

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

## Decision Makers Guide

### Volume 11

### Amendment 43 – February 2019

1. This letter provides details on Amendment 43; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

<https://www.gov.uk/government/publications/decision-makers-guide-vols-4-5-6-and-7-jobseekers-allowance-and-income-support-staff-guide>

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

3. Amendment 43 affects chapters 67, 69 and 71. The changes:  
  
Chapter 67 – update Appendix 7.  
  
Chapter 69 – expand the guidance on date of onset and pensionable age.  
  
Chapter 71 – expand the guidance on people over pensionable age and make minor and consequential changes.
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 67

Appendix 6 – Appendix 7 (3 pages)

##### Chapter 69

69012 – 69019 (1 page)

69121 – 69137 (1 page)

##### Chapter 71

Conts 71621 – Conts 71906 (1 page)

71001 – 71014 (1 page)

71091 – 71099 (1 page)

71747 – 71800 (7 pages)

#### Insert

##### Chapter 67

Appendix 6 – Appendix 7 (4 pages)

##### Chapter 69

69012 – 69019 (1 page)

69121 – 69137 (1 page)

##### Chapter 71

Conts 71621 – Conts 71906 (1 page)

71001 – 71014 (1 page)

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# Appendix 6

## Presumption before 6.3.15

- 1 Before 6.3.15 most PDs were presumed to be due to the nature of a person's employment. The presumption did not apply to PDs A12, C1, C2, C4, C5A, C5B, C6, C7, C12, C13, C16, C19, C20, C21, C22, C25, C26, C27, C29, C30 and D5. The presumption applied in different ways to PDs A10, B5, C23, D1, D2, and D12 (see paragraph x).
- 2 The presumption applied when a person who has contracted a PD
  1. was employed in a prescribed occupation and
  2. was so employed on, or at any time within one month immediately preceding, the date of onset of the disease.
- 3 A presumption in the claimant's favour continued to apply unless the DM was able to rebut it, that is, to show that the disease was not due to the nature of the employment. To do this the DM must have had proof sufficient to establish the point on the balance of probabilities. That is, the DM must have been satisfied that, taking into account all the relevant evidence, it was more probable that the disease was not due to the nature of the employed earner's employment than that it was.
- 4 If the presumption did not apply, the onus was on the claimant to establish on a balance of probabilities, that the disease was due to the nature of the employed earner's employment. This would have been the case, for example, where the claim was for PD A12 and the employed earner was not in employed earner's employment in the prescribed occupation on, or within one month immediately preceding, the date of onset.



## Appendix 7

### Diseases where presumption should normally be automatic and those where automatic presumption is not appropriate

Prescribed disease	Any occupation involving:	Automatic presumption recommended
<b>A. Conditions due to physical agents</b>		
A1. Leukaemia (other than chronic lymphatic leukaemia) or cancer of the bone, female breast, testis or thyroid	Exposure to electro-magnetic radiation or to ionising particles	Yes
A2. Cataract	Exposure to red hot or white hot radiation	No
A3. a) Dysbarism	Subjection to compressed or rarefied air or other gases	Yes
A4. Task-specific focal dystonia	Prolonged periods of handwriting, typing or other repetitive movements of the fingers, hand or arm	No
A5. Subcutaneous cellulitis of the hand	Manual labour causing severe friction or pressure on the hand	No
A6. Knee bursitis or cellulitis	Manual labour causing severe friction or pressure at the knee	No
A7. Elbow bursitis or cellulitis	Manual labour causing severe friction or pressure at the elbow	No
A8. Tenosynovitis	Manual labour, or frequent or repeated movements of the hand or wrist	No
A10. Noise induced hearing loss	The use of, or work wholly or mainly in the immediate vicinity of [ <i>various specified machines and tools</i> ]	Yes
A11. Hand Arm Vibration Syndrome	Exposure to [ <i>variously defined sources of hand-transmitted vibration</i> ]	Yes

A12. Carpal tunnel syndrome	(b) repeated palmar flexion and dorsiflexion of the wrist	Yes
A13. Osteoarthritis of the hip	Work as a farmer	Yes
A14. Osteoarthritis of the knee	Work as an underground coal miner, or work as a carpet fitter or as a carpet layer or floor layer	Yes
<b>B. Conditions due to biological agents</b>		
B1. Anthrax	Contact with anthrax spores, or animals infected with anthrax	Yes
B2. Glanders	Contact with horses	No
B3. Leptospirosis	Work in i) places infested with rats, field mice or voles; ii) dog kennels or the care or handling of dogs, or iii) contact with bovine animals or pigs and their meat products	No
B4. Ankylostomiasis	Contact with a source of ankylostomiasis	No
B5. Tuberculosis	Contact with a source of tuberculous infection	No
B6. Extrinsic allergic alveolitis (including farmer's lung)	Exposure to moulds or fungal spores or heterologous proteins in a variety of occupational settings	No
B7. Brucellosis	Contact with animals infected by or laboratory specimens containing brucella or	Yes
B8A. Infection by hepatitis A virus.	Contact with raw sewage.	No
B8B. Infection by hepatitis B or C virus	Contact with human blood or human blood products or any other source of hepatitis B or C virus.	Yes
B9. Infection by <i>Streptococcus suis</i>	Contact with pigs infected by <i>Streptococcus suis</i> , or with the carcasses, products or residues of pigs so infected.	Yes
B10a) Avian chlamydiosis	Contact with birds infected with <i>Chlamydia psittaci</i> , or with the remains or untreated products of such birds	No

