

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 1

Amendment 50 – February 2016

1. This letter provides details on Amendment 50; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

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

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

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

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

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

3. Amendment 50 affects the lists of Abbs, SI's & Statutes , Chapters 2, 3, 4 & 6.
 - Change at 02009 re ESA claims & 02377 in Chapter 2.
 - Change at DMG 03348. A new paragraph about revising JSA & IS awards after a successful ESA appeal. awards after a successful ESA appeal in chapter 3
 - para 04801 links to the S&T guide in chapter 4
 - expansion of guidance on withdrawal of appeal (06195) in Chapter 6

4. The last two amendment packages amending Volume 1 were

Amendment 49 [October 2015]

Amendment 48 [June 2015]

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

The content of the examples in this document (including use of imagery) is for illustrative purposes only

**Remove
Abbreviations**

RA-YT (2 pages)

Statutes

NHS Act77 – WC Act 25 (1 page)

Statutory Instruments

SS Ben (PA) Regs - SS (IB) (Trans) Regs
(1 page)

Chapter 2

02009 – 02037 (2 pages)

02373 – 02377 (1 page)

Chapter 3

Conts 03340 – 03471 (1 page)

03304 – 03349 (2 pages)

Chapter 4

04800 – 04819 (1 page)

Chapter 6

Conts 06000 – 06304 (1 page)

06190 – 06229 (2 pages)

Insert

Abbreviations

RA-YT (2 pages)

Statutes

NHS Act77 – WC Act 25 (1 page)

Statutory Instruments

SS Ben (PA) Regs - SS (IB) (Trans) Regs
(1 page)

Chapter 2

02009 – 02037 (2 pages)

02373 – 02377 (1 page)

Chapter 3

Conts 03340 – 03471 (1 page)

03304 – 03349 (2 pages)

Chapter 4

04800 – 04819 (1 page)

Chapter 6

Conts 06000 – 06304 (1 page)

06190 – 06229 (2 pages)

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

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

WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

National Health Service Act 1977	NHS Act 77
National Health Service Act 1990	NHS Act 90
National Health Service and Community Care Act 1990	NHS & CC Act 90
National Insurance Act 1965	NI Act 65
National Insurance (Industrial Injuries) Act 1965	NI (II) Act 65
National Insurance contributions Act 2008	NIC Act 08
National Minimum Wage Act 1998	NMW Act 98
Pensions Act 2007	Pensions Act 07
Pensions Act 2008	Pensions Act 08
Pensions Act 2014	Pensions Act14
Pension Schemes Act 1993	PS Act 93
Registered Homes (Amendment) Act 1991	RH (Amdt) Act 91
Registered Homes Act 1984	RH Act 84
Rehabilitation of Offenders Act 1974	ROO Act 74
Social Security Act 1975	SS Act 75
Social Security Act 1985	SS Act 85
Social Security Act 1986	SS Act 86
Social Security Act 1988	SS Act 88
Social Security Act 1989	SS Act 89
Social Security Act 1990	SS Act 90
Social Security Administration Act 1992	SS A Act 92

Social Security Contributions and Benefits Act 1992	SS CB Act 92
Social Security Contributions (Transfer of Functions, etc) Act 1999	SSC (ToF) Act 99
Social Security Fraud Act 2001	SS Fraud Act 01
Social Security (Incapacity for Work) Act 1994	SS (IfW) Act 94
Social Work (Scotland) Act 1968	SW (Scot) Act 68
State Pension Credit Act 2002	SPC Act 02
Supervised Jobsearch Pilot Scheme (Designation of Employment Officers) Order 2014	SJP Scheme (Designation of Emp. O) Order 2014
Tax Credit Act 2002	TC Act 02
Tribunals, Courts and Enforcement Act 2007	TCE Act 07
Teaching and Higher Education Act 1998	T & HE Act 98
Trade Union and Labour Relations (Consolidation) Act 1992	TULR (C) Act 92
Trade Union Reform and Employment Rights Act 1993	TURER Act 93
Welfare Reform Act 2007	WR Act 07
Welfare Reform Act 2009	WR Act 09
Welfare Reform and Pensions Act 1999	WRP Act 99
Workmen's Compensation Act 1925	WC Act 25

