

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 1 Amendment 54 – June 2017

1. This letter provides details on Amendment 54; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 54 affects Chapters 2, 3, 4 & 6
 - Chapter 2 incorporates DMG memo 11/17.
 - Chapter 3 incorporates DMG memos 25/16 & 11/17.
 - Chapter 4 incorporates DMG memos 25/16 & 11/17.
 - Chapter 6 minor amends.
4. The last two amendment packages amending Volume 1 were

Amendment 53 [February 2017]

Amendment 52 [October 2016]
5. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Chapter 2

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02009 - 02037 (3 pages)
02048 – 02093 (6 pages)
02117 – 02127 (1 page)
02134 – 02140 (1 page)
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Chapter 3

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03460 – 03999 (1 page)

Chapter 4

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04150 – 04156 (1 page)
04721 – 04799 (1 page)

Chapter 6

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Benefits for which a claim is not required

02009 A claim is not required for

1. Cat A RP where a claimant who is already entitled to any category of RP other than Cat A RP becomes divorced or has a civil partnership which is dissolved¹
2. Cat B RP where
 - 2.1 a claimant is already entitled to
 - 2.1.a Cat A RP **or**
 - 2.1.b GRB **or**
 - 2.1.c both **and**
 - 2.2 marries or enters a civil partnership with a person who is entitled to Cat A RP or SP in their own right² **or**
 - 2.3 the spouse or civil partner of the claimant becomes entitled to Cat A RP or SP in their own right² **or**
 - 2.4 the spouse or civil partner of the claimant dies and they were entitled to Cat A RP or SP at the date of death²
3. Cat A RP, Cat B RP or SP³ where the beneficiary is a woman
 - 3.1 over the age of 65 and entitled to WMA or WPA on her ceasing to be so entitled **or**
 - 3.2 under the age of 65 and in receipt of WP on her reaching pensionable age
4. Cat C RP⁴ where the beneficiary is already in receipt of
 - 4.1 another RP **or**
 - 4.2 WB **or**
 - 4.3 benefit corresponding to WP or WMA **or**
 - 4.4 WPA
5. Cat D RP⁵ where the beneficiary
 - 5.1 was ordinarily resident in GB on the day on which age 80 was reached **and**
 - 5.2 is in receipt of another category of RP
6. age addition for a pensioner attaining age 80⁶
7. CWP
8. RA⁷
9. dependency increases where entitlement has ended because of earnings (see DMG 02037).

10. JSA where
 - 10.1 JSA has previously been awarded **and**
 - 10.2 payment under that award has been suspended⁸ for a definite or indefinite period **and**
 - 10.3 that suspension expires or is cancelled in part only **and**
 - 10.4 the DM decides that there was no entitlement to JSA during any part of the period of suspension **and**
 - 10.5 the claimant's entitlement is not in doubt

a new claim is not needed to cover days immediately following the suspension period⁹
11. IS, where the claimant is treated as not being in remunerative work because the claimant is in receipt of IS by way of MIRO (see DMG 20530)¹⁰
12. WPA where, immediately before a full GRC is issued, a female to male transsexual claimant was in receipt of WMA¹¹
13. SAP where the beneficiary is in receipt of any category of RP¹²
14. BPT where the beneficiary is in receipt of RP of any category or SP at the date of death of the spouse or civil partner and satisfies the conditions of entitlement¹³
15. ESA where the claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State and that appeal relates to a decision to terminate or not award a benefit for which a claim was made¹⁴. A relevant decision means a decision that embodies the first determination by the Secretary of State that the claimant does not have LCW. It is also a decision that embodies the first determination by the Secretary of State that the claimant does not have LCW since a previous determination by the Secretary of State or appellate authority does not have LCW. An appellate authority is the FtT, UT, Court of Appeal, Court of Session or the Supreme Court¹⁵.
16. A claim for SP¹⁶ under specified legislation¹⁷ is not required where the beneficiary is entitled to
 - 16.1 SP under a different section of the prescribed legislation¹⁸ **or**
 - 16.2 another SP under the same section of the prescribed legislation

Note 1: A Cat B pension also includes a pension awarded under section 51A of the SS CB Act 92. This is sometimes known as an ABL pension.

Note 2: The award of ESA will begin on the day after the last day of entitlement of the award which is the subject of the appeal or on the day the medical evidence begins if later.

Note 3: “SP” at DMG 02009 2. means SP at the transitional rate.

Note 4: The guidance at DMG 02009 3.2 will also apply where a person is entitled to BA on 5.4.17¹⁹. However, it will cease to apply where a person is no longer entitled to BA²⁰.

Note 5: The guidance at DMG 02009 4. will also apply where a person is entitled to BPT or BA on 5.4.17²¹. However, it will cease to apply where a person is no longer entitled to BPT or BA²².

Note 6: The guidance at DMG 02009 14. will only apply where a person is entitled to BPT 5.4.17²³. However, it will cease to apply where a person is no longer entitled to BPT²⁴.

1 SS (C&P) Regs, reg 3(1)(ca); 2 reg 3(1)(cb), (i, ii & iii); 3 reg 3(1)(d); 4 reg 3(1)(a); 5 reg 3(1)(b); 6 reg 3(1)(c); 7 reg 3(1)(e); 8 SS CS (D&A) Regs, reg 16(2); 9 SS (C&P) Regs, reg 3(1)(g); 10 reg 3(1)(h); 11 GR Act 04, Sch 5, para 3(2); 12 SS (C&P) Regs, reg 3(1)(i); 13 reg 3(1)(da) & SS CB Act 92, s 36(1); 14 SS (C&P) Regs, reg 3(1)(j); 15 reg 3(2); 16 reg 3(1)(ja); 17 & 18 Pensions Act 14; 19, 20, 21, 22, 23 & 24 Pensions Act 14 (Commencement No. 10) Order, art 4; Pensions Act 14 (Cons, Supp & Inci Amdts) Order, art 2

Example 1

Heather’s entitlement to ESA ends when she fails the WCA. She appeals and ESA is awarded from the date of disallowance. No claim is required. Her appeal is dismissed. The FtT decision notice is received on 13.7.10. Heather’s benefit week ends on Monday. The DM treats her as not having LCW from 20.7.10 and the award of ESA is superseded and terminated from 20.7.10. Heather makes an appeal against this decision. A further claim though is required to consider entitlement to ESA.

Example 2

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

Exemption from claiming Cat A or Cat B Retirement Pension

02010 A claim is not required for Cat A or Cat B RP in the circumstances set out below.

02011 No claim¹ is required from a beneficiary who has received written notification to that effect from the Secretary of State

1. at least 2 weeks before the day they reach pensionable age² **or**
2. later if the Secretary of State considers that reasonable

1 SS (C&P) Regs, reg 3A(1 & 2); 2 Pensions Act 1995, Sch 4, para 1

02012 The Secretary of State can only give a notification in a case where, 8 weeks before the day on which the beneficiary reaches pensionable age they¹

1. are in receipt of an exempt benefit (including those who have been awarded benefit but have not received their first payment)² **or**

2. would be in receipt of an exempt benefit but for it not being payable because of³
 - 2.1 a sanction (JSA and joint claim JSA - DMG Chapter 34)⁴ **or**
 - 2.2 a failure to attend on the date or at the time specified in a notice (JSA and joint claim JSA - DMG Chapter 20)⁵ **or**
 - 2.3 a disqualification for misconduct (IBLT and IS where it is paid on grounds of incapacity - DMG Chapter 13; ESA - DMG Chapter 53)⁶ **or**
 - 2.4 any provision of the Social Security Fraud Act 2001⁷ **and**
3. are neither entitled to, nor awaiting the determination of, a claim for a non-exempt benefit⁸

1 SS (C&P) Regs, reg 3A(3); 2 reg 3A(3 & 5); 3 reg 3A(7); 4 JS Act 95, s 19 & 20A; 5 s 8(2)(a) & JSA Regs, reg 27A; 6 SS (IfW) (Gen) Regs, reg 18 & ESA Regs, reg 157; 7 SS (C&P) Regs, reg 3A(7)(ca); 8 reg 3A(3)(b)

Example

Jeremy is in receipt of ESA. He reaches pensionable age in 8 weeks time, on 5 March 2012. On 20 February he receives a notification that he does not have to make a claim for Cat A RP.

02013 Exempt benefit¹ means

1. ESA
2. IS
3. JSA
4. IBLT
5. SPC

1 SS (C&P) Regs, reg 3A(6)

02014 Non exempt benefit¹ means

1. CA
2. IBST
3. SDA
4. WMA
5. WP

1 SS (C&P) Regs, reg 3A(6)

Deferral and De-retirement

02015 A person who, in accordance with specified legislation

1. before pensionable age, inform the Secretary of State that they want their entitlement to Cat A or Cat B RP to be deferred¹ **or**

2. after reaching pensionable age, elects to de-retire²

must make a claim in order to subsequently be entitled to Cat A or Cat B RP³

1 SS CB Act 92, s 55(3)(a); 2 SS (WB&RP) Regs, reg 2; 3 SS (C&P) Regs, reg 3A(4)

Dependency increases

02016 For some increases for adult dependants entitlement ends when the earnings of the dependant are more than a certain amount (see DMG Chapter 16). An award of benefit continues, but an increase for a dependant is not payable for the relevant week or weeks affected by those earnings¹ where

1. entitlement to the increase ends only because of the dependant's earnings
and
2. entitlement would have continued if those earnings were ignored.

In these circumstances a new claim is not needed before the increase can be considered again.

1 SS CB Act 92, s 92

02017 - 02037

How to make a claim

02048 Claims for benefit may be made

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

Appropriate offices

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

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

But see also DMG 02052 et seq.

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

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

Example

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

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

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

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

Alternative offices

02052 Certain groups of claimants can make their claim at an alternative office.

Claimants affected

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

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

Note 1: Similar rules apply to SPC - see DMG 02129.

Note 2: The guidance at DMG 02053 **2.** will also apply where a person is entitled to BPT or BA on 5.4.17³. However, it will cease to apply where a person is no longer entitled to BPT or BA⁴.

