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# *C6 Reconsidering, revising and superseding decisions*

## *About this chapter*

- 6.00 This chapter gives
- an overview of how decisions can be changed
  - guidance on
    - the reconsideration process
    - revising decisions
    - supersession
- 6.01 This chapter is only a guide to Housing Benefit (HB) and Council Tax Benefit (CTB) decision making. It has no status in law and does not cover all aspects of decision making for every situation, nor does it provide a full interpretation of the rules. It should not be treated as a complete and authoritative statement of the law that may change from time to time.
- 6.02 LAs should remember that any person affected can ask for a decision to be reconsidered. Remember, a claimant may have nominated a third party to act on their behalf. Accordingly, when you read the word 'claimant', this should also be taken to mean 'claimant or their representative'.
- 6.03 Guidance on appeals, although an integral part of the dispute process, is provided in *C7 Appeals*. Guidance on suspension and termination, also an integral part of the dispute process is provided in *C8 Suspension and termination*.
- 6.04-6.49

## *Overview*

### *The decision*

- 6.50 On receipt of a claim for HB or CTB, the Decision Maker (DM) will make a decision by
- considering the evidence
  - deciding the facts, and
  - applying the law

See *A6 Deciding and paying benefit* earlier in this manual for more information.

- 6.51 The decision must cover all the various components of the award.

6.52-6.59

6.60-6.99

***Claimant queries the decision or asks for written statement of reasons***

6.60 On receipt of a decision notice, the claimant may

- appeal
- query a decision
- seek clarification
- ask for more information

6.61 If so, they should be offered an explanation of that decision. This is not a legislative provision but is part of the broader aims of the Decision Making and Appeals (DMA) process, to

- make sure incorrect decisions are put right at the earliest possible opportunity
- remove, as far as possible, unnecessary appeals
- provide a good customer service

6.62 Before offering an explanation or issuing a written statement of reasons, the DM should always check the decision is correct.

6.63 If, at this stage, the decision is found to be wrong because of an official error, eg it is erroneous in point of law, and the claimant did not contribute to the error

- revise the decision
- notify the claimant of the new decision, which must carry fresh dispute and appeal rights

See *Meaning of official error* later in this chapter for examples of official errors.

6.64-6.69

***Claimant accepts decision***

6.70 If, following an explanation and/or receipt of a written statement of reasons, the claimant accepts the decision no further action is needed.

6.71-6.79

***Claimant still does not accept decision***

6.80 If the claimant still does not accept the decision they have one calendar month to challenge it. The time for doing this starts on the day following the date of notification. This period can be extended in specified circumstances, including when a written statement of reasons has been requested, see *Late applications for revision of decision* later in this chapter.

6.81 During this time the claimant may ask for the decision to be reconsidered or appeal immediately against the decision.

6.82-6.99

### ***Reconsideration process***

- 6.100 The process of looking again at a decision is known as 'reconsideration'. This term is not defined in regulations but should be given its usual everyday meaning. To make sure that the decision is correct, the DM should look again at the
- evidence, including any evidence that may be offered by the claimant at the explanation stage
  - facts and law

*CSPSS Sch 7, para 3; D&A Regs, reg 4*

- 6.101 DMs can reconsider a decision that they, or another DM has given. When possible, although not a legal requirement, reconsideration should be carried out by a different DM.

6.102-6.109

### ***Decision revised to the claimant's advantage***

- 6.110 If, following reconsideration, the decision is revised to the claimant's advantage, notify the claimant of the revised decision. This new decision carries with it fresh appeal rights and the time for any reconsideration starts again.
- 6.111 However, if the claimant appealed at the outset, then the (original) appeal lapses and the claimant has the right of appeal against the new decision. See *C7, Lapsing an appeal* later in this part for more information.

6.112-6.119

### ***Decision not revised***

- 6.120 If, following reconsideration, the original decision has not been revised, and the claimant did not appeal the original decision, notify the claimant of the decision not to revise. The claimant has one month to appeal from the date on which the refusal to revise is sent. The tribunal may consider late applications subject to the absolute time limit of 13 months but has no power to extend the absolute time limit.

*FtT Rules, rule 23(8)*

**Note:** If an application is made outside the time limits in Reg 4 (1)(a) of the D&A Regulations, the time for appealing runs from the date of notification of the original decision.

- 6.121 If the claimant has appealed already, tell the claimant the
- decision has been reconsidered but not revised, and
  - appeal will proceed

6.122-6.129

6.130-6.161

***Decision revised to the claimant's disadvantage***

- 6.130 If, following reconsideration, the decision is revised to the claimant's disadvantage, notify the claimant of the revised decision, which must carry fresh appeal rights and have a fresh dispute period.
- 6.131 If the claimant appealed at the outset, the appeal will continue against the decision as revised. Notify the claimant and tell them that any further representations
- should be made within one month
  - will be considered by the DM

6.132-6.149

***Claimant appeals against decision***

- 6.150 If a claimant appeals on receipt of a decision, then in all cases the decision must be reconsidered, see *Reconsideration process earlier* in this chapter. A decision under appeal can be revised by the DM without reference to any specific legal grounds. The DM will not, for example have to establish the original decision was made in error of law, it is enough that the DM thinks revision is justified.
- 6.151 However, some decisions, mainly administrative decisions, do not carry a right of appeal, see *C7 Annex A* later in this part.
- 6.152 The legal right to appeal to an independent and impartial tribunal, a First-tier Tribunal (FtT), is one of the fundamental elements of the DMA process. It is for this reason that if the claimant appeals immediately on receipt of a decision, and the LA is unable to revise the decision to the claimant's advantage, the appeal together with a response from the LA setting out the facts of the case and the reasons for their decision, should be sent to the Tribunal Service (TS). A copy must also be sent to the claimant, and their representative if applicable.

6.153-6.159

***Decision changed to claimant's disadvantage***

- 6.160 If, following a reconsideration, the decision is changed to the claimant's disadvantage, notify the claimant of the revised decision and tell them
- the appeal will proceed against the decision as revised, and
  - they have one month to make further representations
- 6.161 The DM must consider any new information, evidence or facts before the appeal is submitted to the TS.

6.162 The claimant does not have to tell the LA, on receipt of a disadvantageous or 'no change' notification, that they wish to continue with the appeal. The appeal should proceed unless the claimant withdraws their appeal in writing or orally at the hearing.

6.163 If the claimant did not appeal at the outset, they may appeal following the result of the reconsideration. If the claimant appealed following notification of the result of the reconsideration, and the DM is satisfied that the decision was correct, then the appeal will proceed to the TS.

