

Chapter 69 – Industrial injuries disablement benefit

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Statutes commonly referred to in Chapter 69

Full Title	Abbreviation
Social Security Administration (Northern Ireland) Act 1992	SS A (NI) Act 92
Social Security Contributions and Benefits (Northern Ireland) Act 1992	SS C&B (NI) Act 92
Social Security (Northern Ireland) Order 1998	SS (NI) Order 98

Statutory Rules commonly referred to in Chapter 69

Full title	Abbreviation
The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 No 465	SS (C&P) Regs (NI)
The Social Security (General Benefit) Regulations (Northern Ireland) 1984 No 92	SS (Gen Ben) Regs (NI)
The Social Security (Industrial Injuries and Diseases) (Miscellaneous Provisions) Regulations (Northern Ireland) 1986 No 340	SS (II & D) (Misc Prov) Regs (NI)
The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 No 142	SS (POR) Regs (NI)
The Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986 No 179	SS (II) (PD) Regs (NI)
The Social Security (Industrial Injuries) (Reduced Earnings Allowance and Transitional) Regulations (Northern Ireland) 1987 No 142	SS (II) (REA & Trans) Regs (NI)
Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 No 162	SS & CS (D&A) Regs (NI)
Social Security (Abolition of Injury Benefit) (Consequential) Regulations (Northern Ireland) 1983 No 36	SS (AIB) (Conseq) Regs (NI)
Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2003 No 294	SS (WFI) Regs (NI)

Chapter 69 - Industrial injuries disablement benefit

Introduction

69001 Disablement Benefit provides payments for the long-term effects of industrial accidents and prescribed diseases¹. The rate of benefit is linked to the loss of faculty.

1 SS C&B (NI) Act 92, sec 103

69002 To obtain Disablement Benefit there must be personal injury from an accident or the contraction of a prescribed disease resulting in loss of physical or mental faculty which results in disability and disablement.

Meaning of terms

69003 Injury is the hurt to the body or mind and includes all the adverse physical and mental consequences of an accident.

69004 Loss of faculty is an impairment of the proper functioning of the part of the body or mind and is used in the statute to describe a cause of disabilities to do things which in sum constitute disablement¹.

1 Hudson and Jones v. S of S for Social Services AC 944 - Supplement to R(I) 3/69; R(I) 4/94

69005 Disability is the partial or total failure of power to perform normal bodily or mental processes.

69006 Disablement is the sum of disabilities which, by contrast with the powers of a normal person, can be expressed as a percentage.

69007 These factors govern all claims for Industrial Injuries Disablement Benefit, but some of the essential conditions differ considerably depending on whether the claim was made before or after 19.11.86. Where there is a difference this will be identified by separate headings and care should be taken to ensure that the guidance being followed is applicable.

69008 References to accidents include references to prescribed diseases unless otherwise stated.

Conditions of entitlement

Claims made before 19.11.86

69009 An employed earner was entitled to Industrial Injuries Disablement Benefit if, as a result of an industrial accident, a loss of physical or mental faculty occurred for which the extent of disablement was assessed at not less than 1%¹. A person with pneumoconiosis was treated as having satisfied that condition irrespective of whether there was an actual loss of faculty².

1 SS C&B (NI) Act 92, sec 103(1); 2 sec 110(3)

Claims made on or after 19.11.86

69010 To become entitled to Industrial Injuries Disablement Benefit an employed earner must establish that

1. as a result of an industrial accident, a loss of physical or mental faculty occurs for which the extent of disablement is assessed at not less than 14%¹ **or**
2. as a result of more than one accident, losses of physical or mental faculty occur, for each of which the disablement is assessed at less than 14% but which in total amount to 14% or more² **or**
3. in pneumoconiosis, byssinosis or diffuse mesothelioma cases, disablement is assessed, or treated as assessed, at not less than 1%³ **or**
4. in the case of claims for occupational deafness, disablement is assessed at not less than 20%⁴.

1 SS C&B (NI) Act 92, sec 103(1); 2 sec 103(2)(a)(b); 3 SS (II) (PD) Regs (NI), reg 18; 4 reg 32(6)

Provision of National Insurance number

69011 For Industrial Injuries Disablement Benefit there is a specific requirement¹ for a claimant to provide sufficient information or evidence to establish their National Insurance number. See DMG 02172 et seq for full guidance.

1 SS A (NI) Act 92, sec 1(1A) & (1B)

Date from which entitlement to Industrial Injuries Disablement Benefit arises

Claims before 6.4.83

69012 For claims based on accidents before 6.4.83, entitlement to Disablement Benefit depends on whether incapacity resulted within 156 days, excluding Sundays, from the date of accident. If not, entitlement arises from the fourth day following the date of accident or, in a prescribed disease case, from the beginning of the assessment. If there was a period of incapacity due to the accident entitlement is from the earlier of

1. the day following the last day of such incapacity **or**
2. the day following the expiry of 156 days from the date of accident¹.

1 SS (AIB) (Conseq) Regs (NI)

Claims after 6.4.83

69013 There is no entitlement to Industrial Injuries Disablement Benefit for the 90 days, disregarding Sundays, beginning with the date of the accident or date of onset in prescribed disease claims¹. However, entitlement arises from the date of onset in claims for

1. occupational deafness² (prescribed disease A10) **and**
2. diffuse mesothelioma³ (prescribed disease D3) **and**
3. primary carcinoma of the lung (prescribed disease D8 and prescribed disease D8A) from 6.4.06⁴.

Note 1: In prescribed disease A10 claims the date of onset is the date of claim⁵.

Note 2: The date of onset for a prescribed disease can be prior to the date the disease was added to the schedule, although no benefit can be payable prior to that date⁶.

*1 SS C&B (NI) Act 92, sec 103(6); 2 SS (II) (PD) Regs (NI), reg 26;
3 reg 18(3)(a); 4 reg 18B(2)(a); 5 reg 6(2)(c)(ii); 6 R(I) 4/96*

69014 This 90 day period is absolute. It applies regardless of whether or not the accident has caused incapacity in the intervening period.

69015 In calculating the period of 90 days Sundays are excluded. The period can, therefore, never begin or end on a Sunday. Disablement Benefit can, however, be awarded from a Sunday and so, where an accident occurs on a Sunday or Monday, the 90th

day will be a Saturday and Disablement Benefit may be awarded from the next day, Sunday¹.

1 SS C&B (NI) Act 92, sec 103(6)

Late claims

69016 Guidance on the time limits for claiming Disablement Benefit and disentitlement penalties for late claims is in DMG Chapter 2.

69017 – 69019

Questions arising on claims for industrial injuries disablement benefit

General

69020 Decision makers will give an outcome decision on the claim which consists of a statement to the effect that the claimant is either entitled or not entitled to benefit. In arriving at an outcome decision, the decision maker must consider various questions. For Disablement Benefit, these questions fall into 2 categories

1. non medical questions such as employed earners employment, rate of benefit¹
and
2. medical questions such as diagnosis, relevant loss of faculty and disablement assessment.

Note: See DMG Chapter 01 for further guidance on industrial injuries disablement benefit decisions.

1 SS C&B (NI) Act 92, sec 94

69021 In a claim based on injury by industrial accident, the decision maker should establish whether there was an industrial accident. This question may arise for the first time

1. on the Disablement Benefit claim **or**
2. on an application for a declaration of an industrial accident for the relevant accident¹.

1 SS (NI) Order 98, art 29

69022 If the accident question arises for the first time on a Disablement Benefit claim, the decision maker should consider the question as in DMG Chapter 66. If the case is of the 'accident is the injury' type the decision maker must be satisfied that the claimant suffered personal injury by accident before a favourable accident decision can be given¹.

1 R(I) 7/73

69023 Where the accident question affects more than one benefit all papers should be kept together to avoid conflicting decisions.

69024 The decision maker does not need to give separate consideration to the personal injury question if a favourable industrial accident decision has already been given and Disablement Benefit is the only benefit claimed. Consideration of the personal injury question is part of the process of reaching an outcome decision on entitlement. This may involve the decision maker in seeking medical advice which will include advice on the question of personal injury.

69025 – 69029

Medical questions

General

69030 The law provides for the decision maker to seek medical advice from a health care professional in deciding a claim for industrial injuries disablement benefit¹. Medical advice to the Department is currently provided under contract. These health care professionals are specially trained in disability analysis and how this relates to claims for industrial injuries benefits². Therefore, although the medical advice is not binding on decision makers it should be given appropriate weight (see DMG 69036). Where there is conflicting medical evidence for example between a health care professional and a consultant, decision makers should record in detail the reasons for accepting one opinion and rejecting the other.

1 SS (NI) Order 98, art 19; 2 SS & CS (D&A) Regs (NI), reg 12(1)

69031 Although the Disablement Benefit claim form encourages the claimant to provide any medical evidence they might have eg reports from their General Practitioner, hospital or consultant, it would be exceptional for the decision maker to be presented with sufficient information that would enable all the medical issues to be decided without seeking medical advice.

69032 The decision maker has therefore the option to refer any medical question which has to be answered in

1. deciding a claim **or**
2. reconsidering a decision

to a medical adviser for advice.

Meaning of health care professional

69033 A health care professional¹ is a

1. registered medical practitioner **or**
2. registered nurse **or**
3. registered occupational therapist or physiotherapist² **or**
4. member of such other regulated profession³ as prescribed.

Note: Only for the purposes of the higher rate of Disability Living Allowance mobility component for the severely visually impaired have regulated professions of optometrist and orthoptist been prescribed as health care professionals (see DMG Chapter 61).

1 SS (NI) Order 98, art 39(2); SS (C&P) Regs (NI), reg 2(1); SS (IfW) (Gen) Regs (NI), reg 2(1);

2 Health Act 99, sec 60; NHS Reform & Health Care Professions Act 02, sec 25(2);

3 SS (NI) Order 98, art 39(2)

Referring questions for medical advice

69034 The decision maker can refer the following questions for medical advice in connection with claims for Disablement Benefit

1. whether there is a relevant loss of faculty
2. the extent at which disablement caused by that loss of faculty is to be assessed
3. the period to be taken into account by the assessment
4. in prescribed disease claims, questions relating to
 - 4.1 diagnosis
 - 4.2 whether the prescribed disease is likely to have resulted from the claimant's employment.

