

# Chapter 83 - Assessed income periods

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# Chapter 83 - Assessed income periods

## Introduction

83000 An assessed income period (AIP) is a period specified by a DM during which the amount of a claimant's retirement provision is fixed subject to deemed increases made in accordance with the relevant legislation<sup>1</sup>.

*1SPCAct02,s7(4)*

**Note:** No new AIPs will be set on, or after 6.4.16<sup>1</sup>. As a consequence, claimants will be expected to report all relevant changes in their circumstances, including their retirement provision. Accompanying changes to existing, fixed period and some indefinite period AIPs are described in this chapter.

*1PensionsAct14,s28;PensionsAct2014(CommencementNo.5)Order2015.s2(2)(b)*

83001 - 83004



## Duty to specify an AIP

83005 Where a DM makes a relevant decision in the circumstances described in DMG 83006 or 83007, the DM must at the same time specify an AIP<sup>1</sup> unless prevented from doing so in accordance with DMG 83020.

*1 SPC Act 02, s 6(1)*

**Note:** This only applies to relevant decisions made before 6.4.16.

83006 The first set of circumstances is where<sup>1</sup>

1. a DM determines the amount of a claimant's income for the purposes of a decision on SPC **and**
2. that decision is
  - 2.1 a decision deciding a claim for SPC **or**
  - 2.2 a revision of a decision relating to SPC **or**
  - 2.3 a supersession of a decision relating to SPC **and**
3. the decision takes effect on or after
  - 3.1 the day the claimant attains the age of 65 **or**
  - 3.2 if earlier than the day in 3.1, where the claimant is a member of a couple, the day on which the other member of the couple attains age 65 **and**
4. the decision is not to the effect that the claimant is not entitled to SPC.

*1 SPC Act 02, s 6(3)*

**Note:** New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year Periodic Case Review (PCR) set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen.

83007 The second set of circumstances is where<sup>1</sup>

1. the amount of the claimant's income is determined on an appeal against a decision that the claimant is not entitled to SPC **and**
2. the FtT decides that the claimant is entitled to SPC **and**
3. the FtT's decision takes effect on or after the dates set out in DMG 83006 3..

*1 SPC Act 02, s 6(4)*

83008 - 83009

## Meaning of relevant decision

83010 A "relevant decision" means<sup>1</sup> a decision determining the amount of a claimant's income for the purposes of

1. a decision as in DMG 83006 1. **or**

2. a FtT decision that the claimant is entitled to SPC as in DMG 83007 2..

*1 SPC Act 02, s 6(5)*

83011 - 83019

## When is a DM prevented from setting an AIP

83020 A DM cannot set an AIP where

1. the relevant decision takes effect at a time when an AIP is already in force<sup>1</sup> or
2. in the case of partners, one partner is aged under 60<sup>2</sup> or
3. SPC is awarded, or is awarded at a higher rate because an element of the claimant's retirement provision which is due to be paid stops temporarily<sup>3</sup>.

*1 SPC Act 02, s 6(2); 2 SPC Regs, reg 10(1)(a); 3 reg 10(1)(b)*

**Note:** this does not apply where the change occurs on, or after 6.4.16.

83021 - 83024

## Revision

83025 A decision to set an AIP is a decision under a relevant enactment<sup>1</sup>. It can therefore be revised in the circumstances prescribed in the legislation<sup>2</sup>.

*1 SS Act 98, s 8(4); 2 s 9; SS CS (D&A) Regs*

### Example

Mick made a claim for SPC on 5.1.11. When making his claim Mick told the DM that his house was up for sale and that he had savings of £3,000. Despite this information (see DMG 83041), the DM set an AIP for 5 years. On 9.3.11 Mick informs the DM that he has moved address because he has sold his house and bought a flat. He also now has capital of £25,000 left from the proceeds of the sale of the house after buying the flat. When looking at the circumstances of the case, the DM realises that an AIP should not have been set. The DM revises the decision setting an AIP on the grounds of official error (see DMG Chapter 03).

83026 - 83029

## Supersession

83030 A decision to set an AIP may also be superseded. However the only change of circumstances that will be relevant in relation to AIP decisions is the ending of the AIP<sup>1</sup> (see DMG 83050).

*1 SS CS (D&A) Regs, reg 6(8)*

83031

## How long does an assessed income period last

83032 Unless DMG 83041 applies (but see 83039 for new claims to SPC made on, or after 6.4.16), an AIP is

1. a period of five years or
2. an indefinite period

beginning with the day that the relevant decision takes effect<sup>1</sup>. DMG 83050 provides guidance on when an AIP will come to an end.

**Note:** DMG 83043 et seq gives guidance on backdating and setting the AIP.

*1 SPC Act 02, s 9*

83033 The relevant decision takes effect from the first day for which there would be entitlement to SPC even though payability may not start until the first day of the claimant's benefit week (see DMG 79012).

### AIPs of five years

83034 Claimants who are aged **under 75** on the day that the relevant decision takes effect have an AIP of a maximum period of five years beginning with the day that the relevant decision takes effect<sup>1</sup>.

