

Chapter A4: Supersession, suspension and termination

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Chapter A4: Supersession, suspension and termination

Introduction

A4001 This chapter is about decision making on claims for

1. Universal Credit
2. Personal Independence Payment
3. new style Jobseeker's Allowance
4. new style Employment and Support Allowance.

Note 1: Advice for Decision Making Chapter M5 contains guidance on the meaning of new style Jobseeker's Allowance and new style Employment and Support Allowance.

Note 2: Guidance on supersession for benefits not listed above is in Decision Makers Guide Chapter 04.

Note 3: The guidance comes into effect¹ from 20.6.16 for Personal Independence Payment and from 27.9.17 for Universal Credit, Jobseeker's Allowance and Employment and Support Allowance.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 1(1) & (2)

A4002 – A4004

Supersession

A4005 Supersession means changing a decision of the decision maker, the Appeal Tribunal or the Commissioner and replacing it, from a later date than the original decision. Certain conditions have to be satisfied before a decision can be superseded. There is no time limit for making an application for supersession.

A4006 – A4009

Types of decisions that can be superseded

A4010 The following decisions may be superseded by a decision made by the Department¹

1. a decision on any claim for a relevant benefit²
2. any decision of the Department that falls to be made under relevant Acts³
3. any decision described in 1. & 2. as revised

but this is subject to regulations.

Note: If payability has started or ended by reason of a change of circumstances a supersession decision is required. In cases where payability is restored because an overlapping benefit has ceased to be payable then the decision is not a supersession - it is a decision under prescribed legislation⁴.

1 SS (NI) Order 98, art 11; 2 art 9(1)(a) & (3); 3 art 9(1)(c) & (4); 4 art 9(1)(c)

A4011 The decisions under relevant Acts described in A4010 2. include

1. a decision to “disqualify a claimant for receiving benefit” on imprisonment¹
2. a decision to “adjust” benefit where the claimant is receiving treatment as an in-patient in a hospital²
3. a decision whether an overpayment of benefit is recoverable under specific provisions³.

This list is not exhaustive. See also Annex D. A decision that can be appealed can also generally be superseded.

Note: See ADM Chapter D1 for guidance on overpayment decision making.

1 SS C&B (NI) Act 92, sec 113(3)(1); 2 SS A (NI) Act 92, sec 71; 3 sec 69

A4012 A decision of an Appeal Tribunal or Commissioner can also be superseded

1. where there has been a change of circumstances since that decision had effect¹ **or**
2. where the decision maker is satisfied that the decision was made in ignorance of a material fact or was based on a mistake as to a material fact² **or**

3. where the decision maker is required to supersede the Appeal Tribunal or Commissioner decision made under the stayed appeals procedures³ (see A4457 and Advice for Decision Making Chapter A5)
4. medical evidence has been received from an approved Healthcare Professional or Health Professional (or other person approved by the Department)⁴.

Note: A decision of the Appeal Tribunal or Commissioner cannot be superseded by a decision maker on the grounds of error of law.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 23(1)(a); 2 reg 31(a); 3 reg 31(b); 4 reg 26(1)(a)

Circumstances when a decision can be superseded

A4013 A decision (referred to below as the “original decision”) can be superseded either when an application has been made by the claimant or on the decision maker’s own initiative where

1. there has been a relevant change of circumstances since the original decision
 - 1.1 had effect **or**
 - 1.2 in the case of an advance award, was made¹
2. a relevant change of circumstances is anticipated²
3. the original decision was
 - 3.1 erroneous in law (decision makers’ decisions only) **or**
 - 3.2 made in ignorance of a material fact or was based on a mistake as to a material factand the application period for revision has expired³
4. the original decision is a decision without a right of appeal (see Annex D)⁴
5. a sanction has been imposed in accordance with specified legislation⁵
6. medical evidence has been received from a Healthcare Professional or Health Professional (or other person approved by the Department) (other than a Jobseeker’s Allowance decision)⁶
7. a determination has been made that the claimant is to be treated as having limited capability for work or limited capability for work and limited capability for work and work- related activity⁷
8. on or after the original decision was made a late or unpaid contribution is treated as paid under specified legislation⁸

9. a decision⁹ which reduces the housing costs element of Universal Credit has been made
10. a negative determination decision has been made on an existing award of Personal Independence Payment¹⁰
11. a decision has been made in loss of benefit cases¹¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 23(1)(a); 2 reg 23(1)(b); 3 reg 24; 4 reg 25; 5 reg 27; WR Act (NI) 07, sec 11J(1); JS (NI) Order 95, arts 8J(1) & 8K(1); WR (NI) Order 15, art 31(1) & 32(1); 6 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 26(1)(a); 7 reg 26(1)(b); ESA Regs (NI) 16, reg 16, 21, 22 & 29; UC Regs (NI) 16, part 5; 8 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 29; SS (Crediting and Treatment of Contributions and National Insurance Numbers) Regs (NI) 2001, regs 5 & 6; SS (Conts) Regs 01, reg 60; 9 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 30 & UC HC (Executive Determinations) Regs (NI) 16; 10 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 26(2); 11 reg 28; SS Fraud Act (NI) 01, sec 5B, 6 & 8

A4014 **[See ADM Memo 6/26]** To supersede a decision maker's decision on the ground that it was erroneous in law or made in ignorance or mistake as to fact, the application for supersession or the decision to initiate supersession must be made after the period in A4017 has ended¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 24(b)

A4015 If the application is made on any of the grounds listed in A4013, other than a change of circumstances, during the period in A4017, the decision should be changed by revision¹.

Note: A negative determination for Personal Independence Payment has the same effect as a change of circumstances.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 20(1)

A4016 If during the period in A4017 a claimant reports a relevant change of circumstances or information or evidence is received which indicates that a future relevant change will occur, or is expected to occur, the decision maker should supersede the original decision¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5(2) & 23

A4017 The application period for revision is either¹

1. one month from the date of notification of the original decision **or**
2. a longer period (but not more than 13 months) allowed for a late application for revision.

The one month period can be extended by 14 days in certain circumstances, for example where reasons for the decision were not included in the decision notification and the claimant asks for a written statement of reasons. See ADM Chapter A3 for detailed guidance.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5 & 6

A4018 A decision which can be revised should not be superseded except where there are grounds allowing revision and further grounds arise allowing supersession¹. This allows a decision to be revised and then superseded as part of one process.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 32

Example 1

A claimant has an award of the enhanced rate of the mobility component of Personal Independence Payment. He disputes the decision, as he feels the period of the award is too short. He also notifies that his condition has deteriorated and applies for the daily living component. The decision maker revises the decision and extends the period of the award of the mobility component and supersedes the decision as revised to award the standard rate of the daily living component from a later date.

Example 2

A Universal Credit claimant disputes the amount of their award on the basis that their capital has been determined incorrectly. He also says that he started having caring responsibility for a severely disabled person. The decision maker revises the award of Universal Credit to alter the amount payable and supersedes the decision as revised to include the carer element.

A4019 – A4029

Applications

Introduction

A4030 When an application for supersession is received, the decision maker should consider whether or not to admit it in order to establish whether an application is hopeless. See A4035 for guidance on admitting applications.

A4031 If the application is admitted, the decision maker should

1. make a decision to supersede where the outcome is changed (see A4040 - A4044) **or**
2. make a decision not to supersede where the outcome is not changed (see A4045 - A4046).

Hopeless applications

A4032 If the application is not admitted because it is hopeless, the decision maker should notify the claimant that no decision has been made and there is no right of appeal¹. Decision makers should note that this is not a “decision not to supersede”. The existing award remains in place. The claimant should be notified why no action has been taken on the matters raised by the application.

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

A4033 A communication from the claimant should not be admitted as an application for supersession if no further investigation of fact or law could possibly produce a different decision from the one that has been made. This means that a communication will not be an application if

1. it only contains abuse **or**
2. it contains only material that is not relevant to the benefit the claimant has been awarded (e.g. the claimant has requested extra benefit because of an increase in the price of cat food) **or**
3. the amount or period to which the claimant’s communication relates is already the maximum the law allows¹.

