

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 11 Amendment 44 – June 2019

1. This letter provides details on Amendment 44; 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-vol-11-industrial-injuries-benefits-staff-guide>

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

3. Amendment 44 affects chapter 71. The changes:

expand the guidance at 71766 and add a heading to that paragraph.
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).

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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 10.4.88¹.

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 inclusive¹. 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 retirement¹.

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 abolished¹. 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 up¹.

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.

First claim made after claimant reached pensionable age

71766 Subject to the prescribed time for claiming (3 months), a person who

1. makes a first claim for REA after reaching pensionable age **and**
2. is not in regular employment

can never be converted to RA because they do not reach pension age while they are in receipt of REA. However, a person who can never be converted to RA can continue to receive REA whilst conditions for REA are met.

Note: See DMG Chapter 02 for full guidance on the prescribed time for claiming.

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 weeks¹. 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 week².

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 doer¹. 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 employment¹. A day in interruption of employment is any day of unemployment or IfW². 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 24.3.96¹ 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 later². A week is defined as a period of seven days beginning with a Sunday³.

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 weeks¹.

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 employment¹. A week is defined as a period of 7 days beginning on a Sunday². 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