*1 SPC Act 02, s 9(1)(a)*

**Note:** This only applies to relevant decisions made before 6.4.16. See DMG 83039 for new claims to SPC made on, or after 6.4.16.

#### Example 1

A claim for SPC is made on 16.04.09 by Lloyd who is a 68 year old man. The DM decides that the first day for which payment can be made is Monday 20.04.09. The DM decides that the AIP runs from 16.04.09 to 15.04.14.

#### Example 2

A claim to SPC is made on 07.05.09 by Jean who is a 66 year old woman. The DM decides that the first payday is Monday 11.05.09. The DM sets a five year AIP running from 07.05.09 to 06.05.14.

83035 Although an AIP may have been set for up to a period of five years, it can be brought to an end in the circumstances described at DMG 83050. Where an AIP comes to an end on, or after 6.4.16, a new AIP will not be set. A PCR will be set in those awards.

## AIPs of an indefinite period

83036 To qualify for an AIP of an indefinite period the claimant must be **aged 75 or over** on the day that the relevant decision takes effect (but see 83039 for new claims to SPC made on, or after 6.4.16)<sup>1</sup>.

*1 SPC Act 02, s 9(1)(b)*

### Example 1

Ron makes a claim for SPC on 6.4.09 which also happens to be the date of his 75<sup>th</sup> birthday. After assessing the claim, the DM decides that Ron is entitled to SPC from 6.4.09 and that it is payable from that date. The DM also decides that Ron's AIP will start on 6.4.09 and will have no fixed end date.

### Example 2

Asif makes a claim for SPC on 13.5.09. He is aged 77. The DM decides that SPC is payable to Asif from 18.5.09. The DM also decides that Asif's AIP will start on 13.5.09 and will have no fixed end date.

83037 Although an AIP may have been set for an indefinite period, it can be brought to an end in the circumstances described at DMG 83050. Where an AIP of an indefinite period is brought to a natural end on, or after 6.4.16, a new AIP will not be set.

## Claimants aged 80 or over with an existing award of SPC

83038 Where

1. an AIP has come to an end on or after 6.4.09 but before 6.4.14 by the expiry of a period of five years or more (an AIP of between 5 and 7 years may have been set under transitional arrangements) **and**
2. the claimant is aged 80 or more at that time

the AIP has to be treated as not ending at that time but as continuing indefinitely subject to it being brought to an end in the circumstances described at DMG 83050<sup>1</sup>.

*1 SPC Act 02, s 9(6)*

### Example

Ella has been in receipt of SPC for a number of years and is aged 82. Her AIP which had been set for five years was due to end on 20.4.09. The DM treats the AIP as not ending on 20.4.09 and as continuing indefinitely unless it is brought to an end in the circumstances described in DMG 83050.



## New Claims from 6.4.16

83039 New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year PCR set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen. AIPs can not be set in these awards.

83040

## Retirement provision is likely to change within twelve months

83041 If the DM considers that the claimant's retirement provision is likely to change within the period of twelve months beginning on the day the relevant decision takes effect then

1. the DM does not have to set an AIP<sup>1</sup> or
2. if the DM does set an AIP, it has to be for any suitable period shorter than five years (beginning on the date the relevant decision takes effect)<sup>2</sup>

*1 SPC Act 02, s 9(2)(a); 2 s 9(2)(b)*

**Note:** this only applies to relevant decisions made before 6.4.16.

### Example 1

The DM calculated Mrs Clarke's retirement provision and decided to award SPC from 15.12.08. However, in the claim form, Mrs Clarke stated that she had recently put her house up for sale. The DM decided not to set an AIP.

### Example 2

Mr Jones claimed SPC from 9.1.06 and said he may claim his RP from 17.4.06. He has deferred his RP since 11.4.05. He currently has capital of £9,500.

The DM decides that Mr Jones' retirement provision is unstable because he may get a lump sum which, because of the way it is disregarded, could affect his deemed income from capital. An AIP cannot be set.

**Note:** The lump sum disregard is applied to the gross amount rather than the net amount actually paid after tax. This means that the disregard can impact on the claimant's other capital by reducing any existing deemed weekly income.

### Example 3

On 10.2.06 Mr Jones (in example 2 above) decides to claim his RP immediately. He will no longer have the option to take a lump sum payment, as he deferred his RP for less than a year.

The DM decides Mr Jones' retirement provision is now stable and an AIP is set from 10.2.06

83042 In deciding whether the current retirement provision is going to be typical throughout the following twelve months the DM should take account<sup>1</sup> of the fact that, if an AIP were set, the retirement provision would be subject to the deemed variations described in DMG 83100 - 83102

*1SPCAct02,s9(3)*

**Note:** New claims to SPC with a Treat as Made (TAM) date on, or after 6.4.16 will have a 3 year PCR set. The claimant will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen. AIPs can not be set in these awards.

## Backdating

83043 Where the person claims SPC for a period before the date of claim in deciding whether to award SPC and the amount payable, the DM has to decide the amount of the claimant's income (including his retirement provision) for that period. This is a "relevant decision"<sup>1</sup> (see DMG 83010).