B10b) Ovine chlamydiosis	Contact with sheep infected with <i>Chlamydia psittaci</i> , or with the remains or untreated products of such sheep	No
B11. Q fever	Contact with animals, their remains or their untreated products	No
B12. Orf	Contact with sheep, goats or with the carcasses of sheep or goats	No
B13. Hydatidosis	Contact with dogs	No
B14. Lyme disease	Exposure to deer or other mammals of a type liable to harbour ticks harbouring <i>Borrelia</i> bacteria	No
B15. Anaphylaxis	Contact with products made with natural rubber latex	No
<b>C. Conditions due to chemical agents</b>		
C3. a) Phossy jaw	The use or handling of, or exposure to the fumes, dust or vapour of, phosphorus or a compound of phosphorus, or a substance containing phosphorus	Yes
C3. b) Peripheral neuropathy or peripheral polyneuropathy with pyramidal involvement of the central nervous system, caused by organic compounds of phosphorus which inhibit the enzyme neuropathy target esterase		No
C17. Chronic beryllium disease	Inhalation of beryllium or a beryllium compound	Yes
C18. Emphysema	Inhalation of cadmium fumes	Yes

C22a. Primary carcinoma of the mucous membrane of the nose or paranasal sinuses	Work before 1950 in the refining of nickel	Yes
C23. Bladder cancer	Exposure during manufacture of a variety of chemicals	Yes
C24. a) angiosarcoma of the liver, b) osteolysis of the fingers, c) scleroderma, d) liver fibrosis	Exposure to vinyl chloride monomer in the manufacture of polyvinyl chloride	Yes
C24A. Raynaud's phenomenon due to exposure to vinyl chloride monomer	Exposure to vinyl chloride monomer in the manufacture of polyvinyl chloride before 1 <sup>st</sup> January 1984	Yes
C31 Bronchiolitis	Exposure to diacetyl and food or food flavouring containing diacetyl;	Yes
C32 Nasal carcinoma	Work in manufacturing inorganic chromates or in hexavalent chrome plating	Yes
<b>D. Miscellaneous conditions</b>		
D1. Pneumoconiosis	Various defined exposures during the course of mining, quarrying, sand blasting, breaking, crushing/grinding of flint, certain foundry operations, grinding of mineral graphite, manufacture of china or earthenware, use of a grindstone, manufacture or repair of asbestos textiles, the sawing, splitting or dressing of slate, boiler scaling, etc.	Yes
D2. Byssinosis	Work in any room where any process up to and including the weaving process is performed in a factory in which the spinning or manipulation of raw or waste cotton or of flax, or the weaving of cotton or flax, is carried on	Yes
D3. Diffuse mesothelioma	Exposure to asbestos at a level above that commonly found in the environment at large	Yes



D4. Allergic rhinitis due to [ <i>a specified list of sensitizing agents</i> ]	Exposure to any of the agents set out in column 1 of this paragraph	Yes
D6. Nasal carcinoma	Work involving the manufacture or repair of wooden goods, or footwear made of leather or fibre board or exposure to wood dust in the course of the machine processing of wood	Yes
D7. Occupational asthma due to [ <i>a specified list of sensitizing agents</i> ]	Exposure to any of the agents set out in column 1 of this paragraph	Yes
D8. Lung cancer where there is accompanying asbestosis	Exposure to asbestos in a variety of occupational settings	Yes
D8A. Lung cancer	Exposure to asbestos in a variety of occupational settings	Yes
D9. Diffuse pleural thickening	Exposure to asbestos in a variety of occupational settings	Yes
D10. Lung cancer	a) work underground in a tin mine; or	No
	b) exposure to bis (chloromethyl) ether produced during the manufacture of chloromethyl methyl ether; or c) exposure to zinc chromate calcium chromate or strontium chromate, or (d) work as a coke oven worker	Yes
D11. Lung cancer where there is accompanying silicosis	Exposure to silica dust in a variety of occupational settings	Yes
D12. Chronic obstructive pulmonary disease	Exposure to coal dust a) as an underground coal miner for 20 years; b) on the surface of a coal mine for 40 years or c) both underground in a coal mine and on the surface as a screen worker for 20 years in aggregate	Yes
D13. Nasopharyngeal cancer	Exposure to wood dust	Yes

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



## Date from which entitlement to IIDB arises

### Claims before 6.4.83

69012 For claims based on accidents before 6.4.83, entitlement to IIDB depends on whether incapacity resulted within 156 days, excluding Sundays, from the date of accident. If not, entitlement arises from the fourth day following the date of accident or, in a PD case, from the beginning of the assessment. If there was a period of incapacity due to the accident entitlement is from the earlier of

1. the day following the last day of such incapacity or
2. the day following the expiry of 156 days from the date of accident<sup>1</sup>.

*1 SS (Abolition of Injury Benefit) (Consequential) Regs 1993*

### Claims after 6.4.83

69013 There is no entitlement to IIDB for the 90 days, disregarding Sundays, beginning with the date of the accident or date of onset in PD claims<sup>1</sup>. However, entitlement arises from the date of onset in claims for

1. occupational deafness<sup>2</sup> (PD A10) and
2. diffuse mesothelioma<sup>3</sup> (PD D3) and
3. primary carcinoma of the lung (PD D8 and PD D8A) from 6.4.06<sup>4</sup>.

**Note 1:** In PD A10 claims the date of onset is the date of claim<sup>5</sup>.

**Note 2:** The date of onset for a PD can be prior to the date the disease was added to the schedule, although no benefit can be payable prior to that date<sup>6</sup>.