1 SS (C&P) Regs, reg 4(6A)(a); 2 SFWFP Regs, reg 3(1)(b); 3 & 4 Pensions Act 14 (Commencement No. 10) Order, art 4; Pensions Act 14 (Cons, Supp & Inci Amdts) Order, art 2

Persons who have not yet attained qualifying age

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

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

Definitions

02055 "Bereavement benefit" means¹

1. BPT under legislation² in force before it was repealed³

2. BA under legislation⁴ in force before it was repealed⁵ **and**
3. WPA.

Note: The repeals in DMG 02055 will **not** apply where a person is entitled to BPT or BA on 5.4.17⁶. However, they will apply where a person is no longer entitled to BPT or BA⁷.

*1 SS (C&P) Regs, reg 2(1); 2 SS CB Act 92, s 36; 3 Pensions Act 14, Sch 16, para 8;
4 SS CB Act 92, s 39B; 5 Pensions Act 14, Sch 16, para 13; 6 & 7 Pensions Act 14
(Commencement No. 10) Order, art 4; Pensions Act 14 (Cons, Supp & Inci Amdts) Order, art 2*

02056 “Qualifying age” means¹

1. in the case of a woman, pensionable age **or**
2. in the case of a man, the age which would be the pensionable age of a woman born on the same date as that man.

1 SS (C&P) Regs, reg 2(1); SPC Act 02, s 1(6)

The procedures

02057 In addition to being able to claim at an appropriate office, persons to whom DMG 02053 or 02054 apply can make their claim by sending or delivering it, or making it in person at¹

1. an office designated by the Secretary of State for accepting such claims **or**
2. the offices of
 - 2.1 a LA administering HB or CTB **or**
 - 2.2 a county council in England **or**
 - 2.3 a person providing services to an LA or county council as in **2.1** or **2.2** **or**
 - 2.4 a person authorized to exercise any function of a LA relating to HB or CTB **or**
 - 2.5 a person authorized to exercise any function of a county council in England²

provided the Secretary of State has arranged with the LA, county council or person referred to in DMG 02057 **2.3**, **2.4** or **2.5** for them to receive claims.

Note 1: Decisions about designating offices and making arrangements with LAs are made centrally.

Note 2: For ease of reference the offices listed in DMG 02057 **1.** & **2.** are referred to as “alternative offices” in DMG 02059 to 02065.

1 SS (C&P) Regs, reg 4(6B); 2 SS Admin Act s 7A

02058 A claim made under DMG 02057 must be on a form approved by the Secretary of State which has instructions for completing and returning printed on it¹.

1 SS (C&P) Regs, reg 4(6B)

Rights and responsibilities of local authorities and county councils in England

02059 On receipt of a claim, the LA, county council or person specified in DMG 02057 **2.3**, **2.4** or **2.5**

1. must forward the claim as soon as reasonably practicable to the Secretary of State¹
2. may receive information or evidence relating to the claim supplied by the claimant and/or other persons and must forward it to the Secretary of State as soon as reasonably practicable²
3. may obtain information or evidence from the claimant in connection with the claim (but not medical information or evidence except for that which the claimant must provide in accordance with the instructions on the claim form) and must forward it as soon as possible to the Secretary of State³
4. may verify any non medical evidence or information supplied or obtained and must forward it as soon as possible to the Secretary of State⁴
5. may record information or evidence relating to the claim supplied under DMG 02059 **2.** or obtained under DMG 02059 **3.** and hold it for the purpose of forwarding it to the Secretary of State⁵
6. may give the claimant information and advice relating to the claim⁶.

Note: The functions at DMG 02059 **2.** to **6.** may be carried out by one of these offices even if the original claim was made at a different office.

1 SS (C&P) Regs, reg 4(6C)(a); 2 reg 4(6C)(b); 3 reg 4(6C)(c); 4 reg 4(6C)(cc); 5 reg 4(6C)(d); 6 reg 4(6C)(e)

02060 Where any of the organisations referred to in DMG 02057 has arranged with the Secretary of State to receive claims for a specified benefit (DMG 02066) or to obtain information or evidence relating to claims for a specified benefit then the authority may

1. receive information or evidence which relates to an award of that benefit and which is supplied by either
 - 1.1 the person to whom the award has been made **or**
 - 1.2 other persons in connection with the award **and**
2. shall forward it to the Secretary of State as soon as reasonably practicable
3. verify any information or evidence supplied **and**
4. record the information or evidence supplied and retain it for the purpose of forwarding it to the Secretary of State¹.

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

Date of claim

02061 Where a person who has attained the qualifying age makes a claim for a benefit listed in DMG 02053 at an alternative office, the date of claim will be the date that the claim is received at that office¹.

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

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

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

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

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

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

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

AA and DLA

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

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

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

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

02065 Where

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

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

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

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

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

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

Note: The guidance at DMG 02066 will also apply where a person is entitled to BPT or BA on 5.4.17⁴. However, it will cease to apply where a person is no longer entitled to BPT or BA⁵.

1 SS (C&I) Regs, reg 3(2); 2 reg 3(1)(b); 3 reg 1(3); 4 & 5 Pensions Act 14 (Commencement No. 10) Order, art 4; Pensions Act 14 (Cons, Supp & Inci Amdts) Order, art 2.

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

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

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

Example

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

Social security information verified by a local authority

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

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

Claims made electronically

02069 The following benefits (together with any dependency increase) may be claimed electronically¹

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

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

Note: BSP will be added to the list when the Secretary of State issues a direction.

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

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

02071 Where a claim is made electronically the date of claim is the date the claim is recorded as having been received on the Department's computer system (i.e. at the Government Gateway)¹. This might not be the same as the date the claim is received in the appropriate office.

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

02072 The following should also be noted (see also Annex B, Appendices A & B)

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

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

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

Note: This will also apply where a person is entitled to BPT or BA on 5.4.17².

However, it will cease to apply where a person is no longer entitled to BPT or BA³.

1 SS (C&P) Regs, reg 4(11) ; 2 & 3 Pensions Act 14 (Commencement No. 10) Order, art 4; Pensions Act 14 (Cons, Supp & Inci Amdts) Order, art 2

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

02075 - 02079

Claims made in the prescribed manner

The prescribed manner for making a claim

02080 A claim made in the prescribed manner is one that

1. is made on the approved form for that benefit or (except for IS and JSA) in some other written way that is satisfactory to the Secretary of State (for example a printed form of words such as a statement with the claimant's signature or mark¹) **and**
2. is properly completed in accordance with the instructions on the form **and**
 - 2.1 for IS and JSA satisfies the evidence requirements (see DMG 02086 - 02090)².

Note: See DMG 02069 et seq for claims made electronically. See DMG 02073, 02148, 02253 and 02257 for telephone claims. See DMG 02127 et seq for guidance on claims for SPC.

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

02081 A form that has been produced under the Customer Management System procedures with the claimant's answers already entered on it and then sent to the claimant to be signed and returned as a claim for benefit is an approved claim form. But a claim in the prescribed manner will not be received until the

1. claimant has completed the form and adopted it by his signature **and**
2. form has been returned to an appropriate office (together, in the case of IS and JSA, with the information and evidence it requests).

02082 The requirement to complete the form in accordance with instructions on it is satisfied if the relevant information or evidence is provided somewhere on the claim form or in documents that the claimant refers to and submits along with the claim form. The condition is also satisfied when questions about entitlement to or payability of the benefit being claimed are answered. Answering other questions on the form is not necessary for the form to be accepted as properly completed. For example, where a claim form for a personal benefit includes questions about whether the claimant also wishes to claim an increase for a dependant, any failure to answer those questions will not make the personal benefit claim defective. Nor will failure to provide details about payment arrangements¹.

1 SS (C&P) Regs, reg 4(1) & (1A); R(IS) 6/04

02083 An intention to claim can be notified by any means. It does not have to be in writing¹.

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

02084 An intention to claim stated in a phone conversation is not a claim in the prescribed manner¹ (but see DMG 02073, and 02131 for claims to SFFP, BB, RP, GRB, SAPs and SPC made by telephone). For AA and DLA there are provisions which allow the date of claim to be backdated to the date of a request for a claim form. This includes oral requests made, for example, using the Benefit Enquiry Line.

1 R(F) 1/92

Written communication - sufficient to constitute a claim for benefit

02085 Regulations¹ provide that claims to benefit (with certain exceptions²) shall be made in writing on an approved form or in such other manner (in writing) as the Secretary of State may accept as sufficient in the circumstances of any particular case. The Secretary of State has discretion whether to accept that a written request for benefit which is not on the official form is sufficient for establishing a claim to benefit. This discretion **does not** apply to claims for ESA³, IS or JSA⁴. Written claims for these benefits must be made on a form approved by the Secretary of State. Guidance at paragraphs 02085 - 02091 therefore does not apply to these benefits.

1 SS (C&P) Regs, reg 4(1), reg 4D; 2 regs 4(10-11B); 3 reg 4H(2); 4 reg 4 (1A)(a)

02086 Regulations¹ provide that where a claim is received and is not made in the prescribed manner then the claim is defective. When a defective claim is received² the claim form should be returned to the claimant for completion or the claimant should be supplied with the approved form. If a properly completed claim form is submitted within the timescale provided in regulations it can be backdated to the date of the earlier defective claim. Guidance in paragraphs 02085 to 02091 addresses the question of when a written communication, which is not made on an approved form and which is also not accepted as "sufficient" under the regulations referred above, is nonetheless capable of being sufficient to amount to a "claim" for a particular benefit, albeit a defective one.

