

Chapter 03 - Revision

Revising decisions and handling appeals

Introduction

03000 The revision process allows the DM to re-examine the facts of the case, the law used and other issues such as how discretion was applied when making a decision. Revising a decision at an early stage, for example where an appeal is made, can avoid the need for cases to proceed to a formal FtT hearing.

03001 Where a decision is challenged, the DM reconsiders it, and revises the decision if it is appropriate to do so. Where it cannot be revised, supersession may be appropriate. The DM should always consider revision first.

03002 Where a claimant or other eligible person wants to challenge a decision, they should be encouraged to contact DWP to discuss the decision or ask for an explanation. If they want to challenge the decision formally they **must** apply for a revision so that the DM reconsiders the decision. This is known as mandatory reconsideration. It is only after a mandatory reconsideration that the claimant can exercise their right of appeal. An appeal made directly to DWP before a mandatory reconsideration has been requested will be treated by the DM as a request for mandatory reconsideration. Reconsideration is the process by which

1. an application for revision of a decision is considered **or**
2. a decision is looked at again following an appeal application.

The process includes making a record that a reconsideration has been carried out and what the result is.

03003 At the end of the process the DM

1. revises favourably and issues a new outcome decision **or**
2. revises unfavourably and issues a new outcome decision **or**
3. refuses to revise, i.e. makes a decision not to revise (**Note:** this is not an outcome decision).

A decision not to revise is **not** appealable, but its effect may be to renew the appeal rights arising from the original decision. See DMG 03210 et seq for further details.

Note: There is no limit to the number of times that a decision (including a supersession decision) can be revised.

03004 A decision cannot be revised where claimants report a change of circumstances during the application period. The claim or supersession rules apply instead (see DMG 03012 - 03015, 03021 and DMG Chapter 04). Where the claimant makes an

appeal, see DMG Chapter 06. See DMG 03063 - 03065 for guidance on the meaning of application period.

03005 The revision process applies to the following

1. all benefits including SPC, and SF maternity, funeral, CWP's and WFP's
2. decisions on credits and HRP
3. whether a JSAg is reasonable
4. a proposal to vary a JSAg.

03006 There is no limit to the number of times a claimant can apply for a decision to be revised. The timing of the further application may affect the reconsideration process. For example, if the further application is made outside the application period, only the limited revision provisions apply (see DMG 03250 et seq).

03007 Where

1. an application was made within the application period **and**
2. the DM has not revised the original decision **and**
3. a further application is made outside the application period **and**
4. the DM finds no grounds to revise the original decision **and**
5. the extended time limit for an appeal (see DMG Chapter 06) has not expired

the claimant should be reminded about the right of appeal against the original decision when the refusal to revise is notified.

Which decisions can be revised

03008 The revision process applies to all the decisions of the Secretary of State that can be superseded or appealed. A list of the decisions that can be appealed¹ is at Annex D to this Volume. A list of decisions and determinations that are not appealable² is at Annex E to this Volume.

1 SS Act 98, s 12(1) & Sch 3; SS CS (D&A) Regs, reg 26; 2 SS Act 98, Sch 2; SS CS (D&A) Regs, Sch 2

03009 Decisions of FtT and UT cannot be revised. For guidance on superseding decisions of FtT and UT see DMG Chapter 04.

03010 DMs can also make corrections to accidental errors in decisions of the Secretary of State. Further details are at DMG 03050 - 03054.

When should the DM consider revision

03011 The DM should reconsider a decision when a claimant challenges it by applying for revision for example by asking for it to be looked at again. This should not be

confused with the occasions when a claimant is looking for clarification of a decision by asking for more information. Where a claimant has asked for, and been given, an explanation of a decision, the DM should ensure that the claimant is satisfied with the explanation and is not challenging it.

Mandatory reconsideration before an appeal can be made

03012 Decisions notified on or after 28.10.13 can only¹ be appealed if the claimant has applied for a revision and the notice of the decision includes a statement to that effect. The claimant must be given a notice that informs them²

1. of the decision, whether as originally made or as revised **and**
2. of the time limit for making an application for revision **and**
3. that where the notice does not include a statement of reasons for the decision, the person may, within one month of the date of notification of the decision, request that a written statement is provided for the reasons of the decision **and**
4. that there is a right of appeal against the decision but that this can be exercised only if the Secretary of State has considered an application for revision.

Note: There is no time limit within which the DM must carry out the mandatory reconsideration. Once a decision has been subjected to mandatory reconsideration, further dispute rights are not dependent upon a further mandatory reconsideration.

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

03013 **[See memo DMG 21/17]** Where a claimant makes a late application for revision and the reasons for lateness are not accepted by the DM, the claimant has no right of appeal to the FtT in relation to the original decision. In these cases follow guidance at DMG 03024 et seq. A claimant will only be able to challenge the decision of the DM not to extend the time limit by means of a Judicial Review. There is no right of appeal to the FtT. See DMG 03060 for guidance on the time limits for making an application.

03014 The normal time limit for applying for reconsideration (DMG 03063) can be extended if certain conditions are met which includes satisfying the “tests” of “reasonableness” and “special circumstances”. See DMG 03070. These tests are not defined in legislation but should be interpreted broadly. DMs should therefore allow an application for an extension of time where the person is able to explain why their application for a revision is late and is reasonable. Applicants are **not** expected to show unexpected or exceptional circumstances. But, if an applicant cannot explain why their application was not made in time, then the DM may not be able to consider their case. When considering whether to extend the time limit DMs should

also have regard to the claimant's rights under article 6 of the ECHR – right to a fair trial – see Annex G of DMG Volume 1.

03015 Where a written statement of reasons is requested it must be provided within 14 days of receipt of request or as soon as practicable afterwards¹. If the notification of the decision contains a statement of reasons then any further requests for a written notification has no effect.

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

03016 Where there is no right of appeal against a decision as there has been no request for reconsideration, then any purported appeal may be treated as an application for revision¹.

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

Example 1

An ESA claimant attends a WCA and the DM subsequently determines that they do not have LCW. The award is superseded so as to end entitlement to ESA. The claimant disputes the decision and asks for a reconsideration. No pending appeal award of ESA can be made and they make a claim to JSA. JSA is awarded to the claimant. The DM decides that the decision cannot be revised and informs the claimant. The claimant lodges an appeal with HMCTS and submits medical evidence. They ask for ESA to be re-awarded. The award of JSA is terminated by means of a supersession and a pending appeal award of ESA is made without the need for a claim. ESA is awarded from the day after the JSA award ends.

Example 2

A claim for AA is disallowed. The claimant disputes the decision in time and asks for reconsideration. The DM revises the decision to disallow benefit and makes an award of AA at the lower rate. The claimant considers that they are entitled to AA at the higher rate, decides to appeal this decision and sends the appeal form to HMCTS within the time limit, including a copy of the mandatory reconsideration notice which shows the revised award of AA at the lower rate. Since the claimant has already had a mandatory reconsideration against the decision to disallow AA, the appeal can be accepted without a further mandatory reconsideration.

Reporting changes during the application period

03017 During the application period where

1. a claimant reports a change of circumstances **or**
2. evidence or information is received indicating that there has been a change of circumstances

the DM may **only** revise the decision to take account of the change where it occurred **before** the decision had effect¹.

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

03018 Where the change occurs **after** the original decision had effect, the DM cannot revise to take account of the change. The action to take depends on

1. whether the original decision disallowed or made an award of benefit **or**
2. in the case of disallowance, when the change occurs.

