

Chapter 04 - Supersession, suspension and termination

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Chapter 04 - Supersession, suspension and termination

Introduction to supersession

04000 Supersession means changing a decision of a DM, a FtT or a UT and replacing it, from a later date than the original decision. Certain conditions have to be satisfied before a decision can be superseded. There is no time limit for making an application for supersession.

What type of decisions can be superseded

04001 The following decisions may be superseded by a decision made by the Secretary of State¹

1. a decision on any claim for a relevant benefit²
2. any decision of the Secretary of State that falls to be made under relevant Acts³
3. any decision described in 1. & 2. as revised

but this is subject to regulations.

1 SS Act 98, s 10; 2 s 8(1)(a) & (3); 3 s 8(1)(c) & (4)

04002 The decisions under relevant Acts described in DMG 04001 2. include the following

1. a decision to "disqualify [a claimant] for receiving benefit" on imprisonment¹
2. a decision to "adjust" benefit where the claimant is receiving treatment as an in-patient in a hospital²
3. a decision to "adjust" benefit under the overlapping benefit provisions² (but see DMG 04140 - 04142)
4. a decision whether an overpayment of benefit is recoverable under specific provisions³.

This list is not exhaustive. See also Annex D to this Volume. A decision that can be appealed can also generally be superseded.

1 SS CB Act 92, s 113(3); 2 SS A Act 92, s 73(1); 3 s 71

04003 A decision of a FtT or UT can also be superseded

1. where there has been a change of circumstances since that decision had effect¹ **or**
2. where the DM is satisfied that the decision was made in ignorance of a material fact or was based on a mistake as to a material fact² **or**

3. where the DM is required to supersede a FtT or UT decision made under the stayed appeals procedures³ (see DMG 04315 - 04316 and Chapter 06) **or**
4. where a FtT confirms a DM's decision terminating IS after the claimant had been found not incapable of work, and a later FtT finds that they are incapable of work⁴.

Note: A decision of a FT or UT cannot be superseded by a DM on the grounds of error in law.

1 SS CS (D&A) Regs, reg 6(2)(a); 2 reg 6(2)(c)(i); 3 reg 6(2)(c)(ii); 4 Reg 6(2)(n); IS (Gen) Regs, Sch 1B, para 7

When can a decision be superseded

04004 A decision (referred to below as the “original decision”) can be superseded either when an application has been made by the claimant or on the DM’s own initiative where

1. there has been a relevant change of circumstances since the original decision
 - 1.1 had effect **or**
 - 1.2 in the case of an advance award, was made¹
2. a relevant change of circumstances is anticipated²
3. the original decision was
 - 3.1 erroneous in law (DMs’ decisions only) **or**
 - 3.2 made in ignorance of a material fact or was based on a mistake as to a material fact
 and the application period for revision has expired³
4. the original decision is a decision without a right of appeal (see Annex E to this Volume)⁴
5. the original decision is a decision awarding one benefit and at a later date the claimant or a member of the claimant’s family or a non-dependant becomes entitled to another benefit or to an increase of another benefit⁵
6. the original decision is that JSA is payable and a sanction has subsequently been imposed⁶
7. the original decision is an incapacity benefit decision where there has been an incapacity determination, and where medical evidence has later been received following an examination by a HCP approved by the Secretary of State⁷
8. the original decision relates to a claimant who, since the original decision was made, has been the subject of a decision as to whether or not they took part in a Wfl⁸

9. subsequent to the original decision a claimant has been held not to have taken part in a Wfl, the award has been reduced as a result and, subsequent to the supersession that brought the reduction into effect the claimant has⁹ either
 - 9.1 attained pensionable age **or**
 - 9.2 ceased to reside in an area where there is a requirement to take part in a Wfl
 10. a partner has been held not to have taken part in a Wfl, the claimant's benefit has been reduced as a result and subsequently the partner either⁹
 - 10.1 ceases to be a partner as defined in specific regulations¹⁰ **or**
 - 10.2 ceases to be a partner subject to those regulations¹¹
 11. the original decision is that a sanctionable benefit is payable and that benefit ceases to be payable or is to be reduced under the provisions for the restriction on payment of benefit following convictions for benefit fraud offences¹²
 12. the decision to be superseded is that a joint claim JSA is payable where that allowance ceases to be payable or is reduced under the provisions for the restrictions on payment of benefit following convictions for benefit fraud offences¹³
 13. the original decision is a decision on a claim for SPC, or revising or superseding an SPC decision and the AIP has ended or is about to end¹⁴
 14. at the end of an AIP¹⁵
 - 14.1 the claimant has failed to provide the information needed to set a fresh AIP **and**
 - 14.2 the DM has superseded the award of SPC without setting an AIP **and**
 - 14.3 the claimant subsequently provides the information needed
- Note:** the purpose of this ground for supersession is to allow a fresh AIP to be set from the date the necessary information is received
15. the original decision awards SPC and the claimant or partner
 - 15.1 makes or is treated as having made an election for a lump sum **or**
 - 15.2 repays a lump sum
 after deferring entitlement to RP¹⁶
 16. the original decision awarded ESA and there has been a failure determination¹⁷
 17. the decision was made in consequence of a failure determination where the reduction ceases to have effect under specified legislation¹⁸

18. the original decision awarded ESA and since that decision was made
- 18.1 the Secretary of State has received medical evidence from a HCP **or**
- 18.2 a determination has been made that the claimant is to be treated as having LCW in accordance with specified legislation¹⁹
19. on or after the original decision was made a late or unpaid contribution is treated as paid²⁰.

1 SS CS (D&A) Regs, reg 6(2)(a)(i); SS (C&P) Regs, reg 13, 13A or 13C; 2 SS CS (D&A) Regs, reg 6(2)(a)(ii); 3 reg 6(2)(b); 4 reg 6(2)(d) & 27; SS Act 98, Sch 2; 5 SS CS (D&A) Regs, reg 6(2)(e) or (ee); 6 reg 6(2)(f) & 6(2)(fa); JS Act 95, s 19(1), 20A(5) & 27A; 7 SS CS (D&A) Regs, reg 6(2)(g) & 7A(1); 8 reg 6(2)(h)(i); 9 reg 6(2)(h)(ii); 10 SS (JPIfP) Regs, reg 2(1); 11 reg 2(2); 12 SS CS (D&A) Regs, reg 6(2)(j); SS Fraud Act 01, s 6B, 7 or 9; 13 SS CS (D&A) Regs, reg 6(2)(k); SS Fraud Act 01, s 8; 14 SS CS (D&A) Regs, reg 6(2)(l); SPC Act 02, s 6; 15 SS CS (D&A) Regs, reg 6(2)(m); 16 reg 6(2)(o); 17 reg 6(2)(p); 18 reg 6(2)(q), ESA regs, reg 64; 19 SS CS (D&A) Regs, reg 6(2)(r); 20 ESA Regs, regs 20, 25, 26 or 33(2); SS CS (D&A) Regs, reg 6(2)(s)

04005 To supersede a DM's decision on the ground of ignorance or mistake as to fact, or on the ground that it was erroneous in law, the application for supersession or the decision to initiate supersession must be made after the period in DMG 04008 has ended¹.

1 SS CS (D&A) Regs, reg 6(2)(b)(ii)

04006 If the application is made on any of the grounds listed in DMG 04004, other than a change of circumstances, during the period in DMG 04008, the decision should be changed by revision¹.

1 SS CS (D&A) Regs, reg 6(5)

04007 If during the period in DMG 04008 a claimant reports a relevant change of circumstances or information or evidence of a future change is received, the DM should supersede the original decision¹.

1 SS CS (D&A) Regs, reg 3(9)(a)

04008 The application period for revision is either

1. one month from the date of notification of the decision to be superseded¹ **or**
2. a longer period (but not more than 13 months) allowed for a late application for revision².

The one month period can be extended by 14 days where reasons for the decision were not included in the decision notification and the claimant asks for a written statement of reasons. See DMG Chapter 03 for detailed guidance.

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

04009 A decision which can be revised should not be superseded except where there are grounds allowing revision and further grounds arise allowing supersession¹. This allows a decision to be revised and then superseded as part of one process.

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

Example

A claimant has an award of the higher rate of the mobility component of DLA. He disputes the decision, as he feels the period of the award is too short. He also notifies that his condition has deteriorated and applies for the care component. The DM revises the decision to extend the period of the award of the mobility component and supersedes the decision as revised to award the lowest rate of the care component from a later date.

Applications

Introduction

04010 When an application for supersession is received, the DM should consider whether or not to admit it in order to establish whether an application is hopeless. See DMG 04015 for guidance on admitting applications.

04011 If the application is not admitted because it is hopeless, the DM should notify that no decision has been made and there is no right of appeal¹. DMs should note that this is not a “refusal to supersede” decision. The existing award remains in place. The claimant should be notified why no action has been taken on the matters raised by the application. See DMG Chapter 06 for guidance if the claimant sends an appeal following the notification.

1 Wood v Secretary of State for Work and Pensions [2003] EWCA Civ 53; R(DLA) 1/03

04012 If the application is admitted, the DM should

1. make a decision to supersede where the outcome is changed (see DMG 04016 - 04018) **or**
2. make a decision not to supersede where the outcome is not changed (see DMG 04019 - 04020).

Hopeless applications

04013 A communication from the claimant should not be admitted as an application for supersession if no further investigation of fact or law could possibly produce a different decision from the one that has been made. This means that a communication will not be an application if

1. it only contains abuse **or**
2. it contains only material that is not relevant to the benefit the claimant has been awarded (e.g. the claimant has requested extra benefit because of an increase in the price of cat food) **or**
3. the amount or period to which the claimant’s communication relates is already the maximum the law allows¹.

1 R(DLA) 1/03

04014 DMs should note that it will be exceptional to reject an application for supersession as hopeless.

Admitting an application

- 04015 Where there is a possibility that one or more of the conditions for supersession may be satisfied, the DM should admit a communication as an application for supersession.

Making a decision to supersede

- 04016 The DM should make a decision to supersede where
1. one or more of the conditions (grounds) are satisfied, for example where there has been
 - 1.1 an actual or anticipated relevant change of circumstances
 - 1.2 ignorance of or mistake as to a material fact
 - 1.3 an error of law **and**
 2. the outcome is changed¹.

1 R(DLA) 1/03

- 04017 An outcome is changed where
1. the rate or period of entitlement to benefit is altered **or**
 2. the rate or period for which benefit is payable is altered **or**
 3. the period, amount or recoverability of an overpayment is altered **or**
 4. for IIDB, a decision on diagnosis or assessment of disablement is changed, even if there is no change in the rate of benefit.

- 04018 Where the DM supersedes the previous decision, that decision is replaced by the new decision from the effective date which carries the right of appeal.

Making a decision not to supersede

- 04019 The DM makes a decision not to supersede where the outcome is not changed whether or not the conditions (grounds) to supersede a decision are satisfied. The decision not to supersede carries the right of appeal¹.

1 R(DLA) 1/03

Example 1

A claimant in receipt of an award of IIDB for an IA notifies that their condition has worsened. The DM considers on the basis of medical reports and advice that there has been no change. The DM decides not to supersede the earlier decisions on assessment of disablement and entitlement to benefit as there has not been a relevant change of circumstances.

Example 2

The claimant's appointee notifies that the claimant, who is entitled to AA at the higher rate, has transferred from hospital to a private nursing home. The appointee asks for payment of AA to be reinstated as the claimant has left hospital. The DM establishes that the nursing home fees are being met entirely by the NHS, who are paying the nursing home to continue providing the claimant with the same treatment she was receiving in hospital. Although there has been a relevant change of circumstances, AA still cannot be paid. The outcome is not changed, and the DM decides not to supersede the earlier decision given on the claim to AA made whilst the claimant was in hospital.

Example 3

A claimant returns to work after being in receipt of ESA for 20 weeks. The WCA has not been carried out. The claimant asks for arrears of a component to be paid from week 14. The DM should make a decision refusing to supersede the decision which awarded entitlement on the grounds that the conditions allowing supersession are not satisfied.

04020 A decision not to supersede has no effective date. It does **not** replace the earlier decision¹. If it is revised or overturned on appeal, it then becomes a decision to supersede with the effective date calculated in the normal way. DMs should ensure that

1. the original decision **and**
 2. the evidence on which it was based **and**
 3. the application for supersession including the date on which it was made
- are retained.

1 R(DLA) 1/03

Treating as an application for supersession

04021 A DM may treat an application for revision or a notification of a change of circumstances as an application for supersession¹.

1 SS CS (D&A) Regs, reg 6(5)

Providing information

04022 Where claimants apply for supersession, the onus is on them to prove (on the balance of probabilities) the facts upon which that application is based. They should supply information to support their application.

Further information needed

04023 Where a DM requires further information or evidence in order to consider all the issues raised by an application for supersession the applicant should be notified that more information or evidence is required and the decision may be superseded¹

1. where the applicant provides the further evidence or information within one month of the notification (or such longer period as the DM may allow) on the basis of all the evidence **or**
2. where the applicant does not provide the further evidence or information within one month (or such longer period as the DM may allow) on the basis of the original application.

1 SS CS (D&A) Regs, reg 6(4)

Example

John has income of £55 a week taken into account in relation to his claim for IS (profit from his P/T window cleaning business). In April he asks the DM to look again at the decision as he says he now has expenses of £25 a week. He says he pays someone to help him - £20 a week, and has to buy replacement cloths, cleaning foam etc. for £5 a week. He sends in receipts for the cloths etc. At the beginning of May the DM asks him to supply copies of wage slips or pay packets for the £20 a week, but John doesn't reply. At the beginning of June the DM supersedes the decision from the date of the application in April and takes income of £50 a week into account.

Information provided late

04024 Where the information is provided after the time limit allowed by the DM in DMG 04023 **and**

1. a decision has not been made, the decision should be based on all the evidence including the late information
2. a decision has been made, the DM should consider whether the decision needs to be revised or superseded in the light of the late information.

Issues for decision by HM Revenue and Customs

04025 Since 1.4.99 HMRC (formerly the Board of the Inland Revenue) has been responsible for making decisions on SS contributions issues previously determined by the Secretary of State¹. See Annex C to this Volume for a list of these decisions.

1 Social Security Contributions (Transfer of Functions) Act 99, s 8(1)

04026 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. See DMG Chapter 01 for further guidance about making assumptions. However, where there is a dispute about the record, the matter must be referred by the Secretary of State to HMRC for a formal decision.

04027 Where the Secretary of State has decided a claim or another matter on an assumption of facts about which

1. it appeared to him there was no dispute **but**
2. had an issue arisen, that issue would have fallen to be decided by HMRC as in DMG 04026

then the provisions of DMG 04028 - 04032 may apply.

04028 Where an application is made for a supersession and the DM considers that an issue arises about some question that should be decided by HMRC, that matter should be referred to HMRC¹.

1 SS CS (D&A) Regs, reg 11A(2)

04029 While a decision of HMRC is awaited, the DM can¹

1. determine any other issue arising from the application for supersession
 2. make a supersession decision on the basis of a preliminary opinion of HMRC
- or**
3. defer making a supersession decision.

1 reg 11A(3)

04030 Once the final decision of HMRC is received, the action to take depends on whether the DM has made a supersession decision or has deferred that decision.

04031 If the DM has made a decision on the basis of a preliminary opinion, he should consider whether the decision should be revised or superseded¹ in accordance with HMRC's final decision.

1 reg 11A(4)(a)

04032 Where the DM has decided to defer making the supersession decision, a decision should be made in accordance with HMRC's final decision¹.

1 reg 11A(4)(b)

04033 A final decision of HMRC includes a decision on an appeal against a decision of HMRC¹.

1 reg 11A(5)

04034 - 04039

What if the decision to be superseded is set aside on appeal

04040 Where

1. a decision is or is not superseded following an application **and**
2. the original decision is set aside on appeal to a FtT or UT

the decision to supersede or not may be of no effect¹.

1 R(DLA) 2/04

04041 An application for supersession on the basis that the original decision was made in ignorance of a material fact lapses where the original decision is set aside on appeal.

Example

The claimant is awarded the lowest rate of the care component of DLA following a renewal claim. He lodges an appeal against this decision. Before the appeal is heard, the claimant also applies for the decision to be superseded on the grounds that the DM was ignorant of material facts. The DM decides not to supersede the original decision. On appeal, the FtT sets aside the DM's decision and awards the middle rate of the care component. The DM's decision not to supersede is of no effect, and there is no requirement to consider whether the FtT decision should be superseded, because they were deciding the original claim afresh.

04042 An application for supersession for a relevant change of circumstances may need to be processed again, including treating it as an application for supersession of a different decision, or as a new claim.

Example

The claimant's award of DLA came to an end, and was disallowed on renewal. On appeal, the FtT awarded the lower rate of the mobility component. The claimant made a further appeal to the UT who set aside the FtT decision, and remitted the appeal for rehearing. While the UT appeal was pending, the claimant had applied for supersession of the FtT decision so as to award the care component on the grounds of a change of circumstances. The DM refused to supersede, and the claimant made a further appeal. Both appeals were heard together. The FtT upheld the disallowance of the renewal claim, and held that the second appeal lapsed as there was no awarding decision to supersede. The DM treats the application as a claim, and makes a decision accordingly.

04043 - 04049

The process of supersession

04050 Once it has been decided that there are grounds for supersession, the DM should

1. identify the decision to be superseded
2. investigate and determine the relevant facts
3. decide whether the facts mean that the terms of the award should change
4. make a decision accordingly. That may be **either** a decision which is different from the decision superseded **or** a decision not to supersede
5. determine the date from which the supersession decision should take effect
6. decide what, if any, overpayment has occurred.

04051 The DM need not consider any issue¹ that

1. in the case of an application, was not raised by the application **or**
2. in the case of a supersession at the DM's own initiative did not cause the DM to supersede.

1 SS Act 98, s 10(2)

04052 - 04054

Recording the decision

04055 It is important that a record be made of the supersession decision. That record needs to

1. identify the person to whom it relates
2. specify clearly that the decision is a supersession
3. precisely identify the decision that is being superseded **and**
4. state the grounds allowing supersession to be undertaken.

04056 - 04099

Change of circumstances

Relevant change of circumstances

04100 Where

1. there has been a relevant change of circumstances since the decision
 - 1.1 had effect **or**
 - 1.2 was made in the case of an advance award¹ **or**
2. it is expected that a change will occur

the DM may supersede the decision which is currently in force². The application period for revision is irrelevant in these cases. See also DMG 04115 - 04116.

1 SS (C&P) Regs, reg 13, 13A & 13C; 2 SS CS (D&A) Regs, reg 6(2)(a)

Which decisions can be superseded on the ground of change of circumstances

04101 The following decisions can be superseded on the grounds of a change of circumstances

1. any decision on a claim for a relevant benefit¹
2. any decision made under relevant Acts² (but see DMG 04140 - 04142)
3. any decision in DMG 04101 1. or DMG 04101 2. which has been revised by a DM³
4. any decision made by a FtT or UT⁴.

1 SS Act 98, s 8(1)(a); 2 s 8(1)(c); 3 s 10(1)(a); 4 s 10(1)(b)

What is a relevant change of circumstance

04102 For the purposes of supersession a relevant change of circumstance is a change which happens after the original decision had effect and which has a relevance to the award of benefit. A decision disallowing a benefit cannot be superseded if there is a change of circumstances from a date after the decision had effect. The claimant must make a fresh claim¹. But see DMG 04103 for an exception to this general rule.

1 s 8(2)(b); R(A) 4/81

04103 The claim continues to exist until it is decided¹. A new claim may not be required where

1. a claim is disallowed **and**
2. a change occurs after the date of claim but before the claim was decided **and**
3. the claimant notifies the change within the time limits (see DMG 04201 - 04211).

Where the effect of the change is that entitlement would begin before the date of the disallowance (or for AA and DLA, the qualifying period would begin before the date of the disallowance), the decision can be superseded for a relevant change of circumstances. The effective date rules apply in the normal way.

1 SS Act 98, s 8(2)(a)

Example

A lone parent claims IS on 20.12.07. She is working P/T in a high street store for 20 hours a week, and the claim is disallowed on 10.1.08. On 22.1.08 she notifies that her employment, which was a temporary job over Christmas, had ended on 5.1.08. The change has been reported within one month, so the DM supersedes the disallowance and awards entitlement to IS from 6.1.08.