1 SS (C&P) Regs, reg 4(7), 4(7ZA) & reg 4H(6); 2 reg 4(7), 4(7ZA) & reg 4H(7)

02087 In considering whether a written communication from a claimant is capable of amounting to a defective claim then three principles should be applied. These principles derive from a Court of Appeal judgement which concerned HB but affects other benefits as well¹. The first is that it must be clear from the document that the claimant wishes to claim benefit and is not, for example, just asking for information. A general enquiry as to what benefits can be claimed does not constitute a claim. Similarly, for example, a request for a claim form will usually amount only to a notification that a claimant intends to claim benefit in the future, and will not amount

to a claim (not even a defective one); the receipt of a medical certificate on its own would not constitute a claim for DLA, for example. In the judgment the claimant had stated that she wanted the benefits to which she was entitled to be backdated, so it was clear that she was not just asking for information about her benefit position. She had also described herself as “applying” for benefits. However, the Court commented that the position would have been different if the claimant had said that she would be claiming at a future date and would be asking for her benefit to be backdated. If that was the case it would be clear that no claim was yet being made.

1 Novitskaya vs London Borough of Brent & S of S for Work and Pensions [2009] EWCA Civ 1260

02088 The second principle is that the particular benefit does not necessarily have to be named in the written document. For example, the claimant might not know the correct name of the benefit that they want to claim. However, the Court reached this conclusion on the basis that a reasonable official receiving the document could understand which benefits were being claimed. In this particular case it was clear that the document had been understood to be a claim for HB because the word “HB” had been written on it by an official. Discretion should be applied when the DM is determining such cases, for example if a claimant uses the wrong name for a benefit then this should not necessarily be fatal. If it is reasonably clear what benefit is being claimed then the document should be treated as a defective claim for that benefit. On the other hand, if the information provided is so vague that it is not remotely possible to determine what benefit the claimant wanted then a contrary approach may be taken. DMs should consider all the available evidence and the claimant’s circumstances when determining whether the communication can be treated as a defective claim for a particular benefit.

02089 The third principle established by the judgement is that, in determining whether a defective claim for benefit was made, the written document should not be looked at in isolation. It must be looked at along with any other information such as other documents provided by the claimant at the time, or statements that they have made in a telephone or face to face conversation.

02090 Where such a written notification is received, then the claim will be defective. A claim form should be sent to the claimant to complete. The claimant has one month, or such longer time as is considered reasonable, to return the claim form to the Department¹. Upon receipt within these timescales the date of claim will be the date of receipt of the original notification.

1 SS (C&P) Regs, reg 4(7), reg 4(7ZA), reg 4(7A), reg 4(7B), reg 4D(6C, 6D, 6E, 10 & 11), reg 4H(7)

02091 In some cases it will be clear what benefit the claimant is referring to. For example a 65 year old man may submit a written notification that they want to claim their pension or a person may write in to say that their spouse or civil partner has recently died. Alternatively, it may be the case that contact will be needed with the

claimant to establish what benefits they may be entitled to. Similarly, it may be the case that the claimant's details should be passed to the LA to consider a claim for CTB, HB or HMRC to consider tax credits.

Claims for IS and JSA

02092 A claim for IS or JSA must

1. be made in writing on the official form for the benefit being claimed (but see DMG 02093 below) **and**
2. be made in accordance with the instructions on the form, unless any of the reasons listed in DMG 02094 applies **and**
3. include any information or evidence in connection with the claim as the claim form may require, unless any of the reasons listed in DMG 02094 applies¹ **and**
4. be delivered or sent to an appropriate office² (if so directed a JSA claimant must attend for interview at a place and time specified and must provide a properly completed claim form on or before that occasion³).

Note: The claimant can be permitted an extension of the time allowed for the provision of a fully completed claim form, provided it is done so no later than one month from the date the claimant first notified their intention to make their claim⁴.

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

02093 The Secretary of State also has discretion to accept telephone claims to IS and JSA¹. Information and evidence required for written claims must similarly be produced if the claim is made by telephone². A claim made by telephone is properly completed if the Secretary of State is provided with all the information required to determine the claim and the claim is defective if not so completed³. Information can be required which cannot be provided during the call such as hard copies and original documents. The rules for correcting a defective telephone claim correspond with the rules for correcting a defective written claim⁴. The claimant has one month from the date an intention to claim was notified⁵ this is not capable of being extended by the Secretary of State. The date of claim for telephone claims is determined in the same way as if the claim was made in writing⁶. In some circumstances IS claimants who are lone parents may have their Wfl deferred. A telephone claim made in these circumstances still requires a signed Customer Statement. The telephone call is recorded and retained for up to 14 months following the date of initial contact.

*1 SS (C&P) Regs, reg 4(11A); 2 reg 4(12); 3 reg 4(12); 4 reg 4(13); 5 reg 4(7A) & 4(7B);
6 reg 6(1A), 6(4ZC) & 6(4A)*

Effect of CHB extension on dependency increases

02117 A period of entitlement to CHB can be extended for a person who is

1. under the age of 18 **and**
2. who is not in FTE¹

if a request is made for the extension.

1 CHB (Gen) Regs, reg 7D

02118 Where the period of entitlement to CHB is extended, there may also be entitlement to an additional period of dependency increase for

1. a dependent child **or**
2. a person caring for a child.

A fresh claim may be necessary to establish entitlement to CHB and to the dependency increases during the extended period because it remains a basic condition of entitlement that a claim is made¹.

1 SS A Act 92, s 13(1); SS (C&P) Regs, reg 2(3); CWS 36/50

02119 When deciding if a fresh claim for CHB is necessary the DM should consider whether the request for the extension was made before or after an award has ended. Where a request¹ is made **before** entitlement to CHB would usually have ended a fresh claim will not be necessary.

1 CHB (Gen) Regs, reg 7D(1)(e)

Example

A child leaves school in July 2000, when she is 16, but is still regarded as a child until the next terminal date, 4.9.00¹. No decision is given fixing the end of the award. On 2.8.00 an extension is requested. As the request is made before the date on which entitlement would ordinarily have ended a fresh claim is not required.

1 CHB (Gen) Regs, reg 7(1) & (2)

02120 A fresh claim for the extended period is needed where

1. no request is made before the normal terminal date **and**
2. the Secretary of State has stopped payment of benefit.

Although not superseded, the award does not continue in force beyond the date on which it was ended¹.

1 R(F) 8/61

Example

A child leaves school in July 2000, when he is 16, but is still regarded as a child until the next terminal date, 4.9.00. CHB continues up to 10.9.00 (the last order being 4.9.00) but from 11.9.00 payment of the benefit is stopped.

On 18.9.00 a request for the extension of CHB is received. Although no decision has been given ending the award, payment was stopped by the Secretary of State on 10.9.00. Before entitlement can be considered again a fresh claim must be made.

02121 A fresh claim is required where a

1. DM has made a decision fixing the end of entitlement to CHB **and**
2. request for an extension is made **after** the date fixed by the DM.

If the request for an extension is made **before** the date fixed, the DM can supersede the decision to end entitlement.

02122 A fresh claim is needed to establish entitlement to the increase during the extended period if the original award of the increase was for

1. a definite period¹ **or**
2. an indefinite period², but entitlement to the increase had ended when CHB entitlement was extended. This includes claims where payment of the benefit had been stopped by the Secretary of State³.

1 SS (C&P) Regs, reg 17(3); 2 reg 17(1); 3 R(F) 8/61

02123 A fresh claim for the increase is not necessary if

1. the original award of the increase was for an indefinite period¹ **and**
2. entitlement to CHB is extended whilst the increase is still payable.

1 SS (C&P) Regs, reg 17(1)

02124 - 02126

Claiming SPC

In writing

02127 A claim for SPC may be made in writing, by telephone or in person¹. A claim only has to be in writing if, in a particular case, the Secretary of State directs that it must be².

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

Making a claim

02134 A claim to benefit is made as soon as a claimant gives a clear indication to that effect. This will usually occur towards the start of the telephone conversation when the authentication and validation procedures have been completed. Up to that point the person may simply be expressing an intention to claim benefit, for example, they may be making general enquiries about the benefit or they may want to make a paper claim (see DMG 02137). Once made, the claim is valid but will be defective until the person has provided the Secretary of State with all the information necessary to determine the claim.

1 SS (C&P) Regs, reg 4D(6C)

02135 If all information necessary to determine a claim is provided but further verification is required, the claimant has one month (or such longer reasonable period as allowed) in which to provide it (see DMG 02171)¹. But the claim is not defective.

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

Defective claims - SPC tele-claims

02136 In most cases it is expected that all the information necessary to determine a claim will be provided during the initial telephone conversation. If the information is not provided during that telephone call (for example, if the conversation is cut short unexpectedly) the claim will be defective¹. In these circumstances the Secretary of State must give the claimant the opportunity to provide the missing information². This can be done by the most suitable means i.e. by phone or in writing. A valid claim will also be defective until full information is provided where, following an initial telephone conversation, the claimant asks for a call back to be arranged at a later date.

1 SS (C&P) Regs, reg 4D(6C); 2 reg 4D(6D)

02137 If the missing information is provided within one month of a defect being drawn to the claimant's attention (or within such longer period as the Secretary of State considers reasonable) the claim will be treated as having been properly made in the first instance. Where the person has been asked for information on more than one occasion the time limit starts from the date the defect was first drawn to the claimant's attention¹.

1 SS (C&P) Regs, reg 4D(6E)

02138 If the missing information is not supplied within the time allowed

1. the claim should be disallowed on the basis that it is defective and not made in the prescribed manner¹ **and**
2. the claimant should be notified of
 - 2.1 the decision made on the claim² **and**

2.2 the right to request a statement of the reasons for the decision within one month³ **and**

2.3 the right to appeal against the decision⁴.

1 SS (C&P) Regs, reg 4D(6C), (6D), (6E), SS A Act 92, s 1(1); 2 SS CS (D&A) Regs, reg 28(1)(a); 3 reg 28(1)(b); 4 reg 28(1)(c)

02139 If the missing information is supplied outside the one-month time limit and

1. no decision has yet been made on the claim **and**

1.1 the delay is accepted as reasonable - the date of claim will be treated as the date the claim was first made¹ **or**

1.2 the delay is not accepted as reasonable - the date of claim will be the date the missing information is supplied² **or**

2. the initial claim has been disallowed on the grounds that it was not made in the prescribed manner, the DM should

2.1 consider whether the original decision can be revised on the grounds that it was reasonable to extend the one-month time limit **or**

2.2 decide that the disallowance cannot be revised or superseded because the submission of the information is a change of circumstances occurring after the claim was decided³.