69035 The opinion given in response to such a request

1. is the advice of the individual medical adviser although more than one medical adviser can be used in cases of special difficulty **and**
2. is not binding upon the decision maker.

69036 Although the advice of a medical adviser is not binding, it should, in view of the medical adviser's expertise in disability analysis and the Industrial Injuries Scheme¹, be exceptional for the decision maker not to follow it.

1 SS & CS (D&A) Regs (NI), reg 12(3)

The role of the medical adviser

69037 The medical adviser has experience of disability assessment for the purposes of Disablement Benefit. It is important that the decision maker recognises that disability assessment differs from clinical medicine and requires a different set of skills and different training.

69038 In clinical medicine the objective is to diagnose a patient's condition as precisely as possible, in order to plan treatment.

69039 In disability assessment, the objective is to assess the functional effects of a person's condition - what does it prevent them from doing, or from doing as well or easily as someone without disability?

69040 Other medical practitioners e.g. General Practitioners or hospital consultants, are not usually trained to assess functional effects. Medical advisors who are contracted to provide a medical advice service to the Department are trained to assess functional effects in the context of benefit claims.

69041 The medical advisor's advice will be given in the context of this training and their experience in disability assessment for claims to benefit¹. If necessary the medical adviser will obtain such further medical evidence as is thought necessary in order to give comprehensive advice and will include an assessment of this evidence in the report.

1 SS & CS (D&A) Regs (NI), reg 12(3)

69042 The medical adviser's advice should meet the quality standards set out in the service level agreement. These are that the advice should

1. be legible
2. be comprehensive and clearly explain the medical issues raised
3. address all the evidence. If any evidence is rejected the medical adviser should explain why
4. be in plain English and avoid medical jargon (other than terms covered in the decision maker's Medical Glossary)
5. answer all the questions.

If any of these standards are breached, the decision maker should return the case to medical services for rework.

69043 If a decision on a claim for Disablement Benefit was for a provisional period then the decision maker should arrange for further medical advice before the expiry of the provisional assessment¹.

1 SS C&B (NI) Act 92, Sch 6, para 6

69044 – 69049

Information to be put before the medical adviser

69050 The decision maker should ensure that any medical information or medical evidence that will help them decide a medical question is in front of the medical adviser. The decision maker should specify to the medical adviser that they should consider this before giving their advice on the relevant medical issue(s).

69051 The medical adviser should record the fact that they have seen this medical information or medical evidence.

Format of medical advice

69052 Medical advice should be recorded on forms approved by the Department. The forms enable medical advice to be recorded so that findings of fact material to the case and any resulting loss of faculty may be specified. Medical advisers will give their advice in plain English and where necessary will explain any medical terms used. The decision maker should ensure that the medical advice meets the quality standards (see DMG 69042) before giving a decision on entitlement. Once a decision has been made it is not possible to return the advice for rework. It is therefore important that the decision maker considers the medical advice carefully before giving a decision.

69053 The medical advice on initial and renewal claims will, in most cases, be based on an examination by the medical adviser. In initial claims for prescribed disease cases however, the medical adviser may obtain a report from another medical professional eg an audiometric test in claims for prescribed disease A10. Where this report indicates that the diagnosis condition is not satisfied, the medical adviser will return the case to the decision maker without examining the claimant. Where the report shows that the diagnosis condition is satisfied or is inconclusive, the medical adviser will arrange for an examination to consider diagnosis and, if necessary the assessment of disablement.

69054 Medical advice based on examination will consist of advice on the questions in DMG 69035. The report will also contain

1. a statement taken from the claimant, this will either be taken by the medical adviser or by a member of medical services staff before the examination (see DMG 69055) **and**
2. a medical and occupational history **and**
3. a statement of clinical findings.

69055 For the purposes of DMG 69054 **1.** whoever takes the statement will try to focus on the accident/prescribed disease and only include relevant matters. However, if the claimant insists on including matters of doubtful relevance these should have been included.

69056 When considering the advice, the decision maker should ensure that all evidence has been considered and that all elements of the report are consistent. The report from the medical adviser should

1. specify all the evidence considered

2. where one piece of evidence is preferred over another, explain why.

Where the report is deficient in either respect it should be returned as rework.

69057 – 69059

Assessment of disablement

69060 The classification of the disabilities found will be recorded as follows:

F Fully relevant. Disability arises solely from the relevant loss of faculty.

P Partly relevant. Disability arises partly from the relevant loss of faculty and partly from other causes.

O(pre) A condition present at the time of the accident, and not itself resulting from that accident, and which makes a relevant loss of faculty more disabling than it would otherwise have been

O(post) A condition arising after the accident, and not itself resulting from that accident, and which makes a relevant loss of faculty more disabling than it would otherwise have been.

69061 The report from the medical adviser should also list in the 'unconnected injuries, diseases' section of the medical advice form any other abnormal conditions in the findings of fact that:

1. have no effect on the disablement resulting from the loss of faculty **and**
2. have not been taken into account in giving their opinion on the disablement assessment.

69062 The principles of assessment are governed by law¹. In addition prescribed degrees of disablement are laid down for certain injuries².

1 SS C&B (NI) Act 92, Sch 6; 2 SS (Gen Ben) Regs (NI), reg 11; Sch 2

69063 An assessment of disablement

1. is expressed as a percentage **and**
2. specifies the period to be taken into account **and**
3. if limited to a definite date, states whether the assessment is provisional or final¹.

Note: A life award may be superseded (see DMG Chapter 04).

1 SS C&B (NI) Act 92, Sch 6, para 7

69064 Where more than one disability is sustained in an accident, the assessment of disablement must represent the total loss of faculty resulting from the relevant

accident, that is, the total of the disabilities. Assessments for 2 or more disabilities should not be made for different periods¹. If this arises the decision maker should refer the case back to the medical adviser asking them to clarify their advice.

I R(I) 42/55

- 69065 The medical adviser's report may advise that the award should be made in two or more stages, for example 15% for 6 months followed by 5% for life.

Further medical evidence received before a decision made

- 69066 If further medical evidence is received after medical advice has been received but before the decision maker has made a decision, the decision maker may refer the claim for further advice. This is a re-referral not rework.

69067 – 69069

Reconsiderations involving medical issues

- 69070 A claimant can apply to the decision maker to reconsider the decision on a claim to Disablement Benefit. The general principles on reconsideration are covered in DMG Chapter 03. The guidance at DMG 69071 et seq applies where the issue under dispute is a medical one.

- 69071 Where the decision maker is reconsidering a claim they can, if necessary, seek further medical advice. This should only be necessary where the claimant produces some new medical evidence which

1. had not been considered by the medical adviser **and**
2. the decision maker considers may have affected the advice given by the medical adviser, or the decision maker is unable to decide its relevance.

- 69072 Where the new evidence is simply a further statement from the claimant it would be unlikely that the decision maker would need to seek further medical advice based on that statement alone. There would need to be some supporting medical evidence from the claimant's General Practitioner, hospital or consultant, and that evidence would need to raise new factors which the medical adviser had not considered and which were, in the decision maker's opinion, clearly relevant to the medical issues.

- 69073 Where the evidence does not raise new issues, the decision maker should still reconsider the earlier decision to decide if that decision was correct. If the decision was correct the claimant would then have the opportunity of pursuing the matter before a tribunal.

69074 If the decision maker is unsure whether the new evidence raises fresh issues further medical advice should be sought. Advice can be sought by using medical services advice line. However, if the evidence raises fundamental issues a formal referral for further advice will be needed. Decision makers should note that the advice line should not be used to discuss cases in detail with medical services. It should only be used to resolve simple queries.

69075 If the decision maker decides to refer the case for further medical advice the decision maker should

1. refer the medical adviser to the new evidence **and**
2. set out the facts which are not in dispute
3. set out the facts which are in dispute and on which further advice is sought (eg the claimant may produce a medical report which suggests a longer period of assessment or a higher percentage level of disablement is appropriate).

69076 On receipt of a referral for further advice in dispute cases, the medical adviser (this need not necessarily be the same medical adviser who provided the previous advice) will consider the evidence and advise the decision maker accordingly setting out clearly the reasons for accepting or rejecting the evidence.

69077 Where the medical adviser considers that the evidence does affect the advice previously given, the medical adviser will either

1. provide further advice on the documentary evidence alone **or**
2. arrange for the claimant to be re-examined.

It is for the medical adviser to decide whether a further examination is necessary.

69078 On receipt of the medical adviser's advice, the decision maker should reconsider the earlier decision and if appropriate, revise or supersede it. The general guidance in DMG Chapter 5 should be followed to determine restrictions on any new award.

69079 – 69084

Appeals involving medical questions

69085 Where a claimant appeals against an outcome decision, and the dispute relates to one of the medical questions, the appeal tribunal will contain a medically qualified panel member. To assist in reaching a decision, the tribunal can either examine the appellant at the hearing, or request further medical evidence prior to making a decision¹.

¹ *SS (NI) Order 98, art 20; SS & CS (D&A) Regs (NI), reg 36(2) & 52*

- 69086 Where the tribunal find in favour of the appellant they should go on to consider all other conditions of entitlement to enable an outcome decision to be reached.
- 69087 Occasionally the tribunal will return the case to the decision maker for this action to be taken. The case should be returned to Medical Services for further advice. If Medical Services agree that the evidence does now support a diagnosis of the prescribed disease, they will advise on the level and period of the assessment in the normal way.
- 69088 If Medical Services are still of the opinion that the history (that is the claimant's account of the onset and progression of symptoms, treatment etc) and the clinical findings do not support a diagnosis of the prescribed disease they will give a "no loss of faculty" opinion with a full explanation of why and on what basis that opinion has been formed. The decision maker should then take that opinion into account when deciding the claim.

69089 – 69099

Disablement Pension

69100 **[See DMG Memo 11/24]** With the exception of prescribed diseases A10, D1, D2, D3, D8 and D8A, Industrial Injuries Disablement Benefit is paid as a pension if the assessment is 14% or more¹. In claims to

1. prescribed disease A10 the minimum level of disablement that attracts payment of Industrial Injuries Disablement Benefit is 20%²
2. prescribed disease D1 and D2 Industrial Injuries Disablement Benefit is payable providing disablement is assessed at 1% or more³
3. prescribed disease D3 and D8A is assessed at 100%⁴.