04104 To be relevant a change does not have to be a change in the claimant's own circumstances. The phrase "relevant change of circumstances" should be given a broad meaning. A relevant change must

1. be of sufficient substance to give serious consideration to supersession
2. have the potential effect of altering some component part of the award of benefit even if the end result does not actually change the amount of the award (see DMG 04106).

04105 The following are examples of a relevant change of circumstances.

Example 1

RP is awarded and the claimant is later imprisoned. This is a relevant change of circumstances because a person is disqualified from receiving benefit whilst in prison¹. The award would not be superseded if one of the exceptions from disqualification applied².

Example 2

An award of WB is made and the claimant later goes abroad. This is a relevant change because a person is disqualified from receiving benefit when absent from GB. But the award might not be superseded if one of the exceptions in regulations or in agreements with other States applies.

Example 3

A woman receiving Category B RP based on her husband's insurance is widowed. This is a relevant change of circumstances because the rate of RP changes from the lower to the higher rate specified in the Act³.

Example 4

In JSA(IB) cases, the withdrawal of a Secretary of State severe hardship direction, on a claim from a 16 or 17 year old, is a relevant change of circumstances.

Example 5

A jobseeker decides to go on holiday outside the UK. This is a relevant change because the jobseeker is absent from GB.

Example 6

A child with walking difficulties for whom DLA is being claimed reaching the age of three is a relevant change because at that age the mobility component can be considered.

Example 7

In AA and DLA cases a person with an existing award for daytime care needs requiring help at night on a regular basis is a relevant change because it may give entitlement to a higher rate of care component.

Example 8

For IB cases a determination that the claimant is not incapable of work following a PCA is a relevant change of circumstances where the claimant has not previously been found incapable of work⁴.

*1 SS CB Act 92, s 113(1)(b); 2 SS (Gen Ben) Regs, reg 2; 3 R(IS) 6/78; R(I) 1/71;
4 SS (IW) Regs, reg 10, 24 or 27; SS CS (D&A) Regs, reg 6(2)(a) & 7A(1)*

When a change has the potential to be relevant

- 04106 There will be situations where a change has the potential to affect an award of benefit but the DM ultimately decides that the change does not affect the amount of benefit awarded. This could happen, for example, because a claimant in receipt of a benefit based on incapacity or disability maintains that their medical condition has deteriorated. The DM may, having considered the evidence, decide that the change does not affect the existing award.
- 04107 The DM should make a decision not to supersede. See DMG 04010 et seq for further guidance.

Is a change of opinion a relevant change of circumstances

04108 A change of opinion is not in itself a relevant change of circumstances. This should be noted when a medical opinion has been obtained after a certificate has been issued by a claimant's doctor. A report containing a further medical opinion may however contain evidence of a change of circumstances, for example if a condition has been wholly cured as a matter of medical fact¹.

Note: In IB and SDA where new medical evidence is received following examination by a HCP approved by the Secretary of State, the DM does not have to identify a change of circumstances in order to supersede (see DMG 04430).

1 R(DLA) 6/01

Can a change in law be a relevant change of circumstance

04109 A change in the law can be a relevant change of circumstances. However, where a claim has been disallowed before a change in legislation takes effect, it cannot be superseded due to a change of circumstance. This is because the claim has already been disposed of and the decision was correct under the law current at that time¹. A fresh claim is needed.

1 R(I) 56/54 & R(A) 4/81

Can a decision be superseded because of a future change of circumstance

04110 A decision may be superseded when it is expected that a relevant change of circumstances will occur on a future date¹. The DM should be satisfied on the balance of probabilities that it is likely that the expected change will actually take place.

1 SS CS (D&A) Regs, reg 6(2)(a)(ii)

04111 Where a decision is given for an expected change of circumstances, the DM must record that it might need to be revised¹ if the change

1. does not occur **or**
2. occurs on a date other than the one expected.

1 reg 3(1)(a)

04112 Where 04111 **1.** applies, the decision as revised is that there are no grounds to supersede. Where 04111 **2.** applies, the revised decision takes account of the fresh information about the date of change and changes the effective date where appropriate.

04113 - 04114

Supersession of advance awards

04115 An award on an advance claim is conditional on the claimant's circumstances at the relevant or renewal date¹. 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 supersession where the circumstances in DMG 04116 apply. See also DMG Chapter 03 for revision of advance awards.

1 SS (C&P) Regs, reg 13, 13A & 13C; R(DLA) 4/05

04116 Where

1. a change (either favourable or unfavourable) occurs and is notified before the relevant or renewal date is reached **or**
2. a favourable change is notified after the relevant or renewal date is reached

the DM should consider whether the award should be superseded on the grounds of a relevant change of circumstances since the decision was made¹.

1 SS CS (D&A) Regs, reg 6(2)(a)

Example

Current award expires 1 August. Renewal claim decided 1 March, effective from 2 August. Award is for lowest rate care component and lower rate mobility.

On 1 April the claimant gets worse and starts to need frequent attention throughout the day. The change is reported 15 July. The DM supersedes the decision made on 1 March awarding middle rate care component from 2 August. The decision on the previous award is also superseded with effect from 15 July.

Supersession for closed period

04117 A decision awarding benefit may be superseded for a fixed period to take account of a change of circumstances which has already come to an end. The supersession only replaces the original decision for that period.

Example 1

A claimant is in receipt of IB. Following a fraud investigation, it is established that he was working on a building site for over a year. The work finished when he was laid off after injuring himself. The DM determines that he is treated as capable for the period of work as it was not exempt work, and supersedes the awarding decision to disallow IB for the same period. The conditions of entitlement should be determined from the first day of the fresh period of entitlement.

Example 2

The claimant had been entitled to IS on the basis of IfW since 1999. He was imprisoned for the period 30th August 2011 to 5th September 2011. Entitlement for this closed period should be removed by way of supersession for that period only. The claimant is entitled to IS without the need to make a new claim from 6th September 2011.

04118 - 04119

Relinquishment of benefit

- 04120 A claimant may decide that they do not want entitlement to benefit to continue, for example where it is not payable through overlapping benefit rules, or where the amount of benefit is small. The request should be treated as an application for supersession.
- 04121 The claimant may ask not to receive payment of benefit while underlying entitlement continues. The DM should refuse to supersede following such a request. This is because if entitlement exists, the Secretary of State has an obligation to pay benefit in accordance with an award, other than where legislation such as overlapping benefit rules prevents this.

Effectiveness of the relinquishment

- 04122 The DM should investigate to ensure that the claimant's relinquishment is a genuine statement of intention, and the consequences explained where appropriate. For example, one consequence is that for the purposes of income related benefits the claimant may be fixed with notional income equivalent to the amount of benefit they have relinquished.
- 04123 A request to surrender benefit might not be effective where
1. the claimant is vulnerable or incapable of deciding their affairs and there is no appointee **or**
 2. the withdrawal is made as a result of threatening or overbearing behaviour, deception or similar improper behaviour.
- 04124 Where the DM is not satisfied that the claimant
1. made the request freely **and**
 2. is capable of fully understanding the implications
- the request should be refused. The DM should make a decision that the awarding decision is not superseded (see DMG 04019 - 04020).

04125 Where

1. the claimant has been advised of the consequences **and**
2. the request is genuine **and**
3. DMG 04123 does not apply

the DM should end entitlement accordingly.

04126 Once entitlement has been ended as in DMG 04129 - 04131, a further claim is required if the claimant wishes to receive the benefit again. A change of mind about relinquishment is not grounds for revision, because it was not a fact in existence at the time the original decision was made.

04127 The decision ending entitlement can be revised within the application period if it is established that the original request to surrender entitlement was not effective as in DMG 04123. Where the application is made outside the time limits, the DM should consider whether to revise for official error. See DMG Chapter 03 for advice on revision.

04128 If ending entitlement was not in their best interests, and a further claim is made, the DM has no authority to fix a date of claim to cover a period when the claimant was not entitled. The normal rules about the prescribed time for claiming still apply (see DMG Chapter 02). For example, a person who reclaims IB two months after surrendering an award can be entitled from the day following the end of that award.

Ending entitlement

04129 Where a claimant no longer wishes to receive a benefit, and the DM accepts that the request is effective, the DM should supersede the awarding decision on a relevant change of circumstances¹, and terminate the award. The claimant has the right of appeal. The supersession ends entitlement to, as well as payability of, benefit, because the award has come to an end with the withdrawal of consent.

1 SS Act 98, s 10; SS CS (D&A) Regs, reg 6(2)(a)

04130 The relevant change is that the claimant no longer consents to be entitled to receive the benefit, or no longer wishes it to be payable. The date of the change is

1. the date specified by the claimant where appropriate **or**
2. the first pay day following the date of the application **or**
3. the first pay day following the date the decision is made, where benefit continues to be paid after the application is made and is not returned.

Note: The claimant cannot surrender benefit for a past period.

04131 For guidance on the effective date of the supersession¹, see DMG 04230 et seq. DMs should note that although some changes of circumstances must be notified in writing², an application for supersession can be made orally or in writing.

1 SS Act 98, s 10(5); SS CS (D&A) Regs, reg 7(2)(c), Sch 3A & 3B; 2 SS (C&P) Regs, reg 32(1B)

Example

A claimant is in receipt of CA as she is caring for her mother in law. She reaches pension age, and CA is not payable as it overlaps with her award of RP. Her husband was also caring for his mother after early retirement. His only income is an occupational pension. In order to maximize benefit entitlement, the claimant writes to say that she no longer wishes to get CA, and her husband wishes to claim it instead. The DM accepts that her relinquishment is genuine. The decision awarding CA is superseded on a relevant change of circumstances to end entitlement, effective from the date of the application.

Note 1: An award of benefit cannot be surrendered in part.

Note 2: Relinquishment is not the same as de-retirement. See DMG Chapter 75.

04132

Relinquishment of IIDB

04133 Where an award of IIDB is surrendered, the assessment of disablement remains in place. Should the claimant make a further claim for the accident or PD for which an award has been surrendered, and for which an assessment of disablement remains current, there is no need to refer again to Medical Services for advice.

04134 - 04139

Overlapping benefits

04140 Where a decision has been made that

1. a benefit is not payable, or is payable at a reduced rate, because of the overlapping benefit provisions¹ **and**
2. the overlapping benefit provisions cease to apply

the type of decision made to restore or increase payment depends on the reason the overlapping benefit provisions ceased to apply. See DMG Chapter 17 for guidance on overlapping benefits.

1 Social Security (Overlapping Benefits) Regs 1979

04141 Where a benefit was adjusted because it overlapped with another benefit administered by the DWP, a supersession decision is not appropriate when that adjustment ends¹. The DM should make an outcome decision to end the adjustment, effective from the date the overlapping benefit stops².

1 R(G) 1/03; 2 SS Act 98, s 8(1)(c)

Example

The claimant is entitled to CA, and is later awarded IB. His award of CA is adjusted to nil under the overlapping benefit provisions. The claimant's award of IB is terminated on 14.7.05 when he fails to score 15 points on the PCA, and his appeal against the IB decision is unsuccessful. The CA Unit learns of the ending of the IB award on 25.1.06 following a routine review. The DM decides to end the adjustment of CA with effect from 14.7.05. As this is not a supersession, the effective date rules do not apply.

- 04142 Where benefit is adjusted because it overlaps with a benefit or allowance not administered by the DWP, the normal supersession provisions apply. For example, where a dependency benefit is adjusted because it overlaps with a training allowance paid by or on behalf of another government department, a supersession decision is required when the training allowance ends.

04143 - 04144

Death of claimant

- 04145 The death of the claimant is a relevant change of circumstances affecting entitlement to benefit. In the majority of cases, there is no requirement for an awarding decision to be superseded so as to end entitlement. However, where there is an overpayment of benefit as a result of late notification of the death, the awarding decision must be superseded before the DM can consider whether the overpayment is recoverable¹.

1 SS Act 92, s 71(5A); SS Act 98, s 10(1)

04146 - 04149

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 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, BSP, CA, DLA, ESA, IB, IIDB, 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)

04157 In the case of a birth or death, the duty to notify¹ may be discharged by notifying the Secretary of State, as soon as reasonably practicable, by personal attendance at

1. a relevant authority **or**
2. a county council in England

that the Secretary of State has agreed may facilitate such notifications²

1 SS (C&P) Regs, reg 32(1B); 2 SS (C&P) Regs, reg 32ZZA(1)(a); JSA Regs, reg 24A(1)(a)

04158 In the case of a death only, the duty to notify¹ may be alternatively discharged by telephone to a telephone number specified for that purpose by the Secretary of State².

1 SS (C&P) Regs, reg 32(1B); 2 SS (C&P) Regs, reg 32ZZA(1)(b); JSA Regs, reg 24A(1)(b)

Note: See the “Tell Us Once” website for where these arrangements apply

04159 A Wfl means¹ an interview which a person is required to take part in under specific regulations².

1 reg 1(3); 2 The Social Security (Jobcentre Plus Interviews) Regs 2002

04160 - 04199

Supersession on a change of circumstances - effective dates

Introduction

04200 The effective date of a supersession on a change of circumstances depends upon whether the result of the supersession would be advantageous or disadvantageous to the claimant and whether the change has been notified within certain time limits. DMG 04201 et seq describes the general rules. However, these paragraphs should be read together with any of the special rules relating to specific benefits described in DMG 04395 to 04710.

Time limits

04201 The general rule is that an advantageous change of circumstances is to be notified within one month of the date the change occurred.

04202 - 04203

Late notification of change of circumstances

04204 The one month time limit can be extended provided certain conditions are satisfied¹.
1 SS CS (D&A) Regs, reg 8(1)

Application for an extension of time

04205 Firstly an application for an extension of time needs to be made either by the claimant or a person acting on the claimant's behalf¹.
1 reg 8(2)

04206 That application must¹

1. contain details of the relevant change of circumstances **and**
2. include the reasons for the failure to notify the change on an earlier date **and**
3. be made within 13 months of the date the change occurred.

Note: See DMG 04395 et seq for benefit specific guidance.

1 reg 8(3)

Grounds

04207 The following conditions¹ must **all** be satisfied for a late application to be accepted

1. it is reasonable to grant the application

2. the notified change is relevant to the decision to be superseded **and**
3. special circumstances are relevant to the application **and**
4. as a result of those special circumstances it was not practicable for the claimant or person acting on behalf of the claimant to notify the change of circumstances within one month of the date it happened.

I SS CS (D&A) Regs, reg 8(4)

Meaning of special circumstances

04208 The phrase “special circumstances” is not defined in legislation. It can include factors such as

1. the claimant, or the claimant’s partner or dependent has died or suffered a serious illness
2. the claimant is not resident in the UK
3. normal postal services have been disrupted.

This list is not exhaustive and each application must be treated on its merits.

Deciding whether it is reasonable to grant the extension of time

04209 When deciding whether it is reasonable to grant an extension of time the DM should take account of the principle that the later the application, the more compelling the special circumstances causing the lateness must be¹.

I reg 8(5)

04210 The DM must take **no** account of the following¹

1. that the applicant was ignorant of or misunderstood the law applicable to his case (including the one month time limit for reporting changes of circumstance)
2. the fact that a UT or a court has taken a different view of the law from that which was previously understood and applied.

I reg 8(6)

04211 An application which has been refused cannot be renewed¹.

I reg 8(7)

04212 - 04219

Decision advantageous to the claimant

Meaning of advantageous

- 04220 A decision is advantageous¹ to the claimant where the outcome is that
1. benefit is awarded, is awarded for a longer period **or**
 2. the amount paid is increased **or**
 3. the amount of benefit in payment would be increased but for the application of a provision in the law² restricting or suspending payment of a benefit or disqualifying a claimant from receiving benefit **or**
 4. a denial or disqualification for receiving benefit is lifted whether in whole or in part (a partial lifting of a disqualification would include, for example, where the period of a JSA sanction is reduced in length) **or**
 5. a decision to pay benefit to a third party is reversed **or**
 6. an overpayment is not recoverable or the amount recoverable is reduced **or**
 7. the claimant gains financially.

1 SS CS (D&A) Regs, reg 7(4) & 30(2); 2 SS Act 98, SS CB Act 92

Change notified within the time limits

- 04221 Where an appropriate office is notified of a change of circumstances within one month of the date that change occurred or within such longer period as may be allowed under DMG 04204 - 04210, the effective date of the supersession will be the date the change occurred¹.

1 SS CS (D&A) Regs, reg 7(2)(a)

Change notified outside the time limits

- 04222 Where a change of circumstances is notified later than one month after it occurred (or such longer period as the DM may have allowed under DMG 04204 - 04210) then the effective date of the supersession will be the date **notification** of the change of circumstances was received in an appropriate office¹.

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

DM's own initiative

- 04223 Where DMs supersede of their own initiative to deal with a change of circumstances and the result is advantageous to the claimant the effective date of supersession takes effect from the beginning of the benefit week in which action was started with a view to supersession¹.

Note: A request for information by way of a routine case check does not count as action with a view to supersession.

1 SS CS (D&A) Regs, reg 7(2)(bb)(i)

04224 Where

1. a claimant is in receipt of IS, JSA or SPC **and**
2. benefit is paid in advance **and**
3. the Secretary of State started action with a view to supersede on a day which was not the first day of the benefit week

the supersession takes effect from the beginning of the benefit week following the week in which action to supersede started¹.

1 SS CS (D&A) regs, reg 7(2)(bb)(ii)

04225 It will often be useful for the DM to make a note of the date he first noticed that action was needed to deal with a change so that there is evidence of the basis for the effective date subsequently used.

Award of CA ends

04226 Where

1. the claimant is a disabled person or a disabled person's partner **and**
2. a decision awarding benefit is superseded to the claimant's advantage **and**
3. the reason for the supersession is that payment of an award of CA to that disabled person has ended

the decision is effective from the day after the last day that CA was paid to a person other than the claimant or the claimant's partner¹.

1 SS CS (D&A) regs, reg 7(2)(bc)

Example

The claimant lives with his disabled wife and is in receipt of IS. He is not entitled to the SDP because his daughter receives CA for his wife. The daughter returns to work, and the award of CA is superseded and terminated from and including 16.10.08. The claimant does not find out about the end of the award until late January 2009. He notifies the IS section, and the DM supersedes the IS decision to award SDP from 16.10.08.

04227 - 04229

Decisions not advantageous to the claimant

The general rule

04230 The general rule is that a supersession for a change of circumstances that is not advantageous to the claimant takes effect from the date of the change¹. However there are exceptions.

1 SS CS (D&A) Regs, reg 7(2)(c)(v)

Incapacity benefit, disability benefit and ESA decisions

Meaning of incapacity benefit decision

04231 An incapacity benefit decision is¹ a decision to award benefit or credits

1. which embodies a determination that the person is or is to be treated as incapable of work² or
2. necessary to which is a determination that the person is or is to be treated as incapable of work².

Note: Incapacity benefit decisions are made in respect of IB (including transitional long-term IB), IS, NI credits and SDA.

1 reg 7A(1); 2 SS CB Act 92, Pt X11A

Meaning of incapacity determination

04232 An incapacity determination is¹ a determination whether

1. a person is incapable of work following application of the PCA²
2. a person is to be treated as incapable of work in accordance with certain regulations³.

Note: This does not include determinations of incapacity made pending the PCA. (See DMG 04431).

1 SS CS (D&A) Regs, reg 7A; 2 SS (IW) (Gen) Regs, reg 24; 3 regs 10 or 27

Meaning of disability benefit decision

04233 A disability benefit decision is¹ a decision to award benefit which includes a disability benefit determination. These are AA, DLA, SDA and IIDB.

Note: Although an award of REA relies on an assessment of disablement, a decision awarding REA is **not** a disability benefit decision.

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

Meaning of disability determination

- 04234 A disability determination is¹ a determination
1. in the case of a decision on AA or DLA, whether the person satisfies the disability conditions²
 2. in the case of SDA whether a person is disabled³
 3. in the case of IIDB whether the existence or extent of any disablement is sufficient⁴.