Where DMG 02139 **2.2** above applies the DM should consider whether a further claim to benefit has been made.

1 SS (C&P) Regs, reg 4D(6E); 2 reg 4F(2)(b); 3 SS CS (D&A) Regs, reg 3(9)(a); SS Act 98, s 8(2)(b)

Intention to claim

02140 If a claimant

1. informs by whatever means (eg. another person can act on the claimant's behalf)

1.1 an appropriate office **or**

1.2 an office designated by the Secretary of State for accepting claims for SPC **or**

1.3 one of the offices described in DMG 02129 **3.** (provided the Secretary of State has arranged with the LA or person providing services to a LA for them to receive SPC claims)

of their intention to claim **and**

2. subsequently makes a claim in accordance with DMG 02127 to 02131 within one month of the date they inform one of the offices in 02129 **1.** ("an appropriate office") of their intention to claim, or within such longer period as the Secretary of State may allow, the claim may, where in the circumstances

- 02229 The nominated member¹ in relation to a joint-claim couple is the member of the couple who
1. they have nominated JSA to be paid to **or**
 2. the Secretary of State has nominated, where they have not made such a nomination **or**
 3. is the other member of the couple, where the one member of the joint-claim couple is sanctioned.

1 JS Act 95, s 53

- 02230 To be entitled to JSA, a joint-claim couple must claim JSA jointly¹.

1 JS Act 95, s 1(2B)(a)

- 02231 A joint-claim couple may be treated as having claimed JSA jointly where they have become a joint-claim couple because the child or all the children for whom they were responsible have

1. died **or**
2. ceased to be a child or children for which the couple are responsible **or**
3. reached the age of 16 and are no longer receiving full-time education for CHB purposes¹.

1 JSA (JC) Regs, reg 3C(1)

- 02232 To be treated as having made a JSA claim jointly in these circumstances, the Secretary of State must have

1. sufficient evidence to decide whether a new award should be made **and**
2. been told which member of the couple is to be the nominated member for payment purposes¹.

1 JSA (JC) Regs, reg 3C(3)

- 02233 Where these conditions are satisfied

1. any claim made by either member of the joint-claim couple should be treated as made by both members of the couple **and**
2. the joint-claim should be treated as made on the date on which the claim now treated as a joint-claim was itself treated as made **and**
3. any award of JSA(IB), or a replacement award, to either member of the couple should be terminated and replaced by a new award to the couple¹.

1 JSA (JC) Regs, reg 3(C)(2) & (4)

02234 A member of a couple may be treated as having claimed JSA where the couple has ceased to be a joint-claim couple because they have become responsible, or treated as responsible, for one or more children¹.

To be treated as having made a JSA claim in these circumstances, a member of the couple must

1. provide such evidence as the Secretary of State requires confirming that the couple are responsible for one or more children **and**
2. advise the Secretary of State which member of the couple is to be a claimant².

1 JSA (JC) Regs, reg 3B(1); 2 reg 3B(2)

02235 Where these conditions are satisfied

1. any claim made by both members of the couple should be treated as made by either member of the couple **and**
2. the claim should be treated as made on the date on which the claimant and partner were treated as having made a joint claim **and**
3. any award of joint-claim JSA should be terminated and replaced by a new award to the claimant¹.

1 JSA (JC) Regs, reg 3(B)(2) & (3)

02236 Where a member of a joint-claim couple notifies the Jobcentre by any means of a wish to claim JSA, either one member or each member of the couple will be required to attend the Jobcentre in connection with the claim.

02237 Where

1. each member of the joint-claim couple is required to attend **and**
2. each member of the couple attends at the time and place notified **and**
3. a properly completed claim form is provided at or before the interview

the claim should be treated as made on the later of the date on which an intention to claim was notified to the DWP or the first day for which the claim is made¹.

1 JSA (JC) Regs, reg 6(4ZA) & (4ZB)(a)

02238 Where

1. each member of the joint-claim couple is required to attend **and**
2. without good cause (see DMG 02601), either member fails to attend at the time or place notified or fails to provide a properly completed claim form at or before the interview the claim should be treated as made on the first day on which a member of the couple attends at a time and place notified and provides a properly completed claim form at or before the interview¹.

1 JSA (JC) Regs, reg 6(4ZA) & (4ZB)(b)

02239 Where only one member of the joint-claim couple is required to attend and that member attends at the time and place notified the claim should be treated as made on

1. the date a properly completed claim form is received at an appropriate office **or**
2. the first day for which the claim is made, if this is later than the date on which the properly completed claim form was received at an appropriate office **or**
3. the date on which an intention to claim was notified to the DWP, if a properly completed claim form is received at an appropriate office within one month of the date the intention to claim was notified¹.

1 SS (C&P) Regs, reg 6(4ZA), (4ZA)(b) & (4ZC)(a)

02240 Where

1. only one member of the joint-claim couple is required to attend **and**
2. without good cause (see DMG 02601), that member fails to attend at the time or place notified or fails to provide a properly completed claim form at or

before the interview the claim should be treated as made on the first day on which the member of the couple who is required to attend attends at a time and place notified and provides a properly completed claim form at or before the interview¹.

1 SS (C&P) Regs, reg 6(4ZA) & (4ZC)(c)

02241 Where

1. one member of a joint-claim couple is temporarily absent from GB on the date the other member notifies the Jobcentre of an intention to claim **and**
2. DMG 072150 applied on the date the intention to claim was notified the claim should not be treated as made more than three months before the date on which the date the intention to claim was notified by the member who remained in GB¹.

1 SS (C&P) Regs, reg 6(4ZA) & (4ZD)

DLA and AA

02242 Where a written claim for DLA or AA is received and

1. has been delayed by postal disruption **and**
2. that disruption was caused by industrial action

the claim should be treated as received on the day it would ordinarily have been delivered¹.

1 SS (C&P) Regs, reg 6(5)

02243 The DM should not wait for the claimant to suggest that there has been some disruption but should consider from available evidence whether the post may have been disrupted by industrial action.

- 02244 The DM should generally decide that the claim was received the day after posting. The date of posting should normally be accepted as the date on the claim form or letter. In deciding the date of claim the DM should also consider the guidance at DMG 02061 - 02063 and 02052 et seq.
- 02245 The date of claim for DLA or AA is the date on which a request for a claim pack is received in an appropriate office (or the date the claim was accessed on-line if made electronically) if the claimant
1. completes the claim form properly **and**
 2. returns the form within six weeks of the date the request was received (or such longer period as the Secretary of State may consider reasonable)¹.

Where the date a claim form was requested is not known (for example, because there is no clear evidence in the case or the date has not been recorded) the claim is treated as made on the date six weeks before receipt of the properly completed claim form².

Note: See DMG 02052 et seq for advice on where a claim for DLA or AA is made at an alternative office.

1 SS (C&P) Regs, reg 6(8); 2 reg 6(8A)

IS

- 02246 Where a properly completed claim for IS is received in an appropriate office within one month of the first notification of intention to claim, the date of claim is
1. the date the claimant first notifies an intention to make a claim **or**
 2. the first day for which benefit is claimed, if later¹.

Note: Notification of intention to make a claim is deemed to be made on the date when an appropriate office receives² a notification, by whatever means, of an intention to claim IS or a defective claim.

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

Example 1

On 6.7.00 a social worker telephones the office to notify that a person wishes to claim IS from 6.7.00. A claim form is issued. On 12.7.00 a properly completed claim form with all the required information and evidence is received in the office. The date of claim is 6.7.00.

Example 2

On 6.7.00 the claimant telephones the office to claim IS from that day. On 12.7.00 the claim form is received in the office but evidence of final earnings has not been provided. The missing evidence is received on 9.8.00. The date of claim is 9.8.00, because the properly completed claim form was not received within one month of the first notification of intention to claim, on 6.7.00.

Example 3

On 6.7.00 the claimant calls at the office, is given a claim form and hands it in partially completed. The claimant is asked to provide the missing information and does so on 18.7.00. The date of claim is 6.7.00.

02247 Where

1. a person has claimed WTC **and**
2. the claim is disallowed because the claimant or partner is not in remunerative work **and**
3. a claim for IS or JSA is made within 14 days of benefit being disallowed

the claim for IS or JSA can be treated as made on the date of the original claim for WTC or a later date specified by the claimant¹.

1 SS (C&P) Regs, reg 6(28)

RP - late payment of Class 3 contributions

02248 Where a claim to a Cat A or Cat B RP is received and the circumstances shown in DMG 02249 apply, the claim may be treated as made on

1. 1.10.98 **or**
2. the date on which the claimant, for a Cat A claim, or their spouse or civil partner for a Cat B claim reached pensionable age whichever is the later¹.

1 SS (C&P) Regs, reg 6(31)

02249 The circumstances referred to in DMG 02248 are that

1. the claimant (and their spouse or civil partner in a Cat B claim) has attained pensionable age but previously made no claim to RP
2. Class 3 contributions for the tax years 1996-97 to 2001-02 which have been paid after the due date have been accepted by HMRC¹
3. the contributions have been treated by HMRC as having been paid at an earlier date² **and**
4. the person has subsequently claimed a Cat A or Cat B RP³.

1 SS (Contributions) Regs 2001, reg 50A; 2 SS (Crediting and Treatment of Contributions and NI Numbers) Regs 2001, reg 6A; 3 SS (C&P) Regs, reg 6(31)

Note: As 1.10.98 is the earliest date on which contributions can be treated as paid there can be no entitlement to RP before this date.

02250 DMG 02248 does not apply where entitlement to a

1. Cat A or Cat B RP **and/or**
2. GRB

has been deferred (see DMG Chapter 75)¹. In these circumstances the normal rules for claiming will apply (DMG 02330).

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

Date of claim - SPC tele-claims

02251 Where a person claims SPC after reaching the qualifying age the date of claim made by telephone is

1. where the claim is not defective - the date details of the claimant's circumstances are provided by telephone¹ **or**
2. where the claim is defective but corrected within the time allowed by the Secretary of State - the date the claim is treated as made in the first instance² **or**
3. where the claim is made within one month (or such longer permitted period) of the first notification of an intention to claim benefit - the date of that notification³.

