

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 10

Amendment 42 – February 2016

1. This letter provides details on Amendment 42; 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/lg/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.

4. Amendment 42 affects list of Abbs, SI's and Statutes, chapters 61 and 62. The changes
 - Chapter 61 – minor amendment at 61342 for clarification purposes. 61715 (note 2 added) and appendix 1 updated
 - Chapter 62 - Clarify the guidance on when an MAP starts, Clarify the guidance on MA curtailment. Make minor and consequential changes
5. The last two amendment packages amending Volume 10 were
Amendment 41 [October 2015]
Amendment 40 [June 2015]
6. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
7. 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

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SS Ben (PA) Regs - SS (IB) (Trans) Regs
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Chapter 61

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Chapter 61

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Chapter 62

62553 – 62580 (3 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 |

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|---|---|
| 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 |

DLA mobility component - people without both legs

61332 People satisfy the conditions in DMG 61255 4. for the higher rate DLA mobility component if they

1. have both legs amputated either through or above the ankle **or**
2. have one leg amputated either through or above the ankle and are without the other leg **or**
3. are without both legs to the same extent as if they had been amputated through or above the ankle¹ for example children born without legs.

1 SS (DLA) Regs, reg 12(1)(b)

61333 People who satisfy the conditions in DMG 61332 1. and 2. do so because they are without both legs¹, regardless of whether they use artificial limbs or appliances.

1 SS (DLA) Regs, reg 12(4)

DLA mobility component - severely visually impaired

[\[See DMG Memo 28-15\]](#) [\[See Memo DMG 5/14\]](#)

61334 From 11.4.11 people satisfy the conditions for the higher rate DLA mobility component if they

1. have been certified by a consultant ophthalmologist as
 - 1.1 severely sight impaired **or**
 - 1.2 blind¹ **and**
2. are severely visually impaired².

Note: If people do not satisfy these conditions they can only get the higher rate mobility component on the basis that they are both deaf and blind³ (see DMG 61340 et seq).

1 SS CB Act 92, s 73(1AB)(b); SS (DLA) Regs, reg 12(1A)(b); 2 SS CB Act 92, s 73(1AB)(a); 3 s 73(1AB); s 73(1)(b)

61335 People are severely visually impaired if

1. they have visual acuity, with appropriate corrective lenses if necessary, of less than 3/60¹ **or**
2. they have
 - 2.1 visual acuity of 3/60 or more, but less than 6/60, with appropriate corrective lenses if necessary **and**
 - 2.2 a complete loss of peripheral visual field **and**
 - 2.3 a central visual field of no more than 10° in total².

1 SS (DLA) Regs, reg 12(1A)(a)(i); 2 reg 12(1A)(a)(ii)

61336 For the purposes of DMG 61335 DMs should note that

1. it is the combined visual acuity of both eyes in cases where a person has both eyes¹;
2. visual acuity is measured on the Snellen Scale²;
3. it is the combined visual field of both eyes in cases where a person has both eyes³.

1 SS (DLA) Regs, reg 12(1A)(c)(i); 2 reg 12(1A)(c)(ii); 3 reg 12(1A)(c)(iii)

Evidence of visual acuity/visual field

61337 As well as satisfying the condition that a certificate has been issued as in DMG 61334 1., evidence may also have to be obtained to allow DMs to decide if the person is severely visually impaired. If the DM has a certificate showing the claimant

1. is totally blind (cannot distinguish light and dark) **or**
2. satisfies DMG 61335 1. or 2. **or**
3. does not satisfy DMG 61335 1. or 2.

no further evidence is needed. The DM will decide that the claimant is severely visually impaired if 1. or 2. above apply and **not** severely visually impaired if 3. above applies. If the certificate does not contain this information, then an HCP as specified in DMG 01084 and DMG 61338 will examine the person and provide the necessary evidence for the DM.

Note: The DM may have or may request a report from the hospital. If the report is based on an examination more than 1 year ago and the case is for disallowance, a report from an HCP should be obtained in case there has been a deterioration.

61338 DMG 01084 gives guidance on the meaning of HCPs. For the purposes of the higher rate of DLA mobility component for the severely visually impaired¹, professionals prescribed as HCPs are

1. an optometrist registered with the General Optical Council;
2. an orthoptist registered with the Health Professions Council².