03019 If the original decision awarded benefit, the supersession provisions apply instead¹.

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

03020 Where the original decision was a disallowance, and the change occurred

1. before the decision had effect, the revision provisions apply **or**
2. after the decision was made, a further claim is required¹.

See also DMG 03026, where the change is notified in an application for revision.

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

Advance award

03021 This rule does not apply in the same way where the DM makes an advance award¹. The DM can revise to take account of changes which occurred before the decision was made². See also DMG 03410 - 03411 for changes removing entitlement which occur before the relevant or renewal date, but are notified after that date. Any changes which occur after the date the decision was made, but before the relevant or renewal date, and are notified before that date, should be considered under the supersession rules. See DMG Chapter 04 for guidance on supersession.

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

Example

The claimant made a renewal claim for DLA on 14.11.05, and the DM awarded the lowest rate care component and lower rate mobility component from the renewal date, 12.4.06. The decision was made and notified on 9.3.06, and a week later the claimant reported that his condition had deteriorated following a stroke accident on 7.12.05. The DM revises the decision made on 9.3.06 to award middle rate care and higher rate mobility from the renewal date. The DM also considers whether the existing award should be superseded on a relevant change of circumstances.

03022 For the purposes of advance awards, the **relevant** date is the date the claim is treated as made where the DM is satisfied that the claimant does not satisfy the conditions of entitlement at the date of claim, but will do so within three months of that date (four months for SPC)¹. The **renewal** date is the date the claim is treated as made where it is a claim for AA or DLA made during the period of six months before the expiry of a current award². See DMG Chapter 02 for further details.

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

Revision and supersession

03023 Decisions should not be superseded where they can be revised instead. This rule does not apply where

1. the decision could be revised **and**
2. further circumstances arise which are not in the revision rules, but are in the supersession rules¹.

In these cases, the decision should be revised as appropriate, and then superseded to take account of the supersession rules.

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

Example

The claimant has been awarded the higher rate of the mobility component of DLA. He challenges the decision, as he feels the period of the award is too short. He also notifies that his condition has deteriorated, and applies for the care component. The DM revises the decision to extend the period of the award, and supersedes the decision as revised to award the lowest rate of the care component.

What if an application for revision is not accepted

03024 Where the DM is unable

1. to accept an application for revision because it is late **or**
2. to admit an application for revision outside the maximum period (see DMG 03070 - 03073)

the DM should consider whether the provisions allowing revision at any time apply (see DMG 03250 - 03401).

03025 If it is not possible to revise the decision at any time, the DM should consider the supersession rules¹ instead. The application for revision can be treated as an application for supersession². The outcome of the supersession depends on whether the DM considers the original decision is correct. The DM should

1. supersede the decision on the grounds that it was erroneous in law or based on ignorance of or a mistake as to a material fact where the outcome is changed **or**
2. make a decision not to supersede the original decision³ **or**
3. exceptionally, make no decision and notify that the decision is not superseded³.

Note: The decisions at DMG 03025 1. and 03025 2. only carry the right of appeal

1 SS CS (D&A) Regs, reg 6(2)(b)(i); 2 reg 6(5); 3 R(DLA) 1/03; Wood v Secretary of State for Work and Pensions [2003] EWCA Civ 53

03026 Where the DM considers that the application for revision should be dealt with as an application for supersession for a relevant change of circumstances, it is still important to record and notify that the decision is not revised.

03027 Where DMG 03025 1. applies, the new decision is effective from

1. the date of the application¹ **or**
2. the date of the relevant determination where appropriate².

1 SS Act 98, s 10(5); 2 SS CS (D&A) Regs, reg 7(6)

Example

A claimant entitled to IS returns form MI12, and the DM calculates allowable housing costs. Two months later, the claimant calls in at the office to say that the award of housing costs is incorrect, and asks for arrears to be paid. The visit is treated as an application for revision. After further investigation, the DM finds out that the claimant forgot to return another form MI12 completed by a different lender for a separate allowable loan. The DM decides that the time for applying for revision cannot be extended. The DM notifies that the decision is not revised. The decision is superseded from the date the claimant called in at the office (the date of the application).

How are applications for revision made

03028 A claimant can ask for a decision to be revised, for example by asking for it to be looked at again, either orally or in writing. There is no application form for a revision. Where the application is made orally the Department must keep a record of the conversation. The Secretary of State can also instigate revision of decisions where an appeal is received.

03029 Where a claimant applies for a decision to be revised on any ground the application or notification must be made to an appropriate office¹.

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

03030 An appropriate office is

1. the office of the DWP whose address is shown on the original decision¹ **or**
2. for JSA, the office specified by the Secretary of State² **or**
3. for a claimant who is or would be required to take part in a Wfl an office of the DWP designated by the Secretary of State as a Jobcentre Plus Office³ **or**
4. for certain contributions decisions, any NI Contributions office of HMRC or any office of the DWP⁴.

Note: Where an application for revision 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)(a); 2 reg 3(11)(b); JSA Regs, reg 23; 3 SS CS (D&A) Regs, reg 3(11)(f); 4 SS Act 98, Sch 3, Pt II; SS CS (D&A) Regs, reg 3(11)(c)

Who reconsiders decisions

03031 DMs can reconsider a decision that they, or another DM has given¹. Where possible, although not a legal requirement, the expectation is that mandatory reconsideration should be carried out by a different DM. This includes decisions given by the predecessors of DMs²

1. adjudication officers
2. adjudicating medical authorities
3. insurance officers
4. benefit officers
5. Supp B officers
6. SF officers.

See DMG Chapter 01 for guidance on revision and supersession of decisions of former authorities.

1 SS Act 98, s 9 & s 10; 2 s 11

How are decisions revised

03032 The DM should

1. clarify the grounds for reconsideration where appropriate
2. identify the decision to be reconsidered
3. identify the evidence used by the DM to make the original decision
4. telephone the claimant to ensure all available evidence has been considered
5. obtain further evidence as appropriate
6. keep a record of all the main steps taken during the reconsideration process such as requests for evidence, conversations with the claimant
7. decide whether the decision needs to be revised and, if so, on what grounds where appropriate and when the decision takes effect
8. consider whether any offset is appropriate and whether there is any overpayment (further details are in DMG Chapter 09).

Note: There is no need to look at the whole decision again (but see DMG 03160).

03033 Where a claimant makes an application for revision, the result will be either a revision of the original decision (whether favourable or otherwise) or a decision not

to revise that decision i.e. a change or no change. Whatever the resulting decision,
it

must be recorded properly. There is no legal prescription about the format the record should take, but whether the decision is given clerically or via IT, officers must follow the procedures laid down in the relevant Agency guidance.

03034 On receipt of an appeal response request from HMCTS, in response to a decision made following mandatory reconsideration, the DM should, in every case, consider whether the decision can be revised. If it can be revised to the appellant's advantage the DM should revise the decision and the appeal may lapse. However, where revision will not address all that has been asked for in the appeal see DMG 03254. The claimant can

1. apply for the decision as revised to be revised again **or**
2. make a further appeal.

Note: The claimant, and HMCTS **must** be notified if an appeal is lapsed.

03035 The appeal proceeds if

1. the decision is not revised **or**
2. the decision is revised, but not in the appellant's favour **or**
3. the DM considers that the decision could be revised partially in the claimant's favour but it has not been possible to contact the claimant to establish if they wish their appeal to continue, and so the decision is not revised **or**
4. the decision is superseded. In this case the appeal proceeds against the period from the date of the decision under appeal to the date of the superseding decision.