The weekly rate of the pension depends on the percentage assessment of disablement.

Note: Before 31.10.16 special rates were payable for claimants under age 18.

1 SS C&B (NI) Act 92, sec 103(1); 2 SS (II) (PD) Regs (NI), reg 32; 3 reg 18(1); 4 reg 18A

69101 Assessments between 14% and 19% are rounded to 20%. Assessments above 20% are rounded to the nearest multiple of 10, 5 being rounded up¹.

Example

An assessment of 23% is rounded down to 20%.

An assessment of 25% is rounded up to 30%.

An assessment of 24% is rounded down to 20%.

1 SS C&B (NI) Act 92, sec 103(3)(a) & (b)

69102 Payment of Industrial Injuries Disablement Benefit is made on a weekly basis, for the week from Wednesday to Tuesday¹. Therefore, when the first day of entitlement is not a Wednesday, payment will not start until the following Wednesday.

1 SS (C&P) Regs (NI), reg 16(3), reg 22 & Sch 6

69103 Since payment will be up to a Tuesday the pension will be paid until the Tuesday following the last day of entitlement, unless title ends on a Tuesday.

69104 Where a successful claim is made for a past period, the weekly rate of Industrial Injuries Disablement Benefit is the rate in force during the period of assessment, taking account of any general upratings of benefits¹.

1 R(I) 1/86

69105 – 69109

Disablement Gratuities

General

69110 Until 19.11.86 Disablement Benefit was paid in the form of a gratuity if the assessment of disablement was less than 20%, with the following exceptions

1. Disablement Benefit for pneumoconiosis, byssinosis and diffuse mesothelioma was always in the form of a pension¹
2. Disablement Benefit was not payable for occupational deafness if the assessment of the resulting loss of faculty was less than 20%²
3. during the period of entitlement to Severe Hardship Allowance, where the claimant elected to have the gratuity paid as a pension in lieu of a gratuity (DMG 69135 - 69140)
4. where a claimant already entitled to a Disablement Pension for an accident or disease chose to receive a pension instead of a gratuity for a subsequent accident or disease (DMG 69145 - 69148).

1 SS (II) (PD) Regs (NI), reg 18(1A); 2 reg 32(6)

69111 In certain circumstances a gratuity could be paid by instalments (DMG 69130 - 69131)¹.

1 SS C&B (NI) Act 92, Sch 7, Part II, para 9(1)(2)(b)

69112 The amount of disablement gratuities depended on the length of the period of the assessment and the degree of disablement¹. Where the period of assessment was

1. for 7 years or more, or for life, the amount payable was the full amount of the gratuity appropriate to the degree of disablement²
2. less than 7 years, the amount payable bore the same ratio to the full amount as the period of assessment bore to 7 years³.

1 SS C&B (NI) Act 92, Sch 7, Part II, para 9(1) & (2); 2 SS (Gen Ben) Regs (NI), reg 12(1)(a); 3 reg 12(1)(b)

69113 If the Adjudicating Medical Authority had given a composite assessment the gratuity was calculated in relation to the total assessment not the total of the amounts which would correspond to each of the smaller percentages¹.

1 CSI 74/50(KL)

69114 Where

1. a claim resulted in the payment of a gratuity **and**
2. the period of the assessment was for a past period

the amount of the gratuity was calculated by reference to the rates in force on the day on which the assessment began¹. Subsequent up-ratings were ignored.

1 R(I) 5/82

69115 Where the claimant had chosen to receive, with Special Hardship Allowance, a Disablement Pension in lieu of a gratuity, the decision awarding the pension could not be revised if at a later stage, the beneficiary wanted to receive the balance of the gratuity as a lump sum¹. See DMG 69135 et seq for guidance on Disablement Pension in lieu of gratuity.

1 R(I) 77/53; R(I) 38/57

69116 From 19.11.86 Disablement Benefit was paid in the form of a gratuity only where

1. transitional protection could assist the claimant **or**
2. entitlement to a pension in lieu ceased.

Transitional provisions

69117 Where

1. there is an application for an unforeseen aggravation review or supersession on the grounds of changes of circumstances **and**
2. the original claim was made before 19.11.86 **and**
3. there is an assessment which
 - 3.1 is provisional **or**
 - 3.2 was final but the period of any new assessment begins before 19.11.86 **or**
 - 3.3 was final but any new assessment begins on or after 19.11.86 and the claimant is entitled to a pension in lieu of gratuity

the pre 19.11.86 provisions will apply¹. However, a payment under any new assessment between 1% and 19% can only be paid as a disablement gratuity².

1 SS (II & D) (Misc Prov) Regs (NI), reg 12; 2 reg 12(2)

69118 Where DMG 69117 **3.3** applies, any new assessment of less than 14% will be paid as a disablement gratuity. However, there will be no entitlement to a pension in lieu of gratuity. The provisions from 19.11.86 will apply to any new assessment of 14% or more¹.

1 SS (II & D) (Misc Prov) Regs (NI), reg 12(3)

69119

Death of claimant

69120 If a claimant died during the period covered by an assessment, the death would not affect either entitlement to, or the amount of, a gratuity even if at the date of death an award or payment of the gratuity had still to be made. However, if the claimant died before the start date of the period of assessment, there is no entitlement to a gratuity for that assessment.

69121 Payment of benefit was not normally made before the start of the period of assessment. Exceptionally, where payment was made before the start of the assessment and the beneficiary then died before the period began, the award could be reviewed¹.

1 R(I) 23/52

69122 If the Adjudicating Medical Authority

1. considered a claim after the death of the claimant **and**
2. made a life assessment to start on the day the claimant died

the full amount of the gratuity was payable. The length of the claimant's life after the start of the assessment was irrelevant¹.

1 R(I) 59/54

69123 – 69129

Gratuity by instalments

69130 A gratuity could be paid by instalments if

1. the beneficiary was under age 18 at the date of award **or**
2. in any other case where the amount of the gratuity exceeded £52 and the beneficiary requested payment to be made by instalments¹.

Except where the beneficiary was under age 18, a gratuity payable to the widow of a deceased person could not be paid by instalments on her remarriage.

1 SS (C&P) Regs (NI), reg 31(3)

69131 The amount and frequency of the instalments were at the discretion of the adjudicating authority awarding the gratuity, based on what was reasonable in the circumstances of the case¹.

Note: The question of the method of payment is generally for the Department but questions about the payment of a gratuity by instalments were for the adjudicating authorities.

1 SS (C&P) Regs (NI), reg 31(3)

69132 – 69134

Pensions in lieu

Pensions in lieu when Special Hardship Allowance was payable

69135 Before 19.11.86¹ a claimant who was entitled to a disablement gratuity and Special Hardship Allowance could choose to have a pension in lieu of the gratuity providing the choice was made before the gratuity was paid. The pension in lieu offered the claimant certain advantages over payment by gratuity

1. the rate of the pension was uprated with the general uprating of benefits **and**
2. it continued to be paid throughout the period of the assessment. Assessments for more than 7 years, or for life, would therefore remain payable beyond 7 years whilst the assessment was current and the conditions for payment of a pension in lieu remained satisfied.

The option was removed from 19.11.86 with the amendments which introduced Reduced Earnings Allowance.

1 SS (NI) Act 75, sec 60(7); SS (Gen Ben) Regs (NI), reg 16

69136 Claimants who were entitled to a pension in lieu immediately before 19.11.86 remained entitled to such pensions until the first date on which¹

1. the assessment expired, was reassessed or reviewed **or**
2. payment of Reduced Earnings Allowance ceased (including Retirement Allowance from 1.11.89, see DMG 69140).

Whilst existing pensions in lieu are protected, no new pension in lieu elections may be made. A claimant who was in receipt of a pension in lieu and whose disablement is reassessed between 1% and 19%, must be paid in the form of a gratuity. Where Reduced Earnings Allowance is no longer payable and a pension in lieu has been in payment, consideration of a balancing Disablement Benefit gratuity arises².

1 SS (II & D) (Misc Prov) Regs (NI), reg 7(5) & (6); 2 SS (Gen Ben) Regs (NI), reg 16(4)

69137 From 10.4.89 entitlement to Reduced Earnings Allowance was replaced by entitlement to Retirement Allowance for a claimant who

1. attained pension age **and**
2. retired from regular employment **and**
3. was entitled to Reduced Earnings Allowance immediately before the date of retirement¹ **and**

4. the rate of Reduced Earnings Allowance payable immediately before retirement was at least £2 a week².

Note: See DMG Chapter 75 for the meaning of pensionable age for Retirement Pension purposes and DMG Chapter 74 for the meaning of pensionable age for State Pension purposes.

1 SS C&B (NI) Act 92, Sch 7, para 13(1); 2 Sch 7, para 13(2)

69138 Payment of pensions in lieu for those beneficiaries over pension age whose Reduced Earnings Allowance entitlement ceased on conversion to Retirement Allowance continued, but the payments were made on an extra-statutory basis.

69139 From 1.10.89 the earnings rule for Retirement Pension was abolished. The transition from Reduced Earnings Allowance to Retirement Allowance entitlement could no longer be tied to the date of retirement. Instead entitlement to Retirement Allowance arose as soon as a person over pension age gave up regular employment¹.

1 SS C&B (NI) Act 92, Sch 7, Part V, para 13(1)(a), (b) & (c)

69140 From 1.11.89¹ entitlement to the pension in lieu has been restored while

1. Reduced Earnings Allowance is payable **or**
2. Retirement Allowance is payable **or**
3. Retirement Allowance would be payable had the weekly rate of Reduced Earnings Allowance not been less than £2 on the day immediately before
 - 3.1 the date of retirement (if before 1.10.89) **or**
 - 3.2 the date of giving up regular employment (if on or after 1.10.89).

Where a pension in lieu was paid on an extra-statutory basis from 10.4.89 to 31.10.89, the Department asked the decision maker to consider a further award of pension in lieu from 1.11.89.