1 SS CS (D&A) Regs, reg 7A; 2 SS CB Act 92, s 64, 72(1) to (3); 3 s 68; 4 s 103 or 108

Meaning of ESA decision

- 04235 An ESA decision¹ is a decision to award benefits or credits which embodies a determination that the person is or is to be treated as having LCW.

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

Meaning of LCW determination

- 04236 A LCW determination¹ is a determination whether
1. a person has LCW **or**
 2. can be treated as having LCW.

1 reg 7A(1)

Effective date

- 04237 In the case of
1. an incapacity decision where there has been an incapacity determination as in DMG 04232 **or**
 2. a disability benefit decision where there has been a disability determination as in DMG 04234 **or**
 3. an ESA decision where there has been a LCW determination as in DMG 04236

where the DM is satisfied that the claimant failed to notify an appropriate office of a change of circumstances **relating to incapacity, disability or LCW** which the claimant is required to notify then the effective date of the supersession will depend upon whether the claimant knew or could reasonably have been expected to know that the change of circumstances should have been notified.

Note: See DMG 04245 where the change is not relevant to an incapacity or a disability determination.

04238 If the claimant knew or could reasonably have been expected to know that the change should have been notified then the effective date is the date he should have notified it¹. If it is not reasonable for the claimant to know that the change should have been notified then the supersession decision takes effect from the date the decision is made².

1 SS CS (D&A) Regs, reg 7(2)(c)(ii)(aa); 2 SS Act 98, s 10(5)

04239 If there has been more than one change to which DMG 04237 & 04238 apply between the effective date of the original decision and the date the supersession decision is made then the effective date will be the date the first change should have been notified¹.

1 SS CS (D&A) Regs, reg 7(2)(c)(ii)(bb)

Meaning of “reasonably have been expected to know”

04240 The test of reasonableness is not defined in law. It is similar to the test established by case law for recoverable overpayments arising from failure to disclose material facts (see DMG Chapter 09). When considering that guidance the DM should take into account such matters as

1. the likely extent of the claimant or payee’s knowledge of the reasons for awarding the benefit involved
2. the information given to the claimant about notification of changes of circumstances
3. the claimant’s ability to recognize when a gradual improvement results in a relevant change of circumstances.

04241 A slight change in the claimant’s ability to carry out activities would not normally be a change that a person could reasonably be expected to notify. However, where the change is gradual there may be a point at which the person could reasonably have been expected to know that a change should be reported.

Example 1

A claimant has an award of the higher rate mobility and highest rate care components of DLA because of the effects of progressive heart disease. On 8.11.99 the claimant undergoes a successful heart bypass operation, but does not report this until 1.6.00. Further evidence is obtained from the hospital showing a significant improvement in the claimant’s walking ability and reduced care needs, within three months of the operation.

The DM decides that the claimant is not entitled to either component from 9.2.00. The claimant was aware of the basis of the award and could reasonably have been expected to know that the improvement should have been notified. The supersession decision takes effect from 9.2.00.

Example 2

The claimant has a cataract. She satisfies the PCA because she cannot see well enough to read 16 point print at a distance greater than 20 centimetres. The DM has decided that she is incapable of work. She has an operation to remove the cataract. After a period of recuperation her vision is improved to the extent that three weeks after the operation she is able to read the daily newspaper without using her magnifying glass. The DM decides that she could reasonably have been expected to know that the improvement in her ability to see should have been notified. The supersession decision takes effect three weeks after the operation, when the change should have been notified.

Example 3

The claimant has a heart condition and is receiving out-patient treatment at a hospital. He scores points for walking, and lifting, carrying and reaching, satisfying the personal capability assessment. At first he was unable to walk further than 200 metres. But with exercise this has improved and he can now walk more than 200 metres. The doctor reports that he still has problems with lifting, carrying and reaching. The DM decides that it was not reasonable for him to know that the change should be notified, because the improvement was gradual and only affected one activity. The supersession decision takes effect from the date it is made.

04242 - 04244

Change not related to incapacity, disability or LCW determination

- 04245 Where the change is not related to the incapacity, disability or LCW determination, the effective date rule in DMG 04237 does not apply. The effective date is the date of change¹ (but cannot be earlier than 10.4.06²).

1 SS CS (D&A) Regs, reg 7(2)(c)(iv) & (v); 2 [2012] AACR 14

Adult dependency increase

- 04246 An ADI is awarded by a decision made on a separate claim - see DMG 16115. The conditions of entitlement to ADI do not include a requirement that the person is incapable of work (see DMG 16134), so that the decision awarding ADI is not an incapacity benefit decision¹ as defined in DMG 04231. There is no requirement to supersede the decision awarding IB so as to include the award of ADI.

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

- 04247 Where payability of or entitlement to ADI is affected by earnings, the decision awarding the ADI should be superseded to take account of the change effective from the date of change¹.

1 SS CS (D&A) Regs, reg 7(2)(c)(v)

04248 - 04249

Changes in legislation

04250 Where the relevant change of circumstances is a change in legislation, the effective date is the date the change in legislation had effect¹. DMs should note that this applies to all benefits including IS, JSA and SPC. Where a decision is superseded on the basis of an anticipated relevant change of circumstances and that change is the coming into force of a change in legislation then the decision will take effect from the date on which the change in legislation has effect².

1 SS CS (D&A) Regs, reg 7(9)(a)(ii) & (30); 2 reg 7(30A)

Example

A DLA claimant is in receipt of the lower rate mobility component due to visual impairment. A change in legislation from 11.4.11 means that the claimant will be entitled to the higher rate. The DM identifies that the claimant will become entitled and supersedes the award in advance of the coming into force of the legislation and awards the higher rate mobility component from 11.4.11.

04251 - 04279

Error of law

What decisions can be superseded on the grounds of error of law

04280 Some decisions of a DM can be superseded either on an application or on the DM's own initiative in the circumstances set out in DMG 04281. These are

1. any decision on a claim for a relevant benefit¹
2. any decision under relevant acts²
3. any decision as in DMG 04280 1. or DMG 04280 2. which has been revised³.

Note: A decision of a FtT or UT cannot be superseded on these grounds.

1 SS Act 98, s 8(1)(a); 2 s 8(1)(c); 3 s 10(1)(a)

In what circumstances can a decision be superseded on the grounds of error of law

04281 Supersession on the grounds of error of law will only apply where¹

1. an application was received more than one month (or such longer period as might be allowed under DMG 04204 - 04210) after the date the original decision was notified **or**
2. the Secretary of State decided to act on his own initiative more than one month after the date the original decision was notified.

Note: There will be cases where the DM is able to revise a decision which was wrong in law on the grounds of official error. This route would be available where the error is solely the responsibility of the DM (see DMG Chapter 03 for further guidance).

1 SS CS (D&A) Regs, reg 6(2)(b)

Meaning of error of law

04282 The Courts have set out¹ categories of circumstances in which errors of law may be found. These are

1. making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters")
2. failing to give reasons or any adequate reasons for findings on material matters
3. failing to take into account and/or resolve conflicts of fact or opinion on material matters
4. giving weight to immaterial matters

5. making a material misdirection on law on any material matter
6. committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings
7. making a mistake as to a material fact which could be established by objective and uncontested evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.

Note: As errors in law will usually also be official errors allowing revision, this provision has limited use. See DMG Chapter 03 for guidance on the meaning of official error.

1 R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982

Effective date

04283 Except where DMG 04290 - 04292 apply, where a decision is superseded on the grounds of error of law the effective date is¹

1. where the supersession is made on an application, the date the application is received
2. where the supersession is made on the DM's own initiative, the date the decision is made.

Note: This applies to IS, JSA and SPC.

1 SS Act 98, s 10(5)

04284 - 04289

Reinterpretation of the law

04290 Sometimes UTs and higher courts give decisions that change a previously held interpretation of the law. These decisions will sometimes mean that earlier decisions of DMs were wrong in law.

04291 A decision by a UT or a court that the decision of the DM or a FtT out of which the appeal arose was wrong in law is known as the "relevant determination".

04292 Where

1. an application is made for a supersession decision relating to entitlement to benefit (regardless of whether it is made before or after the relevant determination) **and**
2. a decision on that application falls to be made in accordance with the relevant determination

then the effective date of that supersession will be the date of the relevant determination¹. But see DMG 04500 for IS and JSA, DMG 04640 for SPC and DMG 04696 for ESA.

Note: A judgement in an ECJ reference counts as a “relevant determination”.

1 SS CS (D&A) Regs, reg 7(6)

04293 – 04294

Appeal against a relevant determination

04295 Where

1. a UT or court makes a relevant determination (see DMG 04291) **and**
2. the Secretary of State appeals against that determination and does not stay decisions (see DMG 06800 et seq) **and**
3. an award of benefit made in consequence of the relevant determination is suspended **and**
4. the relevant determination is reversed on appeal

the suspension is lifted and the decision made by the DM in **3.** is superseded on the ground of error of law.

Effective date

04296 Where a DM’s decision is superseded as in DMG 04295, the decision takes effect from the date on which the earlier decision took effect¹. No arrears are paid when the suspension is lifted. See DMG 04500 for IS and JSA, DMG 04640 for SPC and DMG 04696 for ESA.

1 SS CS (D&A) Regs, reg 7(6A)

Example

The claimant appeals against a DM’s decision. A FtT dismisses the appeal, upholding the DM’s view of the law. The claimant appeals to the UT, but this is again dismissed on the same point. The claimant then makes an appeal to the Court of Appeal, which succeeds. The Secretary of State appeals this to the Supreme Court. At the same time the Secretary of State receives applications in look-alike cases seeking benefit on the basis of the Court’s decision. The Secretary of State supersedes existing decisions but suspends payment under these new awards pending the outcome of the appeal of the Supreme Court. The Supreme Court then upholds, the Secretary of State’s appeal. The Secretary of State then lifts the suspensions and supersedes the decision made following the Court of Appeal’s

decision, effective from the same date as those decisions. This ensures that no benefit is paid in consequence of the Court of Appeal's (erroneous) decision.

04297 - 04299

Superseding a First-tier Tribunal or Upper Tribunal's decision

04300 A FtT's or UT's decision can only be superseded¹ where

1. there has been a relevant change of circumstances² **or**
2. the decision arose from ignorance of or mistake as to some material fact³ **or**
3. it was made after the appeal was stayed⁴.

1 SS Act 98, s 10(1)(b) and 26(4) & (5);

2 SS CS (D&A) Regs, reg 6(2)(a); 3 reg 6(2)(c)(i); 4 reg 6(2)(c)(ii)

No outcome decision made

04301 Where the FtT does not give an outcome decision after allowing an appeal, the DM must follow the FtT's decision on the issues it has dealt with when dealing with the matters referred back for subsequent decision unless

1. there are grounds to supersede the FtT's decision **or**
2. the DM considers it is erroneous in law and applies for leave to appeal (see DMG Chapter 06)¹.

1 R(IS) 2/08

04302 Where

1. the DM incorporates the FtT's decision into a new decision
 - 1.1 on a claim **or**
 - 1.2 revising or superseding an earlier decision **and**
2. the facts have changed since the time of the decision under appeal

the DM should not supersede the FtT's decision in order to take account of the change in the facts. This is because the DM must determine all the facts down to the date of the new decision - see DMG 01010. The FtT cannot take account of circumstances which had not arisen at the time of the decision under appeal¹.

1 SS Act 98, s 12(8)(b)

04303 Similarly, if a FtT's decision, other than an outcome decision, is incorporated into a DM's decision, and there are grounds to supersede, it is the DM's decision which must be superseded, not the FtT's decision.

04304 Note that the claimant cannot ask for the DM's decision to be

1. revised (during the application period or for official error) **or**
2. superseded for error of law

where the only issue raised by the application relates to the incorporated FtT's decision. The claimant should apply for leave to appeal to the UT against the FtT's decision.

04305 - 04314

Stayed appeals

04315 DMG Chapter 06 describes the procedure where appeals are stayed at FtT or UT level. Where

1. the tribunal or UT decides the appeal as if the lead appeal had been determined in the most unfavourable terms for the appellant¹ **and**
2. the DM is required to supersede the tribunal or UT's decision once the lead appeal is determined²

the effective date of the supersession is the date the FtT or UT's decision would have taken effect if it had been decided in accordance with the decision which was the subject of the lead appeal³.

1 SS Act 98, s 26(4)(b); 2 s 26(5); SS CS (D&A) Regs, reg 6(2)(c)(ii); 3 reg 7(33)

04316 DMA Leeds will give guidance following the determination of lead cases on whether supersession is required.

04317 - 04319

Ignorance of or mistake as to a material fact

What decisions can be superseded on the grounds of mistake as to or ignorance of a material fact

04320 Supersession of

1. any decision on a claim for a relevant benefit¹
2. any decision made under relevant Acts²
3. any decision in DMG 04320 1. or DMG 04320 2. which has been revised by a DM³
4. any decision made by a FtT or UT⁴.

can be made on the grounds of mistake as to or ignorance of a material fact.

1 SS Act 98, s 8(1)(a); 2 s 8(1)(c); 3 s 10(1)(a); 4 s 10(1)(b)

What is a material fact

04321 A material fact is one which is relevant to a decision on a claim or application. Any fact which has to be determined before a decision can be given is a material fact.

04322 A fact which is itself not immediately relevant can be important to a decision if the process of reaching a decision has been influenced by it.

Example

A FtT does not accept a claimant's evidence because they consider it not to be a true statement of the facts. The claimant then produces evidence to prove the fact was correct. The DM supersedes the decision because it is based on a mistake as to a material fact.

04323 An application for supersession because of ignorance of, or a mistake as to, a material fact may not always result in a supersession decision. See DMG 04010 - 04020 for further guidance.

04324 There is a distinction between a primary fact and a secondary fact. A primary fact is a fact established directly by evidence. A secondary fact is found by applying the process of reasoning to evidence.

04325 DMs often make an inference of fact by reasoning from the evidence before them. If, however, they are wrong because the reasoning was wrong, the decision is not based on a mistake as to a material fact. DMs cannot supersede decisions just because they would have reached a different decision on the same evidence¹ (but see DMG 04329).

1 R(I) 3/75

Ignorance of a material fact

04326 A decision may be superseded if the DM is satisfied that it was given in ignorance of some material fact. A material fact is one which is relevant to

1. an award of benefit
2. a JSAg or sanction
3. a labour market question
4. an overpayment recoverability decision

and has to be identified before a decision is given. The fact must exist at the time the original decision is given¹.

1 CAO v Combe (Court of Session 1999)

04327 It is presumed that a DM is aware of the facts included in the papers available to make a decision. This presumed knowledge prevents supersession because of the ignorance, but supersession because of a mistake as to a material fact may be possible.

04328 Sometimes a question has to be decided by making an adverse assumption about a relevant fact because the DM has been unable to obtain sufficient evidence¹. If evidence is then provided which shows the DM's assumption is wrong the original decision can be superseded because of ignorance of a material fact. If the evidence is provided within the dispute period, revision would be appropriate.

1 R(SB) 18/81; R(SB) 29/83

Example 1

An RP claimant does not provide evidence of his date of birth. The DM makes the adverse assumption that he will not reach the age of 65 within four months of the date of claim and disallows the claim. Five months later the claimant produces a birth certificate showing that at the date of claim he was within four months of his 65th birthday. The DM supersedes the original decision from the date on which the claimant provided the evidence of his date of birth. The ground for supersession is that the decision was made in ignorance of the fact that at the date of claim the claimant was within four months of his 65th birthday.

Example 2

A jobseeker fails to provide evidence that he is actively seeking work after a request from the Secretary of State. The DM decides that he is not actively seeking employment, and disallows the claim for JSA. The claimant later produces his record of job applications. The DM supersedes the original decision because it was made in ignorance of the material fact that the claimant was actively seeking employment.

Mistake as to a material fact

- 04329 A DM may misinterpret the evidence and make a mistake as to a material fact¹. If the mistake was wholly the responsibility of the DM, or of another official of the DWP, it would be an official error and the decision would be revised (see DMG Chapter 03). If the claimant had contributed to the mistake, it would not be an official error and the decision would be superseded².

1 R(G) 8/55; 2 SS CS (D&A) Regs, reg 3&6

- 04330 The mistake may be made when dealing with the claim, for example by a DM misreading information in a document. It may be made by another official, for example by a receptionist recording an incorrect date. The revision provisions should always be considered where the new decision would be advantageous to the claimant.

Example 1

A claimant has an award of the middle rate of the care component of DLA for daytime needs. Two years later the claimant reports that her night-time needs have increased. The DM examines the case and finds that the evidence obtained at the time of the original claim shows that the claimant needed attention twice a night. The DM revises the original decision for official error. The effective date is the date of the original award.

Example 2

A claimant is awarded IS. The DM overlooked the fact that income of £29 a month was in payment. Two years later on a routine case check the DM realises that the income should have been taken into account. The DM supersedes the original decision on a mistake as to a material fact. The effective date is the date the DM started the routine check.

Example 3

The DM decides that the jobseeker was not available for work because he was in prison for the period 3 July to 28 August. The jobseeker later realises that he got his dates mixed up, and he was actually in prison for the period 28 July to 3 August. The DM supersedes his decision because it was based on a mistake as to a material fact.

Are opinions material facts

- 04331 Opinions should be distinguished from facts. DMs often take into account opinions of other persons, for example doctors, in making decisions. Medical opinion does not form a material fact¹.

1 R v. Secretary for Social Services ex parte Loveday [15.2.83]

04332 Because it is not a material fact, a change of medical opinion is not of itself a ground for supersession. A DM's decision awarding benefit as a result of a medical opinion cannot be superseded because it was based on a mistake as to a material fact, if another doctor provides a different opinion based on the same facts. This is because there is no specific or primary fact about which the DM was mistaken¹. For further guidance on medical opinion/fact see benefit specific guidance.

1 R(S) 4/86

04333 However, medical opinions are often expressed in reports which may contain evidence, such as clinical findings or statements by the claimant, from which the DM can infer facts. This may enable the DM to show that the original facts would not have been found, or were found incorrectly, if the new facts had been known¹. A change of opinion where there are different facts may be evidence that the original decision was based on ignorance of or mistake as to some material fact².

1 R(I) 3/75; 2 R(DLA) 6/01

When can a decision of a DM be superseded on these grounds

04334 Where the decision to be superseded is one made by a DM, it can be superseded on the grounds of ignorance of or mistake as to a material fact where either¹

1. an application is made more than one month after the original decision was notified (or a late dispute is not admitted - see DMG Chapter 03)
2. the DM commenced action with a view to supersession more than one month after the original decision was notified.

1 SS CS (D&A) Regs, reg 6(2)(b)

04335 A decision based on ignorance of, or mistake as to, a material fact may have arisen because of official error. In that case revision may be appropriate¹. DMs should also consider whether revision is appropriate where the decision was more advantageous than it would have been if the material fact was known² (see DMG Chapter 03).

1 reg 3(5)(a); 2 reg 3(5)(b)

Effective date

04336 The effective date of a supersession to which DMG 04334 applies will be¹

1. in the case of a supersession made on an application, the date that application was received
2. in the case of a supersession undertaken at the DM's own initiative, the date the supersession decision is made.

Note: This applies to IS, JSA and SPC.

1 SS Act 98, s 10(5)

When can a decision of a FtT or a UT be superseded on these grounds

04337 A decision of a FtT or UT may be superseded at any time on the grounds of ignorance or mistake as to a material fact¹.

1 SS CS (D&A) Regs, reg 6(2)(c)

Effective date

04338 The effective date will depend upon whether the effect of the supersession is advantageous or not advantageous. See DMG 04500 for IS and JSA.

Advantageous

04339 If the effect of the supersession would be advantageous to the claimant, the effective date is¹

1. where the supersession is made as a result of an application, the date the application was received
2. where the supersession was undertaken at the DM's own initiative, the date the supersession decision was made.

1 SS Act 98, s 10(5)

Disadvantageous

04340 Where the effect of the supersession of the FtT or UT's decision would be to the disadvantage of the claimant then where

1. the decision relates to
 - 1.1 a disability benefit decision where there has been a disability determination **or**
 - 1.2 an IB decision where there has been an incapacity determination **or**
 - 1.3 an ESA decision where there has been a LCW determination **and**
2. the DM is satisfied that, at the time the FtT or UT's decision was made, the claimant knew or could reasonably have been expected to know of the fact in question and that it was relevant to the decision **or**
3. the decision does not relate to IIDB, IB or ESA

the effective date of the superseding decision will be the same as the date on which the decision of the FtT or UT took effect¹.