6.164-6.179

### *FtT hearings*

6.180 FtT decisions may be given with or without a hearing. The claimant or the LA may request a hearing. If any party to the proceedings requests or instructs a hearing all parties have a right to be present and the LA may decide to send a Presenting Officer to represent the DM.

6.181 Following the hearing, the tribunal's decision is notified to those present and copied to the LA if no Presenting Officer is present.

6.182 A tribunal is not required to substitute an outcome decision for that under appeal. The power enabling them to deal only with the issues raised by the appeal does not have the effect that they have to make a decision on every issue if there is a more appropriate way of dealing with those issues. See *C7 The FtT's decision* later in this part.

*CSPSS Act 00, Sch 7, para 6(9)(a)*

6.183-6.189

### *Action on receipt of an FtT decision*

6.190 On receipt of the FtT decision, if the DM's decision has been overturned, implement the decision of the appeal tribunal as soon as possible.

6.191 If the LA or the claimant feels that the decision of the FtT is erroneous in law, then there is the option to seek permission to appeal to the Upper Tribunal (UT), see *C7 Appeals to the Upper Tribunal and the courts* later in this part.

6.192-6.199

## *Challenged decisions*

6.200 The DMA process allows DMs to re-examine the

- facts of the case
- law used
- other issues, such as how discretion was applied when making a decision

6.201 Resolving disputes at an early stage, for example when an appeal is made, can avoid the need for cases to proceed to a formal FtT hearing.



6.202-6.239

6.202 When a decision is challenged within one month of being notified or the decision statement of reasons being given, the DM reconsiders it, and changes the decision if it is appropriate to do so. A decision is changed by revision, but if it cannot be revised, it may be superseded, see *Supersession* later in this chapter.

6.203 The DM must always consider revision first.

6.204 However, the process described above does **not** apply when claimants report a change of circumstance. The supersession rules will apply instead, see *Supersession* later in this chapter.

6.205-6.219

### *Which decisions can be challenged?*

6.220 The DMA process applies to relevant decisions that can be revised, superseded or appealed, but see *C7 Annex A* later in this part for a list of decisions that are not appealable.

*CSPSS Sch 7 para 1; Sch 7 para 6; D&A Regs, Sch*

6.221 In some circumstances, a DM can supersede a decision of an FtT or a UT, see *Supersession* later in this chapter.

*D&A Regs, reg 7*

6.222 DMs can also make corrections to accidental errors in decisions, see *Correction of accidental errors* later in this chapter.

6.223-6.229

### *What constitutes a challenge?*

6.230 A claimant challenges a relevant decision by

- asking for it to be looked at again
- appealing it

6.231 Do not confuse this with occasions when a claimant is looking for clarification of a decision by asking for more information. When a claimant has asked for, and been given, an explanation of a decision, the DM should make sure the claimant is satisfied with the explanation and is not challenging it.

6.232-6.239

***Changes reported following notification of a decision***

6.240 The DM cannot revise a decision if

- a claimant reports a change of circumstances, **or**
- evidence or information is received indicating that there will be a change of circumstances

The supersession provisions apply instead.

6.241 Decisions should not be superseded if they can be revised instead. This rule does not apply if

- the decision could be revised, **and**
- further circumstances arise which are not in the revision rules, but are in the supersession rules

*D&A Regs, reg 4*

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

**Example**

The claimant has been awarded HB from 13 August 2001. They challenge the decision on 3 September as they claimed benefit from 31 July and were unable to move in until the adaptations to meet their disability needs had been completed.

They also report that their adult son has been unemployed and getting JSA(IB) since 24 August. The DM

- reconsiders the original decision and revises it so that HB starts from 6 August
- supersedes the revised decision to take account of the change in the non-dependant's circumstances as from 27 August

6.243-6.249

***DM rejects claimant's contention or claimant challenges decision more than a month after notification***

6.250 Decisions may be superseded instead of being revised when the claimant

- is late contacting us and we are unable to extend the time for requesting a revision, **or**
- contacts us only after the extended dispute period has ended

continued

(6.250)-6.279

(6.250)

### **Example**

A claimant is awarded HB from 25 August. The assessment includes a non-dependant deduction in respect of their son, who is aged 21 and is in full-time employment. On 5 November the claimant contacts the LA asking for the amount of deduction to be altered.

Their son earns much less than the amount used to calculate the rate of non-dependant deduction, and the deduction should have been made at a lower rate.

The claimant provides their son's pay slips to support the dispute. They tell the DM that they had made a mistake on the claim form and had been meaning to contact the LA but kept forgetting to do so.

The DM decides that the late dispute cannot be accepted.

The decision is superseded from the benefit week in which the claimant contacted the LA.

6.251-6.259

### ***How decisions are challenged***

6.260 Claimants can ask for a decision to be reconsidered. But this must be in writing and delivered to the LA.

*D&A Regs, reg 4*

6.261 Claimants may challenge decisions by applying for a revision or supersession or by appealing. LAs can also instigate a reconsideration of a decision.

6.262-6.269

### ***Who reconsiders these decisions?***

6.270 DMs can reconsider a decision that they, or another DM within the LA, has given. It is good practice that the reconsideration is done by a different DM, ie not the one who made the original decision.

*CSPSS, Sch 7, para 3; D&A Regs, reg 4*

6.271-6.279

### *How are relevant decisions changed?*

- 6.280 There are three ways to change a decision which has been challenged
- revision, see *Revising decisions disputed during the dispute period* later in this chapter
  - supersession if it cannot be revised, see *Supersession* later in this chapter
  - on appeal, see *C7 Appeals* later in this part
- 6.281 The DM
- identifies the decision to be reconsidered
  - decides if it should be revised or superseded and if so, the date from which the revised or superseded decision takes effect
  - considers if any offset is appropriate and whether there is any under or overpayment

6.282-6.299

### *Revision following an appeal*

- 6.300 When an appeal is received, the DM should, in every case, consider whether the decision can be revised. If it can be revised to the claimant's advantage, the DM should revise the decision and the appeal lapses. This applies even though the decision may not be wholly in the claimant's favour. The claimant now has a new decision, fresh appeal rights and a new dispute period. For more information see *C7, Lapsing an appeal* later in this part.
- 6.301 However, the appeal proceeds if the decision is
- not revised, **or**
  - revised, but not in the claimant's favour
  - superseded

**Note:** Special rules apply when a decision is revised but not in the claimant's favour, see *C7 Appeals* for more information.

6.302-6.309

### *Correction of accidental errors*

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

6.311-6.319

6.320-6.342

***What is an accidental error?***

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

- slips of the pen
- arithmetical mistakes
- errors in the text
- text entered in the incorrect place

6.321-6.329

***How to correct accidental errors***

6.330 A relevant LA can correct their own decision or record of decision at any time.

*D&A Regs, reg 10*

6.331 When a decision is corrected, the time limit for making an appeal begins on the day the corrected decision is notified.

