

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 8

Amendment 22 – October 2016

1. This letter provides details on Amendment 22; 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:

<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 22 affects Chapter 44. The changes
 - Correct definitions and other minor amendments.
4. The last two amendment packages amending Volume 8 were
Amendment 21 [June 2016]
Amendment 20 [October 2015]
5. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
6. 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

Statutory Instruments

SS (LP & Misc Amdts) Regs – WP (Emp O) Des
O 14 (2 pages)

Chapter 44

44141 – 44152 (1 page)

Insert

Statutory Instruments

SS (LP & Misc Amdts) Regs – WP (Emp O) Des
O 14 (2 pages)

Chapter 44

44141 – 44152 (1 page)

Statutory Instruments

The Social Security Lone Parents and Miscellaneous Amendments Regulations 2008 SI 2008 No. 3051	SS (LP & Misc Amdts) Regs
The Social Security (Loss of Benefit) Regulations 2001 No. 4022	SS (Loss of Benefit) Regs
The Social Security (Mariners' Benefits) Regulations 1975 No. 529	SS (Mariners' Ben) Regs
The Social Security (Maternity Allowance) (Work Abroad) Regulations 1987 No. 417	SS (MA) (Work Abroad) Regs
The Social Security (Maternity Allowance) Regulations 1987 No. 416	SS (MA) Regs
The Social Security (Maternity Allowance) (Earnings) Regulations 2000 No. 688	SS (MA) (Earnings) Regs
The Social Security (Maximum Additional Pension) Regulations 2010 No. 426	SS (MAP) Regs
The Social Security (Medical Evidence) Regulations 1976 No. 615	SS (Med Ev) Regs
The Social Security (Miscellaneous Amendments) Regulations 1997 No. 454	SS (Misc Amdts) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2001 No. 652	SS (Misc Amdt) (No. 2) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 No. 641	SS (Misc Amdt) (No. 2) Regs 2010
The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 No. 2425	SS (Misc Amdt) (No. 3) Regs 2011
The Social Security (National Insurance Number Information: Exemption) Regulations 1997 No. 2676	SS (NINO: Exemption) Regs
The Social Security (Overlapping Benefits) Regulations 1979 No. 597	SS (OB) Regs
The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 No. 664	SS (POR) Regs
The Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 No. 30	SS (PFA) Misc Amdt Regs 96
The Social Security Benefit (Persons Residing Together) Regulations 1977 No. 956	SS (PRT) Regs

Statutory Instruments

The Social Security (Reciprocal Agreements) Order 1995 No. 767	SS (RA) Order 95
The Social Security (Reciprocal Agreements) Order 1996 No. 1928	SS RA Order
The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005 No. 469	SS (RP etc) (Trans Provs) Regs
The Social Security (Severe Disablement Allowance) Regulations 1984 No. 1303	SS (SDA) Regs
The Social Security (Savings for Existing Beneficiaries) Regulations 1984 No. 1696	SS (SEB) Regs
The Social Security (State Pension and National Insurance Credits) Regulations 2009 No. 2206	SS (SP & NIC) Regs
The Social Security (Treatment of Postgraduate Master's Degree Loans and Special Support Loans) (Amendment) Regulations 2016 No. 743	SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016.
The Social Security (Unemployment, Sickness, and Invalidity Benefit) Regulations 1983 No. 1598	SS (U, S, & IVB) Regs
The Social Security (Widow's and Widower's Invalidity Pensions) Regulations 1978 No. 529	SS (W & W IVP) Regs
The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 No. 642	SS (WB & RP) Regs
The Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979 No. 643	SS (WB, RP & OB) (Trans) Regs
The Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000 No. 1926	SS (Wfl for lone parents) Regs
The Social Security (Work-focused Interviews) Regulations 2000 No. 897	SS (Wfl) Regs 00
The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003 No. 455	SS (WTC & CTC) (Cons Amdt) Regs
The Statutory Sick Pay Regulations 1982 No. 894	SSP (Gen) Regs

Statutory Instruments

Education (Student Support) Regulations (Northern Ireland) Order SR 1999/192	Support (NI) Order
The Education (Student Support) Regulations	Support Regs
The Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 No. 938	TC Comm No. 3 Order
The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 No. 2885	TP (FtT) (SEC) Rules
The Tribunal Procedure (Upper Tribunal) Rules 2008 No. 2698	TP (UT) Rules
The Workmen's Compensation (Supplementation) Scheme 1982 No. 1489	WC(S) Scheme
Work Programme (Employment Officer) Designation Order 2014	WP (Emp O) Des O 14

Meaning of close relative

44141 A close relative is¹

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, **or**
2. if any of the preceding persons is one member of a couple, the other member of that couple **and**
3. similar relationships arising through civil partnerships².

1 ESA Regs, reg 2(1); 2 CP Act 04, s 246

44142 “Brother” and “sister” includes half-brother and half-sister. A child who is adopted becomes a child of the adoptive parents and the brother or sister of any other child of those parents. The adopted child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends on the **legal relationship** not the blood relationship¹.

1 R(SB) 22/87

Admittance to residential care

44143 The following guidance on admittance to temporary or permanent residential care applies only to the award of SDP. See DMG Chapter 61 for guidance on the treatment of “AA” and DLA when a disabled person is admitted to residential care.

Definitions for DMG 44146 - 44155

44144 “Temporary residential care” means any temporary stay in a care home or independent hospital. For example, respite care in a care home.

44145 “Permanent residential care” means permanent residence in a care home or independent hospital.

Single claimant or lone parent

44146 A single claimant or lone parent who does not satisfy the SDP conditions because there is a non-dependant, will not satisfy the SDP conditions while in temporary residential care. As the stay is temporary the claimant continues to normally reside at home¹.

1 ESA Regs, reg 71(1)

Example

Nasreen is a single claimant living with her parents. The conditions for SDP are not satisfied. She goes into temporary residential care. SDP is not payable because she continues to normally reside at home with her parents.

44147 Claimants who live in permanent residential care are normally resident in the home providing that care. Other residents of the home are not non-dependants because they do not normally reside with the claimant as they are separately liable to make payments to a landlord¹ (see DMG 44127 2.). SDP is payable to a person in permanent residential care if all of the conditions are satisfied.

Note: DLA may cease when the person has been in permanent residential care for four weeks.

1 ESA Regs, reg 71(5)

Example

Ivor is a single claimant who lives at home with his parents. He is in receipt of DLA highest rate care component and no one receives CA for caring for him. His parents are non-dependants. The SDP conditions are not satisfied.

Ivor goes into permanent residential care. The DM decides that Ivor is entitled to SDP at the lower rate from the date that he moves into permanent residential care. This is because

1. he is in receipt of DLA **and**
2. the other residents of the home are not non-dependants because they do not normally reside with him **and**
3. no one is in receipt of CA for caring for him.

Entitlement to SDP continues as long as all of the above are satisfied.

Couples

44148 When a member of a couple is in temporary residential care the separation from the partner is also temporary. This means that the couple remain members of the same household¹.

1 ESA Regs, reg 156(1)

44149 A special assessment is necessary where one member is in temporary residential care. The claimant's applicable amount should be¹ whichever is the greater of the

1. normal amount for the couple **or**
2. total of the applicable amounts assessed as if the claimant and partner were each a single claimant or lone parent living in their present accommodation.

1 ESA Regs, Sch 5, para 4

44150 - 44152