

# Department for Work and Pensions

DECISION MAKING AND APPEALS

## Decision Makers Guide

### Volume 1 Amendment 58 – February 2019

1. This letter provides details on Amendment 58; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

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

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

3. Amendment 58 affects Chapters 1, 2 and 4. The changes:

Chapter 1 - expand the guidance at DMG 01405.

Chapter 2 – amend the date for claiming social fund funeral and maternity payments at DMG 02543.

Chapter 4 - remove out of date guidance on mortgages and loans.

4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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be careful in assessing these matters on written evidence alone. It may be necessary to interview the claimant to get clarification or further information.

- 01402 If it is clear from the case papers that a claimant has previously made statements which have proved to be incorrect, the DM is entitled to regard evidence provided by that claimant critically, regardless of whether these statements were genuine errors or attempts to mislead.

### **Example**

An IB claimant is claiming for a partner who has earnings which he states are the same each month. The papers show that on occasion his partner has not told him of overtime and bonus payments. The overpayments are not recoverable because the claimant did not know the facts and could not be expected to disclose the additional earnings. The DM cannot rely on the claimant's evidence and asks to see the pay slips each month.

01403 - 01404

### **Burden of proof**

- 01405 A clear understanding of where the burden of proof lies helps the DM to weigh the evidence and decide whether further evidence should be sought. DMs should note that
1. initially the burden lies with the claimant to prove that the conditions for a claim or application are satisfied<sup>1</sup> but they should do as much as possible to ensure that the claimant has every opportunity to provide all relevant evidence and where the information is available to them rather than the claimant, then they must take the necessary steps to enable it to be traced
  2. where they wish to show that an exception to a condition of entitlement is not satisfied, the burden of proof rests with them<sup>2</sup>
  3. there is no presumption in favour of the claimant though for IIDB the claimant is normally presumed to have the PD if he has worked in the prescribed occupation; for example, a cotton weaver with byssinosis (see DMG Chapter 67 for full guidance)
  4. where an allegation is denied by the claimant it is generally for DMs to prove the facts.
  5. the burden of proving that the conditions for revision or supersession are satisfied lies with the person who applies for revision or supersession
  6. in overpayment cases the burden of proof for the purposes of determining the sum to be recovered falls on them<sup>3</sup> (see DMG Chapter 09).
  7. where a criminal court convicts a person of an offence related to obtaining or receiving benefit, that conviction shifts the burden of proof relating to the same benefit and period at issue from them to the claimant<sup>4</sup>.

**Note 1:** An example of **2.** is where there is a claim for a SF funeral payment, it is for the DM to show that the claimant is not entitled because a close relative is not in receipt of a qualifying benefit.

**Note 2:** Where **5.** applies the question of whether the **conditions** for revision or supersession are satisfied must be considered separately from the question of whether the decision should be revised or superseded.

*1 R(SB) 2/83(T); 2 Department for Social Development v Kerr [2004] UKHL 23;  
3 SS A Act 92, s 71; CS Act 91, s 16 - 19 & s 71; R(SB) 34/83; 4 R(S) 2/80*

01406 - 01419

02541 A claim for MA which is

1. made between the 14th week before the EWC **and**
2. made up to the beginning of the 6th week before the EWC **and**
3. treated as a claim for IB or SDA

will be a claim in advance for those benefits. The claim can be treated as a claim for IB up to the 14th day following the ADC.

### **IB - failure to satisfy contribution conditions**

02542 Where a claim for IB is made and the DM is satisfied that

1. the contribution conditions are not met **and**
2. within three months the conditions would be satisfied for a PIW beginning in a later benefit year

the DM may treat the claim as made for a period starting with the first day on which the conditions are satisfied and award benefit<sup>1</sup>.

*1 SS (C&P) Regs, reg 13*

### **SF funeral and maternity payments**

02543 An advance claim for a funeral or maternity payment can be made up to three months before the normal time for claiming begins<sup>1</sup>. The normal time for claiming is

1. **for maternity payments** – the period beginning
  - 1.1 eleven weeks before the first day of the EWC and ending six months after the ADC<sup>2</sup> **or**
  - 1.2 with the date on which the claimant becomes responsible for the child and ending 6 months after that date<sup>3</sup> **or**
  - 1.3 with the date on which a qualifying order is made and ending 6 months after that date<sup>4</sup> **or**
  - 1.4 with the date on which the guardianship takes effect and ending 6 months after that date<sup>5</sup> **or**
  - 1.5 with the date on which the child is placed with the claimant or the claimant's partner for adoption and ending 6 months after that date<sup>6</sup> **or**
  - 1.6 with the date on which the adoption<sup>7</sup>
    - 1.6.a takes effect in respect of an adoption under prescribed legislation<sup>8</sup> **or**
    - 1.6.b is recognised under prescribed legislation and ending 6 months after that date<sup>9</sup>

2. **for funeral payments** - the period beginning with the date of death and ending six months after the date of the funeral<sup>10</sup>.

