

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 1 Amendment 51 – June 2017

1. This letter provides details on Amendment 51; 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 51 affects the lists of abbreviations, Chapters 1, 2, 3 & 4
 - Chapter 1 minor amends.
 - Chapter 2 incorporates DMG memo 11/16.
 - Chapter 3 incorporates DMG memo 11/16.
 - Chapter 4 incorporates DMG memo 11/16.
 - Chapter 6 minor amends contains an amended contact address for JR's (06904).
 - Annex D changes
4. The last two amendment packages amending Volume 1 were

Amendment 50 [February 2016]

Amendment 49 [October 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).

**Remove
Abbreviations**

LCW – YT (3 pages)

Chapter 2

Conts 02001 - 02629 (3 pages)

02009 - 02037 (2 pages)

02048 – 02055 (1 page)

02062 – 02079 (2 pages)

02154 – 02161 (1 page)

02343 – 02372 (1 page)

02451 – 02505 (3 pages)

02530 – 02540 (1 page)

Chapter 3

Conts 03340 – 03471 (1 page)

03356 – 03459 (3 pages)

Chapter 4

04150 – 04156 (1 page)

04511 – 04518 (1 page)

04671 – 04686 (1 page)

04696 – 04703 (1 page)

Chapter 6

06000 – 06009 (1 page)

06050 – 06077 (3 pages)

06087 – 06179 (8 pages)

06190 – 06269 (3 pages)

06337 – 06343 (1 page)

06900 – 06999 (1 page)

Annex D (1 page)

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06087 – 06179 (8 pages)

06190 – 06269 (3 pages)

06337 – 06343 (1 page)

06900 – 06999 (1 page)

Annex D (1 page)

LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MDB	Miscellaneous Diseases Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidation Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number
NMW	National Minimum Wage

NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHS	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income
QP	Qualifying Period

QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
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

Chapter 02 - Claims

Contents

Introduction	02001
National insurance credits.....	02002
Definitions.....	02003
The relevant law	02007
Making a claim	
General requirement to make a claim.....	02008
Benefits for which a claim is not required	02009
Exemption from claiming Cat A or Cat B Retirement Pension	02010
Deferment and De-retirement	02015
Dependency increases.....	02016
Who can claim benefits	02038
Change of claimant	
JSA.....	02041
IS.....	02043
Treating another person as the claimant	02044
How to make a claim	02048
Appropriate offices	02049
Alternative offices	02052
Claimants affected	02053
Persons who have not yet attained qualifying age	02054
Definitions	02055
The procedures.....	02057
Rights and responsibilities of local authorities and county councils in England.....	02059
Date of claim	02061
AA and DLA	02064
Use of information provided to a local authority in connection with a claim for HB or CTB.....	02066
Social security information verified by a local authority	02068

Claims made electronically	02069
Claims for SFFP, BB, RP, GRB, SAPs and SP made by telephone	02073
Claims made in the prescribed manner	
The prescribed manner for making a claim.....	02080
Written communication - sufficient to constitute a claim for benefit.....	02085
Claims for IS and JSA	02092
Procedure on receiving a possible IS or JSA claim	02095
Claims for IS or JSA in the prescribed manner.....	02096
Defective IS or JSA claims.....	02097
After a claim has been disallowed as defective	02104
Notification of an intention to claim IS or JSA.....	02106
Claim made after a defective claim or notification of intention to claim..	02107
Claims for benefits other than IS, JSA and SPC.....	02108
Procedure on receiving a possible claim for a benefit other than IS, JSA and SPC	
Item in writing has been received but it is not a claim	02109
Claim in writing received but not on a claim form or in some other sufficient manner	02110
Claim made on an approved form but the form has not been properly completed	02111
After a claim has been disallowed as defective	02112
Dependency increases.....	02113
Claim for adult dependants	02114
Effect of CHB extension on dependency increases.....	02117
Claiming SPC	
In writing.....	02127
By telephone	02131
Making a claim	02134
Defective claims - SPC tele-claims.....	02136
Intention to claim	02140
Defective claims made in writing.....	02141

Telephone claims for SFFP, BB, RP, GRB and SAPs.....	02148
Claiming ESA	
General	02153
By telephone	02155
In writing.....	02159
Members of a couple	02164
Information, evidence and corroboration	02166
Information relating to personal pensions and retirement annuity contracts	02171
Requirement to attend for medical examination	02174
Provision of NINOs.....	02175
NINO Exemptions	02183
Date of claim	02200
JSA - claimant who is not a member of a joint-claim couple	02205
JSA - joint-claim couples.....	02220
DLA and AA	02242
IS.....	02246
RP - late payment of Class 3 contributions.....	02248
Date of claim - SPC tele-claims	02251
Date of claim for SPC - in writing or in person.....	02252
Telephone claims for SFFP, BB, RP, GRB and SAPs.....	02253
Claims for IB other than in writing	02254
Telephone Claims to ESA.....	02257
Award of qualifying benefit	
Introduction	02260
Definitions	02261
Transitional Protection - disabled person goes into hospital or similar institution	02266
Benefits except IB	02267
Reclaim following termination	02269
IB.....	02271

IS or JSA(IB) terminated.....	02273
Claims for IB or ESA where there is no entitlement to SSP	02274
CA	02277
Claims for MA where there is no entitlement to SMP	02280
Time for claiming.....	02330
Bereavement payment	02340
Bereavement benefits where death difficult to establish.....	02341
Less than twelve months have elapsed since date of death	02342
More than twelve months have elapsed since date of death.....	02343
IB/SDA/IIDB/REA/ESA	02344
RP/GRB/SAP/SP	02364
IS/JSA	02371
Extending the time for claiming IS and JSA.....	02372
One month extension	02374
Three months extension	02376
Special groups	
Persons employed on the continental shelf, mariners and aircrew	02387
Amending claims and withdrawing claims	02400
Amendment and withdrawal of claims	02406
In person	02407
Couples.....	02408
Period of claims, awards and disallowances	
Period of claims.....	02420
Awards and disallowances: entitlement and payability.....	02422
Period of awards and disallowances.....	02423
Advance awards.....	02425
Considering the claimants entitlement down to the date of decision.....	02428
Staying a decision	02431

Representatives and claims at death

Appointees02440

Power of attorney02441

Deputies/Guardians02444

Claims at death02450

Cat A and Cat B RP/GRB/SAPs/SP.....02465

Automatic payment of arrears of benefits to a spouse or
civil partner upon death02472

Treating a claim for one benefit as a claim for another benefit02500

Claim for CHB02503

 Claim to be regarded as a claim to CHB02504

MA claimed before confinement02505

MA claimed after confinement02507

Advance claims

AA & DLA02530

MA02535

RP,SAP and SP02537

IB and SDA.....02539

 IB - failure to satisfy contribution conditions02542

SF funeral and maternity payments02543

SPC

 Making a claim before attaining qualifying age.....02560

 Meaning of qualifying age02564

 Advance claims of SPC02565

Good cause.....02600

Application

Meaning of good cause02601

Ignorance “of itself”02603

Failure to make enquiries.....02605

New legislation02607

Difficulty with language	02609
Postal delays	02610
Misled by official information	02611
Misled by unofficial information	02614
Advice from a doctor	02616
Advice from a solicitor or accountant	02617
Deliberately does not claim	02618
Carelessness, thoughtlessness or indifference	02620
Health	02621
Claim by appointee	02623
Claim by person other than appointee	02625
Youthful claimant.....	02626
Belief that solicitors or trade union would claim	02627
Imprisonment.....	02629

Benefits for which a claim is not required

02009 [\[See Memo DMG 11/16\]](#) 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 or SP in their own right² **or**
 - 2.3 the spouse or civil partner of the claimant becomes entitled to Cat A RP or SP in their own right² **or**
 - 2.4 the spouse or civil partner of the claimant dies and they were entitled to Cat A RP or SP at the date of death²
3. Cat A RP, Cat B RP or SP³ where the beneficiary is a woman over the age of 65 and is
 - 3.1 entitled to WMA or WPA on her ceasing to be so entitled **or**
 - 3.2 is in receipt of WP or BA on her reaching pensionable age
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 or SP 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.
16. A claim for SP¹⁶ under specified legislation¹⁷ is not required where the beneficiary is entitled to
 - 16.1 SP under a different section of the prescribed legislation¹⁸ **or**
 - 16.2 another SP under the same section of the prescribed legislation

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.

Note 3: “SP” at DMG 02009.2 means SP at the transitional rate.

Example 1

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.

Example 2

Kathryn is entitled to SP at the transitional rate. She is subsequently widowed and becomes entitled to survivor’s SP based on inheritance of SP. No claim is required

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); 16 reg 3(1)(ja); 17 & 18 Pensions Act 14

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 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

How to make a claim

02048 Claims for benefit may be made

1. in writing at an appropriate office (see DMG 02049)
2. in writing at an alternative office (see DMG 02052)
3. under the Customer Management System in which a form containing information provided by the claimant over the telephone is sent out to the claimant for signing and returning as a claim form
4. by electronic means - (see DMG 02069)
5. by telephone without the need for a written claim form for SFFP, BB, RP, GRB, WFP and SAPs (see DMG 02073)
6. by telephone without the need for a written claim for SPC (see DMG 02131)
7. by telephone without the need for a written claim for ESA (see DMG 02155)
8. by telephone in some instances for IS and JSA (see DMG 02086).

Appropriate offices

02049 Claims for benefit can be made by delivering or sending the form to the appropriate office. The appropriate office is

1. an office of the DWP **or**
2. a postal address specified by the Secretary of State where any provision in specified legislation relates to a claim, notice or other document being received, sent, delivered or otherwise furnished in writing to an appropriate office¹.

But see also DMG 02052 et seq.

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

02050 A wide interpretation is given to the requirement to make a claim at an appropriate office.

Example

A claim for a centrally administered benefit which is received in another office is accepted as made on the date the claim was received at that office.

02051 Conventions with other countries sometimes allow for a claim made to an authority in another country to be accepted as a claim made in GB. For Member States of the EU any claim should be accepted if it should have been submitted to an authority in one Member State within a prescribed time and it is submitted within the same period to a corresponding authority in another Member State¹. For "prescribed time"

see DMG 02330. For details about conventions with other countries and European law, see DMG Chapter 07 Part 1.

1 Reg (EC) No. 1408/71, Art 86

Alternative offices

02052 [\[See Memo DMG 11/16\]](#) Certain groups of claimants can make their claim at an alternative office.

Claimants affected

02053 The provisions in DMG 02057 apply to persons who have reached the **qualifying age** who claim one of the following benefits¹

1. AA
2. a bereavement benefit
3. CA
4. DLA
5. IB
6. RP of any category for which a claim is required
7. SAP for which a claim is required
8. a WFP for which a claim is required under specific legislation²
9. SP.

Note: Similar rules apply to SPC - see DMG 02129.

1 SS (C&P) Regs, reg 4(6A)(a); 2 SFWFP Regs, reg 3(1)(b)

Persons who have not yet attained qualifying age

02054 The provisions in DMG 02057 also apply¹ to a person who has not yet attained the qualifying age but makes a claim for RP, SP or a SAP in advance in accordance with specific legislation². Claims for CA, DLA, ESA, and IB persons below qualifying age can also be made at alternative offices³. IS claims can similarly be made and are not dependent upon whether the claimant has reached qualifying age or not⁴.

1 SS (C&P) Regs, reg 4 (6A)(b); 2 reg 15(1); 3 reg 4(6A)(d); 4 reg 4(6A)(c)

Definitions

02055 "Bereavement benefit" means¹

1. BPT
2. WPA (with increase for child dependants) **and**
3. BA.

1 SS (C&P) Regs, reg 2(1); SS CB Act 92, s 20(1)(ea)

02062 Where a person who has attained the qualifying age makes a claim at an alternative office and that claim is either

1. defective **or**
2. not on an approved form

the Secretary of State may refer the defective claim form to the claimant or supply the claimant with an approved claim form¹.

1 SS (C&P) Regs, reg 4(7)

02063 If the claim form, properly completed, is received within one month (or such longer period as the Secretary of State may consider reasonable) from the date it was referred or supplied, then the claim will be treated as properly made on the date it was first received at the alternative office. That date will therefore be the date of claim¹.

1 SS (C&P) Regs, reg 6(1ZA) & reg 6(1)(b)

AA and DLA

02064 Where a person claims AA and DLA at an alternative office then where

1. a request for a claim form is received in an alternative office **and**
2. in response to that request a claim form for AA or DLA is issued to the claimant **and**
3. the claim form, properly completed, is received in an alternative office within six weeks (or such longer period as the Secretary of State may consider reasonable) from the date on which the request in DMG 02064 1. was received

the date of claim is¹ the date the request in DMG 02064 1. was received. (See also DMG 02242 et seq).

1 SS (C&P) Regs, reg 6(8B) & (8)

02065 Where

1. it is not possible to determine the date the request for a claim form made under DMG 02064 1. was received **and**
2. this is because of a failure to record that date or because there is no clear evidence on the case

the claim shall be treated as made on the date six weeks before the properly completed claim form is received in the alternative office¹.