Note: Doctors on the General Medical Council's specialist register (consultant ophthalmologist) are already HCPs.

1 SS CB Act 92, s 73(1AB); 2 SS Act 98, s 39(1), SS(DLA) (Amend) Regs. 10, reg 3

Supersession of existing awards

61339 For supersession of existing awards before 11.4.11 see DMG 04109.

Note: DMs should have regard to the three month qualifying period being satisfied.

DLA mobility component - deaf and blind

61340 If a DM is considering a claim where the question of dual sensory impairment arises, then any such case should always be referred to Medical Services for advice on the degree of the disablement due to deafness and visual loss.

61341 People satisfy the conditions for the higher rate of DLA mobility component if

1. they are both deaf and blind **and**
2. as a result of the combined effects

they are unable to walk to their destination out of doors without the assistance of another person¹. Further guidance is available in the Children and Adult Medical Guidance.

1 SS CB Act 92, s 73(2); SS (DLA) Regs, reg 12(3)

61342 For the purposes of DMG 61341 **1**, a person is blind if the degree of disablement resulting from loss of vision is 100%¹. This is defined as “unable to do any work for which eyesight is essential”². In practice this means that a person must meet one of the following criteria

1. have vision worse than 3/60 in both eyes **or**
2. have very restricted visual fields **or**
3. have a combination of restrictive fields and decreased visual acuity **or**
4. be registered blind.

A person who is registered blind should have proof of this from their local authority. They may have a form called BD8, CV1, DP1 or A655, or their local authority Social Services should be able to confirm their registration status.

1 SS (DLA) Regs, reg 12(2)(a); 2 SS (General Benefit) Regs 82, Sch 2

61343 Also for the purposes of DMG 61341 **1**, a person is deaf if the degree of disablement resulting from loss of hearing is not less than 80% where 100% is absolute deafness¹. The assessment of the degree of deafness is the same as for occupational deafness in Industrial Injuries legislation². Medical Services may help in assessing the degree of disablement.

1 SS (DLA) Regs, reg 12(2)(b); 2 SS(II)(PD) Regs 85, reg 34(2), Sch 3, Parts II and III

Assessment of the degree of deafness

61344 The DM should refer cases to Medical Services for advice on the degree of the disabilities. When advising on the degree of deafness, Medical Services will arrange for an audiogram test to assess the person's average hearing loss in each ear, measured in decibels (dB)¹. If the person does not satisfy the “blind” test (see DMG 61342 **1**.) there will be no need to carry out an audiogram to test their degree of deafness.

1 SS(II)(PD) Regs 85, reg 34(2)

- 61345 A person with severe or total hearing loss in one ear but normal hearing in the other ear will have no or minimal hearing impairment. They can compensate for the deaf ear by turning their head. Any test of hearing, including formal testing by audiometry, needs to ascertain the loss in each ear separately. The overall degree of hearing impairment is then determined by considering the effects of both deficits in combination.
- 61346 The chart below permits this to be carried out and arrive at the percentage disablement based on the occupational deafness scheme used in industrial injuries disablement benefit. In order to be 80% the person has to have a hearing loss of 87 dB or more in each ear. The hearing loss in the better ear is plotted along the vertical axis and the loss in the worse ear along the horizontal axis allowing the degree of disablement to be read from the chart. For example someone with 55 dB loss in the better ear and 88 dB loss in the other (worse) ear would have a 40% degree of disablement. Those with 80% disablement are likely to have very severe hearing difficulties. They would be unlikely to hear normal conversation, hear the television without special aids or understand a shout at one metre in a busy street.

General rule

61715 AA or the DLA care component is **not** payable where a person is resident in a care home in circumstances where any of the costs of any qualifying services provided for him are met out of public or local funds¹ under

1. specified legislation² **or**
2. any other enactment relating to people with a disability³ **or**
3. any other enactment relating to
 - 3.1 people with a disability **or**
 - 3.2 young people **or**
 - 3.3 education or training⁴.

Note 1: Qualifying services are accommodation, board and personal care⁵.

Note 2: See Appendix 1 for a list of enactments relating to people with a disability, young people and education and training.