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

Example

A telephone claim is received on 6.11.06. A call-back interview is arranged for 10.11.06 when all information necessary to determine the claim is provided. Although the claim made on 6.11.06 was defective when made (because information was not provided during that telephone conversation), the defect was corrected within one month. The date of claim is therefore 6.11.06.

Date of claim for SPC - in writing or in person

02252 Where a person claims SPC after reaching the qualifying age, the date of claim is

1. where the claim is made in writing and is not defective, the date on which the claim is first received
 - 1.1 by the Secretary of State or the person acting on his behalf¹ **or**
 - 1.2 at an office described in DMG 02129 **3**.²
2. where the claim is made in person
 - 2.1 the date details of the claimant's circumstances are provided by the claimant at an appropriate office (see DMG 02129)³.

1 SS (C&P) Regs, reg 4F(2)(a)(i); 2 reg 4F(2)(a)(ii); 3 reg 4F(2)(b)

Telephone claims for SFFP, BB, RP, GRB and SAPs

02253 The date of claim for claims to SFFP, BB, RP, GRB or SAPs when made by telephone and which are either

1. not defective **or**
2. defective, but corrected within the time limit allowed by the DM (See DMG 02166 - 02170)

is the date of the initial telephone call¹.

1 SS (C&P) Regs, reg 6(1)(c)(d)

Claims for IB other than in writing

02254 Where a person notifies **by any means** an appropriate office (or an alternative office for someone of qualifying age claiming IB) of an intention to claim benefit, the date of claim will be the later of

1. the date on which that notification is received **or**
2. the first day in respect of which the claim is made

provided that a properly completed claim is received in an appropriate (or alternative) office within one month of the notification of intention to claim¹. A properly completed claim is a claim that is made on the form approved for the benefit and completed in accordance with the instructions on it². If such a claim is not made within the one-month period, the date of claim will be the date the claim is received³. The one-month period is fixed and cannot be extended under any circumstances.

Example 1

Carol rings to claim IB on 10.11.06. A call back interview is arranged for 15.11.06 and full details of the claim taken. A statement of the claimant's details is issued on 17.11.06 and returned on 1.12.06. The DM determines the date of claim to be 10.11.06.

Similar provisions apply where a person is required to take part in a work-focused interview (see DMG Chapter 05)⁴.

1 SS (C&P) Regs, reg 6(1D), (1ZA); 2 reg 4(6); 3 reg 6(1)(a); 4 reg 6A(2)(d)

02255 A notification to claim benefit is a communication that states or implies that the person concerned wishes to claim benefit. The above applies to an intention to claim benefit notified by any means. An intention to claim benefit may be notified

1. by telephone
2. in person
3. by e-mail **or**
4. by any other means of communication.

Note: A record should be kept of a communication made other than in writing.

02256 The backdating provision at DMG 02251 is in addition¹ to the one in DMG 02103 that applies to a claim in writing that is

1. a defective claim (i.e. on an approved claim form that has not been properly completed) **or**
2. not made on an approved claim form or an acceptable alternative².

Example 1

Ryan contacts a Contact Centre on 6.7.06 to claim IB. Following a subsequent telephone conversation a partially completed claim form is issued on 14.7.06 and the claimant asked to complete the form and return it. The form is returned signed but still incomplete on 20.7.06. The form is again returned to the claimant on 24.7.06 and subsequently received, properly completed, on 4.8.06. The DM determines that the date of claim is 6.7.06.

Example 2

Judith sends a letter to an appropriate office to say she wishes to claim IB. This is received on 6.7.06. Following a subsequent telephone conversation a partially completed claim form is issued on 14.7.06 and the claimant asked to complete the form and return it. The form is returned properly completed on 21.8.06. The delay in returning the form is the result of the claimant's illness. The DM considers the time taken to complete and return the form to be reasonable in the circumstances. The date of claim is determined to be 6.7.06.

1 SS (C&P) Regs, reg 4(8); 2 regs 4(7) & 6(1)(b)

Telephone Claims to ESA

02257 The date on which a claim for ESA is made or treated as made is the first

1. date on which
 - 1.1 a properly completed telephone claim is made¹ **or**
 - 1.2 a defective claim is made but is treated as properly made in the first instance² **or**
 - 1.3 the Secretary of State is notified of an intention to claim and within one month or such period as considered reasonable a claim is properly completed³ **or**
2. the first day in respect of which the claim is made if later.

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

02258 - 02259

Award of qualifying benefit

Introduction

02260 There are special rules for determining the date of claim where entitlement to a benefit depends on entitlement to another benefit. These apply where a further claim is made following

1. disallowance of an earlier claim **or**
2. termination of an earlier award

and a decision on a qualifying benefit is made.

Definitions

02261 The following definitions apply to DMG 02266 - 02268.

02262 A decision on a qualifying benefit includes a decision in the claimant's or disabled person's favour

1. on revision or supersession by a DM **or**
2. on appeal by a FtT, UT or a court¹.

1 SS (C&P) Regs, reg 6(26)

02263 "Relevant benefit" means¹

1. any benefit listed in Annex A (but not IB - see DMG 02269 et seq)
2. IS
3. JSA
4. SF maternity and funeral payments, CWP and WFP.
5. CHB
6. SPC.

1 SS (C&P) Regs, reg 6(22)

02264 "Qualifying benefit" means¹

1. for SDA, the highest rate of the care component of DLA
2. for CA, any of the benefits or payments referred to in DMG Chapter 60
3. for SF maternity expenses, ESA(IR), IS, JSA(IB), SPC, WTC (where the disability or severe disability element is included in the award) CTC (payable at a rate higher than the family element)
4. for SF funeral expenses, ESA(IR), IS, JSA(IB), SPC, WTC (where the disability or severe disability element is included in the award), CTC (payable at a rate higher than the family element), HB or CTB

5. any other relevant benefit that has the effect of making another relevant benefit payable or payable at an increased rate.

1 SS (C&P) Regs, reg 6(22)

02265 “Member of the claimant’s family” has the same meaning¹ as in DMG Chapter 22. In the case of SPC “member of his family” means the other member of a couple where the claimant is a member of a couple².

1 SS (C&P) Regs, reg 6(22); SS CB Act 92 s 137(1); JS Act 95, s 35(1); 2 SS (C&P) Regs, reg 6(22)

Transitional Protection - disabled person goes into hospital or similar institution

02266 Benefits transitionally protected¹ are not lost when a person in receipt of a qualifying benefit goes into hospital or similar institution and payability of that benefit is affected by supersession².

*1 Tax Credits Act 2002 (Commencement No 3 and Transitional Provisions and Savings Order) 2003 Article 3(3)(c);
2 SS (C&P) Regs, reg 6(19-21A)*

Example

A DLA claimant goes into hospital. Their carer loses entitlement to CA and CDI. Upon discharge from hospital DLA is re-instated. If CA and CDI are re-claimed within 3 months of the date of discharge, the date of claim shall be treated as the day on which DLA became payable again.

Benefits except IB

02267 Where

1. a claim (the original claim) for a relevant benefit has been refused¹ in the case of any relevant benefit, except IB, because the claimant or a member of the claimant’s family had not been awarded a qualifying benefit **and**
2. a further claim for the relevant benefit is made where the circumstances specified in DMG 02268 apply

then the further claim will be treated as made on whichever is the later² of the date of the original claim, or the first day in respect of which the qualifying benefit was awarded whether or not it is payable.

Note: In the case of IS and JSA DMG 02267 includes where a claim has been refused on the grounds that income exceeds because the lack of a qualifying benefit means that an element of the applicable amount (usually a premium) cannot be awarded.

1 SS (C&P) Regs, reg 6(17); 2 reg 6(16)

02268 The circumstances referred to in DMG 02267 2.¹ are that

1. a claim for the qualifying benefit had been made not later than ten working days after the date of the original claim but had not been decided **and**
2. after the original claim had been refused, the claim for the qualifying benefit was decided in the claimant's or family member's (or in the case of CA, the disabled person's) favour **and**
3. a further claim to the relevant benefit is made within three months of the date on which the claim for the qualifying benefit was decided.

Note: This does not apply to claims for CA - see DMG 02277.

1 SS (C&P) Regs, reg 6(18)

Example

A person claims IS because they are caring for an elderly relative. The relative has been disallowed AA, and the IS claim is accordingly disallowed. The AA disallowance is overturned on appeal. The carer claims IS again. The second claim is treated as made on the date of the first claim.

Reclaim following termination

02269 Where an award of a relevant benefit is terminated or payment ceases under certain circumstances¹ and a further claim is made then that further claim is treated as made (subject to DMG 02270) on the date of termination of the original award or on the first date in respect of which the qualifying benefit is awarded, re-awarded or becomes payable again².

1 SS (C&P) Regs, reg 6(20); 2 reg 6(19)

02270 In order for the date of claim to be determined in accordance with DMG 02269, the further claim for the relevant benefit must be made within 3 months of the date on which the decision to award, re-award or restart payments of the qualifying benefit on the grounds that either of the following circumstances were satisfied¹

1. that after the original award has been terminated the claim for the qualifying benefit is decided in favour of the claimant, a member of his family or the disabled person **or**
2. the qualifying benefit is re-awarded following revision, supersession or appeal **or**
3. the qualifying benefit is re-awarded on a renewal claim where an award for a fixed period expires **or**
4. the cessation of payment ends when the claimant leaves hospital or similar institution or accommodation.

Note: The date of claim of the relevant benefit is determined by **either** reference to DMG 02269 above **or** by applying the prescribed time for claiming.

1 SS (C&P) Regs, reg 6(21)

Example 1

Richard is in receipt of CA because he is caring for a severely disabled person who gets DLA. The award of DLA terminates on 1.3.05 because the fixed period award expires. At the same time CA terminates because the qualifying benefit has stopped. A further claim for DLA is made on 1.4.05 which is decided on 1.6.05, effective from 1.4.05. Richard then makes a further claim for CA on 1.8.05. The claim for CA is treated as made on 1.4.05 because the claim was made within 3 months of the decision to make a fresh award of DLA and so CA is awarded from 1.4.05.