1 SS (C&P) Regs, reg 6(8B) & (8A)

Use of information provided to a local authority in connection with a claim for HB or CTB

02066 When a claimant supplies information to a LA for the purpose of claiming HB or CTB and this information is supplied to DWP, the Secretary of State must use this information without verifying its accuracy¹. This information can be used for the purpose of a claim for, or award of a specified benefit². A specified benefit is one or more of the following benefits³

1. AA
2. BA
3. BPT
4. CA
5. DLA
6. ESA
7. IB
8. IS
9. JSA
10. RP
11. SPC
12. WPA
13. WFP
14. SP.

1 SS (C&I) Regs, reg 3(2); 2 reg 3(1)(b); 3 reg 1(3)

02067 Information provided as in DMG 02066 above does not have to be used without further checks on its accuracy if

1. it is supplied more than 12 months after it was used by an LA for HB or CTB purposes¹ **or**
2. the information is supplied within 12 months of its use by the LA but the Secretary of State has reasonable grounds for believing the information has changed in the period between its use by the LA and its supply to him² **or**
3. the date on which the information was used by the LA cannot be determined³.

1 SS (C&P) Regs, reg 3(3)(a); 2 reg 3(3)(b); 3 reg 3(3)(c)

Example

A claimant provides evidence of his savings to support his claim for HB. The LA verifies that his savings are £10,000 - this includes shares. The information is sent to DWP. Eight months later a claim for IS is made. The Secretary of State requests

that the claimant provides evidence of his savings as it is likely that the amount of savings will have changed.

Social security information verified by a local authority

02068 Where SS information is verified by a LA and forwarded to DWP the Secretary of State must use this information without verifying its accuracy for the purpose of a claim for or an award of a specified benefit¹. However, information may be checked if either the Secretary of State has reasonable grounds for believing the information is inaccurate or the information is received more than four weeks after it was verified by the LA². SS information means information relating to SS, child support or war pensions or evidence obtained in connection with a claim for or an award of a specified benefit³.

1 SS (C&I) Regs, reg 4(2); 2 reg 4(3); 3 SS Admin Act, s 7B(4)

Claims made electronically

02069 [\[See Memo DMG 11/16\]](#) [\[See Memo DMG 13/16\]](#) The following benefits (together with any dependency increase) may be claimed electronically¹

1. CA
2. AA
3. DLA
4. RP
5. GRB
6. SAP
7. JSA
8. SP.

Detailed guidance on the conditions for the use of electronic communications and the Secretary of State's directions authorizing the use of such means are set out at Annex B. This means that electronic claims must be made using the claim form and the methods set down on the DWP website. If any other methods are used then the claim is treated as not having been submitted².

1 SS (C&P) Regs, reg 4ZC; 2 Sch 9ZC, para 2(7)

02070 A claim made electronically is deemed to have been delivered in the manner or form as described at DMG 02080 et seq.

02071 Where a claim is made electronically the date of claim is the date the claim is recorded as having been received on the Department's computer system (i.e. at the

Government Gateway)¹. This might not be the same as the date the claim is received in the appropriate office.

1 SS (C&P) Regs, Sch 9ZC, para 4(1)

02072 [\[See Memo DMG 11/16\]](#) The following should also be noted (see also Annex B, Appendices A & B)

1. for AA and DLA only - a claim form may be requested electronically
2. for CA only - any certificate, notice, information or evidence in connection with the claim may be provided electronically
3. for CA only - changes of circumstances can be notified electronically.
4. for SP information, including a change of circumstances can also be given electronically.

Claims for SFFP, BB, RP, GRB, SAPs and SP made by telephone

02073 Unless the Secretary of State directs that in any particular case a claim must be made in writing, claims to SFFP, BB, RP, GRB, WFP, SAPs and SP may also be made by telephone to a telephone number specified by the Secretary of State for the purpose of the benefit for which the claim is made¹. No claim form is issued and no signature obtained. Claims made in this way cannot be made to alternative offices (see DMG 02052).

1 SS (C&P) Regs, reg 4(11)

02074 A statement of details is incorporated into any outcome decision in these cases so that claimants can check the accuracy of the facts used to determine their entitlement.

02075 - 02079

ESA is a single benefit comprising of two components – ESA(Cont) and ESA(IR). The two components do not have to be claimed separately. A claimant who states that they do not wish to “claim” ESA(IR) is merely waiving the need of the DM to consider entitlement to that component rather than failing to claim it. A claimant in receipt of ESA(Cont) whose circumstances change has to request a supersession if they want entitlement to ESA(IR) to be considered (not a new claim)¹. This approach equally applies to JSA. See DMG Chapter 04 for guidance on supersession.

1 LH v SSWP (ESA) [2014] UKUT 0480 (AAC)

- 02154 If a claimant says that they wish to “claim” only one element and a decision is made in respect of that element then if the claimant thinks it was a mistake not to ask for both elements an application for revision should be made. A decision can also be revised on the basis of official error if the DM does not award one of the components where there is no evidence that the claimant wishes not to be considered for it. See DMG Chapter 03 for guidance on revision.

By telephone

- 02155 Claims to ESA may be made entirely by telephone to the telephone number specified by the Secretary of State¹. No claim form will be issued to the claimant and no signed declaration obtained. Instead the information given over the phone will constitute the claim. The date of claim is the date of the telephone call or the first day in respect of which the claim is made, if later².

1 SS (C&P) Regs, reg 4G; 2 reg 6(1F)(a)

- 02156 It is not necessary for the claimant to approve a written statement of their circumstances unless

1. the Secretary of State so directs in any particular case¹ **or**
2. during a telephone conversation a person states they wish to claim in writing.

1 SS (C&P) Regs, reg 4G(2)

- 02157 In most cases it is expected that all the information necessary to determine a claim will be provided during the initial telephone conversation. If the information is not provided during that telephone call (for example, if the conversation is cut short unexpectedly) the claim will be defective¹. In these circumstances the Secretary of State must give the claimant the opportunity to provide the missing information and also tell them what the deadline is if the date of the initial phone call is to be the date on which the claim is treated as made². Information can be sent by the most suitable means i.e. by phone or in writing. A claim will also be defective until full information is provided where, following an initial telephone conversation, the claimant asks for a call back to be arranged at a later date.

1 SS (C&P) Regs, reg 4G(3); 2 reg 4G(4)

- 02158 If the missing information is provided within one month of a defect being drawn to the claimant’s attention (or within such longer period as the Secretary of State

considers reasonable) the claim will be treated as having been properly made in the first instance. Where the person has been asked for information on more than one occasion the time limit starts from the date the defect was first drawn to the claimant's attention¹.

1 SS (C&P) Regs, reg 4G(5)

In writing

02159 A claim for ESA may be made in writing and must be made on an approved form and in accordance with the instructions on the form¹. The date of claim is the date the claim form was received in an appropriate office or office mentioned in DMG 02158 below or the first day in respect of the claim, if later². A claim only has to be in writing if, in a particular case, the Secretary of State directs that it must be³. Where the claimant notifies the Secretary of State (by whatever means) of his intention of making a claim to ESA and within one month or such longer period that is considered reasonable of first notification then the date of claim made in writing, received in an appropriate office or office mentioned in DMG 02158 below, is the date notification was made or the first day in respect of which the claim is made, if later⁴.

1 SS (C&P) Regs, reg 4H(2); 2 reg 6(1F)(b); 3 reg 4(H)(1); 4 reg 6(1F)(c)

02160 Claims in writing may also be made

1. at a LA administering HB or CTB **or**
2. by a person providing to such an authority services relating to HB or CTB **or**
3. by a person authorised to exercise the function of a LA relating to HB or CTB

provided the Secretary of State has arranged with the LA or person referred to in **2. or 3.** for them to receive ESA claims¹.

1 SS (C&P) Regs, reg 4H(3)

02161 Where a written claim is made as above the LA or other person

1. must forward the claim to the Secretary of State as soon as reasonably practicable¹
2. may receive information or evidence relating to the claim supplied by the claimant and/or other persons and must forward it to the Secretary of State as soon as reasonably practicable²
3. may obtain information or evidence relating to the claim from the person who has made the claim (but not any medical information or evidence except for that which the claimant must provide) and must forward it to the Secretary of State as soon as reasonably practicable³
4. may record information or evidence relating to the claim supplied or obtained under **2.** or **3.** and hold it for the purposes of forwarding it to the Secretary of State⁴

- 2.2** the claimant is unaware of (or only finds out belatedly about) the discovery and identification

the time for claiming is the date of death (or presumed death) and the period of twelve months immediately following that date¹.

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

Example

The claimant's spouse disappeared on 26.12.04, feared lost in the Asian tsunami. On 24.8.05 the claimant claims a BPT and allowance saying that her spouse's body had not yet been found and identified. The DM decides on the balance of probabilities that the spouse had died on 26.12.04 and that the claimant is entitled to a BPT and a BA from 26.12.04.

More than twelve months have elapsed since date of death

02343 Where

- 1.** a claimant's spouse or civil partner has died or is presumed to have died **and**
- 2.** more than twelve months have elapsed since the date of death (or presumed death) **and**
 - 2.1** the deceased person's body has not been discovered or identified (or if it has the claimant was unaware of this)¹ **and**
 - 2.2** the claim is made within twelve months of the date on which the DM presumes death² **or**
 - 2.3** the deceased person's body has been discovered and identified and less than twelve months have elapsed since the claimant first knew of this³ **and**
 - 2.4** identification of the body took place not more than twelve months before the claimant became aware of it⁴ **and**
 - 2.5** the claim is made within twelve months of the claimant learning of the discovery and identification of the body⁵

the claimant's entitlement to benefit starts from the date the partner died or is presumed to have died⁶.

1 SS Act 92, s 3(1)(b)(i); 2 s 3(2)(a); 3 s 3(1)(b)(ii); 4 s 3(2)(b); 5 s 3(2)(b); 6 s 3(3)

Example

The claimant had been separated from her spouse for a number of years and had lost all contact with him. On 3.7.06 she learned that he had died abroad in a natural disaster on 12.6.05 but it was not until 14.1.06 that his body had been identified.

She makes a claim for bereavement benefits on 27.7.06. The DM decides that she is entitled to a BPT and a BA from 12.6.05.

IB/SDA/IIDB/REA/ESA

02344 The time for claiming ESA, IB or SDA is the day for which benefit is claimed and the three months following¹. A month means a calendar month².

1 SS (C&P) Regs, reg 19 and Sch 4, para 2 & 16; 2 Inte Act 78

02345 The time for claiming IIDB (and increases for CAA and ESDA) and REA is any day of entitlement and the period of three months immediately following it¹. See DMG Chapter 67 for claims to PD A10.

1 SS (C&P) Regs, reg 19 and Sch 4, paras 3, 4, 5

Example

If the first day of entitlement to a benefit is 4.7.05 the period of three months from that date will end on 4.10.05. To avoid a disallowance the date of claim must be no later than 4.10.05.

02346 - 02363

RP/GRB/SAP/SP

02364 The time for claiming RP/GRB/SAP/SP (where a claim is required - see DMG 02036) is any day on which the claimant is entitled to the benefit and the period of twelve months immediately following it¹. This means, for example, that for entitlement to arise on 27.11.16, a claim must be made no later than 27.11.17.

1 SS (C&P) Regs, reg 19 and Sch 4, paras 12-14

02365 - 02370

IS/JSA

02371 For IS and JSA the prescribed time for claiming is the first day of the period claimed for¹. The DM has the power to extend the time for claiming in specified circumstances.

1 SS (C&P) Regs, Sch 4, paras 1 and 6

Extending the time for claiming IS and JSA

02372 The time for claiming IS or JSA may be extended by a period of up to

1. one month (see DMG 02374) **or**
2. three months (see DMG 02376)

if certain conditions are satisfied¹. But the periods cannot be added together².

1 SS (C&P) Regs, reg 19(4), (5), (6) & (7); 2 R(IS) 3/01

4. the grant or appointment is submitted to the DM before any decision is made¹.

1 SS (C&P) Regs, reg 30(1)

02451 In Scotland, where no executor has been named, a person who wishes to continue with a claim on behalf of the deceased must apply to the Court to be appointed as executor. Where the deceased had left a will naming an executor, that nominated executor can apply to the Secretary of State to continue with a claim (or any related issue of revision, supersession or appeal) on behalf of the deceased. Alternatively¹, the person may be appointed to proceed with the claim by the DM².

1 R(SB) 8/88; 2 SS (C&P) Regs, reg 30(1)

02452 Where a person dies without having claimed, a claim on the deceased's behalf may be made if there would have been entitlement before death had a claim been made in the prescribed manner and within the prescribed time. For the following benefits a posthumous claim cannot be made

1. IS
2. JSA
3. SPC
4. SF¹.

1 SS (C&P) Regs, reg 30(5)

02453 For a valid claim to be made after the claimant's death the following conditions must be satisfied

1. a written application to be appointed to act should be made to the Secretary of State within six months of the date of death or, for IIDB benefits, the date of issue of the death certificate **and**
2. a person must be appointed by the Secretary of State to make the claim **and**
3. the claim must be made within six months of the person being appointed¹.