Note: Special rules apply where the decision is revised, but not in the appellant's favour (see DMG Chapter 06).

03036 - 03039

Burden of proof

03040 The person who wants to change the decision has the burden of proving, where necessary, that it should be changed. The claimant has the responsibility of proving the case if they apply for a revision¹. The onus is on the DM if the Secretary of State initiates revision. In a case where documents have been lost or destroyed the burden of proof does not alter².

1 R(I) 1/71; 2 R(IS) 11/92

Consideration of previous law

03041 The DM may need to consider the effect of law previously in force. If questions arise involving the revision of awards for past periods, decisions must be made in accordance with the law as it was at that time¹. If particular rates are to be applied,

the rates are those which applied at the period of time². Any erosion in value, for example old benefit rates compared to new, is not considered³.

1 R(SB) 48/83; 2 SS CB Act 92, s 103(7); 3 R(I) 1/86

Can revision apply to abolished benefits

03042 Decisions on benefits which have been abolished can still be revised in limited circumstances¹ (see DMG Chapter 01).

1 SS A Act 92, Sch 10; Interpretation Act 78, s 16

03043 - 03049

Correction of accidental errors

03050 DMs can correct accidental errors, including slips of the pen, in their own decisions or those of other DMs¹.

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

What is an accidental error

03051 An error is only accidental when the intended decision is clear, and it is obvious that the error occurred when recording it. Accidental errors include

1. slips of the pen
2. arithmetical mistake
3. errors in the text
4. text entered in the incorrect place.

How are accidental errors corrected

03052 A decision can be corrected by striking out the wrong words or date, inserting the correct ones, and signing and dating the correction. If the correction is more complex a fresh decision should be given and clearly identified as a corrected decision. If the correction is made after a copy of the decision has been sent to the claimant then a written notice of the correction should be given to the claimant¹.

1 SS CS (D&A) Regs, reg 9A(2)

03053 Where a decision of a DM is corrected, the time for applying for revision and for making an appeal begins on the day the corrected decision is notified¹.

1 reg 9A(3)

03054 Where the error is made by a FtT it should be returned to the FtT to consider correction. Further details are in DMG Chapter 06.

03055 - 03059

Time limits for revision

Introduction

- 03060 Claimants can apply for revision of decisions if they think they are wrong or unfair. The timing of the application determines how it is dealt with by the DM. For appeals to FtT, UT and the Courts see DMG Chapter 06.
- 03061 Where an application is made outside the time limits in DMG 03063 et seq and it does not satisfy the criteria for a late application, the DM should consider the 'any time' revision procedure. Where this is not applicable the DM should consider whether the decision can be superseded.
- 03062 See DMG 03210 - 03215 for guidance on what happens when a decision is not revised.

What is the application period

- 03063 For claimants, the period begins on the day following the date of notification of a decision by the Secretary of State on a claim or supersession¹. A decision may be revised where the application is made
1. within one calendar month of notification of the original decision **or**
 2. where a written statement of reasons is requested and is provided within the one month period, within 14 days of expiry of the one month period **or**
 3. where a written statement is provided after the one month period, within 14 days of notification of the written statement **or**
 4. within the appropriate period where a late application is accepted (see DMG 03072 - 03073).

1 SS Act 98, s 8 & 10; SS CS (D&A) Regs, reg 3(1)(b); Interpretation Act 78, Sch 1

Examples of one month period

Example 1

On 18 November a claimant is notified of the decision on his claim for IS. The one month period is 19 November to 18 December.

Example 2

On 31 December a claimant is notified of the decision on her claim for IB. The one month period begins on 1 January. The calendar month ends on 31 January.

Example 3

On 29 January a claimant is notified of the decision on his claim for JSA. The calendar month ends on the last **date** of the following month - 28 February. In a leap year use 29 February.

Note: The DM can only determine the date of posting on the balance of probabilities. Unless the DM is certain that a notification was posted on a particular date, the one calendar month must always be extended by one day where the claimant makes an application on the day following the end of the one month period.

Social Fund

03064 In regulated SF WFP and CWP cases the date of notification is¹

1. the date seven days after the date on which the DM makes the decision to award payment to meet heating costs **or**
2. where the claimant collects the payment from the PO, the date on which the payment is collected **or**
3. where the payment was sent to a PO but not collected, the date a replacement payment was issued **or**
4. the date when the DM's response to a query on why an award has not been made is notified.

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

03065 In SSMG and SFFP cases, a decision may be revised where the application is made within¹

1. one calendar month of notification of the decision **or**
2. the prescribed time for claiming a funeral or maternity payment if later² (see DMG Chapter 02) **or**
3. the appropriate period where a late application is accepted (see DMG 03072 - 03073)².

1 reg 3(3) & 4; 2 SS (C&P) Regs, reg 19 & Sch 4

Note 1: The DM should consider late applications for revision in the normal way (see DMG 03070 - 03079). For example, there may be no grounds to admit a late application where the claimant delays notification of a late award of the qualifying benefit or tax credit.

Note 2: Where the award of the qualifying benefit or tax credit is not backdated to the date of the original SSMG claim, the disallowance cannot be revised. The provisions allowing a further claim to be treated as made on an earlier date may still be considered (see DMG 02260).

Example

A claim for SSMG is disallowed because there is no entitlement to a qualifying benefit at the date of claim. Four months later, the claimant is awarded CTC at a rate above the family element which is backdated to a date earlier than the date of the SSMG claim. She immediately makes a further claim for SSMG. Her claim is

now outside the prescribed time limit for claiming SSMG as it is more than three months since the child was born. Her claim for CTC was made more than 10 days after the first SSMG claim, so that the further SSMG claim cannot be treated as made on the date of the original SSMG claim. The DM treats the further claim as an application for revision, extends the time for applying for revision, and revises the disallowance to award SSMG.

03066 - 03069

Late applications

03070 The one month time limit for applying for revision can be extended where the conditions in DMG 03072 - 03074 apply¹.

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

03071 An application for an extension of the time limit can be made by

1. the claimant **or**
2. a person acting on behalf of the claimant¹.

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

03072 The application must

1. give reasons for extending the time period **and**
2. identify the decision to be revised **and**
3. be made within 13 months of the date the decision to be revised was notified except where DMG 03073 applies¹.

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

03073 Where the person applying for an extension of time for revision had requested a written statement of reasons within one month of notification of the decision, the 13 month period is extended by

1. where the statement was provided within one month of the notification, 14 days¹, **or**
2. where the statement was not provided until after the one month periods ends, 14 days and as many days as had elapsed since the expiry of the one month period before the statement was provided².

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

Example 1

On 12.11.04 a claimant is notified of the decision on his claim for IS. The application period is 13.11.04 to 12.12.04 (ordinarily, a late application might be possible up to 12.12.05). The claimant requested a statement of reasons within the one month

period, and this was provided on 10.12.04. A late application, where appropriate, can

be made up to and including 26.12.05 (the 13 month late application period is extended by 14 days).

Example 2

On 9.2.05 a claimant is notified of the decision on his claim to IS. The application period is 10.2.05 to 9.3.05 (ordinarily, a late application might be possible up to 9.3.06). The claimant requested a statement of reasons. This was not provided until 15.3.05 (some 6 days after the initial one month application period ended). A late application, where appropriate, can be made up to and including 29.3.06 (i.e. the 13 month late application period is extended by a total of 20 days, being 14 days plus 6 days for the delayed issue of the written statement of reasons).