*D&A Regs, reg 10*

6.332 If an error is made by an FtT, it should be returned to the FtT to consider correction, see *C7 Appeals* for more information.

6.333-6.339

***Time limits for challenges***

6.340 Claimants can challenge decisions if they think they are wrong or unfair. The timing of the challenge determines how it is dealt with by the DM. See *C7 Appeals* later in this part for guidance on

- FtTs
- UTs and the courts

6.341 When a challenge is made outside the time limit and the circumstances of the case do not allow for the time to be extended, the DM can treat it as an application to supersede the decision, see *Supersession* later in this chapter.

6.342 If a decision is not revised, see *What happens when decision is not revised* later in this chapter.

6.343 Revision may be possible if a challenge is made within one month, beginning on the day following notification of the decision in question.

*D&A Regs, regs 2 & 4*

**Example 1**

On 18 November a claimant is notified of the decision on their claim for HB.

The period in which revision is possible begins on 19 November. The calendar month ends on 18 December.

**Example 2**

On 31 December a claimant is notified of the decision on their claim for CTB.

The period in which revision is possible begins on 1 January. The calendar month ends on 31 January.

**Example 3**

On 29 January a claimant is notified of the decision on their claim for HB.

The period in which revision is possible begins on 30 January. The calendar month ends on the last date of the following month - 28 February. In a leap year, use 29 February.

6.344-6.349

***Extending the revision time limit***

6.350 The one month can be extended by the period taken to supply the written statement of reasons when

- reasons for the decision were not included in the decision notification, **and**
- the claimant requests a written statement of reasons for the decision within the month

6.351-6.361

- 6.351 The extension period begins on the day that the LA receives the request for the statement and ends on the day the statement is provided to the claimant.

**Example**

Decision notified 1 August. The time in which revision is possible is 2 August to 1 September. On 6 August the claimant asks for a written statement of reasons. This is sent on 9 August.

The time in which revision is possible is extended by four days and now ends on 5 September.

**Note:** When calculating the time period for an out of time application for revision, do not take account of the period between the date

- a statement of reasons for the DM's decision is requested
- on which it is eventually provided to that person

6.352-6.359

### *Late applications for revision of decision*

- 6.360 The one month time limit for applying for revision can be extended when the conditions apply, see *Conditions for a late application to be accepted* later in this chapter.

*D&A Regs, reg 5*

**Note:** When calculating the time period for an out of time application for revision, do not take account of the period between the date

- a statement of reasons for the DM's decision is requested
- on which it is eventually provided to that person

- 6.361 The application should

- be made in writing
- contain details and reasons as to why an extension of time is sought, **and**
- contain sufficient details to identify the decision to be revised, **and**
- be made within 13 months of the date the decision to be revised was notified, **and**
- be delivered to the LA

*D&A Regs, reg 5*

*Conditions for a late application to be accepted*

- 6.362 The following conditions should **all** be satisfied for a late application to be accepted
- a it is reasonable to grant the application for the extension of time, and
  - b the application for revision has merit, eg it may be successful if the late dispute is accepted, and
  - c there are special relevant circumstances, and
  - d as a result of those special circumstances the application for revision could not be made within the time limit

*D&A Regs, reg 5*

- 6.363 The term 'special circumstances' is not defined in legislation. It can include factors such as
- the applicant, partner or dependant has died or suffered serious illness
  - the applicant is not resident in UK
  - normal postal services were adversely affected

**Note:** The list is not exhaustive. Consider each application on its own merits, but remember that the later the application the more compelling the special circumstances for lateness must be.

*D&A Regs, reg 5*

- 6.364 When deciding whether it is reasonable to grant the application, take no account of
- ignorance or misunderstanding of law or time limits
  - the fact that a UT or court has taken a different view of the law from that which was previously understood and applied

*D&A Regs, reg 5*

**Example**

The claimant, a pensioner, is awarded HB in a decision notified on 1 August. They do not agree with the way in which their occupational pension has been treated, but before they can apply for a revision they suffer a stroke and are admitted to hospital for three months. They are discharged home on 6 November.

On 11 November they write to the LA asking them to reconsider the decision, providing fresh information about their occupational pension and explaining why they have not done so before.

The DM accepts the explanation for lateness and the claimant's reasoning on the pension issue and revises the decision to award HB from the date of claim.



6.365-6.379

6.365 If the DM refuses a late application for revision it is not open to the claimant to apply again for their application to be accepted out of time. The law does not permit renewed applications.

*D&A Regs, reg 5*

6.366-6.369

***Revision instigated by the DM***

6.370 DMs may act on their own initiative to revise a relevant decision if

- within one month of the notification of the original decision, the DM has sufficient information to show that the original decision was made in ignorance of, or was based on a mistake as to, some material fact, **or**
- the claimant has made an appeal, including a late appeal where FtT Rule 23 and Schedule 1 applies, and that appeal has not been determined, see *C7 Appeals* later in this part

*D&A Regs, reg 4; CSPSS Sch 7, para 3*

6.371 DMs have the power to revise a relevant decision at any time if a decision

- arose from an official error
- was made in ignorance of or was based on a mistake as to some material fact and, as a result of that ignorance or mistake as to that fact, the decision was more advantageous to the claimant than it would otherwise have been but for that ignorance or mistake

*D&A Regs, reg 4*

6.372 A relevant decision may be revised if

- a decision in respect of the claimant is given by an FtT, a UT or court on appeal against a decision ('decision A')
- the relevant decision was made after decision A, and
- the relevant decision would have been made differently had the LA been aware of that appeal decision at the time it made the relevant decision

*D&A Regs, reg 4*

6.373-6.379

*Decision revised*

6.380 A decision that revises an existing decision carries fresh appeal rights and has a fresh challenge period. Claimants can challenge the revised decision provided the challenge is lodged within the time limit. As with the original decision, the challenge may be a request for revision or an appeal and the challenge period may be extended.

6.381-6.389

*Revising decisions challenged within a month of notification*

6.390 Decisions challenged within a month of notification can be revised by the DM. The claimant may ask for the original decision to be reconsidered, or may appeal.

*CSPSS, Sch 7 para 3; D&A Regs, reg 4*

**Note:** When determining if the challenge has been received in good time, ie within a month of notification of the decision in question, do not take account of the period between the date

- a statement of reasons for the DM's decision is requested
- on which it is eventually provided to that person

6.391 If the claimant appeals, the DM should always consider whether the decision should be revised. If the decision is revised to the appellant's advantage, the appeal normally lapses even when the appellant is not given all that they want. For more information see *C7, Lapsing an appeal* later in this part.