Example 2

Sukaina is in receipt of CA. The fixed period award of DLA to the severely disabled person expires on 1.3.05. At the same time CA terminates because the qualifying benefit has stopped. A further claim to DLA is made on 2.5.05 which is decided on 1.6.05, effective from 2.5.05. Sukaina then makes a further claim for CA on 11.10.05. CA is awarded from 12.7.05 because the claim was not made within three months of the fresh award of DLA.

Example 3

A claimant is in receipt of IS and IB and makes a claim to DLA on 6 November. The IS award is terminated from 20 November because IB exceeds the IS applicable amount. No decision has yet been made on the DLA claim. On 15 December, DLA middle rate care component is subsequently awarded from 6 November. The award of DLA entitles the claimant to SDP as part of the IS applicable amount. The award of IS would have exceeded IB if DLA had been decided at the time. The claimant makes a new claim to IS on 29 December and this is awarded from the date of termination of his earlier award on 20 November. The DM also supersedes the previous IS awarding decision to include the SDP for the period 6 - 19 November.

IB

02271 Where

1. a person has ceased to be entitled to IB in the following circumstances
 - 1.1 entitlement ceased because the claimant was not incapable of work **and**
 - 1.2 at the date entitlement to IB ceased, the claimant had claimed a qualifying benefit and that claim had not yet been decided **and**

- 1.3 after entitlement to IB ceased the claim for the qualifying benefit was decided in the claimant's favour **and**
- 1.4 the further claim for IB was made within three months of the date on which the claim for the qualifying benefit was decided
- 2. the further claim for IB will be treated as made on the later¹ of the
 - 2.1 date on which entitlement to IB ceased **or**
 - 2.2 first day in respect of which the qualifying benefit was payable.

1 SS (C&P) Regs, reg 6(23) & (24)

02272 In DMG 02269 "qualifying benefit" means¹

- 1. DLA care component at the highest rate
- 2. an increase of a disablement pension for constant attendance which is higher than the lower rate, or is at the higher rate of such an increase
- 3. CAA under the War Pensions or Personal Injury for Civilians schemes.

1 SS (C&P) Regs, reg 6(25)

IS or JSA(IB) terminated

02273 Where

- 1. an award of IS or JSA(IB) is terminated **and**
- 2. a claim for a qualifying benefit is made **and**
- 3. a further claim for IS or JSA(IB) is made within three months of the date on which the qualifying benefit is decided

the further claim is treated as made on the date the previous award was terminated, or the date from which the qualifying benefit is awarded, whichever is later¹.

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

Example

A single claimant is in receipt of IB and IS. When the IB award is increased to IBLT, his income exceeds his applicable amount and the award of IS is superseded and disallowed from 20.5.07. On 5.8.07 he is awarded the middle rate of the care component of DLA from 31.5.07, the date of the DLA claim. He makes a further claim for IS on 28.10.07, which is treated as made on 31.5.07. The new award of IS includes the SDP.

Claims for IB or ESA where there is no entitlement to SSP

02274 A claim for IB or ESA is treated as made on an earlier date where a person

1. has previously given notice of incapacity to an employer **and**
2. has been notified in writing by the employer that there is no title to SSP¹.

1 SSP (Gen) Regs, reg 7

02275 The claim is treated as made¹ on the date that the employer accepts as the first day of incapacity provided that the claim is made within three months beginning with the day on which the claimant is notified in writing that there is no title to SSP².

1 SS (C&P) Regs, reg 10(1), 10(1A) & (2); 2 reg 10(2)(a) & Sch 4

Example

Colin becomes unable to work following a road traffic accident on 6 July. On 20 September he is informed by his employer that he is not entitled to SSP. He makes a claim to ESA on 15 December. The claim for ESA is treated as made on 6 July.

02276

CA

02277 Where a person makes a claim for CA or an increase for an adult or a child within three months of a decision awarding a qualifying benefit to the disabled person whether on a claim, an application for revision or supersession or an appeal to a FtT, UT or court, the date of the CA claim should be treated as the first day of the benefit week in which the award of the qualifying benefit is payable¹. This has the effect that the carer receives benefit for the whole of the week in which the qualifying benefit is first paid. If a renewal award of a qualifying benefit is made then the date of a new claim to CA is treated as the date on which the renewal award of the qualifying benefit came into effect².

1 SS (C&P) Regs, reg 6(33); 2 reg 6(34)

Example

An award of DLA ends on 1.08.07. A repeat claim is made on 1.04.07. CA is claimed on 1.07.07 and is paid from that date rather than 2.08.07.

02278 - 02279

Claims for MA where there is no entitlement to SMP

- 02280 A claim for MA is treated as made on an earlier date where a woman has
1. previously given notice of absence from work to her employer¹ **and**
 2. been notified in writing by her employer that she has no title to SMP.

1 SMP (Gen) Regs, reg 23

- 02281 The claim is treated as made on the later of¹ the
1. date notice of absence from work was given to the employer **or**
 2. start of the 14th week before the EWC.

1 SS (C&P) Regs, reg 10(3) & (4)

- 02282 The claim for MA must be made within three months of the claimant being notified in writing that she has no title to SMP¹.

1 SS (C&P) Regs, reg 10(4)(a)

- 02283 A claim to MA may be late where
1. a woman has received SMP **and**
 2. it is later discovered that she was not entitled to it.

In these circumstances the DM should treat the claim as made from either of the dates at DMG 02281 so that entitlement to MA for the full MAP can be considered.

02284 - 02329

Time for claiming

02330 For some benefits the claimant is not entitled for some or all of the period of claim if a claim is not made within the prescribed time. Claims to

1. CA
2. dependency increases
3. MA
4. WPA
5. BA
6. SPC

have an absolute time limit for claiming of three months¹ beginning on any day when the claimant would be entitled to the benefit concerned had a claim been made on time.

In calculating the three months beginning on a particular date that date is **included**. A month means a calendar month². DMs will often wish to calculate the earliest date of entitlement working back from the date of claim. The system to use in making such a calculation is: firstly find the appropriate month; secondly find the date in that month that is equivalent to the date of claim (if there is no exact equivalent find the nearest date in the appropriate month); and finally add one day.

1 SS A Act 92, s 1; SS (C&P) Regs, reg 19; 2 Inter Act 78

Example 1

A claim is received in an appropriate office on 8.8.05. The appropriate month is May 2005. The equivalent date in May is 8.5.05, adding one day gives 9.5.05. Thus this claimant has claimed in time for 9.5.05 onwards.

Example 2

A claim is received on 28.2.05. The appropriate month is November 2004. The equivalent date is 28.11.04. Adding one day gives 29.11.04. As all the other conditions were satisfied this claimant is entitled to benefit from 29.11.04.

Example 3

A claim is received in an appropriate office on 31.5.05. The appropriate month is February. There is no equivalent to a date of the 31st in February. The DM therefore sought the nearest date to the 31st in February. That was 28.2.05. The DM then added one day. Thus in this case the claim can be backdated to 1.3.05.

Example 4

A claim is received on 29.5.03. The appropriate month is February. Again there is no equivalent to the 29th in February 2003 so the DM seeks the nearest equivalent

in February which is 28.2.03. Adding one day gives 1.3.03. Thus in this case the claimant has claimed in time for 1.3.03 onwards.

Example 5

A claim is received on 28.5.04. The appropriate month is February 2004. The equivalent date is 28.2.04, adding one day in this case gives 29.2.04 (2004 is a leap year). So in this case the claimant has claimed within the prescribed time for 29.2.04 onwards.

02331 - 02338

Bereavement payment

02339 With effect from 1.4.03 the prescribed time for claiming BPT is twelve months beginning on any day when the claimant would be entitled to such a payment¹. However this only has effect for a person who is entitled to a BPT because of the death of a spouse or civil partner which occurred on or after 1.4.03².

Note: This will only apply where a person is entitled to BPT on 5.4.17³. However, it will cease to apply where a person is no longer entitled to BPT⁴.

1 SS (C&P) Regs, reg 19(3A); 2 SS (C&P & Misc Amdts) (No. 3) Regs, reg 4; 3 & 4 Pensions Act 14 (Commencement No. 10) Order, art 4; Pensions Act 14 (Cons, Supp & Inci Amdts) Order, art 2

Bereavement support payment

02340 The prescribed time limit for claiming¹ in respect of the additional payment of BSP for the first month (£3,500 or £2,500) is 12 months beginning with the date of death of the claimant's spouse or civil partner.

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

Bereavement benefits where death difficult to establish

02341 The normal time for claiming bereavement benefits (BPT, BA and WPA - see DMG 02330 and 02340) may be extended where

1. the dead person's body has not been discovered or identified and death is presumed **or**
2. a surviving partner has been separated for some time from their spouse or civil partner and was unaware of the death or discovery and identification of the body.

Note: For BPT and BA, this will only apply where a person is entitled on 5.4.17¹. However, it will cease to apply where a person is no longer entitled to BPT or BA².

1 & 2 Pensions Act 14 (Commencement No. 10) Order, art 4; Pensions Act 14 (Cons, Supp & Inci Amdts) Order, art 2

Less than twelve months have elapsed since date of death

02342 Where

1. a claimant's spouse or civil partner has died or is presumed to have died **and**
2. less than twelve months have elapsed since the date of death (or presumed death) **and**
 - 2.1 the deceased person's body has not been discovered or identified **or**
 - 2.2 the claimant is unaware of (or only finds out belatedly about) the discovery and identification

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

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

Example

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

More than twelve months have elapsed since date of death

02343 Where

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

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

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

Example

The claimant had been separated from her spouse for a number of years and had lost all contact with him. On 3.7.06 she learned that he had died abroad in a natural disaster on 12.6.05 but it was not until 14.1.06 that his body had been identified. She makes a claim for bereavement benefits on 27.7.06. The DM decides that she is entitled to a BPT and a BA from 12.6.05.