03074 The following conditions must **all** be satisfied for a late application to be accepted¹

1. it is reasonable to grant the application for the extension of time
2. the application for revision has merit (i.e. it may be successful if the application for an extension of time is granted)
3. there are special circumstances for the lateness
4. as a result of the special circumstances the application for revision could not be made within the one month limit.

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

03075 The term “special circumstances” is not defined in legislation. It can include factors such as

1. the applicant, partner or dependant has died or suffered serious illness
2. the applicant is not resident in UK
3. normal postal services were adversely affected
4. the claimant has learning or language difficulties
5. the claimant has difficulty in obtaining evidence or information to support their application

The list is not exhaustive, and each application should be considered on its merits. For example, where the application concerns a benefit awarded because of incapacity or disability, it may be appropriate to accept serious illness as a special circumstance.

03076 Note that the later the application the more compelling the special circumstances for lateness must be¹ although applicants are not expected to show that their circumstances are exceptional. Where the delay is not excessive, the person's circumstances can be less compelling.

1 SS CS (D&A) Regs, reg 4(5)

Example

The claimant, a pensioner, is awarded IS without housing costs in a decision notified on 1 August. At the same time, he is asked to arrange for completion of form MI12. Before he can send the form to the building society, he suffers a stroke and is admitted to hospital for three months. He is discharged home on 6 November. On 11 December he returns form MI12, explaining why he has not done so earlier. The DM accepts a late application for revision, and revises the decision to award housing costs from the date of claim.

03077

03078 Where an application for revision is received but no reason for lateness is given and the application has merit (i.e. is likely to succeed) the DM should make enquiries as to whether there are special circumstances for the late application.

03079 Where a late application has not been accepted, an application for an extension of time cannot be renewed¹.

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

03080 - 03100

Revision instigated by the DM

03101 The DM can instigate a revision within one month of notification of the original decision, and revise it in the same way as for a claimant's application¹.

Note: In cases where a DM considers that the decision may be subject to revision on their own initiative then a note to this effect should be made on the case.

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

03102 Decisions can also be revised at any time on the DM's own initiative in limited circumstances. For example, where an award of benefit is affected by an award of or change to another benefit which takes effect from the date of the original decision, or the decision is based on official error, the any time revision provisions apply. For further advice, see DMG 03250 et seq.

03103 - 03110

Challenging a revised decision

03111 Where an existing decision is revised, following a mandatory reconsideration, there are fresh appeal rights and a fresh application period. A claimant can challenge the revised decision provided the application is lodged within the time limit. A further application for revision is not required by the claimant who can appeal the decision as revised immediately.

03112 - 03149

Revising decisions during the application period

Introduction

03150 Decisions challenged during the application period in DMG 03063 - 03079 can be revised by the DM on any ground. Where the claimant appeals directly to DWP before mandatory reconsideration has been considered then the appeal should be treated as an application for revision and the claimant should be so advised. The claimant has a right to appeal the decision as revised. See DMG Chapter 06 for further guidance.

03151 Where the decision is revised but not to the claimant's advantage, the appeal proceeds, but the appeal will be treated as against the decision as revised¹. The appellant will be given a further month in which to make representations against the revised decision². See DMG Chapter 06 for further details.

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

03152 The DM should always reconsider decisions challenged during the application period. Claimants do not have to give reasons why they think the decision is wrong when making an application for revision. The DM may need further evidence or information to establish if it was based on incorrect facts or law.

03153 Where the DM notices an error, the decision can be looked at again even if it is noticed outside the time limits (see DMG 03250 et seq).

03154 - 03159

When should a decision be revised

03160 The DM looking at a decision during the application period need not examine all the facts and circumstances of the case again¹. For example, only one fact may be at issue. The DM should exercise discretion depending on the circumstances of each case when deciding what determinations embodied in a decision need to be looked at again. If the DM notices an obvious error which is not mentioned in the claimant's application it should be dealt with as part of the revision process.

1 SS Act 98, s 9(2)

Example 1

A lone parent claims IS for herself and two children. She works P/T in the evenings as an office cleaner. The DM awards IS taking gross earnings into account. The

claimant disputes the amount of the award. The DM revises the original decision because the amount of earnings has not been reduced to take account of tax and NI deductions. No other changes are made to the decision.

Example 2

A jobseeker leaves employment. The DM decides that just cause has not been shown, and a 16 week sanction is imposed. The jobseeker disputes the period of the sanction because the maximum period for a sanction is 26 weeks and the claim for JSA was not made until twelve weeks after leaving the job. The DM decides to change the sanction to four weeks because the fact that the claim was not made until twelve weeks after leaving the employment had not been taken into account. No other aspect of the decision is considered.

- 03161 The original decision can be revised during the application period on any ground. This includes if the DM
1. reaches a different conclusion about the facts of the case
 2. decides that the original decision was based on a mistaken view of the facts
 3. considers the original decision was based on an incorrect interpretation of the law
 4. considers the original decision was based on insufficient evidence
 5. decides that there are new relevant facts which were not known at the time the decision was made.

Example

A jobseeker fails to attend as required. She makes a statement in writing within five working days about the failure to attend. The DM supersedes and terminates entitlement to JSA because it is not accepted that good cause was shown. Following a request to reconsider the decision, it later comes to light that there was additional evidence in the claimant's verbal explanation to a member of staff in the Jobcentre. Taking this additional evidence into account, the DM accepts that good cause was shown within five working days, and revises the disallowance to reinstate benefit.

What if more information is needed

- 03162 DMs are not bound by what the previous DM concluded about the facts, but they need to consider cases thoroughly and conscientiously in order to make the reconsideration process a reality. In particular they must make sure that all existing evidence is looked at carefully and, where necessary, further evidence obtained. If the claimant provides

any fresh evidence that also must be looked at carefully. However, in looking at the decision afresh the DM need only look at issues raised by the application for revision or the appeal (see DMG 03160).

- 03163 Although it is **not** a requirement to obtain any further evidence, there will be occasions when further evidence is necessary. For example if a decision is not revised wholly in the claimants favour. In such cases it should be obtained and looked at carefully along with the existing evidence.
- 03164 Should further evidence be required the claimant should be contacted by the most appropriate method such as by telephone, letter, office interview or visit.
- 03165 Where further evidence or information is required from the claimant in order to deal with an application for revision, the claimant is notified that the evidence is required, and given one month to supply it. The one month period can be extended where the DM thinks it is reasonable to do so.
- 03166 The decision may be revised on the basis of the
1. evidence where this is supplied within one month of the notification (or within any extended period) **or**
 2. original application where no response is received within the time allowed¹.

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

03167 - 03199

Which decisions cannot be revised

Social Fund

- 03200 Decisions on discretionary SF payments, such as budgeting loans, crisis loans and community care grants, are not subject to the revision process¹. These decisions are reviewed by an appropriate officer² (see SF specific guidance).

1 SS Act 98, s 9(1); 2 s 36 & s 38

AA, DLA and ESA - Special rules for the terminally ill

- 03201 A decision on AA, or DLA cannot be revised where the application is made within the one month time limit¹, on the grounds that the person is terminally ill², unless the person or another person intending to act on their behalf with or without their knowledge applies for revision or supersession expressly on the ground that the person is terminally ill. For ESA the application for revision can only be made by the terminally ill claimant, not by any other person³.