*CSPSS, Sch 7 para 3; D&A Regs, reg 17*

6.392 In cases when the decision is revised, but not to the appellant's advantage, the appeal proceeds, but the appeal will be treated as against the revised decision.

*D&A Regs, reg 17*

6.393 The appellant should be given a further month in which to make representations against the revised decision, see *C7 Decision changed to claimant's advantage* later in this part.

*D&A Regs, reg 17*

6.394 The DM should always reconsider decisions challenged during the month following notification. Persons affected do not have to give reasons why they think the challenged decision is wrong. The DM may need further evidence or information to establish if it was based on incorrect facts or law.

6.395 If the DM notices an error, the decision can be looked at again even if it is noticed outside the one month time limit, see *Decisions that can be revised at any time* later in this chapter.

6.396-6.399

6.400-6.410

### *What to consider when revising a decision*

- 6.400 The DM should exercise discretion when deciding what parts of a decision need revising. The DM looking at a decision need not examine all the facts and circumstances of the case again. For example, only one fact may be in dispute.

*CSPSS, Sch 7 para 3*

#### **Example**

A lone parent claims HB for themselves and two children. They work part-time in the evenings as an office cleaner. The DM awards HB taking gross earnings into account.

The claimant challenges the amount of the award.

The DM revises the original decision because the amount of earnings has not been reduced to take account of tax and NI deductions, but does not consider other aspects of the initial decision.

- 6.401 The original decision should be revised if the DM
- reaches a different conclusion about the facts of the case
  - decides that the original decision was based on a mistaken view of the facts
  - considers the original decision was based on an incorrect interpretation of the law
  - considers the original decision was based on insufficient evidence
  - decides that there are new relevant facts which were not known at the time the decision was made

6.402-6.409

### *HB/CTB entitlement and relevant benefit*

- 6.410 Regulations allow decisions to be changed in order to take account of the award of a Social Security benefit (relevant or qualifying benefit) which is advantageous to the HB/CTB claimant at any time and without restriction on arrears.

*D&A Regs 2001 regs 4, reg 7, reg 8*

- 6.411 When there is an existing HB/CTB award, and entitlement to a relevant benefit arises which affects entitlement to, or the award of HB/CTB, the HB/CTB decision can be either
- revised at any time and without restriction on arrears, if the relevant benefit entitlement arises from the same date as HB/CTB
  - superseded, if the relevant benefit entitlement arises from a later date than HB/CTB

**Note:** The revised or superseded HB/CTB decision takes effect from the same date as the award of the relevant benefit regardless of when you were notified of the award.

**Example 1**

On 7 October 2003, HB is awarded from 17 September 2003 on the basis that the claimant is not entitled to Income Support (IS). On 17 November 2003, IS is awarded from 7 September 2003. The 7 October 2003 decision can be revised.

**Example 2**

On 7 October 2003, HB is awarded from 17 September 2003 without DP (Disability Premium). On 17 November 2003 Disability Living Allowance (DLA) is awarded to the claimant from 7 June 2003. The 7 October 2003 decision can be revised to include DP from 17 September 2003.

- 6.412 When HB/CTB terminates due to the cessation of a relevant benefit, the HB/CTB decision can be revised if the relevant benefit is reinstated following revision, supersession or appeal.

**Example 1**

On 16 July 2003 entitlement to income-based Jobseeker's Allowance (JSA(IB)) is stopped because the Department for Work and Pensions (DWP) decide that the claimant is living together as husband and wife (LTAHAW) with a partner in full time work. The LA decide to end the HB award. On 17 November 2003 the DWP decision is overturned on appeal and JSA(IB) is reinstated from 16 July 2003. The decision to end the HB can be revised.

**Example 2**

The claimant is in receipt of HB, inclusive of DP. On 16 July 2003 entitlement to DLA ceases and as a result the claimant is no longer entitled to HB because income now exceeds the applicable amount. On 17 November 2003 DLA is reinstated on appeal from 16 July 2003. The decision ending entitlement to HB can be revised.

- 6.413 A revised or superseded HB/CTB decision following the award of a relevant benefit should also revise the claimant's applicable amount from the effective date of the award of the relevant benefit. When ChB is awarded, for example, the increase in applicable amount is effective from the date ChB was awarded from. It is not restricted to the date on which the child's birth or the receipt of ChB is notified.

6.414-6.449

6.450-6.489

## *Handling cases when decisions are challenged*

### *More evidence or information needed*

6.450 The DM may require more evidence or information from the claimant to deal with the application for revision. The claimant should be notified that the evidence is required, and that the decision may be revised on the basis of the

- evidence when this is supplied within one month of the notification (or such longer period as the authority may allow), **or**
- original application when no response is received within the time allowed

*D&A Regs, reg 4*

6.451 The one month period can be extended by DMs if it is reasonable to do so.

*D&A Regs, reg 4*

6.452-6.469

### *What happens when decision is not revised*

6.470 Although the DM should always look again at a case when a decision is challenged, there may not be any reason to revise it. If the claimant has requested reconsideration of the disputed decision and there is no reason to revise it, the claimant is notified that the DM has not revised the decision.

6.471 When the DM is reconsidering a case because the claimant has appealed, if it is decided that revision is not appropriate the appellant should be informed, and at the same time told that the appeal will proceed.

6.472 If the DM notifies the claimant of their intention not to revise, or that the decision is revised to the detriment of the claimant, the decision notice should make clear that the appeal will proceed unless the claimant asks for it to be withdrawn, see *C7 Appeals* later in this part for more information.

**Note:** The decision must **always** be notified when the DM revises the decision to the detriment of the claimant.

6.473-6.489

### ***What happens when decision is revised***

- 6.490 If the claimant has appealed and the revision is in the claimant's favour, the
- appeal lapses
  - claimant gets a new decision with new appeal rights
- 6.491 Claimants who are still unhappy can
- apply for the fresh decision to be revised
  - appeal against the fresh decision

6.492-6.499

### ***Decisions involving issues arising on appeal in other cases***

- 6.500 The DM may decide not to make a decision on a 'lookalike' case while a lead case appeal is pending before the Courts, see *C7 Staying decisions if an appeal is pending before a court order in another case* later in this part for more information on 'lookalike' cases.

*CSPSS Sch 7, para 16 & D&A Regs, reg 15*

6.501-6.509

### ***Decisions that can be revised at any time***

- 6.510 In certain circumstances DMs can revise certain decisions at any time without an application from a claimant. These are

*CSPSS, Sch 7 para 3*

- revision for official error
- revision for error of fact
- revision as a consequence of a Rent Officer's (RO's) redetermination
- decisions with no appeal rights

6.511-6.519

### ***Revision for official error***

- 6.520 A decision made by the DM either initially or on a supersession can be revised at any time for official error.