*1 SS CB Act 92, s 103(6); 2 SS (II) (PD) Regs, reg 28; 3 reg 20(4)(a); 4 reg 20B(2)(a);  
5 reg 6(2)(c)(ii); 6 R(I) 4/96*

69014 This 90 day period is absolute. It applies regardless of whether or not the accident has caused incapacity in the intervening period.

69015 In calculating the period of 90 days Sundays are excluded. The period can, therefore, never begin or end on a Sunday. IIDB can, however, be awarded from a Sunday and so, where an accident occurs on a Sunday or Monday, the 90th day will be a Saturday and IIDB may be awarded from the next day, Sunday<sup>1</sup>.

*1 SS CB Act 92, s 103(6)*

### Late claims

69016 Guidance on the time limits for claiming IIDB and disentitlement penalties for late claims is in DMG Chapter 02.

69017 - 69019



69121 Payment of benefit was not normally made before the start of the period of assessment. Exceptionally, where payment was made before the start of the assessment and the beneficiary then died before the period began, the award could be reviewed<sup>1</sup>.

*1 R(I) 23/52*

69122 If the adjudicating medical authority

1. considered a claim after the death of the claimant **and**
2. made a life assessment to start on the day the claimant died

the full amount of the Dis G was payable. The length of the claimant's life after the start of the assessment was irrelevant<sup>1</sup>.

*1 R(I) 59/54*

69123 - 69129

## **Gratuity by instalments**

69130 A Dis G could be paid by instalments

1. if the beneficiary was under age 18 at the date of award **or**
2. in any other case where the amount of the Dis G exceeded £52 and the beneficiary requested payment to be made by instalments<sup>1</sup>.

Except where the beneficiary was under age 18, a Dis G payable to the widow of a deceased person could not be paid by instalments on her remarriage.

*1 SS (C&P) Regs, reg 31(3)*

69131 The amount and frequency of the instalments were at the discretion of the adjudicating authority awarding the Dis G, based on what was reasonable in the circumstances of the case<sup>1</sup>.

**Note:** The question of the method of payment is generally for the Secretary of State but questions about the payment of a Dis G by instalments were for the adjudicating authorities.

*1 SS (C&P) Regs, reg 31(3)*

69132 - 69134

## Pensions in lieu

### Pensions in lieu when SHA was payable

69135 Before 1.10.86<sup>1</sup>, a claimant who was entitled to a IIDB and SHA could choose to have a pension in lieu of the gratuity providing the choice was made before the Dis G was paid. The pension in lieu offered the claimant certain advantages over payment by Dis G because

1. the rate of the pension was uprated with the general uprating of benefits **and**
2. it continued to be paid throughout the period of the assessment which meant that assessments for more than seven years, or for life, would remain payable beyond seven years whilst the assessment was current and the conditions for payment of a pension in lieu remained satisfied.

The option was removed from 1.10.86 with the amendments which introduced REA.

*1 SS Act 75, s 60(7); SS (Gen Ben) Regs, reg 18*

69136 Claimants who were entitled to a pension in lieu immediately before 1.10.86 remained entitled to such pensions until the first date on which<sup>1</sup>

1. the assessment expired, was reassessed or reviewed **or**
2. payment of REA ceased (including RA from 1.11.89, see DMG 69140).

Whilst existing pensions in lieu are protected, no new pension in lieu elections may be made. A claimant who was in receipt of a pension in lieu and whose disablement is reassessed between 1% and 19%, must be paid in the form of a Dis G. Where REA is no longer payable and a pension in lieu has been in payment, consideration of a balancing Dis G arises<sup>1</sup>.

*1 SS (II&D) Misc Prov Regs, reg 7(5) & (6); 2 SS (Gen Ben) Regs, reg 18(4)*

69137 From 10.4.89 entitlement to REA was replaced by entitlement to RA for a claimant who

1. attained pensionable age **and**
2. retired from regular employment **and**
3. was entitled to REA immediately before the date of retirement<sup>1</sup> **and**
4. the rate of REA payable immediately before retirement was at least £2 a week<sup>2</sup>.

**Note:** See DMG Chapter 75 for the meaning of pensionable age for RP purposes and DMG Chapter 74 for the meaning of pensionable age for SP purposes.

*1 SS CB Act 92, Sch 7, para 13(1); 2 Sch 7, para 13(2)*

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# Chapter 71 - Reduced earnings allowance

## Introduction

71001 REA was introduced on 1.10.86 to replace SHA<sup>1</sup>. REA is a benefit in its own right unlike SHA, which was an increase of IIDB<sup>2</sup>. The case law on SHA can be applied to REA.

*1 SS CB Act 92, Sch 7, para 11(1); 2 SS Act 75, s 60*

71002 REA compensates for the loss of earnings capacity where, as a result of an IA or PD, employed earners are unable to

1. return to their regular occupation or
2. carry out other work producing as high a level of earnings.

71003 The term “reduced earnings” relates to the claimant’s inability to achieve as high a level of income as in the regular occupation. The fact that a claimant’s total income from reduced earnings from an alternative occupation, plus IIDB and REA is greater than earnings had the regular occupation continued is not relevant (but see DMG 71782 et seq for the limitation on the rate of REA payable).

71004 - 71009

## Conditions of entitlement

71010 To be entitled to REA claimants must<sup>1</sup>

1. be entitled to
  - 1.1 IIDB except for PD A10 (or would be entitled if it were payable where disablement is assessed at not less than 1%) **or**
  - 1.2 IIDB for PD A10 where a reassessment is not less than 20%<sup>2</sup> **and**
2. as a result of the relevant loss of faculty
  - 2.1 be incapable
    - 2.1.a and likely to remain permanently incapable of following their regular occupation **and**
    - 2.1.b of following an employment of equivalent standard which is suitable in their case **or**
  - 2.2 be, and have at all times since the end of a period of 90 days after the date of the relevant accident or disease have been, incapable of following that occupation or any such employment<sup>2</sup> (see DMG Chapter 69 for the 90 day period).