IB/SDA/IIDB/REA/ESA

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

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

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

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

Example

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

02346 - 02363

RP/GRB/SAP/SP

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

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

02365 - 02370

IS/JSA

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

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

Extending the time for claiming IS and JSA

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

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

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

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

DM makes a definite award for the period 19 to 23 September. This is followed by a disallowance for the definite period 24 to 30 September and an indefinite award from 1 October.

02424 Benefits such as BPT and regulated SF payments are not related to a period of time. Others such as MA and JSA (where it has been claimed only on the basis of contributions) are for specified periods. An award for these benefits is for one sum or related directly to the period of entitlement¹.

1 R(SB) 8/89

Advance awards

02425 The guidance about advance awards in the following paragraphs does not apply to

1. MA, or where it is treated as a claim for IB or SDA
2. RP, or an increase of RP
3. DLA
4. AA
5. SPC
6. SAP
7. SF funeral and maternity payments.

See DMG 02530 et seq.

02426 An advance award may be possible if a claimant does not satisfy the conditions of entitlement on the date on which a claim is made but will satisfy them for a future period. The future period must begin on a day which is no more than three months after the date of claim. The DM treats the claim as made for a period beginning with the date from which entitlement will begin. No disallowance is needed for the period from the date claimed to the date entitlement begins¹. The advance award provisions do not apply to IS, JSA(IB) and ESA(IR) claimants from abroad (including claimants who are not habitually resident in the UK)².

1 SS (C&P) Regs, reg 13; 2 reg 13(3) & 13(9)

Example

A claimant receiving IS makes a claim for a maternity payment 15 weeks before her expected date of confinement. If the DM considers it will be likely that the claimant will still be getting IS in four weeks time (the start of the prescribed time for claiming), the claim date can be advanced and an award considered.

02427 The claim should only be treated as made in advance if the day on which entitlement would begin is fixed and certain. If it is not, a disallowance should be given and the claimant advised to claim at a later date. If an advance award is made

it is subject to the claimant satisfying the conditions for entitlement when the date from which benefit is to be awarded is reached. The DM should reconsider an award made in advance if, on the date entitlement would start, the claimant does not satisfy conditions for entitlement because, for example, there has been a change of circumstances in the meantime¹ (see DMG Chapter 04).

1 SS (C&P) Regs, reg 13

Considering the claimant's entitlement down to the date of decision

02428 A claim for a future period continues to run until it is decided by the DM¹. When giving a decision on the claim, the DM must consider the claimant's entitlement for each day in the period starting with the first day claimed for and ending with the date of the DM's decision. This may mean that further information should be obtained from the claimant to ensure that there has been no further change of circumstances since the claim was made.

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

02429 If the claimant is entitled to benefit for any day in that period, benefit should be awarded. This is so even if the claimant later ceased to be entitled. If the claimant is entitled to benefit on the date of the DM's decision, a definite or indefinite period award for the future should be made, as appropriate.

Example

The claimant claims JSA on 30.6.06 but on that date she has capital over the statutory limit. On 10.7.06 she reduces her capital below the limit by repaying a loan that legally must be repaid immediately. On 14.7.06 the DM decides that the claimant is entitled to JSA from 10.7.06 and makes an indefinite award from and including that day. Note that in this case the DM makes an award at a time when the claimant is entitled to benefit.

02430 Where the date of claim is more than three months (or four months for RP and SPC) before the DM decides it, it is not necessary to consider the advance award provisions. In such a case, the whole of the advance claim period as well as any period after that will fall to be decided under the principle above.

Staying a decision

02431 The DM has no power to leave a valid claim or application undecided but in some circumstances the DM may stay making a decision. Staying means that the DM does not have to make a decision (or may make a restricted decision) in cases which would be affected by the outcome of an appeal to the courts in another case which has yet to be decided¹. Further details about staying are in DMG Chapter 06.

1 SS Act 98, s 25

02432 - 02439

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03271 The benefits in DMG 03270 are

1. BB
2. BSP
3. ESA(Cont)
4. JSA(Cont)
5. IB
6. RP
7. WB.

03272 - 03279

Revision for error of fact

03280 Decisions can be revised at any time where the DM's decision was better for the claimant than it should have been, because it was made in ignorance of, or based on a mistake as to, a material fact¹. For guidance on the meaning of a material fact, see DMG Chapter 04.

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

Exceptions for disability and incapacity benefits

03281 This does not apply where the error of fact relates to disability and incapacity determinations for AA, DLA, IIDB, SDA, and IfW and LCW determinations for ESA. See DMG 03283 - 03294 for further guidance.

Note: Where the error relates to disability or incapacity determinations, and the conditions in DMG 03283 - 03287 do not apply, the supersession rules apply instead. See DMG Chapter 04 for guidance.

03282 Where the material fact is about other issues, such as payability or earnings, the normal rule in DMG 03280 applies¹.

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

AA/DLA

03283 A decision by the DM awarding AA/DLA may be revised at any time where¹

1. the DM was ignorant of, or mistaken as to, a fact relevant to the question of whether the claimant satisfies any of the disability conditions for AA or for the care or mobility components of DLA **and**
2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**

3. the DM is satisfied that when the original decision was made, the claimant knew or could reasonably have been expected to know the fact, and that it was relevant to the disability determination.

1 SS CS (D&A) Regs, reg 3(5)(c) & 7A(1)(a)

IIDB

03284 A decision awarding an IIDB following a determination as to the existence or extent of any disablement¹, that a disease is prescribed in relation to him or her and when he or she developed that disease², may be revised at any time where³

1. the DM was ignorant of, or mistaken as to a fact relevant to those questions **and**
2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**
3. the DM is satisfied that when the original decision was made, the claimant knew or could reasonably have been expected to know the fact, and that it was relevant to the disability determination.

1 SS CB Act 92, s 103; 2 s 108; 3 SS CS (D&A) Regs, reg 3(5)(c) & 7A(1)(c)

SDA

03285 A decision to award SDA following a determination that a person is at least 80% disabled¹ may be revised at any time where²

1. the DM was ignorant of, or mistaken as to a fact relevant to that question **and**
2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**
3. the DM is satisfied that when the original decision was made the claimant knew or could reasonably have been expected to know the fact and that it was relevant to that decision.

1 SS CB Act 92, s 68; 2 SS CS (D&A) Regs, reg 3(5)(c) & 7A(1)(b)

Incapacity for work

03286 A decision awarding IB, IS, SDA or credits¹ where there has been a determination that a person is incapable of work following a PCA, or is to be treated as incapable of work under certain regulations², may be revised at any time where³

1. the DM was ignorant of, or mistaken as to, any fact relevant to the question of IfW **and**
2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**

Effective date of a revised decision

03460 A revised decision usually takes effect from the date of the original decision¹. For details of the exception to this general rule, see DMG 03461.

1 SS Act 98, s 9(3); SS CS (D&A) Regs, reg 5

Example

An IS claimant is awarded benefit from 6 May. The DM decides, on the evidence provided, that the claimant has P/T earnings. The P/T earnings are taken into account when calculating the amount of benefit.

On 21 May the claimant disputes the decision because the P/T earnings had ended before the award of benefit. The DM reconsiders the evidence and decides that the claimant is entitled to benefit with no P/T earnings taken into account. A new decision is made excluding P/T earnings from 6 May.

03461 The effective date of the original decision may be part of the dispute. If the new decision includes revision of the date of the decision, the new decision takes effect from the revised date¹.

1 SS Act 98, s 9(4)

Example

A claimant makes a claim to JSA on 25 June. The DM decides that the claimant is not available for work for the first three days of the jobseeking period. He then has to serve three waiting days. Benefit is awarded from 1 July.

The claimant disputes the decision that he was not available for work from 25 June to 27 June. The DM reconsiders the evidence and makes a new decision that the claimant was not available for work on 25 June but available from 26 June and awards benefit from 29 June.

03462 - 03470

Effective date where RP decision revised due to late paid class 3 contributions

03471 Where a disallowance of RP is revised due to late payment of class 3 contributions (See DMG 03245), the decision as revised is effective from¹

1. 1.10.98 or

2. for Cat

2.1 A RP, the date on which the claimant reached pensionable age or

- 2.2 B RP, the date on which the claimant's spouse or civil partner reached pensionable age

whichever is the later.

1 SS CS (D&A) Regs, reg 5(2)

Revision as a result of changes to Class 2 NI collection

- 03472 As a consequence of the reform of the method of collection and payment of Class 2 NICs¹, the deadline for the payment of Class 2 NICs from the 2015/16 tax year onwards is now 31 January of the following calendar year. For example, Class 2 NICs due in the 2015/2016 tax year are due to be paid by 31.1.17. This means that there is an increased possibility of a claim being made for a contributory benefit where entitlement relies (either wholly or partly) on as yet unpaid contributions. This is likely to have a particular impact on claims for ESA(Cont) and JSA(Cont).

Note: Class 2 NICs are only relevant in JSA(Cont) claims from share fishermen and volunteer development workers.

1 The National Insurance Contribution Act 2015

Example

A claim to ESA is made on 21.1.17 in respect of a period of LCW which started on 14.01.2017. The claimant started self-employment in June 2015. Entitlement to ESA(Cont) relies on satisfaction of the contribution conditions in the tax years 2014/15 and 2015/16. The claimant was previously unemployed and has Class 1 credits for the whole of 2014/15 and for the weeks in 2015/16 before he started self-employment. At the point of claim the claimant had not filed his self assessment return for 2015/16 – he has until 31.1.17 to do so. Consequently his Class 2 NIC liability has not been established and so no Class 2 NICs have been paid. Neither contribution condition is satisfied and the claim to ESA is disallowed.

- 03473 In order to address this the regulations¹ provide for payments of Class 2 NICs which are made by 31 January to be treated as having been made at an earlier date, in appropriate cases, to ensure that claimants are not disadvantaged by the changes. In such cases a decision to disallow claims may be revised in the claimant's favour.