1 SS (II & D) (Misc Prov) Regs (NI), reg 7(5)

69141 – 69144

Pensions in lieu when a pension is already in payment

69145 Before 19.11.86, a claimant who was entitled to a Disablement Pension for a life assessment could choose to receive as a pension in lieu any gratuity that was payable as a result of any subsequent accident¹. This was on condition that the total of the two assessments would enable that person to receive a rate of pension higher than the existing pension rate.

1 SS (Gen Ben) Regs (NI), reg 36

69146 The amending legislation which came into force on 19.11.86 made no amendment to the provisions allowing for these pensions in lieu. But after that date their application

will only be to cases where a pension in lieu is already in payment or where the claim, although made on or after 19.11.86, is decided under earlier legislation.

69147 In cases

1. which fall to be decided under the pre 19.11.86 legislation **and**
2. for which the conditions of a pension in lieu are satisfied

the claimant can still choose to have the gratuity paid as a pension¹. Any pension in lieu which remains payable under the provisions², whereby a gratuity was payable as a pension in lieu when the claimant was also entitled to receive Special Hardship Allowance, constitutes an existing pension³.

1 SS (Gen Ben) Regs (NI), reg 36; 2 reg 16; 3 R(I) 2/84

69148 Though the pension in lieu option in successive accident cases still remains in force, decision makers should note that it can only apply where a gratuity for the succeeding accident would be payable. Where as a result of a successive accident

1. a claim made on or after 19.11.86 is decided under the legislation in force from 19.11.86 **and**
2. the resulting assessment is less than 14%

a pension in lieu is not available since Disablement Benefit is not payable for such assessments.

69149 – 69154

Limitations on pensions in lieu for successive accidents

69155 Limitations on pensions in lieu for successive accidents¹ apply only to claims which were, or may be treated as having been, made before 19.11.86. Their application is likely to be very limited.

1 SS (Gen Ben) Regs (NI), reg 36

69156 A choice to have a gratuity paid as a pension in lieu must be made before the claim to Disablement Benefit for the second accident is determined¹. Once a choice has been made the claimant will be deemed to be entitled to the relevant benefits from the date of the beginning of the respective periods of assessment of disablement². The pension based on the aggregation of assessments is payable

1. for the period of the gratuity assessment only **and**

2. at a rate equal to the difference between the rate of the existing pension and the higher rate appropriate to the aggregate of the 2 assessments.

1 SS (Gen Ben) Regs (NI), reg 36(1)(b); 2 reg 36(3)(c)

69157 Where the assessment for the existing pension has been rounded to the nearest multiple of 10 (the figures 1-4 being rounded down and 5-9 being rounded up), the rounded figure should be used for aggregating¹. The resulting figure should then be rounded as appropriate.

1 SS C&B (NI) Act 92, Sch 6, para 7

69158 But in the event of further aggregation, because of another successive accident which falls within the scope of the pre 19.11.86 legislation, the final rounded figure should not be used. The actual assessments of the gratuities should be added to the assessment for the existing pension (which is a multiple of ten) and the total rounded up if appropriate.

69159 If a person is already entitled to two or more Disablement Pensions based on life assessments when they are given a gratuity assessment, the pension assessments and the rates of pension are aggregated and regarded as forming one life assessment and one existing pension¹. But see DMG 69220 - 69242 on the limits to be applied to the total amount of weekly Disablement Benefit payable for successive accidents.

1 SS (Gen Ben) Regs (NI), reg 36(3)(a)

69160 It is only the basic pension or gratuity assessment, that is, excluding increases, which is taken into account for the purposes of deciding the rate of pension and pension in lieu. If an assessment had been treated as being 100% for Hospital Treatment Allowance¹ this was also disregarded². Payment of such an increased assessment would be taken into account when applying the weekly limits for successive accidents, so also would the payment of Special Hardship Allowance.

1 SS C&B (NI) Act 92, Sch 7, Part III, para 10(2); 2 SS (Gen Ben) Regs (NI), reg 36(3)(b)

69161 – 69169

Extinguishment or reduction of gratuity

69170 If a person is entitled to Disablement Pension of 100% and then becomes entitled to a gratuity for another accident, they are not entitled to receive the gratuity for any period covered by the assessment of 100%¹.

1 SS (Gen Ben) Regs (NI), reg 36(2)(b)

69171 If the assessment of 100% is then reduced during the currency of the gratuity assessment, see DMG 69120. If a person entitled to a Disablement Pension for an assessment of less than 100% becomes entitled to a gratuity for another accident the amount of the gratuity which they are able to receive cannot exceed the difference between 100% and the existing pension assessment¹.

1 SS (Gen Ben) Regs (NI), reg 36(2)(b)

69172 If a person is already entitled to two or more Disablement Pensions when they become entitled to a gratuity, the pension assessments are aggregated and treated as one assessment¹. An increase of an assessment for Hospital Treatment Allowance is disregarded².

1 SS (Gen Ben) Regs (NI), reg 36(3)(a); 2 reg 36(3)(b)

69173 The provisions preventing or reducing payment of a gratuity can only apply if the claimant is already entitled to Disablement Pension at the date on which they become entitled to the gratuity. They do not apply if entitlement to the gratuity arises

1. before entitlement to Disablement Pension begins **or**
2. after entitlement to Disablement Pension ends.

For this purpose the date of entitlement to the gratuity is the date on which the gratuity assessment begins.

69174 The extinguishment and reduction provisions should only be applied to the actual period of overlap of assessments¹. Adjustments may be required at a later stage if an existing Disablement Pension assessment is followed on renewal, by a lower assessment during the currency of the affected Disablement Gratuity assessment. The principles at DMG 69175 - 69177 should be applied.

1 SS (Gen Ben) Regs (NI), reg 36(2)(a) & (b)

69175 If payment of a Disablement Gratuity for a life assessment is prevented¹ by an existing 100% Disablement Pension and this is later replaced by a lower assessment, the life gratuity then becomes payable subject to any reduction² for example if

1. the 100% Disablement Pension is followed by an assessment of 80% or less, an overlapping life gratuity becomes payable in full
2. the further Disablement Pension assessment is 90% and the life gratuity is 11% or more, only a 10% life gratuity can be paid
3. following reduction from 100% to 90% the existing Disablement Pension is further reduced to 80%, the balance of the life Disablement Gratuity can be paid.

1 SS (Gen Ben) Regs (NI), reg 36(2)(a); 2 reg 36(2)(b)

69176 If payment of a Disablement Gratuity for a life assessment is reduced by an existing Disablement Pension which is replaced by a lower assessment, a further payment may be made for the unpaid balance of the life Disablement Gratuity assessment¹.

1 SS (Gen Ben) Regs (NI), reg 36(2)(b)

69177 If the Disablement Gratuity assessment affected by the provisions is for a limited period, not for life, it does not become payable in full when a reduction in the existing

Disablement Pension assessment renders those provisions inoperative or operative only to a lesser extent¹. In this case the amount of the Disablement Gratuity is reduced by an amount related to the period during which the assessments overlapped.

1 SS (Gen Ben) Regs (NI), reg 36(2)(a) & (b)

69178 If an existing Disablement Pension assessment is followed on renewal by a higher assessment during the currency of a Disablement Gratuity assessment to which the reduction or extinguishment provisions have not applied or have applied in part, the change has no effect on the Disablement Gratuity payment.

69179

Pneumoconiosis and Byssinosis

69180 Compensation for these prescribed diseases is always paid as a pension providing the relevant loss of faculty resulting from the disease is assessed at 1% or more¹.

1 SS (II) (PD) Regs (NI), reg 18(1)

69181 Under the legislation in force before 19.11.86 the rate of pension payable, where the assessment was less than 20%, was determined by reference to the rates specified for a pension in lieu of a gratuity where Special Hardship Allowance was in payment¹. Assessments of 1% but less than 11% received a pension at the rate specified for assessments of less than 11% but not less than 6%. Where the assessment was between 11% and 19% the rate was that specified for a degree of disablement of less than 20% but not less than 16%. In cases where the assessment was 20% or more the appropriate pension rate was payable.

1 SS (II) (PD) Regs (NI), reg 18(1); SS (Gen Ben) Regs (NI), Sch 4

69182 – 69184

Effect of changes from 19.11.86

69185 The required minimum assessment for benefit to be payable for these diseases remains at 1%¹. Where the degree of disablement is in the range of 1% to 10% the pension rate is one tenth of weekly rate payable for 100% degree of disablement. Where the assessment is more than 10% but less than 20% the pension payable is at the 20% rate².

1 SS (II) (PD) Regs (NI), reg 18(1); 2 reg 18(1A)

69186 Guidance on the aggregation of assessments for these prescribed disease with assessments for other prescribed diseases or accidents is at DMG 69251. In addition DMG 69217 contains guidance on the savings provisions which may apply to assessments for these diseases¹.

1 SS (II & D) (Misc Prov) Regs (NI), reg 3

69187 – 69199

Transitional protection for claims made before 19.11.86

General

69200 Claims for accidents made before 19.11.86 should be decided under the provisions in force before 19.11.86¹. Decision makers should have regard to the guidance in Volume 1 of DMG, Chapter 2 when determining the date of a claim. Therefore where disablement is assessed at 1% to 13% compensation will continue to be made in the form of a gratuity to those beneficiaries. Where disablement is 14% to 19% compensation will continue to be in the form of a gratuity and not as a 20% pension. It is not possible to put into payment a fresh pension in lieu, where Reduced Earnings Allowance is also payable, in these circumstances see DMG 69136.

1 SS (II & D) (Misc Prov) Regs (NI), reg 14

69201 Where DMG 69200 applies provisional assessments for such claimants are referred for medical reassessment but will be decided by the decision maker in accordance with the pre 19.11.86 rules. Such assessments may, however, be available for aggregation with assessments on claims made under the scheme operating from 19.11.86 providing it will result in payment of a pension or increased rate of pension under the new provisions (DMG 69240).

Delayed claim

69202 Special delayed claim provisions enabled claims made on or after 19.11.86 to be treated as having been made on 18.11.86¹. These provisions were revoked from 12.2.90 but should still be considered by the decision maker when determining certain applications for reconsideration (DMG 69215).