Statutory Instruments

The Social Security Benefit (Persons Abroad) Regulations 1975 No. 563	SS Ben (PA) Regs
The Social Security (Civil Penalties) Regulations 2012	SS (CPen) Regs
The Social Security (Computation of Earnings) Regulations 1978 No. 1698	SS (C of E) Regs
The Social Security (Claims and Information) Regulations 2007 No. 2911	SS (C&I) Regs
The Social Security Class 3A Contributions (Units of Additional Pension) Regulations 2014 SI 2014 No. 3240	SS Class 3A Conts (UAP) Regs
The Social Security (Child Maintenance Bonus) Regulations 1996 No. 3195	SS (CMB) Regs
The Social Security (Claims and Payments) Regulations 1979 No. 628	SS (C&P) Regs 79
The Social Security (Claims and Payments) Regulations 1987 No. 1968	SS (C&P) Regs
The Social Security Commissioners (Procedure) Regulations 1999 No. 1495	SS Commissioners Procedure Regs
The Social Security (Contributions) Regulations 1979 No. 591	SS (Conts) Regs
The Social Security (Contributions) Regulations 2001 No. 1004	SS (Conts) Regs 01
Social Security (Contribution Credits for Parents and Carers) Regulations 2010 No. 19	SS (CC P & C) Regs
The Social Security (Credits) Regulations 1975 No. 556	SS (Credits) Regs
The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 No. 769	SS (Crediting etc) Regs
The Social Security and Child Support (Decisions and Appeals) Regulations 1999 No. 991	SS CS (D&A) Regs
The Social Security and Child Support (Jobseeker's Allowance) (Miscellaneous Amendment) Regulations 1996 No. 2538	SS & CS (JSA) (Misc Amdt) Regs

Statutory Instruments

The Social Security (Deferral of Retirement Pensions) Regulations 2005 No. 453	SS (Def RP) Regs
The Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005 No. 2677	SS (Def RP, SAP & GRB) (Misc Provs) Regs
The Social Security (Disability Living Allowance) Regulations 1991 No. 2890	SS (DLA) Regs
The Social Security (Introduction of Disability Living Allowance) Regulations 1991 No. 2891	SS (Introduction of DLA) Regs
The Social Security and Family Allowances (Polygamous Marriages) Regulations 1975 No. 561	SS & FA (Poly Marr) Regs
The Social Security (General Benefit) Regulations 1982 No. 1408	SS (Gen Ben) Regs
The Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 No. 393	SS (GRB) (No. 2) Regs
The Social Security (Graduated Retirement Benefit) Regulations 2005 No. 454	SS (GRB) Regs
The Social Security (Habitual Residence) Amendment Regulations 2004 No. 1232	SS Hab Res Regs
The Social Security (Hospital In-Patients) Regulations 1975 No. 555	SS (HIP) Regs
The Social Security (Hospital In-Patients) Regulations 2005 No. 3360	SS (HIP) Regs 05
The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 No. 636	SS (I&A) Cql Amdts Regs
The Social Security (Incapacity Benefit) Regulations 1994 No. 2946	SS (IB) Regs
The Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 No. 2945	SS (IB for D) Regs
The Social Security (Incapacity Benefit) (Transitional) Regulations 1995 No. 310	SS (IB) (Trans) Regs

Benefits for which a claim is not required

02009 A claim is not required for

1. Cat A RP where a claimant who is already entitled to any category of RP other than Cat A RP becomes divorced or has a civil partnership which is dissolved¹
2. Cat B RP where
 - 2.1 a claimant is already entitled to
 - 2.1.a Cat A RP **or**
 - 2.1.b GRB **or**
 - 2.1.c both **and**
 - 2.2 marries or enters a civil partnership with a person who is entitled to Cat A RP in their own right² **or**
 - 2.3 the spouse or civil partner of the claimant becomes entitled to Cat A RP in their own right² **or**
 - 2.4 the spouse or civil partner of the claimant dies and they were entitled to Cat A RP at the date of death²
3. Cat A or B RP³ where a woman
 - 3.1 is over the age of 65 on her ceasing to be entitled to WMA **or**
 - 3.2 is in receipt of WP on reaching the age of 65
4. Cat C RP⁴ where the beneficiary is already in receipt of
 - 4.1 another RP **or**
 - 4.2 WB **or**
 - 4.3 benefit corresponding to WP or WMA **or**
 - 4.4 BB
5. Cat D RP⁵ where the beneficiary
 - 5.1 was ordinarily resident in GB on the day on which age 80 was reached **and**
 - 5.2 is in receipt of another category of RP
6. age addition for a pensioner attaining age 80⁶
7. CWP
8. RA⁷
9. dependency increases where entitlement has ended because of earnings (see DMG 02037).