1 SS (C&P) Regs, reg 30(6A); reg 30(6B)(b)

02454 Where appropriate the time to apply for appointment may be extended by up to six months. Where this is done the time for claiming is reduced by the same amount. Similarly the time for claiming benefit may be extended by up to six months where an application for appointment has been made within six months¹.

1 SS (C&P) Regs, reg 30(6D)(a)

02455 There is an overriding limitation that a claim cannot be made more than twelve months after the date of death¹. In calculating the period of twelve months, the time between the receipt of the application to be appointed and the authorization of the appointment is disregarded².

1 SS (C&P) Regs, reg 30(6D)(b); 2 SS (C&P) Regs, reg 30(6D)(c)

02456 For IIDB and REA “date of death” in DMG 02453 - 02455 should read as “date of issue of the death certificate”¹.

1 SS (C&P) Regs, reg 30(6B)

02457 A claim made in time by the appointed person is treated as if it had been made by the deceased on the date of death¹.

1 SS (C&P) Regs, reg 30(7)

02458 - 02464

CAT A and CAT B RP/GRB/SAPs/SP

02465 The following paragraphs describe the special rules that apply to posthumous claims for Cat A and B RP, GRB, SAPs or SP. They also describe the claiming provisions where the deceased was deferring entitlement to these benefits at the date of death¹. Full guidance about deferment of benefit can be found in DMG Chapter 75.

1 SS (C&P) Regs, reg 30(5)-(5G)

02466 A claim may be made on behalf of a deceased person to any Cat A or Cat B RP or GRB to which they may have been entitled provided that the deceased was neither

1. married **nor**
2. in a civil partnership

at the date of death. This is because of the normal inheritance provisions for such couples (see DMG Chapter 75)¹.

1 SS (C&P) Regs, reg 30(5A)

02467 However the rule in DMG 02466 creates an anomaly for certain widowers and civil partners who cannot benefit from the main deferral provisions (see DMG Chapter 75). This anomaly will disappear from 6.4.10 when the inheritance provisions between men and women are equalized. Until that time a claim for a Cat A or B RP or GRB on behalf of a deceased person may also be made by a widower or surviving civil partner who is

1. under pensionable age on the date of their wife’s or civil partner’s death **and**
2. due to reach pensionable age before 6.4.10¹.

1 SS (C&P) Regs, reg 30(5B)

02468 The amount of benefit that can be claimed under DMG 02466 and DMG 02467 or for a SAP or SP is the amount that person would have been entitled to had they claimed it within the prescribed time for claiming. For this purpose the prescribed time is three months beginning with any day of entitlement to the benefit and ending on the date of death¹. The maximum amount that can be claimed is therefore three months benefit.

1 SS (C&P) Regs, reg 30(5C)

02469 Where a deceased person had deferred their entitlement to a Cat A or B RP, GRB or SAP (see DMG Chapter 75) throughout the period of twelve months before the date of death they will be treated as having made an election in favour of an increase in their weekly pension or benefit. The lump sum payment is not available to a person making a posthumous claim¹.

1 SS (C&P) Regs, reg 30(5D), (5E)

02470 Where the deceased person was a widow, widower or surviving civil partner

1. whose deceased spouse or civil partner had deferred entitlement to a Cat A or B RP or GRB throughout the period of twelve months before the date of their death **and**
2. the widow, widower or surviving civil partner had made no election in relation to that period of deferment or choice under specified legislation¹

they will be treated as having made an election in favour of an increase of benefit. The lump sum payment is not available to a person making a posthumous claim².

1 Pensions Act 14, s 10; 2 SS (C&P) Regs, reg 30(5F), (5G)

02471 Where a person makes a claim to SP¹ as in DMG 02465 then the deceased person shall be treated as having made a choice to be paid SP based under

1. survivor's pension based on inheritance of deferred old state pension² **or**
2. prescribed legislation which make corresponding provisions³

1 SS (C&P) Regs, reg 30(5H); 2 Pensions Act 14, s 9 & s 8(2)(b); 3 s 8(2)(b), 9 & 10

Automatic payment of arrears of benefits to a spouse or civil partner upon death

02472 If the claimant was in receipt of RP, SP or SPC or any other benefit combined for payment purposes with either of those benefits then any arrears of benefit will be paid automatically to a spouse or civil partner when the claimant dies. No written application is required.

02473 Arrears will only be paid if an executor or administrator has not been appointed and the spouse or civil partner was living with the claimant at the time of death. It also applies if the spouse or civil partner would have been living with the claimant at the time of death but for the fact that one or both of them was in a RCH, nursing home or hospital¹.

1 SS (C&P) Regs, reg 30(4 & 4B)

02474 - 02499

Treating a claim for one benefit as a claim for another benefit

02500 A claim for one benefit may in some circumstances be treated as a claim for a different benefit or it may be treated as a claim for an additional benefit¹. The DM must consider if the minimum standards of information and evidence for the different or additional benefit are met if the claim is to be valid (see DMG 02080).

1 SS (C&P) Regs, reg 9(4)

02501 A claim for the benefit listed in column 1 of the table below **may** be treated as a claim for the different or additional benefit listed in column 2¹. This provision is not mandatory and should not be employed if detrimental to the claimant.

Column 1	Column 2
Benefit claimed	Benefit which may be treated as if claimed
AA	DLA or an increase of IIDB where constant attendance is needed
DLA	AA or an increase of IIDB where constant attendance is needed
An increase of IIDB where constant attendance is needed	AA and DLA
ESA for a woman	MA
IS	CA
IB for a woman	MA
MA (see also DMG 02585 and 02507)	IB, SDA or ESA
RP (of any category)	BB, RP of any other category, GRB or SAP
SDA	IB
SP	Any other type of SP
SDA for a woman	MA
BB	RP (of any category), GRB or SP
Increase of SDA	Increase of IB

1 SS (C&P) Regs, Sch 1, Part 1

02502 A claim for an increase of benefit can be accepted as

1. a claim for the same increase of a different benefit **or**
2. a claim for a different increase of the same or a different benefit.

Example 1

A claim for an increase of IB for a partner can be accepted also as a claim for an increase of SDA for a partner.

Example 2

Where a valid marriage or civil partnership is not accepted, a claim for an increase of IB for a partner can be accepted as a claim for an increase for a person having care of children.

Claim for CHB

02503 Where a person who has claimed CHB may be entitled instead or also to

1. GA
2. MA or
3. a child dependency increase¹

for the same child, the Secretary of State may treat that claim as a claim in the alternative or also to one of those benefits².

1 SS CB Act 92, s 80; 2 SS (C&P) Regs, reg 9(3) & Sch 1, Part II

Claim to be regarded as a claim to CHB

02504 Where a claim is made for one of the following benefits and the claimant may be entitled to CHB for the same child the Secretary of State may treat the claim as a claim instead or also for CHB or GA, or MA claimed after confinement or a child dependency increase¹

1 SS CB Act 92, s 80

MA claimed before confinement

02505 Where

1. it has been certified¹ that a woman is expected to be confined **and**
2. she makes a claim for MA before the confinement

that claim may, unless the DM decides otherwise, be treated as a claim for ESA, IB or SDA².

1 SS (Med Ev) Regs; 2 SS (C&P) Regs, reg 11(1)

Advance claims

AA & DLA

02530 A claim for AA or DLA may be made

1. for AA - within the six month qualifying period¹
2. for DLA - within the three month qualifying period²
3. for both benefits - in the six months before a current award ends³.

1 SS CB Act 92, s 65(6)(a); 2 SS (C&P) Regs, reg 13A; 3 reg 13(c)

02531 Where a claim is decided in advance it must be decided on circumstances obtaining at the date of decision. This excludes any prediction of what a person's circumstances might be at the date of entitlement¹. However, the DM can take account of any change that will inevitably occur within three months following the renewal date. A change of circumstances occurring after the claim is decided and before the date of entitlement should be dealt with by way of revision² (see DMG Chapter 03) or supersession³ (see DMG Chapter 04).

1 R(DLA) 4/05; 2 SS Act 98, s 9; SS (C&P) Regs, reg 13C(3); 3 SS CS (D&A) Regs, reg 6(2)(a)

02532 Where a renewal claim is disallowed the disallowance does not subsist after the date of decision. A further claim may therefore be made between the date of the decision and the renewal date on the basis of changes that have occurred since the decision was given. Any award of benefit will be effective from the renewal date¹.

1 R(DLA) 4/05

02533 Occasionally it might be appropriate to defer making a decision on a renewal claim. This might be when a claimant is particularly relying on an anticipated change of circumstances (for example, an operation to amputate a limb that would considerably increase care needs)¹. But these cases are likely to be few in number and advice should be sought before taking action.

1 R(DLA) 4/05

02534 A decision on a renewal claim (especially where it is to disallow) will always raise the question of whether the existing award should be superseded¹. But it will not always be appropriate to supersede and DMs should follow existing guidance.

1 R(DLA) 4/05

MA

02535 A claim for personal MA, or for an increase of MA for an adult dependant cannot be made earlier than 14 weeks before the EWC¹.

1 SS (C&P) Regs, reg 14(1)

02536 A claim for an increase of MA for an adult dependant cannot be made in advance if the conditions of entitlement for the increase are not satisfied at the date of claim¹.

1 SS (C&P) Regs, reg 14(2)

Example

A claimant with one child claims an increase of MA for a person caring for a child in the 8th week before her EWC. The claim is from the 6th week before the expected week of confinement when she considers that she will need help with her first child. At the date of claim there is no entitlement to the increase because the person does not have the care of the child. The advance claim for the dependant is not accepted as a valid claim.

RP, SAP and SP

02537 [\[See Memo DMG 11/16\]](#) A claim for RP of any category, SAP or SP can be made up to four months before the date that the claimant will become entitled to the benefit¹ (subject to the conditions of entitlement in DMG Chapter 75). Where entitlement to a Cat A or a Cat B RP (including any increase in that pension e.g GRB or ADI), SAP or SP is deferred (see DMG Chapter 75) a claim may be made up to four months before the period of deferment ends². Where a claimant is in receipt of IB while over pensionable age (see DMG Chapter 56) entitlement to RP begins on

1. the first day to which the claim relates **or**
2. if that date is not the appropriate pay day for payment of RP, the next following pay day³.

1 SS (C&P) Regs, reg 15(1); 2 reg 15B; 3 reg 15(5)

02538 The DM should not accept that a valid claim has been made, where a claim is made more than four months before the stated day of entitlement. A further claim will be required for entitlement to be considered again.

IB and SDA

02539 A claim for MA may be treated as a claim for IB or SDA

1. an expected date of confinement certificate has been issued **and**
2. the woman makes her claim for MA before her confinement¹.

1 SS (C&P) Regs, reg 11(1)

02540 The claim for MA

1. can be made up to fourteen weeks before the EWC¹ **and**
2. can be treated as a claim for IB or SDA from the earlier of
 - 2.1 the start of the 6th week before the EWC **or**
 - 2.2 the ADC².

1 SS (C&P) Regs, reg 14(1); 2 reg 11(1)

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, GRB or SP	03361
Revision of termination decisions – RP, SAP, GRB and SP	03362
Revision where no election made	03363
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

Revising IS decisions when incapacity decisions are appealed

03356 Where

1. the DM awards IS at a reduced rate pending an appeal against a decision which includes a determination that they are not incapable of work¹ **and**
2. the appeal
 - 2.1 succeeds **or**
 - 2.2 lapses

the IS decision may be revised².

1 IS (Gen) Regs, reg 22A; 2 SS CS (D&A) Regs, reg 3(7B)

Example

The IB DM supersedes and terminates an award of IB after the claimant scored less than 15 points on the PCA and the claimant immediately appeals. The IS DM supersedes the IS award to remove the DP. The claimant, remains entitled to IS at a reduced rate pending the IB appeal. When a FtT allows the appeal against the IB DM's decision, the IS DM revises their own decision, restoring IS in full, including the DP.

03357 When

1. an award of IS is superseded and terminated following a determination that the claimant is not incapable of work **and**
2. they claim and are awarded JSA **and**
3. the decision that embodies the determination that they are not incapable of work is revised or successfully appealed

the decisions to terminate IS and to award JSA can be revised¹.

1 SS CS (D&A) Regs, reg 3(7C)

03358 Where

1. an award of IS is superseded and terminated following a determination that the claimant is not incapable of work **and**
2. the decision including that determination is
 - 2.1 revised **or**
 - 2.2 the subject of an appeal so that entitlement to IS at a reduced rate can be awarded¹

the IS termination may be revised². For guidance on reduced rate IS, see DMG Chapter 20.