1 SS CB Act 92, s 67(2) & s 72(8); 2 SS (AA) Regs, reg 7(2)(a); SS (DLA) Regs, reg 9(2)(a); NA Act 48, Part III; SW (Scot) Act 68; MH (C & T) (Scot) Act 03; Community Care and Health (Scotland) Act 02; MH Act 83; Health and Social Care Act 01, s 57; Care Act 14, Part 1; 3 SS (AA) Regs, reg 7(2)(b); SS (DLA) Regs, reg 9(2)(b); 4 SS (DLA) Regs, reg 9(2)(b); 5 SS CB Act 92, s 67(4) & s 72(10)

61716 When considering whether a claimant was in a care home, the DM would need to consider the LA involvement and how the claimant's stay in the home was funded. If it was determined that a claimant was in a care home then any DLA care component or AA would not be payable following the first 28 days of their stay¹.

1 SS (DLA) Regs, reg 10(1) & (2)

61717 - 61734

Exceptions to the general rule

61735 AA or the DLA care component is payable if the person for whom the accommodation is provided is meeting the whole cost of the qualifying services entirely out of their own resources or with the help of another person or charity. This includes the situation where the person's stay in a care home is funded by the LA (or they stay in a home owned by the LA but do not pay the full cost) but they are required to pay the full cost for past period at a later date from money raised from the sale of their property¹. For periods before 6.10.03 the person had to make the repayment without IS, HB or JSA(IB).

Note: See DMG 61715 for the meaning of qualifying services.

1 R(A) 1/02

- 61736 Where accommodation is funded under legislation relating to education, training or young people the accommodation will usually be a school, college or children's home. However the DLA care component remains payable
1. for any period during which the LA places a person in a private dwelling with a family, relatives, or suitable person¹, provided that the person is
 - 1.1 under 16 and being looked after by the LA² **or**
 - 1.2 under 18, and specific legislation³ (impairment of health and development) applies because the person's health is likely to be significantly impaired, or further impaired without the provision of service⁴ **or**
 - 1.3 under 18, and specific legislation (disability) applies⁵ **or**
 2. where the accommodation is provided outside the UK and the cost is met wholly or partly by the LA under certain legislation⁶.

1 SS (DLA) Regs, reg 9(5); 2 reg 9(4)(a); 3 Children Act 89, s 17(10)(b); Children (Scotland) Act 95, s 93(4)(a)(ii); 4 reg 9(4)(b)(i); 5 reg 9(4)(b)(ii); Children Act 89, s 17(10)(c); Children (Scotland) Act 95, s 93(4)(a)(iii); 6 reg 9(4)(c); Education Act 96, s 320, Education (Additional Support for Learning) (Scotland) Act 04, s 25

- 61737 The DLA care component is payable if the cost of any qualifying service is met out of public or local funds under specified legislation for
1. grants in aid of educational services¹ **or**
 2. assisting persons to take advantage of educational facilities or grants to education authorities in Scotland² **or**
 3. support for funding of further education and administration of funds³ **or**
 4. new arrangements for giving financial support to students⁴.

Note: See DMG 61715 for the meaning of qualifying services.

1 SS (DLA) Regs, reg 9(3)(a); Education Act 96, s 485; Education Act 02, s 14; Education (Scotland) Act 80, s 73; 2 reg 9(3)(b); Education (Scotland) Act 80 s 49 & s 73; 3 reg 9(3)(c); Further and Higher Education Act 92, s 65; Further and Higher Education (Scotland) Act 05, s 4 & s 11; 4 reg 9(3)(e); Teaching and Higher Education Act 98, s 22.

People with homes to sell or who await other release of funds

- 61738 People who enter a care home for the first time may have a home to sell, or other capital assets. The available assets or value of a property are taken into account by the LA when assessing payment of care home fees.
- 61739 For the purposes of paying for care home fees the following are regarded as assets.