1 SS CS (D&A) Regs, reg 7(5); Sch 3C, para 8

Decisions which cannot be appealed to a First-tier Tribunal

Introduction

04341 Annex E to this Volume lists decisions and determinations that are not appealable. Such decisions can be superseded at any time either on an application or at the DM's own initiative¹.

1 SS CS (D&A) Regs, reg 6(2)(d)

Effective date

04342 The effective date will be¹

1. in the case of a supersession made as a result of an application, the date the application was received
2. in the case of a supersession made at the DM's own initiative, the date the decision is made.

1 SS Act 98, s 10(5)

04343 - 04349

Award of qualifying benefit

Introduction

04350 Where the Secretary of State has

1. awarded a relevant benefit (benefit 1) to a claimant **and**
2. after the first day of the period of entitlement to benefit 1 that claimant (or a member of the claimant's family) becomes entitled to
 - 2.1 another relevant benefit (benefit 2) **or**
 - 2.2 an increase in another relevant benefit (benefit 2) **and**
3. the award of or increase to benefit 2 has an effect on benefit 1, benefit 1 may be superseded¹.

1 SS CS (D&A) Regs, reg 6(2)(e)

04351 The word "family" is defined¹ as having the same meaning as in the SS CB Act² (see DMG 22003 - 22004).

1 SS CS (D&A) Regs, reg 1(3); 2 SS CB Act 92, s 137

IS, ESA(IR), JSA(IB) AND SPC

04352 Where

1. the DM awards entitlement to IS, ESA(IR), JSA(IB) or SPC **and**
2. the claimant has a non-dependant living with them¹ **and**
3. as a result the claimant is not entitled to SDP² or an additional amount as a severely disabled person³ **and**
4. the non-dependant is awarded benefit from a later date so that SDP⁴ or an additional amount⁵ is now applicable

the IS, ESA(IR), JSA(IB) or SPC award can be superseded⁶.

1 IS (Gen) Regs, reg 3; SPC Regs, Sch I, para 1(1)(a)(ii) or (c)(iii); JSA Regs, reg 2; ESA Reg, reg 71;

2 IS (Gen) Regs, reg 17(1)(d); JSA Regs, reg 83(e); ESA Regs, reg 67(b); 3 SPC Regs, reg 6(4);

4 IS (Gen) Regs, Sch 2, para 13(3)(a); 5 SPC Regs, Sch I, para 2(2)(a); 6 SS CS (D&A) Regs, reg 6(2)(ee)

04353

Effective date

04354 Where DMG 04350 or 04352 applies, the effective date is the first day of the period of entitlement for which benefit 2 (or an increase to benefit 2) is awarded¹. See DMG 04500 for IS and JSA², DMG 04640 for SPC³ and DMG 04696 for ESA⁴. In cases

where this rule would apply but for the presence of a non-dependant the effective date of the supersession is when the non-dependant ceased to reside with the claimant⁵.

*1 SS CS (D&A) Regs, reg 7(7)(a); 2 Sch 3A paras. 12 & 13; 3 Sch 3B, paras. 7 & 8;
4 Sch 3C, para 10; 5 reg 7(7)(b)*

Example 1

The claimant, who is incapable of work is in receipt of IS. His son aged 25 lives with him. The son becomes entitled to DLA middle rate care. The claimant's IS is superseded to include SDP from the beginning of the benefit week in which the son becomes entitled to DLA.

Example 2

The claimant is in receipt of IS and makes a claim to PIP on 30.10.13. An award of the daily living component of PIP is subsequently made from that date. An IS DM is made aware of the award of this qualifying benefit on 01.03.14. The award of IS is superseded from the beginning of the benefit week in which PIP is awarded (30.10.13).

04355

Exception

04356 There may be exceptional cases where the award of qualifying benefit rules are less advantageous than the normal change of circumstances rules. In such cases, the more advantageous provisions should be applied instead.

Example

A claimant in receipt of IS with a Monday benefit week ending day has a baby on 18.3.02. She notifies the birth to the IS local office on 14.4.02. She also claims CHB, which is payable from 26.3.02. The DM supersedes the award on a relevant change effective from 12.3.02. Under the late award rules, the effective date would be 26.3.02 which is less favourable.

04357 - 04359

Linked benefits

Introduction

04360 In a case where the receipt of or entitlement to a benefit ("benefit 1") is a condition of entitlement to another benefit, allowance or advantage ("benefit 2") a special rule may apply¹.

1 SS CS (D&A) Regs, reg 7A(2)

Effective date

04361 Where benefit 1 is superseded on the grounds of a relevant change of circumstances then

1. where the decision to be superseded is neither
 - 1.1 a disability benefit decision **or**
 - 1.2 an employment and support allowance where there has been where there has been a limited capability for work determination **or**
 - 1.3 an incapacity benefit decision where there has been an incapacity determination **and**
2. the result is not advantageous to the claimant **and**
3. the effect (on benefit 1) is that either
 - 3.1 it ceases to be payable **or**
 - 3.2 it becomes payable at a lower rate

then the effective date of any consequent supersession of benefit 2 will be the same as the effective date as of the supersession of benefit 1, namely the date the change of circumstances affecting benefit 1 occurred¹. See DMG 04231 - 04236 for guidance on the meaning of disability benefit, incapacity benefit, incapacity determination, employment and support allowance and limited capability for work determination.

1 SS CS (D&A) Regs, reg 7A(2)

Note: This applies to IS, JSA and SPC.

04362 - 04369

Work-focused interviews

Failure to take part

- 04370 Where a determination has been made that a claimant has failed, without good cause to take part in an interview, then the original decision may be superseded¹ in order to bring into effect the resultant reduction of benefit.

1 SS CS (D&A) Regs, reg 6(2)(h)(i)

Effective date

- 04371 The effective date of the supersession is¹ the first day of the benefit week to commence for that person following the date of the **relevant decision**.

Note: This does not apply to ESA. See DMG 04703 for guidance.

1 SS CS (D&A) Regs, reg 7(25)(a)

- 04372 In cases where a partner has failed, without good cause to take part in an interview then the effective date of the supersession¹ is

1. the first day of the benefit week to commence for the claimant following the date of the **relevant decision or**
2. if that date arises five days or less after the day on which the relevant decision was made, as from the first day of the second benefit week to commence for the claimant following the date of the relevant decision

1 SS CS (D&A) Regs, reg 7(25)(b)

Reduction in benefit ceases to apply

- 04373 Where a person has been the subject of a determination that they have failed, without good cause, to take part in a Wfl and a decision has been made reducing benefit then that decision may be superseded where the person¹

1. is no longer required to take part in an interview as a condition of continuing entitlement to benefit **or**
2. reaches pensionable age.

1 SS CS (D&A) Regs, reg 6(2)(h)(ii)

Effective date

- 04374 The effective date of the superseding decision will be set in accordance with the normal rules concerning an advantageous change of circumstances.

04375 - 04379

Loss of benefit following benefit fraud offences

Sanctionable benefit

04380 A decision can be superseded¹ where

1. it is a decision that a sanctionable benefit is payable **and**
2. that benefit ceases to be payable or is reduced under the provisions allowing restrictions on the payment of benefit following convictions for benefit fraud offences.

1 SS CS (D&A) Regs, reg 6(2)(j)

Effective date

04381 The effective date¹ will be the first day of the disqualification period as set out in regulations².

1 reg 7(28); 2 SS (Loss of Benefit) Regs, reg 2

Joint claim JSA

04382 A decision can be superseded¹ where

1. it is a decision that a joint claim JSA is payable **and**
2. the joint claim JSA ceases to be payable or is reduced under the provisions for restrictions on the payment of benefit following convictions for benefit fraud offences.

1 SS CS (D&A) Regs, reg 6(2)(k)

Effective date

04383 The effective date¹ will be the first day of the disqualification period as set out in regulations².

1 reg 7(28); 2 SS (Loss of Benefit) Regs, reg 2

04384 - 04389

Special rules - uprating

04390 The uprating of benefit will not normally require a supersession decision¹.

1 SS A Act 92, s 159(2); s 159A(3); s 159B(2); s 159C(2)

Exception

04391 In some REA cases the uprating gives grounds for supersession.

Example

A claimant has an award of REA of £38 weekly, which is the maximum rate. The difference between the former earnings and his present earnings is £39. The maximum rate of REA is increased on uprating to £40. As this is more than the difference in earnings a supersession is necessary to award REA at £39.

Special Rules - late or unpaid contributions

04392 Where a late or unpaid contribution is treated as paid at an earlier date then the DM can supersede¹ the original decision. The superseding decision takes effect from the date on which the contribution is treated as paid². See DMG 03240 where a late paid contribution or credit is treated as paid on or before the date of the original decision.

1 SS CS (D&A) Regs, reg 6(2)(s); 2 reg 7(8A)

04393 - 04394

Special rules - Attendance Allowance and Disability Living Allowance

Advantageous change

04395 When a supersession decision is made in relation to AA or DLA on the grounds of a change of circumstances where the result is advantageous to the claimant, the effective date of the decision depends on the date of notification and nature of the change.

04396 If the change

1. relates to the disability conditions **and**
2. the claimant notified the change within one month of the end of the qualifying period, or such longer period as may be allowed under DMG 04204 - 04210

the effective date of the supersession decision is¹ the first day after the end of the qualifying period. If the one month time limit for notification of a change is extended, the change must be notified within 13 months of the date on which the claimant satisfied the conditions of entitlement to the particular rate of benefit².

1 SS CS (D&A) Regs, reg 7(9)(b)(i); 2 reg 8(3)(b)(ii)

04397 Where the change

1. relates to the payability of the benefit **and**
2. is notified within one month of the date of change or within such longer period as may be allowed

the effective date of the supersession is¹ the date of change.

1 reg 7(9)(c), reg 8

04398 If the decision is made on the initiative of the DM, the effective date is¹ the date on which the DM begins action leading to supersession.

1 reg 7(9)(a)

04399 In any other case where the change is advantageous to the claimant, the effective date is¹ the date of the application for supersession.

1 reg 7(9)(d)

04400 It may be difficult to identify the date of the relevant or most recent change in a claimant's medical condition, for example where the claimant has a progressive disease. The DM should consider all the available evidence, and decide on the balance of probabilities when the change occurred. Where only the month of the change can be determined, the change is effective from the last day of the month.

04401 Where more than one change has occurred since the decision to be superseded was made, the rules for deciding the effective date apply to each change.

Example

The claimant has an award of lower rate AA for day attention. On 8.6.00 she has a stroke and goes into hospital for free in-patient treatment. After the stroke she needs repeated attention at night. She is discharged from hospital on 26.7.00. On 4.1.01 the claimant asks for her AA to be increased after her stroke. The DM asks for further information and learns about the period in hospital. The DM decides that benefit is not payable for the period 7.7.00 to 26.7.00 and that the claimant is entitled to higher rate AA effective from the date the qualifying conditions were met, 8.12.00.

Terminally ill

04402 For the purpose of AA or DLA the fact that a person is terminally ill is not a relevant change of circumstances, **unless**¹ an application for supersession that contains an express statement that the person is terminally ill is made by

1. the terminally ill person **or**
2. any other person claiming to act on that person's behalf whether or not that other person is acting with the knowledge or authority of the terminally ill person.

Note: The DM may proceed to a supersession on the application notwithstanding the fact that no claim¹ has been made for AA or DLA care or mobility components on the specific grounds of terminal illness.

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

Renewal claims

04403 An award of DLA may consist of one component awarded for an indefinite period, and the other awarded for a fixed period¹. An application to renew the award of the fixed period component is an application for supersession of the whole award of DLA, whether or not the components were originally awarded by separate decisions. If the DM decides to extend the award of the fixed component, the ground for supersession is that there has been a relevant change of circumstances². The change is that the original award was based on a prediction that the claimant's condition would improve by the expiry date, but it had not improved.

1 SS CB Act 92, s 71(3); 2 SS Act 98, s 10; SS CS (D&A) Regs, reg 6(2)(a)

04404

Special rules - Industrial Injuries scheme benefits

Disablement determinations made before 5.7.99

04405 From 5.7.99 determinations on

1. diagnosis
2. percentage of disablement
3. period of assessment

are treated as decisions of the Secretary of State¹. They can be superseded as appropriate even if the original claim is disallowed and there is no award of IIDB. See DMG 04410 - 04420 for further guidance.

1 SS Act 98, Commencement Order No 8, Sch 12, paras 1 & 4

04406 This guidance also applies where the determination was made by a FtT or UT.

Disablement decisions made on or after 5.7.99

04407 DM decisions on the assessment of the extent of disablement arising from a claim for an IA or a PD are outcome decisions and can therefore be superseded¹. This applies even if there is no award of IIDB when the application for supersession is made. See DMG 04410 - 04420 for further guidance.

1 SS CS (D&A) Regs, reg 26(c)

Recrudescence of a prescribed disease

04408 Where

1. the claimant notifies a deterioration in his condition relating to certain PDs
and
2. medical advice is that there has been a recrudescence of that PD

no further claim is required in order to award benefit¹. The previous claim continues to exist.

1 reg 12A

04409 The previous decision on the assessment of disablement and the claim to IIDB, as appropriate, will need to be superseded on a relevant change of circumstances from the effective date¹.

1 regs 6(2)(a), 7(2) & 8

Worsening after assessment period has ended

04410 In industrial disease cases, and in IA cases where the assessment decision was made on or after 5.7.99, the assessment decision only remains operative during the period of the assessment. This means that, in these cases, where

1. the claimant notifies that their condition has worsened **and**
2. medical advice is that
 - 2.1. there is a loss of faculty or an industrial disease is diagnosed **and**
 - 2.2. the change of circumstances occurred **after** the period of the assessment has ended

the DM should give a fresh assessment decision (note, however, that previous determinations on diagnosis and date of onset may still be binding and therefore affect the start date of any new assessment - see DMG 01190) and treat the notification as a new claim and give a decision on it.

Note: No supersession is required.

04411 However, in IA cases where a no loss of faculty decision was made before 5.7.99, that decision remains in operation indefinitely. Additionally, in accident cases where an assessment decision covering a finite period was given before 5.7.99, that decision is treated as incorporating a decision that there is no loss of faculty from the day after the end of that period onwards indefinitely¹. In those cases, where a claimant notifies that their condition has worsened, the guidance in DMG 04414 - 04416 applies.

1 SSA Act 92, s 47(5) & (6) (as then in force); R(I) 5/02

Worsening during an assessment period

04412 If a claimant notifies that their condition has worsened and medical advice is that the change occurred during the period of an assessment, the DM should treat the notification as both

1. an application for supersession of the assessment decision on the grounds of a relevant change of circumstances **and**
2. **either**
 - 2.1 an application for supersession of the decision awarding benefit, if it is in payment **or**
 - 2.2 a new claim, if there is no current award of benefit. This is necessary in order to give the claimant full appeal rights.

- 04413 Two outcome decisions must therefore be made
1. a decision superseding or not superseding the assessment decision **and**
 2. **either**
 - 2.1 a decision superseding or not superseding the decision awarding benefit, if it is in payment **or**
 - 2.2 a decision awarding or disallowing benefit on the new claim (see DMG 04417 - 04419).

Worsening in accident cases - no loss of faculty decision made before 5.7.99

- 04414 Prior to 5.7.99, when it was found that an accident had not resulted in a loss of faculty, two separate decisions were made
1. a decision that there was no loss of faculty **and**
 2. a decision disallowing the benefit claim.
- 04415 Additionally, in accident cases where an assessment decision covering a finite period was given before 5.7.99, that decision is treated as incorporating a decision that there is no loss of faculty from the day after the end of that period onwards indefinitely.
- 04416 In cases where a no loss of faculty decision was given prior to 5.7.99 or where a no loss of faculty decision is treated as having been given in the circumstances in DMG 04415, if the claimant makes a further claim for the same accident, the claim must be treated as
1. an application for supersession of the no loss of faculty decision on the grounds of a relevant change of circumstances **and**
 2. a new claim for benefit.

Example

Following a claim for an IA, decisions were made in 1998 that there was no loss of faculty and that the claim was disallowed. The claimant makes a further claim for the same accident on 22.1.07. The DM treats it as an application for supersession of the no loss of faculty decision and as a new claim. Medical advice is that the claimant has been 15% disabled as a result of the accident since 22.1.06.

The DM supersedes the no loss of faculty decision on the grounds that there has been a relevant change of circumstances and gives an assessment decision that the claimant is 15% disabled from 22.1.06 to 11.6.08. The effective date of the supersession is 22.1.07 the date of the application, and benefit is awarded from 22.1.07.

If the DM had accepted that special circumstances prevented the claimant from applying for supersession earlier, they could have superseded the no loss of faculty decision with effect from 22.1.06 and benefit could have been awarded from 22.10.06, three months before the date of claim.

Claimant's condition has deteriorated

- 04417 If medical advice is that the claimant's condition has deteriorated during the period of an assessment (but see DMG 04414 - 04416 in accident cases), the DM should
1. supersede the existing assessment on the grounds of a relevant change of circumstances (see DMG 04200 for guidance on the effective date of supersession) **and**
 2. **either**
 - 2.1 if an award of benefit was in payment at the effective date, give a decision superseding or not superseding (if the new assessment does not alter it) the award **or**
 - 2.2 if there is no award of benefit in payment, treat the application as a new claim and decide it.

Example

The claimant has an assessment of 6% for life in respect of an IA and no award of benefit. He notifies on 15.12.06 that his condition has worsened and this is accepted as an application for supersession of the assessment and a new claim for benefit. Medical advice is that the claimant has been 15% disabled due to the accident since 10.6.06. The DM supersedes the previous assessment decision on the grounds that there has been a relevant change of circumstances and gives a new assessment of 15% from 10.6.06. The DM does not accept that special circumstances prevented the claimant from applying for supersession earlier, and makes the new assessment effective from 15.12.06, the date of application. Benefit is awarded from 15.12.06.

If the DM had accepted that special circumstances prevented the claimant from applying for supersession of the assessment earlier, they could have superseded it with effect from 10.6.06 and benefit could have been awarded from 15.9.06, three months before the date of claim.

Claimant's condition is unchanged

- 04418 If medical advice is that the claimant's condition remains the same during the period of an assessment (but see DMG 04414 - 04416 in accident cases), the DM should
1. make a decision not to supersede the assessment decision **and**
 2. **either**

- 2.1 if there is an award of benefit in payment, give a decision not to supersede the awarding decision **or**
- 2.2 if there is no award of benefit in payment, treat the application as a new claim and disallow it.

Example

The claimant has an assessment of 6% for life in respect of an IA and notifies on 15.12.06 that his condition has worsened. This is accepted as an application for supersession of the assessment and a new claim for benefit. Medical advice is that there has been no change in the claimant's condition. The DM gives a decision not to supersede the assessment decision and disallows the claim.

Claimant's condition has improved

04419 If medical advice is that the claimant's condition has improved during the period of an assessment (but see DMG 04414 - 04416 in accident cases), and DM is satisfied that there had been a relevant change of circumstances and not merely a new medical opinion, they should

1. supersede the assessment on the grounds of a relevant change of circumstances (see DMG 04200 for guidance on the effective date of supersession) **and**
2. **either**
 - 2.1 if there is an award of benefit in payment, supersede it from the effective date of the new assessment or give a decision not to supersede it if it is unaffected by the new assessment **or**
 - 2.2 if there is no award of benefit in payment, the application should be treated as a new claim and disallowed.

Diagnosis or loss of faculty in doubt

04420 In exceptional cases, evidence may come to light that casts doubt on the assessment decision, for example a Compensation Recovery Unit or FtT decision. Further medical evidence may show that

1. there was no loss of faculty **or**
2. there was a pre-existing condition **or**
3. the diagnosis of the disease was incorrect.

If that is the case, and the DM is satisfied that this is not merely a new medical opinion (see DMG 04108), they should consider whether there are any grounds for revising or superseding the assessment decision and any award of benefit.