1 R(DLA) 1/03

A4034 Decision makers should note that it will be exceptional to reject an application for supersession as hopeless.

Admitting an application

A4035 Where there is a possibility that one or more of the conditions for supersession may be satisfied, the decision maker should admit a communication as an application for supersession.

A4036 – A4039

Making a decision to supersede

A4040 The decision maker should make a decision to supersede where

1. one or more of the conditions (grounds) are satisfied, for example where
 - 1.1 there has been a relevant change of circumstances
 - 1.2 it is anticipated that a relevant change of circumstances will occur
 - 1.3 a decision was made based on ignorance of or mistake as to a material fact
 - 1.4 medical evidence has been received from an approved health care professional (or other person approved by the Department)
 - 1.5 there has been an error of law **and**
2. the outcome is changed¹.

1 R(DLA) 1/03

A4041 An outcome is changed where

1. the rate or period of entitlement to benefit is altered **or**
2. the rate or period for which benefit is payable is altered **or**
3. the period, amount or recoverability of an overpayment is altered.

A4042 Where the decision maker supersedes the previous decision, that decision is replaced from the effective date of the new decision which carries the right of appeal.

A4043 – A4044

Making a decision not to supersede

A4045 The decision maker makes a decision not to supersede where the outcome is not changed whether or not the conditions (grounds) to supersede a decision are satisfied. The decision not to supersede carries the right of appeal¹.

1 R(DLA) 1/03

Example 1

A claimant in receipt of an award of Personal Independence Payment notifies that their condition has worsened. The decision maker considers the report of the change, together with medical reports and advice, and decides that the earlier decision should not be superseded.

Example 2

The claimant's appointee notifies that the claimant, who is entitled to Personal Independence Payment, has transferred from hospital to a care home. The appointee asks for payment of Personal Independence Payment to be reinstated as the claimant has left hospital. The decision maker establishes that the care home is a similar institution to a hospital. Although there has been a relevant change of circumstances, Personal Independence Payment still cannot be paid. The outcome is not changed, and the decision maker decides not to supersede the earlier decision given on the claim to Personal Independence Payment made whilst the claimant was in hospital.

Example 3

A claimant returns to work after being in receipt of Employment and Support Allowance for 20 weeks. The work capability assessment has not been carried out. The claimant asks for arrears of a component to be paid from week 14. The decision maker should make a decision not to supersede the decision which awarded entitlement on the grounds that the conditions allowing supersession are not satisfied.

Example 4

A Universal Credit claimant asks for an increase in benefit as they allege that they are caring for a severely disabled person. The decision maker determines that this is not the case and decides that the Universal Credit award should not be superseded.

A4046 A decision not to supersede has no effective date. It does **not** replace the earlier decision¹. If it is revised or overturned on appeal, it then becomes a decision to supersede with the effective date calculated in the normal way. Decision makers should ensure that

1. the original decision **and**
 2. the evidence on which it was based **and**
 3. the application for supersession including the date on which it was made
- are retained.

¹ R(DLA) 1/03

Treating as an application for supersession

A4047 A decision maker may treat an application for revision or a notification of a change of circumstances as an application for supersession¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 33(1)

A4048 – A4049

Providing information

A4050 Where claimants apply for supersession, the onus is on them to prove (on the balance of probabilities) the facts upon which that application is based. They should supply information to support their application.

Further information needed

A4051 Where a decision maker requires further information or evidence in order to consider all the issues raised by an application for supersession the applicant should be notified that more information or evidence is required and the decision may be superseded¹

1. where the applicant provides the further evidence or information within one month of the notification (or such longer period as the decision maker may allow) on the basis of all the evidence **and**
2. where the applicant does not provide the further evidence or information within one month (or such longer period as the decision maker may allow) on the basis of the original application.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 33(2) & (3)

Example

John has income of £55 a week taken into account in relation to his claim for Jobseeker's Allowance (profit from his part-time window cleaning business). In April he asks the decision maker to look again at the decision as he says he now has expenses of £25 a week. He says he pays someone to help him - £20 a week, and has to buy replacement cloths, cleaning foam etc. for £5 a week. He sends in receipts for the cloths etc. At the beginning of May the decision maker asks him to supply copies of wage slips or pay packets for the £20 a week, but John doesn't reply. At the beginning of June the decision maker supersedes the decision from the date of the application in April and takes income of £50 a week into account.

Further information needed in Universal Credit cases

A4052 Where a decision maker requires further information or evidence in order to consider all the issues raised by an application for supersession in a Universal Credit case and the applicant has reported an advantageous change of circumstances, the applicant should be notified that more information or evidence is required and the decision may be superseded¹

1. where the applicant provides the further evidence or information within 14 days of the notification (or such longer period as the decision maker may allow) on the basis of all the evidence **and**
2. where the applicant does not provide the further evidence or information within 14 days (or such longer period as the decision maker may allow) on the basis of the original application.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 33(4)

Information provided late

A4053 Where the information is provided after the time limit allowed by the decision maker in A4051 and A4052 and

1. a decision has not been made, the decision should be based on all the evidence including the late information
2. a decision has been made, the decision maker should consider whether the decision needs to be revised or superseded in the light of the late information.

A4054 – A4059

Issues for decision by Her Majesty's Revenue and Customs

A4060 Her Majesty's Revenue and Customs is responsible for making decisions on Social Security contributions issues previously determined by the Department¹. See Annex C for a list of these decisions.

1 SSC (ToF) Act 99, art 8(1)

A4061 Entitlement to Social Security contributory benefits depends on the contribution conditions being satisfied. In practice the National Insurance contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. See ADM Chapter A1 for further guidance about making assumptions. However, where there is a dispute about the record, the matter must be referred by the Department to Her Majesty's Revenue and Customs for a formal decision.

A4062 Where the Department has decided a claim or another matter on an assumption of facts about which

1. it appeared to him there was no dispute **but**
2. had an issue arisen, that issue would have fallen to be decided by Her Majesty's Revenue and Customs as in A4062

then the provisions of A4063 - A4068 may apply¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 42(2)

A4063 Where an application is made for supersession and the decision maker considers that an issue arises about some question that should be decided by Her Majesty's Revenue and Customs, that matter should be referred to Her Majesty's Revenue and Customs¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 42(1)

A4064 While a decision of Her Majesty's Revenue and Customs is awaited, the decision maker can¹

1. determine any other issue arising from the application for supersession
2. make a supersession decision on the basis of a preliminary opinion of Her Majesty's Revenue and Customs **or**
3. defer making a supersession decision.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 42(3)

A4065 Once the final decision of Her Majesty's Revenue and Customs is received, the action to take depends on whether the decision maker has made a supersession decision or has deferred that decision.

A4066 If the decision maker has made a decision on the basis of a preliminary opinion, he should consider whether the decision should be revised or superseded¹ in accordance with Her Majesty's Revenue and Customs final decision.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 42(4)(a)

A4067 Where the decision maker has decided to defer making the supersession decision, a decision should be made in accordance with Her Majesty's Revenue and Customs final decision¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 42(4)(b)

A4068 A final decision of Her Majesty's Revenue and Customs includes a decision on an appeal against a decision of Her Majesty's Revenue and Customs¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 42(5)

A4069 – A4079

Decision to be superseded is set aside on appeal

A4080 Where

1. a decision is or is not superseded following an application **and**
2. the original decision is set aside on appeal to the tribunal or Commissioner
the decision to supersede or not may be of no effect¹.

1 R(DLA) 2/04

A4081 An application for supersession on the basis that the original decision was made in ignorance of a material fact lapses where the original decision is set aside on appeal.

Example

The claimant is awarded the standard rate of the daily living component of Personal Independence Payment following a further claim. Following a mandatory reconsideration he lodges an appeal against this decision with the Appeals Service. Before the appeal is heard, the claimant also applies for the decision to be superseded on the grounds that the decision maker was ignorant of material facts. The decision maker decides not to supersede the original decision. On appeal, the tribunal sets aside the decision maker's original decision and awards the enhanced rate of the daily living component. The decision maker's decision not to supersede is of no effect, and there is no requirement to consider whether an Appeal tribunal decision should be superseded, because they were deciding the further claim afresh.