**Note:** Backdating may be up to three months earlier than the date the claim is actually made<sup>2</sup>.

*1 SPC Act 02, s 6(5); 2 SS (C&P) Regs, reg 19(3)(i)*

83044 On making this relevant decision, the DM must consider whether to set an AIP<sup>1</sup>. In order to do that, the DM has to make a judgement as to whether the claimant's retirement provision is likely to be typical throughout the twelve months starting with the date the claim for SPC is backdated to<sup>2</sup>.

*1 SPC Act 02, s 6(1); 2 s 9(2)*

83045 In making this judgement, the DM must look at the position as it stood on the day the claim is backdated to, which may be up to three months earlier than the date of claim. DMs must consider whether, had they been making that decision at that time, they would have decided that the retirement provision was likely to be typical over the following twelve months or not.

**Note:** This approach ensures that claimants whose claims are backdated are treated in the same way as those who do not request backdating.

### Example 1

Bill, aged 67, made a valid claim for SPC on 16.2.09. He requested that his claim be backdated to 1.12.08.

He declares that he has an occupational pension, which has no provision for annual increases. He also states that he had a lottery win of £50,000 in January 2009.

The DM decided to backdate the claim and awards SPC from 1.12.08.

The DM then considered whether to set an AIP. He asked himself whether, **as at 1.12.08**, the lottery win was predictable. As it clearly was not, the DM decided that the occupational pension had been likely to be typical of the claimant's retirement provision over the period 1.12.08 to 15.2.09 (the period of time back to the first day the claimant wishes to claim SPC from).

The DM therefore set a five year AIP running from 1.12.08 to 30.11.13.

As a result, The DM decided that the lottery win has no effect on the award and could be ignored until the end of the AIP.

## Example 2

Patricia, aged 70, made a valid claim for SPC on 15.3.09. She asks for her claim to be backdated by three months.

She declares that she currently receives an occupational pension of £14.70 a week, which does not increase. She also declares that she received £15,000 net on the maturity of an insurance policy on 5.1.09.

The DM decides to backdate the claim by three months to 16.12.08.

In calculating the amount of SPC due from 16.12.08, the DM decides that the claimant's retirement provision was £14.70. The DM goes on to consider whether to set an AIP commencing 16.12.08. He decides that, **as at 16.12.08**, the maturing of the insurance policy was predictable.

The DM determines that he will not set an AIP from 16.12.08 due to the expected changes in the claimant's retirement provision. The DM then goes on to recalculate the retirement provision to take account of the receipt of capital on 5.1.09. In doing so he determines that, as at 5.1.09, the claimant had a deemed weekly income from capital of £18 a week, in addition to the second pension of £14.70 a week, making a total of £32.70 retirement provision to be taken into account.

The DM decides to award SPC. In making the award the DM takes a retirement provision of £14.70 into account from 16.12.08 and then a retirement provision of £32.70 into account from 5.1.09.

Finally, as no further changes in retirement provision were likely during the twelve months from 5.1.09, the DM sets an AIP for five years from 5.1.09 to 4.1.14.

- 83046 There will of course also be cases where it is not clear-cut whether a particular change was or was not predictable as at the date the claim is backdated to. For example a house may have been up for sale at that time or a relative may have died but the estate has not yet been distributed. These are matters for DMs to decide on the balance of probabilities in the particular circumstances of the case. For example with regard to a house up for sale, in one case the claimant may have instructed her estate agent to obtain a quick sale but in another case the property might be in poor condition in an undesirable area where houses are taking years to find a buyer.

## Backdating - when does an AIP start

- 83047 An AIP starts from the date the relevant decision takes effect. DMs are reminded that usually in a new claim that means the first day for which SPC would be payable (if it were not for the rule that payment begins from a payday). (See examples in DMG 83034 - 83036). A relevant decision **does not** "take effect" on the date it is made.

**Example**

Henry aged 66 makes a claim for SPC on 10.3.09. He asks that his claim be considered from 11.12.08.

The DM decides to backdate the claim by three months to 11.12.08.

On 17.3.09 the DM decides to award SPC to Henry and that it is payable from 15.12.08 (the first payday following 11.12.08).

The DM decides that he can set a five year AIP. He decides that the AIP starts on 11.12.08 and ends on 10.12.13.

**Note:** New claims to SPC with a TAM date on, or after 6.4.16 will have a 3 year PCR set.

83048 - 83049



## When will an AIP end

83050 An AIP of any length will end at any time at which

1. the claimant becomes a member of a couple<sup>1</sup>
2. the claimant ceases to be a member of a couple<sup>2</sup>
3. the claimant attains the age of 65<sup>3</sup>
4. where the claimant is a member of a couple, the other member of the couple attains the age of 65<sup>4</sup>
5. the claimant no longer satisfies a condition of entitlement to SPC<sup>5</sup>
6. payments of an element of the claimant's retirement provision
  - 6.1 stop temporarily or
  - 6.2 the amounts paid are less than the amount due and as a consequence the award of SPC is superseded<sup>6</sup>
7. a claimant who has no partner is provided with accommodation in a care home or an independent hospital on a permanent basis<sup>7</sup> (see DMG Chapter 77 for the meaning of care home and independent hospital).