Example

The claimant has an assessment of 16% from 31.1.90 for life for an injury to his knee following an IA, and has an award of benefit at the rounded rate of 20%. A FtT decision was received, which held that there was no continuing loss of faculty. The consultant for the compensator reported that the GP and hospital notes showed that the claimant injured the same knee in a biking accident two years before the date of the IA. He further reported that the effects of the IA would have healed after three years. The case was referred for further medical advice and the medical adviser was of the opinion that had the claimant disclosed details of his previous injury an offset of 14% would have been made. He advised that a 2% assessment for life was appropriate.

The DM revises the original assessment on the grounds that it was made in ignorance of a material fact, was more advantageous than it would otherwise have been, and that the claimant could reasonably have been expected to know the fact and that it was relevant to the assessment. The revised decision gives an assessment of 2% from 31.1.90 for life. They also revise and disallow the benefit award, and refer the case to Debt Management.

04421 - 04424

Posthumous claims

04425 Where a claim is made after death, the normal rules on appointment after death apply¹ (see DMG 02450). If the conditions are satisfied, the claim is treated as made on the date of death and in certain circumstances benefit can be awarded for the three month period prior to death.

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

Superseding current assessments and awards

04426 If there is no current assessment for the same or a different IA or PD, the DM should make an assessment decision and decide the claim for benefit in the normal way. But if there is a current assessment of disablement for the same IA or prescribed disease, the DM should treat it as

1. an application for supersession of the assessment decision **and**
2. **either**
 - 2.1 an application for supersession of the decision awarding benefit, if benefit is in payment **or**
 - 2.2 a new claim, if there is no award of benefit.

04427 If, following medical advice, it is appropriate to supersede the assessment decision on the grounds of a relevant change of circumstances, the effective date of supersession will be the date of death unless there are grounds for accepting a late application for supersession (see DMG 04204). This means that in cases where there is a current assessment of disablement for the same accident or disease, the claim can only result in payment of benefit if the DM accepts that special circumstances prevented the claimant or their appointee from applying for supersession earlier.

Example

The claimant's appointee makes a claim for PD D1 on 1.3.07 following the claimant's death on 1.12.06 and it is treated as made on the day the claimant died. The claimant had an assessment of 1% for life from January 2005 for the same disease and benefit was in payment at 10%. Medical advice is that there was a worsening of the claimant's condition and he was 16% disabled from 1.5.06. The DM accepts the claim as an application for supersession of the existing assessment of disablement and an application for supersession of the decision awarding benefit. If the DM accepts that special circumstances prevented the claimant and their appointee from applying for supersession earlier, they can supersede the assessment and the decision awarding benefit and pay benefit at 20% with effect from 1.5.06. However, if the DM does not accept that special circumstances prevented the claimant from applying for supersession earlier, there will be no grounds for superseding either decision before the date of application and no additional benefit can be awarded.

04428 If there is an existing assessment for a different IA or disease, the DM should give an assessment decision for the new accident or disease and consider whether aggregation is appropriate before deciding the outcome of the benefit claim.

Example

The claimant had an assessment of 16% for life from December 2002 in respect of an IA and benefit was awarded at the rounded rate of 20%. He died on 7.12.06 and a post mortem showed that one of the conditions he had been suffering from was nasal carcinoma. His appointee made a posthumous claim for PD D6 on 6.2.07. Following medical advice the DM decides that he was 10% disabled due to the disease from 3.6.05. As the second assessment is less than 14% it cannot produce a separate award of benefit. As the two assessments are concurrent the DM considers aggregation. Aggregation would produce a rounded award of 30% but because the change took place more than 13 months before 6.2.07, the supersession effective date rules means that the existing rounded award of 20% could only be superseded from the date of application. The new claim is disallowed.

04429

Special rules - Incapacity Benefit and Severe Disablement Allowance

IB and SDA decisions - medical examination

- 04430 A decision can be superseded¹ where
1. it is an IB, credits or SDA decision where an incapacity determination has been made (whether before or after the IB, credits or SDA decision) **and**
 2. since the original decision was made the Secretary of State has received medical evidence following an examination conducted by a HCP approved by the Secretary of State² **and**
 3. after considering all the medical evidence, including the report from the HCP, the DM determines that the claimant is not incapable of work as at the effective date of the decision.

1 SS CS (D&A) Regs, reg 6(2)(g); 2 SS (IW) (Gen) Regs

- 04431 Supersession under DMG 04430 **only** applies after an incapacity determination has been made (see DMG 04232 for the definition of incapacity determination). This provision does not apply to the situation, for example, where a person has been treated as incapable of work because he is submitting medical evidence and then the PCA is completed. In these cases the decision should be superseded on a relevant change of circumstances, the change being the PCA determination.

- 04432 The receipt of medical evidence as in DMG 04430 is itself a **ground** for supersession but it will only be appropriate to supersede where, after looking at all the medical evidence, the DM decides that the claimant is not incapable of work. The onus of proof (on the balance of probabilities) lies with the Secretary of State¹.

1 R(IB) 5/05

Effective date

- 04433 The effective date of a supersession made in accordance with DMG 04430 is the date the superseding decision is made¹.

1 SS Act 98, s 10(5)

04434 - 04439

Change in the rate of IB

- 04440 Where an award of IB is superseded and a higher rate is awarded because a claimant is entitled to the highest rate of the care component of DLA¹, the decision takes effect from the date on which he became entitled to the highest rate².

1 SS CB Act 92, s 30B(4); 2 SS CS (D&A) Regs, reg 7(10)

Advance PCA testing

04441 Where

1. a person is subject to the OOT¹ **and**
2. is subject to and fails the PCA² before the end of the OOT period

the decision to award benefit or entitlement to credits should be superseded on the grounds of an anticipated relevant change of circumstances³. The effective date is the day after the OOT no longer applies to the person⁴ i.e. the 197th day.

*1 SS CB Act 92, s 171B(2); 2 SS (IW) Gen Regs, reg 24; 3 SS CS (D&A) Regs, reg 6(2)(a)(ii);
4 reg 7(31) & (32)*

04442 - 04449

Medical evidence expires

04450 A person may be treated as capable of work¹ if

1. they have supplied medical evidence in accordance with legislation² **and**
2. the period covered by that medical evidence has ended **and**
3. the Secretary of State has requested further medical evidence **and**
4. they have not, within six weeks
 - 4.1 supplied further medical evidence **or**
 - 4.2 otherwise made contact with the Secretary of State to indicate that they wish to have the question of IfW determined.

1 SS (IW) (Gen) Regs, reg 16A; 2 reg 28(2)(a)

04451 The six weeks period begins on

1. the date of the Secretary of State's initial request for further medical evidence **or**
2. the day after the date on which the period covered by the medical evidence has ended

whichever is the later¹

1 reg 16A(d)

04452 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact DWP, the DM should treat the claimant as capable of work from the day after the medical evidence expired. The decision is effective from the date of change¹, which is the date from which the claimant is treated as capable of work.

1 SS CS (D&A) Regs, reg 7(2)(c)(v)

Example

Sophia's current medical certificate provides her with evidence of incapacity up to and including 19.5.10. A reminder that further medical evidence will be required was issued on 12.5.10. The six weeks period ends on 30.6.10 and Sophia has not contacted DWP by then. She is treated as capable of work from 20.5.10, the day after medical evidence expires.

04453 In cases where medical evidence expires and the claimant asks for the question of IfW to be determined, the DM **must** apply the appropriate test of incapacity.

04454

Own occupation test

04455 Where the OOT is the test of incapacity, the receipt of medical evidence is the condition of entitlement. Where medical evidence expires, and it is not appropriate to apply the PCA, the DM should supersede the awarding decision on the grounds that there has been a relevant change of circumstances¹. The supersession is effective from the day after the last day covered by medical evidence².

1 SS CS (D&A) Regs, reg 6(2)(a); 2 reg 7(2)(c)(v)

Personal capability assessment

04456 Where the claimant asks for IfW to be determined, and the OOT is not the relevant test, the DM will have to apply the PCA. This applies even if the claimant is treated as capable of work because they

1. fail to return the questionnaire **or**
2. fail to attend for or submit to a medical examination.

In such cases a determination of incapacity must be made to cover all periods where the claimant is not treated as incapable or capable of work.

04457 The PCA may need to be applied on the balance of probabilities using all the available evidence, including evidence from the previous claim where appropriate. Where there is little or no evidence, the DM may draw adverse inferences, and award no points when scoring the PCA. Advice should be sought from Medical Services in cases of doubt, for example where the questionnaire is returned showing high scores. See DMG Chapter 01 for guidance on weighing evidence, and Chapter 13 for guidance on applying the test of IfW.

Example 1

The claimant is treated as incapable of work while submitting medical certificates. The test of incapacity is the PCA. On 10.7.07 medical evidence expires, and despite reminders no further medical evidence is received. The questionnaire is issued on 23.7.07, but is not returned. A reminder is issued on 21.8.07. The claimant contacts

DWP asking for IfW to be determined. On 19.9.07 the DM determines that the claimant is treated as capable of work from 5.9.07. They also carry out the PCA, and make a determination that for the period from 11.7.07 to 4.9.07 the claimant scores 0 points for the purposes of the PCA and is not incapable of work. The decision awarding IB or credits is superseded to terminate entitlement from 11.7.07.

Effective date

04458 In all PCA cases where medical evidence ceases the effective date of the supersession to end entitlement to IB or NI credits is the date from which the claimant is first found not to be incapable of work¹. This is because the determination that the claimant is not incapable of work following application of the PCA showed that there had been a change of circumstances when the claimant was no longer treated as incapable of work².

1 SS CS (D&A) Regs, reg 7(2)(c)(v); 2 SS (IW) (Gen) Regs, reg 28

Medical evidence received after PCA carried out

04459 Where

1. a person was treated as capable as in DMG 04454 **and**
2. the DM applied the PCA for periods when the person was not treated as incapable or capable of work **and**
3. the DM accepts that good cause is shown for the failure to return the questionnaire or attend the medical examination

the DM may revise the supersession decision which ended entitlement so as to remove it, subject to the normal rules about time limits for revision - see DMG Chapter 03. This has the effect of removing all the determinations of incapacity, so that the claimant can be treated as incapable of work while submitting medical evidence, and is again subject to the PCA.

04460 If medical evidence is not received but good cause is shown for the failure, the supersession decision may be revised. However, if the person cannot be treated as incapable of work, the suspension provisions should be considered and the PCA applied as a matter of urgency.

04461 Where medical evidence is received for the period covered by the PCA, and good cause is not shown for the failure, the supersession decision cannot be revised. This is because medical evidence is only relevant to the question of whether the person can be treated as incapable of work, and is not relevant to the determinations which had the effect of ending entitlement.

04462 - 04499

Special rules common to Income Support and Jobseeker's Allowance

General effective date rule

04500 Unless otherwise stated in this Chapter, the effective date for any supersession decision in IS and JSA follows the general rule for changes of circumstances¹. See DMG 04551 and 04580.

1 SS CS (D&A) Regs, Sch 3A, paras 12 & 13

Advantageous change notified outside the time limits

04501 Where the result of the supersession would be advantageous to the IS or JSA claimant and it is reported outside the time limits set out in paragraphs DMG 04201 to DMG 04210 the effective date will be

1. where IS or JSA is paid in arrears, the first day of the benefit week in which the notification was made¹
2. where IS or JSA is paid in advance² and
 - 2.1 the date of notification is the first day of the benefit week, that date **or**
 - 2.2 the date of notification is a day other than the first day of a benefit week, the first day of the benefit week following that in which the notification is made.

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

Note: See DMG para 04696 for guidance on ESA.

04502 - 04505

Changes not requiring supersession

Repayment of a student loan

04506 The repayment of a student loan is not a relevant change of circumstances¹. This means that there are no grounds for supersession and the award of ESA(IR), IS or JSA(IB) remains unchanged

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

Alteration of component rates

04507 Uprating of IS and JSA 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 a DM¹. The exceptions are set out below.

1 SSA Act 92, s 159 & 159A

04508 A supersession will be needed on uprating¹ in the case of IS where the award includes

1. an applicable amount under specific provisions² relating to transitional additions **or**
2. a protected sum determined in accordance with specific regulations³ **or**
3. any transitional addition, personal expenses addition or special transitional addition under specific regulations⁴.

Where these circumstances apply the supersession can be made solely to give effect to an uprating order⁵.

*1 SS A Act 92, reg 14(1); 2 IS (Gen) Regs, reg 17(2) - (7); 3 Sch 3A or 3B; 4 IS (Trans) Regs, part II;
5 SS CS (D&A) Regs, reg 14(2)*

04509 A supersession will be needed on uprating in the case of JSA(IB) where¹ the applicable amount includes a transitional supplement made in accordance with a specific regulation². Where this applies the supersession can be made for the sole purpose of giving effect to an uprating order³.

1 SS CS (D&A) Regs, reg 14(3); 2 JSA Regs, reg 87; 3 SS CS (D&A) Regs, reg 14(4)

Age changes

04510 Age changes in ESA, IS or JSA do not need a supersession decision where

1. an award of ESA, IS or JSA is in payment **and**
2. a component rate of ESA, IS and JSA becomes payable, or payable at a different rate, because the claimant or a member of the family reaches a particular age even though some other component may cease for the same reason **and**
3. as a result of the change the claimant becomes entitled to a higher rate of ESA, IS or JSA.

In these circumstances the increased amount of ESA, IS or JSA payable is changed automatically without the need for any further decision¹.

Note: Component means an amount listed in regs which refer to personal allowances and premiums.

1 SS A Act 92, s 160(1) & (2); s 160A(1) & (2); s 160B(1) & (2)

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)

Changes in capital outstanding on mortgages and loans

04519 The guidance in DMG 04520 to 04522 should be read in conjunction with the guidance in DMG Chapter 23.

Increases in outstanding balance

04520 An increase in the balance of eligible capital outstanding will only occur in the limited circumstances described in DMG 23563. It is a change of circumstances which should be dealt with by supersession in the normal way. The result will normally be advantageous to the claimant.

Example

Pierre is in receipt of IS. He is paid weekly in arrears with a Wednesday benefit week ending date. His housing costs are first awarded from 7.2.02. On 3.7.02 Pierre applies for a supersession on the grounds that the capital outstanding on his mortgage has increased with effect from 1.7.02. The DM supersedes and the effective date of the supersession is 27.6.02 (the first day of the benefit week in which the change occurs).

Decreases in outstanding balance

04521 Special rules apply to the effective date of a supersession on the grounds of a decrease in capital outstanding. The effective date will be¹

1. the first anniversary of the date housing costs were first met **or**
2. where the reduction in eligible capital outstanding occurs after the first anniversary date, the next anniversary date after the reduction occurs.

Note: Where appropriate the effective date will be subject to the special rule in DMG 04551 in the case of IS and DMG 04580 in the case of JSA i.e. it will be the first day of a benefit week.

1 SS CS (D&A) Regs, reg 7(14) and (18)

Example 1

Jacob is in receipt of IS. He is paid weekly in arrears with a Tuesday benefit week ending date. His housing costs are first awarded from 3.4.13. Following a review of his housing costs in April 2014 the DM supersedes with an effective date of 2.4.14 – the first day of the benefit week in which the first anniversary date falls.

Example 2

Paula is in receipt of JSA. She is paid fortnightly in arrears with a Thursday benefit week ending date. Her housing costs were first met on 18.1.13. The DM undertakes a review of Paula's housing costs but does not do so until July 2014. Irrespective of this the effective date of the supersession is 17.1.14 – the first day of the benefit week in which the anniversary date falls.

04522 Where DMG 04251 applies a claimant has been continuously in receipt of IS or JSA or one of those benefits followed by the other and the claimant or his partner continues to receive IS or JSA, the anniversary referred to in DMG 04521 is the anniversary of the earliest date on which housing costs were first met in benefit (whether it be IS or JSA)¹.

1 SS CS (D&A) Regs, reg 7(23)

Special rules for claimants with JSA transitional protection

04523 Special rules apply to the effective date of a supersession where the following circumstances apply¹

1. the claimant was paid IS for 6.10.96 **and**
2. the claimant's IS applicable amount includes an amount for housing costs determined in accordance with a specific regulation² **and**
3. that claimant is treated as having been awarded JSA under a specific transitional provision³ (see DMG 37701)
4. a supersession decision is made because of a reduction in the amount of eligible capital outstanding on a housing costs loan⁴.

1 reg 7(22); 2 IS (Gen) Regs, Sch 3; 3 JSA (TP) Regs, reg 7; 4 IS (Gen) Regs, Sch 3, paras 15 or 16

04524 Where the conditions in DMG 04523 are satisfied the effective date of the supersession is¹ the next anniversary of the date that housing costs were first met which occurs after the reduction in eligible capital outstanding.

Note: Where appropriate this is subject to the general rule in DMG 04580 i.e. the effective date is to be the first day of a benefit week.

1 SS CS (D&A) Regs, reg 7(22)

Example

John claimed IS on 1.11.95. On 27.12.95 housing costs are first met in John's applicable amount. IS was paid for 6.10.96. On 9.10.96 John was treated as having been awarded JSA(IB) as a person who had previously been claiming IS as an unemployed person.

On 12.6.00 the DM supersedes John's JSA(IB) because the amount of his eligible capital outstanding has reduced by £400. The supersession is effective from 27.12.00 (the first day of the benefit week in which the next anniversary of the date housing costs were first met falls - in this case the 5th anniversary).

04525 - 04549

Special rules relating to Income Support

Introduction

04550 The following special rules apply to the effective date of supersessions affecting IS **except**¹ where a change of circumstances is notified outside the time limits set out in DMG 04201 - 04210.

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

IS - change of circumstances - the general rule

04551 When a supersession decision is made because of a change of circumstances in an IS case, the decision takes effect

1. where IS is paid in arrears, from the first day of the benefit week in which the change occurs or is expected to occur¹
2. where IS is paid in advance, from the first day of the benefit week, if it coincides with the date of change. If it does not, from the first day of the next benefit week².

1 SS CS (D&A) Regs, Sch 3A, para 1(a); 2 para 1(b)

Example 1

IS paid in arrears on Thursday. Child born on 18.6.02. Supersession takes effect from 14.6.02.

Example 2

IS paid in advance on Monday. There is entitlement to HPP from 11.10.02. Supersession decision takes effect from 14.10.02.

04552 - 04554

Periods of temporary residence in connection with training

04555 Any period of residence in temporary accommodation under arrangements for training made under specific legislation¹ which is expected to last for 7 days or less is **not** to be regarded as a change of circumstances².

1 The Employment and Training Act 73, s 2 or The Enterprise and New Towns (Scotland) Act 1990, s 2;

2 SS CS (D&A) Regs, Sch 3A, para 1

Exceptions to the general rule - IS

04556 The supersession takes effect from the date when the change occurs or is expected to occur¹ in the following circumstances

1. where IS is paid in arrears and entitlement ends for a reason other than income (for example if the claimant starts remunerative work or capital increases)²
2. where IS is superseded in order to bring Preserved Rights to an end, the effective date will be 8.4.02³, the date the relevant legislation takes effect⁴
3. where a child or young person in the care of a LA or detained in custody, lives with the claimant for only part of the week⁵
4. where one of the following, or a member of their family, is an in-patient and ceases to be an in-patient for a period of less than a week⁶
 - 4.1 a single claimant
 - 4.2 a lone parent
 - 4.3 a member of a couple
 - 4.4 a member of a polygamous marriage
 - 4.5 a child or young person who is a member of a family, a person in a nursing home or in residential care
5. where⁷
 - 5.1 a person is detained in custody pending trial or sentence becomes a prisoner **or**
 - 5.2 a prisoner cease to be a prisoner
6. where a person involved in a trade dispute becomes incapable of work or enters the maternity period⁸
7. where⁹, during the currency of the IS claim, a claimant
 - 7.1 makes a claim for a social security benefit and the result is that the IS benefit week changes **or**
 - 7.2 makes an advance claim for a social security benefit and the result is that the IS benefit week is expected to change
8. where the claimant is precluded from entitlement to the DP or SDP solely because PIP is not payable for periods in hospital and PIP is paid at a daily rate for a period of less than a week¹⁰.

Note: See DMG 04696 for guidance on ESA.