*1 SS (C&P) Regs, reg 13(1); 2 reg 19(1), Sch 4(8) & SFMFE (Gen) Regs, reg 5(3)(a); 3 reg 5(3)(b); 4 reg 5(3)(c); 5 reg 5(3)(d); 6 Reg 5(3)(e); 7 Reg 5(3)(f); 8 Adoption and Children Act 2002, s 66(1)(c), (d) & (e); 9 s 66(1)(e); 10 SS (C&P) Regs, reg 19(1) & Sch 4(9)*

02544 The DM should

1. decide whether a claim which has been made too early can be accepted as an advance claim **and**
2. if the claim is not accepted as an advance claim, disallow it because it has been made outside the normal time limits.

02545 The DM should accept that an advance claim has been made where the evidence shows that the conditions for entitlement will be satisfied

1. **for maternity payments** - on the first day of the eleventh week before the EWC
2. **for funeral payments** - on the date of the funeral.

Benefit will be paid on that day, subject to all the conditions for entitlement being satisfied<sup>1</sup>.

*1 SS (C&P) Regs, reg 13(1)(b)*

02546 - 02559

## **SPC**

### **Making a claim before attaining qualifying age**

**[See Memo DMG 01/19]**

02560 A claim for SPC may be made, and that claim may be determined, at any time within the advance period<sup>1</sup>.

*1 SS (C&P) Regs, reg 4E(1)*

02561 The advance period begins on the date four months before the day on which the claimant attains the qualifying age and ends on the day before the claimant reaches that age<sup>1</sup>.

*1 SS (C&P) Regs, reg 4E(2)*

02562 Where a claim made within the advance period is defective, the claimant may correct the defect at any time before the end of the advance period<sup>1</sup>.

*1 SS (C&P) Regs, reg 4E(3)*

02563 Where a claim for SPC is made during the advance period the information or evidence required by the Secretary of State in order to decide whether to set an AIP or the length of the AIP the time within which the claimant **must** provide that

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## Change from IS to JSA or JSA to IS

04511 Where

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

then when a claim is made for the alternative benefit, the DM may supersede the existing award to bring it to an end<sup>1</sup>.

*1 SS CS (D&A) Regs, reg 14A(1) & (2)*

04512 Where DMG 04511 applies the existing award ends on the day immediately before the first day on which the award of the alternative benefit takes effect<sup>1</sup>.

*1 SS CS (D&A) Regs, reg 14A(3)*

04513 Where the alternative benefit is JSA, the person does not have to serve waiting days<sup>1</sup>.

**Note:** See DMG 04701 for guidance on ESA

*1 SS CS (D&A) Regs, reg 14A(4); JSA Act 95, Sch 1, para 4*

04514 - 04549



04655 - 04679

## Uprating

04680 Uprating of SPC will not normally require a supersession decision. Where rates are changed on uprating, the amount of benefit payable and the award will be the new amount without the need for any further decision of the DM<sup>1</sup>.

But see DMG 04681 for an exception to this rule.

*1 SSA Act 92, s 159B*

04681 There is an exception<sup>1</sup> where the appropriate minimum guarantee includes an additional amount for former claimants of IS or JSA(IB)<sup>2</sup> (known as the transitional amount - see DMG 78120 et seq for guidance on when this additional amount applies).

*1 SS CS (D&A) Regs, reg 14(5); 2 SPC Regs, Sch I, para 6*

04682 Where DMG 04681 applies, uprating will need to be carried out by means of supersession<sup>1</sup>.

*1 SS CS (D&A) Regs, reg 14(6)*

04683 – 04684

## Supersession on change of election - deferred entitlement

04685 The DM may supersede<sup>1</sup> a decision awarding SPC where

1. the claimant or partner makes or is treated as having made an election for a lump sum<sup>2</sup> or
2. a lump sum is repaid after the person changes their election to an increase of Cat A or Cat B RP, SAP, GRB or SP<sup>3</sup>.

See DMG Chapter 75 for guidance about deferring entitlement and making elections.

*1 SS CS (D&A) Regs, reg 6(2)(o) or reg 6(2)(oo); 2 SS CB Act 92, Sch 5, para A1 or 3C; Sch 5A, para 1; SS (DefRP, SAP & GRB) (Misc Provs) Regs, Sch 1, para 12 or 17; Pensions Act 2014, s 8(2), s 8(4) & s 10; 3 DefRP Regs 05, reg 5; SS (DefRP, SAP & GRB) (Misc Provs) Regs, Sch 1, para 20D; SP Regs, reg 44 & reg 6; Pensions Act 2014, s 10*

04686 Where DMG 04685 applies, the new decision is effective<sup>1</sup> from

1. the day on which the lump sum or payment on account of a lump sum is paid or repaid where that is the payday or
2. the following payday.