*1 SS CB Act 92, Sch 7, para 11(1); 2 SS (II) (PD) Regs, reg 34(6); 3 SS CB Act 92, Sch 7, para 11(1)*

- 71011 There is no entitlement to REA for
1. an accident which occurred on or after 1.10.90<sup>1</sup> or
  2. a disease prescribed
    - 2.1 or extended between 1.10.90 and 9.10.94 - **unless** the date of onset was before 1.10.90<sup>2</sup> or
    - 2.2 before 10.10.94 but extended after that date and the claim relates to the extension<sup>3</sup> or
    - 2.3 on or after 10.10.94<sup>4</sup>.

For the effect on individual PDs, see DMG Chapter 67.

*1 SS CB Act 92, Sch 7, para 11(1); 2 Sch 7, para 11(1); 3 II (PD) Regs, reg 14A;  
4 SS CB Act 92, Sch 7, para 11(1)*

## **Gap in entitlement on or after 1.10.90**

- 71012 A person who
1. is entitled to REA on 30.9.90 and
  2. ceases to be entitled to REA for one or more days from 1.10.90
- cannot again become entitled to REA for that accident<sup>1</sup> or PD (but see DMG 71015).

*1 SS CB Act 92, Sch 7, para 11(2)*

- 71013 REA can still be awarded where
1. a continuation claim is made for a period beginning on the day following the last day of entitlement and
  2. the DM accepts that the entitlement conditions have been continuously satisfied since 1.10.90<sup>1</sup>.

There may still be underlying entitlement to REA even though REA is not payable.

*1 SS CB Act 92, Sch 7, para 11(2)*

- 71014 REA entitlement is established on 30.9.90 if
1. there is an award of REA covering 30.9.90 or
  2. a claim made before 1.10.90 is disallowed on payability for a period which includes 30.9.90 or
  3. a claim made before 1.10.90 is disallowed on payability from and including a date before 1.10.90 where the date of the DM's decision is on or after 30.9.90 or
  4. a first ever claim is made after 1.10.90 for an accident or PD occurring before 1.10.90 and the normal conditions of entitlement are satisfied for a period which includes 30.9.90.

## Abandonment of regular occupation for health reasons

- 71091 The usual effect of abandoning an occupation before the relevant date is that the occupation cannot be accepted as the regular occupation for REA purposes. For example, when a person who has changed occupations cannot establish that
1. the change was temporary under the principles set out in DMG 71081 - 71086 **and**
  2. there were reasonable prospects of resuming the former occupation
- the occupation cannot be accepted as the regular occupation.

- 71092 A person who abandoned an occupation may have that occupation treated as the regular occupation for REA purposes<sup>1</sup> if the occupation was abandoned
1. before the first day for which there is an assessment of disablement of at least 1% **and**
  2. as a result of the relevant disease **and**
  3. at any time after the person had been employed in employed earner's employment in any occupation prescribed for that disease.

*1 SS (II) (PD) Regs, reg 17*

- 71093 DMs should note that
1. the expression "relevant disease" includes any attack of the same disease<sup>1</sup>
  2. the occupation must have been abandoned before the first day for which there is an assessed loss of faculty
  3. they can accept that the regular occupation was abandoned as the result of a disease even though a DM may have decided on an earlier claim, before or after the date of abandonment, that the claimant was not suffering from that disease
  4. it does not follow that because it is accepted that a claimant abandoned an occupation because of the relevant disease it must also be accepted that the disease prevented them following that occupation as that is a question which they must decide on the available evidence.

*1 R(I) 4/69*

71094 - 71095

## Retirement from regular occupation

71096 A person who retires from an occupation **after** the relevant date may still have that occupation accepted as the regular occupation<sup>1</sup>.

*1 CI 258/49(KL)*

71097 If a person retires from an occupation **before** the relevant date the DM should consider whether

1. the pre-retirement occupation may still be treated as the regular occupation<sup>1</sup> (see DMG 71084 - 71086)
2. the claimant may by retirement have abandoned the occupation without later on taking up the same or any other employment; the effect is that that occupation cannot be accepted as the regular occupation for REA purposes<sup>2</sup>
3. claimants may be able to establish that, despite retirement, they did in fact have a regular occupation, having returned to employment in the same or another occupation and this will depend largely on the
  - 3.1 reasons for resuming work **and**
  - 3.2 intentions and prospects of continuing in the employment.

*1 SS (II) (PD) Regs, reg 17; 2 CWI 29/49 (KL)*

### Example 1

Malcolm is recalled to his former employment for a limited period to assist his successor. Malcolm is unable to show an intention to follow that employment regularly.

### Example 2

Stan takes up employment after retirement, with the intention of following it regularly - that employment is accepted as the regular occupation.

71098 An occupation cannot be accepted as regular if

1. it is merely temporary or casual **and**
2. the claimant has no intention or prospects of following it regularly.

71099 RP can be paid together with IIDB and REA, but see DMG 71782 et seq for restrictions on the rate of REA payable.

## Claimants over pensionable age

### Meaning of pensionable age

71747 See DMG Chapter 75 for the meaning of pensionable age for RP purposes and DMG Chapter 74 for the meaning of pensionable age for SP purposes<sup>1</sup>.

