

ADM Chapter A4: Supersession, suspension and termination

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ADM Chapter A4: Supersession, suspension and termination

Introduction

A4001 This chapter is about decision making on claims for

1. UC
2. PIP
3. new style JSA (hereafter referred to as JSA)
4. new style ESA (hereafter referred to as ESA).

Note 1: ADM Chapter M1 contains guidance on the meaning of new style JSA and new style ESA.

Note 2: Guidance on supersession for benefits not listed above is in DMG Chapter 04.

Note 3: The guidance comes into effect¹ from 8.4.13 for PIP and from 29.4.13 for UC, JSA and ESA.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 1(2) & 1(3)

Introduction to supersession

A4002 Supersession means changing a decision of the DM, the FtT or the UT and replacing it, from a later date than the original decision. Certain conditions have to be satisfied before a decision can be superseded. There is no time limit for making an application for supersession.

Types of decisions that can be superseded

A4003 The following decisions may be superseded by a decision made by the Secretary of State¹

1. a decision on any claim for a relevant benefit²
2. any decision of the Secretary of State that falls to be made under relevant Acts³
3. any decision described in 1. & 2. as revised

but this is subject to regulations.

Note : If payability has started or ended by reason of a change of circumstances a supersession decision is required. In cases where payability is restored because an overlapping benefit has ceased to be payable then the decision is not a supersession – it is a decision under prescribed legislation⁴.

1 SS Act 98, s 10; 2 s 8(1)(a) & (3); 3 s 8(1)(c) & (4); 4 s 8(1)(c)

A4004 The decisions under relevant Acts described in A4003 **2.** include

1. a decision to “disqualify a claimant for receiving benefit” on imprisonment¹
2. a decision to “adjust” benefit where the claimant is receiving treatment as an in-patient in a hospital²
3. a decision whether an overpayment of benefit is recoverable under specific provisions³.

This list is not exhaustive. See also Annex D. A decision that can be appealed can also generally be superseded.

Note: See ADM Chapter D1 for guidance on overpayment decision making.

1 SS CB Act 92, s 113(3); 2 SS A Act 92, s 73(1); 3 s 71

A4005 A decision of the FtT or UT can also be superseded

1. where there has been a change of circumstances since that decision had effect¹ **or**
2. where the DM is satisfied that the decision was made in ignorance of a material fact or was based on a mistake as to a material fact² **or**
3. where the DM is required to supersede the FtT or UT decision made under the stayed appeals procedures³ (see A4262 and ADM Chapter A5)
4. medical evidence has been received from an approved HCP or HP (or other person approved by the Secretary of State)⁴.

Note: A decision of the FtT or UT cannot be superseded by a DM on the grounds of error of law.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 23(1)(a); 2 reg 31(a); 3 reg 31(b) 4 Reg 26(1)(a)

Circumstances when a decision can be superseded

A4006 A decision (referred to below as the “original decision”) can be superseded either when an application has been made by the claimant or on the DM’s own initiative where

1. there has been a relevant change of circumstances since the original decision
 - 1.1 had effect **or**
 - 1.2 in the case of an advance award, was made¹
 2. a relevant change of circumstances is anticipated²
 3. the original decision was
 - 3.1 erroneous in law (DMs’ decisions only) **or**
 - 3.2 made in ignorance of a material fact or was based on a mistake as to a material fact
- and the application period for revision has expired³

4. the original decision is a decision without a right of appeal (see Annex D)⁴
5. a sanction has been imposed in accordance with specified legislation⁵
6. medical evidence has been received from an approved HCP or HP (or other person approved by the Secretary of State) (other than a JSA decision)⁶
7. a determination has been made that the claimant is to be treated as having LCW or LCW and LCWRA⁷
8. on or after the original decision was made a late or unpaid contribution is treated as paid under specified legislation⁸
9. a decision⁹ which reduces the housing costs element of UC has been made
10. a negative determination decision has been made on an existing award of PIP¹⁰
11. a decision has been made in loss of benefit cases¹¹

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 23(1)(a); 2 reg 23(1)(b); 3 reg 24; 4 reg 25;
5 reg 27; WR Act 07, s 11J(1); JS Act, s 6J(1) & 6K(1); WR Act 12, s 26(1) & 27(1);
6 UC, PIP, JSA & ESA Regs, reg 26(1)(a); 7 reg 26(1)(b), ESA Regs, reg 16, 21, 22 & 29;
UC Regs, part 5; 8 UC, PIP, JSA & ESA (D&A) Regs, reg 29; SS (Crediting etc) Regs, regs 5&6;
SS (Conts) Regs 01, reg 60; 9 UC, PIP, JSA & ESA Regs, reg 30 & Rent Officers Order 2013;
10 UC, PIP, JSA & ESA (D&A) Regs, reg 26(2); 11 reg 28; SS Fraud Act 2001, s 6B, 7 & 9*

A4007 To supersede a DM's decision on the ground that it was erroneous in law or made in ignorance or mistake as to fact, the application for supersession or the decision to initiate supersession must be made after the period in A4010 has ended¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 24(b)

A4008 If the application is made on any of the grounds listed in A4006, other than a change of circumstances, during the period in A4010, the decision should be changed by revision¹.

Note: A negative determination for PIP has the same effect as a change of circumstances.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 20(1)

A4009 If during the period in A4010 a claimant reports a relevant change of circumstances or information or evidence is received which indicates that a future relevant change will occur, or is expected to occur, the DM should supersede the original decision¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 5(2) & reg 23

A4010 The application period for revision is either¹

1. one month from the date of notification of the original decision **or**
2. a longer period (but not more than 13 months) allowed for a late application for revision.

The one month period can be extended by 14 days in certain circumstances, for example where reasons for the decision were not included in the decision notification and the claimant asks for a written statement of reasons. See ADM Chapter A3 for detailed guidance.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 5 & 6

A4011 A decision which can be revised should not be superseded except where there are grounds allowing revision and further grounds arise allowing supersession¹. This allows a decision to be revised and then superseded as part of one process.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 32

Example 1

A claimant has an award of the enhanced rate of the mobility component of PIP. He disputes 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 daily living component. The DM revises the decision and extends the period of the award of the mobility component and supersedes the decision as revised to award the standard rate of the daily living component from a later date.

Example 2

A UC claimant disputes the amount of their award on the basis that their capital has been determined incorrectly. He also says that he started having caring responsibility for a severely disabled person. The DM revises the award of UC to alter the amount payable and supersedes the decision as revised to include the carer element.

Applications

Introduction

A4012 When an application for supersession is received, the DM should consider whether or not to admit it in order to establish whether an application is hopeless. See A4017 for guidance on admitting applications.

A4013 If the application is admitted, the DM should

1. make a decision to supersede where the outcome is changed (see A4018 - A4020) **or**
2. make a decision not to supersede where the outcome is not changed (see A4021 - A4022).

Hopeless applications

A4014 If the application is not admitted because it is hopeless, the DM should notify the claimant that no decision has been made and there is no right of appeal¹. DMs should note that this is not a “decision not to supersede”. The existing award remains in place. The claimant should be notified why no action has been taken on the matters raised by the application.

1 Wood v Secretary of State for Work and Pensions [2003] EWCA Civ 53; R (DLA) 1/03

- A4015 A communication from the claimant should not be admitted as an application for supersession if no further investigation of fact or law could possibly produce a different decision from the one that has been made. This means that a communication will not be an application if
1. it only contains abuse **or**
 2. it contains only material that is not relevant to the benefit the claimant has been awarded (e.g. the claimant has requested extra benefit because of an increase in the price of cat food) **or**
 3. the amount or period to which the claimant's communication relates is already the maximum the law allows¹.

1 R(DLA) 1/03

- A4016 DMs should note that it will be exceptional to reject an application for supersession as hopeless.

Admitting an application

- A4017 Where there is a possibility that one or more of the conditions for supersession may be satisfied, the DM should admit a communication as an application for supersession.

Making a decision to supersede

- A4018 The DM should make a decision to supersede where
1. one or more of the conditions (grounds) are satisfied, for example where
 - 1.1 there has been a relevant change of circumstances
 - 1.2 it is anticipated that a relevant change of circumstances will occur
 - 1.3 a decision was made based on ignorance of or mistake as to a material fact
 - 1.4 there has been an error of law **and**
 2. the outcome is changed¹.

1 R(DLA) 1/03

- A4019 An outcome is changed where
1. the rate or period of entitlement to benefit is altered **or**
 2. the rate or period for which benefit is payable is altered **or**
 3. the period, amount or recoverability of an overpayment is altered.

- A4020 Where the DM supersedes the previous decision, that decision is replaced from the effective date of the new decision which carries the right of appeal.

Making a decision not to supersede

A4021 The DM makes a decision not to supersede where the outcome is not changed whether or not the conditions (grounds) to supersede a decision are satisfied. The decision not to supersede carries the right of appeal¹.

1 R(DLA) 1/03

Example 1

A claimant in receipt of an award of PIP notifies that their condition has worsened. The DM considers the report of the change, together with medical reports and advice, and decides that the earlier decision should not be superseded.

Example 2

The claimant's appointee notifies that the claimant, who is entitled to PIP, has transferred from hospital to a care home. The appointee asks for payment of PIP to be reinstated as the claimant has left hospital. The DM establishes that the care home is a similar institution to a hospital. Although there has been a relevant change of circumstances, PIP still cannot be paid. The outcome is not changed, and the DM decides not to supersede the earlier decision given on the claim to PIP made whilst the claimant was in hospital.

Example 3

A claimant returns to work after being in receipt of ESA for 20 weeks. The WCA has not been carried out. The claimant asks for arrears of a component to be paid from week 14. The DM should make a decision not to supersede the decision which awarded entitlement on the grounds that the conditions allowing supersession are not satisfied.

Example 4

A UC claimant asks for an increase in benefit as they allege that they are caring for a severely disabled person. The DM determines that this is not the case and decides that the UC award should not be superseded.

A4022 A decision not to supersede has no effective date. It does **not** replace the earlier decision¹. If it is revised or overturned on appeal, it then becomes a decision to supersede with the effective date calculated in the normal way. DMs should ensure that

1. the original decision **and**
 2. the evidence on which it was based **and**
 3. the application for supersession including the date on which it was made
- are retained.

1 R(DLA) 1/03

Treating as an application for supersession

A4023 A DM may treat an application for revision or a notification of a change of circumstances as an application for supersession¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 33(1)

Providing information

A4024 Where claimants apply for supersession, the onus is on them to prove (on the balance of probabilities) the facts upon which that application is based. They should supply information to support their application.