*1 SS CS (D&A) Regs, reg 7(7A)*

### **Example**

The claimant is a single woman who was 60 on 8.5.05 and who deferred her RP for twelve months. She has capital of £8,000. On 8.5.06 she claims RP and SPC but does not immediately make an election on her deferral option. SPC is awarded to the claimant, taking into account her RP and £4.00 deemed weekly income due to her capital. On 5.6.06 the claimant elects to receive increments. The decision awarding RP is revised to include increments. The decision awarding SPC is also revised to take into account the claimant's increased RP. On 26.6.06 the claimant realises she would have been better off taking a lump sum so she changes her election. As she is liable for tax, the claimant receives a lump sum of £7,200 rather than the amount of £8,000 she would have received if she were not liable for tax. Of the claimant's total capital of £15,200, the amount of £8,000 (the gross amount of the lump sum) is disregarded. The decision awarding SPC is superseded to reduce the amount of deemed weekly income to be taken into account to £3.00.

# Special rules - Employment and Support Allowance

04696 The general rule is that an ESA supersession decision on the grounds that there has been a relevant change of circumstances takes effect from the first day of the benefit week in which the change occurs<sup>1</sup>.

*1 SS CS (D&A) Regs, reg 7(1)(a); Sch 3C, para 1*

04697 “Benefit week” means the period of seven days ending on

1. the day before the first day of the first benefit week following the date of claim  
or
2. the last day of ESA payment where it is paid for less than a week<sup>1</sup>

*1 ESA Regs, reg 2(1); SS CS (D&A) Regs, reg 7(3)(d)*

04698 Other supersession decisions where<sup>1</sup>

1. the supersession is on the grounds that the decision to be superseded
  - 1.1 is a DM's decision which is erroneous in law<sup>2</sup>
  - 1.2 is a decision awarding ESA where the claimant or a family member becomes entitled to a qualifying benefit<sup>3</sup>
  - 1.3 is a decision awarding ESA where the SDP cannot be included in the award because there is a non-dependant, and the non-dependant is awarded a qualifying benefit<sup>4</sup>
  - 1.4 is as in DMG 04292 (reinterpretation of the law)<sup>5</sup>

also take effect from the first day of the benefit week.

*1 SS CS (D&A) Regs, Sch 3C, paras 9 & 10; 2 reg 6(2)(b); 3 reg 6(2)(e); 4 reg 6(2)(ee); 5 reg 7(6);*

## Exceptions

04699 The general rule in DMG 04696 does not apply

1. where the change is to the claimant's advantage, and was notified outside the one month time limit<sup>1</sup> - see DMG 04501 1. which also applies to ESA
2. where the change is because the claimant is terminally ill<sup>2</sup> - see DMG 04710.

*1 SS CS (D&A) Regs, reg 7(2)(b)(i); 2 reg 7(2)(be)*

## Other exceptions

- 04700 The guidance at DMG 04556 1<sup>1</sup>, 3<sup>2</sup>, 4<sup>3</sup>, 5<sup>4</sup>. and 7. on exceptions to the general rule in DMG 04696 also apply to ESA. In these cases the decision is effective from the date of the change<sup>5</sup>.

*1 WR Act 07, Sch 1, para 6(1)(a); 2 ESA Regs, reg 156(6)(d) or (h); 3 Sch 5, para 12; 4 para 3; 5 SS CS (D&A) Regs, Sch 3C, para 2 & 3*

## Other effective date rules

- 04701 Guidance on effective date rules for

1. supersession in incapacity cases<sup>1</sup> (see DMG 04231 - 04245)
2. supersession of a FtT or UT for error of fact<sup>2</sup> (see DMG 04337 - 04340)
3. change between benefits including waiting days<sup>3</sup> (see DMG 04511 - 04513)
4. payment of income<sup>4</sup> (see DMG 04560)
5. reduction of benefit following supersession<sup>5</sup> (see DMG 04561 - 04562)
6. change ceases to apply<sup>6</sup> (see DMG 04557)

also apply to ESA.

*1 SS CS (D&A) Regs, Sch 3C, para 7; 2 para 8; 3 reg 14A; WR Act 07, Sch 2, para 2; 4 ESA Regs, reg 93; SS CS (D&A) Regs, Sch 3C, para 4; 5 para 5; 6 para 6;*

## Non-dependant entitled to ESA

- 04702 Where the relevant change is that

1. the claimant has a non-dependant **and**
2. the non-dependant becomes entitled to main phase ESA

the supersession decision is effective from the date the main phase ESA is first paid to the non-dependant<sup>1</sup>.

*1 SS CS (D&A) Regs, reg 7(17H)*

## Failure determination

- 04703 A decision awarding ESA may be superseded where there has been a failure determination<sup>1</sup>. A failure determination is a determination by the DM that the claimant has failed without good cause to satisfy a requirement to take part in a Wfl or undertake WRA<sup>2</sup>. The supersession decision takes effect from<sup>3</sup>

1. the first day of the benefit week in which the failure determination is made where, on the date of the determination, the claimant has not been paid ESA since the failure to which that determination relates or