1 SS CS (D&A) Regs, reg 3(9)(b); 2 SS CB Act 92, s 66(2)(a); 3 SS CS (D&A) Regs, reg 3(9)(c)

03202 This applies even though the claim may not have been made expressly because the person was terminally ill¹.

1 SS CB Act 92, s 66(1), 72(5) & 73(12)

Industrial accident decisions

03203 Decisions about IA can only be revised in limited circumstances. See DMG 03300 - 03306 for further guidance.

03204 - 03209

What happens when a decision is not revised

03210 Although the DM should always look again at a decision following an application for revision, there may not be any reason to revise it. Where

1. the claimant has requested mandatory reconsideration of the decision **and**
2. the application is within the time limits or a late application is accepted **and**
3. there is no reason to revise it

the claimant is notified that the DM has decided not to revise the decision.

03211 The decision not to revise does not of itself carry the right of appeal, although the claimant has a further period of one month to appeal the original decision¹. See DMG 03024 - 03027 for action to take when a late application is not accepted.

1 TP (FrT) (SEC) Rules, rule 23(2) & Sch 1; R(IB) 2/04; R(1S) 15/04

Example

Following IA and medical advice, the DM decides that the claimant's disablement is assessed at 7%. The claim for IIDB is disallowed. The claimant challenges the assessment and benefit decisions. Following re-assessment, the DM decides that the degree of disablement should have been 11% and revises the assessment decision, but decides not to revise the disallowance. The claimant has one month from date of notification that the benefit decision is not revised in which to appeal the original benefit decision. The revised assessment decision has a fresh right to appeal.

03212 Appeal rights arising from the original decision are only renewed where an application for revision has been refused and the application was made

1. within the statutory one month time limit (see DMG 03063) **or**
2. **after** the statutory one month time limit, and the DM has extended the time for applying (see DMG 03070 - 03078).

If neither **1.** nor **2.** above applies then there is no right of appeal.

03213 If the time for appealing cannot be extended the DM should always look at whether the decision under appeal can be revised as in DMG 03250 et seq, or if not, superseded as in DMG 03023. If the DM decides that there are no grounds for revision or supersession, the claimant must be notified accordingly. The decision not to supersede has the right of appeal.

03214 Where the DM is reconsidering a case because the claimant has appealed following a reconsideration, and it is decided that revision is not appropriate but supersession is then the claimant must be notified of this decision.

Example

On 4.11.05 the DM awards the higher rate of the mobility component from 22.06.05, the date of the DLA claim. The claimant appeals on 18.11.05 on the grounds that he is also entitled to the care component. He sends in a consultant's report with his appeal. The DM considers that the evidence shows that the claimant's condition has got worse since the award began. He treats the appeal as an application for supersession, and supersedes the awarding decision on the grounds that there has been a relevant change of circumstances. The new decision awarding the lowest rate of care component in addition to the mobility component is effective from 31.10.05, after the qualifying period is satisfied. The appeal goes ahead, and the FtT is limited to considering whether the care component should be awarded for the period 22.06.05 to 30.10.05. If the FtT awards a higher rate of the care component, the supersession decision may be revised to take account of the FtT decision.

03215 If the decision is revised to the detriment of the claimant, the notification to the claimant should make clear that the appeal will proceed unless the claimant asks for it to be withdrawn. For further details, see DMG Chapter 06.

Note: The decision should always be notified where the DM revises the decision to the detriment of the claimant.

03216 - 03221

Revision where an appeal is pending before a court in another case

03222 The DM may decide not to make a decision on a look-alike case while a lead case appeal is pending before the courts (see DMG Chapter 06 for guidance on staying cases).

03223 - 03229

Issues for decision by HM Revenue and Customs

Introduction

03230 Since 5.7.99 HMRC (formerly the Board of the Inland Revenue) has been responsible for making decisions on NI contributions issues previously determined by the Secretary of State¹. A list of these, together with exceptions is at Annex C to this Volume.

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

03231 Entitlement to SS contributory benefits depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. See DMG Chapter 01 for further guidance about making assumptions. However, where there is a dispute about the record, the matter must be referred by the Secretary of State to HMRC for a formal decision.

Note: There are restrictions on revision in IA cases - see DMG 03300 - 03306.

When to refer to HM Revenue and Customs

03232 Where the DM considers that before deciding an application for revision of a decision made on an assumption of facts a formal decision by HMRC is required, the issue must be referred to HMRC¹.

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

Example

A claim for JSA(Cont) is disallowed because the NI record shows no contributions for the two tax years before the benefit year in which the date of claim fell. All other conditions of entitlement are satisfied. The claimant applies for the decision to be revised on the ground that she was employed for several years immediately before claiming benefit, and her wage slips show NI deductions. The DM refers the question of whether contributions should be treated as paid to HMRC. HMRC decides that contributions should be treated as paid for the period of employment. The DM revises the disallowance and awards JSA.

03233 While a decision of HMRC is awaited, the DM can¹

1. determine any other matter on the application (leaving the application undecided)

2. decide the application on the basis of a preliminary opinion of HMRC on the issue referred to them
3. defer making a decision on the application.

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

03234 Where the referral was made following an appeal, it is not possible to make a further decision until HMRC's decision is received.

Action when HM Revenue and Customs decision received

03235 Once the final decision of HMRC is received, the action depends on what decision had been made before it was received.

03236 Where a decision had been made on an application for revision in accordance with DMG 03233 **2.** the DM should consider whether to revise or supersede in the light of HMRC's final decision¹.

1 SS CS (D&A) Regs, reg 11A(4)(a)

03237 Where no decision had been made on an application for revision in accordance with DMG 03233 **1.** or **3.**, the DM should make a decision taking HMRC's decision into account¹. However, if HMRC's decision shows no error or change in the original decision, the DM should notify that the decision is not revised.

1 SS CS (D&A) Regs, reg 11A(4)(b)

Example

A claim for IB is disallowed because the contribution conditions are not satisfied. The claimant applies for revision on the basis that some contributions from employment in the relevant tax years have not been included in his record. The DM defers making a decision pending HMRC's decision. HMRC decide that all appropriate contributions have been included. The DM notifies that the disallowance decision is not revised.

03238 Where the reference was made following an appeal as in DMG 03234 the DM should consider whether the decision under appeal can be revised or superseded. See DMG Chapter 06 for guidance.

03239 A final decision of HMRC includes a decision on an appeal against a decision of HMRC¹.

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

Late award of contributions and credits

03240 A decision not to award a contributory benefit, or to award it at a lesser rate, may be revised at any time if after that decision is made a late paid contribution or credit is treated as paid at the same time as or before the date on which the original decision not to award, or award at a lesser rate was made, and as a result of the late contribution or credit the original decision would have awarded benefit or would have awarded it at a higher rate¹.

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

03241 - 03244

RP - late payment of class 3 contributions

03245 Where

1. a person reaches pensionable age **and**
 2. that person makes a late claim for RP **and**
 3. the DM disallows the claim because
 - 3.1 for Cat A RP, the claimant does not satisfy the contribution conditions **or**
 - 3.2 for Cat B RP, the claimant's spouse or civil partner does not satisfy the contribution conditions **and**
 4. HMRC accepts late payment of class 3 contributions by the claimant, spouse or civil partner¹ **and**
 5. the contributions are treated as paid on an earlier date²
- the DM should revise the disallowance³.