*1 Pensions Act 1995, Sch 4, Part I, para 1*

### Claimants who retired on or before 5.4.87

71748 Where on 5.4.87 a person

1. was of pensionable age **and**
2. had retired or was deemed to have retired from regular employment **and**
3. was entitled to REA

the rate of REA could not be increased above the amount in payment on 5.4.87<sup>1</sup>, nor could indexation be applied to an award<sup>2</sup>.

*1 SS (II) (REA & Trans) Regs 87, reg 5; 2 Social Security Act 1986, Sch 3*

71749 Though the rate of REA could not increase above the rate payable immediately before 6.4.87 it could go down. If, for example, on renewal, a lower rate was found to be appropriate on comparison of earnings, the new award would reflect this. In these circumstances

1. there was nothing to prevent the rate subsequently increasing again on a renewal award **but**
2. the rate could **never** be greater than that payable on 5.4.87.

Therefore each claimant affected by this limitation had a personal ceiling on the REA rate imposed.

71750 In cases where REA was reduced because the total IIDB and REA would otherwise have been greater than the 100% IIDB rate<sup>1</sup>, the reduced rate payable immediately before 6.4.87 became the claimant's upper limit for the future.

*1 SS (II & D) Misc Prov Regs 86, reg 9*

71751 Similarly claimants with entitlement to IIDB totalling 100% could not establish entitlement to REA in the future because nothing was payable immediately before 6.4.87. Where claimants first made claims to REA on or after 6.4.87 they were prevented from gaining entitlement to REA. This is because the statutory limit of 140% of the IIDB rate<sup>1</sup> is modified by the replacement of 100% with 140% where the claimant was treated as retired for NI purposes before 6.4.87<sup>2</sup>.

*1 SS CB Act 92, Sch 7, para 11(10); 2 SS (II) (REA & Trans) Regs, reg 8*

71752 The combined effect of the legislation<sup>1</sup> was that in no circumstances could a claimant who retired before 6.4.87 obtain an aggregate of REA and IIDB greater than the equivalent of the 100% IIDB rate.

*1 SS (II) (REA & Trans) Regs, reg 7 & 8*

- 71753 It will not be possible to establish entitlement to REA in the future in cases where there was underlying entitlement to REA immediately before 6.4.87 **but** for some reason no benefit was in payment. This is because the rate of REA payable immediately before 6.4.87 was nil. For example if the claimant was abroad or serving a term of imprisonment.
- 71754 Should the rate of REA payable immediately before 6.4.87 later be revised, superseded or varied on appeal, with retrospective effect, the DM should reconsider any awards which followed and which reflected the original pre 6.4.87 rate. In these circumstances the payable rate can
1. increase or
  2. decrease.
- In changing any award that follows, an increase should only be given where the earnings differential allows.
- Note:** See DMG Chapter 03 for guidance on revision, DMG Chapter 04 for guidance on supersession and DMG Chapter 06 for guidance on appeals.

## **Claimants who retired on or before 10.4.88**

- 71755 Claimants are entitled to REA for life<sup>1</sup> if on 10.4.88 they
1. were of pensionable age **and**
  2. had retired or were deemed to have retired from regular employment **and**
  3. were entitled to REA
- But the rate of the allowance is frozen at the amount payable on 10.4.88<sup>2</sup>.
- 1 SS (CB) Act 92, Sch 7, para 12(1); 2 Sch 7, para 12(2)*
- 71756 In the circumstances in DMG 71756
1. satisfaction of the usual entitlement conditions for REA is no longer relevant **and**
  2. the link between REA and IIDB is broken **and**
  3. REA will continue at the same rate for life regardless of any later changes in the claimant's circumstances which could otherwise affect entitlement, for example ending of the assessment of disablement.
- 71757 Because these REA awards are at a set rate for life
1. there is no question of renewal **but**
  2. revision or supersession may be necessary if a claimant is subject to disqualification due to
    - 2.1 absence abroad<sup>1</sup> or
    - 2.2 imprisonment<sup>2</sup>.

These provisions apply in “frozen” REA award cases and existing guidance should continue to be followed (see DMG Chapter 07 and DMG Chapter 12).

*1 SS CB Act 92, s 113(1)(a); 2 s 113(1)(b)*

71758 Where on 10.4.88 a person was entitled to REA but disqualified from payment for the reasons in DMG 71758, payment can be resumed

1. when the conditions for payment become satisfied
2. at the rate which would otherwise have been payable (but for the disqualification) on 10.4.88<sup>1</sup>.

*1 SS CB Act 92, Sch 7, para 12(2)*

### **Claimants who retired between 11.4.88 and 9.4.89**

71759 From 10.4.89 the “frozen rate” of REA was extended to REA beneficiaries who

1. retired or
2. were deemed to have retired

in the period from 11.4.88 to 9.4.89 inclusive<sup>1</sup>. The rate of REA payable for life was the rate payable on 9.4.89.

*1 SS CB Act 92, Sch 7, para 12(1) & (2)*

### **Claimants who retired between 10.4.89 and 30.9.89**

71760 A person who, between 10.4.89 and 30.9.89

1. had reached pensionable age **and**
2. had retired or was deemed to have retired from employment **and**
3. was entitled to REA on the day immediately before retirement or deemed retirement

ceased to be entitled to REA from the day of retirement<sup>1</sup>.

*1 SS CB Act 92, Sch 7, para 13(1)*

71761 A person who

1. satisfied all three conditions in DMG 71760 **and**
2. was entitled to REA at a weekly rate of not less than £2 on the day immediately before retirement or deemed retirement

became entitled to RA (see DMG 71777).

71762 A person who had ceased to be entitled to REA because of retirement could become entitled to REA again only if they elected to de-retire. In these circumstances

1. a fresh claim was necessary **and**
2. all the entitlement conditions for REA had to be met again.