Where the AIP (indefinite or fixed length) ends in such a manner as described in DMG 83050 and takes effect on, or after 6.4.16, a new AIP will not be set. In those cases a PCR will be set. There are no provisions for any linking rules and there is no right of appeal where an AIP ends through natural expiry.

**Note:** See DMG 77012 for the definition of 'couple'.

*1 SPC Act 02, s 9(4)(a); 2 s 9(4)(b); 3 s 9(4)(c); 4 s 9(4)(d); 5 SPC Regs, reg 12(a); 6 reg 12(b); 7 reg 12(c)*

### Example

Owen, a single man, is aged 78 and is in receipt of SPC. When making the award of SPC from 20.4.09, the DM also decided to set an AIP for an indefinite period. Owen informs the DM that his partner to be, also aged 78, is moving in with him on 18.4.16. The DM decides to end Owen's AIP when his partner moves into his household because he has become a member of a couple.

The DM supersedes the award of SPC to take account of the fact that Owen is now a member of a couple. The DM sets a three year PCR for Owen.

## Ending of some Fixed Length AIPs

83051 Those awards of SPC with a fixed length AIP which is due to end between 1.4.19 and 5.4.21 will be brought to an end on a date earlier than originally intended<sup>1</sup>. Appendix 2 details the dates on which these AIPs will now end<sup>2</sup>. An AIP that ends in this way does not carry a right of appeal.

*1 SPC Act 02, s 9, 2, SPC Regs, reg 12(d); 2 SPC Regs, Sch IIIA*

83052 - 83059



## Effect of the assessed income period

83060 Where an AIP has been set, the amount of a claimant's retirement provision is fixed subject only to deemed variations.

### The assessed amount

83061 Where the DM determines the claimant's income

1. for the purposes of the relevant decision **and**
2. includes an element of the retirement provision (called the "assessed amount") then the amount of that element has to be
  - 2.1 the amount as originally assessed or
  - 2.2 the amount as varied in accordance with DMG 83100 - 83102

for the duration of the AIP<sup>1</sup>.

*1 SPC Act 02, s 7(3)*

83062 If, when making the relevant decision, the DM decides that the claimant's income does not include

1. any retirement provision **or**
2. any further elements of retirement provision

then these cannot be included in the claimant's income for the duration of the AIP<sup>1</sup>.

*1 SPC Act 02, s 7(5)*

83063 - 83064

### Meaning of retirement provision

83065 Retirement provision means<sup>1</sup> any of the following

1. income from an occupational pension scheme<sup>2</sup>
2. income from a personal pension scheme<sup>2</sup>
3. income from an overseas arrangement<sup>3</sup>
4. income from a retirement annuity contract<sup>4</sup>
5. income from annuities or insurance policies purchased or transferred for the purpose of giving effect to rights under a personal pension scheme or an overseas arrangement<sup>5</sup>
6. income<sup>6</sup> from an annuity purchased or entered into for the purpose of crediting a former partner with a share of pension rights on divorce<sup>7</sup>
7. any pension payable out of money provided under the Civil List Acts<sup>8</sup>

8. payments made to a person by or on behalf of a former employer on account of early retirement on grounds of ill-health or disability<sup>9</sup>
9. income from annuity contracts other than those mentioned in DMG 83065 4.-6.<sup>10</sup>
10. income from capital<sup>11</sup>
11. any payment made at regular intervals under an equity release scheme<sup>12</sup>
12. any payment made under the Financial Assistance Scheme<sup>13</sup>
13. periodic payments from the Pension Protection Fund<sup>14</sup>.

**Note:** Retirement provision **does not** include<sup>15</sup> state retirement benefits (including the new State Pension) paid in accordance with the Act<sup>16</sup>.

*1 SPC Act 02 s 7(6); 2 s 16(1)(f); 3 s 16(1)(g); 4 s 16(1)(h); 5 s 16(1)(i); 6 s 16(1)(j);  
7 WRP Act 99, s 29(1)(b); 8 SPC Regs, reg 16; 9 reg 16(1)(l);  
10 SPC Act 02, s 7(6)(b); 11 s 7(6)(c); 12 SPC Regs, reg 16; 13 reg 16(n);  
14 SPC Act 02, s 7(6)(d); 15 s 7(6)(a); 16 SS CB Act 92*

## Meaning of overseas arrangement

83066 An overseas arrangement is<sup>1</sup> a scheme or arrangement which

1. has the effect (or is capable of having the effect) of providing benefits to or in respect of employed earners
  - 1.1 on the termination of employment **or**
  - 1.2 on death **or**
  - 1.3 on retirement **and**
2. is administered wholly or primarily outside GB **and**
3. is not an appropriate scheme as described in the legislation<sup>2</sup> **and**
4. is not an occupational pension scheme.

*1 SPC Act 02 s 16(3); PS Act 93, s 181(1); 2 s 7*

83067 Where the claimant is in receipt of a foreign state retirement pension (see DMG 85094) then that income is to be treated in the same way as a domestic retirement pension and therefore cannot form part of the claimant's retirement provision. The treatment of it is unaffected by any AIP<sup>1</sup> which might be in place.