1 SS (Conts) Regs 01, reg 50A; 2 SS (Crediting etc) Regs reg 6A;

3 SS CS (D&A) Regs, reg 11A(4)(a)

Note: See DMG 03471 for guidance on the effective date of this decision.

Payment of additional class 3 contributions for past periods

03246 The DM may revise a decision, either to award or disallow RP, at any time where a class 3 contribution is

1. paid under special rules¹ (see DMG Chapters 58 and 75) **and**
2. treated as paid on a date on or before the date the decision was made².

Note: The normal rules on revision and supersession apply if the contributions are treated as paid on a date after the decision is made.

1 SS CB Act 92, s 13A; 2 SS CS (D&A) Regs, reg 3(8D)

03247 - 03249

Revising decisions at any time

Introduction

03250 In the following circumstances decisions made by the DM can be revised at any time either during or outside the application period without an application from the claimant¹.

I SS Act 98, s 9(1)

Revision while appeal is going on

03251 The DM may revise at any time **before** the appeal is determined where an appeal, including a late appeal, is made within the time limits (see DMG Chapter 06¹).

I SS CS (D&A) Regs, reg 3(4A)

03252 This allows the DM to revise the decision under appeal where action to revise does not start within the one month time limit (see DMG 03101). For example, the claimant may produce further evidence after an adjourned hearing which was not previously available to the DM, but which allows the decision to be revised.

03253 Where new information is provided after the response has been written and sent to HMCTS, a revision should be considered. Where the decision is revised, HMCTS should be informed **immediately**, especially where the appeal is to be lapsed.

When should a decision not be revised

03254 The purpose of lapsing an appeal is to prevent unnecessary appeals going ahead. The power to revise is discretionary rather than mandatory, and should not be used in order to prevent an appeal being heard. DMs are therefore advised to consider whether a decision under appeal should be revised where

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

Example 1

The DM decides that a claim for IS should be disallowed from and including 17.1.07 on the grounds that the claimant's income exceeds. The decision is reconsidered on appeal, the issue being whether the claimant has income. The DM notices that the date of disallowance is incorrect, and should have been 19.1.07. The DM does not revise the decision, and the appeal goes ahead. The error in the disallowance date should be addressed in the appeal response.

Example 2

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

appeal goes ahead. The error in the amount should be addressed in the appeal response.

Example 3

The DM decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the amount of the overpayment is correct. The claimant contends that that the amount of the overpayment is £5,000. The DM notices that the amount of the overpayment has been incorrectly calculated, and should be £10,835. The DM does not revise the decision as it is clear that the claimant will make a further appeal. The response to the FtT should point out the error in the calculation.

Example 4

The DM makes an advance award of the lowest rate of the care component of DLA, deciding that the qualifying period was not satisfied at the date of the claim. The claimant appeals on the ground that the award should have started on the date of claim, and should have been at the middle rate. The DM accepts that the qualifying period was satisfied at the date of claim, but decides that the claimant is not entitled to the middle rate care component. The claimant is advised of this via telephone call but still contends that they consider that they should be entitled to the middle rate and that they would make a further appeal if the decision was revised. The DM does not revise and the appeal goes ahead.

Example 5

The DM awards the lowest rate care and mobility component of DLA. The claimant appeals on the grounds that they satisfy the conditions for the higher rate of both components. The DM finds he could revise the decision awarding benefit at the same rate but 3 weeks earlier. The DM does not revise and the appeal goes ahead.

03255 Where the decision is not revised, but the DM considers it to be incorrect, the response should

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

Revision for official error

03256 A decision made by the Secretary of State either initially or on a supersession can be revised at any time for official error¹. See DMG 03270 et seq where the official error is due to incorrect recording of credits².

1 SS CS (D&A) Regs, reg 3(5)(a); 2 reg 3(5ZA)

03257 Where the claimant applies for a decision to be revised for official error outside the application period in DMG 03063 et seq, and the DM does not accept that there was

an official error, the decision not to revise should be notified without appeal rights¹.
The DM should consider supersession.

1 R(IS) 15/04

Meaning of official error

03258 An official error is an error made by

1. an officer of the DWP **or**
2. HMRC **or**
3. a person employed by a designated authority acting on behalf of the authority¹

which no person outside the Department or authority caused, or materially contributed to¹.

Note: A designated authority means the Secretary of State, a person providing services to the Secretary of State, an LA or a person providing services to, or authorised to exercise any functions of, any such authority.

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

Example

A GP provides an incorrect report on a person who claims ESA. The GP is also employed part-time by the service provider to provide a report for the purposes of the ESA claim. The report from the GP in his capacity of the NHS cannot constitute an official error as the GP is not providing services to the Secretary of State.

03259 In considering whether a decision was based on an official error, DMs should note that

1. an official error refers only to a clear mistake of fact or law arising because an officer has failed to make a decision or take an administrative act that was required under SS legislation. The officer must not have been acting in a private capacity for example giving advice to a neighbour
2. the official error must have made the appropriate decision wrong
3. the error must lie in the decision and not merely in the circumstances surrounding its issue
4. "mistake" refers only to obvious mistakes made by officers on the facts told to them by claimants or which they had reason to believe were relevant
5. officers of the Department, for example visiting officers, do not have a duty to interrogate claimants about their circumstances. It is up to the claimant to make the point about the circumstances to the visiting officers
6. DMs have a duty to consider whether the claimant has caused or contributed to any mistake

7. there is no general duty on an officer to keep all cases constantly under review in order to see whether a particular provision might apply in a particular case, even when that provision may be beneficial to a claimant
8. an alleged failure of consideration is not equivalent to a mistake of fact
9. the provision cannot apply where the mistake, act or omission occurred after the decision being reconsidered was made. To be relevant, it must have occurred before or have existed at the time of the decision
10. an error of law by a DM is an official error.

Note: Decisions which are found to be erroneous in law because of a later decision of a UT or Court cannot be revised. The decision should be superseded instead (see DMG Chapter 04).

03260 Applications for supersession may be treated as applications for revision where it would be more appropriate to apply the revision rules¹.

1 SS CS (D&A) Regs, reg 3(10)

03261 This is most likely to be where the decision ought to be revised to the claimant's advantage because it was based on an official error. In these circumstances revision is more appropriate because the effective date of the revised decision is more advantageous to the claimant than the effective date of the superseded decision.

03262 - 03269

When should a decision not be revised for official error

03270 Where

1. the decision which would otherwise be revised for official error is one awarding a benefit in DMG 03271 **and**
 2. the award was based on the contributions conditions being satisfied wholly or partly due to credits in the tax years¹ from 1993-94 to 2007-08 for
 - 2.1 IfW **or**
 - 2.2 approved training **and**
 3. the official error is because the credits information sent from DWP to HMRC was not recorded correctly **and**
 4. the error resulted in an award which is more advantageous than it should be
- the decision should not be revised².

1 SS CB Act 92, s 122(1); 2 SS CS (D&A) Regs, reg 3(5ZA), (5ZB) & (5ZC)

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**

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 IfW determination.

*1 SS CB Act 92, s 22(5); 2 SS (IW) (Gen) Reg, regs 10 and 27;
3 SS CS (D&A) Regs, reg 3(5)(c) & 7A(1)*

03287 For guidance on the meaning of “reasonably expected to know”, see DMG Chapter 04.

ESA

03288 A decision awarding ESA or credits where there has been a determination that a person has, or is treated as having LCW, may be revised at any time where

1. the DM was ignorant of, or was mistaken as to, some material fact in relation to the LCW determination **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 LCW determination¹.