## Claimants who reach pensionable age on or after 1.10.89

71763 From 1.10.89 the earnings rule for RP was abolished<sup>1</sup>. With the abolition of the earnings rule there is no longer a retirement condition for entitlement to RP. Entitlement to RA for REA beneficiaries reaching pensionable age on or after 1.10.89 cannot be tied to a date of retirement.

*1 SS Act 89, s 7*

71764 From 1.10.89 a person who

1. reaches pensionable age **and**
2. gives up regular employment **on or after** 10.4.89 **and**
3. was entitled to REA on the day before giving up regular employment ceases to be entitled to REA from the day regular employment is given up<sup>1</sup>.

*1 SS CB Act 92, Sch 7, para 13(1)*

71765 A person cannot be entitled to REA

1. after they have reached pensionable age **and**
2. if they are no longer in regular employment.

### Example

Philip reached pensionable age on 28.2.09. He gave up regular employment on 31.3.93. He had an IA in April 1970 and received REA from 30.9.70 to 28.2.09. He has another IA in January 1980 and received REA from 2.7.80 to 28.2.09. On 14.8.14 Philip made another claim for REA following a DM's decision on 7.8.14 that he had been suffering from PD A11 since 1.1.74. The DM decides that Philip is not entitled to REA from 14.8.14.

71766 However, a person can be entitled to REA when making a first claim more than three months after reaching pensionable age and not in regular employment. A person can continue to receive REA whilst conditions for REA are met.

## Giving up regular employment 1.10.89 - 23.3.96

71767 In the period 1.10.89 - 23.3.96 it was important that the conditions in DMG 71765 1. - 3. be satisfied in the strict order in which they appear. A person who gave up regular employment **before** reaching pensionable age (or before 10.4.89) could not lose entitlement to REA (but see DMG 71771).

71768 From 1.4.90 regular employment meant gainful employment which a person undertook for at least ten hours a week, in each of five or more consecutive weeks<sup>1</sup>. A person was also treated as engaged in regular employment in any week in a



period of five consecutive weeks during which the total number of hours worked averaged at least ten hours a week<sup>2</sup>.

*1 SS (II) (RE) Regs, reg 2(1); 2 reg 2(2)*

71769 In deciding whether a person had given up regular employment the words must be given their normal everyday meaning and denote some conscious act on the part of the doer<sup>1</sup>. A person's intentions were therefore important when considering this question.

*1 R(I) 2/93*

71770 A person was not treated as having given up regular employment in any week in which there were one or more days in interruption of employment<sup>1</sup>. A day in interruption of employment is any day of unemployment or IfW<sup>2</sup>. This includes days of UB, SB, IVB and IB but **not** days for which

1. SSP, SMP or SDA were payable or
2. a person received autocredits or signed for credits only.

*1 SS (II) (RE) Regs, reg 2(3) (as then in force); 2 SS CB Act 92, s 57(1) (as then in force)*

## **Giving up regular employment 24.3.96 onwards**

71771 From 24.3.96<sup>1</sup> a person who reaches (or has already reached) pensionable age is regarded as having given up regular employment at the start of the first week following

1. week commencing 24.3.96 or
2. the week in which they reach pensionable age or
3. if still in regular employment, the week in which they are no longer in such employment

whichever is the later<sup>2</sup>. A week is defined as a period of seven days beginning with a Sunday<sup>3</sup>.

**Note:** Where employment is seasonal, a person is not in regular employment when a seasonal contract ends.

*1 SS (II & D) (Misc Amdt) Regs, reg 6;  
2 SS (II) (RE) Regs, reg 3; 3 SS CB Act 92, s 122*

71772 A person who is regarded as having given up regular employment as in DMG 71771 ceases to be entitled to REA. But they may be entitled to RA instead (see DMG 71777).

71773 The changes from 24.3.96 mean that a person's intentions to continue working are of no relevance. Nor does it matter if regular employment is given up before pensionable age. A person who reaches pensionable age will continue to be entitled to REA only if they are in regular employment (see DMG 71774).

**Note:** These changes do not apply to people receiving “frozen” REA (see DMG 71756).

71774 From 24.3.96 regular employment is defined for

1. employed earners as gainful employment under a contract of service which requires a person to work for an average of ten hours or more a week in any period of five consecutive weeks but any week where absence is permitted under the contract for example, sickness or leave, is disregarded **and**
2. S/E people as gainful employment which a person undertakes for an average of ten hours or more per week in any period of five consecutive weeks<sup>1</sup>.

*1 SS (II) (RE) Regs, reg 2*

71775 For the purpose of DMG 71774 2. a S/E person can remain in gainful employment, and therefore in regular employment, for weeks where they are not actually working. The absences are disregarded if they would have been disregarded under DMG 71774 1. had the person been an employed earner. If the absence is due to sickness DMs should consider whether the person

1. would have worked had they not been ill
2. could return to work in the foreseeable future
3. decided they were no longer in gainful employment
4. changed their pattern of work so their weekly hours reduced.

This list is not exhaustive. However, claimants still have to meet the requirement in DMG 71774 1. that they must undertake employment for an average of 10 hours a week in any period of five consecutive weeks.

**Example**

Bill is a S/E earner working 12 hours a week on a regular basis. He has a period of sickness which begins on 10.1.11. He states that he would have worked had he not been ill and intends to go back to work when he is better. He returns to work on 31.1.11 and continues to work 12 hours a week. The DM decides that Bill remained in regular employment throughout the absence.