A4082 An application for supersession for a relevant change of circumstances may need to be processed again, including treating it as an application for supersession of a different decision, or as a new claim.

Example

The claimant's award of Personal Independence Payment came to an end, and was disallowed when a further claim was made. On appeal, the Tribunal awarded the standard rate of the mobility component. The claimant made a further appeal to the Commissioner who set aside the tribunal decision, and remitted the appeal for rehearing. While the Commissioner's appeal was pending, but before the decision had been set aside, the claimant had applied by telephone for supersession of the tribunal decision so as to award the daily living component on the grounds of a change of circumstances. The decision maker made a decision not to supersede, and the claimant made a further appeal. Both appeals were heard together. The tribunal upheld the disallowance of the further claim, and held that the second appeal lapsed as there was no awarding decision to supersede. The decision maker treats the application as a claim, and makes a decision accordingly.

A4083 – A4089

The process of supersession

Introduction

A4090 Once it has been decided that there are grounds for supersession, the decision maker should

1. identify the decision to be superseded
2. investigate and determine the relevant facts
3. decide whether the facts mean that the terms of the award should change
4. make a decision accordingly. That may be either a decision which is different from the decision superseded or a decision not to supersede
5. determine the date from which the supersession decision should take effect
6. decide what, if any, overpayment has occurred.

A4091 The decision maker need not consider any issue¹ that

1. in the case of an application, was not raised by the application **or**
2. in the case of a supersession at the decision maker's own initiative, did not cause the decision maker to supersede.

1 SS (NI) Order 98, art 10(2)

A4092 – A4094

Recording the decision

A4095 It is important that a record be made of the supersession decision. That record needs to

1. identify the person to whom it relates
2. specify clearly that the decision is supersession
3. precisely identify the decision that is being superseded **and**
4. state the grounds allowing supersession to be undertaken.

A4096 – A4149

Change of circumstances

Relevant change of circumstances

A4150 Where

1. there has been a relevant change of circumstances since the decision
 - 1.1 had effect **or**
 - 1.2 was made in the case of an advance award¹ **or**
2. it is expected that a change will occur

the decision maker may supersede the decision which is currently in force². The application period for revision is irrelevant in these cases. See also A4175 - A4176.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, regs 31-33; 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 23

Decisions that can be superseded on the grounds of change of circumstances

A4151 The following decisions can be superseded on the grounds of a change of circumstances

1. any decision on a claim for a relevant benefit¹
2. any decision made under relevant Acts²
3. any decision in **1.** or **2.** which has been revised by a decision maker³
4. any decision made by the Tribunal or Commissioner⁴.

1 SS (NI) Order 98, art 9(1)(a); 2 art 9(1)(c); 3 art 11(1)(a); 4 art 11(1)(b)

Relevant change of circumstance

A4152 For the purposes of supersession a relevant change of circumstance is a change which happens after the original decision had effect and which has a relevance to the award of benefit. A decision disallowing a benefit cannot be superseded if there is a change of circumstances from a date after the decision had effect. The claimant must make a fresh claim¹. But see A4153 for an exception to this general rule.

1 SS (NI) Order 98, art 9(2)

A4153 The claim continues to exist until it is decided¹. A new claim may not be required where

1. a claim is disallowed **and**
2. a change occurs after the date of claim but before the claim was decided **and**
3. the claimant notifies the change within the time limits (see A4301 - A4322).

Where the effect of the change is that entitlement would begin before the date of the disallowance (or for Personal Independence Payment, the qualifying period would begin before the date of the disallowance), the decision can be superseded for a relevant change of circumstances. The effective date rules apply in the normal way.

1 SS (NI) Order 98, art 9(2)(a)

Example 1

A claim to Jobseeker's Allowance is made on 20.12.17. The claimant is working part-time in a high street store for 20 hours a week, and the claim is disallowed on 10.1.18. On 22.1.18 she notifies that her employment, which was a temporary job over Christmas, had ended on 5.1.18. The change has been reported within one month, so the decision maker supersedes the disallowance and awards entitlement to Jobseeker's Allowance from 6.1.18.

Example 2

A claim to Universal Credit is made on 20.12.17. The claim is disallowed on 17.1.18 because the claimant has capital in excess of £16,000. On 22.1.18 the claimant reports that their capital fell below £16,000 on 5.1.18. The decision maker determines that no deprivation has occurred. The disallowance is superseded and an award of Universal Credit is made from 20.12.17.

A4154 To be relevant a change does not have to be a change in the claimant's own circumstances. The phrase "relevant change of circumstances" should be given a broad meaning. A relevant change must

1. be of sufficient substance to give serious consideration to supersession
2. have the potential effect of altering some component part of the award of benefit even if the end result does not actually change the amount of the award (see A4156).

A4155 The following are examples of a relevant change of circumstances.

Example 1

A jobseeker decides to go on holiday outside Northern Ireland. This is a relevant change because the jobseeker is absent from Northern Ireland.

Example 2

In Personal Independence Payment cases a person with an existing award of the standard rate of daily living component whose needs increase on a regular basis is a relevant change because it may give entitlement to the enhanced rate of the component.

Example 3

A person in receipt of Universal Credit starts to live with their partner.

When a change has the potential to be relevant

- A4156 There will be situations where a change has the potential to affect an award of benefit but the decision maker ultimately decides that the change does not affect the amount of benefit awarded. This could happen, for example, because a claimant in receipt of Employment and Support Allowance maintains that their medical condition has deteriorated. The decision maker may, having considered the evidence, decide that the change does not affect the existing award.
- A4157 The decision maker should make a decision not to supersede. See A4045 et seq for further guidance.

Is a change of opinion a relevant change of circumstances

- A4158 A change of opinion is not in itself a relevant change of circumstances. This should be noted when a medical opinion has been obtained after a certificate has been issued by a claimant's doctor. A report containing a further medical opinion may however contain evidence of a change of circumstances, for example if a condition has been wholly cured as a matter of medical fact¹.

Note: Where new medical evidence is received following examination by a Healthcare Professional or Health Professional or other person approved by the Department, the decision maker does not have to identify a change of circumstances in order to supersede. This does not apply to Jobseeker's Allowance.

1 R(DLA) 6/01

Can a change in law be a relevant change of circumstance

- A4159 A change in the law can be a relevant change of circumstances. However, where a claim has been disallowed before a change in legislation takes effect, it cannot be superseded due to a change of circumstance. This is because the claim has already

been disposed of and the decision was correct under the law current at that time¹. A fresh claim is needed.

1 R(I) 56/54 & R(A) 4/81

Can a decision be superseded because of a future change of circumstance

A4160 A decision may be superseded when it is expected that a relevant change of circumstances will occur on a future date¹. The decision maker should be satisfied on the balance of probabilities that it is likely that the expected change will actually take place.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 23(1)(b)

A4161 Where a decision is given for an expected change of circumstances, the decision maker must record that it might need to be revised¹ if the change

1. does not occur **or**
2. occurs on a date other than the one expected.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5

A4162 Where A4161 1. applies, the revised decision is that there are no grounds to supersede. Where A4161 2. applies, the revised decision takes account of the fresh information about the date of change and changes the effective date where appropriate.

A4163 – A4174

Supersession of advance awards

A4175 An award on an advance claim is conditional on the claimant's circumstances on the first day of entitlement¹. Changes of circumstances occurring and effective

1. after the date the claim is decided **and**
2. before the relevant or renewal date

can be dealt with by way of supersession where the circumstances in A4176 apply. See also ADM Chapter A3 for revision of advance awards.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, regs 31-33; R(DLA) 4/05

A4176 Where

1. a change (either favourable or unfavourable) occurs and is notified before the relevant or renewal date is reached **or**
2. a favourable change is notified after the relevant or renewal date is reached

the decision maker should consider whether the award should be superseded on the grounds of a relevant change of circumstances since the decision was made¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 23(1)(a)

Example

Personal Independence Payment current award expires 1 August. Further claim decided 1 March, effective from 2 August. Award is for the standard rate of daily living component and standard rate of mobility component.