1 SS CS (D&A) Regs, Sch 3A, para 3; 2 para 3(a); 3 para 3(aa); 4 SS Amndt (RC & NH) Regs 2002; 5 SS CS (D&A) Regs, Sch 3A, para 3(b); 6 para 3(d); 7 para 3(e); 8 para 3(f); 9 para 3(g); 10 para 3(i)

Change ceases to apply

04557 Where

1. a supersession decision (“the first decision”) was made on the ground of a change of circumstances as in DMG 04556 **3.** - DMG 04556 **7. and**
2. the first decision is superseded by a subsequent decision (“the second decision”) because the change which led to the first decision ceased to apply

the effective date of the second decision shall be¹ the date on which the circumstances ceased to apply.

Note: See DMG 04701 for guidance on ESA.

1 SS CS (D&A) Regs, Sch 3A, para 6

IS and residential care breaks

04558 The IS effective date rule is amended to allow payment of premiums where the care component of DLA or the daily living component of PIP is paid at a daily rate for periods of less than a week outside “certain accommodation” such as a care home, independent hospital or special residential school. Where

1. the claimant is precluded from entitlement to the DP, EDP or SDP¹ **solely** because the care component of DLA or the daily living component of PIP is not payable for periods in certain accommodation² **and**
2. DLA or PIP is paid at a daily rate for a period of less than a week

the IS decision is superseded effective from the date of the change³.

Note: See DMG Chapter 61 for guidance on the meaning of “certain accommodation”.

Example

The claimant normally lives in a care home, and receives IS. He is entitled to the highest rate care component of DLA, which is not payable while he is in the care home. He regularly spends weekends with his mother (who does not get CA for caring for him), and DLA is paid for those days. The IS awarding decision can be superseded to award the SDP for the days when DLA is paid.

*1 IS (Gen) Regs, Sch 2, paras 11-13A; 2 SS CB Act, s 72(8); SS (DLA) Regs, reg 9; SS (PIP) regs, reg 29;
3 SS CS (D&A) Regs, Sch 3A, para 3(h)*

04559

Supersession resulting from payment of income

04560 Where a supersession decision is made as a result of income being treated as paid on a particular day under specific regulations¹, the effective date will be the day on which the income is treated as paid².

1 IS (Gen) Regs, regs 31(1)(b), (2) or (3) or reg 39C(3); 2 SS CS (D&A) Regs, Sch 3A, para 4

Note: See DMG para 04701 for guidance on ESA.

Reduction in IS

04561 Except where DMG 04556 7. (change of payday) or DMG 04560 (payment of income) apply where

1. IS is superseded on the grounds of a relevant change of circumstances and the result is a reduction in the amount **and**
2. the Secretary of State certifies that it is impracticable for the superseding decision to take effect from the day set by reference to DMG 04551 - 04560

the effective date of the superseding decision shall be as set out in DMG 04562¹.

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

04562 The supersession shall take effect¹

1. where the change has occurred, from the first day of the benefit week following that in which the supersession decision is made
2. where the change is expected to occur, from the first day of the benefit following that in which the change is expected to occur.

Note: See DMG 04701 for guidance on ESA.

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

04563 - 04569

Incomplete evidence - housing costs

04570 Where, in order to make a supersession decision,

1. a determination has to be made as to the amount of housing costs to be included in the claimant's applicable amount **and**
2. it appears to the DM that not all the evidence or information needed to make that determination is in the possession of the Secretary of State

the DM should make the supersession decision based on a determination that housing costs are those that can be determined immediately¹.

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

Incomplete evidence - other issues

04571 Where, for the purposes of a supersession decision

1. a determination falls to be made
 - 1.1 whether in relation to a person the applicable amount is to be reduced or disregarded by virtue of the law relating to persons affected by trade disputes¹ **or**
 - 1.2 whether a person is to be treated as receiving relevant education in accordance with a specific regulation² **or**
 - 1.3 whether the applicable amount should include a SDP³ **and**
2. it appears to the DM that not all of the evidence or information needed for the determination is in the possession of the Secretary of State.

then the DM will make the determination on the assumption that the missing evidence or information is adverse to the claimant⁴.

*1 SS CB Act 92, s 126(3); 2 IS (Gen) Regs, reg 12; 3 regs 17(1)(d) or 18(1)(e) & Sch 2, para 13;
4 SS CS (D&A) Regs, reg 13(2)*

04572 - 04579

Special rules relating to Jobseeker's Allowance

Change of circumstances - the general rule

04580 Where a decision in respect of a claim for JSA is superseded on the grounds of a change of circumstances the effective date will be¹ the first day of the benefit week in which the change occurs or is expected to occur.

1 SS CS (D&A) Regs, Sch 3A, para 7

Exceptions to the general rule

04581 The supersession takes effect from the date the change occurs or is expected to occur in the following circumstances

1. where JSA is superseded in order to bring preserved rights to an end¹, the effective date will be 8.4.02, the date the relevant legislation² takes effect
2. where entitlement ends or is expected to end for a reason other than a change in income or the applicable amount (for example if the claimant starts remunerative work)³
3. where a child or young person in the care of a LA or detained in custody lives with the claimant for only part of the benefit week⁴
4. where the partner of a claimant, or a member of the claimant's family ceases to be a hospital in-patient for a period of less than a week⁵
5. where a joint claim couple ceases to be a couple⁶.

1 Sch 3A, para. 8(aa); 2 SS Amdt (Residential Care and Nursing Homes) Regs 2002; 3 SS CS (D&A) Regs, Sch 3A, para. 8(a); 4 para. 8(b); 5 para. 8(d); 6 para. 8(e)

Change ceases to apply

04582 Where a supersession decision is made in any of the circumstances listed in DMG 04581 and that change ceases to apply, the second supersession decision takes effect from the date on which the circumstances cease to apply¹.

1 Sch 3A, para 9

Payment of income

04583 Where income is treated as paid on a particular day, the supersession decision takes effect from that day¹.

1 Sch 3A, para 10

Reduction in Jobseeker's Allowance

04584 Where the effect of a supersession is to reduce the award of JSA and the Secretary of State decides that it is impracticable for the supersession to take effect from the date set out in DMG 04580 - 04583, the supersession will take effect from the first day of the benefit week following the benefit week in which the change occurred¹.

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

Determinations on incomplete evidence

04585 Where, for the purposes of deciding a claim or making a supersession decision a determination has to be made as to whether

1. the applicable amount should be reduced in accordance with DMG 32606 (partner involved in a trade dispute)¹
2. a person is to be treated as receiving relevant education under specific regulations (see DMG 20556 - 20633²) **and**
3. it appears to the DM that he is not in possession of all the evidence or information needed to make that determination,

the determination shall be made on the assumption that the missing evidence or information is adverse to the claimant³.

1 JS Act 95, s 15; 2 JSA Regs, reg 54(2)-(4); 3 SS CS (D&A) Regs, reg 15

Young people - sanctions

04586 Where

1. JSA is paid to a young person because a severe hardship direction has been issued **and**
2. a decision has been made that the amount payable is to be reduced because a sanction applies **and**
3. that decision is to be superseded because the Secretary of State has issued a certificate saying that there was good cause for the failure in question

the effective date of the supersession decision will be the same as the date the decision to reduce the amount payable took effect¹.

1 reg 7(24)

Sanctions

04587 Where a decision has been made that JSA is payable and subsequently it ceases to be payable because a sanction under the Jobseeker's Act¹ has been imposed that decision may be superseded². From 20.5.11 this includes where JSA ceases to be payable or is reduced due to a sanction being imposed for a failure to participate in the ESE scheme³.

*1 Jobseeker's Act 95, s 17(A) & 19(1); JSA (MWA) Regs 2011, reg 18b; JSA Regs, reg 27A;
2 SS CS (D&A) Regs, reg 6(2)(f) & 6(2)(fa); 3 JSA (ESE) Scheme Regs, reg 17*

04588 The effective date of the decision superseding the award is

1. where a sanction is imposed as in DMG 34626 or 34721, the first day of the week following the date on which it is determined that a sanction is to be applied¹ **or**
2. where a sanction is imposed as in DMG 34060, 34220, 34388 or 34591, the first day of the period of the sanction².
3. where a sanction is imposed³ as in DMG 20909
 - 3.1 where JSA is paid otherwise than fortnightly in arrears, on the day following the end of the last week in respect of which JSA was paid **or**
 - 3.2 in any other case, on the first day of the week following the date on which JSA is determined not to be payable

1 SS CS (D&A) Regs, reg 7(8)(a); 2 reg 7(8)(b); 3 reg 7(8)(za)

04589 The effective date of supersession due to failure to participate in the ESE scheme is¹

1. where JSA is paid otherwise than fortnightly in arrears on the day following the end of the last benefit week in respect of which JSA was paid²
2. in any other case, on the first day of the benefit week following the date on which the claimant's JSA is determined not to be payable or to be payable at a lower rate³.

1 SS CS (D&A) Regs, reg 7(8ZB); 2 JSA (ESE Scheme) Regs 2011, reg 8(9)(a); 3 reg 8(9)(b)

Supersession of JSA (Cont) awards

04590 Where

1. an award of JSA(Cont) is about to or has exhausted **and**
2. a written application for supersession (form JSA3) is received

the supersession provisions should be considered, irrespective of when the application was made.

04591 A new claim is not required where the conditions of entitlement to JSA(IB) are satisfied. The grounds for supersession depend on when entitlement to JSA(IB) begins. The effective date of the supersession will also depend on

1. when the application is made **and**
2. whether the awarding decision is superseded on
 - 2.1 ignorance of a material fact **or**
 - 2.2 a relevant change of circumstances.

04592 Where form JSA3 shows that there is no entitlement to JSA(IB) after the award of JSA(Cont) has exhausted, the DM should decide not to supersede the awarding decision.

Example 1

A jobseeker claims JSA on 18.1.99, and completes the contribution and income based sections of form JSA1. Both conditions are satisfied, but as the personal rate is the same as the applicable amount, he is awarded JSA(Cont) for 182 days. The award exhausts on 18.7.99. The jobseeker completes form JSA3 on 21.7.99, which shows no change in the information given on form JSA1. The DM supersedes the decision awarding JSA(Cont) on a relevant change of circumstances (the jobseeker is now entitled to JSA(IB)) to make an indefinite award. The decision is effective from 19.7.99, as the application was made within one month of the change.

Example 2

A jobseeker claims JSA on 18.1.99, and completes the contribution based section of form JSA1. He is awarded JSA(Cont) for 182 days. The award exhausts on 18.7.99. The jobseeker completes form JSA3 on 21.7.99, which shows that he has a partner who works P/T for less than 24 hours a week, and has done so since the date of claim. There are no special circumstances for a late dispute. The JSA award is superseded on ignorance of a material fact (that the jobseeker was entitled to JSA(IB) throughout). The decision takes effect from 21.7.99.

Example 3

A jobseeker applies for JSA on 18.1.99, and only completes the contribution based section of form JSA1. He is awarded JSA(Cont) for 182 days. Two weeks before exhaustion of the award on 18.7.99, he fills in form JSA3 which shows that he satisfies the conditions of entitlement to JSA(IB) (and has done since the date of the claim). The applicable amount is the same as the personal rate. Supersession on ignorance of a material fact is not appropriate, as the jobseeker would still have been awarded JSA(Cont) from the date of claim. The DM supersedes the awarding decision on an anticipated relevant change of circumstances to make an indefinite award, as in example 1. The decision is effective from 19.7.99.

Example 4

A jobseeker claims JSA on 11.1.99, and completes the contribution and income based sections of form JSA1. He is not entitled to JSA(IB), as his partner works more than 24 hours a week. He is awarded JSA(Cont) for 182 days. After the award expires on 11.7.99, he continues signing for credits. On 16.8.99 he is advised that he may have entitlement to JSA(IB), as his partner's hours reduced to 20 a week from 9.7.99. He completes form JSA3 at the interview. The DM supersedes the awarding decision on a relevant change of circumstances, as in example 1. The decision is effective from 16.8.99, as the change was not reported within one month, and there are no special circumstances for the late application.

04593 - 04599

Special rules - State Pension Credit

Information and Evidence

04600 Once a claimant is receiving SPC under an award, the normal duty to provide evidence and report changes set out in DMG 04150 to 04158 apply to that claimant¹. However an SPC claimant is not required to notify changes in his retirement provision in certain circumstances (see DMG 04603).

1 SS (C&P) Regs, reg 32

At the end of an assessed income period

04601 There is an additional requirement that applies to SPC claimants. At the end of an AIP, the claimant will be required to provide such information and evidence as the Secretary of State may require in order to determine¹

1. whether a further period should be specified as an AIP **and**
2. if such a period is to be specified, its length.

1 reg 32(6)

04602 The claimant is required to provide that information or evidence described in DMG 04601 within¹

1. one month of the date the Secretary of State notifies the claimant of the requirement **or**
2. such longer period as the Secretary of State considers reasonable

1 reg 32(6)(c)

Changes in retirement provision

04603 Subject to the requirement in DMG 04601, SPC claimants are not required to report changes in an element of their retirement provision (see DMG 83070 for a definition of retirement provision) during the following periods¹

1. the currency of an AIP set in their case
2. the period described in DMG 04602 **1. and**
3. the period described in DMG 04602 **2.**

1 reg 32(6)(b)

Rapid review

04604 Where the Secretary of State considers that the information already held is sufficient then the claimant does not have to provide information and evidence for a new AIP to be set¹. The claimant is notified of the new AIP automatically. The notification

includes a breakdown of the claimant's income and circumstances, and invites them to notify DWP if their retirement provision has changed. This change to information requirements only applies when the AIP has ended because it has expired.

1 SS (C&P) Regs, reg 32(6)(a)

04605 Cases where information is not required will be automatically selected according to specific criteria and decision notices will be computer generated. This process is known as rapid review.

04606 The criteria for rapid review are that

1. the claimant (and partner if appropriate) is aged 65 or over
2. any capital held is below the level at which deemed weekly income is calculated
3. any non state pension is a fixed amount
4. no other income is held.

04607 Where cases are automatically selected, the claimant is notified that a new AIP has been set on the basis of information already held. The notification includes details of the claimant's retirement provision. The claimant is invited to notify corrections to their retirement provision and/or any other changes since the last AIP was set.

04608 Where a case is selected for Rapid Review, but there is outstanding action, an AIP decision notice will not be generated until the action is cleared.

04609 Cases where an AIP is due to end and which

1. are not selected for Rapid Review **or**
2. are clerically maintained

are subject to normal information requirements.

04610 Where a new AIP has been set following Rapid Review and the claimant notifies that the information already held is incorrect the DM should consider whether revision or supersession of the SPC award, and the new AIP, is required.

Example 1

The claimant's AIP is due to end on 14.12.08. On 3.11.08 notification that a new AIP of 5 years is set from 15.12.08 is generated. The claimant phones on 20.1.09 to say that he had inherited £15,000 in 2006, bringing his savings to £15,300. As the change occurred in the period of the previous AIP, the DM determines that the change does not affect the amount of SPC during that period. The DM then determines the claimant's retirement provision from 15.12.08, including deemed

weekly income from capital, and supersedes the decision awarding SPC from the first day of the benefit week which includes 15.12.08.

Example 2

The claimant's AIP is due to end on 14.12.08. On 3.11.08 notification that a new AIP of 5 years is set from 15.12.08 is generated. The claimant writes in on 13.11.08 to say that his non-state pension had reduced from 14.10.08. The DM determines retirement provision, and supersedes the decision awarding SPC to increase the amount from the first day of the benefit week which includes 14.10.08. The change does not affect the previous AIP, nor the date of the new AIP.

Example 3

The claimant's AIP is due to end on 14.12.08. On 3.11.08 notification that a new AIP of 5 years is set from 15.12.08 is generated. The claimant's son notifies that the claimant was admitted permanently to a care home on 5.11.08. His former home is up for sale. The DM supersedes the decision setting the original AIP and ends it from 5.11.08. The DM then undertakes a check of the claimant's circumstances, and revises the new AIP decision on the grounds that a further AIP should not be set. The claimant's retirement provision is now unstable because his house has not been sold.

Supersession - assessed income periods

- 04611 A decision to set an AIP is a decision in its own right¹ and is final unless and until it is revised or superseded².

1 SS Act 98, s 8(1)(c); 2 s 17(1)

- 04612 The SPC Act and regulations¹ require an AIP to end in the circumstances set out in DMG 83050. Regulations² provide that this will be the only relevant change of circumstances giving grounds for supersession of a decision to set an AIP.

1 SPC Act 02, s 9(4), SPC Regs, reg 12; 2 SS CS (D&A) Regs, reg 6(8)

- 04613 Where an AIP is superseded on the grounds set out in DMG 04612, the effective date is the day immediately following the day on which the last AIP ended¹.

1 Sch 3B, para 1(a)

04614

Supersession at the end of the assessed income period

04615 As an AIP comes to the end of its “natural” life, (in addition to the information or evidence required under DMG 04601) SPC claimants will be required to provide the information and evidence needed to bring the **award** of SPC up to date¹. That will include information about their retirement provision. The Secretary of State will notify the claimant of the period of time within which that information or evidence must be provided¹.

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

04616 The regulations¹ specifically provide for the supersession needed as a result of this periodic updating of SPC.

1 SS CS (D&A) Regs, reg 6(2)(l)

Information provided within time limits

04617 Where the claimant provides all the information and evidence needed to update the award of SPC within the time allowed by the Secretary of State under DMG 04615, the effective date of the supersession will be either¹

1. the day immediately after the last day of the AIP if that is the first day of the claimant's benefit week **or**
2. the first day of the claimant's benefit week following the last day of the AIP

Note: Where a fresh AIP is set it will take effect from the same date as the supersession².

1 reg 7(29); 2 SPC Act 02, s 9(1)

Information provided late

04618 Where the claimant provides the information required to update the award of SPC **after** the end of the period set by the Secretary of State under DMG 04615, the effective date of the supersession will be

1. if the result of the supersession is **advantageous** to the claimant¹
 - 1.1. the date the information or evidence required is provided if that is the first day of the claimant's benefit week
 - 1.2. otherwise, the first day of the benefit week immediately following the benefit week in which the information or evidence required is provided.
2. if the result of the supersession is **disadvantageous** to the claimant, the day after the end of the period set by the Secretary of State under DMG 04615²
3. if the result of the supersession is that there is **no change in the amount** of SPC payable under the award, the day after the day the old AIP ended if that is the first day of the claimant's benefit week, otherwise the following such day³

Note: In each case, where a fresh AIP is set, that AIP will take effect from the same date as the supersession⁴.

1 SS CS (D&A) Regs, reg 7(29A); 2 reg 7(29B); 3 reg 7(29); 4 SPC Act 02, s 9(1)

Example 1

Harry is being paid SPC weekly in advance on Mondays. His AIP is due to end on 5.11.04. On 29.9.04 a DM sends Harry a review form asking for details of his current income and circumstances. Harry is notified that he must complete and return the review form within 14 days. Despite reminders, Harry does not return the completed form until 25.11.04. The DM supersedes the award of SPC. As the result is an increase in the amount of SPC payable, the DM decides that the effective date of the supersession is 29.11.04. The DM also decides to set a new AIP. That AIP starts on 29.11.04.

Example 2

Marjorie is being paid SPC by direct payment. Her benefit week begins on a Monday and her AIP is due to end on 23.11.04. On 18.10.04, the DM sends Marjorie a review form which she is required to complete and return in 14 days. Following a telephone call from Marjorie the DM decides to allow her until 10.12.04 to provide the information needed. However it is not until 16.12.04 that Marjorie returns the completed form. The DM supersedes the award of SPC. As the result is a decrease in the amount payable, the DM decides that the effective date of the supersession is 11.12.04. The DM also decides that it is appropriate to set a new AIP. That AIP starts on 11.12.04.

Example 3

Ray is being paid SPC by direct payment. His benefit week begins on a Monday and his AIP is due to end on 19.11.04. On 12.10.04, the DM sent Ray a review form which he is required to complete and return within 14 days. Despite reminders and attempts to contact Ray by telephone, he did not return his review form until 21.12.04. On examining the case, the DM found that there was no change in the amount of SPC payable. The DM therefore proceeded to supersede with an effective date of 22.11.04 simply in order to enable the creation of a new AIP. That AIP starts on 22.11.04.