71776 For the purposes of DMG 71774 the five consecutive weeks can be taken

1. forwards in time or
2. backwards or
3. both.

The five consecutive weeks can also include periods in which no work is undertaken.

**Example 1**

w/c 3.6.07		w/c 7.10.07	w/c 14.10.07
gives up work - contract ends		age 65	

The claimant last works on Friday 8.6.07 (the day his contract terminates) and does not start another job. He reaches pensionable age on Tuesday 9.10.07. He is regarded as giving up regular employment on Sunday 14.10.07.

**Example 2**

w/c 9.9.07		w/c 18.11.07	w/c 25.11.07
age 65		stops work - contract ends	

The claimant reaches pensionable age on Thursday 13.9.07 but continues in regular employment until Friday 23.11.07 when the contract of service terminates and does not start another job. He is regarded as giving up regular employment on Sunday 25.11.07.

**Example 3**

				w/c 15.4.07	w/c 22.4.07	w/c 29.4.07
				age 65		
				finishes work		
15 hours	15 hours	15 hours	15 hours	15 hours	(12 hours)	(9 hours)

The claimant is 65 on Wednesday 18.4.07 and has been working on a self-employed basis (that is other than under a contract of service). He finishes work on Friday 20.4.07 having been working for 15 hours each week and does not start another job. He cannot be regarded as having given up regular employment until his hours of work, averaged over a 5 week period, drop to less than 10 per week. His last week of regular employment is w/c 22.4.07 and he is regarded as giving up regular employment on Sunday 28.4.07.

#### Example 4

w/c		w/c
14.10.07		21.10.07
sick-incapacity benefit/age 65		

The claimant has been unable to work for several years and has been receiving benefit. He reaches age 65 on Wednesday 17.10.07. He is regarded as giving up regular employment on Sunday 21.10.07 as this will be the start of the first complete week following pensionable age in which he does no work.

#### Example 5

w/c		w/c		w/c
14.10.07		21.10.07		28.10.07
sick-incapacity benefit				

The situation is the same as for example 4 except that age 65 is reached on Sunday 21.10.07. The claimant is regarded as giving up regular employment on Sunday 28.10.07.

#### Example 6

w/c	w/c	w/c	w/c	w/c	w/c	w/c
20.5.07.	27.5.07	3.6.07	10.6.07	17.6.07	24.6.07	1.7.07
stops work	age 65	no work	no work	no work	starts another job	
					30 hours	30 hours

The claimant stops work on Friday 25.5.07. He is age 65 on Monday 28.5.07. He does no work for three weeks and then starts another job on Monday 25.6.07 working 30 hours a week. The hours of work, averaged over the five week period beginning with the week after the claimant is pensionable age, do not drop to less than ten per week. The claimant has **not** given up regular employment and remains entitled to REA.

## Retirement Allowance

71777 RA is awarded from the start of the first week in which a claimant is not in regular employment<sup>1</sup>. A week is defined as a period of 7 days beginning on a Sunday<sup>2</sup>. The **award** of REA will always finish on a Saturday but will be payable to the following Tuesday. The **award** of RA begins on a Sunday but is payable from the following Wednesday.

*1 SS (II) (RE) Regs, reg 3; 2 SS CB Act 92, s 122*

71778 A person who ceases to be entitled to REA is entitled to RA for life if on the day before it ceased there was entitlement to REA at a rate of £2.00 or more per week (from one or more awards)<sup>1</sup>. If the assessment of IIDB ceases from a date after the award of RA starts entitlement to RA continues.

*1 SS CB Act 92, Sch 7, para 13(2) & (3)*

71779 The weekly rate of RA is

1. 25% of the weekly rate of REA to which the claimant was last entitled or
  2. 10% of the maximum rate of IIDB (excluding increases of IIDB)<sup>1</sup>
- whichever is the less<sup>2</sup> (½p or more being rounded up)<sup>3</sup>.**

*1 SS CB Act 92, Sch 7, para 13(11); 2 Sch 7, para 13(4); 3 Sch 7, para 13(6)*

71780 Before 1.10.90, a person who was entitled to RA who decided to return to regular employment could again become entitled to REA if a fresh claim was made. From 1.10.90 this is no longer possible<sup>1</sup>.

*1 SS CB Act 92, Sch 7, para 11(1)*

## **Gender Recognition**

71781 The law provides that where a person is issued a full GRC<sup>1</sup> then that person will be entitled to a new birth certificate reflecting the acquired gender. As the person will be for REA/RA purposes that of their acquired gender then provided all the other conditions<sup>2</sup> are satisfied the date of conversion to RA may be affected.

*1 GR Act 04; 2 SS CB Act 92, Sch 7, para 13*

### **Example 1**

Oliver is aged 58 and is getting REA. He is issued with a full GRC as a woman and will therefore convert to RA at pensionable age.

### **Example 2**

Peter is aged 63 and getting REA. He is issued with a full GRC as a woman and therefore will convert to RA straightaway.

### **Example 3**

Kirsty is 58 and getting REA. She is issued with a full GRC as a man and therefore will not convert to RA until age 65.

### **Example 4**

Dawn is aged 63 and has been converted to RA. She is issued with a GRC as a man but will not be entitled to a further award of REA because conversion to RA was properly carried out and once RA is awarded it is awarded for life.

### **Example 5**

Andrew is aged 68 and made his first claim to REA after he had reached pensionable age. He is issued with a full GRC as a woman and will continue to receive REA because the conditions for conversion to RA are not satisfied.

**Example 6**

Louise is aged 62 and made her first claim to REA after pensionable age. She is issued a full GRC as a man and is now under pensionable age in the acquired gender. He will continue to receive REA until age 65 and will then convert to RA.