Further information needed

A4025 Where a DM requires further information or evidence in order to consider all the issues raised by an application for supersession the applicant should be notified that more information or evidence is required and the decision may be superseded¹

1. where the applicant provides the further evidence or information within one month of the notification (or such longer period as the DM may allow) on the basis of all the evidence **and**
2. where the applicant does not provide the further evidence or information within one month (or such longer period as the DM may allow) on the basis of the original application.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 33(2) & (3)

Example

John has income of £55 a week taken into account in relation to his claim for JSA (profit from his P/T window cleaning business). In April he asks the DM to look again at the decision as he says he now has expenses of £25 a week. He says he pays someone to help him - £20 a week, and has to buy replacement cloths, cleaning foam etc. for £5 a week. He sends in receipts for the cloths etc. At the beginning of May the DM asks him to supply copies of wage slips or pay packets for the £20 a week, but John doesn't reply. At the beginning of June the DM supersedes the decision from the date of the application in April and takes income of £50 a week into account.

Further information needed in UC cases

A4026 Where a DM requires further information or evidence in order to consider all the issues raised by an application for supersession in a UC case and the applicant has reported an advantageous change of circumstances, the applicant should be notified that more information or evidence is required and the decision may be superseded¹

1. where the applicant provides the further evidence or information within 14 days of the notification (or such longer period as the DM may allow) on the basis of all the evidence **and**
2. where the applicant does not provide the further evidence or information within 14 days (or such longer period as the DM may allow) on the basis of the original application.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 33(4)

Information provided late

A4027 Where the information is provided after the time limit allowed by the DM in A4025 – A4026 **and**

1. a decision has not been made, the decision should be based on all the evidence including the late information
2. a decision has been made, the DM should consider whether the decision needs to be revised or superseded in the light of the late information.

Issues for decision by HM Revenue and Customs

A4028 HMRC are responsible for making decisions on SS contributions issues previously determined by the Secretary of State¹. See Annex C for a list of these decisions.

1 Social Security Contributions (Transfer of Functions) Act 99, s 8(1)

A4029 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 ADM Chapter A1 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.

A4030 Where the Secretary of State has decided a claim or another matter on an assumption of facts about which

1. it appeared to him there was no dispute **but**
2. had an issue arisen, that issue would have fallen to be decided by HMRC as in A4029

then the provisions of A4031 - A4035 may apply¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42(2)

A4031 Where an application is made for supersession and the DM considers that an issue arises about some question that should be decided by HMRC, that matter should be referred to HMRC¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42(1)

A4032 While a decision of HMRC is awaited, the DM can¹

1. determine any other issue arising from the application for supersession

2. make a supersession decision on the basis of a preliminary opinion of HMRC
or
3. defer making a supersession decision.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42(3)

A4033 Once the final decision of HMRC is received, the action to take depends on whether the DM has made a supersession decision or has deferred that decision.

A4034 If the DM has made a decision on the basis of a preliminary opinion, he should consider whether the decision should be revised or superseded¹ in accordance with HMRC's final decision.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42(4)(a)

A4035 Where the DM has decided to defer making the supersession decision, a decision should be made in accordance with HMRC's final decision¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42(4)(b)

A4036 A final decision of HMRC includes a decision on an appeal against a decision of HMRC¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42(5)

A4037 - A4039

Decision to be superseded is set aside on appeal

A4040 Where

1. a decision is or is not superseded following an application **and**
2. the original decision is set aside on appeal to the FtT or UT

the decision to supersede or not may be of no effect¹.

1 R(DLA) 2/04

A4041 An application for supersession on the basis that the original decision was made in ignorance of a material fact lapses where the original decision is set aside on appeal.

Example

The claimant is awarded the standard rate of the daily living component of PIP following a further claim. Following a mandatory reconsideration he lodges an appeal against this decision with HMCTS. Before the appeal is heard, the claimant also applies for the decision to be superseded on the grounds that the DM was ignorant of material facts. The DM decides not to supersede the original decision. On appeal, the FtT sets aside the DM's original decision and awards the enhanced rate of the daily living component. The DM's decision not to supersede is of no effect, and there is no requirement to consider whether the FtT decision should be superseded, because they were deciding the further claim afresh.

A4042 An application for supersession for a relevant change of circumstances may need to be processed again, including treating it as an application for supersession of a different decision, or as a new claim.

Example

The claimant's award of PIP came to an end, and was disallowed when a further claim was made. On appeal, the FtT awarded the standard rate of the mobility component. The claimant made a further appeal to the UT who set aside the FtT decision, and remitted the appeal for rehearing. While the UT appeal was pending, but before the decision had been set aside, the claimant had applied by telephone for supersession of the FtT decision so as to award the daily living component on the grounds of a change of circumstances. The DM made a decision not to supersede, and the claimant made a further appeal. Both appeals were heard together. The FtT upheld the disallowance of the further claim, and held that the second appeal lapsed as there was no awarding decision to supersede. The DM treats the application as a claim, and makes a decision accordingly.

A4043 - A4049

The process of supersession

- A4050 Once it has been decided that there are grounds for supersession, the DM should
1. identify the decision to be superseded
 2. investigate and determine the relevant facts
 3. decide whether the facts mean that the terms of the award should change
 4. make a decision accordingly. That may be **either** a decision which is different from the decision superseded **or** a decision not to supersede
 5. determine the date from which the supersession decision should take effect
 6. decide what, if any, overpayment has occurred.

- A4051 The DM need not consider any issue¹ that
1. in the case of an application, was not raised by the application **or**
 2. in the case of a supersession at the DM's own initiative, did not cause the DM to supersede.

1 SS Act 98, s 10(2)

A4052 - A4054

Recording the decision

- A4055 It is important that a record be made of the supersession decision. That record needs to
1. identify the person to whom it relates

2. specify clearly that the decision is supersession
3. precisely identify the decision that is being superseded **and**
4. state the grounds allowing supersession to be undertaken.

A4056 - A4099

Change of circumstances

Relevant change of circumstances

A4100 Where

1. there has been a relevant change of circumstances since the decision
 - 1.1 had effect **or**
 - 1.2 was made in the case of an advance award¹ **or**
2. it is expected that a change will occur

the DM may supersede the decision which is currently in force². The application period for revision is irrelevant in these cases. See also A4115 - A4116.

1 UC, PIP, JSA & ESA (C&P) Regs, regs 32-34; 2 UC, PIP, JSA & ESA (D&A) Regs, reg 23

Decisions that can be superseded on the grounds of change of circumstances

A4101 The following decisions can be superseded on the grounds of a change of circumstances

1. any decision on a claim for a relevant benefit¹
2. any decision made under relevant Acts²
3. any decision in A4101 1. or A4101 2. which has been revised by a DM³
4. any decision made by the FtT or UT⁴.

1 SS Act 98, s 8(1)(a); 2 s 8(1)(c); 3 s 10(1)(a); 4 s 10(1)(b)

Relevant change of circumstances

A4102 For the purposes of supersession a relevant change of circumstance is a change which happens after the original decision had effect and which has a relevance to the award of benefit. A decision disallowing a benefit cannot be superseded if there is a change of circumstances from a date after the decision had effect. The claimant must make a fresh claim¹. But see A4103 for an exception to this general rule.

1 SS Act 98, s 8(2)(b); R(A) 4/81

A4103 The claim continues to exist until it is decided¹. A new claim may not be required where

1. a claim is disallowed **and**
2. a change occurs after the date of claim but before the claim was decided **and**

3. the claimant notifies the change within the time limits (see A4201 - A4213).

Where the effect of the change is that entitlement would begin before the date of the disallowance (or for PIP, the qualifying period would begin before the date of the disallowance), the decision can be superseded for a relevant change of circumstances. The effective date rules apply in the normal way.

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

Example 1

A claim to JSA is made on 20.12.17. The claimant is working P/T in a high street store for 20 hours a week, and the claim is disallowed on 10.1.18. On 22.1.18 she notifies that her employment, which was a temporary job over Christmas, had ended on 5.1.18. The change has been reported within one month, so the DM supersedes the disallowance and awards entitlement to JSA from 6.1.18.

Example 2

A claim to UC is made on 20.12.15. The claim is disallowed on 17.1.16 because the claimant has capital in excess of £16,000. On 22.1.16 the claimant reports that their capital fell below £16,000 on 5.1.16. The DM determines that no deprivation has occurred. The disallowance is superseded and an award of UC is made from 20.12.15.

A4104 To be relevant a change does not have to be a change in the claimant's own circumstances. The phrase "relevant change of circumstances" should be given a broad meaning. A relevant change must

1. be of sufficient substance to give serious consideration to supersession
2. have the potential effect of altering some component part of the award of benefit even if the end result does not actually change the amount of the award (see A4106).

A4105 The following are examples of a relevant change of circumstances.

Example 1

A jobseeker decides to go on holiday outside the UK. This is a relevant change because the jobseeker is absent from GB.

Example 2

In PIP cases a person with an existing award of the standard rate of daily living component whose needs increase on a regular basis is a relevant change because it may give entitlement to the enhanced rate of the component.

Example 3

A person in receipt of UC starts to live with their partner.

When a change has the potential to be relevant

- A4106 There will be situations where a change has the potential to affect an award of benefit but the DM ultimately decides that the change does not affect the amount of benefit awarded. This could happen, for example, because a claimant in receipt of ESA maintains that their medical condition has deteriorated. The DM may, having considered the evidence, decide that the change does not affect the existing award.
- A4107 The DM should make a decision not to supersede. See A4011 et seq for further guidance.

Is a change of opinion a relevant change of circumstances

- A4108 A change of opinion is not in itself a relevant change of circumstances. This should be noted when a medical opinion has been obtained after a certificate has been issued by a claimant's doctor. A report containing a further medical opinion may however contain evidence of a change of circumstances, for example if a condition has been wholly cured as a matter of medical fact¹.

Note: Where new medical evidence is received following examination by a HCP or HP or other person approved by the Secretary of State, the DM does not have to identify a change of circumstances in order to supersede. This does not apply to JSA.

1 R(DLA) 6/01

Can a change in law be a relevant change of circumstances

- A4109 A change in the law can be a relevant change of circumstances. However, where a claim has been disallowed before a change in legislation takes effect, it cannot be superseded due to a change of circumstance. This is because the claim has already been disposed of and the decision was correct under the law current at that time¹. A fresh claim is needed.

1 R(I) 56/54 & R(A) 4/81

Can a decision be superseded because of a future change of circumstance

- A4110 A decision may be superseded when it is expected that a relevant change of circumstances will occur on a future date¹. The DM should be satisfied on the balance of probabilities that it is likely that the expected change will actually take place.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 23(1)(b)

- A4111 Where a decision is given for an expected change of circumstances, the DM must record that it might need to be revised¹ if the change

1. does not occur **or**
2. occurs on a date other than the one expected.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 5

A4112 Where A4111 1. applies, the revised decision is that there are no grounds to supersede. Where A4111 2. applies, the revised decision takes account of the fresh information about the date of change and changes the effective date where appropriate.

A4113 - A4114

Supersession of advance awards

A4115 An award on an advance claim is conditional on the claimant's circumstances on the first day of entitlement¹. 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 supersession where the circumstances in A4116 apply. See also ADM Chapter A3 for revision of advance awards.