1 IS (Gen) Regs, reg 22A; 2 SS CS (D&A) Regs, reg 3(7C)

Example

The IB DM supersedes and terminates an award of IB after the claimant scored less than 15 points on the PCA. The IS DM supersedes the IS award and ends entitlement as there has not yet been an appeal against the IB decision. The last day the claimant is paid IS is 11.2.05. The claimant later appeals the IB decision and the IS DM revises the decision ending IS, which is then paid at a reduced rate, from 12.2.05, pending determination of the IB appeal. When later the claimant's appeal against the IB decision is upheld by the FtT, the IS DM revises the decision which held IS was payable at a reduced rate and restores it in full, including the DP.

Note: where the IS termination is confirmed on appeal, the FtT's decision can be superseded - see DMG Chapter 04.

- 03359 Where the claimant is entitled to IS on the basis of IfW, and is also in another prescribed category of person such as being a lone parent, the effect of a decision embodying a determination that they are capable of work is that the IS awarding decision is superseded to remove the disability premium. From 10.4.06, the IS supersession decision can be revised where the decision about incapacity is revised, or an appeal against it is successful¹.

1 SS CS (D&A) Regs, reg 3(7F)

Example

The claimant, a lone parent, has an award of IS including the disability premium. Following application of the PCA, she is found not to be incapable of work, and her award of IB is superseded and disallowed. Her IS award is superseded to remove the disability premium. On appeal against the IB decision, the FtT decides that she is still incapable of work, and allows her appeal. The IB award is restored. The IS DM revises the IS supersession decision to restore the disability premium.

Revision on change of election - deferred entitlement

SPC

- 03360 [\[See Memo DMG 11/16\]](#) Where

1. a person elects for an increase of a Cat A or Cat B RP, a SAP a GRB, or SP¹
and
2. the DM decides that the person or their partner is entitled to SPC and takes the increase into account when deciding the SPC claim, or superseding an award made on that claim **and**
3. the person's election is later changed to a lump sum²

the DM may revise the SPC decision³. See DMG Chapter 75 for guidance about deferring entitlement and making elections.

1 SS CB Act 92, Sch 5, para A1 or 3C; Sch 5A, para 1; SS (GRB) Regs, Sch 1, para 12 or 17; Pensions Act 14, s 8(2), 9 & 10; SP Regs, reg 6; 2 SS (Def RP, SAP & GRB) (Misc Provs) Regs; SS (GRB) Regs, reg 5; Sch 1, para 20D; 3 SS CS (D&A) Regs, reg 3(7D) & 3(7DA)

Cat A or Cat B RP, SAP, GRB or SP

03361 Where

1. a person is awarded a Cat A or Cat B RP, SAP, GRB or SP **and**
2. an election is made or treated as made¹ **and**
3. the election is subsequently changed²

the DM may revise the awarding decision³. See DMG Chapter 75 for guidance about deferring entitlement and making elections.

1 SS CB Act 92, Sch 5, para A1 or 3C; Sch 5A, para 1; SS (GRB) Regs, Sch 1, para 12 or 17 Pensions Act 14, s 8(2) & 10; 2 SS (Def RP, SAP & GRB) (Misc Provs) Regs, reg 5; SS (GRB) Regs, Sch 1, para 20D; SP regs, reg 6; 3 SS CS (D&A) Regs, reg 3(7E) & reg 3(7DB)

Example

The claimant defers claiming RP for twelve months. He claims and is awarded RP and SPC from 10.4.06 before he has chosen a deferral option. On 1.5.06 he notifies that he wishes to be paid increments. The decision awarding RP is revised to include an increase of RP from 10.4.06. The decision awarding SPC is also revised to take account of the revised RP award. The arrears of RP are offset against the excess payment of SPC. On 1.7.06 the claimant notifies that he wishes to change his election to a lump sum payment. The decisions awarding RP and SPC are revised again to take account of the change of election. The lump sum is reduced by the amount of increments already paid. The arrears of SPC, taking the reduced rate of RP into account from 10.4.06, are paid to the claimant.

Revision of termination decisions - RP, SAP, GRB and SP

03362 [\[See Memo DMG 11/16\]](#) Where a decision has been made to terminate entitlement¹ to

1. Cat A or Cat B RP **or**
2. SAP **or**
3. GRB **or**
4. SP

then the Secretary of State may revise that decision at any time².

1 SS CS (D&A) Regs, reg 18(1); 2 reg 3(7EA & 7EB)

Revision where no election made

03363 Where a claim to Cat A or Cat B RP, SAP, GRB or SAP is made and a choice may be made between¹

1. a lump sum **or**
2. a pension increase **and**
3. no choice is made²

the DM may decide the claim before a choice is made³

1 SS CB Act 92, para A1 or para 3C Sch 5; Sch 5A para 1; SS (GRB) Regs, Sch 1 para 12 or para 17; Pensions Act 14, s 8(2) & s 10; 2 SS CS (D&A) Regs, reg 13 A & 13 B

03364 The DM may revise¹ the decision when the person makes a choice, is treated as making a choice or becomes entitled to a lump sum.

1 SS CS (D&A) Regs, reg 13A & 13B;

03365 - 03369

Revising decisions and determinations with no appeal rights

03370 Decisions and determinations which have no right of appeal¹ can be revised at any time. These are mostly administrative decisions such as timing and manner of payment. See DMG Chapter 01 for details. The rule for housing cost determination is different - see DMG 03372.

1 SS Act 98, Sch 2; SS CS (D&A) Regs, reg 3(8) & Sch 2

03371 Decisions that are not appealable are listed in Annex E to this Volume. Where such decisions are challenged, the Secretary of State can look again at the decision, and revise or supersede it if it is reasonable to do so, but this is at the discretion of the Secretary of State. These decisions can also be challenged by means of judicial review. See DMG Chapter 06 for further guidance.

03372 When all of the evidence or information which is relevant for determining housing costs for ESA, IS or SPC are not available, the DM should make a decision based on the available evidence or information¹. This decision is not appealable². If further information or evidence is supplied then the DM can revise the decision at any time³. This only applies to cases where housing costs would otherwise be due from the beginning of the award.

1 SS CS (D&A) Regs, reg 13(1); 2 Sch 2, para 13; 3 reg 3(8)

03373 - 03374

Revising decisions on sanctionable benefits

03375 Where a court quashes or sets aside a conviction which had resulted in a decision that a restriction on payment of benefit was to be imposed

1. that decision may be revised at any time **and**
2. payments and other adjustments made as if no restriction had been imposed¹.

See DMG Chapter 04 for further guidance on sanctionable benefits.

1 SS Fraud Act 2001, s 6C(1); 7(7); s 8(6); s 9(6); SS CS (D&A) Regs, reg 3(8B)

03376 This applies to the offender who may be

1. the claimant **or**
2. in the case of a joint-claim JSA, any member of a couple **or**
3. a family member

03377 Where

1. the offender withdraws their agreement to pay the administrative penalty **or**
2. it is decided that the overpayment to which that agreement relates is not recoverable or due

any decision that a restriction on the payment of benefit was to be imposed may be revised at any time and payments and other adjustments made as if no restrictions had been imposed¹.

1 SS Fraud Act 2001, s 6C(2); s 8(7); s 9(7); SS CS (D&A) Regs, reg 3(8B)

03378 - 03399

Decisions given without authority

03400 Decisions given by DMs which are outside their jurisdiction are nevertheless effective and may be revised¹. The effect of the revision includes deciding that the decision should not have been made.

1 R(S) 13/81

03401 A decision of a DM given without authority because no claim has been made for the period covered by the decision can be revised because of official error¹. It does not matter whether or not the error was a reasonable one to have made. The statutory provision is a wide one which is applicable as long as the error on which the revision was based is genuine.

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

03402 - 03409

Revision of advance awards

03410 An award on an advance claim is conditional on the claimant's circumstances at the relevant or renewal date. See DMG 03017 for the meaning of relevant and renewal date. Changes of circumstances occurring and effective

1. after the date the claim is decided **and**
2. before the relevant or renewal date

can be dealt with by way of revision where the circumstances in DMG 03411 apply. See also DMG 03016 for revision where the change is advantageous to the claimant and occurred before the decision was made.

03411 Where a change

1. is notified **after** the relevant or renewal date **and**
2. has the effect that the conditions of entitlement are not satisfied from that date the award can be revised¹. The result of the revision is that the claim is disallowed from the date of claim. It is important to note that, whilst the effect is the same, revision in this context is done not under the normal rules² but under a free-standing provision. It must therefore be exercised with discretion and cases where a change is notified long after it occurred should be referred to DMA Leeds for advice. See also DMG Chapter 04 for guidance on supersession of advance awards.

1 SS Act 98, s 9; SS (C&P) Regs, reg 13, 13A & 13C(3); R(DLA) 4/05; 2 SS CS (D&A) Regs, reg 3

Example

The current award of DLA expires 25 September. A renewal claim is decided on 14 April, effective from 26 September. An award is made for middle rate care component under the deemed provisions for renal dialysis. On 4 June the claimant has a successful kidney transplant operation that is notified to the DM on 12 October. Although the claimant has limited care needs, the DM decides that these are insufficient for an award of DLA. The DM revises the decision made on 14 April under reg 13C(3) to disallow the claim from 26 September.

03412 - 03459

Notification of changes

Introduction

04150 The process of supersession on a change of circumstances is closely linked to the legal requirement that certain changes be notified to the Secretary of State.

When should a change be notified

04151 Beneficiaries and every person by whom, or on whose behalf, sums by way of benefit are receivable are required¹ to notify the Secretary of State of any change of circumstance which they might reasonably be expected to know might affect

1. continuing entitlement to benefit **or**
2. the payment of benefit

as soon as reasonably practicable after the change occurs. In addition there may be benefit specific rules requiring changes to be notified.

1 SS (C&P) Regs, reg 32(1B)

04152 [\[See Memo DMG 13/16\]](#) Notification of the changes set out in DMG 04151 must be made¹ to an appropriate office

1. in writing **or**
2. by telephone, unless the Secretary of State in any case or class of case requires written notice.

Note: Persons can notify changes of circumstance by means of an electronic communication in relation to awards of AA, CA, DLA, ESA, IB, IS, JSA, RP and SPC². See Annex B to this Volume for detailed guidance on this.

1 SS (C&P) Regs, reg 32(1B); 2 reg 32ZA

Who can notify the change

04153 A change of circumstances can be notified by

1. the person claiming the benefit
2. any person appointed to act as an appointee for a claimant who is unable to act for themselves
3. any person who is an authorised representative for the claimant
4. a representative or agent of the Secretary of State
5. in overseas cases, social security authorities of EC countries, or other countries who have reciprocal arrangements with the UK.

Note: This list is not exhaustive. The legislation does not specify who may apply for supersession on a change of circumstances.

How can a change be notified

04154 The general rule up until 5.1.04 was that a change should be reported in writing. However the Secretary of State could determine in any particular case that some other form of notification be accepted such as by telephone or in person.

04155 With effect from 6.1.04 notification of the changes set out in DMG 04151 must be made¹ to an appropriate office

1. in writing **or**
2. by telephone, unless the Secretary of State in any case or class of cases requires written notice

Note 1: this does not apply to JSA, which has its own rules² concerning reporting changes.

Note 2: it remains the case that, in relation to CA only, changes can be reported by means of an electronic communication (see Annex B to this Volume for further guidance).

Note 3: notification³ of a death may be given by means of an electronic communication⁴ for AA, DLA, ESA, IB, IS, JSA, RP and SPC.

*1 SS (C&P) Regs, reg 32(1B); 2 JSA Regs, reg 24; 3 SS (C&P) Regs, reg 32ZA, 32 & Sch 9ZC;
4 The Social Security (Electronic Communications) Consolidation and Amendment Directions 2011 art 3(a)*

Where should a change be notified

04156 A change of circumstances should be notified to an appropriate office¹. An appropriate office is

1. the office of the DWP whose address is shown on the original decision notice
2. for JSA, the office specified by the Secretary of State
3. in the case of a person who is or would be required to take part in a Wfl, an office of the DWP which is designated by the Secretary of State as a Jobcentre Plus Office.

Note: Where a notification is received in a different office of the DWP, and is forwarded to and received by the appropriate office, it should be treated as received in the appropriate office on the date of receipt in the different office. But see DMG Chapter 9 in overpayment cases.

1 SS CS (D&A) Regs, reg 3(11)

Change from IS to JSA or JSA to IS

04511 Where

1. a person is awarded IS or JSA (“the existing award”) **and**
2. if that award did not exist an award could be made for JSA or IS (“the alternative benefit”) were a claim made for it

then when a claim is made for the alternative benefit, the DM may supersede the existing award to bring it to an end¹.

1 SS CS (D&A) Regs, reg 14A(1) & (2)

04512 Where DMG 04511 applies the existing award ends on the day immediately before the first day on which the award of the alternative benefit takes effect¹.

1 SS CS (D&A) Regs, reg 14A(3)

04513 Where the alternative benefit is JSA, the person does not have to serve waiting days¹.

Note: See DMG 04701 for guidance on ESA

1 SS CS (D&A) Regs, reg 14A(4); JSA Act 95, Sch 1, para 4

Changes in loan interest payable

04514 Where¹ a claimant is receiving IS or JSA and

1. payments under a mortgage protection policy are being disregarded under specific legislation² **and**
2. there is a change in the amount of interest payable on a loan qualifying under specific legislation³

the effective date of the supersession decision made to take account of the change should be set in accordance with DMG 04517.