On 1 April the claimant gets worse and his needs change, entitling him to the enhanced rate of the daily living component. The change is reported 15 July. The decision maker supersedes the decision made on 1 March awarding enhanced rate daily living component from 2 August. The decision on the previous award is also superseded with effect from 1 July (see A4353).

A4177 – A4179

Supersession for closed period

A4180 A decision awarding benefit may be superseded for a fixed period to take account of a change of circumstances which has already come to an end. The supersession only replaces the original decision for that period.

A4181 The principle behind a closed period supersession relies on whether, at the end of the disallowance, the claimant would, in the absence of a new claim, be entitled to benefit. If there is no ongoing entitlement, a closed period supersession is not appropriate and the decision maker should make a “from and including” disallowance decision.

Example 1

A claimant is in receipt of Jobseeker’s Allowance. Following a fraud investigation, it is established that he was working on a building site for over a year. The work finished when he was laid off. The decision maker supersedes the awarding decision to disallow Jobseeker’s Allowance for the same period. The conditions of entitlement should be determined from the first day of the fresh period of entitlement.

Example 2

A claimant is in receipt of Employment and Support Allowance. It is later discovered that she worked for a period of more than 12 weeks which she didn’t report until a few months later. The decision maker determines that had a new claim been made when the claimant ceased work, the conditions of entitlement would not have been satisfied. This means that a closed period supersession would not be appropriate and

Employment and Support Allowance should be terminated from the first day that the conditions of entitlement were no longer met.

A4182 – A4189

Relinquishment of benefit

A4190 A claimant may decide that they do not want entitlement to benefit to continue for example where the amount of benefit is small. The request should be treated as an application for supersession.

A4191 The claimant may ask not to receive payment of benefit while underlying entitlement continues. The decision maker should refuse to supersede following such a request. This is because if entitlement exists, the Department has an obligation to pay benefit in accordance with an award.

Effectiveness of the relinquishment

A4192 The decision maker should investigate to ensure that the claimant's relinquishment is a genuine statement of intention, and the consequences explained where appropriate.

A4193 A request to surrender benefit might not be effective where

1. the claimant is vulnerable or incapable of deciding their affairs and there is no appointee **or**
2. the withdrawal is made as a result of threatening or overbearing behaviour, deception or similar improper behaviour.

A4194 Where the decision maker is not satisfied that the claimant

1. made the request freely **and**
2. is capable of fully understanding the implications

the request should be refused. The decision maker should make a decision that the awarding decision is not superseded (see A4045).

A4195 Where

1. the claimant has been advised of the consequences **and**
2. the request is genuine **and**
3. A4193 does not apply

the decision maker should end entitlement accordingly.

A4196 Once entitlement has been ended as in A4199 - A4201, a further claim is required if the claimant wishes to receive the benefit again. A change of mind about

relinquishment is not grounds for revision, because it was not a fact in existence at the time the original decision was made.

A4197 The decision ending entitlement can be revised within the application period if it is established that the original request to surrender entitlement was not effective as in A4193. Where the application is made outside the time limits, the decision maker should consider whether to revise for official error. See ADM Chapter A3 for advice on revision.

A4198 If ending entitlement was not in their best interests, and a further claim is made, the decision maker has no authority to fix a date of claim to cover a period when the claimant was not entitled. The normal rules about the prescribed time for claiming still apply (see ADM Chapter A2). For example, a person who reclaims Employment and Support Allowance two months after surrendering an award can be entitled from the day following the end of that award.

Ending entitlement

A4199 Where a claimant no longer wishes to receive a benefit, and the decision maker accepts that the request is effective, the decision maker should supersede the awarding decision on a relevant change of circumstances¹, and terminate the award. The claimant has the right of appeal. The supersession ends entitlement to, as well as payability of, benefit, because the award has come to an end with the withdrawal of consent.

1 SS (NI) Order 98, art 11; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 23(1)(a)

A4200 The relevant change is that the claimant no longer consents to be entitled to receive the benefit, or no longer wishes it to be payable. The date of the change is

1. the date specified by the claimant where appropriate **or**
2. the first pay day following the date of the application **or**
3. the first pay day following the date the decision is made, where benefit continues to be paid after the application is made and is not returned **or**
4. for Universal Credit cases, the first day of the assessment period that follows the one in which the decision is made.

Note: The claimant cannot surrender benefit for a past period.

Example

A claimant is in receipt of Universal Credit. They start work which has the effect of reducing the amount of Universal Credit to £1 for each assessment period. The claimant writes to say that they no longer wish to receive Universal Credit. The decision maker accepts that the relinquishment is genuine. The decision awarding

Universal Credit is superseded on a relevant change of circumstances to end entitlement, effective from the first day of the assessment period that follows the one in which the decision is made.

- A4201 For guidance on the effective date of the supersession¹, see A4370 et seq. Decision makers should note that although some changes of circumstances must be notified in writing², an application for supersession can be made orally or in writing.

1 SS (NI) Order 98, art 11(5); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1;

2 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37

Note: An award of benefit cannot be surrendered in part.

A4202 – A4204

Death of claimant

- A4205 The death of the claimant is a relevant change of circumstances affecting entitlement to benefit. In the majority of cases, there is no requirement for an awarding decision to be superseded so as to end entitlement. However, where there is an overpayment of benefit as a result of late notification of the death, the awarding decision must be superseded before the decision maker can consider whether the overpayment is recoverable¹.

Note 1: See ADM Chapter D1 for guidance on overpayment decision making.

Note 2: See ADM Chapter A2 regarding how death impacts awards of Universal Credit in certain circumstances.

1 SS Act 98, s 10(1); SS A (NI) Act 92, sec 69(5A); SS (NI) Order 98, art 10(1)

A4206 – A4219

Notification of changes

Introduction

A4220 The process of supersession on a change of circumstances is closely linked to the legal requirement that certain changes be notified to the Department.

Notification of a change of circumstances

A4221 Beneficiaries and every person by whom, or on whose behalf, sums by way of benefit are receivable are required¹ to notify the Department of any change of circumstance which they might reasonably be expected to know might affect

1. continuing entitlement to benefit **or**
2. the amount of benefit awarded **or**
3. the payment of benefit

as soon as reasonably practicable after the change occurs. In addition there may be benefit specific rules requiring changes to be notified.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37

A4222 – A4224

Categories of people who can notify the change

A4225 A change of circumstances can be notified by

1. the claimant
2. the appointee
3. any person who is an authorised representative for the claimant
4. a representative or agent of the Department
5. in overseas cases, social security authorities of European Community countries, or other countries that have reciprocal arrangements with the United Kingdom.

Note: This list is not exhaustive. The legislation does not specify who may apply for supersession on a change of circumstances.

Method of notification

A4226 Notification of the changes set out in A4221 must be made¹ to an appropriate office

1. in writing (including electronic communications where appropriate) or by telephone (unless it is determined that notice must be given in a particular way or to accept notice other than in writing or telephone) **or**
2. in writing if in any class of case written notice is required (unless it is determined to accept notice given otherwise than in writing).

Note: This does not apply to Jobseeker's Allowance, which has its own rules² concerning reporting changes.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37(5); 2 JSA Regs (NI) 16, reg 31

Where to notify a change of circumstances

A4227 A change of circumstances should be notified to an appropriate office¹. An appropriate office is

1. in cases where a person is authorised or required to use electronic communications, an address where electronic communications may be sent
2. an office of the Department **or**
3. any other place as may be designated (including a postal address).

Note: Where a notification is received in a different office of the Department, and is forwarded to and received by the appropriate office, it should be treated as received in the appropriate office on the date of receipt in the different office. But see ADM Chapter D1 in overpayment cases.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 2 & Sch 1

A4228 – A4239

Universal Credit childcare costs

A4240 Where a claimant is in receipt of Universal Credit childcare costs then a person providing relevant childcare¹ must provide such certificates, documents, information or evidence in connection with the award, or any question arising out of it. This must be supplied within a month or such longer period as may be considered reasonable². See ADM Chapter F7 for when the childcare costs condition is satisfied.