1 UC, PIP, JSA & ESA (C&P) Regs, regs 32-34; R(DLA) 4/05

A4116 Where

1. a change (either favourable or unfavourable) occurs and is notified before the relevant or renewal date is reached **or**
2. a favourable change is notified after the relevant or renewal date is reached

the DM should consider whether the award should be superseded on the grounds of a relevant change of circumstances since the decision was made¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 23(1)(a)

Example

PIP current award expires 1 August. Further claim decided 1 March, effective from 2 August. Award is for the standard rate of daily living component and standard rate of mobility component.

On 1 April the claimant gets worse and his needs change, entitling him to the enhanced rate of the daily living component. The change is reported 15 July. The DM supersedes the decision made on 1 March awarding enhanced rate daily living component from 2 August. The decision on the previous award is also superseded with effect from 15 July.

Supersession for closed period

A4117 A decision awarding benefit may be superseded for a fixed period to take account of a change of circumstances which has already come to an end. The supersession only replaces the original decision for that period.

Example

A claimant is in receipt of JSA. Following a fraud investigation, it is established that he was working on a building site for over a year. The work finished when he was laid off. The DM supersedes the awarding decision to disallow JSA for the same period. The conditions of entitlement should be determined from the first day of the fresh period of entitlement.

A4118 - A4119

Relinquishment of benefit

A4120 A claimant may decide that they do not want entitlement to benefit to continue for example where the amount of benefit is small. The request should be treated as an application for supersession.

A4121 The claimant may ask not to receive payment of benefit while underlying entitlement continues. The DM should refuse to supersede following such a request. This is because if entitlement exists, the Secretary of State has an obligation to pay benefit in accordance with an award.

Effectiveness of the relinquishment

A4122 The DM should investigate to ensure that the claimant's relinquishment is a genuine statement of intention, and the consequences explained where appropriate.

A4123 A request to surrender benefit might not be effective where

1. the claimant is vulnerable or incapable of deciding their affairs and there is no appointee **or**
2. the withdrawal is made as a result of threatening or overbearing behaviour, deception or similar improper behaviour.

A4124 Where the DM is not satisfied that the claimant

1. made the request freely **and**
2. is capable of fully understanding the implications

the request should be refused. The DM should make a decision that the awarding decision is not superseded (see A4017 - A4019).

A4125 Where

1. the claimant has been advised of the consequences **and**
2. the request is genuine **and**

3. A4123 does not apply

the DM should end entitlement accordingly.

A4126 Once entitlement has been ended as in A4129 - A4131, a further claim is required if the claimant wishes to receive the benefit again. A change of mind about relinquishment is not grounds for revision, because it was not a fact in existence at the time the original decision was made.

A4127 The decision ending entitlement can be revised within the application period if it is established that the original request to surrender entitlement was not effective as in A4123. Where the application is made outside the time limits, the DM should consider whether to revise for official error. See ADM Chapter A3 for advice on revision.

A4128 If ending entitlement was not in their best interests, and a further claim is made, the DM has no authority to fix a date of claim to cover a period when the claimant was not entitled. The normal rules about the prescribed time for claiming still apply (see ADM Chapter A2). For example, a person who reclaims ESA two months after surrendering an award can be entitled from the day following the end of that award.

Ending entitlement

A4129 Where a claimant no longer wishes to receive a benefit, and the DM accepts that the request is effective, the DM should supersede the awarding decision on a relevant change of circumstances¹, and terminate the award. The claimant has the right of appeal. The supersession ends entitlement to, as well as payability of, benefit, because the award has come to an end with the withdrawal of consent.

1 SS Act 98, s 10; UC, PIP, JSA & ESA (D&A) Regs, reg 23(1)(a)

A4130 The relevant change is that the claimant no longer consents to be entitled to receive the benefit, or no longer wishes it to be payable. The date of the change is

1. the date specified by the claimant where appropriate **or**
2. the first pay day following the date of the application **or**
3. the first pay day following the date the decision is made, where benefit continues to be paid after the application is made and is not returned **or**
4. for UC cases, the first day of the assessment period that follows the one in which the decision is made.

Note: The claimant cannot surrender benefit for a past period.

Example

A claimant is in receipt of UC. They start work which has the effect of reducing the amount of UC to £1 for each assessment period. The claimant writes to say that they no longer wish to receive UC. The DM accepts that the relinquishment is genuine. The decision awarding UC is superseded on a relevant change of circumstances to end entitlement, effective from the first day of the assessment period that follows the one in which the decision is made.

A4131 For guidance on the effective date of the supersession¹, see A4223 et seq. DMs should note that although some changes of circumstances must be notified in writing², an application for supersession can be made orally or in writing.

1 SS Act 98, s 10(5); UC, PIP, JSA & ESA (D&A) Regs, Sch 1; 2 UC, PIP, JSA & ESA (C&P) Regs, reg 38

Note: An award of benefit cannot be surrendered in part.

Death of claimant

A4132 The death of the claimant is a relevant change of circumstances affecting entitlement to benefit. In the majority of cases, there is no requirement for an awarding decision to be superseded so as to end entitlement. However, where there is an overpayment of benefit as a result of late notification of the death, the awarding decision must be superseded before the DM can consider whether the overpayment is recoverable¹.

Note 1: See ADM Chapter D1 for guidance on overpayment decision making.

Note 2: See ADM Chapter A2 regarding how death impacts awards of UC in certain circumstances.

1 SS A Act 92, s 71(5A); SS Act 98, s 10(1)

A4133 - A4149

Notification of changes

Introduction

A4150 The process of supersession on a change of circumstances is closely linked to the legal requirement that certain changes be notified to the Secretary of State.

Notification of a change of circumstances

A4151 Beneficiaries and every person by whom, or on whose behalf, sums by way of benefit are receivable are required¹ to notify the Secretary of State of any change of circumstance which they might reasonably be expected to know might affect

1. continuing entitlement to benefit **or**
2. the amount of benefit awarded **or**
3. the payment of benefit

as soon as reasonably practicable after the change occurs. In addition there may be benefit specific rules requiring changes to be notified.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 38

A4152

Categories of people who can notify the change

A4153 A change of circumstances can be notified by

1. the claimant
2. the appointee
3. any person who is an authorised representative for the claimant
4. a representative or agent of the Secretary of State
5. in overseas cases, social security authorities of EC countries, or other countries that have reciprocal arrangements with the UK.

Note: This list is not exhaustive. The legislation does not specify who may apply for supersession on a change of circumstances.

Method of notification

A4154 Notification of the changes set out in A4151 must be made¹ to an appropriate office

1. in writing (including electronic communications where appropriate) or by telephone (unless it is determined that notice must be given in a particular way or to accept notice other than in writing or telephone) **or**
2. in writing if in any class of case written notice is required (unless it is determined to accept notice given otherwise than in writing).

Note: this does not apply to JSA, which has its own rules² concerning reporting changes.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 38(5); 2 JSA Regs 13, reg 31

Where to notify a change of circumstances

A4155 A change of circumstances should be notified to an appropriate office¹. An appropriate office is

1. in cases where a person is authorised or required to use electronic communications, an address where electronic communications may be sent
2. a DWP office **or**
3. any other place as may be designated (including a postal address).

Note: Where a notification is received in a different office of the DWP, and is forwarded to and received by the appropriate office, it should be treated as received in the appropriate office on the date of receipt in the different office. But see ADM Chapter D1 in overpayment cases.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 2 & Sch 2

A4156 In the case of a birth or death, the duty to notify¹ may be discharged by notifying the Secretary of State, as soon as reasonably practicable, by personal attendance at an office specified by

1. an LA **or**

2. a county council in England

that the Secretary of State has agreed may facilitate such notifications

1 UC, PIP, JSA & ESA (C&P) Regs, reg 39(a)

A4157 In the case of a death only, the duty to notify¹ may be alternatively discharged by telephone to a telephone number specified for that purpose by the Secretary of State.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 39(b)

UC Childcare Costs

A4158 Where a claimant is in receipt of UC childcare costs then a person providing relevant childcare¹ must provide such certificates, documents, information or evidence in connection with the award, or any question arising out of it. This must be supplied within a month or such longer period as may be considered reasonable². See ADM Chapter F7 for when the childcare costs condition is satisfied.

1 UC Regs, reg 33 & 35; 2 UC, PIP, JSA & ESA (C&P) Regs, reg 38(7)

UC – Severely Disabled Person Caring Responsibility

A4159 Some UC claimants may be in receipt of a carer element¹ in respect of the fact that they have regular and substantial caring responsibilities for a severely disabled person. The severely disabled person may be required to furnish a signed declaration to confirm the details which have been given by the claimant².

1 UC Regs, reg 29; 2 UC, PIP, JSA & ESA (C&P) Regs, reg 38(8)

A4160 - A4199

Supersession on a change of circumstances - effective dates

Introduction

A4200 The effective date of a supersession on a change of circumstances depends upon whether the result of the supersession would be advantageous or disadvantageous to the claimant and whether the change has been notified within certain time limits. A4201 describes the general rule. However, these paragraphs should be read together with any of the special rules relating to specific benefits.

Time limits

A4201 The general rule is that an advantageous change of circumstances is to be notified within one month of the date the change occurred. For UC it should be noted that the change should be notified in the assessment period in which the change occurs.

A4202 The relevant notification period is, for UC the assessment period in which the change occurs and for ESA, JSA and PIP a period of one month, beginning with the date on which the change of circumstances occurred¹.

Note: The DM should exercise discretion in cases where a UC claimant notifies a change promptly but it is received in the next assessment period.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(9)

Example

Cornelius has an assessment period that starts on the 13th of each month and ends on the 12th of the following month. A change in his circumstances occurs on the 10th of January and he notifies the Department by post. The post is not received until the 14th of January. The DM exercises discretion and supersedes the award of UC from the 13th December.

A4203

Late notification of change of circumstances

A4204 The time limit for notifying a change of circumstances can be extended provided all of the five conditions at A4205 to A4209 are satisfied¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(1)

A4205 The first condition is that an application for an extension of time is made at an appropriate office¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(2)

A4206 The second condition is that the application must¹

1. contain details of the relevant change of circumstances **and**
2. include the reasons for the failure to notify the change on an earlier date **and**
3. be made within 13 months of the date the change occurred **or**
4. for PIP², be made within 13 months of the date on which the applicant first satisfied the conditions of entitlement to the particular rate of benefit

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(3); 2 Sch 1, part 2, para 14

A4207 The third condition is that it is reasonable to grant the application¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(4)

A4208 The fourth condition is that the notified change is relevant to the decision to be superseded¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(5)

A4209 The fifth condition¹ is that

1. special circumstances are relevant to the application **and**

2. as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances within the relevant notification period.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(6)

A4210

Meaning of special circumstances

A4211 The phrase “special circumstances” is not defined in legislation. It can include factors such as

1. the claimant, or the claimant’s partner or dependant has died or suffered a serious illness
2. the claimant is not resident in the UK
3. normal postal services have been disrupted

This list is not exhaustive and each application must be treated on its merits.