*1 SPC Regs, reg 11(2)*

83068 For the period 20.3.09 - 12.4.10 it was possible that a foreign state retirement pension could form part of a claimant's retirement provision. Appendix 1 provides guidance on those types of cases.

83069 - 83071

## Meaning of occupational pension scheme

- 83072 An occupational pension scheme is a pension scheme defined under specific pensions legislation<sup>1</sup> that provides benefits to, or in respect of, people with service in a particular employment or may provide benefits to, or in respect of, other people.

*1 SPC Act 02, s 17; PS Act 93, s 1*

## Meaning of personal pension scheme

- 83073 A personal pension is a pension scheme that<sup>1</sup>
1. is not an occupational pension scheme **and**
  2. is established by a person within specified finance legislation<sup>2</sup>.

*1 SPC Act 02, s 17; PS Act 93, s 1; 2 Finance Act 2004, s 154(1)*

## Meaning of retirement annuity contract

- 83074 A retirement annuity contract is<sup>1</sup> a contract or scheme approved under specified legislation<sup>2</sup>.

*1 SPC Act 02 s 16(3); 2 Income and Corporation Taxes Act 1988, Part 14, Chapter 3*

## Meaning of equity release scheme

- 83075 Equity release scheme means<sup>1</sup> a loan made between a person “the lender” and the claimant
1. by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals **and**
  2. which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home.

*1 SPC Regs, reg 1(2)*

## Financial Assistance Scheme

- 83076 Financial Assistance Scheme provides financial help to some people who have lost out on their non-state pension because
1. the scheme they were a member of was under-funded when it started to wind-up **and**
  2. the employer is insolvent or no longer exists.
- 83077 Persons will be eligible to be considered for a Financial Assistance Scheme award if they satisfy both of the following conditions
1. they belong (or have belonged) to a qualifying pension scheme **and**
  2. they are within three years of their normal retirement age (as laid down in their pension scheme rules) or older on 14.5.04.

83078 Subject to an annual cap, awards will top up the amount payable under the qualifying pension scheme to a level broadly equal to 90% of the amount that would have been received had the pension scheme not started to wind-up. Tax will be deducted at source. In most cases, Financial Assistance Scheme payments for individuals will commence at age 65. The terminally ill and survivors may qualify for payments earlier.

## **Pension Protection Fund**

83079 The Pension Protection Fund compensates members of defined benefit (final salary) occupational pension schemes where the employer goes out of business and the scheme is left with insufficient funds. The Pension Protection Fund Board decides whether to take over the pension scheme's liabilities and pay compensation to members.

83080 Compensation may be made as regular payments of income and lump sums (just as the former pension scheme would have paid). Members cannot gain financially under the Pension Protection Fund. In some cases members will see no change in the amount of income they receive. However, in some cases members may receive a lower level of income than their pension would have provided.

83081 - 83099

## **Deemed variations**

83100 Where an AIP is in force, elements of the claimant's retirement provision are deemed<sup>1</sup>

1. to increase or
2. in the case of income from capital, to increase or decrease

on such dates and by such amounts as are prescribed in the relevant legislation - see DMG 83120 et seq.

*1 SPC Act 02, s 7(4)*

83101 Where the result of a deemed variation is that the amount of SPC to which the claimant is entitled increases or decreases then that increase or reduction takes place without the need for any further decision by the DM<sup>1</sup>. This means that there is no decision superseding the award of SPC.

*1 SPC Act 02, s 10(2)*

83102 Where, even though there has been a deemed variation in an element of retirement provision, there is no change in the amount of SPC to which the claimant is entitled then the award continues in force at the same rate<sup>1</sup> without the need for any further decision. This means that there is no decision superseding the award of SPC.

*1 SPC Act 02, s 10(3)*

83103 - 83109

## **Circumstances in which retirement provision is deemed not to change**

83110 Where an AIP is in force then in certain circumstances elements of the claimant's retirement provision are deemed not to change. The prescribed circumstances are<sup>1</sup> that

1. the arrangements under which the assessed amount is paid contain no provision for periodic increases in the amount payable or
2. the assessed income comprises income from capital (except where DMG 83130 applies).

*1 SPC Regs, reg 10(2)*

83111 - 83119

## **Dates and amounts of deemed increases**

### **Deeming based on actual increase**

83120 Where the DM is informed that the arrangements under which an element of retirement provision is paid contain provisions for

1. the payment to be increased periodically **and**
2. the date on which the increase is to be paid **and**
3. determining the amount of the increase

then the amount is deemed to increase by the amount provided for in the arrangements<sup>1</sup>.

*1 SPC Regs, reg 10(4)*

83121 Where the period for which the increase in the assessed amount is first paid is the same as the period for which the last regular payment was made<sup>1</sup>, the deemed increase takes effect from<sup>2</sup>

1. the date the first increased payment is actually paid if that is the first day of the claimant's benefit week or
2. the first day of the benefit week that immediately follows the benefit week in which the first increased payment is actually paid.