1 UC Regs (NI) 16, reg 34 & 37; 2 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37(7)

Universal Credit - severely disabled person caring responsibility

A4241 Some Universal Credit claimants may be in receipt of a carer element¹ in respect of the fact that they have regular and substantial caring responsibilities for a severely disabled person. The severely disabled person may be required to furnish a signed declaration to confirm the details which have been given by the claimant².

1 UC Regs (NI) 16, reg 30; 2 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37(8)

A4242 – A4299

Supersession on a change of circumstances - effective dates

Introduction

A4300 The effective date of a supersession on a change of circumstances depends upon whether the result of the supersession would be advantageous or disadvantageous to the claimant and whether the change has been notified within certain time limits. A4301 describes the general rule. However, these paragraphs should be read together with any of the special rules relating to specific benefits.

Time limits

A4301 The general rule is that an advantageous change of circumstances is to be notified within one month of the date the change occurred. For Universal Credit it should be noted that the change should be notified in the assessment period in which the change occurs.

A4302 The relevant notification period is, for Universal Credit the assessment period in which the change occurs and for Employment and Support Allowance, Jobseeker's Allowance and Personal Independence Payment a period of one month, beginning with the date on which the change of circumstances occurred¹.

Note: The decision maker should exercise discretion in cases where a Universal Credit claimant notifies a change promptly but it is received in the next assessment period.

¹ UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(9)

Example

Cornelius has an assessment period that starts on the 13th of each month and ends on the 12th of the following month. A change in his circumstances occurs on the 10th of January and he notifies the Department by post. The post is not received until the 14th of January. The decision maker exercises discretion and supersedes the award of Universal Credit from the 13th December.

A4303 – A4309

Late notification of change of circumstances

A4310 The time limit for notifying a change of circumstances can be extended provided all of the five conditions at A4311 to A4315 are satisfied¹.

¹ UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(1)

A4311 The first condition is that an application for an extension of time is made at an appropriate office¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(2)

A4312 The second condition is that the application must¹

1. contain details of the relevant change of circumstances **and**
2. include the reasons for the failure to notify the change on an earlier date **and**
3. be made within 13 months of the date the change occurred **or**
4. for Personal Independence Payment², be made within 13 months of the date on which the applicant first satisfied the conditions of entitlement to the particular rate of benefit.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(3); 2 Sch 1, part 2, para 14

A4313 The third condition is that it is reasonable to grant the application¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(4)

A4314 The fourth condition is that the notified change is relevant to the decision to be superseded¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(5)

A4315 The fifth condition¹ is that

1. special circumstances are relevant to the application **and**
2. as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances within the relevant notification period.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(6)

A4316 – A4319

Meaning of special circumstances

A4320 The phrase “special circumstances” is not defined in legislation. It can include factors such as

1. the claimant, or the claimant’s partner or dependant has died or suffered a serious illness
2. the claimant is not resident in the UK
3. normal postal services have been disrupted.

This list is not exhaustive and each application must be treated on its merits.

Deciding whether it is reasonable to grant the extension of time

A4321 The decision maker must have regard to the principle that the greater amount of time that has lapsed between the time limit for notifying the change and the date of application the more compelling should be the special circumstances on which the application is based¹. The decision maker must take **no** account of the fact²

1. that the applicant or any person acting for them was ignorant of or misunderstood the law applicable to their case (including the time limit for reporting changes of circumstance as set out in A4301) **or**
2. that a Commissioner or a court has taken a different view of the law from that which was previously understood and applied.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(7)(a); 2 reg 36(7)(b) & 36(7)(c)

A4322 An application which has been refused cannot be renewed¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 36(8)

Example

A claimant has been in receipt of Universal Credit from 18.11.19 and so her first assessment period was from 18.11.19 to 17.12.19. A relevant change of circumstances occurred on 21.1.20 meaning that her award should increase. The change should have been notified within the assessment period in which it occurred but it was not notified until 14.4.20. The decision maker can consider extending the time to give notice of the change as the notification is within 13 months of the date of change (the latest dated being 21.2.21), If the decision maker determines that they can extend the time, the effective date of the supersession decision is 18.1.20 which is the first day of the assessment period in which the change occurred. If the decision maker determines that they cannot extend the time, the effective date of the supersession decision is 18.3.20, the first day of the assessment period in which the notification was made.

A4323 – A4349

Decision advantageous to the claimant

A4350 Decisions which are advantageous to the claimant include those where

1. the amount of benefit is increased, or is awarded for a longer period¹ **or**
2. the amount of benefit in payment would be increased but for the application of a provision in the law² restricting or suspending payment of a benefit or disqualifying a claimant from receiving benefit **or**
3. a denial or disqualification for receiving benefit is lifted whether in whole or in part (a partial lifting of a disqualification would include, for example, where the period of a Jobseeker's Allowance sanction is reduced in length)³ **or**
4. a decision to pay benefit to a third party is reversed⁴ **or**
5. an overpayment is not recoverable or the amount recoverable is reduced⁵ **or**
6. the claimant gains financially⁶.

Note: See Advice for decision makers Chapter D1 for guidance on overpayment decision making.

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 51(5)(a); 2 reg 51(5)(b);
3 reg 51(5)(c); 4 reg 51(5)(d); 5 reg 51(5)(e); 6 reg 51(5)(f)*

Example

Anna is in receipt of Universal Credit. Her assessment period runs from 16th of the month to 15th of the following month. She rings up on Saturday 16th February to notify a change of circumstances. The office is closed. She rings up again on Monday 18th February. The decision maker supersedes the award of Universal Credit from 16th January.

Effective dates when changes notified within the time limits

A4351 Where an appropriate office is notified of an advantageous change of circumstances within the relevant notification period or within such longer period as may be allowed under A4310 - A4315, the effective date of the supersession will be

1. for Employment and Support Allowance and Jobseeker's Allowance¹, the first day of the benefit week in which the change occurs or is expected to occur
2. for Personal Independence Payment², the day on which the change occurs or is expected to occur
3. for Universal Credit³, the first day of the assessment period in which the change occurs or is expected to occur.

Note: See A4353 for Personal Independence Payment cases where the change relates to entitlement to a particular rate.

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, part 1, para 1;
2 Sch 1, part 2, para 12; 3 Sch 1, part 3, para 20*

Example

David is in receipt of Universal Credit. His assessment period runs from the 17th of the month to the 16th of the following month. He notifies the Department on the 1st of December that from the 25th of November he started to care for his elderly mother. The decision maker determines that David is caring for his mother on a regular and substantial basis. The award of Universal Credit is superseded to include the carer element from the 17th of November.

Change notified outside the time limits

A4352 Where an advantageous change of circumstances is notified later than one month after it occurred, or for Universal Credit after the end of the assessment period in which the change occurred (or such longer period as the decision maker may have allowed under A4310 - A4315) then the effective date of the supersession will be

1. for Employment and Support Allowance and Jobseeker's Allowance¹ from the beginning of the benefit week in which the notification was made
2. for Personal Independence Payment², from the date of notification of the change (but see A4353)
3. for Universal Credit³, from the first day of the Assessment Period in which the notification was made (but see A4360 - A4361).

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, part 1, para 6;
2 Sch 1, part 2, para 14; 3 Sch 1, part 3, para 21*

A4353 In the case of Personal Independence Payment¹

1. where the change is relevant to entitlement to a particular rate **and**
2. the claimant notifies an appropriate office of the change
 - 2.1 no later than one month after the date on which they first satisfied the conditions of entitlement to that rate **or**
 - 2.2 within such longer period as may be allowed

the superseding decision takes effect from the date on which the claimant first satisfied those conditions - the first day after the end of the 3 month "required period".

Example

Nicola is in receipt of the standard rate of the daily living component of Personal Independence Payment. She notified the Department on 11.5.18 that she had a stroke on 2.2.18. The decision maker decides that she is entitled to the enhanced rate of the daily living component and the standard rate of the mobility component. Due to the 3 month required period, the qualifying date is 2.5.18. Nicola has therefore notified the change in circumstances within one month from the date on which she first satisfied the conditions of entitlement. The decision maker supersedes the awarding decision with effect from 2.5.18 to award a higher rate of Personal Independence Payment.