10. JSA where
 - 10.1 JSA has previously been awarded **and**
 - 10.2 payment under that award has been suspended⁸ for a definite or indefinite period **and**
 - 10.3 that suspension expires or is cancelled in part only **and**
 - 10.4 the DM decides that there was no entitlement to JSA during any part of the period of suspension **and**
 - 10.5 the claimant's entitlement is not in doubt

a new claim is not needed to cover days immediately following the suspension period⁹
11. IS, where the claimant is treated as not being in remunerative work because the claimant is in receipt of IS by way of MIRO (see DMG 20530)¹⁰
12. WPA where, immediately before a full GRC is issued, a female to male transsexual claimant was in receipt of WMA¹¹
13. SAP where the beneficiary is in receipt of any category of RP¹²
14. BPT where the beneficiary is in receipt of RP of any category at the date of death of the spouse or civil partner and satisfies the conditions of entitlement¹³
15. ESA where the claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State and that appeal relates to a decision to terminate or not award a benefit for which a claim was made¹⁴. A relevant decision means a decision that embodies the first determination by the Secretary of State that the claimant does not have LCW. It is also a decision that embodies the first determination by the Secretary of State that the claimant does not have LCW since a previous determination by the Secretary of State or appellate authority does not have LCW. An appellate authority is the FtT, UT, Court of Appeal, Court of Session or the Supreme Court¹⁵.

Note 1: A Cat B pension also includes a pension awarded under section 51A of the SS CB Act 92. This is sometimes known as an ABL pension.

Note 2: The award of ESA will begin on the day after the last day of entitlement of the award which is the subject of the appeal or on the day the medical evidence begins if later.

Example

Heather's entitlement to ESA ends when she fails the WCA. She appeals and ESA is awarded from the date of disallowance. No claim is required. Her appeal is dismissed. The FtT decision notice is received on 13.7.10. Heather's benefit week

ends on Monday. The DM treats her as not having LCW from 20.7.10 and the award of ESA is superseded and terminated from 20.7.10. Heather makes an appeal against this decision. A further claim though is required to consider entitlement to ESA.

1 SS (C&P) Regs, reg 3(1)(ca); 2 reg 3(1)(cb, (i, ii & iii)); 3 reg 3(1)(d); 4 reg 3(1)(a); 5 reg 3(1)(b); 6 reg 3(1)(c); 7 reg 3(1)(e); 8 SS CS (D&A) Regs, reg 16(2); 9 SS (C&P) Regs, reg 3(1)(g); 10 reg 3(1)(h); 11 GR Act 04, Sch 5, para 3(2); 12 SS (C&P) Regs, reg 3(1)(i); 13 reg 3(1)(da) & SS CB Act 92, s 36(1); 14 SS (C&P) Regs, reg 3(1)(j); 15 reg 3(2)

Exemption from claiming Cat A or Cat B Retirement Pension

02010 A claim is not required for Cat A or Cat B RP in the circumstances set out below.

02011 No claim¹ is required from a beneficiary who has received written notification to that effect from the Secretary of State

1. at least 2 weeks before the day they reach pensionable age² **or**
2. later if the Secretary of State considers that reasonable

1 SS (C&P) Regs, reg 3A(1 & 2); 2 Pensions Act 1995, Sch 4, para 1

02012 The Secretary of State can only give a notification in a case where, 8 weeks before the day on which the beneficiary reaches pensionable age they¹

1. are in receipt of an exempt benefit (including those who have been awarded benefit but have not received their first payment)² **or**
2. would be in receipt of an exempt benefit but for it not being payable because of³
 - 2.1 a sanction (JSA and joint claim JSA - DMG Chapter 34)⁴ **or**
 - 2.2 a failure to attend on the date or at the time specified in a notice (JSA and joint claim JSA - DMG Chapter 20)⁵ **or**
 - 2.3 a disqualification for misconduct (IBLT and IS where it is paid on grounds of incapacity - DMG Chapter 13; ESA - DMG Chapter 53)⁶ **or**
 - 2.4 any provision of the Social Security Fraud Act 2001⁷ **and**
- 3 are neither entitled to, nor awaiting the determination of, a claim for a non-exempt benefit⁸

1 SS (C&P) Regs, reg 3A(3); 2 reg 3A(3 & 5); 3 reg 3A(7); 4 JS Act 95, s 19 & 20A; 5 s 8(2)(a) & JSA Regs, reg 27A; 6 SS (IfW) (Gen) Regs, reg 18 & ESA Regs, reg 157; 7 SS (C&P) Regs, reg 3A(7)(ca); 8 reg 3A(3)(b)

Example

Jeremy is in receipt of ESA. He reaches pensionable age in 8 weeks time, on 5 March 2012. On 20 February he receives a notification that he does not have to make a claim for Cat A RP.

