

# Department for Work and Pensions

DECISION MAKING AND APPEALS

## Decision Makers Guide

### Volume 1

### Amendment 59 – June 2019

1. This letter provides details on Amendment 59; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

<https://www.gov.uk/government/publications/decision-makers-guide-vol-1-decision-making-and-appeals-staff-guide>

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

3. Amendment 59 affects Chapter 1 and Annex E. The changes:  
  
Chapter 1 – change the guidance at DMG 01420 to match the equivalent guidance in ADM.  
  
Annex E – removes “Payments of mortgage interest to qualifying lenders” in the list of decisions and determinations that are not appealable.
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).

#### Remove

##### Chapter 1

01420 – 01440 (1 page)

##### Annex E

bullet 1 – bullet 48 (3 pages)

#### Insert

##### Chapter 1

01420 – 01440 (1 page)

##### Annex E

bullet 1 – bullet 47 (3 pages)



# Evidence in certain situations

## Destruction of documents

01420 The Department destroys documents in order to meet the obligations of the Data Protection Act. No one can make any presumptions about what evidence the documents might have contained<sup>1</sup>. This means that claimants cannot say that the destroyed documents must have supported their case. This principle does not apply if the claimant can prove that the documents were disposed of with the sole intention of destroying evidence.

*1 R(IS) 11/92*

01421 The DM should take account of any available evidence and make a decision on the balance of probabilities. Where it is impossible to reconstruct the document the DM should not assume any fact but decide the question on the basis of any other evidence.

01422 The DM must consider the burden of proof when looking at evidence. This can rest with either the claimant or the DM.

01423 - 01429

## Evidence of Departmental procedures

01430 Where a case relies on systems of work or Departmental forms no longer available, the DM should

1. get evidence of the system of work **or**
2. explain why the original form is not available.

The DM could then decide on the balance of probabilities whether the procedures were properly followed.

### Example

An overpayment has been identified. The DM is looking at recoverability. Benefit is paid to the claimant by direct payment. The DM knows the benefit cannot be paid by direct payment unless the claimant signs a declaration of understanding and agreement that overpayments may be recovered<sup>1</sup>.

The DM decides that the prescribed conditions for recoverability are satisfied even though the original document has been destroyed under normal destruction procedures.

*1 SS (POR) Regs, reg 11(2)(b)*

## Evidence of a decision

01431 It may be necessary for the Secretary of State to produce evidence of a decision of a DM, for the purpose of an appeal for example. If so, the evidence of the decision should contain a certificate signed on behalf of the Secretary of State stating that the document is such a record. The certificate must be signed by an officer specifically authorized to do so<sup>1</sup>.

*1 SS Act 98, s 39ZA*

01432 A certificate should **not** be produced where there is no evidence that a decision was made or recorded, or that the decision was different from that provided in any explanation or recorded in a submission to the FtT.

### Example

The claimant is in receipt of IS as a lone parent. Following an investigation, the DM records a determination that the claimant is LTAHAW with the father of her children, and has been for three years. He is in remunerative work. The award of IS is terminated from a current date. The DM's determination is incorrectly notified with appeal rights. The Secretary of State cannot certify that the determination is a decision superseding and ending entitlement from the date the claimant began to LTAHAW.

01433 Where DMG 01432 applies, the DM should not use the certification process to construct a record of what ought to have been decided. DMs should be aware that it is a false statement which could lead to criminal sanctions<sup>1</sup>.

*1 Perjury Act 1911, s 5*

01434 Where the decision was made electronically, the DM should

1. produce a computer printout showing the decision history **and**
2. provide an explanation of codes used in the computer record.

See DMG 01111 - 01113 for guidance on recording decisions.

01435 - 01439

## Evidence given in confidence

01440 If evidence raises any question of confidentiality, the matter must be resolved before it is put to the DM. If any confidential evidence is disclosed to the DM, that evidence must be disclosed to the FtT. However, the FtT may make an order prohibiting the disclosure or publication of confidential evidence<sup>1</sup>.