*D&A Regs, reg 4*

6.521-6.522

### *Meaning of official error*

6.521 An official error is an error made by

- an LA, or a person
  - authorised to carry out any function of an LA relating to HB or CTB, or
  - providing services relating to HB or CTB directly or indirectly to the LA
- an officer, acting in an official capacity, of the
  - DWP, or
  - Her Majesty's Revenue and Customs

'Official error' does **not** include any error caused wholly or partly by any person or body not specified above and any error of law which is shown to have been an error only by virtue of a subsequent decision of a UT or the court.

*D&A Regs, reg 1*

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

- an official error refers only to a clear mistake of fact or law arising from the actions of an officer acting in an official capacity. The officer must **not** have been acting in a private capacity, eg giving advice to a neighbour
- the official error must have made the appropriate decision wrong
- the error must lie in the decision and not merely in the circumstances surrounding its issue
- 'mistake' refers only to obvious mistakes made by officers on the facts told to them by claimants or which they had reason to believe were relevant
- they have a duty to consider whether the claimant, or another person other than the claimant, who is not an official, has caused or contributed to any mistake
- there is no general duty on an officer to keep all cases constantly under review in order to see whether a particular provision might apply in a particular case, even when that provision may be beneficial to a claimant
- the provision cannot apply where the mistake, act or omission occurred after the decision being reconsidered was made. To be relevant, it must have occurred before or have existed at the time of the decision
- an error of law by a DM is an official error

**Note:** Decisions which are wrong in law because of a decision of a Commissioner or Court cannot be revised. The decision should be superseded instead, see *Supersession* later in this chapter.

- 6.523 Applications for supersession may be treated as applications for revision if it would be more appropriate to apply the revision rules. This is most likely to be when the decision ought to be revised because it was based on an official error. In these circumstances revision is more appropriate because the effective date of the revised decision is more advantageous to the claimant than the effective date of the superseding decision.

*D&A Regs, reg 4*

6.524-6.529

### ***Revision for error of fact***

- 6.530 A decision can be revised at any time if the decision was better for the claimant than it should have been, because it was made in ignorance of, or based on a mistake as to, a material fact, see *Material fact* later in this chapter.

*D&A Regs, reg 4*

6.531-6.539

### ***Revisions as a consequence of a Rent Officer's redetermination***

- 6.540 A decision can be revised at any time when the
- decision was made on the basis of a determination of an RO under the Rent Officers (Housing Benefit Functions) Order 1997 or Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 as to the rent for the purposes of calculating entitlement to housing benefit, and
  - the amount which represents the rent has subsequently been **increased** as a result of an RO's redetermination, substitute determination or substitute redetermination

*D&A Regs, reg 4*

6.541-6.549

### ***Decisions with no appeal rights***

- 6.550 Decisions which have no right of appeal can be revised at any time. These are mainly administrative decisions such as timing and manner of payment.
- 6.551 Decisions that are not appealable are listed in *C7 Annex A* later in this part. When such a decision is challenged, the LA should look again at the decision, and revise or supersede it. These decisions can be challenged by means of judicial review.

*CSPSS, Sch 7 para 6; D&A Regs, reg 16 & Sch; D&A Regs, regs 4 & 7*

6.552-6.559



6.560-6.619

### *Effective date of revised decision*

6.560 A revised decision replaces the original decision and will usually take effect from the same date. The exception is when the effective date of the original decision was itself wrong.

*CSPSS, Sch 7 para 3; D&A Regs, reg 6*

#### **Example 1**

An HB claimant is awarded benefit from 6 May. The DM decides, on the evidence provided, that the claimant has part-time earnings.

The part-time earnings are taken into account when calculating the amount of benefit.

On 21 May the claimant disputes the decision because the part-time earnings had ended before the award of benefit. The DM reconsiders the evidence and decides that the claimant is entitled to benefit with no part-time earnings taken into account.

A new decision is made excluding part-time earnings from 6 May.

#### **Example 2**

A claimant makes a claim for HB on 6 September. The DM decides that the claimant is not entitled to benefit until 17 September as he does not move into the property until 17 September.

The claimant disputes the decision on the grounds he was waiting for a social fund loan to help with the cost of removal expenses for himself, wife and one month old daughter and has been liable for the rent since 3 September.

The DM reconsiders the evidence and awards benefit from 3 September.

6.561-6.599

## *Supersession*

6.600 Supersession means changing a decision of a DM, an FtT or a UT and replacing it, generally from a date later than the original decision. Certain conditions have to be satisfied before a decision can be superseded.

6.601-6.609

### *Applications for supersession*

6.610 If a written communication is received from a claimant who is getting HB/CTB, or who has had a claim to HB/CTB turned down, the DM must first decide whether it is an application for supersession either of the existing award or decision refusing to award HB/CTB.

6.611-6.619

***Communications that are not applications***

6.620 A communication from a claimant is not an application for supersession if no further investigation of fact or law could possibly produce a different decision from the one already made. This means that a communication will not be an application if it contains only

- abuse, or
- material that is irrelevant to the benefit the claimant has been awarded, eg the claimant has requested extra benefit because of an increase in the price of pet food

6.621 If a communication is considered not to be an application for supersession, the communication should not be admitted as an application for supersession. This does not involve the making of a decision and there is no right of appeal against it. The existing award remains in place. The claimant should be told why no action has been taken on the matters raised.

6.622-6.629

***Communications that are applications***

6.630 If a communication is accepted as an application, the DM should

- investigate
- decide the relevant facts, and
- decide whether to supersede the existing award

6.631 If the investigation

- discloses grounds to alter the award, the award is superseded with a new award
- has not disclosed grounds to alter the award, make a decision not to supersede. There is a right of appeal against this decision. The description 'supersede at the same rate' should no longer be used

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

6.632-6.639

6.640-6.642

## *Superseding decisions*

### *Superseding a Decision Maker's decision*

6.640 A DM's decision may be changed by supersession, either following an application made by the claimant or on the DM's own initiative, if

- there has been a change of circumstances since the decision to be superseded had effect
- a change of circumstances is anticipated
- the decision was erroneous in law or was made in ignorance of, or based on a mistake as to, some material fact and the decision
  - cannot be revised on the basis of that error, ignorance or mistake, and
  - is not a decision without the right of appeal
- there is a reduction in the amount which represents the rent for the purposes of calculating HB following an RO's redetermination, substitute determination or substitute redetermination
- the decision to be superseded is a decision without a right of appeal, see *C7 Annex A* later in this part

*D&A Regs, reg 7*

6.641 Following the notification of a DM's decision, the DM should supersede the original decision if

- a claimant reports a relevant change of circumstances, or
- information or evidence of a future change is received

*D&A Regs, reg 4*

6.642 A decision that can be revised should not be superseded. But both revision and supersession may be appropriate if

- the decision could be revised, **and**
- further circumstances arise which are not in the revision rules but are in the supersession rules

*D&A Regs, reg 7*

continued

(6.642)

**Example**

The claimant has been awarded HB from 13 August 2001. They challenge the decision on 3 September as they claimed benefit from 31 July and were unable to move in until the adaptations to meet their disability needs had been completed.