Deciding whether it is reasonable to grant the extension of time

A4212 The DM must have regard to the principle that the greater amount of time that has lapsed between the time limit for notifying the change and the date of application the more compelling should be the special circumstances on which the application is based¹. The DM must take **no** account of the fact²

1. that the applicant or any person acting for them was ignorant of or misunderstood the law applicable to their case (including the time limit for reporting changes of circumstance as set out in A4201) **or**
2. that a UT or a court has taken a different view of the law from that which was previously understood and applied.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(7)(a); 2 reg 36(7)(b) & 36(7)(c)

A4213 An application which has been refused cannot be renewed¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 36(8)

Decisions advantageous to the claimant

A4214 Decisions which are advantageous to the claimant include those where

1. the amount of benefit is increased, or is awarded for a longer period¹ **or**
2. the amount of benefit in payment would be increased but for the application of a provision in the law² restricting or suspending payment of a benefit or disqualifying a claimant from receiving benefit **or**
3. a denial or disqualification for receiving benefit is lifted whether in whole or in part (a partial lifting of a disqualification would include, for example, where the period of a JSA sanction is reduced in length)³ **or**

4. a decision to pay benefit to a third party is reversed⁴ **or**
5. an overpayment is not recoverable or the amount recoverable is reduced⁵ **or**
6. the claimant gains financially⁶.

Note: See ADM Chapter D1 for guidance on overpayment decision making.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 52(5)(a); 2 reg 52(5)(b);
3 reg 52(5)(c); 4 reg 52(5)(d); 5 reg 52(5)(e); 6 reg 52(5)(f)*

Example

Anna is in receipt of UC. Her assessment period runs from 16th of the month to 15th of the following month. She rings up on Saturday 16th February to notify a change of circumstances. The office is closed. She rings up again on Monday 18th February. The DM supersedes the award of UC from 16th January.

Effective dates when changes notified within the time limits

A4215 Where an appropriate office is notified of an advantageous change of circumstances within the relevant notification period or within such longer period as may be allowed under A4204 - A4210, the effective date of the supersession will be

1. for ESA and JSA¹, the first day of the benefit week in which the change occurs or is expected to occur
2. for PIP², the day on which the change occurs or is expected to occur
3. for UC³, the first day of the assessment period in which the change occurs or is expected to occur

Note: See A4217 for PIP cases where the change relates to entitlement to a particular rate.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, part 1, para 1; 2 Sch 1, part 2, para 12; 3 Sch 1, part 3, para 20

Example

David is in receipt of UC. His assessment period runs from the 17th of the month to the 16th of the following month. He notifies the Department on the 1st of December that from the 25th of November he started to care for his elderly mother. The DM determines that David is caring for his mother on a regular and substantial basis. The award of UC is superseded to include the carer element from the 17th of November.

Change notified outside the time limits

A4216 Where an advantageous change of circumstances is notified later than one month after it occurred, or for UC after the end of the assessment period in which the change occurred (or such longer period as the DM may have allowed under A4204 - A4210) then the effective date of the supersession will be

1. for ESA and JSA¹, from the beginning of the benefit week in which the notification was made
2. for PIP², from the date of notification of the change (but see A4217)
3. for UC³, from the first day of the AP in which the notification was made (but see A4219 - A4220)

1 UC, PIP, JSA & ESA (D&A) Regs Sch 1, part 1, para 6; 2 Sch 1, part 2, para 14; 3 Sch 1, part 3, para 21

A4217 In the case of PIP¹,

1. where the change is relevant to entitlement to a particular rate **and**
2. the claimant notifies an appropriate office of the change
 - 2.1 no later than one month after the date on which they first satisfied the conditions of entitlement to that rate **or**
 - 2.2 within such longer period as may be allowed

the superseding decision takes effect from the date on which the claimant first satisfied those conditions – the first day after the end of the 3 month “required period”.

Example

Nicola is in receipt of the standard rate of the daily living component of PIP. She notified the Department on 11.5.18 that she had a stroke on 2.2.18. The DM decides that she is entitled to the enhanced rate of the daily living component and the standard rate of the mobility component. Due to the 3 month required period, the qualifying date is 2.5.18. Nicola has therefore notified the change in circumstances within one month from the date on which she first satisfied the conditions of entitlement. The DM supersedes the awarding decision with effect from 2.5.18 to award a higher rate of PIP.

Note: If a claimant indicates in the evidence provided that there has been a change in circumstances which could lead to an increase in the award for an earlier period then the DM should consider investigating this. Not every case should be investigated and the DM should only investigate cases where the claimant has asked/indicated that they want the DM to consider late notification of the change. A late change is one that is notified more than 1 month after the expiry of the qualifying period.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 2, para 15

Award of other benefits

A4218 In the case of PIP where the claimant becomes entitled to another relevant benefit under prescribed legislation¹ or ceases to be entitled or the rate of another such benefit alters then the superseding decision takes effect² from the date on which entitlement to the other benefit or an alteration in its rate arises or entitlement ends.

1 SS Act 98, s 8(3); 2 UC, PIP, JSA & ESA (D&A) Regs, Sch 1 part 4, para 31(1) & 31(2)(b)

UC

A4219 In the case of a UC claimant where

1. the relevant change is that the person's employed earnings are reduced **and**
2. the claimant provides such information for calculating those earnings at such times as may be required

the superseding decision takes effect¹ from the first day of the assessment period in which that change occurred.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 3, para 22

Example

Tony is in receipt of UC and works part time in a bingo hall. His assessment period starts on the 15th of each month. His hours are reduced on 28 February. He informs DWP of this change and is asked to provide details of his new earnings. Tony does this and the DM supersedes the award of UC from 15 February to take into account his reduced earnings.

A4220 In the case of UC where the claimant or a member of their family becomes entitled to another relevant benefit, ceases to be entitled or the rate of another such benefit alters then the superseding decision takes effect¹ from the first day of the assessment period in which entitlement to the other benefit or an alteration in its rate arises or entitlement ends.

1 SS Act 98, s 8(3); UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 4, para 31(1) & 31(2)(a)

Example

Matt is in receipt of UC and JSA. He starts part time work and receives payment from this employment in the final week of his assessment period. His award of JSA is terminated. The DM supersedes the award of UC from the first day of the assessment period so that JSA is no longer taken into account when determining the amount of UC payable.

DM's own initiative

A4221 Where a DM supersedes on their own initiative to deal with a change of circumstances and the result is advantageous to the claimant, the supersession takes effect

1. for ESA and JSA, from the beginning of the benefit week in which action was started with a view to supersession¹
2. for PIP,
 - 2.1 the date on which action was started with a view to supersession²
e.g. the date the review form was issued **or**
 - 2.2 where the required period has not been satisfied, from the date of change³

3. for UC, the first day of the AP in which action was started with a view to supersession⁴.

*1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 1, para 10; 2 Part 2, para 18;
3 Part 2, para 12 4 Part 3, para 29*

A4222 It will often be useful for the DM to make a note of the date they first noticed that action was needed to deal with a change so that there is evidence of the basis for the effective date subsequently used.

Decisions not advantageous to the claimant

Effective dates

A4223 A supersession for a change of circumstances that is not advantageous to the claimant generally takes effect

1. for ESA and JSA
 - 1.1 from the first day of the benefit week in which the change occurs or is expected to occur¹ **or**
 - 1.2 if not practicable as in 1.1, and the change has occurred, from the first day of the benefit week following that in which the superseding decision is made² **or**
 - 1.3 if not practicable as in 1.1 and where the change is expected to occur, from the first day of the benefit week following that in which the change is expected to occur³
2. for PIP⁴, from the date on which the change occurs or is expected to occur (see A4231)
3. for UC⁵, the first day of the assessment period in which the change occurs or is expected to occur.

Note: See ADM Chapter D1 for overpayments.

*1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 1, para 1; 2 para 3(a);
3 para 3(b); 4 Part 2, para 12; 5 Part 3, para 20*

Example 1

Norman is in receipt of UC. His assessment period runs from the 8th of the month to the 7th of the following month. On the 12th January he notifies the Department that he has inherited £25,000 from his father's estate and has received a cheque for that day. The DM supersedes the award of UC to terminate the award from the 8th January.

Example 2

Jeremy is in receipt of PIP. On 17 January he rings up to inform the Department that he has moved to the USA permanently since 10 January. The DM supersedes the award of PIP to end entitlement from 11 January.

ESA decisions

Meaning of ESA decision

A4224 An ESA decision¹ in this section of the guidance is a decision to award ESA that embodies a determination that the person is or is to be treated as having LCW.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 1, para 11

Meaning of LCW determination

A4225 A LCW determination¹ is a determination whether

1. a person has LCW **or**
2. can be treated as having LCW.

1 WR Act 07, s 1(4) & s 8; ESA Regs 13, reg 15 & 16

A4226 In the case of an ESA decision where there has been a LCW determination as in A4225 where the DM is satisfied that the claimant¹

1. failed to notify the appropriate office of a change of circumstances which the claimant is required to notify **and**
2. could reasonably have been expected to know that the change of circumstances should have been notified

then the award of ESA is superseded from² either the date on which the claimant ought to have notified the change of circumstances or if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, the date the first change should have been notified. See A4235 – A4236.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 1 para 7; 2 para 8

ESA Terminally ill Claimants

A4227 When a claimant applies for a supersession which contains a statement that they are terminally ill then the superseding decision takes effect from the date the claimant became terminally ill¹.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 1, para 9

Ending entitlement

A4228 Where entitlement ends, or is expected to end as a result of a change of circumstances the superseding decision takes effect from the day the change occurs or is expected to occur¹.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 1, para 4

Example

David is in receipt of ESA. He starts work on 1.11.16. His award of ESA is terminated from 1.11.16.

A4229 Where an ESA claimant has been detained in hospital under prescribed legislation¹ and ceases or is expected to cease to be so detained for less than a week the superseding decision takes effect from the day on which the change of circumstances occurs or is expected to occur².

1 Mental Health Act, s 45A & s 47; 2 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 1, para 4

PIP Decisions

A4230 A PIP decision in this section of the guidance is a decision to award either or both the daily living or mobility components of PIP¹.

1 WR Act 12, s 78(1) & (2) & s 79(1) & (2); UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 2, para 19

A4231 Where the DM is satisfied that the claimant¹

1. failed to notify an appropriate office of a change of circumstances relating to disability issue **and**
2. could reasonably have been expected to know that the change of circumstances should have been notified

the award of PIP is superseded from² either the date on which the claimant ought to have notified the change of circumstances or the date on which the first change ought to have been notified if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision. See A4236. "Reasonably expected to know" only refers to changes in a claimant's disability and their ability to carry out activities.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 2, para 16; 2 para 17

UC decisions

Meaning of UC decision

A4232 The UC decision in this section of the guidance means a decision to award UC which embodies a determination that a person has, or is treated as having LCW¹.

1 WR Act 12, s 37; UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 3, para 30

Meaning of LCW determination

A4233 A LCW determination¹ is a determination whether

1. a person has LCW **or**
2. can be treated as having LCW.