*1 TP (FtT) (SEC) Rules, rule 14*

# Annex E

## Decisions and determinations that are not appealable

1. Whether a person aged 16-17 is in severe hardship<sup>1</sup>.  
*1 SS Act 98, Sch 2, para 1; JS Act 95, s 16 & 17(4)*
2. Whether a claimant is entitled to a Christmas bonus<sup>1</sup>.  
*1 SS Act 98, Sch 2, para 2; SS CB Act 92, s 148*
3. Priority between claimants entitled to CA<sup>1</sup>.  
*1 SS Act 98, Sch 2, para 3; SS CB Act 92, s 70(7)*
4. Whether a person is treated as present in GB<sup>1</sup>.  
*1 SS Act 98, Sch 2 para 5; SS CB Act 92, s 64(1), 71(6), 113(1) or 119*
5. The rate of benefit provided for by law<sup>1</sup> including the rate of interest used in calculating a lump sum where a person has deferred entitlement to Cat A or B RP, GRB or shared additional pension<sup>2</sup>.  
*1 SS Act 98, Sch 2 para 6(a); 2 SS CB Act 92, Sch 5, para 3B(3)*
6. Up-rating of rates of benefit<sup>1</sup>.  
*1 SS Act 98, Sch 2, para 6(b); SS A Act 92, s 129B(1)(b), 159(1)(b) & 159A(1)(b)*
7. Increases of IS or JSA(IB) due to age changes<sup>1</sup>.  
*1 SS Act 98, Sch 2, para 7; SS A Act s 160(2) & 160A(2)*
8. Reduction of benefit in accordance with an RBD<sup>1</sup>.  
*1 SS Act 98, Sch 2, para 8; CS Act 91, s 46*
9. Which partner should make a claim for IS, JSA(IB), ESA(IR) or SPC where the partners are unable to agree who should be the claimant<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 5(a), (aa) & (bb); SS (C&P) Regs, reg 4(3), (3B), 4D(7) & 4(I)*
10. An excluded decision, namely
  1. the review of a decision of the FtT made by it on
    - 1.1 whether to review or not review and earlier decision of the FtT<sup>2</sup>
    - 1.2 whether to take no action or no particular action in light of the review of an earlier decision of the FtT<sup>3</sup>
    - 1.3 whether to set aside an earlier decision of the FtT<sup>4</sup>
    - 1.4 whether to refer or not refer a matter to the UT<sup>5</sup>
  2. a decision of a FtT that is set aside<sup>6</sup>
  3. any decision specified by the Lord Chancellor as being excluded<sup>7</sup>.*1 TCE Act 07, s 11(5); 2 s 11(5)(d)(i); 3 s 11(5)(d)(ii); 4 s 11(5)(d)(iii); 5 s 11(5)(d)(iv); 6 s 11(5)(e); 7 s 11(5)(f)*

- 11.** Evidence or information required from the claimant/partner<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(f); SS (C&P) Regs, reg 7*
- 12.** Decisions that a claim for one benefit is to be treated as a claim for another benefit as an alternative or in addition to the benefit originally claimed<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(g); SS (C&P) Regs, reg 9 & Sch 1*
- 13.** A decision to treat a claim for MA as a claim for IB<sup>1</sup> or ESA<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(h); SS (C&P) Regs, reg 11*
- 14.** Approving the form in which a person may give particulars for the determination of RP questions in advance of a claim<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(i); SS (C&P) Regs, reg 15(7)*
- 15.** Time and manner of payment of benefit<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(j); SS (C&P) Regs, reg 20 - 24*
- 16.** Payment of AA, DLA and CAA at a daily rate when the claimant is expected to return to hospital or certain accommodation<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(k); SS (C&P) Regs, reg 25(1)*
- 17.** Time and manner of payment of IS<sup>1</sup> (including decisions as to the day on which entitlement to IS is to begin).

*1 SS CS (D&A) Regs, Sch 2 para 5(l); SS (C&P) Regs, reg 26*
- 18.** Time and intervals of payment of JSA<sup>1</sup> & ESA.

*1 SS CS (D&A) Regs, Sch 2 para 5(m) & 5(nn); SS (C&P) Regs, reg 26A & 26C*
- 19.** Payment of SPC<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(mn); 2 SS (C&P) Regs, reg 26B*
- 20.** Claims and payments after the death of the claimant<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(o); SS (C&P) Regs, reg 30*
- 21.** Payment of arrears of joint-claim JSA where the nominated person can no longer be traced<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(p); SS (C&P) Regs, reg 30A*
- 22.** Time and manner of payments of II gratuities<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(q); SS (C&P) Regs, reg 31*
- 23.** Information to be given when obtaining payment of benefit<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(r); SS (C&P) Regs, reg 32*
- 24.** Decisions about appointees<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(s); SS (C&P) Regs, reg 33*
- 25.** Decisions about payments to third parties in the claimant's interest<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2 para 5(t); SS (C&P) Regs, reg 34*