They also report that their adult son has been unemployed and getting JSA(IB) since 24 August.

The DM

- 1 reconsiders the original decision
- 2 revises it so that HB starts from 6 August, and
- 3 supersedes the revised decision from 27 August to take account of the change in the non-dependant status

6.643-6.649

***Superseding an FtT or UT's decision***

6.650 The FtT's decision on the issues it has dealt with is **final**. If the FtT does not give an outcome decision after allowing an appeal, the DM must follow the tribunal's decision when dealing with the matters referred back for subsequent decision unless

- there are grounds to supersede the FtT's decision, **or**
- the DM considers it is erroneous in law and applies for leave to appeal

*CSPSS, Sch11*

6.651 An FtT or UT's decision may be superseded, either on application or on the DM's own initiative when

- the decision was made in ignorance of a material fact, **or**
- the decision was based on a mistake as to a material fact, **or**
- there has been a relevant change of circumstances since the decision was made

*D&A Regs, reg 7*

6.652-6.661

6.652 The DM should not supersede the FtT's decision in order to take account of the change in the facts when

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

The FtT cannot take account of circumstances that had not arisen at the time of the decision under appeal and their decision should be followed. This is because the DM must determine all the facts down to the date of the new decision.

*CSPSS, Sch 7, para 6(9)(b)*

6.653 If an 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 that must be superseded, not the FtT's decision.

6.654 Note that when the only issue raised by the application relates to the incorporated tribunal's decision the claimant cannot ask for the DM's decision to be

- revised for official error, **or**
- superseded for error of law

The claimant should apply for leave to appeal to the Commissioner against the tribunal's decision.

6.655-6.659

### *Change of circumstances*

6.660 When there has been a change of circumstances since the effective date of the decision, or if it is expected that a change will occur, the DM may supersede the decision which is currently in force.

6.661 It is not necessary for a claimant to make a new claim following a relevant change of circumstances.

*CI3700/2000 paras 27-32; R(1) 12/75*

- 6.662 When a person notifies a change of circumstances which has already ended then the correct way of dealing with any period of non-entitlement is by way of a closed period supersession. There is no requirement for a new claim when there is a fixed period of non-entitlement. The award may be superseded for that period and the supersession only replaces the original decision to that extent.

*CIS/2595/03*

**Example 1**

Claimant has been in receipt of HB since 2006.

An investigation in November 2008 discovered the claimant had worked from 12 June 2007 to 3 August 2007 and had failed to disclose the work. The conditions of entitlement were not satisfied for that period only and entitlement continued immediately afterwards.

The DM determines that there was no entitlement to HB for that closed period and supersedes from 18 June 2007 to 5 August 2007.

A further claim is not required because all the conditions of entitlement were satisfied after the period of work ceased.

The overpayment was calculated in accordance with existing procedures.

**Example 2**

Claimant has been in receipt of LHA in a pathfinder area since 2004.

An investigation in June 2008 discovered the claimant had worked from 6 July 2005 to 20 October 2005 and 1 March 2007 to 17 April 2007 and had failed to disclose to work. The conditions of entitlement were not satisfied for those periods only and entitlement continued immediately after each period ended.

The DM determines that there was no entitlement for those closed periods and supersedes from 11 July 2005 to 23 October 2005 and 5 March 2007 to 22 April 2007. Further claims are not required because all the conditions of entitlement were satisfied after each period of work ended.

The overpayments were calculated in accordance with existing procedures.

- 6.663 Closed period supersession should not be used when an advance notification of a change can be actioned before the change takes place because the change notified in advance may not take place. If the notification cannot be actioned before the anticipated date of change then the period may be dealt with by way of a closed period supersession.
- 6.664 A closed period supersession will not trigger a claim for LHA because there has been no break in the claim.

6.665-6.669

6.670-6.699

*What is a relevant change of circumstance*

6.670 A relevant change of circumstance is a change that happens after the effective date of the original decision and has a relevance to the award of benefit.

*D&A Regs, reg 7*

6.671 A change of circumstances that can trigger supersession includes both those changes that a claimant is required to report **and** those that they are not required to report.

6.672-6.679

*When is a change not a relevant change?*

6.680 A change is not relevant when it can have no possible effect on the award. In this circumstance no decision would be made, instead the claimant would simply be told in writing the outcome of the application.

**Example for CTB**

A claimant writes to the DM advising that they now have a dog and would like an increase in the amount of CTB as they have to buy food for the dog.

As there is no provision in the law to make allowance for a pet the DM does not consider superseding the award as this is not a relevant change.

6.681-6.689

*When a change has the potential to be relevant*

6.690 There will be situations when a change has the potential, however slight, to affect an award of benefit, but the DM decides that the change does not result in the award or assessment changing.

6.691 This could happen, for example because a claimant reports their adult son has had a change in the level of his earnings. The DM may, having considered the evidence, decide that the change does not affect the level of HB/CTB awarded as there is no change in the non-dependant deduction made in respect of the son. However, the application for supersession would be valid, because the reported change had the potential to affect the award of benefit.

6.692 In such cases, there would be no change in the existing decision. However, the DM should still make a decision - this would be a decision not to supersede. The claimant would be notified not only that benefit would continue at the same rate but also that they had the right of appeal against the decision.

6.693-6.699

***Can a change in law be a relevant change of circumstances?***

- 6.700 A change in law can be a relevant change of circumstances. A change in an opinion on the law is not a relevant change of circumstances. This was shown in the Court of Appeal in a case which concerned the application of EC law and a change in a UK declaration made under it. When there is a change in legislation, the effective date is the date the change in legislation has effect.