1 WR Act 12, s 37(1) & 37(6); UC Regs 13, reg 39

A4234 Where the DM is satisfied that the claimant

1. failed to notify an appropriate office of a change of circumstances which the claimant is required to notify **and**

2. could reasonably have been expected to know that the change of circumstances should have been notified then the award of UC is superseded from¹

either the first day of the assessment period in which the claimant ought to have notified the change of circumstances or the first day of the assessment period in which the first change ought to have been notified if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision² (see A4236).

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 3, para 23; 2 para 24

- A4235 For ESA and PIP, if it is not reasonable for the claimant to know that the change should have been notified then the supersession decision takes effect from the date the decision is made¹. For UC the effective date is the first day of the assessment period in which the DM makes the decision².

1 SS Act 98, s 10(5); 2 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 3, para 25

Meaning of “reasonably have been expected to know”

- A4236 The test of reasonableness is not defined in law. It is similar to the test established by case law for recoverable overpayments arising from failure to disclose material facts (see DMG Chapter 9). When considering that guidance the DM should take into account such matters as

1. the likely extent of the claimant or appointee’s knowledge of the reasons for awarding the benefit involved
2. the information given to the claimant about notification of changes of circumstances
3. the claimant’s ability to recognise when a gradual improvement results in a relevant change of circumstances.

- A4237 A slight change in the claimant’s ability to carry out activities would not normally be a change that a person could reasonably be expected to notify. However, where the change is gradual there may be a point at which the person could reasonably have been expected to know that a change should be reported.

Example 1

The claimant has a cataract. She satisfies the WCA because she cannot see well enough to read 16 point print at a distance greater than 20 centimetres. The DM has determined that she has LCW. She has an operation to remove the cataract. After a period of recuperation her vision is improved to the extent that three weeks after the operation she is able to read a newspaper without using her magnifying glass. The DM decides that she could reasonably have been expected to know that the improvement in her ability to see should have been notified. The supersession decision takes effect three weeks after the operation, when the change should have been notified.

Example 2

The claimant has a heart condition and is receiving out-patient treatment at a hospital. He scores points for walking, and lifting, carrying and reaching, satisfying the WCA. At first he was unable to walk further than 200 metres. But with exercise this has improved and he can now walk more than 200 metres. The doctor reports that he still has problems with lifting, carrying and reaching. The DM decides that it was not reasonable for him to know that the change should be notified, because the improvement was gradual and only affected one activity. The supersession decision takes effect from the date it is made.

UC claimant reaches the qualifying age for SPC

- A4238 When a claimant reaches the qualifying age for SPC in an assessment period and makes an advance claim for SPC then a superseding decision made in consequence of the person reaching that age takes effect on the date on which the change occurs or is expected to occur¹.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 3, para 26

UC Hardship Payments

- A4239 A decision to make or stop making hardship payments takes effect from the date prescribed in legislation¹.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 3 para 27; UC Regs, reg 117

UC Terminally ill Claimants

- A4240 Where a claimant makes an application for supersession which expressly states that they are terminally ill the superseding decision takes effect from the first day of the assessment period in which the claimant becomes terminally ill¹.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 3 para 28

Changes to legislation – effective dates

- A4241 Changes to legislation can constitute a relevant change of circumstances. Where the changes of circumstances is that there has been a change in UC legislation, the superseding decision takes effect from

1. the first day of the AP if the change in legislation has effect from that day **or**
2. in any other case, the first day of the AP beginning after the date on which the change had effect.

In relation to any other benefit, the superseding decision takes effect from the date on which the change in the legislation has effect.

- A4242 Where the change of circumstances is the expected coming into force of a change in UC legislation, the superseding decision takes effect from

1. the first day of the AP if the change in legislation has effect from that day **or**

2. in any other case, the first day of the AP beginning after the date on which the change had effect¹

In relation to any other benefit, the superseding decision takes effect from the date on which the change in legislation has effect.

Note: In some cases the effective date is not always the change in law. For example if an ESA or UC claimant attends a WCA and the effect is that they are due a higher rate of benefit the effective date is the date of the DMs decision. If the claimant applies for a supersession in the light of the changes to legislation the effective date will be the date of application.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, Part 4 para 32 & 33

Example

A PIP claimant is in receipt of the standard rate mobility component due to visual impairment. A future change in legislation from 11.4.21 means that the claimant will be entitled to the enhanced rate. The DM identifies that the claimant will become entitled and supersedes the award in advance of the coming into force of the legislation and awards the enhanced rate mobility component from 11.4.21.

Error of law

What decisions can be superseded on the grounds of error of law

A4243 Some decisions of a DM can be superseded when the decision was wrong in law. The decision can be superseded either on an application or on the DM's own initiative. These are any decision

1. on a claim for a relevant benefit¹
2. under relevant acts²
3. as in 1. or 2. which has been revised³

Note: A decision of the FtT or UT cannot be superseded by the DM on these grounds.

1 SS Act 98, s 8(1)(a); 2 s 8(1)(c); 3 s 10(1)(a)

Circumstances when a decision can be superseded on the grounds of error of law

A4244 Supersession on the grounds of error of law only apply where¹

1. an application was received more than one month (or such longer period as might be allowed) after the date the original decision was notified **or**
2. the DM decided to act on their own initiative more than one month after the date the original decision was notified.

Note: There will be cases where the DM is able to revise a decision which was wrong in law on the grounds of official error. This route is available where the error is solely the responsibility of the DM.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 24

Meaning of error of law

A4245 The Courts have set out¹ categories of circumstances in which errors of law may be found. These are

1. making perverse or irrational findings on a matter or matters that were material to the outcome (“material matters”)
2. failing to give reasons or any adequate reasons for findings on material matters
3. failing to take into account and/or resolve conflicts of fact or opinion on material matters
4. giving weight to immaterial matters
5. making a material misdirection of law on any material matter
6. committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings
7. making a mistake as to a material fact which could be established by objective and uncontested evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made

Note: As errors in law will usually also be official errors allowing revision, this provision has limited use. See ADM Chapter A3 for guidance on the meaning of official error.

1 R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982

Effective date

A4246 Where a decision is superseded on the grounds of error of law the effective date is

1. for JSA or ESA the first day of the benefit week¹
2. for UC the first day of the assessment period²

in which the superseding decision, or where applicable, the application for supersession was made¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(3); 2 reg 35(4)

A4247 - A4249

Reinterpretation of the law

A4250 Sometimes UTs and higher courts give decisions that change a previously held interpretation of the law. These decisions will sometimes mean that earlier decisions of DMs were wrong in law.

A4251 A decision by the UT or a court that the decision of the DM or the FtT out of which the appeal arose was wrong in law is known as the “relevant determination”.

A4252 Where

1. an application is made for a supersession decision relating to entitlement to benefit (regardless of whether it is made before or after the relevant determination) **and**
2. a decision on that application falls to be made in accordance with the relevant determination

then the effective date of that supersession will be the date of the relevant determination¹.

Note: A judgement in an ECJ reference counts as a “relevant determination”.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(5)

Appeal against a relevant determination

A4253 Where

1. a UT or court makes a relevant determination (see A4251) **and**
2. the Secretary of State appeals against that determination and does not stay decisions **and**
3. an award of benefit made in consequence of the relevant determination is suspended **and**
4. the relevant determination is reversed on appeal

the suspension is lifted and the decision made by the DM in **3.** is superseded on the ground of error of law¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 37(5)

Effective date

A4254 Where a DM's decision is superseded as in ADM A4253, the decision takes effect from the date on which the earlier decision took effect¹. No arrears are paid when the suspension is lifted.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 37(5) & 37(6)

Example

The claimant appeals against a DM's decision. The FtT dismisses the appeal, upholding the DM's view of the law. The claimant appeals to the UT, but this is

again dismissed on the same point. The claimant then makes an appeal to the Court of Appeal, which succeeds. The Secretary of State appeals this to the Supreme Court. At the same time the Secretary of State receives applications in look-alike cases seeking benefit on the basis of the Court's decision. The Secretary of State supersedes existing decisions but suspends payment under these new awards pending the outcome of the appeal of the Supreme Court. The Supreme Court then upholds the Secretary of State's appeal. The Secretary of State then lifts the suspensions and supersedes the decision made following the Court of Appeal's decision, effective from the same date as those decisions. This ensures that no benefit is paid in consequence of the Court of Appeal's (erroneous) decision.

Superseding a First-tier Tribunal or Upper Tribunal's decision

A4255 An FtT's or UT's decision can be superseded where

1. the decision arose from ignorance of or mistake as to some material fact¹ **or**
2. it was made after the appeal was stayed² **or**
3. there has been a relevant change of circumstances³ **or**
4. medical evidence has been received from an approved HCP or HP (or other person approved by the Secretary of State)⁴.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 31(a); 2 reg 31(b) & 37(4); 3 reg 23; 4 reg 26(1)(a)

A4256 Where A4255 1. applies and the decision to be superseded was more advantageous to the claimant than it would otherwise have been the superseding decision takes effect for

1. JSA and PIP, the date the FtT's or UT's decision took or was to take effect from¹
2. ESA or UC, when the material fact does not relate to the LCW determination or if it does and the DM is satisfied that at the time the decision was made the claimant knew or could reasonably be expected to know of it and that it was relevant – the first day of the benefit week or the assessment period in which the Tribunal's decision took or was to take effect².

1 UC, PIP, JSA & ESA (D&A) Regs, reg 37(2); 2 reg 37(3)

A4257 Where A4255 2. applies the superseding decision takes effect for

1. PIP, from the date on which the decision of the FtT or UT would have taken effect had it been decided in accordance with decision which was the subject of the lead appeal¹
2. JSA or ESA from the first day of the benefit week in which the Tribunal's decision would have taken effect had it been so decided²
3. UC, from the first day of the assessment period in which the Tribunal's decision would have taken effect had it been so decided³.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 37(4)(a); 2 reg 37(4)(b); 3 reg 37(4)(c)

No outcome decision made

A4258 Where the FtT does not give an outcome decision after allowing an appeal, the DM must follow the FtT's decision on the issues it has dealt with when dealing with the matters referred back for subsequent decision unless

1. there are grounds to supersede the FtT's decision **or**
2. the DM considers it is erroneous in law and applies for leave to appeal (see ADM Chapter A5)¹.

1 R(IS) 2/08

A4259 Where

1. the DM incorporates the FtT's decision into a new decision
 - 1.1 on a claim **or**
 - 1.2 revising or superseding an earlier decision **and**
2. the facts have changed since the time of the decision under appeal

the DM should not supersede the FtT's decision in order to take account of the change in the facts. This is because the DM must determine all the facts down to the date of the new decision - see ADM Chapter A2. The FtT cannot take account of circumstances which had not arisen at the time of the decision under appeal¹.

1 SS Act 98, s 12(8)(b)

A4260 Similarly, if the FtT's decision, other than an outcome decision, is incorporated into a DM's decision, and there are grounds to supersede, it is the DM's decision which must be superseded, not the FtT's decision.