Appendix 1

Acts relating to people with disabilities

| Act | Sections |
|---|--|
| National Assistance Act 1948 | s 21, 24 & 26 |
| Health Services and Public Health Act 1968 | s 44 |
| Social Work (Scotland) Act 1968 | s 12, 12A, 12B, 12C, 13A, 13B, 59 & 59A |
| Health and Personal Services (Northern Ireland) Order 1972 | Article 5, 7, 15 & 36 |
| National Health Service (Scotland) Act 1978 | s 36 & 37 |
| Mental Health Act 1983 | s 117 |
| Mental Health (Scotland) Act 1984 | s 7 & 8 |
| National Health Service and Community Care Act 1990 | Sch 9 para 10(7) |
| Community Care (Direct Payments) Act 1996 | s 1 |
| Social Security Act 1998 | |
| Community Care and Health (Scotland) Act 2002 | |
| Mental Health (Care and Treatment)(Scotland) Act 2003 | s 25 & Sch 4 para 1(6) |
| National Health Service Act 2006 | |
| National Health Service (Wales) Act 2006 | |
| Public Services Reform (Scotland) Act 2010 | |
| Health and Social Care Act 2001 | s 57 |

This list is not exhaustive¹

1 R(DLA) 6/04

Acts relating to young people, education or training

| Act | Sections |
|--|---|
| Disabled Persons Employment Act 1944 | s 15 |
| Children and Young Persons Act 1969 | s 23 |
| Employment and Training Act 1973 | s 2 |
| Criminal Procedure (Scotland) Act 1975 | s 14(1), 24(1), 206(1), 296(3), 297(1), 323(1) & 413 |
| Education (Scotland) Act 1980 | s 1 & 2, s 73 |
| Children Act 1989 | s 20, 21, 22A, 24 & Sch 2(5) |
| Enterprise and New Towns (Scotland) Act 1990 | s 2(3) |
| Further and Higher Education Act 1992 | s 65 |
| Education Act 1996 | s 320 & s 485 |
| Teaching and Higher Education Act 1998 | s 22 |
| Education Act 2002 | s 14 |
| Education (Additional Support for Learning) (Scotland) Act 2004 | s 25 |
| Further and Higher Education (Scotland) Act 2005 | s 4 or 11 |
| The Apprenticeships, Skills, Children and Learning Act 2009 | Parts 2 & 3 |

This list is not exhaustive¹

1 R(DLA) 6/04

Maternity allowance period

62553 MA is payable for the MAP which is the same as the MPP in SMP cases¹. If a woman ceased employment or self-employment prior to the 11th week before the EWC the MAP starts with the 11th week before the EWC². Otherwise, subject to the modifications in DMG 62560 - 62562, the MAP for a woman who is employed as an employed or S/E earner may begin at anytime between the 11th week before the EWC and the day following the actual day of confinement³. Within this period a woman's MAP starts with the earlier of the day

1. she has chosen for her payments to begin after she has stopped work to have her baby **or**
2. following the day on which she is confined⁴.

From 1.12.14⁵, women whose EWC is on or after 5.4.15 can curtail their 39 week MAP⁶.

Note 1: As long as a woman has stopped work to have her baby, her MAP can begin during a period of annual leave or while she is receiving holiday pay.

Note 2: See DMG 62721 et seq for guidance on period for MA is paid to a participating wife or civil partner of a S/E earner.

Note 3: See DMG 62566 et seq for guidance on when women can curtail their MAP.

1 SS CB Act 92, s 35(2) & 165; 2 s 165(2); 3 s 165(3), SMP (Gen) Regs, reg 2(1); 4 reg 2(1); 5 MA (Curtilment) Regs, reg 1; 6 SPL Regs, reg 2(1); SSPP (Gen) Regs, reg 3(a)

62554 Where a woman is absent from work wholly or partly because of pregnancy or confinement which is

1. on or after the beginning of the 4th week before the EWC **and**
2. not later than the day immediately following the day on which she is confined

the MAP begins on the day following the first complete day of absence from work because of pregnancy or confinement¹.

1 SMP (Gen) Regs, reg 2(4)

62555 Where a woman leaves her employment

1. after the beginning of the 11th week before the EWC where this is before the start of the MAP **and**
2. not later than the day on which she is confined

the MAP begins on the day following the day on which she leaves¹.

1 SMP (Gen) Regs, reg 2(5)

62556 There is no extension of the MAP where confinement occurs in any week later than the EWC.

Time limit for claiming

62557 The prescribed time for claiming MA is three months beginning with any day of potential entitlement¹ (see DMG Chapter 02).