02013 Exempt benefit¹ means

1. ESA
2. IS
3. JSA
4. IBLT
5. SPC

1 SS (C&P) Regs, reg 3A(6)

02014 Non exempt benefit¹ means

1. CA
2. IBST
3. SDA
4. WMA
5. WP

1 SS (C&P) Regs, reg 3A(6)

Deferment and De-retirement

02015 A person who, in accordance with specified legislation

1. before pensionable age, inform the Secretary of State that they want their entitlement to Cat A or Cat B RP to be deferred¹ **or**
2. after reaching pensionable age, elects to de-retire²

must make a claim in order to subsequently to be entitled to Cat A or Cat B RP³

1 SS CB Act 92, s 55(3)(a); 2 SS (WB&RP) Regs, reg 2; 3 SS (C&P) Regs, reg 3A(4)

Dependency increases

02016 For some increases for adult dependants entitlement ends when the earnings of the dependant are more than a certain amount (see DMG Chapter 16). An award of benefit continues, but an increase for a dependant is not payable for the relevant week or weeks affected by those earnings¹ where

1. entitlement to the increase ends only because of the dependant's earnings **and**
2. entitlement would have continued if those earnings were ignored.

In these circumstances a new claim is not needed before the increase can be considered again.

1 SS CB Act 92, s 92

02017 - 02037

02373 In both cases the period of extension is that falling immediately before the date of claim. It does not necessarily run from the first day of the period claimed for¹. In appropriate circumstances a claim can be taken as including a claim for a period starting with the earliest date which would make the claim in time².

1 R(IS) 3/01; 2 R(IS) 16/04

One month extension

02374 The conditions are that

1. the claim is made late **and**
2. one or more of the circumstances specified in DMG 02375 apply **and**
3. as a result of those circumstances the claimant could not reasonably have been expected to make the claim earlier¹.

1 SS (C&P) Regs, reg 19(6), R(IS) 16/04

02375 The circumstances are¹

1. the office where the claimant would be expected to make a claim was closed and alternative arrangements had not been made
2. the claimant was unable to attend the appropriate office due to difficulties with the normal mode of transport and there was no reasonable alternative available
3. there were adverse postal conditions
4. the claimant was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant before the date on which entitlement expired
5. in a claim for **IS** or **JSA** the claimant had ceased to be a member of a couple within the period of one month before the claim was made
6. during the period of one month before the claim was made, a close relative of the claimant died. "Close relative" means a partner, parent, son, daughter, brother or sister
7. a claim is made by one member of a joint-claim couple and the other member has failed to attend at a time and place specified by the Secretary of State for the purpose of claiming a joint-claim **JSA**
8. the claimant's partner was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant's partner before the date on which entitlement expired
9. the claimant was unable to make telephone contact with the appropriate office because the telephone lines were busy or inoperative.

1 SS (C&P) Regs, reg 19(7)

Three months extension

02376 The conditions are that

1. the claim is made late **and**
2. one or more of the circumstances specified in DMG 02377 apply **and**
3. as a result of those circumstances the claimant could not reasonably be expected to make the claim earlier¹.

1 SS (C&P) Regs, reg 19(4), R(IS) 16/04

02377 The circumstances are¹

1. the claimant has difficulty communicating because of
 - 1.1 learning, language, or literacy difficulties **or**
 - 1.2 deafness or blindnessand it was not reasonably practicable for the claimant to obtain assistance from another person to make the claim
2. except in the case of a claim for JSA, the claimant was ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make the claim
3. the claimant was caring for a person who was ill or disabled, and it was not reasonably practicable to get help from another person to make the claim
4. the claimant was given information by an officer of the DWP or HMRC which led the claimant to believe that a claim for benefit would not succeed²
5. the claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, an LA, or a person working in a Citizens Advice Bureau or a similar advice agency, which led the claimant to believe that a claim for benefit would not succeed
6. the claimant or partner was given written information about income or capital by an employer or former employer, or by a bank or building society, which led the claimant to believe that a claim for benefit would not succeed
7. the claimant was required to deal with a domestic emergency and it was not reasonably practicable to obtain assistance from another person to make the claim
8. the claimant was prevented by adverse weather conditions from attending the appropriate office.