*R v SS Commissioner ex parte Browning CMLR 1984 3 & 192;  
R(P) 2/84; R(A)4/81, D&A Regs, reg 8*

6.701-6.709

***Can a decision be superseded because of a future change of circumstances?***

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

*D&A Regs, reg 7*

- 6.711 A decision given for an expected change of circumstances should be revised at any time for ignorance of a material fact, if information is received to the effect that the change will

- not now occur
- be less advantageous than anticipated
- occur on a later date than originally anticipated

- 6.712 A decision given for an expected disadvantageous change of circumstances should be revised if information is received within the month or such longer time as may be allowed under Reg 5, to the effect that the change will

- not now occur
- be less advantageous than anticipated
- occur on a later date than originally anticipated

- 6.713 If information is received outside the above limits, the decision can be superseded and the effective date will be the date the information is received.

6.714-6.719

***How a change should be notified***

- 6.720 A change of circumstances should be notified in writing and delivered either to the LA which made the original decision. However, if the LA has made arrangements for change of circumstance notifications to be made electronically or by telephone there is no automatic need for written confirmation.

*HB Regs 2006, reg 88 & 88A*

6.721-6.729



6.730-6.769

***Additional evidence/information needed for decision to be superseded***

6.730 If further evidence or information from a claimant is needed in order to consider all the issues raised in the application for supersession, the DM should notify the claimant that further evidence or information is required. Claimants should be given one month or such longer period as the DM may allow to provide this further evidence or information.

*D&A Regs, reg 7*

6.731 If the information is not provided within that period the DM should make the decision on the basis of the information available. This may lead to the DM making a decision not to supersede because of insufficient evidence to support changing the existing award.

*D&A Regs, reg 7*

6.732-6.739

***How the change is taken into account***

6.740 The DM takes the relevant change into account by superseding the award which is in force. This means that the existing decision is replaced by a new decision. For the effective date of this new decision see *Effective dates* later in this chapter.

6.741 The DM can consider any known change but need not have regard to any change that

- was not raised by the application, or
- did not cause the DM to seek to supersede the existing decision

*CSPSS, Sch 7 para 4*

6.742-6.749

***What happens when a decision is superseded***

6.750 When an application for supersession on grounds of change of circumstance is received the DM should

- identify the decision against which the application is made including decisions no longer in force
- decide whether there are grounds to supersede the award or assessment
- if appropriate, make a fresh award
- determine the date from which the superseded award should be effective
- decide when payment should be made from
- decide what, if any, under or overpayment has occurred
- consider recoverability and from whom recovery is to be made

*CSPSS, Sch 7 para 4*

6.751-6.769

## ***Effective dates***

**Note:** See *HB/CTB entitlement and relevant benefit* earlier in this chapter for information about the effective date for supersession in late award of qualifying benefits.

### ***Changes of circumstances***

6.770 The general rule on changes of circumstances is that the superseding decision takes effect in accordance with the normal change of circumstances rules specified in

- regulation 79 of the HB Regs 2006
- regulation 67 of the CTB Regs 2006

*CSPSS, Sch 7 para 4; D&A Regs, reg 8*

6.771 Exceptions to this general rule are set in the following paragraph.

6.772-6.779

### ***Late report of change of circumstances - decision advantageous to the claimant***

6.780 For the purposes of calculating the effective date of the change, in accordance with Regulation 79 of the HB Regs 2006 or regulation 67 of the CTB Regs 2006, the date of notification of the change shall be treated as the date on which the change occurred provided the change of circumstances

- is required by regulations to be notified, and
- is not a change to which regulation 79 of the HB Regs 2006 or regulation 67 of the CT Regs 2006 applies, and
- is notified more than one month after it occurs or such longer period as may be allowed under regulation 9, see *Late notification of an advantageous change of circumstances*, and
- the superseding decision is advantageous to the claimant for the purposes of calculating the effective date

*D&A Regs, reg 8*

6.781-6.789

### ***Changes in legislation***

6.790 When the change is a change in legislation, the effective date is the date the change in legislation has effect.

*D&A Regs, reg 8*

6.791-6.799

6.800-6.811

*Effective dates of other superseding decisions*

6.800 When the superseding decision is advantageous to the claimant and is made on the ground that the original decision was made in ignorance of, or was based on a mistake as to, a material fact, the superseding decision takes effect from the first day of the benefit week in which the relevant authority first had sufficient information to show that the original decision was incorrect.

6.801 When the superseding decision results from an application by the claimant, the effective date is the first day of the benefit week in which the application was received by the LA.

*D&A Regs, reg 8*

6.802 When the decision is made on the basis of an RO's determination as to the rent for the purposes of calculating HB, and that rent has subsequently been decreased as a result of an RO's redetermination, substitute determination or substitute redetermination, the change takes effect in accordance with HB (Gen) Regs, reg 68 as if the determination or redetermination were the relevant change.

*D&A Regs, reg 8*

6.803 When a decision is made superseding a decision of an FtT or a UT on the ground that decision was made in ignorance of, or was based on a mistake as to, a material fact and was more advantageous to the claimant than it would otherwise have been, the superseding decision takes effect from the date on which the decision of the FtT or a UT took, or was to take, effect.

*D&A Regs, reg 8*

6.804-6.809

*Late notification of an advantageous change of circumstances*

6.810 The one-month time limit for notifying a change of circumstances, which is advantageous to the claimant, may be extended if there were special circumstances which led to the late notification. In these cases, any new decision will take effect in accordance with the normal change of circumstances rules.

*D&A Regs, reg 9*

6.811 For a late notification of an advantageous change of circumstances to be accepted, the following conditions must be satisfied

- the notification should contain particulars of the change of circumstances and the reasons for the failure to notify the change of circumstances on an earlier date
- it is reasonable to grant the application
- the notified change is relevant to the decision to be superseded

continued

- (6.811) • special circumstances are relevant to the application and, as a result of those special circumstances it was not practicable for the claimant to notify the change within a month of it occurring. For example
- the applicant or a partner or dependant of the applicant has died or suffered a serious illness
  - the applicant was not in the UK
  - postal services were adversely affected

*D&A Regs, reg 9*

**Note:** This list is not exhaustive. Treat each application on its merits. The absolute time limit for accepting the late report of an advantageous change of circumstances is 13 months from the date the change occurred.

- 6.812 When deciding whether it is reasonable to grant a late application for a change of circumstances, DMs should note that
- the later the application, the more compelling the special circumstances for lateness should be
  - no account should be taken of the fact that the applicant was ignorant of or misunderstood the law and time limits
  - no account should be taken of the fact that a UT or court has taken a different view of the law from that which was previously understood and applied

*D&A Regs, reg 9*

6.813-6.829

### ***How the decision is notified***

- 6.830 When a change of circumstance is reported, the DM issues a written decision notice of the outcome of that change to the claimant.
- 6.831 If the notified change
- alters the award, the decision notice gives details of the fresh award and advises the claimant of the relevant appeal rights
  - could have had an impact on the award but does not result in a change, the decision notice explains why there is no change and gives details of the relevant appeal rights
- 6.832 If the decision notice does not include a statement of reasons for the decision, the notification should advise the claimant that they may ask the LA to provide a written statement of reasons for the decision. When a written statement of reasons is requested, it should be provided, so far as practicable, within 14 days.