Note: If a claimant indicates in the evidence provided that there has been a change of circumstances which could lead to an increase in the award for an earlier period then the decision maker should consider investigating this. Not every case should be investigated and the decision maker should only investigate cases where the claimant has asked or indicated that they want the decision maker to consider late notification of the change. A late change is one that is notified more than one month after the expiry of the qualifying period.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 2, para 15

Personal Independence Payment and award of other benefits

A4354 In the case of Personal Independence Payment where the claimant becomes entitled to another relevant benefit under prescribed legislation¹ or ceases to be entitled or the rate of another such benefit alters then the superseding decision takes effect² from the date on which entitlement to the other benefit or an alteration in its rate arises or entitlement ends.

A4355 – A4359

1 SS (NI) Order 98, art 9(3); Disability Assistance (SADLA) Regs 25, reg 2;

Disability Assistance for Children and Young People (Scot) Regs 21, reg 2;

2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, part 4, para 31(1) & 31(2)(b)

Universal Credit

A4360 In the case of a Universal Credit claimant where

1. the relevant change is that the person's employed earnings are reduced **and**
2. the claimant provides such information for calculating those earnings at such times as may be required

the superseding decision takes effect¹ from the first day of the assessment period in which that change occurred.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 22

Example

Tony is in receipt of Universal Credit and works part time in a bingo hall. His assessment period starts on the 15th of each month. His hours are reduced on 28 February. He informs the Department of this change and is asked to provide details of his new earnings. Tony does this and the decision maker supersedes the award of Universal Credit from 15 February to take into account his reduced earnings.

Universal Credit and award of other benefits

A4361 In the case of Universal Credit where the claimant or a member of their family becomes entitled to another relevant benefit, ceases to be entitled or the rate of another such benefit alters then the superseding decision takes effect¹ from the first day of the assessment period in which entitlement to the other benefit or an alteration in its rate arises or entitlement ends.

1 SS (NI) Order 98, art 9(3); Disability Assistance (SADLA) Regs 25, reg 2; Disability Assistance for Children and Young People (Scot) Regs 21, reg 2; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 4, para 31(1) & 31(2)(a)

Example 1

Sam has been in receipt of Universal Credit from 21.11.19. On 28.5.20 she was awarded Carer's Allowance from 30.3.20 meaning that she is also entitled to the carer element in Universal Credit. Sam didn't notify the change until 24.9.20. The supersession effective date rule means that she did not have to report the change within a certain period. The Universal Credit award is superseded on the grounds of a relevant change of circumstances and the carer element is awarded from 21.3.20.

Example 2

Connor has been in receipt of Universal Credit from 14.12.18. On 11.5.21 his daughter was awarded Disability Living Allowance at the middle rate from 8.2.21. He didn't notify the change until 26.5.21. The decision maker is satisfied that Connor had regular and substantial caring responsibilities for a severely disabled person since 8.2.21 and so there is a clear and direct link between the award of Disability Living Allowance and entitlement to the carer element. The supersession effective date rule means that he did not have to report the change within a certain period. The Universal Credit award is superseded on the grounds of a relevant change of circumstances and the carer element is awarded from 14.1.21.

Example 3

Matt is in receipt of Universal Credit and Jobseeker's Allowance. He starts part time work and receives payment from this employment in the final week of his assessment period. His award of Jobseeker's Allowance is terminated. The decision maker supersedes the award of Universal Credit from the first day of the assessment period so that Jobseeker's Allowance is no longer taken into account when determining the amount of Universal Credit payable.

A4362 – A4364

Decision maker's own initiative

A4365 Where decision makers supersede on their own initiative to deal with a change of circumstances and the result is advantageous to the claimant the effective date of supersession takes effect

1. for Employment and Support Allowance and Jobseeker's Allowance, from the beginning of the benefit week in which action was started with a view to supersession¹
2. for Personal Independence Payment
 - 2.1 the date on which action was started with a view to supersession²
 - 2.2 where the required period has not been satisfied, from the date of change³
3. for Universal Credit, the first day of the Assessment Period in which action was started with a view to supersession⁴.

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 1, para 10; 2 Part 2, para 18;
3 Part 2, para 12; 4 Part 3, para 29*

A4366 It will often be useful for the decision maker to make a note of the date they first noticed that action was needed to deal with a change so that there is evidence of the basis for the effective date subsequently used.

A4367 – A4369

Decisions not advantageous to the claimant

Effective dates

A4370 A supersession for a change of circumstances that is not advantageous to the claimant generally takes effect

1. for Employment and Support Allowance and Jobseeker's Allowance
 - 1.1 from the first day of the benefit week in which the change occurs or is expected to occur¹ **or**
 - 1.2 if not practicable as in 1.1, and the change has occurred, from the first day of the benefit week following that in which the superseding decision is made² **or**
 - 1.3 if not practicable as in 1.1 and where the change is expected to occur, from the first day of the benefit week following that in which the change is expected to occur³
2. for Personal Independence Payment⁴, from the date on which the change occurs or is expected to occur (see A4391)
3. for Universal Credit⁵, the first day of the assessment period in which the change occurs or is expected to occur.

Note: See ADM Chapter D1 for overpayments.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 1, para 1; 2 para 3(a); 3 para 3(b); 4 Part 2, para 12; 5 Part 3, para 20

Example 1

Norman is in receipt of Universal Credit. His assessment period runs from the 8th of the month to the 7th of the following month. On the 12th January he notifies the Department that he has inherited £25,000 from his father's estate and has received a cheque for that day. The decision maker supersedes the award of Universal Credit to terminate the award from the 8th January.

Example 2

Jeremy is in receipt of Personal Independence Payment. On 17 January he rings up to inform the Department that he has moved to the United States of America permanently since 10 January. The decision maker supersedes the award of Personal Independence Payment to end entitlement from 11 January.

A4371 – A4374

Employment and Support Allowance decisions

Meaning of Employment and Support Allowance decision

A4375 An Employment and Support Allowance decision¹ in this section of the guidance is a decision to award Employment and Support Allowance that embodies a determination that the person is or is to be treated as having limited capability for work.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 1, para 11

Meaning of limited capability for work determination

A4376 A limited capability for work determination¹ is a determination whether

1. a person has limited capability for work **or**
2. can be treated as having limited capability for work.

1 WR Act (NI) 07, sec 1(4) & sec 8; ESA Regs (NI) 16, reg 15 & 16

A4377 In the case of an Employment and Support Allowance decision where there has been a limited capability for work determination as in A4376 where the decision maker is satisfied that the claimant¹

1. failed to notify the appropriate office of a change of circumstances which the claimant is required to notify **and**
2. could reasonably have been expected to know that the change of circumstances should have been notified

then the award of Employment and Support Allowance is superseded from² either the date on which the claimant ought to have notified the change of circumstances or if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, the date the first change should have been notified. See A4403 - A4404.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 1, para 7; 2 para 8

Employment and Support Allowance terminally ill claimants

A4378 When a claimant applies for a supersession which contains a statement that they are terminally ill then the superseding decision takes effect from the date the claimant became terminally ill¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 1, para 9

Ending entitlement

A4379 Where entitlement ends, or is expected to end as a result of a change of circumstances the superseding decision takes effect from the day the change occurs or is expected to occur¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 1, para 4

Example

David is in receipt of Employment and Support Allowance. He starts work on 1.11.16. His award of Employment and Support Allowance is terminated from 1.11.16.

A4380 Where an Employment and Support Allowance claimant has been detained in hospital under prescribed legislation¹ and ceases or is expected to cease to be so detained for less than a week the superseding decision takes effect from the day on which the change of circumstances occurs or is expected to occur².

1 Mental Health Act 1983, s 45A & s 47; 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 1, para 4

A4381 – A4389

Personal Independence Payment decisions

A4390 A Personal Independence Payment decision in this section of the guidance is a decision to award either or both the daily living or mobility components of Personal Independence Payment¹.