1 SS (C&P) Regs, reg 19(5); 2 R(IS) 3/01

Revising decisions on JSA sanctions	03340
Revision of ESA awards.....	03341
Revision of IS and JSA awards following successful ESA appeal.....	03348
Revising decisions on linked benefits	03350
ESA(IR), IS and SPC	03354
Revision in REA cases.....	03355
Revising IS decisions when incapacity decisions are appealed.....	03356
Revision on change of election - deferred entitlement	
SPC	03360
Cat A or Cat B RP, SAP or GRB.....	03361
Revision of termination decisions – RP, SAP and GRB	03362
Revising decisions and determinations with no appeal rights	03370
Revising decisions on sanctionable benefits.....	03375
Decisions given without authority.....	03400
Revision of advance awards	03410
Effective date of a revised decision	03460
Effective date where RP decision revised due to late paid class 3 contributions.....	03471

Decisions where the restriction applies

03304 An accident whereby a person suffers personal injury shall be deemed in relation to that person to be an IA if

1. it arises out of and in the course of the person's employment¹ **and**
2. that employment is employed earner's employment for the purposes of the Act² **and**
3. payment of benefit is not precluded because the accident happened outside GB³.

1 SS Act 98, s 29(6)(a); 2 s 29(6)(b); SS CB Act 92; 3 s 94(5); SS Act 98, s 29(6)(c)

03305 Decisions given based on the conditions in DMG 03304 can only be revised where the criteria in DMG 03300 apply¹.

1 SS Act 98, s 29(7)

03306 A decision that an accident was not an IA because the employment was not employed earner's employment can only be revised where DMG 03300 applies. This is because the employed earner's employment question is one of the deeming provisions under which an accident is deemed to be an IA

03307 - 03319

Revision following appeal against an earlier decision

03320 The DM may revise a decision at any time following determination of an appeal against an earlier decision. These decisions may be a decision on a claim, or a supersession.

03321 Where the DM

1. makes a decision, or revises or supersedes a decision ("decision A") **and**
2. the claimant appeals against decision A **and**
3. after the appeal has been made but before it is decided the DM makes another decision ("decision B")
 - 3.1 which supersedes decision A **or**
 - 3.2 on a further claim **and**
4. decision A is changed on appeal **and**
5. the DM would have made decision "B" differently if, at the time they had been aware of the FtT decision

the DM may revise decision B¹.

1 SS CS (D&A) Regs, reg 3(5A)

Example 1

A claimant in receipt of IB is disallowed following a PCA in which he scored 5 points. He makes an appeal against the disallowance. He also claims IB again. The second

IB claim is disallowed. The appeal against the first disallowance is successful, and the FtT awards IB for the period up to date of the second claim. The DM revises the second disallowance, and awards IB.

Example 2

A claimant in receipt of an indefinite award of DLA care and mobility components at the lower rate notifies on 21.5.02 that he has more care needs. The DM does not accept that a higher rate of care is appropriate, and on 4.6.02 decides not to supersede the awarding decision. The claimant appeals. He also applies to the DM for a higher rate of mobility component following an accident on 28.6.02. On 18.7.02 the DM supersedes the awarding decision to award the higher rate mobility component for two years from 28.9.02, but does not increase the care component. The FtT hears the appeal on 16.09.02, and awards the middle rate of the care component from 21.5.02. The DM revises the decision of 18.7.02 to award the middle rate of the care component from 28.9.02 and the higher rate of mobility component for the period 28.9.02 - 27.9.04.

03322 - 03329

Revision of IB awards

03330 If a person cannot be treated as incapable because they make a claim within six months of a previous PCA and the incapacity is the same or not significantly worse (see DMG 13630 - 13631), their claim cannot be decided straight away¹. The person normally has to wait for a decision on their claim until the PCA is actually carried out. However, the person can be treated as incapable of work if the six months period ends before application of the PCA. This means that the claim can be decided, and IB awarded from that date. No award can be made for the period before the claimant is treated as incapable.

1 SS (IW) (Gen) Regs, reg 28(2)(b)

03331 If the person subsequently passes the PCA, and is found to be actually incapable of work, the PCA determination applies to all periods of incapacity not covered by the determination treating them as incapable. The decision awarding IB can be revised at any time so as to award from the date of claim¹.

1 SS CS (D&A) Regs, reg 3(5B)

03332 - 03339

Revising decisions on JSA sanctions

03340 Decisions on whether JSA is payable for any period because a sanction has been imposed¹ can be revised at any time. For further guidance on sanctions, see DMG Chapter 34. In order to allow an intermediate level sanction to take effect on a new

claim a decision to award JSA can be revised² where a decision is made under prescribed regulations that the amount of that award is to be reduced³.

Example

A claimant in receipt of JSA fails to attend a course as directed. A sanction was imposed for two weeks. The decision is appealed to the FtT. A second sanction of four weeks is imposed after the jobseeker fails to attend another course as directed. This decision is also appealed. The appeal for the first sanction is allowed. The DM revises the second sanction to reduce the period to two weeks, and lapses the appeal.