1 SS (C&P) Regs, reg 19(2) & (3)

Death of the woman

62558 A woman who is entitled to MA ceases to be entitled if she dies before the beginning of the MAP. If she dies after the beginning, but before the end, of the MAP, MA is not payable for any week within the MAP which falls after the week in which she dies¹. A week, in respect of weeks within the MAP, is the period of seven days beginning with the day of the week on which the MAP begins².

Note: See DMG 62736 for guidance on death of a participating wife or civil partner of a S/E earner.

1 SS CB Act 92, s 35(4); 2 s 35(2) & s 165(8)

Modification of the maternity allowance period

62559 There is no modification to the MAP where a claim to MA is made after confinement (see DMG 62560 - 62562 where modification is allowed).

62560 The MAP for a woman who stops working before the 11th week before the EWC is the period of 39 weeks beginning with the 11th week before the EWC. For this purpose a woman should not be regarded as having stopped work if she is absent from work due to illness, but has not yet ceased work in expectation of confinement (unless DMG 62553 - 62555 applies).

62561 However a woman who is not entitled to MA at the 11th week before the EWC can qualify by utilising a period of employment and earnings paid for weeks after the start of the 11th week before the EWC. The MAP for such a woman is a period of 39 weeks starting

1. no earlier than the day she becomes entitled to MA **and**
2. no later than the day following the day on which she is confined¹.

1 SS (MA) Regs, reg 3(2A)

62562 The MAP for a woman who is confined more than 11 weeks before the EWC is a period of 39 weeks which starts on the day following the day on which she is confined¹.

1 SMP (Gen) Regs, reg 2(3)

62563 – 62565

Maternity allowance period curtailment

62566 From 1.12.14¹, women whose EWC is on or after 5.4.15² can curtail their MAP to enable their partner to take

1. SSPP³ (see DMG 62568) **or**
2. SPL⁴ (see DMG 62569)

Note: A partner can be a woman's spouse or partner or her child's father⁵. They must live with the woman and her child in an enduring family relationship.

*1 MA (Curtailment) Regs, reg 1; 2 Shared Parental Leave Regulations 2014, reg 2(1);
Statutory Shared Parental Pay (General) Regulations 2014, reg 3(a);
3 SS CB Act 92, s 171ZU; 4 ER Act 96, s 75E; 5 MA (Curtailment) Regs, reg 2*

Meaning of maternity allowance period curtailment date

62567 Unless DMG 62574 or 62579 apply, the MAP curtailment date is the date specified in the MAP curtailment notification¹.

Note: See DMG 62571 et seq for guidance on the MAP curtailment notification.

1 MA (Curtailment) regs, reg 2

Maternity allowance period curtailment – statutory shared parental pay

62568 A woman's MAP ends on the MAP curtailment date if

1. she gives a MAP curtailment notification¹ **and**
2. her partner
 - 2.1 satisfies the employment and earnings conditions in order to be entitled to SSPP² **and**
 - 2.2 shares the main responsibility for the care of the child with her **and**
 - 2.3 qualifies for SPL **and**
3. she
 - 3.1 satisfies employment and earnings conditions relating to her partner **and**
 - 3.2 is entitled to MA³.

Note: A MAP curtailment notification can be revoked (see DMG 62576 et seq).

*1 MA (Curtailment) Regs, reg 3(a); 2 reg 3(b); SSPP (Gen) Regs, reg 5(2)(a);
3 MA (Curtailment) Regs, reg 3(c); SSPP (Gen) Regs, reg 5(3)(b) & (c)*

Maternity allowance period curtailment – shared parental leave

62569 A woman's MAP ends on the MAP curtailment date if

1. she gives a MAP curtailment notification¹ **and**
2. her partner satisfies the employment condition for SPL² **and**
3. she
 - 3.1 satisfies employment and earnings conditions **and**
 - 3.2 is entitled to MA³.