A4261 Note that the claimant cannot ask for the DM's decision to be

1. revised (during the application period or for official error) **or**
2. superseded for error of law

where the only issue raised by the application relates to the incorporated FtT's decision. The claimant should apply for leave to appeal to the UT against the FtT's decision.

Stayed appeals

A4262 ADM Chapter A5 describes the procedure where appeals are stayed at FtT or UT level. Where

1. the tribunal or UT decides the appeal as if the lead appeal had been determined in the most unfavourable terms for the appellant¹ **and**
2. the DM is required to supersede the tribunal or UT's decision once the lead appeal is determined²

the effective date of the supersession is the date the FtT or UT's decision would have taken effect if it had been decided in accordance with the decision which was the subject of the lead appeal³ (see A4257).

1 SS Act 98, s 26(4)(b); 2 s 26(5); UC, PIP, JSA & ESA (D&A) Regs, reg 31(b); 3 reg 37(4)

A4263 DMA Leeds will give guidance following the determination of lead cases on whether supersession is required.

Ignorance of or mistake as to a material fact

What decisions can be superseded on the grounds of ignorance of or mistake as to a material fact

A4264 Supersession of

1. any decision on a claim for UC, PIP, ESA or JSA¹
2. any decision made under relevant Acts²
3. any decision in A4264 1. or A4264 2. which has been revised by a DM³
4. any decision made by the FtT or UT⁴.

can be made on the grounds of ignorance of or mistake as to a material fact.

1 SS Act 98, s 8(1)(a); 2 s 8(1)(c); 3 s 10(1)(a); 4 s 10(1)(b)

Material facts

A4265 A material fact is one which is relevant to a decision on a claim or application. Any fact which has to be determined before a decision can be given is a material fact.

A4266 A fact which is itself not immediately relevant can be important to a decision if the process of reaching a decision has been influenced by it.

Example

The FtT does not accept a claimant's evidence because they consider it not to be a true statement of the facts. The claimant then produces evidence to prove the fact was correct. The DM supersedes the decision because it is based on a mistake as to a material fact.

A4267 An application for supersession because of ignorance of, or a mistake as to, a material fact may not always result in a supersession decision. See A4010 - A4020 for further guidance.

A4268 There is a distinction between a primary fact and a secondary fact. A primary fact is a fact established directly by evidence. A secondary fact is found by applying the process of reasoning to evidence.

A4269 DMs often make an inference of fact by reasoning from the evidence before them. If, however, they are wrong because the reasoning was wrong, the decision is not based on a mistake as to a material fact. DMs cannot supersede decisions just because they would have reached a different decision on the same evidence¹ (but see A4273).

Ignorance of a material fact

A4270 A decision may be superseded if the DM is satisfied that it was given in ignorance of some material fact. A material fact is one which is relevant to

1. an award of benefit
2. a claimant commitment
3. a labour market question
4. an overpayment recoverability decision

and has to be identified before a decision is given. The fact must exist at the time the original decision is given¹.

1 CAO v Combe (Court of Session 1999)

A4271 It is presumed that a DM is aware of the facts included in the papers available to make a decision. This presumed knowledge prevents supersession because of the ignorance, but supersession because of a mistake as to a material fact may be possible.

A4272 Sometimes a question has to be decided by making an adverse assumption about a relevant fact because the DM has been unable to obtain sufficient evidence¹. If evidence is then provided which shows the DM's assumption is wrong the original decision can be superseded because of ignorance of a material fact. If the evidence is provided within the dispute period, revision would be appropriate.

1 R(SB) 18/81; R(SB) 29/83

Example

A jobseeker fails to provide evidence that he is actively seeking work after a request from the Secretary of State. The DM decides that he is not actively seeking employment, and disallows the claim for JSA. The claimant later produces his record of job applications. The DM supersedes the original decision because it was made in ignorance of the material fact that the claimant was actively seeking employment.

Mistake as to a material fact

A4273 A DM may misinterpret the evidence and make a mistake as to a material fact¹. If the mistake was wholly the responsibility of the DM, or of another official of the DWP, it would be an official error and the decision would be revised (see ADM Chapter A3). If the claimant had contributed to the mistake, it would not be an official error and the decision would be superseded².

1 R(G) 8/55; UC, PIP, JSA & ESA (D&A) Regs, reg 9; 2 reg 22

A4274 The mistake may be made when dealing with the claim, for example by a DM misreading information in a document. It may be made by another official, for example by a receptionist recording an incorrect date. The revision provisions should always be considered where the new decision would be advantageous to the claimant.

Example 1

A claimant has an award of the standard rate of the daily living component of PIP. Two years later the claimant reports that her daily living needs have increased. The DM examines the case and finds that the evidence obtained at the time of the original claim shows that the claimant needed more assistance with her daily living activities. The DM revises the original decision for official error. The effective date is the date of the original award.

Example 2

A claimant is awarded UC. The DM overlooked the fact that income of £290 a month was in payment. Two years later on a routine case check the DM realises that the income should have been taken into account. The DM supersedes the original decision on a mistake as to a material fact. The effective date is the date the DM started the routine check.

Example 3

The DM decides that the jobseeker was not available for work because he was in prison for the period 3 July to 28 August. The jobseeker later realises that he got his dates mixed up, and he was actually in prison for the period 28 July to 3 August. The DM supersedes his decision because it was based on a mistake as to a material fact.

Opinions and material facts

A4275 Opinions should be distinguished from facts. DMs often take into account opinions of other persons, for example doctors, in making decisions. Medical opinion does not form a material fact¹.

1 R v. Secretary for Social Services ex parte Loveday [15.2.83]

A4276 Because it is not a material fact, a change of medical opinion is not of itself a ground for supersession. A DM's decision awarding benefit as a result of a medical opinion cannot be superseded because it was based on a mistake as to a material fact, if another doctor provides a different opinion based on the same facts. This is because there is no specific or primary fact about which the DM was mistaken¹. For further guidance on medical opinion/fact see benefit specific guidance.

1 R(S) 4/86

A4277 However, medical opinions are often expressed in reports which may contain evidence, such as clinical findings or statements by the claimant, from which the DM can infer facts. This may enable the DM to show that the original facts would not have been found, or were found incorrectly, if the new facts had been known¹. A change of opinion where there are different facts may be evidence that the original decision was based on ignorance of or mistake as to some material fact².

1 R(I) 3/75; 2 R(DLA) 6/01

Supersession of a decision of a DM on grounds of ignorance or mistake

A4278 Where the decision to be superseded is one made by a DM, it can be superseded on the grounds of ignorance of or mistake as to a material fact where either¹

1. an application is made more than one month after the original decision was notified (or a late dispute is not admitted - see ADM Chapter A3)
2. the DM commenced action with a view to supersession more than one month after the original decision was notified.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 24

A4279 A decision based on ignorance of, or mistake as to, a material fact may have arisen because of official error. In that case revision may be appropriate¹. DMs should also consider whether revision is appropriate where the decision was more advantageous than it would have been if the material fact was known (see ADM Chapter A3).

1 UC, PIP, JSA & ESA (D&A) Regs, reg 9

Effective date

A4280 The effective date of a supersession to which A4278 applies will be for

1. JSA or ESA, the first day of the benefit week in which the superseding decision or application for supersession was made¹
2. UC, the first day of the assessment period in which the superseding decision or application for supersession was made²
3. PIP, on the date the decision is made or the date of application³.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(3); 2 reg 35(4); 3 SS Act 98, s 10(5)

Supersession of a decision of the FtT or the UT

A4281 A decision of the FtT or UT may be superseded at any time on the grounds of ignorance or mistake as to a material fact¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 31(a)

Effective date

Advantageous

A4282 If the effect of the supersession would be advantageous to the claimant the effective date is¹

1. where the supersession is made as a result of an application, the date the application was received **or**
2. where the supersession was undertaken at the DM's own initiative, the date the decision was made.

1 SS Act 98, s 10(5)

Disadvantageous

A4283 Where the effect of the supersession of the FtT or UT decision would be to the disadvantage of the claimant the effective date is for

1. JSA and PIP, from the date on which the decision of the FtT or UT took or was to take effect¹
2. ESA or UC² where the fact does not relate to the LCW determination or does relate to it and the DM is satisfied that at the time the decision was made the claimant knew or could reasonably be expected to know of it and that it was relevant, from the first day of the benefit week or the first day in the assessment period in which the decision of the FtT or UT took or was due to take effect.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 37(2); 2 reg 37(3)

Decisions which cannot be appealed to a First-tier Tribunal

Introduction

A4284 Annex E lists decisions and determinations that are not appealable. Such decisions can be superseded at any time either on an application or at the DM's own initiative¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 25

Effective date

A4285 The effective date will be¹

1. the date of the application for supersession **or**
2. the date the decision was made when made on the DM's own initiative

1 SS Act 98, s 10(5)

Sanction Cases

A4286 ESA, JSA and UC claimants can be sanctioned under certain circumstances¹. A superseding decision to apply a sanction takes effect for ESA²

1. where the claimant has not been paid ESA for the benefit week in which the Secretary of State determines that the amount of the award of ESA is to be reduced, the first day of that benefit week **or**
2. where the claimant has been paid ESA for the benefit week referred to in A4286 1. the first day of the first benefit week for which the claimant has not been paid ESA **or**
3. where the amount of the award of ESA for the benefit week referred to in paragraph A4286 1. or 2. is already subject to a reduction because of a previous sanctionable failure, the first day in respect of which the amount of the award is no longer subject to that reduction.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 27; 2 ESA Regs, reg 54 & reg 35(10)(a)

A4287 A superseding decision to apply a sanction takes effect for JSA¹

1. where the claimant has not been paid JSA for the benefit week in which the sanctionable failure occurred, the first day of that benefit week **or**
2. where the claimant has been paid JSA for the benefit week referred to in A4287 1. the first day of the first benefit week for which the claimant has not been paid JSA **or**
3. where the amount of the award of JSA for the benefit week referred to in A4287 1. or A4287 2. is already subject to a reduction because of a previous sanctionable failure, the first day of the first benefit week in respect of which the amount of the award is no longer subject to that reduction.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(10)(c); JSA Regs 13, reg 22

A4288 A superseding decision to apply a sanction takes effect for UC¹ from

1. the first day of the assessment period in which the DM determines that the amount is to be reduced **or**
2. if the amount of the award is not reduced as in A4288 1. the first day of the next assessment period **or**
3. if the amount of the award for the assessment period as in A4288 1. or 2. is already subject to a reduction because of a previous sanctionable failure, the first day in respect of which the amount of the award is no longer subject to that reduction

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(10)(e); UC Regs, reg 106

Reduction in benefit ceases to apply

A4289 Where a person has had an award of benefit sanctioned as above and the reduction is suspended or terminated then the decision to impose the reduction can be superseded¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 27(2)

Effective date

A4290 For ESA, JSA and UC the reduction is suspended for any period during which a fraud sanction applies. The reduction ceases to have effect on the day that period begins¹.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(11)(a), 35(11)(c) & 35(11)(e);
ESA Regs, reg 56; JSA Regs 13, reg 24; UC Regs, reg 108*

A4291 The reduction is terminated where, since the date of the most recent sanctionable failure, the claimant has been in paid work¹

1. for a period of at least 26 weeks (ESA) or 182 days (JSA) **or**
2. for more than one period where the total of those periods amounts to at least 26 weeks (ESA) or 182 days (JSA).