*1 SS CS (D&A) Regs, reg 3(6); JS Act 95, s 17A, 19 & 20A; JSA Regs, reg 27A;
2 SS CS (D&A) Regs, reg 3(6B); 3 JSA Regs, reg 69B & 70*

Revision of ESA awards

03341 A decision awarding ESA can be revised¹ if

1. the decision was made on the basis that the claimant has made and is pursuing an appeal against a decision that they did not have LCW (the original decision) **and**
2. the appeal to the FtT in relation to the original decision is successful.

1 SS CS (D&A) Regs, reg 3(5E)

03342 A decision awarding ESA can be revised¹ if

1. the claimant's current PLCW is treated as a continuation of another PLCW by virtue of the linking rules² **and**
2. the assessment phase ended in the previous award, or the PLCW was more than 13 weeks³.

1 SS CS (D&A) Regs, reg 3(5F); 2 ESA Regs, reg 145(1); 3 reg 7(1)(b)

03343 An award of ESA may be revised at any time¹ if

1. it incorporates a determination that treats a claimant as having LCW until a determination about LCW has been made² **and**
2. the condition in 03343 1. was not satisfied at the time when the claim was made **and**

there is a period before the award which falls to be decided.

1 SS CS (D&A) Regs, reg 3(5D); 2 ESA Regs, reg 30

Example

A claimant is sent a questionnaire on 2.7.12 but it is not returned within the prescribed time. The DM determines that the claimant is to be treated as not having LCW and the award of ESA is terminated from 1.8.12. A fresh claim to ESA is made on 3.9.12. The questionnaire is not returned until 5.11.12 and ESA is paid from that date. The claimant attends a WCA in February 2013 and the DM determines that

they have LCW. The decision awarding ESA from 5.11.12 is revised so that ESA is awarded from 3.9.12.

03344

03345 Where a claimant is reassessed for the purposes of ESA¹ and ESA is not awarded and

1. they appeal that decision to the FtT **and**
2. before or after that decision is appealed they are awarded IS or JSA **and**
3. their appeal is successful

then the decision to award IS or JSA may be revised².

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs; 2 SS CS (D&A) Regs, reg 3(5H)

03346 Where a decision has been made to terminate the award of ESA (Cont) under specified legislation¹ and it is subsequently determined, in relation to the period of entitlement before that decision, that the claimant has or is treated as having LCWRA, then the decision to terminate entitlement may be revised². The previous decision awarding ESA (Cont) should be superseded to award the support component. See DMG 04709 for guidance on the effective date rule.

1 WR Act 12, s 51(1); 2 SS CS (D&A) Regs, reg 3(5I)

03347 A decision awarding ESA may be revised at any time where

1. it is made immediately following the last day for which the claimant was treated as capable of work or not having LCW under specified legislation¹ and the period lasted 13 weeks **and**
2. it is not a decision which embodies a determination that the claimant is treated as having LCW under specified legislation².

1 SS CS (D&A) Regs, reg 3(5J); 2 JSA Regs, reg 55ZA & JSA Regs 13, reg 46A; ESA Regs, reg 30

Revision of IS and JSA awards following successful ESA appeal

03348 Where a claimant's award of ESA is terminated because they do not have LCW and

1. they appeal that decision to the FtT **and**
2. before or after that decision is appealed they are awarded IS or JSA **and**
3. their appeal is successful

then the decision to award IS or JSA may be revised¹.

1 SS CS (D&A) Regs, reg 3(5G)

03349

Suspension and termination of benefit

Hardship

- 04800 DMs should always have regard to the question of whether hardship will result from their decision when considering suspension of benefit, either wholly or in part. This applies both to circumstances where the DM is considering an immediate suspension or where the claimant has been asked to provide information.
- 04801 For issues to be considered when deciding if hardship would result see Chapter 2 of the [Suspension and Termination Guide](#).

Loss of contact with claimant

- 04802 If contact with the claimant is lost the DM should consider suspension and termination to help prevent the accumulation of long periods of arrears.

04803 - 04809

Immediate suspension

- 04810 The DM may suspend the payment of benefit immediately, either wholly or in part, where a question has arisen about the claimant's entitlement to benefit or some component part of it¹. Payment can also be suspended after 14 days, where there has been a failure to satisfy information requirements (see DMG 04841)².
- 1 SS Act 1998, s 21; SS CS (D&A) Regs, reg 16; 2 reg 17*
- 04811 Suspension may be appropriate where a question has arisen during the currency of a claim
1. about whether the claimant satisfies the conditions of entitlement to the benefit¹
 2. about whether an award of benefit should be revised or superseded²
 3. about the award of benefit because an appeal is pending against a decision made by a FtT, UT or a court³
 4. because an appeal is pending in a different case before a UT or a court, and it appears to the DM that the outcome of that case might require the award to be revised or superseded⁴
 5. about whether an overpayment of benefit is recoverable⁵
 6. about whether the claimant is still residing at the last address notified to the Secretary of State⁶.