04619

SPC superseded but assessed income period cannot be set

04620 There will be cases where, at the end of an AIP, the claimant provides sufficient information to enable the award of SPC to be updated but fails to provide the information about the likelihood of future changes to retirement provision needed to decide whether to set an AIP, or the length thereof, within the period of time allowed.

04621 The law¹ allows the DM to proceed with the supersession of the award without at the same time setting an AIP in these circumstances. The effective date of the supersession will be set in accordance with DMG 04617 and 04618 (depending on the circumstances).

1 SPC Regs, reg 10(1)(c)

04622 Where

1. the claimant fails to provide the information or evidence needed to set the AIP **and**
2. the DM proceeds to supersede the award of SPC as in DMG 04621 without setting an AIP **and**
3. the claimant subsequently provides the necessary information

then, unless there is a relevant change of circumstances between the supersession as in DMG 04622.2 and the receipt of the required information as in DMG 04622.3, the DM will conduct a further supersession under specific legislation¹ in order to bring a new AIP into effect. The effective date of that supersession and the AIP will be the date the necessary information is provided².

Note: See DMG 04623 for action to take if there is an intervening change of circumstances.

1 SS CS (D&A) Regs, reg 6(2)(m); 2 reg 7(29C)

Example

Michael is receiving SPC payable on Mondays. His AIP is due to end on 16.11.04. On 11.10.04, the DM sends Michael a review form and notifies him that this must be completed and returned by 11.11.04. The form is returned on 8.11.04 but the DM finds that Michael has not completed the questions relating to the likelihood of changes to his retirement pension over the next twelve months. After a number of unsuccessful attempts to contact Michael, the DM decides to proceed with the supersession of the award of SPC without setting an accompanying AIP. The effective date of the supersession is 22.11.04. On 14.12.04, Michael telephones the DM and tells him that his retirement provision is unlikely to change over the next twelve months. The DM makes a further supersession decision. That decision does not change the amount of SPC payable but it results in the setting of a fresh AIP effective from 14.12.04.

04623 If there is an intervening change of circumstance the DM would deal with it by means of a change of circumstances supersession. If, on reporting the change of circumstance, the claimant has still not provided the information needed to set an AIP then no AIP need be set. However if the claimant does provide the necessary information, the DM can set an AIP which will have the same effective date as the change of circumstances supersession.

04624 - 04629

Supersession - incomplete evidence

Housing costs

- 04630 Where, for the purpose of making a supersession decision in relation to SPC
1. a determination has to be made as to what housing costs are to be included in the claimant's appropriate minimum guarantee by virtue of specific legislation¹ **and**
 2. it appears to the DM not all the information needed to make that determination is in the Secretary of State's possession

the DM should make the supersession decision on the basis of a determination that the housing costs to be included are those that can be immediately determined².

1 SPC Regs, reg 6(6)(c) and Sch II; 2 SS CS (D&A) Regs, reg 13(1)

Additional amount for the severely disabled

- 04631 Where, for the purpose of making a supersession decision in relation to SPC
1. a determination has to be made as to whether the claimant's appropriate minimum guarantee should include an additional amount for the severely disabled¹ **and**
 2. it appears to the DM that not all the evidence or information needed to make that determination is in the Secretary of State's possession

the DM should make the determination on the assumption that the missing evidence or information is adverse to the claimant² and proceed to decide the claim or make the supersession accordingly.

1 SPC Regs, reg 6(4) & Sch I, para 1; 2 SS CS (D&A) Regs, reg 13(3)

04632 - 04639

Supersession - changes of circumstances

General effective date rule

- 04640 Unless otherwise stated in this Chapter, the effective date for any supersession decision for SPC (other than AIP decisions) follows the general rule for changes of circumstances¹. See DMG 04642.

1 SS CS (D&A) Regs, Sch 3B, paras 7 & 8

- 04641 Changes due to the automatic increasing of non state pensions are not subject to the normal rules regarding supersession¹.

1 SPC Act 02, s 10(2) & 10(3)

Change of circumstances - the general rule

04642 Except where DMG 04643 - 04644 apply, where a decision relating to SPC is superseded on the grounds of a change of circumstances, the general rule is that the effective date is¹ either

1. where SPC is paid in advance, from the day that change occurs or is expected to occur if either of those days is the first day of a benefit week but if not from the next following such day **or**
2. where SPC is paid in arrears, from the first day of the benefit week in which that change occurs or is expected to occur .

1 SS CS (D&A) Regs, Sch 3B, para 1

Advantageous change notified outside time limits

04643 Where a DM makes a supersession decision because of a change of circumstances

1. that is notified more than one month (or such longer period as the DM may allow under DMG 04204 - 04218) after it occurred **and**
2. where the result of the supersession will be advantageous to the claimant

the effective date of the supersession will be as set out in DMG 04644.

04644 In the circumstances described in DMG 04643, the effective date is

1. where SPC is paid in arrears, the first day of the benefit week in which the notification is made¹ **or**
2. where SPC is paid in advance² **and**
 - 2.1 the date of notification is the first day of the benefit week, that day, **or**
 - 2.2 the date of notification is a day other than the first day of a benefit week, the first day of the benefit week **following** that in which notification is made.

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

04645

Exceptions to the general rule

04646 The exceptions to the general rule are set out below.

Changes in income

04647 Where the claimant or their partner

1. has a change in income (other than income that is deemed to derive from capital) **or**
2. becomes entitled to DLA (middle or higher rate care) or AA or PIP or AFIP **or**
3. receives again any of the allowances or payments at paras 04647 2. immediately after the end of a period where they are maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution defined under prescribed legislation¹ or maintained or administered by the Defence Council

then the effective date of the supersession is² either

1. the first day of the claimant's benefit week in which the change occurs **or**
2. if it is not **practicable** in the circumstances of the case to use the effective date in DMG 04647.1., the first day of the next benefit week following the benefit week in which the change occurred.

Note: This rule does not apply where the only change in income concerned is that WTC becomes payable or payable at a higher rate³. This rule is subject to late notification of a change of circumstances as at DMG 04642.

1 NHS Act 2006; NHS (Wales) Act 2006; NHS (Scotland) Act 2006;

2 SS CS (D&A) Regs, Sch 3B, para 2; 3 Sch 3B, para 3

Example 1

Alice is in receipt of spousal maintenance for herself from her ex-husband and her benefit week commences on Monday. She told us that her maintenance increased from Wednesday 12 May. The DM takes the spousal maintenance into account at the new weekly rate from Monday 10 May.

Example 2

Tim's benefit week commences on Monday. On Wednesday 12 May he reports that his partner will start to receive an annuity from Friday 14 May. Because SPC has already been paid for benefit week commencing 10 May, the DM takes the annuity into account from the first day of the next benefit week i.e. Monday 17 May.

Prisoners

04648 Where the change of circumstances is that a person becomes or ceases to be a prisoner, the effective date is¹ the date the change actually occurred or is expected to occur.

1 SS CS (D&A) Regs, Sch 3B, para 4(a)

Change of benefit week

- 04649 Where, whilst entitled to SPC, a claimant is awarded another social security benefit and, as a consequence his benefit week changes, the effective date is¹ the date the other social security benefit is awarded.

1 SS CS (D&A) Regs, Sch 3B, para 4(b)

Claimant ceases to be a patient

- 04650 This exception to the general rule applies where the claimant ceases to be a patient but becomes a patient again **within the same benefit week**. Where that applies the effective date of the supersession to deal with the fact that the claimant ceased to be a patient is the first day of the benefit week in which the change occurred¹.

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

Note: remember that the date of admission **is not** a day in hospital and that the day of discharge **is** a day in hospital.

Example

Peggy has been in hospital for 52 weeks and consequently her SPC has been reduced. SPC is paid on Mondays in advance. On Monday 11.10.04, Peggy is discharged from hospital. However she is readmitted on Friday 15.10.04. The DM first supersedes to deal with the fact that Peggy ceased to be a patient on 12.10.04. He decides that the exception described in DMG 04650 **does apply** and that the effective date should therefore be 11.10.04. The DM then conducts a second supersession to deal with the readmission. Peggy again became a patient on 16.10.04. The DM applies the general rule in DMG 04642 and concludes that the effective date of the second supersession should be 18.10.04.

- 04651 In DMG 04650 "patient" means¹ a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of specific legislation².

1 SS CS (D&A) Regs, Sch 3B, para 6; 2 SS (HIP) Regs 05

04652

Death of the claimant

- 04653 When the claimant dies, the superseding decision takes effect on the first day of the benefit week next following the date of death¹.

1 SS (HIP) Regs 05, Sch 3B, para 8A

- 04654 "Benefit week" means, where SPC is paid

1. in advance, the period of seven days beginning on the day on which, in the claimant's case, that benefit is payable
2. in arrears, the period of seven days ending on the day on which, in the claimant's case, that benefit is payable.

Mortgages and loans

04655 Where a supersession decision is made in relation to SPC **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 necessary to make that decision (other than information requested on an annual review) had not been supplied by the lender

the effective date of the supersession will be set in accordance with DMG 04656.

1 SPC Regs, Sch II, paras 11 or 12

04656 The effective date is¹ such date as the DM considers reasonable on the particular circumstances of the case **but not more than eight weeks before**

1. the date of application for supersession **or**
2. where the DM supersedes of his own initiative, the date on which the supersession decision is made.

Note: 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.

1 SS CS (D&A) Regs, reg 7(13); 2 SK v Secretary of State for Work & Pensions [2013] UKUT 0138 (AAC)

Mortgages and loans - decrease in capital outstanding

04657 Where a claimant is

1. in receipt of SPC **and**
2. the appropriate minimum guarantee includes an amount in respect of a loan under specific legislation¹ **and**
3. the amount of eligible capital on that loan reduces

the effective date of the supersession decision made as a result of that decrease will be set in accordance with DMG 04658.

1 SPC Regs, Sch II

04658 The effective date is¹

1. the first anniversary of the date housing costs were first met **or**
2. where the reduction in eligible capital outstanding occurs after the first anniversary date, the next anniversary date after the reduction occurs.

Note: Where appropriate the effective date will be subject to the special rule in DMG 04643.

1 SS CS (D&A) Regs, reg 7(14) & (17A)

04659

Non-dependants

Rules applying before 5.4.04

- 04660 Where a DM makes a supersession decision in the following circumstances
1. the claimant receiving SPC or the claimant's partner is aged 65 or over¹ **and**
 2. the SPC includes² an amount in respect of a loan for housing costs under specific legislation³ **and**
 3. one of the two following changes of circumstances occurs⁴
 - 3.1 a non-dependant starts residing with the claimant **or**
 - 3.2 there is an increase in the non-dependant's income and this affects the applicable amount of the claimant's housing costs

the effective date of that supersession will be set in accordance with DMG 04661.

1 SS CS (D&A) Regs, reg 7(17B); 2 reg 7(17B); 3 SPC Regs, Sch II; 4 SS CS (D&A) Regs, reg 7(17C)

- 04661 Where DMG 04660 applies the effective date is¹ either
1. the first anniversary of the date the claimant's housing costs were first met under specific legislation² **or**
 2. where the change occurred after the first anniversary date, on the next anniversary date following the change.

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

Rules applying from 5.4.04

- 04662 Subject to the transitional provisions described in DMG 04664 and 04665, with **effect from 5.4.04**, where a DM makes a supersession decision in the following circumstances¹
1. a claimant is awarded SPC **and**
 2. the claimant or the claimant's partner is aged 65 or over **and**
 3. the claimant's appropriate minimum guarantee includes an amount for housing costs in accordance with specific legislation² **and**
 4. after the date an amount or housing costs was included **either**
 - 4.1 a non-dependant (as defined in DMG 78501) begins to reside with the claimant **or**
 - 4.2 there is an increase in a non-dependant's income and this affects the applicable amount for housing costs

Note: this criterion changes from 5.4.05 (see DMG 04670 **4.2**).

the effective date of that supersession will be set in accordance with DMG 04663.

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

04663 Where DMG 04662 applies, the effective date is¹ either

1. where
 - 1.1 more than one of the changes described in DMG 04662 **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. 26 weeks after the change described in DMG 04662 **4.** occurred in any other circumstances

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

Example

Bill is aged 65 and he is receiving SPC. His appropriate minimum guarantee includes housing costs. He and his wife are the sole occupants of their house. On 17.5.04 the claimant telephones to say that his nephew, Phil (who is in full-time employment), started to live in his home on 14.5.04. The arrangement was open-ended but expected to last some years.

The DM superseded the award of SPC. He decided that, as this was the first change relating to the non-dependant, the effective date should be 26 weeks after the change occurred i.e. 12.11.04.

On 4.10.04 Bill reports that his nephew Phil had been promoted and had an increase of earnings effective from 30.9.04. His net income has increased from £150 per week to £200 per week. The DM calculated that the non-dependant's income now came within a higher band. The DM superseded the award. She decided that as this was the second change relating to Phil within a period of 26 weeks the effective date should be 26 weeks after the first change (Phil coming to live with Bill) occurred i.e. 12.11.04.

Consequently a deduction was made from Bill's housing costs from 12.11.04 at the rate appropriate for a non-dependant with net income of £200 per week.

Transitional provisions

04664 The rules described in DMG 04662 - 04663 do not apply¹ where

1. a person's claim for SPC is backdated in accordance with the provisions described in DMG 80064 or 80065 **and**
2. the change, or the first change, in the non-dependant's circumstances occurred before 5.4.04.

1 SPC (Misc Amdts) Regs, reg 4

04665 In these circumstances, the rules described in DMG 04660 - 04661 will continue to apply.

Example 1

Warren, who is aged 65, claimed SPC on 27.1.04. His claim was backdated to 6.10.03. His younger sister Jackie started to live with him on 1.2.04. With effect from 1.6.04 her net income increases from £205 per week to £310 per week. The DM superseded the award and decided that a non-dependant deduction should be made from the first anniversary of the date housing costs were first met. In this case that date was 6.10.04.

Example 2

Celia is age 65 and claimed SPC on 25.4.04. Her claim, which included housing costs, was backdated to 6.10.03. On 1.6.04 her friend Rosemary moved into her home on a permanent basis. The DM decided that, as the first change occurred after 5.4.04 the savings provisions did not apply. He superseded the award with an effective date 26 weeks after the date of the change i.e. 30.11.04.

Non-dependant ceases to reside with SPC claimant

04666 Where a non-dependant ceases to reside with the claimant, the normal rules relating to a supersession of an SPC award on a change of circumstances will apply (see DMG 04642).

04667 - 04669

Rules applying from 4.4.05

04670 With effect from 4.4.05, where a DM makes a supersession decision in the following circumstances¹

1. a claimant is awarded SPC **and**
2. the claimant or the claimant's partner is aged 65 or over **and**
3. the claimant's appropriate minimum guarantee includes an amount for housing costs in accordance with specific legislation² **and**
4. after the date an amount for housing costs was included **either**
 - 4.1 a non-dependant (as defined in DMG 78501) begins to reside with the claimant **or**
 - 4.2 there has been any change of circumstances in respect of the non-dependant and this has the effect of **reducing** the applicable amount of the claimant's housing costs

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 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 - ESA, IS, JSA and SPC

Special rules for housing costs - service charge adjustments

04687 Some leaseholders are liable to pay service charges. See DMG Chapter 44 on guidance for housing costs for ESA, Chapter 23 for IS and JSA and Chapter 78 for SPC. These service charges are sometimes adjusted during or after the relevant financial year. Guidance in DMG 04688 - 04695 applies only to ESA, IS, JSA and SPC

04688 Housing costs should be calculated and awarded when the claimant becomes liable to pay on receipt of an invoice of estimated costs. The same principle applies when an invoice for the difference between the estimated and actual service charges is issued to the claimant. In each case, the amount of the invoice should be converted to give a weekly amount of housing costs from the date the liability arose¹.

1 JSA Regs, Sch 2, para 16(1); IS (Gen) Regs, Sch 3, para 17(1); SPC regs, Sch II, para 13(1)

04689 The liability for service charges arises in accordance with the terms of the lease. This will usually be

1. in the case of estimated charges, the first day of the relevant financial year **or**
2. in the case of finalised charges, the date the invoice is issued

04690 The finalisation of service charges is a separate liability from the estimated charges. A decision awarding housing costs on the basis of estimated service charges is therefore not made in ignorance of or mistake as to some material fact, nor can it be revised either during the application period (DMG 03063) nor for official error, when those charges are finalised at a later date.

04691 A notification to DWP of a new liability for estimated or finalised service charges is treated as an application for supersession. In order to include such housing costs in an award of ESA(IR), IS, JSA(IB) or SPC, the previous awarding decision should be superseded on the grounds that

1. there has been a relevant change of circumstances¹ **or**
2. it is anticipated that there will be a relevant change of circumstances (in the case of estimated charges where the supersession is carried out before the period of liability has begun)².

The effect of the supersession is to award service charges for a fixed 52 week period from the date the liability arose. At any one time, a claimant's award of housing costs for service charges may therefore be made up of housing costs arising from different liabilities notified at different times.

1 SS CS (D&A) Regs, reg 6(2)(a)(i); 2 reg 6(2)(a)(ii)

04692 Where the claimant sends invoices to DWP promptly, the supersession decision is normally effective

1. for ESA(IR), IS and JSA(IB), from the first day of the benefit week in which the change occurs¹ **or**
2. for SPC paid in advance, from the date of the change where that is the first day of the benefit week, or otherwise the first day of the benefit week following the date of change² **or**
3. for SPC paid in arrears, from the first day of the benefit week in which that change occurs³

1 SS CS (D&A) Regs, Sch 3A, para 1(a) & 7 & Sch C, para 1; 2 Sch 3B, para 1(b)(i); 3 Sch 3B, para 1(b)(ii)

04693 The change occurs on the date the liability begins as in DMG 04692. This is the date the claimant is notified of the service charges by the landlord, or in the case of estimated charges the beginning of the financial year if later.

Example

The claimant's award of IS includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.02 - 31.3.03. The amount for housing costs is due to end on 31.3.03. In February 2003 the claimant sends in an estimate of service charges for the 2003-04 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.03 - 31.3.04. On 9.9.03 the claimant receives an invoice for £243.85, being the balance of finalised service charges for the 2002-3 year, and sends it to the DWP. The DM supersedes the decision of February 2003 to award housing costs of £10.87 and £4.69 for the period 9.9.03 - 31.3.04, and £4.69 for the period 1.4.04 - 6.9.04, the balance for the 2002-03 year charges being paid over a 52 week period. If a further estimate for charges for the 2003-04 year is received, the September 2003 decision may be superseded accordingly.

04694 If the claimant delays notifying the DWP of a liability to pay service charges, the consequence may be that they do not receive their full allowable housing costs for the relevant period. The DM should consider whether there are special circumstances for the delay in notification¹ (see DMG 04204 - 04211). If the liability is not notified until after the period of 13 months from the date the claimant became liable to pay service charges has ended, no housing costs can be awarded at all in relation to that liability.

1 SS CS (D&A) Regs, reg 7(2)(b) & 8

Example 1

The claimant's award of SPC includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.02 - 31.3.03. The amount for housing costs ends on 31.3.03. In February 2003 the claimant receives notice that estimated service charges for the period 1.4.03 - 31.3.04 will be £564.94. He does not send this to the DWP until 13.5.03, saying that he forgot to send it earlier. The DM decides that there are no special circumstances for the late application for supersession. He divides the total service charges by 52 to produce a weekly amount of housing costs. The original decision awarding SPC is superseded to include housing costs of £10.87 weekly from 13.5.03 to 31.3.04.

In March 2004 the claimant receives an invoice for estimated charges for the 2004-05 financial year, and sends it to the DWP straight away. The supersession decision of May 2003 is superseded in March 2004 on the grounds of an anticipated relevant change of circumstances to include weekly housing costs for the estimated service charges for the period 1.4.04 - 31.3.05.

In November 2004 the claimant sends to the DWP an invoice for £243.85, being the balance of finalised service charges for the 2002-03 financial year which he had received on 9.9.03. The DM refuses to supersede the decision of March 2004, because the application was made more than 13 months after the liability for the additional service charge first arose, and the period 9.9.03 - 6.9.04 had already ended.

Example 2

The claimant's award of JSA(IB) includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.02 - 31.3.03. In February 2003 the claimant sends in an estimate of service charges for the 2003-04 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.03 - 31.3.04.