26. Payments to third parties of SF maternity payments and CWP<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 5(v); SS (C&P) Regs, reg 35(2)*
27. Decisions to pay a partner as an alternative payee<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 5(w); SS (C&P) Regs, reg 36*
28. Extinguishment of the right to payment of benefit<sup>1</sup> **except** a decision to extend the 12 month period where there is good cause<sup>2</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 5(x); SS (C&P) Regs, reg 38; 2 reg 38(2A)*
29. Decisions<sup>1</sup> about
1. where the mobility component of DLA is not payable<sup>2</sup>.
  2. appointment of a person to act on behalf of a child for whom a claim for DLA is made<sup>3</sup>.
  3. payment of DLA direct where a vehicle is purchased under a hire purchase arrangement<sup>4</sup>.
  4. termination of direct payment of DLA in hire purchase cases<sup>5</sup>.
  5. ending of direct payment of DLA where hire purchase vehicle returned to the owner<sup>6</sup>.
- 1 SS CS (D&A) Regs, Sch 2, para 5(y); 2 SS (C&P) Regs, reg 42; 3 reg 43; 4 reg 44; 5 reg 45; 6 reg 46*
30. Decisions by the Secretary of State to require that an instrument of payment be returned<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 5(z); SS (C&P) Regs, reg 47(2) & (3)*
31. Staying making a decision<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 7; SS Act 98, s 25*
32. Deductions of fines from ESA, IS, JSA and SPC **except** a decision on whether there is sufficient benefit to make a deduction<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 8; Fines (Deductions from IS) Regs*
33. Deduction of CC or CT from IS, UC, SPC, JSA or ESA **except** a decision
1. whether there is an outstanding sum due of the amount to be deducted
  2. whether there is sufficient benefit to make a deduction
  3. on the priority to be given to a deduction<sup>1</sup>.
- 1 SS CS (D&A) Regs, Sch 2, para 9; Community Charges (Deductions from IS) (No. 2) Regs; Community Charges (Deductions from IS) (Scotland) Regs; Council Tax (Deductions from IS) Regs*
34. Authorization on the application of SS schemes to employed and self-employed people and their families moving within the EC<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 10; Council Reg (EEC) 1408/71, Art 22(1) & 55(1)*
35. Whether to pay expenses<sup>1</sup>.  
*1 SS CS (D&A) Regs, SS CS (D&A) Regs, Sch 2, para 11; SS A Act 92, s 180*

36. Notice of liability to surviving parent in prison or legal custody<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 12; SS (Guardian's Allowance) Regs, reg 5(8)*
37. Adverse assumptions on incomplete evidence for ESA, IS, JSA, SF and SPC<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 13, 13A & 19(3); reg 13 & 15*
38. For IISB<sup>1</sup>
1. whether an award is increased for constant attendance or exceptionally severe disablement and if so, the period and amount payable<sup>2</sup>
  2. the length of a period of interruption of education to be disregarded<sup>3</sup>
  3. whether to approve a person undertaking work<sup>4</sup>
  4. how limitations are to be applied<sup>5</sup>.
- 1 SS CS (D&A) Regs, Sch 2, para 14-17; 2 SS CB Act 92, s 104 & 105;  
3 SS (II) Misc Prov Regs, reg 2(2); 4 SS (Gen Ben) Regs, reg 17; 5 SS CB Act 92, Sch 7, Pt VI*
39. Issue of certificate for IVS<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 18; SS (DLA) Regs, reg 13 & Sch 2*
40. For JSA<sup>1</sup>
1. the day and time a claimant is to attend a Jobcentre Plus office<sup>2</sup>
  2. the day on which a claimant is required to sign a declaration<sup>3</sup>.
- 1 SS CS (D&A) Regs, Sch 2, para 19; 2 JSA Regs, Pt II, Chap IV; 3 reg 24(10)*
41. Any decision on payments on account, overpayments and recovery **except**<sup>1</sup>
1. offset of interim payments<sup>2</sup>
  2. overpayment of interim payment<sup>3</sup>
  3. offset of prior payment against later award<sup>4</sup>
  4. whether excess payment credited to bank account<sup>5</sup>
  5. deductions when calculating recoverable amount<sup>6</sup>
  6. treatment of capital to be reduced<sup>7</sup>
  7. determination of protected earnings<sup>8</sup>
  8. revision or supersession of determination of protected earnings<sup>9</sup>.
- 1 SS CS (D&A) Regs, Sch 2, para 20; 2 SS (POR) Regs, reg 3(1)(a); 3 reg 4(1); 4 reg 5; 5 reg 11(1);  
6 reg 13; 7 reg 14(1); 8 reg 19; 9 reg 24*
42. Whether disqualifications should apply for persons abroad<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 21, SS CB Act 92, s 113(1);  
SS Ben (Persons Abroad) Regs, reg 2(1)(a) & 9(4) & (5)*
43. Reciprocal agreements with countries outside the UK<sup>1</sup>.  
*1 SS CS (D&A) Regs, Sch 2, para 22; SS A Act 92, s 179*



**44.** Recovery of SF awards<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2, para 23; SS A Act 92, s 78*

**45.** Suspension of payment of benefit<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2, para 24; Pt III*

**46.** Whether to waive or defer a Wfi<sup>1</sup>.

*1 Sch 2, para 26; SS (Work-focused Interviews) Regs, reg 3*

**47.** Sanctionable benefit not payable or reduced following convictions for benefits offences where the only ground of appeal is that any of the convictions was wrong or that the offender did not commit the benefit offence in respect of which there has been an agreement to pay an administrative penalty or a caution has been accepted<sup>1</sup>.

*1 SS CS (D&A) Regs, Sch 2, para 27; SS (Loss of Benefit) Regs, reg 21*