1 SS CS (D&A) Regs, reg 16(3)(a)(i); 2 reg 16(3)(a)(ii); 3 SS Act 98, s 21(2)(c); SS CS (D&A) Regs, reg 16(3)(b) & (4); 4 SS Act 98, s 21(2)(d); SS CS (D&A) Regs, reg 16 (3)(b)(i); 5 SS Act 98, s 21(1)(a); SS CS (D&A) Regs, reg 16(3)(a)(iii); 6 reg 16(3)(a)(iv)

04812 JSA must be suspended if there is a doubt as to whether the claimant is or was available for work or ASE¹

1 SS CS (D&A) Regs, reg 16(2)

04813 - 04816

Suspension where a question arises as to whether benefit should be revised or superseded

04817 Where a question arises about whether a decision awarding benefit should be revised¹ or superseded² the DM should consider whether a suspension of the payment of benefit is appropriate. If it looks as though the revised or superseded decision would result in

1. an increase in entitlement, there is no need to consider suspension
2. a decrease in entitlement, consider suspending payments of the amount in question
3. a loss of entitlement to benefit, consider suspending the whole of the payment.

1 SS Act 1998, s 8; 2 s 10

Example 1

If a question arises as to whether a claimant not presently entitled to a DP is in fact registered blind, payment of the existing award should continue unchanged whilst appropriate enquiries are made.

Example 2

If a question arises about a claimant's entitlement to a premium consider suspending payment of the premium pending enquiries to resolve the doubt.

Suspension where an appeal is pending

04818 The DM may suspend payment of benefit, wholly or in part, where an appeal is pending against the decision¹, if in the opinion of the DM the likely outcome of the appeal is that there would be no entitlement to the benefit or part of the benefit in question.

1 SS Act 1998, s 21(2)(c)

04819 Appeal in this context means an appeal against a decision by

1. a FtT
2. a UT or Three Judge Panels
3. the High Court, the Court of Appeal, the Courts of Session in Scotland and the Supreme Court.

Chapter 06 - Making appeals and staying

Contents

Introduction

Appeals lodged on decisions made before 28.10.13.....	06000
Appeals lodged on decisions made on or after 28.10.13.....	06006
Changes and further claims during the period before a hearing.....	06014
The rules of natural justice	06019
Overriding objective.....	06022
The Human Right Act 1998.....	06024
Further information received	06029
Failure to comply with rules.....	06035

Which decisions can be appealed to the First-tier Tribunal

06040

Decisions which cannot be appealed.....	06041
Decisions not revised	06043
Notice of a decision against which an appeal lies.....	06045

Who can appeal to the First-tier Tribunal

06050

Making an appeal to the First-tier Tribunal

Decisions made before 28.10.13	06060
Time limit for appealing to the First-tier Tribunal	06065
Appeals following decisions whether or not to revise	06067
Decisions made on or after 28.10.13	06070
Time limit for appealing to the First-tier Tribunal	06072
Appeals following decisions whether or not to revise	06074
Late appeals	
Decisions made before 28.10.13	06075
Decisions made on or after 28.10.13	06091

Action when an appeal is made

Decisions made before 28.10.13	06100
Identifying the decision appealed against.....	06102

Decisions by HM Revenue and Customs	06104
Issue raised after appeal lodged with Her Majesty's Courts and Tribunals Service	06106
Decisions made on or after 28.10.13	06110
Identifying the decision appealed against.....	06111
Appeal not duly made	
Decisions made before 28.10.13	06112
Decisions made on or after 28.10.13	06119
Appeals outside First-tier Tribunal jurisdiction	
Decisions made before 28.10.13	06150
Decisions made on or after 28.10.13	06152
Lapsing an appeal	06160
Decision not to the claimant's advantage.....	06166
Appeal awaiting outcome of other proceedings	
Employment or other tribunal pending	06180
Criminal proceedings contemplated or pending.....	06181
Appeal on the same subject as a case before the Court	06183
Withdrawing an appeal	
Decisions made before 28.10.13	06190
Reinstatement of withdrawn appeal.....	06197
Decisions made on or after 28.10.13	06210
Reinstatement of withdrawn appeal.....	06213
When is an appeal struck out	
The appellant.....	06230
The respondent	06235
Reinstatement of appeal	06240
Hearings	06270
Evidence	06286
Non disclosure of documents and information	06287
Extracts from documents	06294
Copyright.....	06304