Note: A MAP curtailment notification can be revoked (See DMG 62576 et seq)

*1 MA (Curtailment) Regs, reg 4(a); 2 reg 4(b); SPL Regs, reg 5(2)(a);
3 MA (Curtailment) Regs, reg 4(c); SPL Regs, reg 5(3)(a) & (c)*

62570

Maternity allowance period curtailment notification

62571 A MAP curtailment notification must

1. be given to the Secretary of State **and**
2. specify the date on which a woman wants her MAP to end¹ (see DMG 62572)

1 MA (Curtailment) Regs, reg 5(1)

62572 For the purposes of DMG 62571 **2.**, the date specified must be

1. the last day of a week¹ **and**
2. at least one day after the end of the compulsory maternity leave period (see DMG 62573) if a woman has a right² to ordinary maternity leave³ **and**
3. at least two weeks after the end of her pregnancy⁴ if a woman does not have a right in **2.** **and**
4. at least eight weeks after a woman gives a MAP curtailment notification⁵ (unless the DM decides it is appropriate for this not to apply⁶) **and**
5. at least one week before the last day of a woman's MAP⁷.

Note 1: For the purpose of **1.** a week is a period of seven days beginning with the day of the week on which the MAP begins⁸.

Note 2: The date specified does **not** have to be the same date on which a woman returns to work. However, it can be a date after a woman's partner has taken SSPP or SPL.

1 MA (Curtailment) Regs, reg 5(2)(a); 2 reg 5(2)(b); 3 ER Act 96, s 71; 4 MA (Curtailment) Regs, reg 5(2)(b); 5 reg 5(2)(c); 6 reg 5(3); 7 reg 5(2)(d); 8 reg 5(6); SS CB Act 92, s 165(8)

Example 1

Person A is receiving MA. She and her partner, Person B, decide that Person B will take 9 weeks SSPP. This is agreed with Person B's employer. Person A notifies the Secretary of State that she will curtail her MA at the end of her 30th week of payment. Her MAP ends on that date.

Example 2

Person A is receiving MA. She and her partner, Person B, decide that Person B will take 32 weeks SPL. Person A notifies the Secretary of State that she will curtail her MA at the end of her 20th week of payment. Person B starts his SPL before that date. However, that does not effect when Person A's MAP will end.

62573 The compulsory maternity leave period is

1. two weeks¹ **or**
2. if a woman works in a factory, 4 weeks²

after childbirth. For the purposes of DMG 62572 **2.** the end of the compulsory maternity leave period is the later of the last day of those periods³.

*1 Maternity and Parental Leave etc. Regulations 1999, reg 8; 2 Public Health Act 36, s 205;
3 MA (Curtailment) Regs, reg 5(4)*

62574 Where a woman

1. returns to work before giving a notification in accordance with DMG 62571
and
2. subsequently gives such a notification

the MAP curtailment date is the last day of the week in which that notice is submitted. This is irrespective of the date given in that notice¹. A woman is treated as returning to work² when she is disqualified for receiving MA³ in accordance with DMG 62592 et seq.

1 MA (Curtailment) Regs, reg 5(5); 2 reg 5(7); 3 SS (MA) Regs, reg 2(1)

62575

Revoking maternity allowance period curtailment notification

62576 A woman may revoke a MAP curtailment notification before the MAP curtailment date if

1. she
 - 1.1 provided the MAP curtailment notification before her child's birth¹ **and**
 - 1.2 has not returned to work **and**
 - 1.3 has not reached the end of her MAP **or**
2. her partner dies².

1 MA (Curtailment) Regs, reg 6(1)(a); 2 reg 6(1)(b)

62577 A woman makes a revocation in accordance with DMG 62576 by giving a revocation notification to the Secretary of State

1. within six weeks of her child's birth where the revocation notification is given as in DMG 62576 1. **or**
2. within a reasonable period from the date of her partner's death¹.

1 MA (Curtailment) Regs, reg 6(2)

62578 A revocation notification must

1. state that a woman revokes the MAP curtailment notification **and**
2. where DMG 62576 2. applies, state the date of her partner's death¹.

1 MA (Curtailment) Regs, reg 6(3)

62579 A woman may not give a MAP curtailment notification after she has given a revocation notification for the same MAP unless the revocation¹ was made in accordance with DMG 62576 1..

1 MA (Curtailment) Regs, reg 6(4)

62580