1 SS (II & D) (Misc Prov) Regs (NI), reg 13

69203 The provisions set out what amounted to good cause for delay. To qualify it must be established that

1. the claim for Disablement Benefit was delayed until on or after 19.11.86 **and**
2. the degree of disablement is assessed at less than 14% **and**
3. throughout a period commencing on a date before 19.11.86 and ending with the date of claim the claimant
 - 3.1 was incapable of making an earlier claim **or**

- 3.2** delayed making the claim because of advice provided by the Department.

69204 – 69209

Incapable of making an earlier claim

- 69210 A claimant should be regarded as incapable of making an earlier claim if in the circumstances of the case there are facts which indicate a justifiable lack of appropriate knowledge for making a claim. It is not enough for a claimant to plead ignorance, facts have to be proved from which it can be inferred that there was justifiable ignorance for the claim not being made earlier¹. A lack of knowledge of the right to claim and of the procedures for claiming does not of itself make a person incapable of making a claim.

1 R(I) 1/90

69211 – 69214

Application for supersession

- 69215 Where an application for review is made either before or after 12.2.90, or an application for supersession is made on or after 5.7.99 and the

1. date of claim was between 19.11.86 and 11.2.90 **and**
2. Disablement Benefit assessment is less than 14% **and**
3. date of accident or date of onset of the disease is prior to 19.11.86

the special delayed claim provisions should still be considered by the decision maker when determining that application¹.

1 SS (II & D) (Misc Prov) Regs (NI), reg 13

Pneumoconiosis, Byssinosis and Diffuse Mesothelioma

- 69216 Before 19.11.86 it was the practice of the Special Medical Board to give assessment in respect of pneumoconiosis, byssinosis and diffuse mesothelioma in multiples of 10. If the claimant also suffered from some other respiratory disease, for example emphysema, which does not arise from the prescribed disease, but which makes it more disabling than it would otherwise be, the Special Medical Board would also make an assessment to take account of the extent to which the prescribed disease is made more disabling. Assessments for the other condition would also be in multiples

of 10. Consequently the overall assessment was increased as a result of double rounding.

69217 From 19.11.86 assessments have been given to the nearest percentage point. There is therefore, the possibility of a claimant whose last assessment was before 19.11.86 finding on reassessment that the overall assessment is reduced despite the fact the claimant's condition has remained unchanged. So that the claimant's rate of benefit is not adversely affected the rate of disablement benefit payable will be determined by reference to the degree of disablement established on the last assessment made before 19.11.86¹. The mark-time provision applies until on supersession.

1. disablement is assessed at less than 1% **or**
2. the assessment of disablement equals or is greater than that determined on the last assessment before 19.11.86 **or**

the other disability ceases to exist.

1 SS (II) (PD) Regs (NI), reg 18(1B)

69218 – 69219

Aggregation of Assessments

Statutory limitations on rate of benefits

69220 If a claimant is entitled to Disablement Benefit for an accident or prescribed disease and qualifies during the same period for more than one assessment of Disablement Benefit, the maximum payment a claimant receives may be limited¹. The limit is 100% of the disablement pension rate specified².

Note: Before 31.10.16 special rates applied to claimants under age 18.

1 SS C&B (NI) Act 92, sec 107; 2 Sch 4, Part V, para 1 & 4

69221 Where a claimant is receiving a pension in lieu of a gratuity, the weekly sum payable must be included in the total amount when applying the limit. Increases such as Unemployability Supplement or those for children or dependants are payable in addition to the statutory limit. Special Hardship Allowance was taken into account when applying the limit¹ but Reduced Earnings Allowance from 6.4.87 is payable in addition, subject to the limit of 140% of the maximum rate of Disablement Pension².

1 SS C&B (NI) Act 92, sec 107(1)(a); 2 Sch 7, para 11(10) & (11)

69222 – 69224

Role of decision maker

General

69225 Aggregation was introduced on 19.11.86. It is the process whereby two or more concurrent assessments are added together to produce one award of benefit. The decision maker should aggregate assessments¹ unless it is advantageous to the claimant not to do so². Where aggregation is not appropriate there will be separate awards. This applies to assessments arising from both accidents and prescribed diseases³. However, see DMG 69251 for guidance where at least one of the assessments is for prescribed disease D1 or D2.

Note: See DMG 69231 et seq for guidance on whether separate awards are advantageous.

*1 SS (II) (PD) Regs (NI), reg 13A; 2 reg 13A; R(I) 4/03;
3 SS C&B (NI) Act 92, sec 103(1); SS (II) (PD) Regs (NI), reg 13A*

69226 Aggregation is the responsibility of the decision maker. Where aggregation is appropriate, it should be applied in all cases where

1. assessments of disablement cover a common period
2. a claim to benefit resulting in an assessment of disablement is made after 18.11.86 (a claim in this instance includes an application for an unforeseen aggravation review or application for reconsideration on the ground of a change of circumstances where the assessment is increased by at least 1%).

Example 1

A claimant has an assessment of 10% for life in respect of an accident on 5.1.69 for which a gratuity was paid. Following a claim for a further accident on 10.2.71 he is assessed at 7% for life and awarded a further gratuity.

On 19.8.99 he notifies that his condition for the second accident has worsened. Medical opinion is that there has been no change. The decision maker supersedes but does not change the previous assessment. As there is no requirement for a claim the assessments cannot be aggregated.

Example 2

A claimant has an assessment of 10% for an industrial accident on 1.5.62 and 10% for an accident on 10.1.75. He is examined by an Adjudicating Medical Authority on a claim for unforeseen aggravation on 15.8.94 and the assessment for the first accident is increased to 11%. No award is paid.

On 7.3.01 the claimant applies for a supersession in light of a Commissioner's decision¹ which held that assessments for which life gratuities had been paid could be aggregated. As the claim on 15.8.94 was after 18.11.86, and the assessment was increased, the assessments can be aggregated. The decision maker supersedes the decision made on the claim for error of law and awards benefit from 7.3.01, the date of the application for supersession, at 20%.

1 CI/522/1993

- 69227 Aggregation can only be applied during the period of the claim made on or after 19.11.86. If that claim ceases then aggregation must also cease.

Example

Industrial accident on 6.1.04. Disablement is assessed at 8% from 21.5.04 to 20.11.04 final.

Industrial accident on 15.4.73. Disablement assessed at 14% for life, gratuity paid.

Industrial accident 7.8.84. Disablement assessed at 5% for life, gratuity paid.

Aggregation is appropriate and an award of disablement benefit at 30% is made from 21.5.04 to 20.11.04 only.

- 69228 Where the aggregated assessments are 14% or more, a pension is payable. If this level is not reached the claim should be disallowed in the normal way.

Example 1

1st accident assessed at 10%

2nd accident assessed at 7%

Aggregation produces an assessment of 20% and a pension at this rate is payable.

Example 2

1st accident assessed at 5%

2nd accident assessed at 5%

Aggregation produces an assessment of 10%, therefore the claim would be disallowed.

69229 Assessments under pre 19.11.86 legislation can also (subject to certain conditions) be aggregated with assessments after that date.

Rounding

69230 Individual assessments of disablement should be aggregated first and then the total assessment rounded to the nearest multiple of 10% (5% being rounded up). However, an aggregated assessment of 14% is always payable at the 20% rate¹.

1 SS C&B (NI) Act 92, sec 103(3)(4)

Example 1

1st accident assessed at 15%

2nd accident assessed at 10%

The aggregated assessment totals 25% and a pension at the 30% rate is payable.

Example 2

1st accident assessed at 18%

2nd accident assessed at 6%

The aggregated assessment totals 24% and a pension at the 20% rate is payable.

Determining whether separate awards are advantageous

69231 In order to determine whether separate awards are more advantageous to the claimant than aggregation, the decision maker needs to consider which option

1. produces the most weekly benefit **or**
2. allows any increase in benefit to be paid from the earliest date, taking into account the supersession effective date rules.

Note: Industrial Injuries Disablement Benefit **cannot** be paid for any day prior to the introduction of a new prescribed disease¹. Therefore, when considering aggregation of a new prescribed disease the effective date of supersession **cannot** be before the introduction of that prescribed disease.

1 R(I) 4/96

Example 1

Jason has an assessment of 6% for life in respect of an industrial accident that happened in 2001. On 13.12.06 he makes a claim for a second industrial accident that happened in March 2006. Following medical advice, the decision maker gives a

separate assessment of disablement of 8% from 20.6.06 in respect of the second accident. The new assessment runs concurrently with the existing one and cannot produce an award on its own, so aggregation is advantageous to the claimant. There is no award of benefit to supersede, so the decision maker makes a new rounded award of 20% from 13.9.06, three months before the date of claim.

Example 2

John has an assessment of 15% for life from 7.9.04 in respect of a prescribed disease and benefit is in payment at the rounded rate of 20%. He claims on 10.4.06 in respect of an industrial accident that happened in October 2005. Following medical advice, the decision maker gives a separate assessment of disablement of 10% from 23.1.06. The new assessment runs concurrently with the existing one and cannot result in a separate award, so aggregation is advantageous to the claimant. The decision maker treats the new claim as an application for supersession of the existing award of benefit on the grounds of a relevant change of circumstances and supersedes so as to give a new award at the rounded rate of 30%. If the decision maker accepts that special circumstances prevented the claimant from applying earlier, supersession of the benefit award is effective from 23.1.06. If not, supersession is only effective from 10.4.06, the date of application.

Example 3

Karen has an assessment of 15% for life in respect of an industrial accident that happened in 2003 and an award of benefit is in payment at the rounded rate of 20%. She makes a claim for a prescribed disease on 7.10.06 and following medical advice, the decision maker gives an assessment that she is 20% disabled from 5.4.06 due to the disease. The new assessment runs concurrently with the existing one so the decision maker considers aggregation. Aggregation would produce one award of 40%, but supersession of the existing award of benefit could only be effective from 7.10.06 as there were no special circumstances that prevented the claimant from applying for supersession earlier. It is therefore more advantageous for the decision maker to make a separate award of 20% from 7.7.06, three months before the date of claim.