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(11)(b) & 35(11)(d); ESA Regs 13, reg 57; JSA Regs 13, reg 25

A4292 For UC claimants the reduction is terminated where since the date of the most recent sanctionable failure, the claimant has been in paid work for a period of, or for periods amounting to at least 26 weeks and the claimant's weekly earnings during that period or periods were equal to or exceed their individual threshold or prescribed legislation in relation to apprenticeships apply¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(11)(f); UC Regs, reg 90(4) & reg 109(1)

A4293 The effective date is either the first day of the assessment period in which A4292 is satisfied or where that date falls outside a period of entitlement to UC, from the beginning of the first assessment period in relation to any subsequent award¹.

1 UC Regs, reg 109(2)

Loss of benefit following benefit fraud offences

Sanctionable benefit

A4294 A decision can be superseded¹ where

1. it is a decision that a sanctionable benefit is payable **and**
2. that benefit ceases to be payable or is reduced under the provisions allowing restrictions on the payment of benefit following convictions for benefit fraud offences.

Note: See ADM Chapter B2 for further guidance.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 28

Effective date

A4295 The effective date¹ will be the first day of the disqualification period as set out in regulations².

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(12); 2 SS (Loss of Benefit) Regs, reg 2

Special Rules

Special rules - uprating

A4296 The uprating of benefit will not normally require a supersession decision¹.

1 SSA Act 92, s 159A; s 159C; s 159D; s 159E

Special rules - late or unpaid contributions

A4297 Where a late or unpaid contribution is treated as paid at an earlier date then the DM can supersede¹ the original decision. The superseding decision takes effect from the date on which the contribution is treated as paid². See ADM Chapter A3 where a late paid contribution or credit is treated as paid on or before the date of the original decision.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 29; 2 reg 35(13)

Special rules – UC Housing Costs

A4298 Where the housing costs element is reduced following a determination made under specified legislation then the award of UC may be superseded¹. The effective date is the first day of the assessment period following the day on which that determination is received by DWP².

1 UC, PIP, JSA & ESA (D&A) Regs, reg 30; 2 reg 35(14)

Special rules – PIP

Receipt of HP report

A4299 A PIP decision (whether originally made by a DM or a FtT) can be superseded where since the decision was made, the Secretary of State has received medical evidence from an approved HP or other approved person approved by the Secretary of State¹. The effective date of supersession is either

1. the date on which the decision is made or
2. the date on which the claimant applied for supersession².

1 UC, PIP, JSA & ESA D&A Regs, reg 26(1)(a) 2 SS Act 1998, 10(5)

Reasons for decision

A4300 If it is appropriate to supersede as in A4299, the DM does not have to identify a change of circumstances. However, if the outcome is less favourable than the existing award and the claimant says their condition has not improved or has worsened, the reasons for decision must show that it is based on a proper evaluation of all relevant evidence. The reasons should explain why it differs from the decision which informed the earlier award.

Considering other grounds for supersession

A4301 When superseding a PIP decision, any ground of supersession could apply as long as the conditions they contain are satisfied. Superseding on the basis of receipt of medical evidence from an approved HP should not be regarded as a ground of supersession of last resort. Where a decision will be advantageous to the claimant, the DM should supersede on the ground that will be most beneficial to the claimant¹ e.g. advantageous change of circumstances (see A4214 – A4222).

1 [2017] AACR 19 (DS v SSWP) & R(M)1/96

Terminally ill

A4302 For the purpose of PIP, the fact that a person is terminally ill is not a relevant change of circumstances, **unless**¹ an application for supersession contains an express statement that the person is terminally ill and is made by

1. the terminally ill person **or**

2. any other person claiming to act on that person's behalf whether or not that other person is acting with the knowledge or authority of the terminally ill person.

Note: Where an application for supersession is made without an express statement of terminal illness but evidence is received of terminal illness from either the claimant or on behalf of the claimant then the application for supersession should be treated as one made on the grounds of terminal illness.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 23(2)

- A4303 If the application for supersession is made expressly on the grounds of terminal illness then this constitutes a relevant change of circumstances. The effective date of the supersession is the date of the change¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(1)

Special rules - ESA

- A4304 Where a claimant applies for supersession on the grounds that they have LCWRA the effective date of the supersession is the date of the application¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(6)

- A4305 Where a determination is made that the claimant has

1. LCW **or**
2. LCWRA **or**
3. LCW and LCWRA

and it is the first determination then the effective date of the supersession takes effect from the day after the last day of the relevant period as defined under prescribed legislation¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 26(1) & 35(7); ESA Regs 13, reg 5(4)

- A4306 Where

1. the claimant was previously entitled to ESA for no more than 13 weeks **and**
2. the assessment phase had not ended in the previous award **and**
3. the claimant's current PLCW is treated as a continuous PLCW

the supersession decision takes effect from the beginning of the 14th week of the claimant's continuous PLCW¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(8)

Special rules - UC

- A4307 A decision that embodies a determination that the claimant has LCW or LCW and LCWRA takes effect from the beginning of the assessment period in which the decision is made (DMs own initiative) or the application for supersession was made¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(9)(b)

A4308 Some awards of UC are **not** to include the LCW or LCWRA elements until certain circumstances are satisfied. In these cases the elements are not included until the beginning of the assessment period that follows the assessment period in which the relevant period ends¹. See ADM Chapter F5.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 35(9)(a)

Determinations on incomplete evidence

A4309 Where, for the purposes of deciding a claim or making a supersession decision, a determination has to be made as to whether

1. a person is to be treated as receiving relevant education under specific regulations¹ **and**
2. it appears to the DM that he is not in possession of all the evidence or information needed to make that determination

the determination shall be made on the assumption that the missing evidence or information is adverse to the claimant².

1 JSA Regs 13, reg 45; 2 UC, PIP, JSA & ESA (D&A) Regs, reg 39(3)

A4310 Where

1. a determination falls to be made as what housing costs are to be included in an award of UC **and**
2. it appears to the DM that he is not in possession of all the evidence or information needed to make that determination

the determination may be made on the assumption that the housing costs to be included in the award are those that can be determined¹ using evidence or information that is in the DM's possession¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 39(4)

A4311 Where

1. a determination falls to be made as to whether a PIP claimant meets the condition in prescribed legislation regarding costs of qualifying services for care home residents¹ **and**
2. it appears to the DM that he is not in possession of all the evidence or information needed to make that determination after having made reasonable enquiries

the determination may be made on the basis of the information or evidence that is in the DM's possession².

1 WR Act 12, s 85(2); 2 UC, PIP, JSA & ESA (D&A) Regs, reg 39(5)

Determinations as to limited capability for work

A4312 When a DM determines (including after a change of circumstances) that for the purposes of ESA or UC a claimant

1. has or does not have LCW **or**
2. is to be treated as having or not having LCW

then this determination is conclusive for any further decisions on ESA or UC¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 40(1) & reg 40(2)

A4313 Where an issue arises¹ whether a person is or is to be treated as having or not having LCW or is terminally ill for the purposes of UC or ESA then that issue should be determined by the DM. This is notwithstanding any other matters that fall to be determined by another authority.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 40(3)

Alterations affecting UC

A4314 Where a person disputes the figure used to calculate earnings from employment for any assessment period for UC then the Secretary of State must

1. inform the person that they may request a decision in relation to the amount of UC payable in relation to that assessment period **and**
2. where such a decision is requested, provide it within 14 days of receiving the request or as soon as practicable afterwards

In these cases the decision takes effect on the same date on which the alteration of the person's employed earnings takes effect¹.

Note: Alterations to the rate of UC as a consequence of information provided via the RTI do not require a further decision.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 41; SSA Act 92, s 159(D)(2) & (3)

Claimant fails to attend for or participate in a consultation - PIP

A4315 Where a PIP claimant fails without good reason to attend for or participate in a consultation a negative determination shall be made¹. This only applies if written notice of the date, time and place of the consultation was issued at least 7 days in advance or unless the claimant agreed to accept a shorter period of notice. A negative determination means that the claimant does not meet the requirements of entitlement to the daily living component or the mobility component². A supersession decision can be made to end entitlement to PIP³. The effective date of the decision is the date of the DM's decision⁴.

Good reason includes the claimant's state of health at the relevant time and the nature of their disability. The DM should exercise discretion when determining good reason.

Note 1: A decision made in consequence of a negative determination may be revised at any time if it contains an error to which the claimant did not materially contribute⁵.

Note 2: See Chapter P2 for guidance on PIP assessments.

*1 PIP Regs, reg 9; 2 WR Act 12, s 80(6); 3 UC, PIP, JSA & ESA (D&A) Regs, reg 26(2);
4 SS Act 98, s 10(5); 5 UC, PIP, JSA & ESA (D&A) Regs, reg 18(3)*

Example 1

Jackie is sent a written request to attend a consultation but does not attend. She tells the DM that she did not attend because she was in hospital and did not receive the letter. The DM accepts that Jackie has shown good reason for not attending.

Example 2

Kevin is sent a written request to attend a consultation but does not attend. He tells the DM that he didn't go because he didn't want his award of PIP to be looked at again. The DM decides that Kevin has not shown good reason for not attending and makes a negative determination.

Example 3

Warren does not attend the consultation. He tells the DM that he didn't attend because on the day of the consultation he suffered an epileptic seizure and was admitted to hospital. The DM accepts that Warren has shown good reason.

A4316 An existing PIP claimant may be required to provide any information or evidence required to determine if they have limited or severely limited ability to carry out daily living or mobility activities, for example on the form "How your disability affects you".

In such cases the claimant must provide the information or evidence within one month from the date of the request or within such longer period as is considered reasonable.

Where the claimant fails without good reason to provide the information or evidence then a negative determination must be made¹. The effective date is the date of the DM's decision².

1 PIP Regs, reg 8; 2 SS Act 98, s 10(5)

Change from JSA to ESA or ESA to JSA

A4317 Where

1. a person is awarded ESA or JSA ("the existing award") **and if**
2. that award did not exist, an award could be made for JSA or ESA ("the alternative benefit") were a claim made for it

then when a claim is made for the alternative benefit, the DM may supersede the existing award to bring it to an end¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 48(1), (2) & (3)

A4318 Where A4314 applies the existing award ends on the day immediately before the first day on which the award of the alternative benefit takes effect¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 48(4)

A4319 Waiting days do not have to be saved in where either an award of ESA or JSA is made¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 48(5) & 48(6)

Suspension and termination of benefit

Hardship

A4320 DMs should always have regard to the question of whether hardship will result from their decision when considering suspension of benefit, either wholly or in part. This applies both to circumstances where the DM is considering an immediate suspension or where the claimant has been asked to provide information.

A4321 For issues to be considered when deciding if hardship would result see benefit specific guidance.