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

03289 Where the facts relate to the LCW determination, and the condition in DMG 03288 3. is not satisfied, the supersession rules apply instead¹.

1 SS CS (D&A) Regs, reg 6(2)(b); SS Act 98, s 10(5)

03290 Where the fact is not in relation to the LCW determination, the normal revision rules apply¹.

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

03291 A LCW determination¹ is a determination whether a person

1. has LCW following application of the test for LCW **or**
2. is treated as having LCW².

1 SS CS (D&A) Regs, reg 7A(1); 2 ESA Regs, reg 20

03292 A person has LCW if

1. their capability for work is limited by their physical or mental condition **and**
2. the limitation is such that it is not reasonable to require them to work¹.

1 WR Act 07, s 1(4); SS CS (D&A) Regs, reg 1(3)

03293 A supersession decision made in consequence of a failure determination can be revised at any time if it contained an error to which the claimant did not materially contribute¹.

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

03294 A failure determination means a determination by the DM under prescribed legislation¹ that a claimant has failed without good cause to satisfy a requirement to

1. take part in a Wfl² **or**
2. undertake WRA³.

*1 SS CS (D&A) Regs, reg 1(3); ESA Regs, reg 61(2), ESA (WRA) Regs, reg 8(2); 2 ESA Regs, reg 54;
3 ESA (WRA) Regs, reg 3*

03295 - 03299

Industrial accident decisions

03300 A decision that an accident was or was not an IA may only be revised¹ if

1. there has been a non-disclosure or misrepresentation of fact **and**
2. the fact was material **and**
3. the non-disclosure or misrepresentation was wilful².

1 SS CS (D&A) Regs, reg 3(5)(b); 2 SS Act 98, s 29(7)

03301 Misrepresentation occurs when a person represents, as a material fact, information which is found to be incorrect or incomplete.

03302 The Courts have considered the meaning of the word wilful:

“Wilful is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used, is a free agent, and that what has been done arises from a spontaneous action of his will. It amounts to nothing more than this that he knows what he is doing, and intends to do what he is doing, and is a free agent”¹.

Example

A market stall attendant stated that his eye was injured by hot ash from a passer-by’s pipe blowing into his eye. Later, it became apparent that this was a wilful misrepresentation because this version of events was never the claimant’s genuine belief².

1 per Brown LJ Re Young and Harston 31 ChD, 174; 2 R(I) 71/54

Decisions where the restriction does not apply

03303 The restriction in DMG 03300 does not apply to any decision which was based on any of the preliminary questions on IAs¹. These are

1. whether an accident happened at all
2. whether the claimant suffered personal injury
3. whether the claimant suffered personal injury by accident.

1 SS Act 98, s 29(6); R(I) 11/62

Decisions where the restriction applies

03304 An accident whereby a person suffers personal injury shall be deemed in relation to that person to be an IA if

1. it arises out of and in the course of the person's employment¹ **and**
2. that employment is employed earner's employment for the purposes of the Act² **and**
3. payment of benefit is not precluded because the accident happened outside GB³.

1 SS Act 98, s 29(6)(a); 2 s 29(6)(b); SS CB Act 92; 3 s 94(5); SS Act 98, s 29(6)(c)

03305 Decisions given based on the conditions in DMG 03304 can only be revised where the criteria in DMG 03300 apply¹.

1 SS Act 98, s 29(7)

03306 A decision that an accident was not an IA because the employment was not employed earner's employment can only be revised where DMG 03300 applies. This is because the employed earner's employment question is one of the deeming provisions under which an accident is deemed to be an IA

03307 - 03319

Revision following appeal against an earlier decision

03320 The DM may revise a decision at any time following determination of an appeal against an earlier decision. These decisions may be a decision on a claim, or a supersession.

03321 Where the DM

1. makes a decision, or revises or supersedes a decision ("decision A") **and**
2. the claimant appeals against decision A **and**
3. after the appeal has been made but before it is decided the DM makes another decision ("decision B")
 - 3.1 which supersedes decision A **or**
 - 3.2 on a further claim **and**
4. decision A is changed on appeal **and**
5. the DM would have made decision "B" differently if, at the time they had been aware of the FtT decision

the DM may revise decision B¹.

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

Example 1

A claimant in receipt of IB is disallowed following a PCA in which he scored 5 points. He makes an appeal against the disallowance. He also claims IB again. The second

IB claim is disallowed. The appeal against the first disallowance is successful, and the FtT awards IB for the period up to date of the second claim. The DM revises the second disallowance, and awards IB.

Example 2

A claimant in receipt of an indefinite award of DLA care and mobility components at the lower rate notifies on 21.5.02 that he has more care needs. The DM does not accept that a higher rate of care is appropriate, and on 4.6.02 decides not to supersede the awarding decision. The claimant appeals. He also applies to the DM for a higher rate of mobility component following an accident on 28.6.02. On 18.7.02 the DM supersedes the awarding decision to award the higher rate mobility component for two years from 28.9.02, but does not increase the care component. The FtT hears the appeal on 16.09.02, and awards the middle rate of the care component from 21.5.02. The DM revises the decision of 18.7.02 to award the middle rate of the care component from 28.9.02 and the higher rate of mobility component for the period 28.9.02 - 27.9.04.

03322 - 03329

Revision of IB awards

- 03330 If a person cannot be treated as incapable because they make a claim within six months of a previous PCA and the incapacity is the same or not significantly worse (see DMG 13630 - 13631), their claim cannot be decided straight away¹. The person normally has to wait for a decision on their claim until the PCA is actually carried out. However, the person can be treated as incapable of work if the six months period ends before application of the PCA. This means that the claim can be decided, and IB awarded from that date. No award can be made for the period before the claimant is treated as incapable.

1 SS (IW) (Gen) Regs, reg 28(2)(b)

- 03331 If the person subsequently passes the PCA, and is found to be actually incapable of work, the PCA determination applies to all periods of incapacity not covered by the determination treating them as incapable. The decision awarding IB can be revised at any time so as to award from the date of claim¹.

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

03332 - 03339

Revising decisions on JSA sanctions

- 03340 Decisions on whether JSA is payable for any period because a sanction has been imposed¹ can be revised at any time. For further guidance on sanctions, see DMG Chapter 34. In order to allow an intermediate level sanction to take effect on a new

claim a decision to award JSA can be revised² where a decision is made under prescribed regulations that the amount of that award is to be reduced³.

Example

A claimant in receipt of JSA fails to attend a course as directed. A sanction was imposed for two weeks. The decision is appealed to the FtT. A second sanction of four weeks is imposed after the jobseeker fails to attend another course as directed. This decision is also appealed. The appeal for the first sanction is allowed. The DM revises the second sanction to reduce the period to two weeks, and lapses the appeal.

*1 SS CS (D&A) Regs, reg 3(6); JS Act 95, s 17A, 19 & 20A; JSA Regs, reg 27A;
2 SS CS (D&A) Regs, reg 3(6B); 3 JSA Regs, reg 69B & 70*

Revision of ESA awards

03341 A decision awarding ESA can be revised¹ if

1. the decision was made on the basis that the claimant has made and is pursuing an appeal against a decision that they did not have LCW (the original decision) **and**
2. the appeal to the FtT in relation to the original decision is successful.