Example 4

Kevin has an assessment of 15% for life in respect of an industrial accident and an award of benefit is in payment at the rounded rate of 20%. He makes a claim for a prescribed disease on 7.10.06 and following medical advice, the decision maker gives an assessment that he is 20% disabled from 5.4.06 due to the disease. The new assessment runs concurrently with the previous one so the decision maker considers aggregation. The decision maker could either make a separate award of 20% from

7.7.06, or aggregate so as to produce a single award at the rounded rate of 40%. The decision maker accepts that special circumstances prevented the claimant from applying earlier than 7.10.06. Aggregation is therefore more advantageous to the claimant and the decision maker treats the claim as an application for supersession of the benefit award on the grounds that there has been a relevant change of circumstances and gives an award at the rounded rate of 40% with effect from 5.4.06.

69232 However, where there are three or more assessments, they must either all be aggregated or none aggregated at all. It is not possible to aggregate some assessments and leave others separate.

Note: This does not apply where there is an assessment for prescribed disease D1 or D2 (see DMG 69251).

69233 If there is a doubt as to whether or not separate awards are advantageous, the case should be referred to Decision Making Services for advice.

69234 In certain cases an offset decision will also be required (see DMG 69260). See also DMG Chapters 03 and 04 for advice on the limitation of arrears following revision or supersession.

69235 – 69239

Assessments under pre 19.11.86 provisions

69240 Certain assessments under the pre 19.11.86 provisions can be aggregated with those arising after that date. Assessments which **should** be aggregated are

1. provisional assessments
2. final awards for which a gratuity has been awarded **but not yet paid**¹
3. **any** assessment for which a pension (including a pension in lieu) has been awarded.

1 SS C&B (NI) Act 92, sec 103(2); SS (II) (PD) Regs (NI), reg 13A; R(I) 3/00

Adjustment

69241 If a provisional assessment for which a gratuity has been paid is included in an aggregated assessment, an adjustment must be made to take account of that part of the award for which the claimant has already been compensated. This is done by reducing the rounded aggregated assessment by the degree of the assessment already paid as a gratuity for the common period¹. A pension is then payable on the remaining assessment. Special pension rates between 1-19% are provided for use in these circumstances².

1 SS (II & D) (Misc Prov) Regs (NI), reg 8(1); 2 regs 8(3) & (4)

Example 1

	2.6.86 - 1.6.88	2.6.88 - 4.4.93
Pre 19.11.96 claim	5% prov grat paid 1.10.89 for life	9% prov grat paid
Post 19.11.86 claim	5% for life	

1. Aggregated assessment = 20% (9% + 5% rounded to 20%)
2. 9% already paid as a gratuity is deducted leaving balance of 11%
3. 11% paid at the special pension rates from 19.11.89 - 4.4.93

Example 2

	25.5.93 - 24.5.95
Pre 19.11.86 claim	9% prov grat paid 6.6.94 for life
Post 19.11.86 claim	23% for life

1. Aggregated assessment = 30% (9% + 23% rounded to 30%)
2. 9% already paid as a gratuity is deducted leaving a balance of 21%
3. 21% is paid as 20% at normal rate+ 1% at special pension rate for the period 6.6.94 - 24.5.95 followed by a pension at the 20% rate.

Note: It is not necessary to supersede the original gratuity award.

69242 Where a provisional assessment given under the pre 19.11.86 provisions has been included in an aggregated award, and then is subsequently reassessed, the following points should be noted

1. whether the reassessment is provisional or final, the pre 19.11.86 provisions will continue to apply because of transitional protection¹. Where the assessment is therefore 1-19% a gratuity should be awarded
2. the award of a gratuity as above does not prevent an aggregated award subsequently being given but an adjustment will need to be made (DMG 69241). But in the case of a final award aggregation **must** be done before the gratuity is paid.

1 SS (II & D) (Misc Prov) Regs (NI), reg 12

Assessments where claim is treated as made under pre 19.11.86 provisions

69243 Assessments should **not** be aggregated where a claim is

1. made on or after 19.11.86 **and**
2. treated as a claim made under the pre 19.11.86 provisions¹.

1 R(I) 4/03

69244 – 69249

Change of circumstances

69250 Where the level of assessment is increased the amount available for aggregation depends on whether there is an overlap with the previous assessment. Where

1. the previous assessment has expired, the whole of the revised assessment is available for aggregation
2. there is an overlap with the previous assessment, only the difference between the old and new assessments is available for aggregation.

For these purposes, a life award is treated as expiring after seven years¹.

1 SS (Adj) Regs (NI) 84, reg 84(1), R(I) 11/67

Example

First accident 1971. 5% for life awarded and gratuity paid from 1973.

An unforeseen aggravation review results in an assessment of 9% for life from 14.3.92.

Second accident 1973. 3% for life awarded and gratuity paid from 1973. Following an application for supersession on the grounds of a change of circumstances the decision maker assesses the level of disablement at 11% from 19.8.99 for life.

As the original assessments on the first two claims can be treated as expired the amounts available for aggregation are 9% + 11% = 20%. A pension at the 20% rate is payable from the start of the common period that is 19.8.99.

Assessments for prescribed diseases D1 or D2

69251 The general rule is that where there are three or more assessments, they must either all be aggregated or none aggregated at all (see DMG 69232). However, that does not apply in cases where there is an assessment for D1 or D2. In those cases it is

still possible to make an award for D1 and D2 and to make another award based on aggregated assessments for other diseases or accidents.

69252 However, decision makers should aggregate assessments only if it is to the claimant's advantage.

Example 1

Prescribed disease assessed at 2%, special provisions allow payment to be made at 10%.

Accident 1996, 12% for life.

Aggregation is appropriate. Claimant is entitled to a pension of 14% - (2% D1 and 12% accident) rounded to 20%. If aggregation was not applied the claimant would only be entitled to a 10% pension for D1.

Example 2

Prescribed disease D1 assessed at 2%, special provisions allow payment to be made at 10%.

1st accident 1996, 12% for life.

2nd accident 1998, 17% for life.

Aggregation of D1 with the other assessments is not now appropriate. Claimant is entitled to a 10% pension for D1 **and** a 30% pension for the two accidents, giving 40% in total. Aggregating the three assessments would only give the claimant a 30% pension (2 + 12 + 17 = 31 rounded to 30).

Example 3

Prescribed disease D1 assessed at 2%, special provisions allow payment to be made at 10%.

1st accident 1996, 14% for life.

Aggregation is not appropriate. Claimant is entitled to a 10% pension for D1 **and** a 20% pension for the accident, giving 30% in total. Aggregating the two assessments would only give the claimant a 20% pension (2 + 14 = 16 rounded to 20).

Example 4

Prescribed disease D1 assessed at 2%, special provisions allow payment to be made at 10%.

1st accident 1996, 14% for life.

2nd accident 1998, 16% for life.

Aggregation is not appropriate. Claimant is entitled to a 10% pension for D1 **and** a 30% pension for the two accidents, giving 40% in total. Aggregating the three assessments would only give the claimant a 30% pension (2 + 14 + 16 = 32 rounded to 30).

69253 – 69259

Offsets

General

69260 Where an award of Disablement Benefit is

1. revised **or**
2. superseded **or**
3. varied on appeal

payments made under the original award may be treated as paid on account of benefit which is then found to be payable under the new award¹.

1 SS A (NI) Act 92, sec 69(6); SS (POR) Regs (NI), reg 5

69261 DMG 69262 et seq gives guidance on offsetting a Disablement Pension against another Disablement Pension. The likelihood of an offset where a disablement gratuity is involved is rare because a disablement gratuity is deemed to be for a maximum period of seven years¹. Where the decision maker has to consider an offset where a disablement gratuity is involved before the expiry of the period of seven years, the case should be sent to Decision Making Services for advice.

1 R(I) 11/67

69262 The decision maker's action on cases where entitlement to a Disablement Pension is based on aggregated assessments will vary according to the circumstances. Guidance is in DMG 69300.

69263 The amount of offset is the amount of the Disablement Pension previously paid in the common period and not already offset¹.

1 SS (POR) Regs (NI), reg 5

69264 – 69269

Limitation of offset

69270 The amount offset must never exceed the lesser of

1. the amount paid under the original award for the common period **or**
2. the amount subsequently awarded following reconsideration for that period.

69271 – 69274

Odd days

69275 For offset purposes where a pension is involved, only weekly payments are taken into account. No offset should be made for any odd days of the original assessment period falling before the first Wednesday and after the last Tuesday of the common period.

69276 – 69279

Difference between offset amount and that originally paid

69280 Where the sum to be offset is less than that paid under the previous award, it will not be necessary to account for the balance. But should the amount arrived at for offset exceed the value of the previous award, it is not possible to offset more than was originally paid.

69281 – 69284

Hospital treatment allowance

69285 It will be rare to consider an offset where hospital treatment allowance is involved. If this situation arises, seek advice from Decision Making Services.

Calculation and wording of a decision including an offset

69286 An offset determination must accurately reflect the law and can therefore be complex. Decision makers should note the guidance on the basic principles at DMG 69287 - 69291.

69287 **Supersession** - if the previous decision is superseded, the offset determination should state this and the grounds. This action is not required when the decision awarding the benefit to be offset has already been superseded at an earlier date¹.

1 R(I) 15/66

69288 **Re-awarding benefit previously paid** - if the new award follows supersession, the decision must re-award any part of the original award which is not affected by the new award. This is because the original decision no longer exists.

- 69289 **New award of benefit** - the decision should include a statement of the benefit now awarded, the weekly rate of pension and the period to which it relates.
- 69290 **Amount to be paid** - the decision should include a statement of the net amount payable following offset and the period for which that payment is due.
- 69291 **Offset** - the decision should include a statement of the total benefit treated as paid on account of benefit now awarded. Where the current award is for benefit at a weekly rate, the statement should also say how much is being recovered weekly and also state the period for which recovery at that rate will be made. Where an offset from benefit originally awarded has already been made on one or more previous occasions the decision should also include a statement of the amount previously offset.
- 69292 The decision maker should note that
1. the offset should be made at the time the new benefit is awarded
 2. a decision including an offset may be superseded on the ground that a mistake was made in arithmetic or deciding the common period (see DMG 69293)
 3. any amount remaining for recovery in the future should be notified to the claimant as a footnote to the decision (see DMG 69294).
- 69293 Where DMG 69292 **2.** applies, if not superseded, and an incorrect sum has been offset, the error will stand. The balance available for future offset is the remaining amount, not the amount that would be remaining had the decision been correct.
- 69294 Where DMG 69292 **3.** applies the footnote does not form part of the decision. The sum quoted will be the maximum amount that can still be offset. Providing there is a common period, this amount can be offset on any number of subsequent occasions at any time in the future against any further awards for the same accident or disease, until it has been fully recovered.