1 Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations 2016

- 03474 Similarly, where a decision on RP, SP or BB is made on a claim from a self employed person before the contributions for the tax year have been paid, and the person pays Class 2 NICs for that tax year by the due date, the decision to award the benefit may be revised if the payment of the contribution means that the benefit should be paid at a higher rate or that benefit is now payable.

- 03475 The regulations also provide for cases where benefit has been awarded and the NICs upon which an award of benefit was based are repaid or refunded to the

contributor. In these cases the decision to award benefit may be revised to reduce the amount of benefit payable or to disallow benefit.

Revision of decision: Contributions paid by due date

- 03476 A decisions on a claim to JSA(Cont) or ESA(Cont) may be revised¹ at any time where
1. on or after the date of the decision a contribution that is paid after the due date is treated as paid by the due date for the purpose of entitlement to the benefit by regulations² **and**
 2. as a result, the person now satisfies the contribution conditions.

1 SS & CS (D&A) Regs, reg 3(8E); 2 Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001, reg 7A

Example

A claim to ESA is made on 21.1.18 in respect of a period of LCW starting on 14.1.18. Entitlement relies on satisfaction of the contribution conditions for the tax years 2015/16 and 2016/17. The claimant started self employment in April 2015. The claimant had previously paid his Class 2 NICs for 2015/16, but, at the point of claim, has not yet filed his self assessment for 2016/17. His Class 2 liability has not yet been established and no Class 2 NICs have been paid. As a result, the second contribution condition isn't satisfied and his claim to ESA is disallowed. DWP is subsequently notified that the claimant has paid his Class 2 NICs for 2016/17 on 31.1.18. These NICs are treated as having been paid before 14.1.18 and the original decision to disallow ESA is revised in the claimant's favour.

- 03477 Decisions to award or to decide that
1. BB
 2. Cat A or Cat B RP **or**
 3. SP

is not payable may be revised¹ at any time where on or after the date of the decision a contribution is treated as paid by the relevant day for the purposes of entitlement to the benefit by regulations², and as a result the person is now entitled to the benefit, or to a higher rate of benefit.

1 SS & CS (D&A) Regs, reg 3(8J) & 3(8K); 2 Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001, reg 7(1)

Revision of decision: Contributions are refunded

- 03478 A decision to award
1. JSA(Cont)
 2. ESA(Cont)

3. BA
4. WPA
5. BPT
6. Cat A or Cat B RP **or**
7. SP

may be revised¹ at any time where contributions are repaid or returned to the contributor who is in receipt of a contributory benefit, where this means the person no longer satisfies the contribution conditions for entitlement to the benefit.

1 SS & CS (D&A) Regs, reg 3(8F) & reg 3(8H)

Example

ESA(Cont) is awarded in January 2018 to a claimant who was self-employed. The award was based on Class 2 NICs paid in respect of 2015/16 and 2016/17 RITYs. Class 2 NICs for 2016/17 were paid on the basis of profits declared on a self assessment return filed on 31.01.2018. In March 2018 HMRC adjusts the declared profits for 2016/17 to a figure below which no liability for Class 2 NICs actually arose. HMRC informs the claimant of this. The claimant pursues and accepts a refund of NICs. These NICs are removed from the claimant's NI record. As a consequence of this the claimant ceases to satisfy the contribution conditions for ESA(Cont). The decision to award ESA(Cont) is revised so as to disallow the award.

03479 A decision to award

1. BB
2. Cat A or Cat B RP **or**
3. SP

may be revised¹ at any time where on or after the date of the decision contributions are returned to the contributor² and, as a result, the original decision was more advantageous to the claimant than it would otherwise have been.

1 SS & CS (D&A) Regs, reg 3(8I) & reg 3(8K); 2 reg 3(8H)

03480 – 03999

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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)

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

- 1.1 its importance
- 1.2 the complexity of the issues
- 1.3 the anticipated costs
- 1.4 the resources of the parties.
- 2. avoiding formality and seeking flexibility in proceedings
- 3. ensuring all parties are able to participate fully
- 4. using any special expertise of the FtT effectively
- 5. avoiding unnecessary delay.

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

06023 All parties to the appeal must help the FtT to further the overriding objective and must co-operate with the FtT in general¹.

1 TP (FtT) (SEC) Rules, rule 2(4)

The Human Rights Act 1998

06024 The HR Act requires that so far as it is possible primary and subordinate legislation must be interpreted in a way which is compatible with the Convention rights¹. The High Court, Court of Appeal and the House of Lords can make declarations of incompatibility under s 4 of the Act, but FtTs and the UT do not have such power. Where the FtT finds that it is impossible to interpret **primary** legislation as compatible it must apply that legislation as enacted. This is because incompatibility does not affect the validity or continuing effect of incompatible legislation². Unlike EC law there is no doctrine of supremacy so as to give Convention law precedence over domestic law.

1 Human Rights Act 98, s 3; 2 s 4(6)(a)

06025 Regulations which are not protected by primary legislation, because their incompatibility does not arise from the primary legislation that they are made under, may be found to be incompatible by the FtT. These provisions would be outside the power conferred by the primary legislation under which they are made and therefore *ultra vires*. By making such regulations the relevant Minister would have acted unlawfully¹.

1 Human Rights Act 98, s 6

06026 DMs should ensure that, where the claimant raises a substantial human rights issue in his appeal, HMCTS is made aware of this issue at the outset. If such an issue is raised for the first time at an oral hearing presenting officers should request an adjournment for consideration of a further response.

06027 As with other grounds of appeal it is not sufficient for a claimant to make a general statement that the decision in question breaches the Convention on the Human Rights Act. The claimant should identify

1. the asserted breach of the convention
2. the Article which is said to be breached
3. the remedy sought in respect of the breach
4. the legal principles and authorities relied upon **and**
5. any error in law on the part of the DM in consequence of the breach.

See DMG Chapter 01 and Annex G to this Volume for further guidance and Convention Rights.

06028 Where a human rights issue is raised on a case and the DM requires advice on the matter, they should contact DMA Leeds without delay.

Further information received

06029 Where further evidence is received at **any** time before the FtT gives its decision, e.g. following an adjournment, a further reconsideration of the decision under appeal **must** be carried out. This is **despite** there having already been earlier reconsiderations. See also DMG 06011.

06030 - 06034

Failure to comply with rules

06035 The FtT has several options where a party to an appeal has failed to comply with the rules. The FtT can

1. waive the requirement to comply¹
2. require the failure to be remedied²
3. strike out the party's case³
4. refer the matter to the UT to decide where a failure by a person to comply with a requirement imposed by the FtT⁴
 - 4.1 to attend at any place to give evidence
 - 4.2 otherwise to make themselves available to give evidence
 - 4.3 to swear an oath in connection with giving evidence
 - 4.4 to give evidence as a witness
 - 4.5 to produce a document

Appendix 2

Aide memoire for DMs seeking a Secretary of State's application for permission to appeal to the Upper Tribunal (DMG 06600)

Introduction

- 1 All applications for permission to appeal to the UT on behalf of the S of S are made only by DMA Leeds. If it is considered that an appeal might be appropriate, take the following action to notify DMA Leeds immediately.
- 2 It is very important that anyone considering requesting that DMA Leeds apply for permission to appeal to the UT, does so within the timescales described below. Many potential Secretary of State appeals have to be returned because they are late. Administrative delays are **almost never accepted** by the FtT or the UT as a reason for a late application. Cases must be sent to DMA Leeds **within one month of the date the FtT send the written statement of reasons (WSoR)**. As DMA Leeds have to work within the same timescales sufficient time must be allowed for DMA Leeds to work through the necessary processes **within the same one month deadline**.
- 3 In most instances, the FtT's decision should not be implemented if the case is referred to DMA Leeds. As soon as an application for permission to appeal to the UT is being considered
 1. suspend benefit **and**
 2. send the claimant a DL/Susterm 6 (found in the Suspension and Termination Guide on the DMA Leeds part of the intranet). This tells the claimant that the FtT's decision is not being implemented as an application for permission to appeal the FtT's decision to the UT is being considered).

Action to take

- 4 Once a case is identified as one where permission to appeal the FtT's decision may be appropriate, the following action should be taken
 1. request a written statement of reasons (WSoR) from the FtT within one calendar month of the date that the decision notice was issued to all parties.
 2. when the WSoR is received, consider if an application to the UT is still appropriate. It must be remembered that an appeal can only be made where we consider that the FtT's decision is erroneous in law, e.g. consider whether

- 2.1 the provisions of the act or regulations/rules have been misinterpreted or misapplied
- 2.2 the decision is not supported by evidence
- 2.3 the decision is such that no person acting judicially and properly instructed about the relevant law could have reached it
- 2.4 there has been a breach of natural justice
- 2.5 there are other errors of law, e.g.
 - 2.5.a taking irrelevant evidence into account **or**
 - 2.5.b giving reasons for decisions which imply faulty reasoning **or**
 - 2.5.c ignoring relevant evidence

Note: This list is not exhaustive.

- 5 If an application is considered appropriate
 - 1. refer the case to **DMA Leeds**, having first checked payments systems (such as JSAPS) and confirm that full payment has **not** been made for the period which the appeal covers
 - 2. all documents referred **must be clearly marked with office/business unit address and contain**
 - 2.1 an AT64 proforma stating clearly the grounds for appeal and where appropriate an estimate of the amount of benefit involved
 - 2.2 the DM's written response to the FtT and numbered enclosures **and**
 - 2.3 any other written response made, received from, or handed in, by any party to the appeal on the day of the FtT hearing **and**
 - 2.4 the FtT's decision **and**
 - 2.5 the WSoR for the decision **and**
 - 2.6 papers relating to any action taken after the FtT's decision has been made; for example, if an application is made to set aside the FtT's decision
 - 2.7 set a three monthly reminder to await the outcome **and**
 - 2.8 set further three monthly reminders if the case is still outstanding when the BF matures
- 6 When DMA Leeds has decided whether or not to seek an application to appeal, they will inform the DM by e mail. The DM must then send DL/SUSTERM 7 to the claimant to inform them of what further action will be taken.

The content of the examples in this document (including use of imagery) is for illustrative purposes only