Note: See DMG 04696 for guidance on ESA

*1 SS CS (D&A) Regs, reg 7(15) & (19); 2 IS (Gen) Regs, Sch 9, para 29 & JSA Regs, Sch 7, para 30;
3 IS (Gen) Regs, Sch 3, paras 15 or 16; JSA Regs, Sch 2, paras 14 or 15*

04515 Where¹ a claimant is receiving IS or JSA **and**

1. payments intended and used as a contribution towards certain housing costs not allowable in the applicable amount are disregarded under specific legislation² **and**
2. there is a change in the amount of interest payable on the loans to which those payments relate

the effective date of the supersession decision made to take account of the change should be set in accordance with DMG 04516.

1 SS CS (D&A) Regs, reg 7(15)(b) & (19)(b); 2 IS (Gen) Regs, Sch 9, para 30 & JSA Regs, Sch 7, para 31

- 04516 Where DMG 04514 or 04515 apply the effective date is¹ either
1. the date on which housing costs are first met under specific regulations² **or**
 2. where the change in the amount of interest occurred after the date in DMG 04516 1., the date of the next alteration in the standard interest rate following that change (see DMG 23560 et seq for information on the standard interest rate).

Note: This is subject to the general rule in DMG 04551 in the case of IS and DMG 04580 in the case of JSA i.e. the effective date has to be the first day of a benefit week.

1 SS CS (D&A) Regs, reg 7, (16) & (20); 2 IS (Gen) Regs, Sch 3, paras 6(1)(a), 8(1)(a), 9(2)(a); JSA Regs Sch 2, paras 6(1)(a), (7)(1)(a), (8)(2)(a)

Mortgages and loans

- 04517 Where¹ a supersession decision is made in relation to IS or JSA **and**
1. the award made as a result of the supersession includes an amount in respect of a loan under specific regulations¹ **and**
 2. the supersession decision could not have been made earlier because information requested (other than information requested on an annual review) had not been supplied by the lender²

the effective date of the supersession will be set in accordance with DMG 04518.

1 SS CS (D&A) Regs, reg 7(13); 2 IS (Gen) Regs, Sch 3, paras 15 or 16; JSA Regs, Sch 2, paras 14 or 15

- 04518 Where DMG 04517 applies, the effective date is¹ such date as the DM considers reasonable in the particular circumstances of the case but not more than 8 weeks before
1. the date of the application for supersession **or**
 2. where the DM supersedes of his own initiative the date on which the decision is made.

Note 1: this is subject to the general rule in DMG 04551 in the case of IS and DMG 04580 in the case of JSA. i.e. the effective date has to be the first day of a benefit week.

Note 2: following a decision of the UT² housing costs should be awarded from the normal qualifying date and are not limited to 8 weeks prior to the return of form MI 12. This applies from the date of the UT's decision – 18.03.13. This also applies to ESA.

1 SS CS (D&A) Regs, reg 7(12); 2 SK v Secretary of State for Work & Pensions [2013] UKUT 0138 (AAC)

the effective date of the supersession will be set in accordance with DMG 04671.

1 SS CS (D&A) Regs, reg 7(17B); 2 SPC Regs, Sch II

04671 Where DMG 04670 applies, the effective date is¹ either

1. where

1.1 more than one of the changes described in DMG 04670 4. has happened with respect to the same non-dependant **and**

1.2 those changes all occurred within the same 26 week period

26 weeks after the date on which the first change occurred **or**

2. in any other circumstances, 26 weeks after the change described in DMG 04670 4. occurred.

Note: this means that, from 4.4.05 where there is a change in the non-dependant's circumstances which results in an **increase** in the amount of housing costs applicable, the normal rules regarding a supersession on a change of circumstances apply (see DMG 04642).

1 SS CS (D&A) Regs, reg 7(17C)

04672 - 04679

Uprating

04680 Uprating of SPC will not normally require a supersession decision. Where rates are changed on uprating, the amount of benefit payable and the award will be the new amount without the need for any further decision of the DM¹.

But see DMG 04681 for an exception to this rule.

1 SSA Act 92, s 159B

04681 There is an exception¹ where the appropriate minimum guarantee includes an additional amount for former claimants of IS or JSA(IB)² (known as the transitional amount - see DMG 78120 et seq for guidance on when this additional amount applies).

1 SS CS (D&A) Regs, reg 14(5); 2 SPC Regs, Sch I, para 6

04682 Where DMG 04681 applies, uprating will need to be carried out by means of supersession¹.

1 SS CS (D&A) Regs, reg 14(6)

04683 - 04684

Supersession on change of election - deferred entitlement

04685 [\[See Memo DMG 11/16\]](#) The DM may supersede¹ a decision awarding SPC where

1. the claimant or partner makes or is treated as having made an election for a lump sum² **or**
2. a lump sum is repaid after the person changes their election to an increase of Cat A or Cat B RP, SAP, GRB or SP³.

See DMG Chapter 75 for guidance about deferring entitlement and making elections.

1 SS CS (D&A) Regs, reg 6(2)(o) or reg 6(2)(oo); 2 SS CB Act 92, Sch 5, para A1 or 3C; Sch 5A, para 1; SS (Def RP, SAP & GRB) (Misc Provs) Regs, Sch 1, para 12 or 17; Pensions Act 2014, s 8(2), s 8(4) & s 10; 3 Def RP Regs 05, reg 5; SS (Def RP, SAP & GRB) (Misc Provs) Regs, Sch 1, para 20D; SP Regs, reg 44 & reg 6; Pensions Act 2014, s 10

04686 Where DMG 04685 applies, the new decision is effective¹ from

1. the day on which the lump sum or payment on account of a lump sum is paid or repaid where that is the payday **or**
2. the following payday.

1 SS CS (D&A) Regs, reg 7(7A)

Example

The claimant is a single woman who was 60 on 8.5.05 and who deferred her RP for twelve months. She has capital of £8,000. On 8.5.06 she claims RP and SPC but does not immediately make an election on her deferral option. SPC is awarded to the claimant, taking into account her RP and £4.00 deemed weekly income due to her capital. On 5.6.06 the claimant elects to receive increments. The decision awarding RP is revised to include increments. The decision awarding SPC is also revised to take into account the claimant's increased RP. On 26.6.06 the claimant realises she would have been better off taking a lump sum so she changes her election. As she is liable for tax, the claimant receives a lump sum of £7,200 rather than the amount of £8,000 she would have received if she were not liable for tax. Of the claimant's total capital of £15,200, the amount of £8,000 (the gross amount of the lump sum) is disregarded. The decision awarding SPC is superseded to reduce the amount of deemed weekly income to be taken into account to £3.00.

Special rules - Employment and Support Allowance

04696 The general rule is that an ESA supersession decision on the grounds that there has been a relevant change of circumstances takes effect from the first day of the benefit week in which the change occurs¹.

1 SS CS (D&A) Regs, reg 7(1)(a); Sch 3C, para 1

04697 “Benefit week” means the period of seven days ending on

1. the day before the first day of the first benefit week following the date of claim
or
2. the last day of ESA payment where it is paid for less than a week¹

1 ESA Regs, reg 2(1); SS CS (D&A) Regs, reg 7(3)(d)

04698 Other supersession decisions where¹

1. the supersession is on the grounds that the decision to be superseded
 - 1.1 is a DM's decision which is erroneous in law²
 - 1.2 is a decision awarding ESA where the claimant or a family member becomes entitled to a qualifying benefit³
 - 1.3 is a decision awarding ESA where the SDP cannot be included in the award because there is a non-dependant, and the non-dependant is awarded a qualifying benefit⁴
 - 1.4 is as in DMG 04292 (reinterpretation of the law)⁵
 - 1.5 is as in DMG 04514 - 04522 (award of housing costs)⁶.

also take effect from the first day of the benefit week.

1 SS CS (D&A) Regs, Sch 3C, paras 9 & 10; 2 reg 6(2)(b); 3 reg 6(2)(e); 4 reg 6(2)(ee); 5 reg 7(6); 6 reg 7(12), (13), (17D), (17E) & (17F)

Exceptions

04699 The general rule in DMG 04696 does not apply

1. where the change is to the claimant's advantage, and was notified outside the one month time limit¹ - see DMG 04501 1. which also applies to ESA
2. where the change is because the claimant is terminally ill² - see DMG 04710.

1 SS CS (D&A) Regs, reg 7(2)(b)(i); 2 reg 7(2)(be)

Other exceptions

- 04700 The guidance at DMG 04556 **1**¹, **3**², **4**³, **5**⁴ and **7** on exceptions to the general rule in DMG 04696 also apply to ESA. In these cases the decision is effective from the date of the change⁵.

1 WR Act 07, Sch 1, para 6(1)(a); 2 ESA Regs, reg 156(6)(d) or (h); 3 Sch 5, para 12; 4 para 3; 5 SS CS (D&A) Regs, Sch 3C, para 2 & 3

Other effective date rules

- 04701 Guidance on effective date rules for

1. supersession in incapacity cases¹ (see DMG 04231 - 04245)
2. supersession of a FtT or UT for error of fact² (see DMG 04337 - 04340)
3. change between benefits including waiting days³ (see DMG 04511 - 04513)
4. payment of income⁴ (see DMG 04560)
5. reduction of benefit following supersession⁵ (see DMG 04561 - 04562)
6. change ceases to apply⁶ (see DMG 04557)
7. mortgages and loans⁷ (DMG 04518)

also apply to ESA.

1 SS CS (D&A) Regs, Sch 3C, para 7; 2 para 8; 3 reg 14A; WR Act 07, Sch 2, para 2; 4 ESA Regs, reg 93; SS CS (D&A) Regs, Sch 3C, para 4; 5 para 5; 6 para 6; 7 Reg 7(12); ESA Regs, Sch 6, para 16 & 17

Non-dependant entitled to ESA

- 04702 Where the relevant change is that

1. the claimant has a non-dependant **and**
2. the non-dependant becomes entitled to main phase ESA

the supersession decision is effective from the date the main phase ESA is first paid to the non-dependant¹.

1 SS CS (D&A) Regs, reg 7(17H)

Failure determination

- 04703 A decision awarding ESA may be superseded where there has been a failure determination¹. A failure determination is a determination by the DM that the claimant has failed without good cause to satisfy a requirement to take part in a Wfl or undertake WRA². The supersession decision takes effect from³

1. the first day of the benefit week in which the failure determination is made where, on the date of the determination, the claimant has not been paid ESA since the failure to which that determination relates **or**

Chapter 06 - Making appeals and staying

Introduction

Note: From 28.10.13, a new appeals system was introduced changing the way appeals are made and lodged. However, the appeals system pre 28.10.13 is still relevant where a claimant appeals a decision notified before 28.10.13. The guidance in this chapter has been amended to reflect the new system and it is made clear in the text when the DM should use pre or post 28.10.13 guidance.

Appeals lodged on decisions notified before 28.10.13

- 06000 For appeals lodged on decisions notified before 28.10.13, claimants can appeal to a FtT where they are not satisfied with a decision. All decisions appealed, including late appeals, should be reconsidered by the DM, so that only unresolved disputes go to appeal. This is also the point at which the DM could identify cases that are out of the FtT's jurisdiction (see DMG 06150) or that have no reasonable prospect of success (see DMG 06233) and apply to the FtT for strike out. For guidance on reconsidering decisions see DMG Chapter 03.
- 06001 The FtT must be confident that the DM has thoroughly looked at the decision again, and considers that it is correct. It is not simply a question of taking a more claimant-friendly line (DMs must still only revise where that is the right thing to do), but the Department has to treat, and to be seen to be treating, this aspect of decision making seriously.
- 06002 Where an outcome decision has been reconsidered following the receipt of an appeal, but there has been no prior application for revision, and the result of the reconsideration is no change, a decision not to revise has **not** been made, and therefore **no** decision should be recorded. There is no need to inform the claimant; the appeal should be processed in the normal way.
- 06003 Although no decision has been given it is still necessary to record the result of the administrative process of reconsideration and any suitable format can be used. However, if procedural guidance prescribes a particular form or format, that is the one that should be used.
- 06004 However, where
1. an outcome decision has been reconsidered following the receipt of an appeal **and**
 2. there has been **no** prior application for revision **and**

3. the reconsideration results in an advantageous or disadvantageous change, a revised outcome decision **has** been made. The revised decision should be notified to the claimant.

06005 Where a DM revises the decision which is the subject of the appeal, the appeal lapses if the decision as revised is to the claimant's advantage¹. For guidance on lapsing appeals see DMG 06160 - 06167.

1 SS Act 98, s 9(6); SS CS (D&A) Regs, reg 30(2)

Appeals lodged on decisions notified on or after 28.10.13

06006 For appeals lodged against decisions notified on or after 28.10.13, claimants can **only** appeal to a FtT where the DM has first considered an application for revision of the original decision¹ (see DMG Chapter 03: Revision). Where a claimant makes an appeal before mandatory reconsideration has been requested then the appeal should be treated as a request for a mandatory reconsideration.

