

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 14

Amendment 39 – February 2016

1. This letter provides details on Amendment 39; 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 39 affects the list of Abbs, SI's & Statutes chapter 85. The changes
 - Chapter 85 - Added reference to useful case-law. 85457: Added note re: removal of notional income regs
4. The last two amendment packages amending Volume 14 were
Amendment 38 [October 2015]
Amendment 37 [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**Insert**

Abbreviations	Abbreviations
RA-YT (2 pages)	RA-YT (2 pages)
Statutes	Statutes
NHS Act 77 – WC Act 25 (1 page)	NHS Act77 – WC Act 25 (1 page)
Statutory Instruments	Statutory Instruments
SS Ben (PA) Regs - SS (IB) (Trans) Regs (1 page)	SS Ben (PA) Regs - SS (IB) (Trans) Regs (1 page)
Chapter 85	Chapter 85
85022 – 85029 (1 page)	85022 – 85029 (1 page)
85458 – 85466 (1 page)	85458 – 85466 (1 page)

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

Overpayment recovery from other income

- 85022 Except where DMG 85095 applies, when income paid to a claimant is reduced because the paying authority is enforcing recovery of an overpayment, the DM should take into account the net amount. This is the amount the claimant actually receives¹ unless the circumstances in DMG 85023 apply.

1 R(IS) 5/99 Leves

Example

Peter is in receipt of SPC. His partner, Lisa, works and is in receipt of WTC. HMRC has awarded WTC at a rate of £50 per week. However, due to the recovery of an overpayment which occurred on a previous award of WTC, the amount Lisa actually receives is £28 per week. When determining the amount of WTC to take into account on Peter's award of SPC, the DM takes into account Lisa's WTC of £28 per week.

- 85023 If a claimant volunteers to repay an overpayment by offering to have deductions made from his income, the DM should consider whether the claimant has deprived himself of that income (see DMG 85408 et seq).

Treatment of income for part-week payments at the start of entitlement

- 85024 A claimant may only be paid a GC for a part week at the start of entitlement to SPC in certain circumstances. DMG 79105 provides guidance on the treatment of income for a part-week.

85025 - 85029

Once an application is made it would take the pension fund holder six weeks to arrange for the maximum income to be paid.

The DM decides that Bernard should be treated as having a notional income of £23 a week from 13 December.

Personal pensions/occupational pensions where income withdrawal is not allowed - notional income

85458 Treat a person who has reached qualifying age for SPC (see DMG 77032) who

1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that does not allow income withdrawal **or**
2. has a retirement annuity contract

and has not bought an annuity, as having a notional income¹.

1 SPC Regs, reg 18(2)(a)(iii) & (b)

Amount of notional income

85459 The amount of notional income is the amount that a person could have received without buying an annuity, if the pension funds or retirement annuity contract were held in a scheme that did allow income withdrawal¹ (see DMG 85465 et seq).

1 SPC Regs, reg 18(4)

From what date should the DM take notional income into account

85460 Take notional income into account from the date that a person could expect to get the income if an application was possible¹. To calculate this date

1. assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for the maximum amount of income.

1 SPC Regs, reg 18(2)

Example

Fiona is an SPC claimant. On 1 November the DM receives evidence that Fiona has a retirement annuity contract.

The pension fund holder provides evidence, based on the Government tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The DM estimates that it would take six weeks for a typical pension fund holder to arrange for the maximum income to be paid from a fund.

The DM decides that Fiona should be treated as having a notional income of £30 a week from 13 December.

Note: where the notional income rules have been applied and the claimant subsequently takes steps to obtain that income, the guidance at DMG 85460 will no longer apply. The DM should establish the date the claimant begins to take steps to obtain that income and remove the notional income from that date.

Meaning of money purchase benefits

85461 The term money purchase benefits means¹ where pension benefits are determined by the amount of the payment or payments made by or on behalf of the member of the pension scheme rather than average salary benefits.

1 SPC Regs, reg 18(5), PS Act 93, s 181(1)

What is a pension fund holder

85462 A pension fund holder, with respect to an occupational pension scheme, personal pension scheme or retirement annuity contract means¹

1. trustees **or**
2. managers **or**
3. administrators

of the scheme or contract concerned.

1 SPC Regs, reg 1(2)

Who is a person who derives entitlement

85463 The term person who derives entitlement is used to describe people who may be paid a pension at the discretion of the pension fund holder. When the original pensioner dies the pension fund holder has discretion to decide what to do with the fund.

85464 People such as widows or widowers of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

Information and evidence

85465 Pension fund holders must provide the DM with information about

1. the maximum amount of income available from the pension fund **and**
2. the amount of income that would be available if the funds were held in a scheme that produces an income.

85466 This information is based on tables prepared by the Government¹. DMs should consider evidence from pension fund holders when deciding the amount of notional income. Do not make a decision until the pension fund holder has been given sufficient time to provide evidence.

1 SS (C&P) Regs, reg 7(6)