*1 WR (NI) Order 15, art 83(1) & (2) & 84(1) & (2);
UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 2, para 19*

A4391 Where the decision maker is satisfied that the claimant¹

1. failed to notify an appropriate office of a change of circumstances relating to disability issue **and**
2. could reasonably have been expected to know that the change of circumstances should have been notified

the award of Personal Independence Payment is superseded from² either the date on which the claimant ought to have notified the change of circumstances or the date on which the first change ought to have been notified if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision. See A4404. “Reasonably expected to know” only refers to changes in a claimant’s disability and their ability to carry out activities.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 2, para 16; 2 para 17

A4392 – A4399

Universal Credit decisions

Meaning of Universal Credit decision

A4400 The Universal Credit decision in this section of the guidance means a decision to award Universal Credit which embodies a determination that a person has, or is treated as having limited capability for work¹.

1 WR (NI) Order 15, art 43; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 30

Meaning of limited capability for work determination

A4401 A limited capability for work determination¹ is a determination whether

1. a person has limited capability for work **or**
2. can be treated as having limited capability for work.

1 WR (NI) Order 15, art 43(1) & 43(6); UC Regs (NI) 16, reg 40

A4402 Where the decision maker is satisfied that the claimant

1. failed to notify an appropriate office of a change of circumstances which the claimant is required to notify **and**
2. could reasonably have been expected to know that the change of circumstances should have been notified then the award of Universal Credit is superseded from¹

either the first day of the assessment period in which the claimant ought to have notified the change of circumstances or the first day of the assessment period in which the first change ought to have been notified if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision² (see A4404).

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 23; 2 para 24

A4403 For Employment and Support Allowance and Personal Independence Payment, if it is not reasonable for the claimant to know that the change should have been notified then the supersession decision takes effect from the date the decision is made¹. For Universal Credit the effective date is the first day of the assessment period in which the decision maker makes the decision².

1 SS (NI) Order 98, art 11(5); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 25

Meaning of “reasonably have been expected to know”

A4404 The test of reasonableness is not defined in law. It is similar to the test established by case law for recoverable overpayments arising from failure to disclose material

facts (see DMG Chapter 09). When considering that guidance the decision maker should take into account such matters as

1. the likely extent of the claimant or appointee's knowledge of the reasons for awarding the benefit involved
2. the information given to the claimant about notification of changes of circumstances
3. the claimant's ability to recognise when a gradual improvement results in a relevant change of circumstances.

A4405 A slight change in the claimant's ability to carry out activities would not normally be a change that a person could reasonably be expected to notify. However, where the change is gradual there may be a point at which the person could reasonably have been expected to know that a change should be reported.

Example 1

The claimant has a cataract. She satisfies the work capability assessment because she cannot see well enough to read 16 point print at a distance greater than 20 centimetres. The decision maker has determined that she has limited capability for work. She has an operation to remove the cataract. After a period of recuperation her vision is improved to the extent that three weeks after the operation she is able to read a newspaper without using her magnifying glass. The decision maker decides that she could reasonably have been expected to know that the improvement in her ability to see should have been notified. The supersession decision takes effect three weeks after the operation, when the change should have been notified.

Example 2

The claimant has a heart condition and is receiving out-patient treatment at a hospital. He scores points for walking, and lifting, carrying and reaching, satisfying the work capability assessment. At first he was unable to walk further than 200 metres. But with exercise this has improved and he can now walk more than 200 metres. The doctor reports that he still has problems with lifting, carrying and reaching. The decision maker decides that it was not reasonable for him to know that the change should be notified, because the improvement was gradual and only affected one activity. The supersession decision takes effect from the date it is made.

Universal Credit claimant reaches the qualifying age for State Pension Credit

A4406 When a claimant reaches the qualifying age for State Pension Credit in an assessment period then a superseding decision made in consequence of the person reaching that age takes effect from the first day of the assessment period after the

assessment period in which the change occurs or is expected to occur¹. This applies whether or not the person makes a claim for State Pension Credit.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 26

A4407 Where the Universal Credit claimant who reaches State Pension Credit qualifying age is

1. a single claimant **or**
2. the younger member of a mixed-age couple

the guidance in A4406 on the effective date for termination of the Universal Credit award applies. This means that Universal Credit continues in payment for the whole assessment period in which the claimant or younger member of a mixed-age couple reaches the qualifying age for State Pension Credit.

Note 1: But see A4408 - A4409 for guidance on the effective date for termination of the award where a mixed-age couple ends through separation or bereavement.

Note 2: See DMG Chapter 77 for guidance on claims to State Pension Credit for Universal Credit claimants who reach the qualifying age for State Pension Credit.

Example

Norman and Audrey are Universal Credit joint claimants. Their assessment period begins on the 4th of every month. Audrey has already reached State Pension Credit qualifying age. Norman reaches State Pension Credit qualifying age on 7.12.20. Audrey and Norman's award of Universal Credit is superseded and terminated from 4.1.21.

Mixed-age couple ends through separation or bereavement

A4408 Where a mixed-age couple separates, the guidance at A4406 does not apply. The Universal Credit award to joint claimants ends from the beginning of the assessment period in which that change occurs¹ - see A4370. See DMG Chapter 77 for guidance on claims for State Pension Credit by the member of the mixed-age couple who has reached State Pension Credit qualifying age.

1 UC, PIP, JSA & ESA (D&A) Regs (NI), Sch 1, Part 3, para 20

A4409 Where the younger member of a mixed-age couple dies, the older member may continue to be entitled to Universal Credit for a further two assessment periods after the assessment period in which the death occurs¹ - see E2182 (run-on after death). The guidance at A4406 does not apply. The Universal Credit award ends at the end of

1. the period of run-on after death **or**

2. the assessment period before the assessment period in which the older member states that they wish to relinquish Universal Credit if earlier.

Note: See DMG Chapter 77 for guidance on claims for State Pension Credit by the surviving member of the mixed-age couple.

1 UC Regs (NI) 16, reg 3(2)(a) & 39(a); UC, PIP, JSA & ESA (C&P) Regs (NI), reg 8(1)

Universal Credit hardship payments

- A4410 A decision to make or stop making hardship payments takes effect from the date prescribed in legislation¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 27; UC Regs (NI) 16, reg 112

Universal Credit terminally ill claimants

- A4411 Where a claimant makes an application for supersession which expressly states that they are terminally ill the superseding decision takes effect from the first day of the assessment period in which the claimant becomes terminally ill¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 28

A4412 – A4414

Changes to legislation - effective dates

A4415 Changes to legislation can constitute a relevant change of circumstances. Where the changes of circumstances is that there has been a change in Universal Credit legislation, the superseding decision takes effect from

1. the first day of the assessment period if the change in legislation has effect from that day **or**
2. in any other case, the first day of the assessment period beginning after the date on which the change had effect.

In relation to any other benefit, the superseding decision takes effect from the date on which the change in the legislation has effect.

A4416 Where the change of circumstances is the expected coming into force of a change in Universal Credit legislation, the superseding decision takes effect from

1. the first day of the assessment period if the change in legislation has effect from that day **or**
2. in any other case, the first day of the assessment period beginning after the date on which the change had effect¹.

In relation to any other benefit, the superseding decision takes effect from the date on which the change in legislation has effect.

Note: In some cases the effective date is not always the change in law. For example if an Employment and Support Allowance or Universal Credit claimant attends a work capability assessment and the effect is that they are due a higher rate of benefit the effective date is the date of the decision makers decision. If the claimant applies for a supersession in the light of the changes to legislation the effective date will be the date of application.

¹ UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 4, para 32 & 33

Example

A Personal Independence Payment claimant is in receipt of the standard rate mobility component due to visual impairment. A future change in legislation from 11.4.21 means that the claimant will be entitled to the enhanced rate. The decision maker identifies that the claimant will become entitled and supersedes the award in advance of the coming into force of the legislation and awards the enhanced rate mobility component from 11.4.21.

A4417 – A4419

Error of law

What decisions can be superseded on the grounds of error of law

A4420 Some decisions of a decision maker can be superseded when the decision was wrong in law. The decision can be superseded either on an application or on the decision makers own initiative. These are any decision

1. on a claim for a relevant benefit¹
2. under relevant acts²
3. as in 1. or 2. which has been revised³

Note: A decision of the tribunal or Commissioner cannot be superseded by the decision maker on these grounds.