On 30.9.04 the claimant sends to the DWP an invoice for £243.85, being the balance of finalised service charges for the 2002-03 financial year which he had received on 9.9.03. The application is made after the 52 week period beginning on 9.9.03, but within the 13 month period for notifying a change of circumstances. The DM accepts that there were special circumstances for the late notification, and supersedes the decision of February 2003 to award additional housing costs of £4.69 for the period 9.9.03 - 6.9.04. As the period has ended, arrears of £243.85 are paid as a lump sum.

04695 Care needs to be taken in establishing the claimant's liability when awarding housing costs for service charges as part of an award on a claim. The claimant may have an outstanding liability for finalised service charges relating to a period before entitlement to benefit began, and may have started paying these. Where these are outstanding at the date of claim, and the 52 week period of liability has not ended, they may be included as housing costs. If payment has been made in full, or the period of liability has ended, there is no entitlement to housing costs for finalised service charges.

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**

2. the first day of the benefit week after the end of the benefit week in respect of which the claimant was last paid ESA.

1 SS CS (D&A) Regs, reg 6(2)(p); reg 1(3); 2 ESA Regs, reg 61(2), 63(1) & reg 54, ESA (WRA) Regs, reg 8(2) & reg 3; 3 SS CS (D&A) Regs, reg 7(36)

04704 Where an award of ESA has been reduced as in DMG 04703 and the requirement to attend a Wfl or WFHRA ceases to apply the reduction decision may be superseded so as to restore full payment of ESA¹. The decision is effective from the first day of the benefit week in which the requirement was met or ceased to apply².

1 SS CS (D&A) Regs, reg 6(2)(q); 2 reg 7(37); ESA Regs, reg 64

Receipt of HCP report and cases where no examination is carried out

04705 An ESA decision may be superseded where the Secretary of State

1. has received medical evidence from an approved HCP for the purposes of determining whether the claimant has LCW or LCWRA¹ **or**
2. has made a determination that the claimant is to be treated as having LCW under specified legislation².

DMG 04705 **2.** allows the DM to move the claimant to a higher rate of ESA on age grounds or award a component in cases where the claimant is not examined by a HCP.

Note: See DMG 42017 sub paras 1, 2, 3 & 5 for when a claimant can be treated as having LCW under specified legislation.

1 SS CS (D&A) Regs, reg 6(2)(r); 2 ESA Regs, reg 20, 25, 26 & 33(2)

Example

Danny is aged under 20 and is in receipt of DLA and is entitled to ESA(IR) as a disabled student at the rate for claimants aged under 25. He is treated as having LCW as he has weekly dialysis. The decision awarding ESA is superseded to award the higher applicable amount from week 14 although the WCA has not been carried out.

04706 An ESA decision is a decision awarding ESA or credits where the DM has made a determination that the claimant has, or is treated as having, LCW¹.

1 SS CS (D&A) Regs, reg 7A(1); WR Act 07 Part 1

04707 Where a decision is made which embodies a determination that the claimant has

1. LCW **or**
2. LCWRA **or**
3. LCW and LCWRA

which is the first such determination made in respect of the claim for ESA then the decision is superseded effective from the day after the last day of the relevant period as defined in specified legislation¹.

1 SS CS (D&A) Regs, reg 7(38); ESA Regs, reg 4(4)

04708 Where the claimant is found not to have LCW, the ESA decision is superseded from the date of the decision¹.

1 SS Act 98, s 10(5)

Example

A claimant attends a WCA on 2 April. After considering the report from the HCP on 10 April, the DM decides that the claimant does not have LCW. The DM supersedes the award of ESA effective from 10 April.

04709 Where

1. the claimant's entitlement to ESA includes the WRAC **and**
2. the claimant applies for supersession **and**
3. following a report by an approved HCP, the DM makes a determination that the claimant has LCWRA

the supersession decision takes effect from the date of the application¹.

Note: Where the DM makes a determination, following a routine WCA, the supersession takes effect from the date the DM makes their decision².

1 SS CS (D&A) Regs, reg 7(39); 2 SS Act 98, s 10(5)

Terminally ill

04710 Where the claimant makes an application for supersession expressly on the grounds that they are terminally ill, the ESA award is superseded from the date they became terminally ill¹.

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

Treated as having LCW - medical evidence expires

04711 A claimant may be treated as not having LCW¹ if

1. they have supplied medical evidence in accordance with legislation² **and**
2. the period covered by that medical evidence has ended **and**
3. the Secretary of state has requested further medical evidence **and**
4. the claimant has not, within six weeks
 - 4.1 supplied further medical evidence **or**
 - 4.2 otherwise made contact with the Secretary of State to indicate that they wish to have the question of LCW determined.

1 ESA Regs, reg 32A; 2 reg 30(2)(a)

- 04712 The six week period begins on
1. the date of the Secretary of State's initial request for further medical evidence
or
 2. the day after the date on which the period covered by the medical evidence has ended
- whichever is the later¹.

1 ESA Regs, reg 32A(d)

- 04713 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact DWP, the DM should treat the claimant as not having LCW from the day after the medical evidence expires. The decision is effective from the date of change¹, which is the date from which the claimant is treated as not having LCW.

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

ESA appeal withdrawn, struck out or dismissed

- 04714 Where
1. the claimant is entitled to ESA after making an appeal **and**
 2. they are treated as having LCW while providing medical statements **and**
 3. either
 - 3.2 there is no change of circumstances **or**
 - 3.3 following a change of circumstances the claimant is treated as having LCW where they have been found not to have LCW after application of the WCA **and**
 4. the appeal is withdrawn, struck out or dismissed

the claimant is treated as not having LCW from the first day of the benefit week following the date on which the Secretary of State is notified by the FtT that the appeal is withdrawn, struck out or dismissed¹.

1 ESA Regs, reg 30 & 147A(5)

- 04715 The decision awarding ESA (pending the outcome of the appeal) is superseded on the grounds of a relevant change of circumstances¹ and is effective from the date of change². The change is that the claimant is treated as not having LCW.

1 SS CS (D&A) Regs, reg 6(2)(a); 2 Sch 3C, para 2 & 3(a)

Example

Heather's entitlement to ESA ends when she fails the WCA. She appeals and ESA is awarded from the date of disallowance. Her appeal is dismissed. The FtT decision notice is received by DWP on 13.7.10. Heather's benefit week ends on Monday. The DM treats her as not having LCW from 20.7.10, the first day of the next benefit week. The decision awarding ESA is superseded and terminated from 20.7.10.

04716 Where, following an unsuccessful appeal

1. a claim for JSA is made **and**
2. a fresh LCW has not yet been made

the DM should supersede on the grounds of a relevant change of circumstances, namely that the claimant is treated as not having LCW and terminate the ESA award from the date that the claimant is awarded JSA.

Previous PLCW less than 13 weeks

04717 Where

1. the claimant was previously entitled to ESA for no more than 13 weeks **and**
2. the assessment phase had not ended in the previous ESA award **and**
3. the claimant's current PLCW is treated as a continuous PLCW

the assessment phase ends on the day when the continuous PLCW is 13 weeks or the date of determination that claimant has, or is treated as having LCW (other than DMG 042201 - 042204) where that is later¹.

1 ESA Regs, reg 5(2) & (3)

04718 The effective date of supersession in cases described at DMG 04717 is the beginning of the 14th week of entitlement¹.

1 SS CS (D&A) Reg, reg 7(38)

04719 Where a decision which embodies a determination that the claimant has

1. LCW **or**
2. LCWRA **or**
3. LCW **and** LCWRA

and specific legislation applies¹ then the effective date of the supersession takes effect from the beginning of the 14th week of entitlement².

Note: The assessment phase ends after the later of 13 weeks (in two or more linked spells of LCW) or the decision on whether the claimant has, or is treated as having, LCW.

1 ESA Regs, reg 5; 2 SS CS (D&A) Regs, reg 7(40)

ESA and residential care breaks

04720 The ESA effective date rule is amended to allow payment of SDP where the care component of DLA or the daily living component of PIP is paid at a daily rate for periods of less than a week outside "certain accommodation" such as a care home, independent hospital or special residential school. Where

1. the claimant is precluded from entitlement to SDP¹ **solely** because the care component of DLA or the daily living component of PIP is not payable for periods in certain accommodation² **and**
 2. DLA or PIP is paid at a daily rate for a period of less than a week
- the ESA decision is superseded effective from the date of change³.

*1 ESA Regs, Sch 4, para 6; 2 SS CB Act, s 72(8); WR Act 12, s 85(1); DLA Regs, reg 9; PIP Regs, reg 28;
3 SS CS (D&A) Regs, Sch 3C, para 3(f) & 3(g)*

04721 The practical effect is that the ESA awarding decision can be superseded to award the SDP for the days when DLA or PIP is paid.

04722 - 04750

SUPERSESSION OF BB, CAT A OR CAT B RP AND SP – CLASS 2 CONTRIBUTIONS

- 04751 A decision to award BB, Cat A or Cat B RP or SP may be superseded¹ where on or after the date of the decision was made a late contribution is treated as paid and as a result the person is now entitled to benefit at a higher rate.

1 SS CS (D&A) Regs, reg 6(2)(sa); Social Security (crediting and Treatment of Contributions, and National Insurance Numbers) Regs 2001, reg 4

- 04752 The effective date¹ of the supersession is the date on which the contributions are treated as paid for the purposes of entitlement to benefit.

1 SS CS (D&A) Regs, reg 7(43); Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regs 2001, reg 4(7)

Example

A claim to SP is made on 21.2.17. The decision to award SP is made on 3.2.17. SP is awarded on the basis of the contribution record at the date of claim. The record is not complete and the award is less than 100% SP. On 27.3.17 the claimant pays the missing contributions to give him a 100% contribution record. The decision of 3.2.17 is superseded effective from 27.3.17, the date on which the late contributions are paid.

04753 - 04799

Suspension and termination of benefit

Hardship

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

Loss of contact with claimant

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

04803 - 04809

Immediate suspension

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

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

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

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

04813 - 04816

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

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

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

1 SS Act 1998, s 8; 2 s 10

Example 1

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

Example 2

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

Suspension where an appeal is pending

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

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

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

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

04820 An appeal is pending¹ where a decision of a FtT, UT or a court has been made **and**

1. the Secretary of State is waiting to receive that decision
2. in the case of a FtT decision the Secretary of State
 - 2.1 is considering whether to apply for a statement of reasons **or**
 - 2.2 has applied for a statement of reasons and is waiting to receive it **or**
 - 2.3 has received the statement of reasons and is considering whether to apply for leave to appeal to the UT
3. the Secretary of State has received the decision and is considering whether to apply for permission to appeal against it
4. an application for permission to appeal has been made but not determined
5. permission to appeal has been granted and the Secretary of State is considering whether to proceed with an appeal
6. an appeal has been made but has not yet been determined.

1 SS Act 98, s 21 & SS CS (D&A) Regs, reg 16(4)

Notification

04821 The Secretary of State must give written notice¹ of his proposal to

1. in the case of a FtT decision, apply for a statement of reasons
2. apply for permission to appeal **and**
3. make an appeal,

as soon as reasonably practicable.

1 reg 16(4)

Note: As the regulations require the Secretary of State to notify his **proposal** to take the actions listed above, he must send the notification **before** taking the action.

When benefit suspended must be paid - appeal no longer pending

04822 Payment of benefit suspended shall be made if¹

1. in the case of a FtT decision, the Secretary of State does not apply for a statement of reasons within one month of the day he receives notice of the FtT's decision
2. in the case of any decision, the Secretary of State does not
 - 2.1 make an application for permission to appeal **or**

2.2 when permission is granted, make an appeal

within the relevant time limit

3. the Secretary of State withdraws his appeal or application for permission
4. the Secretary of State is refused permission to appeal where he cannot renew his application or make a further application for permission to appeal.

I SS CS (D&A) Regs, reg 20(2)

04823 - 04829

Suspension where an appeal is pending against a decision in a different case

04830 The DM may suspend benefit wholly or in the part where¹

1. an appeal is pending in another case (the lead case) before a UT or a court
and
2. it seems to the DM that, if the lead case were determined in a particular way an issue would arise as to whether the award of benefit in the case before the DM (the look-alike case) should be revised or superseded.

I SS Act 98, s 21(2)(d); SS CS (D&A) Regs, reg 16(3)(b)

04831 The appeal in question does not have to involve the same benefit. But if it appears the outcome of the appeal would have an effect on the award being considered by the DM then suspension can still be considered.

Example

The Secretary of State has appealed to the Court of Appeal against a decision of a UT awarding DLA. This is the lead case. The DM considers the separate case of a claimant currently entitled to CA. Because the award of CA in the separate case is dependent upon an award of DLA where the same or similar legal issue arises as in the lead case, the DM decides that it is a look-alike case. Suspension of payment in the look-alike case should be considered pending the outcome of the appeal in the lead case.

04832 - 04839

What happens if the suspension is lifted

04840 When the suspension is lifted the DM

1. reinstates all or part of the benefit where it is appropriate to do so
2. revises or supersedes the award of benefit
3. makes, revises or supersedes the award of benefit in accordance with the directions of the FtT, UT or court
4. makes, refuses to make, revises or supersedes the award of benefit in accordance with the directions of the UT or court given in the different case.

Suspension where information has been requested

04841 The DM can suspend¹ payment of benefit when they are considering whether an award of benefit should be revised or superseded. When the DM has asked the claimant to provide information² they must

1. supply that information³ within a period of 14 days beginning with the date on which the notification was sent or such longer period as the DM allows in that notification **or**
2. supply that information³ within such longer period as he satisfies the DM is necessary in order to enable him to comply with the requirement

in default of which payment of benefit may be suspended.

1 SS CS (D&A) Regs, reg 17; 2 SS C&P Regs, reg 32(1); 3 SS CS (D&A) Regs, reg 17(4)

04842 Alternatively, the claimant must satisfy the DM within 14 days beginning with the date on which the notification was sent that either

1. the information does not **exist or**
2. it is not possible for him to obtain it

04843 Where the DM requires documents, certificates or other evidence from a JSA claimant under other legislation¹ then this must be supplied within 7 days beginning with the date on which notification was sent in default of which payment of JSA may be suspended².

1 JSA Regs, reg 24(5), 24(5A) & 24(9A); 2 SS CS (D&A) Regs, reg 17(4A)

04844 The DM should impose the 14 day period where there is a serious doubt about the claimant's award. Examples are where

1. information has been received indicating that there may be undeclared income or capital or an undeclared non dependent or partner
2. a data match anomaly

3. the claimant has failed to co-operate with a Benefit Integrity Centre review by failing to participate in a telephone review and subsequently fails to return a fully completed postal review form.
4. FEPS has no contact number and reverts immediately to the postal process
5. FEPS has been unable to make contact by telephone and reverts to the postal process
6. FEPS has conducted a telephone review but further information is required and sends a letter requesting this information

04845 When considering whether to extend the 14 day period the DM should take into account all the circumstances including

1. the claimant's circumstances and the nature of the information requested
2. whether there are difficulties in obtaining the information (e.g. where verification, which may not be readily available, has to be sought from a 3rd party such as a bank)
3. any difficulty the claimant may have in obtaining the information due to disability, illness or family circumstances
4. circumstances beyond the claimant's control such as hospitalisation, bereavement or postal disruption
5. whether the nature of the award causes difficulties e.g. overseas awards

This list is not exhaustive and each case should be considered on its merits.

Extension is at the discretion of the DM. Before making a decision to suspend the DM must consider hardship.

Example 1

A claimant fails to comply with a Benefit Integrity Centre review by failing to participate in a telephone review. The DM issues a letter asking them to provide information relating to his award. This letter asks the claimant to provide the information within 14 days of the day it was sent. The letter also states that failure to provide the required information will result in suspension of benefit. The claimant does not respond to the letter and the DM decides to suspend benefit.

Example 2

An allegation is received that the claimant has a large amount of capital in numerous savings accounts. The DM issues a letter asking them to provide evidence of their capital within 14 days of the date of issue of the letter. The claimant responds within 14 days, denying the allegation and says that they have only small amounts of capital in several accounts. The claimant says that it will take a month to provide this information. The DM considers this reasonable and does not suspend benefit and allows the claimant a month in total to provide the information.

Termination following suspension

04846 The DM must consider terminating benefit where

1. the claimant has been required to provide information (this applies where payment has been suspended both immediately and following failure to satisfy information requirements) **and**
2. has failed to do so within 14 days (or such longer period as appropriate - see DMG 04850) **and**
3. payment of benefit has been suspended in full¹.

It should be noted that it is not possible to terminate benefit if the suspension is a partial one. In this situation the suspension remains in place indefinitely.

Note: Benefit cannot be terminated where no question of revision or supersession arises e.g. where information as to the claimant's address is required and a change in address could not affect the benefit².

1 SS Act 98, s 23; SS CS (D&A) Regs, reg 18; 2 ML v SSWP (II) [2012] UKUT 192 (AAC)

04847 The time limit of 14 days may be extended where the DM considers in all the circumstances it is reasonable to do so (see DMG 04850). A decision terminating benefit in these circumstances will be a supersession decision. This decision carries the right of appeal¹.

1 SS Act 98, s 23; SS CS (D&A) Regs, reg 18

04648 - 04649

When is it appropriate to extend the time limit

04850 When considering whether to extend the time limit for providing information, the DM should take into account all the circumstances including

1. the circumstances of the claimant and the nature of the information requested
2. whether there are difficulties in obtaining the information itself, for example where verification, which may not be readily available, has to be sought from another source such as a bank or a building society
3. any difficulty the claimant may have in obtaining the information due to disability, illness or family circumstances
4. where the nature of the benefit itself, for example, overseas cases, creates its own difficulties.

This list is not exhaustive. Each case must be based on its merits.

04851

Date from which benefit is terminated

04852 Benefit is terminated from a date not earlier than the date from which the benefit was suspended¹. Benefit cannot be terminated if not more than one month has elapsed since either the information requirement was made² or the first payment was suspended³.

1 SS Act 98, s 23; SS CS (D&A) Regs, reg 18 (1); 2 reg 18(2); 3 reg 18(3)

04853 DMs should note that if it transpires that entitlement should have terminated from an earlier date, then this termination provision cannot be used. Instead, the original decision should be revised/superseded, with the effective date of termination being determined as appropriate.

Example

Original outcome decision 1.4.99. Benefit suspended 1.7.99. Because the claimant does not respond to requests for information entitlement is terminated from 1.7.99. On 1.10.99 the Secretary of State discovers that entitlement should have ended on 1.5.99 as a result of new information coming to light. He revises the decision to terminate benefit and then supersedes the decision of 1.4.99, effective from 1.5.99¹.

1 SS CS (D&A) Regs, reg 3(5) & 18(1)

04854 - 04856

Suspension where claimant fails to have a medical examination

04857 Where a claimant is required, as a condition of receiving benefit, to have a medical examination, but fails, without good cause, to do so on at least two consecutive occasions, the DM may suspend payment of benefit entirely or in part¹. It should be noted that this does not apply to IfW and LCW cases. See benefits specific guidance for further details.

1 SS Act 98, s 24; SS CS (D&A) Regs, reg 19(2)

Example

A claimant is in receipt of the higher rate of mobility component for DLA, because she has arthritis in both hips. A letter is received stating that the claimant has been seen out walking normally and has received hip replacements.

The DM asks for a HCP to visit to prepare a medical report. Despite being notified of visits on two occasions the claimant is not at home when the HCP calls. The DM suspends benefit from the date of the second visit because the claimant has not shown good cause for failing to be medically examined.

04858 - 04859

Termination where claimant fails to have a medical examination

04860 Where

1. a claimant has failed, without good cause, to attend for medical examination on at least two consecutive occasions when requested to do so **and**
2. as a result benefit has been suspended **and**
3. following the suspension, continues to fail to have a medical examination or provide an explanation as to why he will not submit to such examination,

the DM can terminate the benefit in question¹.

1 SS Act 98, s 24(d); SS CS (D&A) Regs, reg 19

04861 At least one month must have elapsed since the date of suspension. Benefit is terminated from a date not earlier than the date on which benefit was suspended¹.

1 SS Act 98, s 24(d); SS CS (D&A) Regs, reg 19

04862 - 04999

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