1 SS Act 98, s 12(3A); SS (D&A) Regs, reg 3ZA

06007 If, following the mandatory reconsideration, the claimant wishes to pursue an appeal then they must send their notice of appeal directly to HMCTS¹. HMCTS will then send the notice of appeal to DWP along with the mandatory reconsideration notice and any supporting documents to request that a response is prepared.

1 TP(FiT) (SEC) Rules, rule 22(2)(aa)

06008 The Secretary of State must

1. provide the person with the right of appeal (see DMG Chapter 01) a written notice of the decision including their appeal rights¹ **and**
2. tell the person with the right of appeal that where the notice in 1. above does not include a statement of reasons, they may, within one month of the date of the notification of the decision, request that a statement of reasons is provided². The statement must be provided within 14 days of the request or as soon as practicable thereafter³.

1 SS (D&A) Regs, reg 3ZA(1); 2 reg 3ZA(3); 3 reg 3ZA(4)

06009 When making their appeal to HMCTS, the claimant must include with their notice of appeal, a copy of the notice of the result of the mandatory reconsideration issued by DWP¹. Where the mandatory reconsideration notice has not been included, HMCTS will return the notice of appeal to the appellant and advise that the appellant either

1. provide the mandatory reconsideration notice **or**
2. contact DWP to request a mandatory reconsideration if one has not already been carried out¹.

1 TP (FiT) (SEC) Rules, rule 22(4)(a)(i)

Who can appeal to the First-tier Tribunal

06050 The general rule is that any claimant or person affected by a decision has the right of appeal to the FtT¹. In practice, these are (subject to the mandatory reconsideration already having been completed as in DMG 06006 for decisions notified on or after 28.10.13)

1. a claimant who claims a relevant benefit²
2. a claimant or other person from whom an overpayment of benefit is recoverable³
3. a widow or dependant affected by a decision on IDB made before 11.4.98⁴
4. a person who seeks a declaration that an accident was an IA⁵
5. a claimant affected by a decision on certain contributions questions (see Annex D to this Volume)⁶.

1 SS Act 98, s 12(2)(b); 2 s 8(3); 3 s 12(4); SS A Act 92, s 71 & 74; 4 SS Act 98, s 12(5); SS CB Act 92, Sch 7, Part VI; 5 SS Act 98, Sch 3, para 7; 6 paras 16 & 17

06051 Other people can act on behalf of claimants when making an appeal. An appeal should be accepted where it is made by

1. a person appointed by the Secretary of State to act on behalf of a claimant¹
2. a person appointed on the death of a claimant to continue with a claim for benefit made before death²
3. a person appointed after death to make a claim for benefit for the deceased³
4. a person appointed to make a claim for IISB or REA for a person who has died⁴
5. a person who claims AA or DLA on behalf of a terminally ill claimant⁵
6. a representative acting with the claimant's written authority⁶. If the representative is a legal representative then written authority is not required⁷.

1 SS CS (D&A) Regs, reg 25(a); SS (C&P) Regs, reg 33(1); 2 reg 25(ai); SS (C&P) Regs, reg 30(1); 3 SS CS (D&A) Regs, reg 25(a(ii)); SS (C&P) Regs, reg 30(5) & (6); 4 SS CS (D&A) Regs, reg 25(a(iii)); SS (C&P) Regs, reg 30(6A) & (6B); 5 SS CS (D&A) Regs, reg 25(b); SS CB Act 92, s 66(2)(b) & 76(3); 6 TP (FtT) (SEC) Rules, rule 11(1); 7 rule 11(3)

06052 The DM does not have the right of appeal to the FtT. Where there is any doubt about a decision, the DM may revise or supersede it instead.

06053 Where a person who does not have the right of appeal makes an appeal against a decision, see DMG 06112 et seq.

06054 - 06059

Making an appeal to the First-tier Tribunal

Decisions notified before 28.10.13

06060 The notice of appeal¹ must be on an approved form or some other approved format and must be signed by the appellant and must include

1. the name and address of the appellant and any representative
2. the address where documents for the appellant should be sent
3. details of the decision being appealed
4. details as to why the appellant thinks the decision may be wrong².

1 SS CS (D&A) Regs, reg. 33; 2 TP (FiT) (SEC), Rules, rule 23(6)

06061 Where the appeal form or letter does not give all the details required, see DMG 06112 - 06118.

06062 An appropriate office¹ is, for an appeal in

1. a compensation recovery case², the Compensation Recovery Unit of the DWP, Durham House, Washington, Tyne and Wear, NE38 7SF
2. a JSA case, the office of the DWP which issued the decision under appeal
3. a contributions decision case³, any NI Contributions office of the HMRC, or any office of the DWP
4. any other case, the office of the DWP which issued the decision under appeal.

1 SS CS (D&A) Regs, reg 33(2); 2 SS (Recovery of Benefits) Act 1997; 3 SS Act 98, Sch 3, Part II

Note: Where an appeal is received in a different office of the DWP, and is forwarded to and received by the appropriate office, it should be treated as received in the appropriate office on the date of receipt in the different office.

06063 The requirement to give particulars of the grounds of appeal should not be applied stringently. In the majority of the cases, it should be accepted that the condition is satisfied. Where a simple unexplained disagreement with the decision is given as the ground of appeal, further information is required to ensure that the appeal is duly made - see DMG 06112 et seq.

06064

Time limit for appealing to the First-tier Tribunal

06065 The time limit within which the claimant must make an appeal¹ is the later of

1. one month after the date the notification of the DM's decision was sent to the appellant **or**

2. if a written statement of reasons is requested within that month, 14 days after the later of
 - 2.1 the end of that month **or**
 - 2.2 the date the written statement of reasons was provided **or**
3. if the claimant made an in-time application for revision² of the decision and that application was unsuccessful, one month after the date the notification of refusal to revise was sent to the appellant.

Note: The decision is notified when it is posted or handed to the claimant. The time limit for appealing is calculated in the same way as the revision application period. See DMG Chapter 03 for guidance on rights to request a written statement and time limits.

1 TP (FiT) (SEC) Rules, rule 23(2); Sch 1; 2 SS CS (D&A) Regs, reg 3(1), (3) & 3A(1)

06066 Where the decision is handed to the claimant, the Department should ensure that the date of notification is recorded in the claimant's case papers. The response to the FtT should include the date notification was handed to the appellant.

Appeals following decisions whether or not to revise

06067 Where the DM revises a decision, the right of appeal is against the original decision as revised¹. The original decision is treated as made on the date it is revised solely for the purposes of calculating appeal time limits².

1 TP (FiT) (SEC) Rules, Sch 1; R(IS) 15/04; 2 SS Act 98, s 9(5)

Example

The DM disallows a claim for benefit on 8.9.09 and the decision is notified on the same day. The claimant applies for the disallowance to be revised. On 27.9.09 the DM revises the decision of 8.9.09 so as to award benefit. The claimant makes an appeal. The decision under appeal is the decision of 8.9.09 as revised, but the time for appealing starts on 27.9.09.

06068 Where

1. the claimant applies for a decision to be revised during the one month application period **and**
2. the DM notifies that the decision is not revised

the time for appealing the original decision is extended, so that the one month period in DMG 06065 begins on the date the claimant is notified that the decision is not revised¹.

1 TP (FiT) (SEC) Rules, Sch 1

06069 Where the application is made after the one month period but within 13 months of notification of the original decision, the time for appealing is **only** extended as in

DMG 06068 where the DM admits the application, but then does not revise the original decision. The time limit is not extended where the DM does not revise following an application made more than 13 months after notification. See DMG Chapter 03 for guidance on applications for revision.

Note: the DM should consider supersession where the time for appealing is not extended when a decision is not revised (see DMG Chapter 04).

Decisions notified on or after 28.10.13

06070 The notice of appeal must include¹

1. the name and address of the appellant and any representative
2. the address where documents for the appellant should be sent
3. the name and address of any respondent other than the DM
4. details as to why the appellant thinks the decision may be wrong
5. whether the appellant will require an interpreter at any hearing and for which language or dialect
6. whether the appellant intends to attend or be represented at any hearing.

1 TP (FtT) (SEC), Rules, rule 22(3)

06071 Along with the notice of appeal, the appellant must also provide

1. a copy of the mandatory reconsideration notice
2. any statement of reasons that the appellant may have
3. any documents the appellant has to support their case that have not already been sent to the Department¹.

Note: Where the appeal form or letter does not give all the details required, see DMG 06112 – 06118 below.

1 TP (FtT) (SEC) Rules, rule 22(4)

Time limit for appealing to the First-tier Tribunal

06072 The time limit within which the claimant must make an appeal¹ to the FtT is one month after the date the appellant was sent the DM's mandatory reconsideration notice¹.

Note: The decision is notified when it is posted or handed to the claimant. For guidance on rights to request a written statement and time limits, see DMG Chapter 03: Revision.

1 TP (FtT) (SEC) Rules, rule 22(2)(d)(i)

06073 Where the decision is handed to the claimant, the Department should ensure that the date of notification is recorded in the claimant's case papers. The response to the FtT should include the date notification was handed to the appellant.

Appeals following decisions whether or not to revise

06074 Where the DM revises a decision, the right of appeal is against the original decision as revised¹. The original decision is treated as made on the date it is revised solely for the purposes of calculating appeal time limits².

1 R(IS) 15/04; 2 SS Act 98, s 9(5)

Late appeals

Decisions notified before 28.10.13

06075 Where an appeal is made outside normal time limits, it must include the reason why it is late¹. If it does not then the DM will need to request this information. No appeal can be made more than 12 months after the normal time limits². An appeal can be treated as made in time if the Secretary of State is satisfied that it is in the interests of justice to do so³ (See DMG 06078 for meaning of "in the interest of justice"). If the Secretary of State does not object to the appeal being treated as made in time then they should reconsider the decision and if appropriate lapse the appeal. In practice, a late appeal will be accepted unless the Secretary of State objects.

Note: The "interests of justice" test is only part of the Secretary of States consideration. The FtT are not bound by this test as they have a wide general power to extend time limits.

1 TP (FtT) (SEC) Rules, rule 23(3); 2 rule 23(5) & (8); 3 SS CS (D&A) Regs, reg 32(4)

06076 If the DM does not accept that it is in the interest of justice to accept the late appeal then the DM needs to consider whether they object to the FtT using their wider powers to accept the late appeal. The sort of reasons for which the DM may consider objecting to the FtT accepting the late appeal would be where for example

1. the appellant says they received the notice of decision late but they had previously acknowledge the receipt at an earlier date
2. the appellant's condition deteriorated after the appeal decision was made and so this was irrelevant to the appeal.

06077 In other cases the appeal will be treated as having been made in time if the DM does not object¹. The DM should refer the case to the FtT where

1. the DM does object to treating a late appeal as made in time **or**

Example 2

The claimant is in receipt of IS and IB and has mental health problems. He lives alone and does not have an appointee. Both benefits are stopped after application of the PCA. The late appeal is accompanied by a letter from the community psychiatric nurse explaining that he did not understand the significance of the decision, and had not kept appointments with the nurse due to memory problems. The DM accepts that there are special circumstances and admits the late appeal.

- 06087 The list at DMG 06086 is intended only as a guide to the type of circumstances when a late appeal should be treated as in time. For example, a person might not be living alone, but the other people in the house may not be willing to help. Alternatively, a person living alone may have family or friends who visit regularly to check post. Each case should be considered on its merits.

06088 - 06090

Decisions notified on or after 28.10.13

- 06091 Where an appeal is made to the FtT outside normal time limits, the appellant must include a request for an extension of time and the reason why it is late¹. If the appellant does not then HMCTS will request reasons. A late appeal will normally be treated by the FtT as having been made in time if neither the DM nor any other respondent objects². In this situation the FtT will extend the time for appealing³.

1 TP (FtT) (SEC) Rules, rule 22(6); 2 rule 22(8); 3 rule 5(3)(a)

- 06092 The time limits in DMG 06072 begin when the decision is notified. It is therefore important to ensure, especially in cases where it is alleged that the decision notice has not been received, that the decision has been notified correctly. For guidance on how a decision is notified see DMG Chapter 01: Principles of decision making and evidence.

- 06093 The following are examples of special circumstances when it might be appropriate for the DM to not object to HMCTS accepting an appeal as made in time

1. difficulty in getting an appointment with a representative (especially in rural areas)
2. problems in writing the appeal for a blind person living alone
3. difficulty in obtaining an appeal form
4. allegation that the decision notice was not received
5. inability to read, write or understand English where the appellant lives alone
6. change of address during one month period
7. allegation that an earlier appeal was made

8. inability to understand the decision notice where the person has a mental disability or learning difficulties and lives alone.

06094 The list at DMG 06093 is intended only as a guide. For example, a person might not be living alone, but the other people in the house may not be willing to help. Alternatively, a person living alone may have family or friends who visit regularly to check post. Each case should be considered on its merits.