Loss of contact with claimant

A4322 If contact with the claimant is lost the DM should consider suspension and termination to help prevent the accumulation of long periods of arrears.

Immediate suspension

A4323 The DM may suspend the payment of benefit immediately, either wholly or in part, where a question has arisen about the claimant's entitlement to benefit or some component part of it¹. Payment can also be suspended after 14 days, where there has been a failure to satisfy information requirements².

1 SS Act 1998, s 21 & UC, PIP, JSA & ESA (D&A) Regs, reg 44; 2 reg 45

A4324 Suspension may be appropriate where a question has arisen during the currency of an award

1. about whether the claimant satisfies the conditions of entitlement to benefit¹
2. about whether an award of benefit should be revised or superseded²
3. about whether an overpayment of benefit is recoverable³
4. about whether the claimant is still residing at the last address notified to the Secretary of State⁴
5. about the award of benefit because an appeal is pending against a decision made by a FtT, UT or a court⁵
6. because an appeal is pending in a different case before a UT or a court, and it appears to the DM that the outcome of that case might require the award to be revised or superseded⁶.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 44(2)(a)(i); 2 reg 44(2)(a)(ii);
3 reg 44(2)(a)(iii); 4 reg 44(2)(a)(iv); 5 reg 44(2)(b); 6 reg 44(2)(c)*

Suspension where a question arises as to whether benefit should be revised or superseded

A4325 Where a question arises about whether a decision awarding benefit should be revised¹ or superseded² the DM should consider whether a suspension of the payment of benefit is appropriate. If it looks as though the revised or superseded decision would result in

1. an increase in entitlement, there is no need to consider suspension
2. a decrease in entitlement, consider suspending payments of the amount in question
3. a loss of entitlement to benefit, consider suspending the whole of the payment.

1 SS Act 1998, s 8; 2 s 10

Example

If a question arises about a claimant's entitlement to a UC housing element consider suspending payment of the element pending enquiries to resolve the doubt.

Suspension where an appeal is pending

A4326 The DM may suspend payment of benefit, wholly or in part, where an appeal is pending against the decision¹, if in the opinion of the DM the likely outcome of the appeal is that there would be no entitlement to the benefit or part of the benefit in question.

1 SS Act 1998, s 21(2)(c); UC, PIP, JSA & ESA (D&A) Regs, reg 44(3)

A4327 Appeal in this context means an appeal against a decision by the

1. FtT
2. UT or Three Judge Panels
3. High Court, the Court of Appeal, the Court of Session in Scotland and the Supreme Court.

A4328 An appeal is pending¹ where a decision of the FtT, UT or a court has been made **and**

1. the Secretary of State is waiting to receive that decision **or**
2. in the case of the FtT decision the Secretary of State
 - 2.1 is considering whether to apply for a statement of reasons **or**
 - 2.2 has applied for a statement of reasons and is waiting to receive it **or**
 - 2.3 has received the statement of reasons and is considering whether to apply for leave to appeal to the UT **or**
3. the Secretary of State has received the decision and is considering whether to apply for permission to appeal against it **or**
4. an application for permission to appeal has been made but not determined **or**

5. permission to appeal has been granted and the Secretary of State is considering whether to proceed with an appeal **or**
6. an appeal has been made but has not yet been determined.

1 SS Act 98, s 21 & UC, PIP, JSA & ESA (D&A) Regs, reg 44(4)

Notification

A4329 The Secretary of State must give written notice¹ to the claimant of his proposal to

1. in the case of the FtT decision, apply for a statement of reasons
2. apply for permission to appeal **or**
3. make an appeal

as soon as reasonably practicable.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 44(5)

Note: As the regulations require the Secretary of State to notify his **proposal** to take the actions listed above, he must send the notification **before** taking the action.

When benefit suspended must be paid - appeal no longer pending

A4330 Payment of benefit that has been suspended must be made if¹

1. in the case of the FtT decision, the Secretary of State does not apply for a statement of reasons within one month of the day he receives notice of the FtT's decision
2. in the case of any decision, the Secretary of State does not
 - 2.1 make an application for permission to appeal **or**
 - 2.2 when permission is granted, make an appealwithin the relevant time limit
3. the Secretary of State withdraws his appeal or application for permission to appeal
4. the Secretary of State is refused permission to appeal where he cannot renew his application or make a further application for permission to appeal.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 46(c) & 46(d)

Suspension where an appeal is pending against a decision in a different case

A4331 The DM may suspend benefit wholly or in part where¹

1. an appeal is pending in another case (the lead case) before a UT or a court **and**
2. it seems to the DM that, if the lead case were determined in a particular way an issue would arise as to whether the award of benefit in the case before the DM (the look-alike case) should be revised or superseded².

1 SS Act 98, s 21(2)(d); 2 UC, PIP, JSA & ESA (D&A) Regs, reg 44(2)(c)

A4332 The appeal in question does not have to involve the same benefit. But if it appears the outcome of the appeal would have an effect on the award being considered by the DM then suspension can still be considered.

What happens if the suspension is lifted

A4333 When the suspension is lifted the DM

1. reinstates all or part of the benefit where it is appropriate to do so
2. revises or supersedes the award of benefit
3. makes, revises or supersedes the award of benefit in accordance with the directions of the FtT, UT or court
4. makes, refuses to make, revises or supersedes the award of benefit in accordance with the directions of the UT or court given in the different case.

Suspension where information has been requested

A4334 The DM can suspend¹ payment of benefit when they are considering whether an award of benefit should be revised or superseded. This applies to²

1. a person who has had benefit suspended as in A4321
2. a person who has applied for a decision to be revised or superseded
3. a person who is required to provide information or evidence
4. a JSA claimant who has been asked to provide documents, certificates or other evidence
5. a person whose entitlement to ESA or UC is conditional on their having or being treated as having LCW

1 SS Act 98, s 21(2)(b); 2 UC, PIP, JSA & ESA (D&A) Regs, reg 45(2)(a)-(e)

A4335 When the DM has asked the claimant to provide information¹ they must

1. supply that information² within a period of 14 days beginning with the date on which the notification was sent or such longer period as the DM allows in that notification **or**
2. supply that information³ within such longer period as he satisfies the DM is necessary in order to enable him to comply with the requirement

in default of which payment of benefit may be suspended.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 45(1) & 45(3); 2 reg 45(4)(a)(i); 3 reg 45(4)(a)(ii)

Example

Matt is self employed and is in receipt of UC. He is asked to send in details of his earnings within 14 days and told that if he doesn't his UC may be suspended. Matt fails to do this and his award of UC is suspended.

A4336 Alternatively, the claimant must satisfy the DM within 14 days beginning with the date on which the notification was sent that either¹

1. the information does not **exist or**
2. it is not possible for him to obtain it.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 45(4)(b)

A4337 Where the DM requires documents, certificates or other evidence from a JSA claimant under other legislation¹ then this must be supplied within 7 days beginning with the date on which notification was sent in default of which payment of JSA may be suspended².

1 JSA Regs 13, reg 31(3); 2 UC, PIP, JSA & ESA (D&A) Regs, reg 45(5)

A4338 The DM should impose the 14 day period where there is a serious doubt about the claimant's award. Examples are where

1. information has been received indicating that there may be undeclared income or capital or an undeclared non dependant or partner
2. a data match anomaly
3. the claimant has failed to co-operate with a Benefit Integrity Centre review by failing to participate in a telephone review and subsequently fails to return a fully completed postal review form.
4. FEPS has no contact number and reverts immediately to the postal process
5. FEPS has been unable to make contact by telephone and reverts to the postal process
6. FEPS has conducted a telephone review but further information is required and sends a letter requesting this information

A4339 When considering whether to extend the 14 day period the DM should take into account all the circumstances including

1. the claimant's circumstances and the nature of the information requested
2. whether there are difficulties in obtaining the information (e.g. where verification, which may not be readily available, has to be sought from a third party such as a bank)
3. any difficulty the claimant may have in obtaining the information due to disability, illness or family circumstances
4. circumstances beyond the claimant's control such as hospitalisation, bereavement or postal disruption
5. whether the nature of the award causes difficulties e.g. overseas awards

This list is not exhaustive and each case should be considered on its merits. Extension is at the discretion of the DM. Before making a decision to suspend the DM must consider hardship.

Example 1

A claimant fails to comply with a Benefit Integrity Centre review by failing to participate in a telephone review. The DM issues a letter asking them to provide information relating to his award. This letter asks the claimant to provide the information within 14 days of the day it was sent. The letter also states that failure to provide the required information will result in suspension of benefit. The claimant does not respond to the letter and the DM decides to suspend benefit.

Example 2

An allegation is received that the claimant has a large amount of capital in numerous savings accounts. The DM issues a letter asking them to provide evidence of their capital within 14 days of the date of issue of the letter. The claimant responds within 14 days, denying the allegation and says that they have only small amounts of capital in several accounts. The claimant says that it will take a month to provide this information. The DM considers this is reasonable and does not suspend benefit and allows the claimant a month in total to provide the information.

Termination following suspension

A4340 The DM must consider terminating benefit where

1. the claimant has been required to provide information (this applies where payment has been suspended both immediately and following failure to satisfy information requirements) **and**
2. has failed to do so within one month or such longer period as appropriate **and**
3. payment of benefit has been suspended in full¹.

It should be noted that it is not possible to terminate benefit if the suspension is a partial one. In this situation the suspension remains in place indefinitely.

1 SS Act 98, s 23; UC, PIP, JSA & ESA (D&A) Regs, reg 47

A4341 The time limit of one month may be extended where the DM considers in all the circumstances it is reasonable to do so. A decision terminating benefit in these circumstances will be a supersession decision. This decision carries the right of appeal¹.

1 SS Act 98, s 23; SS CS (D&A) Regs, reg 47

Extension of the time limit

A4342 When considering whether to extend the time limit for providing information, the DM should take into account all the circumstances including

1. the circumstances of the claimant and the nature of the information requested
2. whether there are difficulties in obtaining the information itself, for example where verification, which may not be readily available, has to be sought from another source such as a bank or a building society

3. any difficulty the claimant may have in obtaining the information due to disability, illness or family circumstances
4. where the nature of the benefit itself, for example, overseas cases, creates its own difficulties.

This list is not exhaustive. Each case must be based on its merits.

Date from which benefit is terminated

- A4343 Benefit is terminated with effect from the date on which the payment of benefit was suspended.
- A4344 DMs should note that if it transpires that entitlement should have terminated from an earlier date, then this termination provision cannot be used. Instead, the original decision should be revised or superseded, with the effective date of termination being determined as appropriate¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 47(2)

Example

Original outcome decision 1.4.13. Benefit suspended 1.7.13. Because the claimant does not respond to requests for information entitlement is terminated from 1.7.13. On 1.10.13 the Secretary of State discovers that entitlement should have ended on 1.5.13 as a result of new information coming to light. He revises the decision to terminate benefit and then supersedes the decision of 1.4.13, effective from 1.5.13.

A4405 – A4999

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