*1 SPC Regs, reg 10(5A); 2 reg 10(5)(a)*

### Example

SPC has been in payment to Frances since 6.10.03. The first day of her benefit week is a Monday. The Secretary of State has been given full details of the arrangements under which periodical increases of Frances' occupational pension are calculated and paid: regular payments of occupational pension are made on the last day of each calendar month. The last regular payment before the increase was made on 30.6.04. Annual increases of 2% take effect from the first day in July but are not paid until 31 July. The DM decided that the period between 1.7.04 and 31.7.04 was the same as the last regular payment period (that is, a calendar month). He therefore applied the deemed increase from 2.8.04 (the first day of the benefit week immediately following 31.7.04).

83122 Where the period for which the increase in the assessed amount is first paid is not the same as the period for which the last regular payment was made, the deemed increase takes effect from<sup>1</sup>

1. the date the second payment of the increased amount is actually paid, if that is the first day of the claimant's benefit week **or**
2. the first day of the claimant's benefit week immediately following the date the second payment of the increased amount is actually paid.

*1 SPC Regs, reg 10(5)(b)*

### Example

SPC has been in payment to Clare since 1.11.03. The first day of the benefit week is Monday. The Secretary of State has full details of the way in which Clare's occupational pension increases each year. Regular payments of the occupational pension are made on the last day of each calendar month. An annual increase of 2.6% takes effect from 15.9.04 and that increase is first paid with the regular payment on 30.9.04. The DM decided that the period between 15.9.04 to 30.9.04 (16 days) was not the same as the period covered by the last regular payment made on 31.8.04 (a calendar month). The DM decided that the second payment of the increased amount was to be paid on 31.10.04. He therefore applied the deemed increase from 1.11.04 (the first day of the benefit week immediately following 31.10.04).

### Deeming based on standard increase

83123 Where the Secretary of State has **not** been provided with all of the information set out in DMG 83120 the relevant element of retirement provision is deemed to increase **on**<sup>1</sup>

1. the day in April each year when the annual uprating of additional pensions comes into force if that is the first day of the benefit week **or**
2. the first day of the next following benefit week

by an amount produced by applying to the relevant element of retirement provision the same percentage increase as the Secretary of State directs shall be made to additional pensions on uprating.

*1 SPC Regs, reg 10(6)(a)*

### **Example**

Jessica has been receiving SPC since January 2004. On her SPC claim form Jessica set out the current amount of her occupational pension but was unable to provide answers about possible future increases. Jessica's benefit week starts on a Tuesday. The DM decided to apply an increase of 2.8% with effect from 13.4.04, as that was the first day of the benefit week starting immediately after 12.4.04 (the day in April 2004 when the annual uprating of additional pensions comes into force).

83124 - 83129

## **Income from capital**

83130 Where the assessed amount comprises income from capital and the claimant's income from that capital

1. increases or
2. decreases

then the assessed amount is treated as changing on the first day of the next benefit week to begin on or after the day on which the income increases or decreases<sup>1</sup>.

*1 SPC Regs, reg. 10(7)(a)*

83131 The amount of the increase or decrease is equal to the change in the claimant's income as determined by

1. changes made to the deemed weekly income from capital (see DMG Chapter 84) or
2. changes made to the capital limits above which income is deemed from capital or
3. both 1. and 2.<sup>1</sup>.

*1 SPC Regs, reg. 10(7)(b)*

83132 - 83139

## Retirement provision in assessed income period

83140 Where an element of a person's retirement provision ceases to be payable by one source but

1. responsibility for that element is assumed by another source, income from both those sources has to be treated as income from the same source
2. in consequence of that element ceasing, income of a different description becomes payable from a different source, that income has to be treated as income of the same description from the same source as the element which ceased to be payable<sup>1</sup>.

*1 SPC Regs, reg 11(1)*

83141 - 83149



# Changes in retirement provision during an AIP

## Reductions in retirement provision during an AIP

83150 The rules for fixing a claimant's retirement provision do not prevent a DM from making a decision where a claimant's retirement provision reduces during an AIP and the claimant is entitled to an increase in their SPC.

83151 The DM can make a decision on the claimant's retirement provision at any time during the AIP where the<sup>1</sup>

1. decision is a supersession decision **and**
2. supersession results in an increase in the amount of SPC that the claimant is entitled to **and**
3. increase in SPC is due (or partly due) to the change in the claimant's retirement provision.

*1 SPC Act 02, s 8(1)*

83152 Where a supersession decision is made as in DMG 83151, then the claimant's remaining retirement provision is fixed until the end of the existing AIP<sup>1</sup>.

*1 SPC Act 02, s 8(3)*

**Note:** where the change occurs on, or after 6.4.16 **and** the AIP ends under existing rules (see DMG 83050), a PCR will be set.

### Example 1

Alice claimed SPC and because her retirement provision was stable the DM set an AIP for five years. Alice's benefit week commenced on a Monday.