Period of original award runs beyond the end of the common period

- 69295 The following points may help the decision maker when dealing with these cases
1. the period beyond the end of the common period is not yet available for offset, it can only be taken into account if further decisions are made to award benefit for this period
 2. the original award no longer exists after supersession, so cannot be the object of further supersession

3. the superseded decision not only covers the common period of the altered assessment but also re-awards at the original rate the remainder of the original award. Thus the whole period of the original award is made available for offsets
4. the decision in explaining the offset should not deal with the period outside the common period.

69296 – 69299

Cases involving aggregated awards

69300 The aggregated award may sometimes form part of the offset decision. But in other cases a separate aggregated award will be needed. In most cases supersession of the original assessment will still be necessary.

69301 – 69309

Constant Attendance Allowance

Considering a grant of Constant Attendance Allowance

69310 Entitlement to Constant Attendance Allowance may arise where

1. Disablement Pension is paid in respect of 100% disablement¹
2. there is entitlement to weekly payments under relevant legislation² or any certified contracting-out scheme and the disablement would be assessed at 100%³.

1 SS C&B (NI) Act 92, sec 104(1); 2 Workmen's Compensation Acts; 3 SS (Gen Ben) Regs (NI), reg 41

69311 The medical adviser will advise on the need for constant attendance when they are dealing with an Industrial Injuries Disablement Benefit referral and their recommended level of disablement is 95% or greater. In addition to the usual medical reports on the claim for Industrial Injuries Disablement Benefit, the medical adviser will give specific medical advice about Constant Attendance Allowance on form BI118D.

69312 While decisions on Constant Attendance Allowance can be reconsidered by the decision maker, there is no right of appeal against a decision on Constant Attendance Allowance¹ so it is important to consider all the relevant facts fully before making a decision.

1 SS & CS (D&A) Regs (NI), Sch 1, para 12(a)

69313 – 69319

Primary conditions

69320 The primary conditions for a grant of Constant Attendance Allowance¹ are

1. the claimant's disablement resulting from the relevant accident or disease must total at least 95% as that percentage
 - 1.1 is rounded to 100% **and**
 - 1.2 is paid at the 100% rate **and**
 - 1.3 may be made up by
 - 1.3.a one or more assessments under the Industrial Injuries Disablement Benefit provisions **or**

- 1.3.b** assessment for expired gratuities that have been aggregated
or
- 1.3.c** a combination of one or more assessments of disablement under the Industrial Injuries Disablement Benefit provisions and one or more assessments covered by payments made under other schemes **and**
- 2.** the claimant is dependent on attendance for the necessities of life **and**
- 3.** the attendance is needed as a result of the relevant loss of faculty **and**
- 4.** attendance will be needed for a prolonged period.

1 SS C&B (NI) Act 92, sec 104

69321 The claimant may receive payments under other schemes after an assessment of disablement. The following schemes may be added to any Industrial Injuries pension assessment(s) to satisfy the 95% disablement condition

- 1.** weekly payments under relevant legislation or any contracting out scheme certified under those Acts. It is only necessary that a person is, or has been at any time after 4 July 1948 entitled to such payments¹
- 2.** payments by way of benefit under relevant legislation²
- 3.** payments of personal benefit by way of disablement pension or gratuity under any Personal Injuries Scheme or Services Pensions Instrument³.

1 SS (Gen Ben) Regs (NI), reg 18(2)(b); 2 reg 18(2)(c); 3 reg 18(2)(d)

Interpretation of conditions for awarding Constant Attendance Allowance

Dependent on attendance

- 69322 In interpreting this condition the decision maker should establish
1. the claimant's needs **and**
 2. which needs cannot be met without assistance.
- 69323 The grant and rate of Constant Attendance Allowance depends on the number, frequency and importance of these needs.
- 69324 In deciding the degree of dependence, consider how far the claimant can attend to their ordinary human needs themselves. If the claimant needs any help, consider
1. what the claimant needs help with
 2. how much help the claimant needs **and**
 3. whether the needs are frequent or predictable.
- 69325 Remember the Constant Attendance Allowance is granted for the amount of attendance **needed**. This may not necessarily be the amount of attendance **received**.
- 69326 Constant Attendance Allowance is payable if it is necessary, not merely desirable, for someone to be on call even though the claimant may not need attention.

The necessities of life

- 69327 The decision maker should interpret the phrase "necessities of life" freely. Obvious examples would include
1. eating
 2. drinking
 3. sleeping
 4. natural functions.
- 69328 A claimant can also expect a reasonable degree of physical and mental comfort and the disablement may create special "necessities of life". For example some applicants

may need to eat or drink more frequently than others, or needs may be increased by incontinence, insomnia, bed sores or vomiting.

A prolonged period

69329 The decision maker can interpret a prolonged period as six months or more. If the need for attendance is established for a past period, the decision maker should take this period into account when deciding if the need has lasted for six months or more.

69330 Once this condition is satisfied, it will continue as long as attendance is needed.

69331 This condition is discounted if the need for attendance arose within six months of death and continued up to the claimant's death.

69332 – 69339

Determining the rate of Constant Attendance Allowance

69340 The rate of Constant Attendance Allowance depends on the amount of attendance needed. These are four rates of Constant Attendance Allowance¹. The four rates are referred to as

1. part-time
2. normal maximum
3. intermediate
4. exceptional.

1 SS (Gen Ben) Regs (NI), reg 17

Artificial limbs

69341 Unless otherwise stated, the examples given in the guidance for each rate assume (when appropriate) that an artificial limb is fitted. In any case in which an artificial limb is awaited, a higher rate of Constant Attendance Allowance may be applicable if it means that extra attendance is needed, for example if the applicant is confined to bed.

69342 The fact that an artificial limb is not yet in use may not, in itself, make much difference to the amount of attendance needed. The decision maker must consider each case on its own merits.

69343 – 69344

Part-time rate

69345 To qualify for the part-time rate the claimant must satisfy the primary conditions and also

1. need the help of an attendant at certain predictable times of the day for routine attendance. Attendance should be needed for half a day or less **and**
2. be capable of being left for other periods.

69346 Some examples of when the part-time may apply are

1. guiding vision, when vision is not good enough to read ordinary print or get about in unfamiliar places without the help of a sighted person

2. amputation of one arm below the elbow, and one leg below the knee
3. double leg amputations, one through the knee and one higher, or both below the knee.

However Constant Attendance Allowance is not payable when one or both lower limb amputations is a Symes or similar amputation through the ankle joint as in these cases, resulting in an end bearing stump, the applicant can stand on their leg without putting on their prosthesis.

69347 It is not usual to grant Constant Attendance Allowance if help is only needed in dressing and undressing.

69348 – 69349

Normal maximum rate

69350 To qualify for the normal maximum rate the claimant must satisfy the primary conditions and also need attendance for more than half the day.

69351 If occasional attendance at night is also needed but not every night, do not increase entitlement above the normal maximum rate.

69352 If minimal attendance is needed during the day, but regularly during part of the night (i.e. at least twice every night) normal maximum rate may be appropriate.

69353 Some examples of when the normal maximum rate may apply are

1. total blindness without added complications
2. guiding vision with any single limb amputation
3. loss of both arms with stumps from 11.5 cm below the elbow
4. double leg amputations through or above the knee
5. amputation of one leg and one arm where at least one amputation is above the knee or above the elbow
6. paraplegia with incontinence largely controlled by the aid of appliances and considerable independence both in and outside the house (i.e. not practically housebound)
7. other cases where the applicant is confined to bed or wheelchair but has good use to the upper limbs and is not incontinent
8. severe mental disability, including epilepsy, when there is a large measure of physical control of actions

9. severe respiratory disablement necessitating occasional night attendance.

69354 – 69359

Intermediate rate

69360 To qualify for the intermediate rate the claimant, in addition to satisfying the primary conditions, must need a considerable amount of attendance either

1. during most of the day and regularly during part of the night (i.e. at least twice every night) **or**
2. frequently throughout the night and part of the day.

69361 Consider a grant at the intermediate rate if the applicant

1. is not regarded as completely helpless, for example because they have some use in their limbs, particularly the upper limbs **but**
2. needs a considerable degree of attendance both day and night.

69362 Occasional attendance at night does not normally qualify for the intermediate rate.

69363 Some examples of when the intermediate rate may apply are

1. total blindness with any single limb amputation or deafness to the extent of at least 60%
2. both arms amputated with stumps from 20.5cm below the shoulder to less than 11.5cm below the elbow
3. paraplegia with material incontinence when, although not bed ridden, a considerable amount of attendance is needed both day and night (for example needs help from bed to chair, and from chair to motorised vehicle) - almost housebound without help
4. incomplete quadriplegia when there is a little use in the upper limbs so that the applicant can do some things for themselves (such as feeding) but the upper limbs are still severely disabled
5. severe respiratory disablement necessitating regular night attendance but not all night
6. severe mental disability but able to do a few useful things such as feeding.

Note: Bedsores, repeated urinary infections and considerable preventative skin care nursing also comes under **3.**

69364 – 69368

Exceptional rate

69369 To qualify for the exceptional rate the applicant, in addition to satisfying the primary conditions, must

1. be completely or almost completely helpless **and**
2. need constant attendance day and night.

69370 Some examples of when the exceptional rate may apply are

1. amputations of both arms above the elbow with stumps less than 20.5cm
2. quadriplegia with little or no use in the hands
3. paraplegia, almost completely bedridden, with little use in the upper limbs and severe incontinence leading to regular and considerable attendance both during the day and at night (for example tidal drainage, excessive laundry or persistent bedsores)
4. severe respiratory impairment with very severe breathlessness even at rest so that people are bed or chair bound and unable to transfer necessitating attention day and night
5. severe mental disability resulting in complete helplessness
6. both arms amputated at any level and amputation of leg or serious injury to leg when crutches cannot be used.