06095 - 06099

Action when an appeal is made

Decisions notified before 28.10.13

06100 When an appeal is made, or further evidence is obtained after an appeal is made, the DM should consider whether the original decision should be revised and the appeal lapsed. This applies even if the decision has been reconsidered and not revised before the appeal was made.

06101

Identifying the decision appealed against

06102 In most cases an appeal is made against the last decision made on a claim or application. However, claimants may make an appeal against an earlier decision which has been revised or superseded. Where the appealed decision has been

1. revised, the claimant should be advised that this decision has been amended by the later decision. See DMG 06160 et seq for further action **or**
2. superseded, the claimant has the right of appeal against the previous decision if the superseded decision does not entirely replace it. For example, there may be a limitation on payability of arrears.

06103 Where it is not clear which decision the claimant is appealing against, the DM may need to

1. ask the claimant for more information **or**
2. treat the appeal as made against more than one decision.

For example, the claimant may make a general appeal where a decision has been made superseding and terminating entitlement to a benefit, and a decision refusing to backdate a further claim to the same benefit. Where the appeal is in time for each decision, and the termination has not been reconsidered in the light of the request for backdating, the DM should treat the appeal as made against both decisions.

Example

A claimant in receipt of IB is found to be not incapable of work following application of the PCA, and the award terminated on supersession. He makes a new claim two weeks later, which is disallowed using the same evidence as for the previous decision. His letter of appeal gives the date of the decision under appeal as the second decision, but his grounds of appeal refer to stopping his benefit. As no award of benefit was made on the second claim, the appeal is treated as against both decisions.

Decisions by HM Revenue and Customs

06104 Since 1.4.99, HMRC has been responsible for making decisions on NI contributions issues previously determined by the Secretary of State¹. A list of these, together with exceptions, is at Annex C to this volume.

Note: Decisions made before 1.4.99 remain the responsibility of the Secretary of State and cannot be changed by HMRC.

1 SSCC (ToF) Act 99, s 8(1)

06105 Entitlement to SS contributory benefits depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there has been a dispute about the record, the matter must be referred by the Secretary of State to HMRC for a formal decision. See DMG Chapters 03 and 04 for guidance on references following an application for revision or supersession.

Issue raised after appeal lodged with Her Majesty's Courts and Tribunals Service

06106 In some cases it may not be apparent that an issue should be referred to HMRC until after the appeal has been sent to HMCTS. The FtT may identify that an issue should be referred before a hearing takes place, or the issue may be raised at a hearing. In either case, the FtT

1. refers the appeal to the Secretary of State **and**
2. requires the Secretary of State to refer the issue to HMRC¹.

1 SS CS (D&A) Regs, reg 38A(1)

06107 The DM can revise or supersede the decision under appeal on any other issue while HMRC decision is awaited¹.

1 SS CS (D&A) Regs, reg 38A(2)

06108 When HMRC's final decision is received, the DM should revise or supersede the decision under appeal if appropriate¹. The appeal should be forwarded to HMCTS unless the decision under appeal can be revised to the claimant's advantage.

1 SS CS (D&A) Regs, reg 38A(3)

06109 A final decision of HMRC includes a decision on an appeal against a decision of HMRC¹.

1 SS CS (D&A) Regs, reg 11A(5)

Decisions notified on or after 28.10.13

06110 When an appeal is made, or further evidence is obtained after an appeal is made, the DM should consider whether the original decision should be revised and the appeal lapsed once they are passed the papers by HMCTS. This applies even though a mandatory reconsideration will have already been done.

Identifying the decision appealed against

06111 In most cases an appeal is made against the last decision made on a claim or application. However, claimants may make an appeal against an earlier decision which has been revised or superseded. Where the appealed decision has been

1. revised, the claimant should be advised that this decision has been amended by the later decision. See DMG 06160 et seq for further action **or**
2. superseded, the claimant has the right of appeal against the previous decision as the superseded decision does not entirely replace it. For example, there may be a limitation on payability of arrears.

Appeal not duly made

Decisions notified before 28.10.13

06112 Where an appeal does not give all the details required (see DMG 06060), and they have not been provided during the reconsideration process, the DM may

1. return the appeal form for completion¹ or
2. request the person making the appeal to provide further information².

Where the form is returned, a copy should be retained by the DM.

1 SS CS (D&A) Regs, reg 33(3); 2 reg 33(6)

06113 The DM will normally give the claimant 14 days from the date the form is returned or the information is requested to reply. Exceptionally the DM can give a longer period for reply, for example, where the DM knows that the claimant lives abroad, is in hospital or that there is some other compelling reason why the claimant will need more time to provide the information. The DM must tell the claimant the date that the information is required when they request the further information.

06114 Where the claimant responds within the time given for reply the date of the appeal will be the date the form is returned or further information is provided, and the time limit for making the appeal can be extended.

Example - appeal in time

Decision issued	17.10.09
Appeal period	18.10.09 - 17.11.09
Appeal received (not duly made)	15.11.09
Reconsideration (no change)	18.11.09
Further info requested re appeal	19.11.09
Date claimant required to respond	3.12.09
Further information rec'd from appellant	30.11.09
Date of appeal	30.11.09

06115 Special arrangements apply where the end of the 14 days period falls within the one month time limit for making an appeal. This is likely to be rare but may happen where the claimant makes an immediate appeal and the DM actions the appeal

quickly. In these cases the one month time limit takes priority. This is because the claimant has one month in which to make a duly made appeal.

Example - appeal in time

Decision issued	17.10.09
Appeal period	18.10.09 - 17.11.09
Appeal received (not duly made)	19.10.09
Reconsideration (no change)	19.10.09
Further info requested re appeal	19.10.09
Date claimant required to respond (i.e. end of appeal period)	17.11.09
Further information rec'd from claimant	12.11.09
Date of appeal	12.11.09

06116 If the claimant does not return the form or reply to the request, the papers (including a copy of the form where appropriate) should be sent to HMCTS so that the FtT can decide whether or not the appeal is duly made¹. If the FtT accepts that the appeal is duly made, HMCTS will refer back to the Department to prepare a full response.

1 SS CS (D&A) Regs, reg 33(8)

06117 Where the claimant returns the form or provides the further information outside the 14 days (or longer period) and the papers have already been passed to HMCTS, the form or further information should be passed to HMCTS and the FtT will decide

1. the duly made issues **and**
2. if the late appeal can be accepted¹.

1 SS CS (D&A) Regs, reg 33(9)

06118 Where the claimant returns the form or provides the further information outside the 14 days (or longer period) and the papers have not been sent to HMCTS, the DM should

1. accept the appeal as duly made
2. record the date of appeal as the date the form or further information is received
3. apply the late appeal rules (see DMG 06075 - 06082).

Decisions notified on or after 28.10.13

06119 It will be for HMCTS/FtT to decide whether the appeal has been duly made taking into account the information required (see DMG 06060). If it has not been duly made then HMCTS will write to the person making the appeal to provide that information. There may however, be information that HMCTS is not aware of that means the appeal would not be accepted as duly made. For example where the person making the appeal does not have written authority to do so from the claimant. In that case, DWP would have to return the papers to HMCTS to investigate.

06120 - 06149

Appeals outside First-tier Tribunal jurisdiction

Decisions notified before 28.10.13

06150 The FtT decides whether an appeal is within the tribunal's jurisdiction. Decisions or determinations that are non-appealable are listed at Annex E to this Volume. On decisions where there is no right of appeal to a tribunal¹, the DM should

1. refer the matter to the FtT by minute stating why the DM considers the matter outside the FtT's jurisdiction and quoting the relevant legislation
2. ensure that the decision in dispute is identified
3. complete form AT37 as appropriate.

1 SS Act 98, Sch 2; SS CS (D&A) Regs, Sch 2

06151 A notification that the DM has not revised a decision or admitted an application for supersession is not a decision with the right of appeal. Where an appeal is made giving the letter of notification as the decision under appeal, the DM should refer the appeal to HMCTS. The response to the FtT should explain that the matter is outside the FtT's jurisdiction because

1. in the case of revision, there is no right of appeal¹
2. in the case of supersession no decision under relevant legislation² has been made.

1 R(IB) 2/04; R(IS) 15/04; 2 SS Act 98, s 10 & 12(1); R (DLA) 1/03; Wood v Secretary of State for Work and Pensions [2003] EWCA Civ 53

Decisions notified on or after 28.10.13

06152 The FtT has the authority to decide whether an appeal is within the tribunal's jurisdiction. HMCTS will only send the appeal to DWP once they have accepted it. However, this does not prevent the DM from referring a case back to the FtT if the DM considers the matter outside the FtT's jurisdiction because of information they hold that HMCTS may not be aware of. Decisions or determinations that are non-appealable are listed at DMG Annex E¹.

1 SS Act 98, Sch 2; SS CS (D&A) Regs, Sch 2

06153 The mandatory reconsideration notice issued by the DM will state what decision the claimant can appeal to the FtT. Without this notice, HMCTS may not progress the appeal.

06154 - 06159

Lapsing an appeal

06160 Where

1. the DM revises the decision under appeal (for decisions notified before 28.10.13) **or**
2. the appeal is accepted by HMCTS, the DM can still consider revising the decision under appeal (for decisions notified on or after 28.10.13)

the outcome determines whether the appeal lapses. An appeal should be lapsed where the revised decision is to the claimant's advantage¹.

Note: An appeal cannot be lapsed where the decision is superseded.

1 SS Act 98, s 9(6)

06161 The purpose of lapsing an appeal is to prevent unnecessary appeals going ahead. The power to revise is discretionary rather than mandatory, and should not be used in order to prevent an appeal being heard. DMs are therefore advised to consider whether a decision under appeal should be revised where

1. the revision does not address the issue which is the subject of the appeal **and**
2. it is clear that a further appeal will be made.

Note: Once the DM actually makes that revised decision then the appeal must lapse so it is important that the DM considers whether revision is the appropriate course of action to take.

06162 So where a revision would not give the claimant all they are asking for in the appeal, the DM will contact the claimant before revising to ask them if they would still want to appeal if the revised decision were made. If the claimant says they would

1. still appeal, then the decision would not be revised and the appeal goes ahead with our response including details of the revised decision and that we cannot revise the decision as this would mean the appeal would have to lapse **or**
2. be happy with the revised decision, the DM would make that revised decision and lapse the appeal. The claimant would be informed of their appeal rights against the revised decision.

Note: If the claimant cannot be contacted then the appeal should not be lapsed.

Example 1

The DM decides that a claim for IS should be disallowed from and including 17 January on the grounds that the claimant's income exceeds. The decision is reconsidered on appeal, the issue being whether the claimant has income. The DM

notices that the date of disallowance is incorrect, and should have been 19 January.
The DM does not revise the decision, and the appeal goes ahead.

Example 2

The DM decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the overpayment is recoverable. The DM notices that the amount of the overpayment has been incorrectly calculated, and should be £10,835. The DM does not revise, and the appeal goes ahead.

Example 3

The DM decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the amount of the overpayment is correct. The DM notices that the amount of the overpayment has been incorrectly calculated, and should be £10,835. The DM revises, and the appeal is lapsed.

Example 4

The DM makes an advance award of the lowest rate of the care component of DLA, deciding that the qualifying period was not satisfied at the date of the claim. The claimant appeals on the ground that the award should have started on the date of claim, and should have been at the middle rate. The DM accepts that the qualifying period was satisfied at the date of claim, revises the decision and lapses the appeal.

06163 Where the decision is not revised, but the DM considers it to be incorrect, the response should

1. advise the tribunal why the decision is not revised **and**
2. request that the correct decision is substituted for that of the DM.

06164 A decision is to the claimant's advantage¹ when the outcome is that

1. an award of benefit is made, increased or the period extended **or**
2. an amount of benefit is greater but is not payable, or has been suspended, or the claimant is disqualified from receiving it **or**
3. a decision that benefit is payable to a third party is reversed **or**
4. a refusal to give an IA declaration is reversed (see DMG 03300 for full guidance on revision and supersession of accident questions) **or**
5. the amount of a recoverable overpayment is reduced or is no longer recoverable **or**
6. a sanction is lifted or the period reduced.

Note 1: An increase in an assessment of disablement for IISB which does not result in an award of benefit on its own or on aggregation is not advantageous.

Note 2: This list is not exhaustive and each case should be considered on its facts.

1 SS CS (D&A) Regs, reg 30(2)

Example 1

A claimant is awarded lowest rate care component and lower rate mobility component of DLA. They appeal on the grounds that they satisfy the conditions for higher rates of both components. The DM revises the decision to award the middle rate care component, but does not change the award of the mobility component. The appeal lapses.

Example 2

A claimant is awarded lowest rate care component and lower rate mobility component of DLA. They appeal on the grounds that they satisfy the conditions for higher rates of both components. The DM finds they could revise the decision awarding benefit at the same rates but from three weeks earlier. The DM does not revise, and the appeal goes ahead.