Six months later (on 5.12.06) Alice told the DM that her income from one small occupational pension had ceased. Alice had given up £2.80 a week occupational pension she was entitled to in exchange for a one off lump sum payment of £3,000, which she had received on 1.12.06. Alice had no other savings. The DM did a full check of Alice's retirement provision to determine the overall effect.

The DM decided the occupational pension should no longer be taken into account and Alice's SPC increased by £2.80 a week from Monday 4.12.06.

### Example 2

Boris is in receipt of SPC and because his retirement provision was stable at the outset his AIP was set for five years. Boris' benefit week commences on a Monday.

Fours years later (on 27.10.17) the Department receives confirmation (via HMRC's RTI feed) that Boris' occupational pension has reduced. There are no other changes

to Boris' retirement provision and the overall effect is an increase in his SPC. The DM supercedes Boris' SPC award taking the new occupational pension rate into account from 23.10.17. The AIP is not affected by this decision and continues to apply until it expires at the end of the five year period it was originally set for.

83153 The condition at DMG 83151 2. and 3. is also treated as satisfied if<sup>1</sup>

1. the supersession results in a decrease in the amount of SPC the claimant is entitled to **but**
2. the decrease is less (overall) than it would otherwise have been because there has been a change in the income which the claimant is required to report.

**Note:** This allows for the situation where the claimant's retirement provision decreases and the claimant's other income increases during the same benefit week resulting in an overall decrease in the amount of SPC to be paid.

*1 SPC Act 02, s 8(2)*

#### **Example 1**

Jack claimed SPC and because his retirement provision was stable the DM set an AIP for five years. Jack's benefit week commenced on a Monday

Two years later Jack told the DM about a change in his retirement provision. On 3.11.06 Jack declared that on 31.10.06 he had spent £9,000 from his savings (of £16,500) to pay for essential repairs to his home. He also declared that from 10.11.06 he would receive £30 a week earnings.

The DM did a full check of Jack's retirement provision to determine the overall effect. As a result of the overall changes (£25 earnings to be taken into account and £18 no longer deducted for deemed weekly income) Jack's SPC decreased by £7 a week from Monday 6.11.06.

#### **Example 2**

Mary claimed SPC and because her retirement provision was stable an AIP was set for 5 years. Mary's benefit week commenced on a Monday.

Six months later on 20.7.07 Mary reported her savings had increased from £5,500 to £10,600. She also reported that from 21.7.07 she would be receiving £60 a week for providing her niece with board and lodging.

The DM does not action the increase in Mary's savings during her AIP because this would not be a beneficial change to her retirement provision. The DM only actions the change in Mary's other income (under the usual rules for dealing with a non retirement provision income change).

As a result of the additional income from her boarder Mary's SPC decreased by £20 a week (after the BL disregard was applied) from Monday 23.7.07

83154 - 83159

## **Increases in retirement provision during an AIP**

83160 Where the claimant reports a change in retirement provision which would result in the amount of SPC that the claimant is entitled to decreasing then the DM is prevented from making a supersession decision<sup>1</sup>. The claimant's retirement provision has to remain fixed until the end of the AIP.

**Note:** This does not apply to changes reported to **new** awards made on, or after 6.4.16, or those existing awards where the AIP has **already** ended on a date on, or after 6.4.16. Those claimants will be expected to report all relevant changes of circumstances, such as changes to their marital status or retirement provision, as they happen.

*1 SPC Act 02, s 7(3) & (5)*

### **Example 1**

Leslie is in receipt of SPC with an AIP which has 2 years left to run.

He reports to the DM that his capital has decreased but that the income from his occupational pension has increased significantly. The overall effect of these changes would be that the amount of SPC which Leslie is entitled to would reduce if the changes were put into effect on the award of SPC.

The DM cannot make a supersession decision and Leslie's entitlement to SPC continues unchanged.

### **Example 2**

Walter is in receipt of SPC with a 3 year PCR set.

On 16.5.16 he reports that his savings have increased after he inherited a small lump sum from a deceased relative's estate. As a result, the amount of SPC that Walter is entitled to is reduced.

The DM supersedes Walter's entitlement to SPC and sets a new 3 year PCR.

83161 - 83999



# Appendix 1

## Treatment of foreign state retirement pensions for the period 20.3.09 - 12.4.10

- 1 On 20.3.09 a Judge of the UT decided an appeal which affected how foreign state pensions were to be treated when considering entitlement to SPC<sup>1</sup>. Prior to the date of that decision, DMs should have treated a foreign state pension as not being part of a claimant's retirement provision. The Judge decided that a foreign state pension may fall within the meaning of income from an overseas arrangement and therefore be part of the claimant's retirement provision (see DMG 83066). Memo DMG 28/09 was issued in July 2009 to provide guidance on this to DMs.

*1 SSWPvJK(PC)[2009]UKUT55(AAC)*

- 2 From 13.4.10 SPC legislation was amended so that a foreign state retirement pension **cannot** be part of the claimant's retirement provision and should be treated in the same way as a foreign social security benefit<sup>1</sup>.

*1SPCRegs,reg15(2)*

### Meaning of foreign state retirement pension

- 3 A foreign state retirement pension is<sup>1</sup>
1. any pension paid under the law of a country outside the UK **and**
  2. in the nature of social security (similar to a RP paid under UK law).