# Provisions affecting payment

## Statutory limitations

71782 Apart from any restriction in the amount of REA payable that may occur from comparing standard of remuneration, the DM should note that limitations apply<sup>1</sup>. These are the

1. overall maximum rate of REA is restricted to 40% of the maximum rate of IIDB per award
2. total of REA and IIDB cannot exceed 140% of the maximum rate of IIDB.

*1 SS CB Act 92, Sch 7, para 11(10)*

71783 The maximum rate of IIDB is limited to the 100% rate of pension whether disablement results from one accident or successive accidents<sup>1</sup>. Where a claimant is entitled to REA for more than one accident (see DMG 71787) the total of IIDB and REA is limited to 140% of the maximum rate of Dis P.

**Note:** Before 5.12.12 special rates were payable to claimants under age 18.

*1 SS CB Act 92, s 107 & Sch 4, para 4*

71784 Though REA was introduced as a benefit in its own right on 1.10.86, transitional provisions limited the total rate of REA and IIDB to 100% of the maximum rate of IIDB during the period to 6.4.87<sup>1</sup>. The position during this period was therefore the same as had existed when SHA had been payable (see DMG 71750).

*1 SS (II & D) Misc Prov Regs, reg 9*

## Unemployability supplement

71785 During any period claimants were entitled to US they could not also be entitled to SHA. The introduction of REA on 1.1.0.86<sup>1</sup> did not change this. From 6.4.87 US was abolished but any beneficiary in receipt of US immediately before 6.4.87 retains entitlement for any period following, whilst the conditions remain satisfied<sup>2</sup>.

*1 SS (II & D) Misc Provs Regs, reg 11; 2 SS CB Act 92, Sch 3, para 4*

71786 Any claimant continuing to receive US will therefore not be entitled to receive REA.

## Successive accidents

71787 A history of successive accidents or PDs may involve more than one occupation. Questions of entitlement to REA in such circumstances can be settled by applying basic principles; there are no special provisions. However, the DM should note the guidance at DMG 71788 - 71793.

## **Successive accidents in same occupation**

71788 Where there are successive accidents in the same occupation REA can be awarded only for the loss of faculty which caused the claimant to become incapable of the relevant regular occupation. A claimant may, in any one occupation have

1. suffered more than one accident **and**
2. received IIDB for several accidents. In this situation the latest accident will be established as the cause of inability to follow the regular occupation.

However, this will not be the case where the effects of an earlier accident worsen<sup>1</sup>.

*1 R(I) 4/83*

## **Successive accidents in different occupations**

71789 Where there are successive accidents in different occupations the DM should establish whether the latest occupation

1. has become the regular occupation (see DMG 71790 - 71791) or
2. is temporary (see DMG 71792).

71790 Where there are successive accidents in different occupations, the latest of which has become the regular occupation and, following an accident, a claimant

1. is unable to return to the regular occupation because of the relevant loss of faculty **and**
2. takes employment in a different occupation which is not of equivalent standard

there will normally be entitlement to REA.

71791 If the claimant then suffers another accident which makes them incapable of the second occupation, the claimant can claim a further award of REA provided that it can be shown that the second occupation has become the regular occupation for the further accident (see DMG 71041 - 71102). If both accidents affect the same part of the body, the DM will need to decide which loss of faculty makes the claimant incapable of following the second occupation. If the effects of the second accident have been overtaken by the effects of the first, entitlement for the second accident may well be removed.

71792 However, if there are successive accidents in different occupation and the latest is temporary

1. the first occupation may still be the regular occupation in all respects **and**
2. incapacity for the second occupation because of the further loss of faculty would not give entitlement to a second REA<sup>1</sup>.

*1 R(I) 14/62*



## Accident followed by PD

71793 If claimants are in receipt of REA because they are unable to work in their regular occupation following an IA and are later found to be suffering from a PD which is attributable to the same regular occupation, a second REA is not payable<sup>1</sup>.

However, where they

1. recover from the effects of the IA and
2. are then found to be incapable of following their regular occupation because of the PD

consideration should be given to the award of REA on account of the PD from the date of cessation of the original REA. This principle can be also be applied where an accident follows an accident or a PD is followed by an accident.

*1 R(I) 2/56*

## REA or RA with a pension in lieu of gratuity

71794 Before 1.10.86 claimants could choose to receive a pension in lieu of a gratuity<sup>1</sup> where they were also entitled to SHA. From 1.10.86 the right to choose a pension in lieu of a gratuity was removed<sup>2</sup>. However existing beneficiaries could continue to receive a pension in lieu of a gratuity until

1. the period of assessment expired, was reassessed or reviewed or
2. REA or RA was no longer payable

whichever was the earlier<sup>3</sup>. For further guidance on a pension in lieu of a gratuity where REA or RA is payable see DMG Chapter 69.

*1 SS (Gen Ben) Regs, regs 18;*

*2 SS (II & D) Misc Prov Regs, reg 7(5);*

*3 reg 7(6) as amended by SS (II & D) Misc Prov (Amdt) Regs 89, reg 2(1)(b)*

71795 - 71796

## Rounding up

71797 Any rate of REA less than the maximum rate should be calculated by rounding up to the nearest 10p<sup>1</sup>.

*1 R(I) 7/69; R(I) 9/80*

## **Regular occupation earnings less than maximum REA**

71798 If the earnings in the regular occupation are less than the maximum REA the claimant should not be compensated by an amount larger than the earnings loss. If this occurs, usually where minimal P/T working is involved, the award should not in any case be greater than that level.

71799 - 71800