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

03342 A decision awarding ESA can be revised¹ if

1. the claimant's current PLCW is treated as a continuation of another PLCW by virtue of the linking rules² **and**
2. the assessment phase ended in the previous award, or the PLCW was more than 13 weeks³.

1 SS CS (D&A) Regs, reg 3(5F); 2 ESA Regs, reg 145(1); 3 reg 7(1)(b)

03343 An award of ESA may be revised at any time¹ if

1. it incorporates a determination that treats a claimant as having LCW until a determination about LCW has been made² **and**
2. the condition in 03343 1. was not satisfied at the time when the claim was made **and**

there is a period before the award which falls to be decided.

1 SS CS (D&A) Regs, reg 3(5D); 2 ESA Regs, reg 30

Example

A claimant is sent a questionnaire on 2.7.12 but it is not returned within the prescribed time. The DM determines that the claimant is to be treated as not having LCW and the award of ESA is terminated from 1.8.12. A fresh claim to ESA is made on 3.9.12. The questionnaire is not returned until 5.11.12 and ESA is paid from that date. The claimant attends a WCA in February 2013 and the DM determines that

they have LCW. The decision awarding ESA from 5.11.12 is revised so that ESA is awarded from 3.9.12.

03344

03345 Where a claimant is reassessed for the purposes of ESA¹ and ESA is not awarded and

1. they appeal that decision to the FtT **and**
2. before or after that decision is appealed they are awarded IS or JSA **and**
3. their appeal is successful

then the decision to award IS or JSA may be revised².

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs; 2 SS CS (D&A) Regs, reg 3(5H)

03346 Where a decision has been made to terminate the award of ESA (Cont) under specified legislation¹ and it is subsequently determined, in relation to the period of entitlement before that decision, that the claimant has or is treated as having LCWRA, then the decision to terminate entitlement may be revised². The previous decision awarding ESA (Cont) should be superseded to award the support component. See DMG 04709 for guidance on the effective date rule.

1 WR Act 12, s 51(1); 2 SS CS (D&A) Regs, reg 3(5I)

03347 A decision awarding ESA may be revised at any time where

1. it is made immediately following the last day for which the claimant was treated as capable of work or not having LCW under specified legislation¹ and the period lasted 13 weeks **and**
2. it is not a decision which embodies a determination that the claimant is treated as having LCW under specified legislation².

1 SS CS (D&A) Regs, reg 3(5J); 2 JSA Regs, reg 55ZA & JSA Regs 13, reg 46A; ESA Regs, reg 30

Revision of IS and JSA awards following successful ESA appeal

03348 Where a claimant's award of ESA is terminated because they do not have LCW and

1. they appeal that decision to the FtT **and**
2. before or after that decision is appealed they are awarded IS or JSA **and**
3. their appeal is successful

then the decision to award IS or JSA may be revised¹.

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

03349

Revising decisions on linked benefits

03350 Where

1. the DM awards entitlement to a relevant benefit **and**
2. the claimant or a member of his family is awarded another relevant benefit or an increase in another benefit for a period which includes the date on which the award of the first benefit took effect

the first decision can be revised¹.

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

Example

A claimant is awarded IS from 19.6.00 because he is incapable of work. His wife is also entitled to DLA care component at the lowest rate from 6.4.92. On 25.10.00 a FtT allows an appeal, and increases the wife's DLA care component award to the middle rate from the date of claim. The DM revises the IS award to include the disability premium from 19.6.00.

03351 A relevant benefit¹ includes

1. IB
2. AA
3. SDA
4. DLA
5. CA
6. JSA
7. IS
8. CHB
9. SPC
10. ESA.

I SS Act 98, s 8(3)

03352 Credits are not an award of a relevant benefit. For example, a claimant in receipt of IS because of incapacity cannot be awarded the disability premium earlier than the 365th day, even if it is subsequently determined for the purposes of incapacity credits that he was incapable of work from a date earlier than the date he became entitled to IS.

03353 The term "family" in DMG 03350 has the same meaning as in IS legislation¹. For further guidance, see DMG Chapter 22.

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

ESA(IR), IS and SPC

03354 Where

1. the DM awards entitlement to ESA(IR), IS, JSA(IB), or SPC **and**
2. the claimant has a non-dependant living with them¹ **and**
3. as a result the claimant is not entitled to SDP² or an additional amount as a severely disabled person³ **and**
4. the non-dependant is awarded benefit for a period which includes the date on which the claimant's ESA(IR), IS, JSA(IB) or SPC award took effect so that SDP⁴ or an additional amount is now applicable⁵
5. the ESA(IR), IS, JSA(IB) or SPC award can be revised⁶. See DMG Chapters 44, 23 and 78 for further guidance.

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

2 ESA Regs, reg 67; IS (Gen) Regs, reg 17(1)(d); JSA Regs, reg 83(e) & 86A(c); 3 SPC Regs, reg 6(4);

4 ESA Regs, Sch 4, para 6(4)(a); IS (Gen) Regs, Sch 2, para 13(3)(a); JSA Sch 1, para 20I;

5 SPC Regs, Sch 1, para 2(2)(a); 6 SS CS (D&A) Regs, reg 3(7ZA)

Example

A non-dependant is living with an IS claimant. The non-dependant, who was awarded DLA at the lowest rate (from 15.3.04) is appealing the relevant decision. The presence of the non-dependant means that the IS claimant cannot receive any SDP in connection with their IS claim which they made on 19.6.04. On 25.10.04 a FtT awards DLA to the non-dependant at the middle rate from 15.3.04. This now means that the non-dependant no longer disqualifies the IS claimant from receiving the SDP. The DM revises the claimant's IS award to include the SDP from 19.6.04.

Revision in REA cases

03355 Where

1. a decision that the claimant is not suffering from a prescribed disease, or has no loss of faculty¹, is revised by the DM, or changed on appeal to a FtT **and**
2. a claim to REA has been disallowed because there was no assessment of disablement²

the DM can revise the REA decision so as to award REA³ where the remaining conditions of entitlement are satisfied.

1 SS CB Act 92, s 103; 2 Sch 7, para 11 & 12; 3 SS CS (D&A) Regs, reg 3(7A)

Revising IS decisions when incapacity decisions are appealed

03356 Where

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

the IS decision may be revised².

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

Example

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

03357 When

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

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

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

03358 Where

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

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

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

Example

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

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

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

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

Example

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

Revision on change of election - deferred entitlement

SPC

- 03360 Where
1. a person elects for an increase of a Cat A or Cat B RP, a SAP a GRB, or SP¹
and
 2. the DM decides that the person or their partner is entitled to SPC and takes the increase into account when deciding the SPC claim, or superseding an award made on that claim **and**
 3. the person's election is later changed to a lump sum²

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

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

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

03361 Where

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

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

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

Example

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

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

03362 Where a decision has been made to terminate entitlement¹ to

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

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

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

Revision where no election made

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

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

the DM may decide the claim before a choice is made³

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

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

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

03365 - 03369

Revising decisions and determinations with no appeal rights

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

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

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

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

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

03373 - 03374

Revising decisions on sanctionable benefits

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

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

See DMG Chapter 04 for further guidance on sanctionable benefits.

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

03376 This applies to the offender who may be

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

03377 Where

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

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

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

03378 - 03399

Decisions given without authority

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

1 R(S) 13/81

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

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

03402 - 03409

Revision of advance awards

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

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

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

03411 Where a change

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

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

Example

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

03412 - 03459

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

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