*1reg1(2)*

- 4 From 13.4.10 where the claimant is in receipt of a foreign state retirement pension then that income should be taken into account in the same way as any other income which is not part of the claimant's retirement provision. It does not form part of the claimant's retirement provision and so the treatment of it is unaffected by any AIP<sup>1</sup>.

*1SPCAct02,s7(6);SPCRegs,reg11(2)*

### Example

Juan is in receipt of SPC and the DM has set an AIP. On 30.4.10 Juan receives the first payment of a state retirement pension paid by the Spanish government. The DM decides that the income does not form part of Juan's retirement provision because it is income from a foreign state retirement pension. This means that the rules whereby a claimant's retirement provision is fixed for the duration of the AIP do not apply to this income. The DM takes the income into account when it is paid because it is not part of the claimant's retirement provision.

## Supersession

- 5 A change in the law is a relevant change of circumstances (see DMG 04109)<sup>1</sup>. From 13.4.10 DMs should be considering superseding awards of SPC where the claimant is in receipt of a foreign state retirement pension. The DM should supersede the award of SPC where the foreign state retirement pension has been treated as part of the claimant's retirement provision and that supersession results in a change in the amount of SPC which the claimant is entitled to. The date of change for the purposes of the supersession will be 13.4.10<sup>2</sup>.

*ISSCS(D&A)Regs,reg6(2)(a); 2 reg7(30)*

### Example

Camilla is in receipt of SPC. The DM set an AIP on 6.5.08 for a period of five years. On 1.5.09 Camilla began to receive a state retirement pension from the Italian government. The DM determined that the pension formed part of Camilla's retirement provision on the grounds that it was an income from an overseas arrangement. Since there was an AIP already in place on 1.5.09 the foreign state retirement pension could have no affect on the amount of SPC that Camilla was entitled to.

From 13.4.10 the DM determines that due to a change in the law, Camilla's Italian pension no longer falls to be treated as part of her retirement provision. The DM takes the payment of that foreign state retirement pension into account as income. The AIP which was set for a period of five years remains in place because none of the circumstances which may bring it to an end have occurred (see DMG 83030 and 83050).

## Appendix 2

Period in which the AIP was originally determined to end	Date on which AIP will now end
1 April 2019 to 14 April 2019	14 July 2016
15 April 2019 to 30 April 2019	28 July 2016
1 May 2019 to 14 May 2019	14 August 2016
15 May 2019 to 30 May 2019	28 August 2016
1 June 2019 to 14 June 2019	14 October 2016
15 June 2019 to 30 June 2019	28 October 2016
1 July 2019 to 14 July 2019	14 November 2016
15 July 2019 to 31 July 2019	28 November 2016
1 August 2019 to 14 August 2019	14 December 2016
15 August 2019 to 31 August 2019	28 December 2016
1 September 2019 to 14 September 2019	14 February 2017
15 September 2019 to 30 September 2019	28 February 2017
1 October 2019 to 14 October 2019	14 March 2017
15 October 2019 to 31 October 2019	28 March 2017
1 November 2019 to 14 November 2019	14 April 2017
15 November 2019 to 30 November 2019	28 April 2017
1 December 2019 to 14 December 2019	14 June 2017
15 December 2019 to 31 December 2019	28 June 2017
1 January 2020 to 14 January 2020	14 July 2017
15 January 2020 to 31 January 2020	28 July 2017
1 February 2020 to 14 February 2020	14 September 2017

15 February 2020 to 29 February 2020	28 September 2017
1 March 2020 to 14 March 2020	14 October 2017
15 March 2020 to 31 March 2020	28 October 2017
1 April 2020 to 14 April 2020	14 December 2017
15 April 2020 to 30 April 2020	28 December 2017
1 May 2020 to 14 May 2020	14 January 2018
15 May 2020 to 31 May 2020	28 January 2018
1 June 2020 to 14 June 2020	14 March 2018
15 June 2020 to 30 June 2020	28 March 2018
1 July 2020 to 14 July 2020	14 April 2018
15 July 2020 to 31 July 2020	28 April 2018
1 August 2020 to 14 August 2020	14 June 2018
15 August 2020 to 31 August 2020	28 June 2018
1 September 2020 to 14 September 2020	14 July 2018
15 September 2020 to 30 September 2020	28 July 2018
1 October 2020 to 14 October 2020	14 August 2018
15 October 2020 to 31 October 2020	28 August 2018
1 November 2020 to 14 November 2020	14 October 2018
15 November 2020 to 30 November 2020	28 October 2018
1 December 2020 to 14 December 2020	14 November 2018
15 December 2020 to 31 December 2020	28 November 2018
1 January 2021 to 14 January 2021	14 January 2019
15 January 2021 to 31 January 2021	28 January 2019
1 February 2021 to 14 February 2021	14 February 2019
15 February 2021 to 28 February 2021	28 February 2019



1 March 2021 to 14 March 2021

14 March 2019

15 March 2021 to 5 April 2021

28 March 2019”

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