Withdrawing an appeal

Decisions made before 28.10.13

- 06190 An appeal can be withdrawn by the DM or the FtT depending on when the application is made.
- 06191 The DM can discontinue action on an appeal (i.e. it is not forwarded to HMCTS) where
1. the appellant or an authorised representative gives written notification **and**
 2. the appeal has not been sent to HMCTS¹.
- 1 SS CS (D&A) Regs, reg 33(10)*
- 06192 Where the appellant or representative initially makes a verbal request to withdraw their appeal, the DM should advise them that we need their request in writing before we can discontinue the appeal. A note should be made of any response they make to this request (for example do they refuse point blank to put the request in writing or offer some explanation as to why this would not be possible). Under no circumstances must the DM express any view as to whether the appellant should withdraw their appeal. Work on the appeal will then stop to await the written confirmation that the appellant or their representative wishes to withdraw the appeal.
- 06193 Where
1. the appellant or representative sends confirmation in writing, then the DM can discontinue the appeal as per DMG 06191 above **or**
 2. no written request is received, the case should be referred to HMCTS for the FtT to make a decision as to whether the requirement to notify withdrawal in writing can be waived. In these cases the FtT has delegated to the tribunal clerk the function of waiving the requirement for a withdrawal to be made in writing¹.
- 1 Practice Statement on the Delegation of Functions to Staff in Relation to the Social Entitlement Chamber of the FtT*
- 06194 Once an appeal has been lodged with HMCTS, any appeal may be withdrawn by the claimant or representative
1. in writing to the FtT at any time before the appeal is determined¹ **or**
 2. at an oral hearing but only where the FtT agree to the withdrawal².
- 1 TP (FtT) (SEC) Rules, rule 17(1); 2 rule 17(2) & (3)*
- 06195 The withdrawal of an appeal to the FtT made
1. before a hearing begins **or**
 2. during an adjournment of proceedings

takes effect automatically, unless the FtT has previously directed that any withdrawal requires its consent. So even where the proceedings are adjourned part heard for some months for example, the appeal could still be withdrawn during the adjournment period without consent of the FtT being required.

06196 HMCTS will inform all parties to an appeal when an appeal lodged with HMCTS has been withdrawn.

Reinstatement of withdrawn appeal

06197 A party to an appeal who has withdrawn their case may also apply to the FtT for it to be reinstated¹. Such a request must be made in writing and be received within a month after

1. the date the FtT received the written request to withdraw the case **or**
2. the date of the hearing if the withdrawal was made verbally².

1 TP (FtT) (SEC) Rules, rule 17(4); 2 rule 17(5)

06198 Where an appeal is accepted as withdrawn under DMG 06193 above, the appellant or representative is still able to make an application to re-instate the appeal. Any such application should be made to the FtT within one month of the date that HMCTS received the application for accepting withdrawal from DWP. This date will be on the notification that HMCTS issue to the appellant.

06199 Where the DM has discontinued action on the appeal as per DMG 06191, the claimant is still able to make an application to the FtT for re-instatement of the appeal within one month of the date the DM discontinued action on the appeal. The DM should refer any such application to HMCTS.

06200 - 06209

Decisions made on or after 28.10.13

06210 Once an appeal has been lodged with HMCTS, it may be withdrawn by the claimant or representative

1. in writing to the FtT¹ **or**
2. at an oral hearing but only where the FtT agree to the withdrawal² **or**
3. by telephone to HMCTS³.

1 TP (FtT) (SEC) Rules, rule 17(1); 2 rule 17(2) & (3); 3 Practice Statement on Delegation of Functions to Staff

06211 The withdrawal of an appeal to the FtT made

1. before a hearing begins **or**
2. during an adjournment of proceedings

takes effect automatically, unless the FtT has previously directed that any withdrawal requires its consent. So even where the proceeding are adjourned part heard for some months for example, the appeal could still be withdrawn during the adjournment period without consent of the FtT being required.

06212 HMCTS will inform all parties to an appeal when an appeal lodged with HMCTS has been withdrawn.

Reinstatement of withdrawn appeal

06213 A party to an appeal who has withdrawn their case may also apply to the FtT for it to be reinstated¹. Such a request must be made in writing and be received within a month after

1. the date the FtT received the written request to withdraw the case **or**
2. the date of the hearing if the withdrawal was made verbally².

1 TP (FtT) (SEC) Rules, rule 17(4); 2 rule 17(5)

06214 - 06229