- 06165 Where an appeal is lapsed because the decision is revised, the new outcome decision carries a new dispute period and appeal rights. For decisions made before 28.10.13, the claimant, and HMCTS where the appeal has been sent to them, should be notified that the appeal has lapsed. For decisions made on or after 28.10.13, the claimant and HMCTS should be notified that the appeal has lapsed.

Decision not to the claimant's advantage

- 06166 Where the revised decision is not to the claimant's advantage, the appeal should be treated as made against the decision as revised¹. The claimant is also invited to make further representations within one month of notification of the revised decision². For appeals on decisions notified before 28.10.13, the appeal is not referred to HMCTS at this stage, and the decision is implemented. If however, the appeal has already been referred to HMCTS then a further response based on the additional facts should be prepared.

1 SS CS (D&A) Regs, reg 30(3); 2 reg 30(4)

- 06167 If the decision is not revised following reconsideration, the reconsideration is **not** a decision. The appeal continues and the DM prepares the appeal response to be sent to HMCTS.
- 06168 After the end of that period, or within that period if the claimant consents in writing, the appeal to the FtT must proceed, except where
1. the DM further revises the decision in light of further representations from the claimant **and**

2. that decision is more advantageous to the claimant than the decision before it was revised¹.

1 SS CS (D&A) Regs, reg 30(5)

06169 The appeal lapses where

1. the claimant provides further information **and**
2. the revised decision can be revised again **and**
3. the effect of the new decision is that the conditions in DMG 06161 are satisfied for the original decision¹.

1 SS CS (D&A) Regs, reg 30(5)

Example

The DM awards IS of £40. The claimant appeals, and the DM revises the decision to award £35. The claimant provides more information, as a result of which the DM is able to revise again and award £40.50. The appeal lapses.

06170 Where the result of the further revision is not to the claimant's advantage, the appeal proceeds to HMCTS with a response in the normal manner.

06171 - 06179

Withdrawing an appeal

Decisions notified 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 issues 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 notified 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

When is an appeal struck out

The appellant

06230 The FtT will automatically strike out appeal proceedings if the appellant has failed to comply with a direction where the direction stated that failure to comply would result in strike out¹.

1 TP (FtT) (SEC) Rules, rule 8(1)

06231 Where the FtT have no jurisdiction to hear the appeal then they must strike out the whole or part of the proceedings unless they transfer the case to another court or tribunal¹.

1 TP (FtT) (SEC) Rules, rule 8(2)(a)

06232 The FtT have the option to strike out proceedings if the

1. appellant fails to comply with a direction by the FtT where the direction stated that failure to comply may result in strike out
2. appellant failed to co-operate with the FtT to the extent that the proceedings cannot be dealt with fairly and justly
3. FtT considers there is no reasonable prospect of appellant being successful¹.

1 TP (FtT) (SEC) Rules, rule 8(3)

06233 While it is only the FtT who have the authority to strike out proceedings, the DM is able to apply to the FtT for cases to be struck out. So where the DM identifies a case that they think

1. is outside of the FtT's jurisdiction, they should take action as per DMG 06150 for decisions notified before 28.10.13 or DMG 06152 for decisions notified on or after 28.10.13 **or**
2. has no reasonable prospect of success, they should send the case to HMCTS **before** writing the appeal response including details of the appeal and why they think there is no reasonable prospect of success (see CAP 2133 et seq for details of how to submit cases).

Note: Appendix 1 to this Chapter gives examples of the types of case that may be suitable for applying for strike out on grounds of no reasonable prospect of success.

06234 The FtT may not strike out proceedings under DMG 06231 or DMG 06232 **2.** and **3.** above before allowing the appellant the opportunity to make representations to the FtT about the matter¹.

1 TP (FtT) (SEC) Rules, rule 8(4)

The respondent

06235 The strike out provisions described in DMG 06230 - 06233 above also apply to the respondent (i.e. DWP) except that for the respondent this means that rather than the proceedings being struck out, the respondent would be barred from taking any further part in the proceedings¹. The respondent must be given the opportunity to make representations to the FtT on the proposed bar before it is imposed.

1 TP (FtT) (SEC) Rules, rule 8(7)(a)

06236 The DM **must** respond to a direction from the FtT as the direction can be accompanied by a warning that DWP may be barred from the proceedings if they fail to comply. When a direction is received it will include a time limit within which the DM must respond. The DM can request an extension to this time limit if they have to seek information or advice before responding. A direction should never be ignored and the DM can always refer the case to DMA Leeds for advice if they do not feel able to respond to the direction without assistance.

06237 If failure to comply with the direction does result in DWP being barred from proceedings, the FtT is then able to continue with the hearing without taking any account of the appeal response submitted by DWP. It can then determine any or all issues under appeal against DWP¹. So it is extremely important that the direction is complied with.

1 TP (FtT) (SEC) Rules, rule 8(8)

06238 The DM does have the right to challenge a direction¹, for example if they feel it is unreasonable for DWP to provide the information requested or DWP does not have the relevant authority to obtain the information.

1 TP (FtT) (SEC) Rules, rule 6(5)

06239

Reinstatement of appeal

06240 If proceedings have been struck out under DMG 06230 or DMG 06232 **1.**, the appellant can apply in writing to the FtT for proceedings to be reinstated¹. Where the respondent has been barred from taking further part in the proceedings as in DMG 06234, then they can apply to the FtT for the bar to be lifted². An application for reinstatement or lifting of the bar has to be made within a month of the striking out or barring being notified³.

1 TP (FtT) Rules, rule 8(5); 2 rule 8(7)(b); 3 rule 8(6)

06241 - 06269

Example 3

The DM disallows a DLA claim because the claimant failed to attend a medical examination without good cause. The response asks the FtT to consider whether the claimant satisfies the conditions for an award of DLA if they find that there was good cause

Example 4

The DM disallows a claim for CA because the claimant is in gainful employment with earnings above the NI lower earnings limit. The DM is satisfied that all other conditions of entitlement are satisfied. The response asks the FtT to give an outcome decision on entitlement if the appeal on the issue of earnings is allowed.

Example 5

The DM disallows ESA following a LCW determination. The DM's response includes a recommendation that if the FtT decide that the claimant has LCW they should go on to decide whether or not they have LCWRA.

Outcome decision not required

06337 The following examples are where the response writer may wish to request that the FtT refers the case for the DM to give an outcome decision.

Example 1

The DM disallows a claim for IIDB on the grounds that the claimant was not in a prescribed occupation. The response requests the FtT to remit the claim to the DM to deal with the diagnosis and disablement questions if the appeal on the prescribed occupation issue is allowed.

Example 2

The DM disallows a claim for JSA(IB) on the ground that the claimant has excess capital. There is no entitlement to JSA(Cont). The claim form indicates that the claimant's partner may be in remunerative work which requires further investigation. The response requests the FtT to refer the claim to the DM to make a decision on entitlement if the appeal on the excess capital issue is allowed.

Example 3

The DM disallows a claim for CA on the grounds that the claimant has not satisfied the prescribed conditions as to residence and presence in GB. The claim form indicates that the claimant may also be in F/T education. The response requests the FtT to refer the claim to the DM to make a decision on entitlement if the appeal on residence and presence is allowed.

Completion of appeal responses

06338 Appeal responses are made in a standard format depending on the focus of the response. For general advice on the contents of responses see DMG 06330 et seq. Detailed guidance on the completion of appeal response templates can be found in Departmental operational guidance.

Personal details

06339 The response should contain

1. the claimant's name and NI number
2. the date the decision appealed was made
3. the date the decision was notified to the claimant (see DMG 06065 - 06066)
4. the date the mandatory reconsideration was undertaken (for decisions notified on or after 28.10.13)
5. the date the mandatory reconsideration notice was sent to the claimant (for decisions notified on or after 28.10.13).

The decision

06340 The exact wording of the decision as notified to the claimant should be included. The response writer should not paraphrase or make corrections to the decision. DMs should ensure that the outcome is recorded, and not the determination which is the issue under appeal.

Claimant's letter of appeal (where decision notified before 28.10.13)

06341 Where the claimant's letter is legible, a copy is attached to the response. If not, the wording of the appeal should be entered exactly as written except for the omission of phrases such as "Dear Sir" and "Yours faithfully".

Summary of facts

06342 The summary should

1. be a plain statement of facts in a simple narrative form
2. contain only those facts relevant to the case
3. exclude opinions or assumptions not supported by the evidence.

06343 The facts of the case should also include an explanation of the reasons for the decision and the reconsideration/mandatory reconsideration process as appropriate.

Judicial review

06900 The decision making authorities are subject to judicial review, that is the controlling jurisdiction of the High Court, because the High Court has legal authority to decide questions affecting peoples' rights¹.

1 [1924] 1KB, 171, 205

06901 The result of judicial review differs from that of an appeal. An appeal

1. examines the decision under appeal, and decides whether it is one which could be made on the basis of the facts found and the relevant law **and**
2. if the decision is found to be erroneous, either refers it back to be made again, or substitutes a fresh decision.

06902 A judicial review considers a case to find out if there is a fault in the decision making process. If a fault is found the Court usually

1. quashes the decision, **and**
2. makes an order for the decision making authority to consider the question again.

In exceptional cases, the Court may make its own decision.

Judicial review of an Upper Tribunal decision

06903 The Court exercises its jurisdiction to quash an UT decision by way of judicial review only if there are compelling reasons in the interest of justice¹. In approaching such cases the Court takes account of

1. the existence of the right of appeal on a question of law to the Court of Appeal
2. the fact that Parliament has set limits to this right.

1 RA 5/83, Appendix; R(SB) 12/83, Appendix; [1892] 1QB609

Action on receipt of a claim for judicial review

06904 All action on claims for judicial review is taken by DWP Legal Advisors, Government Legal Department, Caxton House, 3-12 Tothill Street, London, SW1H 9NA. Where a claim for judicial review, including a proposal to bring a claim for judicial review, is received, it should be forwarded to the above address immediately.

06905 - 06999

Annex D

Decisions and determinations that are appealable

[\[See Memo DMG 11/16\]](#)

Benefit decisions

1. All decisions, other than those in Annex E, made on a claim for or award of a relevant benefit¹, including whether there has been a valid claim² or if the claim is defective.

1 SS Act 98, s 12(1)(a); 2 SS (C&P) Regs, reg 4

2. Entitlement to and amount of a benefit for which no claim is required¹.

1 SS (C&P) Regs, Sch 3 para 1 & 2; SS CS (D&A) Regs, reg 26(a); SS (C&P) Regs, reg 3

3. Whether benefit to which a claimant is entitled is not payable because¹

3.1 the claimant is disqualified for receiving benefit²

3.2 the claimant is in certain accommodation for the purposes of DLA care component³

3.3 the claimant is in hospital⁴

3.4 a sanction has been imposed⁵.

1 SS Act 98, Sch 3 para 3; 2 SS CB Act 92; 3 s 67(2) & 72(8); 4 s 113(2); 5 JS Act 95, s 19 & 17A

4. Payments to third parties¹ (but see Annex E for exceptions).

1 SS Act 98, Sch 3 para 4

5. Whether an overpayment of benefit is recoverable, and if so, the amount¹.

1 ESA(IR), para 5 & 6; SSA Act, s 71 & 71A

6. Recoverability of excess amounts of IS, JSA(IB), ESA(IR) or SPC where a prescribed payment is received after the due date¹.

1 SSA Act, s 74; R(IS) 14/04

7. Whether an accident was an IA¹.

1 SS Act 98, Sch 3 para 7

8. Decisions about a proposal to make or vary a JSAg¹.

1 SS Act 98, para 8; JS Act 95, s 9 & 10

9. Decisions about the assessment of extent of disablement¹.

1 SS CS (D&A) Regs, reg 26(c); SS CB Act 92, s 103, 106 & Sch 6

10. Where one member of a joint claim couple is working and the DM decides that neither claimant is in remunerative work¹.

1 SS CB Act 92, reg 26(d); Welfare Reform and Pensions Act 99, s 59 & Sch 7

11. Whether to specify a period as an AIP¹ made in accordance with specific legislation².
1 SS Act 98, Sch 3, para 8A; 2 SPC Act 02, s 6
12. Decisions as to the length of an AIP¹.
1 SS Act 98, Sch 3, para 8B
13. Decisions to end AIPs¹ made under specific legislation².
1 SS Act 98, para 8C; 2 SPC Act 02, s 9(4) or (5)
14. Where a decision is made under para 12, a decision as to when the AIP ends¹.
1 SS Act 98, Sch 3, para 8D
15. A decision that SP is not payable because a person is a prisoner¹.
1 SS Act 98, Sch 3, para 6C
16. A decision that a person is not entitled to uprating increases because they are an overseas resident¹.
1 SS Act 98, Sch 3, para 6D

Contributions decisions

1. Whether a person was precluded from regular employment by home responsibilities¹.
1 SS Act 98, Sch 3 para 16
2. Whether a person should be credited with earnings or contributions¹.
1 SS Act 98, para 17; SS CB Act 92, s 22(5)