Distinguishing between Constant Attendance Allowance rates

- 69371 The conditions for Exceptionally Severe Disablement Allowance make the distinction between the intermediate rate and the normal maximum rate very important.
- 69372 Examine a case with great care before making an initial grant at the exceptional or intermediate rate.
- 69373 Consider each case on its own merits, but the essential factor in determining the need for attendance at the exceptional or intermediate rate is that attendance is either
1. required regularly during most of the day and part of the night **or**
 2. frequently throughout the night and part of the day.
- 69374 One of the higher rates normally is appropriate if more than occasional attendance at night is needed.
- 69375 To distinguish between the normal maximum and intermediate rates cases, consider the extent, nature and frequency of night attendance in addition to the severity of the disablement.
- 69376 The intermediate rate is appropriate, irrespective of the extent and nature of the attendance needed at night, when attendance is needed
1. all day **and**
 2. at least twice every night.

Special factors

- 69377 When special factors arise which largely create the need for attendance day or night, the decision maker must give them due weight when deciding whether Constant Attendance Allowance is appropriate at an exceptional rate (for example special factors from domestic circumstances or mental conditions).

Period of grant

- 69378 If the claimant satisfies the conditions for Constant Attendance Allowance, the decision maker must decide the period of any grant.
- 69379 In deciding the period of a grant of Constant Attendance Allowance, take account of the period of assessment of
1. Industrial Injuries Disablement Benefit **and**
 2. in aggregation cases, the period for which any other relevant benefit is awarded.
- 69380 The period of a grant
1. cannot be longer than the period for which an assessment of 95% or more is made **and**
 2. should not exceed the period for which constant attendance is likely to last.
- 69381 The decision maker should normally make initial grants for at least six months. Grants can be made for less than six months, for example if the claimant has died within this period.
- 69382 When the claimant's assessment for Industrial Injuries Disablement Benefit is for life the decision maker should, make a grant of Constant Attendance Allowance
1. for up to two years **or**
 2. for longer if
 - 2.1 it is obvious that there will be no change in the degree of attendance needed **and**
 - 2.2 there is no evidence that the claimant is having difficulty coming to terms with their disability.
- 69383 The decision maker should not grant Constant Attendance Allowance for life if
1. the evidence shows that the claimant is having difficulty coming to terms with their disability
 2. attendance needs are likely to reduce or increase, bearing in mind the age of the claimant
 3. it is known that the claimant's house is about to be adapted
 4. it is known that the claimant is about to move house

5. an up to date form BI118D has not been completed in the claimant's house.

Renewal

- 69384 A grant will be renewed if the claimant continues to satisfy the conditions¹. When considering renewal, the decision maker should consider all available evidence. The decision maker should refer the case to Decision Making Services for advice if a reduction in the rate of Constant Attendance Allowance would affect the grant of Exceptionally Severe Disablement Allowance. Cases of difficulty should also be referred to Decision Making Services for advice.

1 SS C&B (NI) Act 92, sec 104(2)

Overpayment

- 69385 If an overpayment occurs because Constant Attendance Allowance has been paid at the same time as Attendance Allowance or the care component of Disability Living Allowance, the overpaid benefit is the Attendance Allowance or Disability Living Allowance as that benefit should have been reduced to take account of the Constant Attendance Allowance¹. Constant Attendance Allowance is the benefit which remains in payment.

1 SS (OB) Regs (NI), Sch 1

69386 – 69389

Claimant in hospital

69390 Constant Attendance Allowance is not payable while the claimant is receiving free in-patient treatment in a hospital or similar institution unless DMG 69391 applies¹.

1 SS (Gen Ben) Regs (NI), reg 19(1)

69391 Constant Attendance Allowance is payable for the first 28 days of free in-patient treatment following admission to a hospital or similar institution if

1. the claimant is already receiving Constant Attendance Allowance at the date of admission **or**
2. Constant Attendance Allowance is subsequently granted for a period which includes the date of admission¹.

1 SS (Gen Ben) Regs (NI), reg 19(2)

69392 Two or more distinct periods spent as an in-patient are added together and treated as a continuous period unless they are separated by a period of at least 28 days¹.

1 SS (Gen Ben) Regs (NI), reg 19(3)

Conditional grant for hospital in-patient

69393 A claimant who is disqualified from receiving Constant Attendance Allowance because they are receiving free in-patient treatment in a hospital or similar institution can be given a "conditional" grant of Constant Attendance Allowance.

69394 If the claimant has a conditional grant, Constant Attendance Allowance becomes payable when they leave hospital, even if only for short periods, without the need to change the decision. In these cases Constant Attendance Allowance is payable at a daily rate equivalent to one seventh of the weekly rate for days which the claimant spends out of hospital.

69395 If the claimant was in hospital when their attendance needs first were assessed, the answers to the questions on form BI118D outline the need for attendance if the claimant was **not** an in-patient. In such cases consider the need for Constant Attendance Allowance as normal, and in the light of any information obtained from the hospital.

69396 Exceptionally Severe Disablement Allowance can be paid while the claimant is in hospital. If the conditions for Exceptionally Severe Disablement Allowance are satisfied but Constant Attendance Allowance is not payable, make a conditional grant

of Constant Attendance Allowance so that the Exceptionally Severe Disablement Allowance can be granted and paid.

69397 – 69499

Exceptionally Severe Disablement Allowance

Considering a grant of Exceptionally Severe Disablement Allowance

69500 A claimant may be entitled to Exceptionally Severe Disablement Allowance if the

1. conditions for Constant Attendance Allowance are satisfied **and**
2. need for constant attendance is likely to be permanent¹.

1 SS C&B (NI) Act 92, sec 105(1)(a) & (b); SS (Gen Ben) Regs (NI), reg 41

69501 There is no specific form for medical advice on Exceptionally Severe Disablement Allowance. The medical adviser normally will give advice on Exceptionally Severe Disablement Allowance when considering Constant Attendance Allowance.

69502 While decisions on Exceptionally Severe Disablement Allowance can be reconsidered by the decision maker, there is no right of appeal against a decision on Exceptionally Severe Disablement Allowance¹ so it is important to consider all the relevant facts fully before making a decision.

1 SS & CS (D&A) Regs (NI), Sch 1, para 12(b)

69503 Decision makers should only grant Exceptionally Severe Disablement Allowance if they are reasonably certain that the claimant's attendance needs, above the normal maximum rate of Constant Attendance Allowance, are likely to be permanent.

69504 Decision makers should not grant Exceptionally Severe Disablement Allowance if they expect the

1. claimant's condition to improve **and**
2. rate of Constant Attendance Allowance to be reduced in the future.

69505 – 69509

Permanent

69510 When awarding Exceptionally Severe Disablement Allowance the term "permanent" means "for life".

69511 Medical advice may sometimes appear to relate to the permanent nature of the relevant loss of faculty rather than the attendance needs. Decision makers should use their own judgement before awarding Exceptionally Severe Disablement Allowance.

69512 Decision makers should be cautious about awarding Exceptionally Severe Disablement Allowance if the claimant's attendance needs are likely to decrease even if their overall physical condition does not improve.

Example

A young person is severely disabled following an accident. Constant Attendance Allowance at the intermediate rate is appropriate.

In time the person could become self sufficient and lead a fairly full life by using their upper limbs even though their basic loss of faculty will not change. If such an improvement seems possible, the need for attendance at the intermediate level on a permanent basis is not established, so Exceptionally Severe Disablement Allowance should not be granted.

An award of Exceptionally Severe Disablement Allowance should not be discounted if a claimant's attendance needs were only considered to be permanent shortly before their death.

Deciding entitlement

69513 The decision maker should note the advice on form BI118D, but should not automatically accept that advice as conclusive.

69514 The decision maker should consider all the available evidence. If Constant Attendance Allowance is not granted for life, the decision maker should pay particular attention to the reasons why the grant of Constant Attendance Allowance is provisional or restricted to a short period.

9515 If decision makers have any doubts about whether Exceptionally Severe Disablement Allowance is appropriate, refer the case to medical services for advice.

69516 – 69519

Claimant is in hospital

69520 The decision maker should consider granting Exceptionally Severe Disablement Allowance if the claimant

1. is receiving free medical treatment as an in-patient at a hospital or similar institution **and**
2. has been granted Constant Attendance Allowance at a rate higher than the normal maximum rate, or would be granted Constant Attendance Allowance at such a rate if they were not an in-patient.

- 69521 If the claimant has not been granted Constant Attendance Allowance because they are an in-patient, but the other conditions for a grant of Exceptionally Severe Disablement Allowance are satisfied, the decision maker should make a conditional grant of Constant Attendance Allowance.

Conditions for Exceptionally Severe Disablement Allowance are satisfied

- 69522 If the conditions for Exceptionally Severe Disablement Allowance are satisfied, the decision maker should grant Exceptionally Severe Disablement Allowance for the period for which title to Constant Attendance Allowance has been established.

Conditions for Exceptionally Severe Disablement Allowance are not satisfied

- 69523 If the conditions for Exceptionally Severe Disablement Allowance are not satisfied, note the reasons in the claimant's B18 in case the claimant asks for an explanation of the decision.

69524 – 69529

Renewals

- 69530 When Exceptionally Severe Disablement Allowance is due for renewal, first consider the claimant's continuing entitlement to Constant Attendance Allowance.
- 69531 If Constant Attendance Allowance is not payable because the claimant is in hospital or a similar institution, consider making a conditional grant of Constant Attendance Allowance.
- 69532 If Constant Attendance Allowance is still granted at a rate higher than the normal maximum rate, decision makers should accept that the need for permanent constant attendance is still satisfied unless they have clear evidence suggesting otherwise.

Clear evidence

- 69533 In this context "clear evidence" must be specific and unambiguous evidence that puts doubt on the need for permanent constant attendance. The decision maker should not accept a change in opinion as clear evidence.

69534 If clear evidence appears to exist, the decision maker should refer all the claimant's papers to Decision Making Services for consideration before making a decision not to renew a grant of Exceptionally Severe Disablement Allowance.

Exceptionally Severe Disablement Allowance grant is not renewed

69535 If decision makers decide not to renew a grant of Exceptionally Severe Disablement Allowance, they should note the reasons in detail in the claimant's B18 in case the claimant asks for an explanation of the decision.

69536 – 69999