6.833-6.869

6.833 The DM should notify the outcome of a notified change as soon as possible after the decision is made.

*D&A Regs, reg 10; HB Regs 2006 reg 90 & Sch 9; CTB Regs 2006, reg 76 & Sch 8*

6.834-6.849

### ***Error of law***

6.850 A decision may be superseded because it is wrong in law.

*D&A Regs, reg 7*

6.851 Errors of law arise when the DM wrongly interprets or applies statute or case law. They may arise also from a wrong inference or conclusion from the particular facts of a case. Although supersession is possible for error of law, it is more likely to result in revision for official error.

6.852-6.859

### ***Definition of error of law***

6.860 Case law sets out categories of circumstances in which errors of law may be found. Case law is also helpful when considering the application of the Acts. The relevant categories are

- an incorrect interpretation of the meaning of the law has been applied  
*R(A) 1/72; R(SB)11/83*
- the decision is not supported by evidence or there is insufficient evidence
- the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the decision in question
- there has been a breach of the requirement to act according to the demands of natural justice

6.861 Cases can arise when DMs realise they have wrongly interpreted the law. If that error is wholly their responsibility, then it should be considered to be an official error and the decision should be revised.

6.862 If the claimant has contributed to the error in any way, then it will not be an official error and the decision should be superseded.

*D&A Regs, reg 4 & 7*

6.863 Decisions of the Courts, reported Commissioners decisions and decisions of the UT, are most likely to be the source of cases when the decision was based on a false proposition of law. These decisions may indicate that the way the law has been interpreted previously by the Commissioners, UT Judges or in advice given to DMs, has been wrong.

6.864-6.869

### *Material fact*

- 6.870 A material fact is one that 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.
- 6.871 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**

An 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.

- 6.872 An application for supersession because of ignorance of, or mistake as to, a material fact may not always result in a different decision. The DM must be satisfied that the fact involved would require serious consideration and could have affected the decision if it had been known at that time.

*R(I) 2/88 (Appendix)*

- 6.873 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.

- 6.874 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 evidence.

*R(I) 3/75*

6.875-6.879

### *Ignorance of a material fact*

- 6.880 A decision may be superseded if the DM is satisfied that it was given in ignorance of a material fact. A material fact is one which is relevant to an award of benefit and has to be identified before a decision is given. The fact must exist at the time the original decision is given.

*CAO v Combe Court of Session*

- 6.881 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 ignorance, but supersession because of a mistake as to a material fact may be possible.

6.882-6.901

- 6.882 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 evidence. 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.

*R(SB) 18/81, R(SB) 29/83*

6.883-6.889

### ***Mistake as to a material fact***

- 6.890 A DM may misinterpret the evidence and make a mistake as to a material fact.

*R(G) 8/55*

- 6.891 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. If the claimant had contributed to the mistake, it would not be an official error and the decision would be superseded.

*D&A Regs, reg 4 & 7*

- 6.892 The mistake may be made when deciding 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.

6.893-6.899

### ***Effective dates***

#### ***Reinterpretation of the law***

- 6.900 Sometimes the UT and the Courts give decisions that change a previously held interpretation of the law. Following reinterpretation, DMs can revise or supersede, because of an error of law, other decisions on

- benefit entitlement
- payability

*CSPSS, Sch 7 Para 18*

- 6.901 The decision of a UT or a Court that has found an adjudicating authority's decision to be wrong in law is called the relevant determination. The reinterpretation cannot be applied to any period before the date of the relevant determination.

*CSPSS, Sch 7 Para 18*

- 6.902 The DM should apply the effect of the reinterpretation when the DM decides
- a claim, regardless of whether the claim was made before or after the date of the relevant determination
  - an application for revision or supersession, regardless of whether the application was made before or after the date of the relevant determination

*CSPSS Sch 7 Para 18*

6.903-6.909

### ***The date of the relevant determination***

- 6.910 The date of the relevant determination is the date the UT or Court reinterpret the law. This may be difficult to identify when a UT decision is appealed to the Courts. As a general rule the relevant determination is the first decision of the UT or the Court that contained the reinterpretation of the law.

6.911-6.919

### ***European Court of Justice***

- 6.920 Exceptionally, the UT and Courts can refer a matter to the European Court of Justice to decide a particular question. The ruling given by the European Court on the matter will then be incorporated into the final decision made by the UT or Courts, according to whichever of them had referred the matter for determination.

6.921-6.929

## ***Rent penalty notices and no rent payable orders (Scotland)***

### ***Introduction***

- 6.930 Since 30 April 2006, as a result of provisions in the Antisocial Behaviour etc. (Scotland) Act 2004, all landlords in Scotland (with a few exceptions), must register with their LA. The rent penalty notice is one of the penalties for failure to register, and it involves the LA serving a notice that no rent is payable on the property. A landlord cannot charge rent for a property to which a rent penalty notice applies, so tenants living in that property will not be able to get HB.
- 6.931 The Antisocial Behaviour etc (Scotland) Act 2004, also allows an LA to serve an antisocial behaviour notice on a landlord if
- anyone who occupies or visits their property engages in antisocial behaviour at or near the property, and
  - the landlord has failed to take reasonable management steps to address the antisocial behaviour



6.932-6.999

- 6.932 The notice requires the landlord to take specified actions to deal with the antisocial behaviour. If the landlord fails to comply with the antisocial behaviour notice, the LA can apply to the courts for a no rent payable order, which means the landlord cannot charge rent and so HB cannot be paid.

***Appeal made against a notice or order and appeal is won***

- 6.933 A landlord or agent can appeal against a rent penalty notice within 21 days of the date that it takes effect. If the appeal is successful then the notice can be revoked.
- 6.934 The making of a no rent payable order can be appealed to the sheriff principal within 21 days of the date it was made. If the appeal is successful then the order is set aside.
- 6.935 In both cases, this means that the tenant's rental liability will be restored. The tenant can be required to pay back-rent for the period from the making of the notice or order to the appeal decision **only** if the landlord gave prompt notice to the tenant of the appeal at the time it was made.

***Effect on HB claim***

- 6.936 If an HB claim was terminated because of the issue of a rent penalty notice or no rent payable order and there has been a successful appeal against that notice or order, you do not need to invite a new claim and consider backdating. Revise the original decision and continue to pay HB on the existing claim.

6.937-6.999