

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 1

Amendment 57 – October 2018

1. This letter provides details on Amendment 57; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

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

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

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

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

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

3. Amendment 57 affects Chapters 1 & 2 . The changes:
 - updates the guidance at DMG 01031 in chapter 01
 - minor amendment in chapter 02.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove

Chapter 1

01015 – 01039 (1 page)

Chapter 2

02541 – 02563 (1 page)

Insert

Chapter 1

01015 – 01039 (1 page)

Chapter 2

02541 – 02563 (1 page)

Note: See DMG 01270 et seq for revision and supersession of decisions made by former adjudicating and appellate authorities.

1 SS Act 98, s 36 & 38; 2 s 9 & 38; 3 s 10; 4 s 12

01015 A decision is valid as soon as it is properly recorded by the DM. If a decision is not acted upon or not communicated to the relevant parties, this does not invalidate the decision¹. However a decision is not fully effective unless and until it is notified². See DMG 01116 - 01117 for guidance on how decisions are notified.

1 R(P)1/85; 2 R (U) 7/81; R (Anufrijeva) v Secretary of State for the Home Department & Another [2003] UK HL 36

01016 - 01029

What decisions are made by DMs

01030 The DM

1. decides any claim for a relevant benefit (see Annex A to this Volume)
2. makes contribution decisions on HRP and credits (see DMG 01050)
3. makes any decision that is made under, or by virtue of, a relevant enactment (see DMG 01031).

These decisions are called outcome decisions. It is important that DMs distinguish between outcome decisions and other decisions and determinations. This is because only outcome decisions carry the right of appeal to the FtT¹. See DMG 01100 - 01102 for further guidance on outcome decisions.

1 R(IB) 2/04

01031 A relevant enactment¹ is any enactment in

1. Chapter II of the SS Act 98
2. the SS CB Act 92 (except Part VII)
3. the SS A Act 92 (except Part VIII)
4. the SS (Consequential Provisions) Act 92
5. the JS Act 95
6. the SPC Act 02
7. Part 1 of the WR Act 07
8. Part 1 and section 30 of the Pensions Act 2014.

1 SS Act 98, s 8(4)

01032 - 01039

02541 A claim for MA which is

1. made between the 14th week before the EWC **and**
2. made up to the beginning of the 6th week before the EWC **and**
3. treated as a claim for IB or SDA

will be a claim in advance for those benefits. The claim can be treated as a claim for IB up to the 14th day following the ADC.

IB - failure to satisfy contribution conditions

02542 Where a claim for IB is made and the DM is satisfied that

1. the contribution conditions are not met **and**
2. within three months the conditions would be satisfied for a PIW beginning in a later benefit year

the DM may treat the claim as made for a period starting with the first day on which the conditions are satisfied and award benefit¹.

1 SS (C&P) Regs, reg 13

SF funeral and maternity payments

02543 An advance claim for a funeral or maternity payment can be made up to three months before the normal time for claiming begins¹. The normal time for claiming is

1. **for maternity payments** – the period beginning
 - 1.1 eleven weeks before the first day of the EWC and ending three months after the ADC² **or**
 - 1.2 with the date on which the claimant becomes responsible for the child and ending 3 months after that date³ **or**
 - 1.3 with the date on which a qualifying order is made and ending 3 months after that date⁴ **or**
 - 1.4 with the date on which the guardianship takes effect and ending 3 months after that date⁵ **or**
 - 1.5 with the date on which the child is placed with the claimant or the claimant's partner for adoption and ending 3 months after that date⁶ **or**
 - 1.6 with the date on which the adoption⁷
 - 1.6.1 takes effect in respect of an adoption under prescribed legislation⁸ **or**
 - 1.6.2 is recognised under prescribed legislation and ending 3 months after that date⁹

2. **for funeral payments** - the period beginning with the date of death and ending six months after the date of the funeral¹⁰.

1 SS (C&P) Regs, reg 13(1); 2 reg 19(1), Sch 4(8) & SFMFE (Gen) Regs, reg 5(3)(a); 3 reg 5(3)(b); 4 reg 5(3)(c); 5 reg 5(3)(d); 6 Reg 5(3)(e); 7 Reg 5(3)(f); 8 Adoption and Children Act 2002, s 66(1)(c), (d) & (e); 9 s 66(1)(e); 10 SS (C&P) Regs, reg 19(1) & Sch 4(9)

02544 The DM should

1. decide whether a claim which has been made too early can be accepted as an advance claim **and**
2. if the claim is not accepted as an advance claim, disallow it because it has been made outside the normal time limits.

02545 The DM should accept that an advance claim has been made where the evidence shows that the conditions for entitlement will be satisfied

1. **for maternity payments** - on the first day of the eleventh week before the EWC
2. **for funeral payments** - on the date of the funeral.

Benefit will be paid on that day, subject to all the conditions for entitlement being satisfied¹.

1 SS (C&P) Regs, reg 13(1)(b)

02546 - 02559

SPC

Making a claim before attaining qualifying age

02560 A claim for SPC may be made, and that claim may be determined, at any time within the advance period¹.

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

02561 The advance period begins on the date four months before the day on which the claimant attains the qualifying age and ends on the day before the claimant reaches that age¹.

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

02562 Where a claim made within the advance period is defective, the claimant may correct the defect at any time before the end of the advance period¹.

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

02563 Where a claim for SPC is made during the advance period the information or evidence required by the Secretary of State in order to decide whether to set an AIP or the length of the AIP the time within which the claimant **must** provide that