2</sup> (see DMG 57308)
2. the claimant has been continuously incapable of work for more than 196 consecutive days<sup>3</sup> (see DMG 57309)
3. the current period of entitlement to SDA links with an earlier period of incapacity falling within the same PIW<sup>4</sup> (see DMG 57310)
4. the claimant qualified for SDA on the incapacity test alone because not more than 182 days of capacity for work near age 20 were treated as days of incapacity<sup>5</sup> (see DMG 57311).

Where a claimant qualifies under more than one of the above categories, the earliest date applies<sup>6</sup> (see DMG 57312).

*1 SS (SDA) Regs, reg 10A & 10B; 2 reg 10A(1a); 3 reg 10A(1b); 4 reg 10A(1c);  
5 reg 10B; 6 reg 10A(2)*

## Previously entitled to non-contributory invalidity pension

57308 A claimant who was previously entitled to NCIP and qualified for SDA through the transitional provisions is treated as having qualified for SDA

1. on the first day of incapacity in the period of at least 196 consecutive days before the first day of entitlement to NCIP<sup>1</sup> **and**
2. from the earlier date in 1. for age related addition purposes if there is evidence that continuous IfW began earlier than the 196 days.

*1 SS (SDA) Regs, reg 10A(1)(a)*

## Continuously incapable of work for more than 196 days

57309 A claimant who has been continuously incapable of work for a period of more than 196 consecutive days is treated as having qualified for SDA on the first day of incapacity in that period<sup>1</sup>.

### Example

The qualifying day for a claimant who

1. has to satisfy both the incapacity and disablement tests **and**
2. became incapable from a day earlier than the one on which the disablement test was satisfied (see DMG 57037)

is the first day of incapacity in that period. Without this provision the qualifying day would be the first day in the period of at least 196 consecutive days on which both the incapacity and disablement tests were satisfied<sup>2</sup>.

*1 SS (SDA) Regs, reg 10A(1)(b); 2 SS CB Act 92, s 68(3)(b) & 69(2)*

### **Linking periods of SDA within period of incapacity for work**

- 57310 A claimant who has previously been entitled to SDA is
1. exempt from a further QP when again incapable or disabled within the same PIW<sup>1</sup> (see DMG 57059) **and**
  2. treated as having qualified for SDA on the first day of incapacity in the period of at least 196 consecutive days before the previous period of entitlement to SDA<sup>2</sup>.

*1 SS (SDA) Regs, reg 6; 2 reg 10A(1c)*

### **SDA qualification on incapacity test alone**

- 57311 Entitlement to SDA may be based on the incapacity test alone where a claimant over age 20
1. has had a period of being capable of work **and**
  2. satisfies the conditions in DMG 57070.

Where this applies the days of capacity for work are treated as days of incapacity when deciding the qualifying day for age related addition purposes<sup>1</sup>.

*1 SS (SDA) Regs, reg 10B*

### **The earliest qualifying day**

- 57312 A claimant may satisfy more than one of the provisions<sup>1</sup> enabling the qualifying day for age related addition to be changed. The DM should use the earliest of these dates to decide the rate of age related addition payable<sup>2</sup> provided this is not before 5.7.48.

*1 SS (SDA) Regs, reg 10A(1); 2 reg 10A(2)*

57313 - 57999

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