1 SS (NI) Order 98, art 9(1)(a); 2 art 9(1)(c); 3 art 10(1)(a)

Circumstances when a decision can be superseded on the grounds of error of law

A4421 Supersession on the grounds of error of law only apply where¹

1. an application was received more than one month (or such longer period as might be allowed) after the date the original decision was notified **or**
2. the decision maker decided to act on their own initiative more than one month after the date the original decision was notified.

Note: There will be cases where the decision maker is able to revise a decision which was wrong in law on the grounds of official error. This route is available where the error is solely the responsibility of the decision maker.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 24

Meaning of error of law

A4422 The Courts have set out¹ categories of circumstances in which errors of law may be found. These are

1. making perverse or irrational findings on a matter or matters that were material to the outcome (“material matters”)
2. failing to give reasons or any adequate reasons for findings on material matters
3. failing to take into account and/or resolve conflicts of fact or opinion on material matters
4. giving weight to immaterial matters

5. making a material misdirection of law on any material matter
6. committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings
7. making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made

Note: As errors in law will usually also be official errors allowing revision, this provision has limited use. See ADM Chapter A3 for guidance on the meaning of official error.

1 R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982

A4423 – A4432

Effective date

A4433 Where a decision is superseded on the grounds of error of law the effective date is

1. for Jobseeker's Allowance or Employment and Support Allowance the first day of the benefit week¹
2. for Universal Credit the first day of the assessment period²

in which the superseding decision, or where applicable, the application for supersession was made¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(3); 2 reg 35(4)

A4434 – A4439

Reinterpretation of the law

A4440 Sometimes Commissioners and higher courts give decisions that change a previously held interpretation of the law. These decisions will sometimes mean that earlier decisions of decision makers were wrong in law.

A4441 A decision by the Commissioner or a court that the decision of the decision maker or the tribunal out of which the appeal arose was wrong in law is known as the "relevant determination".

A4442 Where

1. an application is made for a supersession decision relating to entitlement to benefit (regardless of whether it is made before or after the relevant determination) **and**

2. a decision on that application falls to be made in accordance with the relevant determination

then the effective date of that supersession will be the date of the relevant determination¹.

Note: A judgement in a European Court of Justice reference counts as a “relevant determination”.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(5)

Appeal against a relevant determination

A4443 Where

1. a Commissioner or court makes a relevant determination (see A4441) **and**
2. the Department appeals against that determination and does not stay decisions **and**
3. an award of benefit made in consequence of the relevant determination is suspended **and**
4. the relevant determination is reversed on appeal

the suspension is lifted and the decision made by the decision maker in **3.** is superseded on the ground of error of law¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 37(5)

Effective date

A4444 Where a decision makers decision is superseded as in ADM A4443, the decision takes effect from the date on which the earlier decision took effect¹. No arrears are paid when the suspension is lifted.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 37(5) & 37(6)

Example

The claimant appeals against a decision makers decision. The tribunal dismisses the appeal, upholding the decision makers view of the law. The claimant appeals to the Commissioner, but this is again dismissed on the same point. The claimant then makes an appeal to the Court of Appeal, which succeeds. The Department appeals this to the Supreme Court. At the same time the Department receives applications in look-alike cases seeking benefit on the basis of the Court’s decision. The Department supersedes existing decisions but suspends payment under these new awards pending the outcome of the appeal of the Supreme Court. The Supreme Court then upholds the Department’s appeal. The Department then lifts the suspensions and supersedes the decision made following the Court of Appeal’s decision, effective from

the same date as those decisions. This ensures that no benefit is paid in consequence of the Court of Appeal's (erroneous) decision.

A4445 – A4449

Superseding a tribunal or Commissioners decision

A4450 A tribunal or Commissioner's decision can be superseded where

1. the decision arose from ignorance of or mistake as to some material fact¹ **or**
2. it was made after the appeal was stayed² **or**
3. there has been a relevant change of circumstances³ **or**
4. medical evidence from a Healthcare Professional or other person approved by the Department has been received⁴.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 31(a); 2 reg 31(b) & 37(4); 3 reg 23; 4 reg 26(1)

A4451 Where A4450 1. applies and the decision to be superseded was more advantageous to the claimant than it would otherwise have been the superseding decision takes effect for

1. Jobseeker's Allowance and Personal Independence Payment, the date the tribunal's or Commissioner's decision took or was to take effect from¹
2. Employment and Support Allowance or Universal Credit, when the material fact does not relate to the limited capability for work determination or if it does and the decision maker is satisfied that at the time the decision was made the claimant knew or could reasonably be expected to know of it and that it was relevant - the first day of the benefit week or the assessment period in which the tribunal's decision took or was to take effect².

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 37(2); 2 reg 37(3)

A4452 Where A4450 2. applies the superseding decision takes effect for

1. Personal Independence Payment, from the date on which the decision of the tribunal's or Commissioner's would have taken effect had it been decided in accordance with decision which was the subject of the lead appeal¹
2. Jobseeker's Allowance or Employment and Support Allowance from the first day of the benefit week in which the tribunal's decision would have taken effect had it been so decided²
3. Universal Credit, from the first day of the assessment period in which the tribunal's decision would have taken effect had it been so decided³.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 37(4)(a); 2 reg 37(4)(b); 3 reg 37(4)(c)

No outcome decision made

A4453 Where the tribunal does not give an outcome decision after allowing an appeal, the decision maker must follow the tribunal's decision on the issues it has dealt with when dealing with the matters referred back for subsequent decision unless

1. there are grounds to supersede the tribunal's decision **or**
2. the decision maker considers it is erroneous in law and applies for leave to appeal (see ADM Chapter A5)¹.

1 R(IS) 2/08

A4454 Where

1. the decision maker incorporates the tribunal's decision into a new decision
 - 1.1 on a claim **or**
 - 1.2 revising or superseding an earlier decision **and**
2. the facts have changed since the time of the decision under appeal

the decision maker should not supersede the tribunal's decision in order to take account of the change in the facts. This is because the decision maker must determine all the facts down to the date of the new decision - see ADM Chapter A2. The tribunal cannot take account of circumstances which had not arisen at the time of the decision under appeal¹.

1 SS (NI) Order 98, art 13(8)(b)

A4455 Similarly, if the tribunal's decision, other than an outcome decision, is incorporated into a decision maker's decision, and there are grounds to supersede, it is the decision maker's decision which must be superseded, not the tribunal's decision.

A4456 Note that the claimant cannot ask for the decision maker's decision to be

1. revised (during the application period or for official error) **or**
2. superseded for error of law

where the only issue raised by the application relates to the incorporated tribunal's decision. The claimant should apply for leave to appeal to the Commissioner against the tribunal's decision.

Stayed appeals

A4457 ADM Chapter A5 describes the procedure where appeals are stayed at tribunal or Commissioner level. Where

1. the tribunal or Commissioner decides the appeal as if the lead appeal had been determined in the most unfavourable terms for the appellant¹ **and**

2. the decision maker is required to supersede the tribunal or Commissioner's decision once the lead appeal is determined²

the effective date of the supersession is the date the tribunal or Commissioner's decision would have taken effect if it had been decided in accordance with the decision which was the subject of the lead appeal³ (see A4452).

1 SS (NI) Order 98, art 26(4)(b); 2 art 26(5); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 31(b); 3 reg 37(4)

A4458 Decision Making Services will give guidance following the determination of lead cases on whether supersession is required.

A4459

Ignorance of or mistake as to a material fact

What decisions can be superseded on the grounds of ignorance of or mistake as to a material fact

A4460 Supersession of

1. any decision on a claim for Universal Credit, Personal Independence Payment, Employment and Support Allowance or Jobseeker's Allowance¹
2. any decision made under relevant Acts²
3. any decision in **1.** or **2.** which has been revised by a decision maker³
4. any decision made by the tribunal or Commissioner⁴.

can be made on the grounds of ignorance of or mistake as to a material fact.

1 SS (NI) Order 98, art 9(1)(a); 2 art 9(1)(c); 3 art 11(1)(a); 4 art 11(1)(b)

Material facts

A4461 A material fact is one which is relevant to a decision on a claim or application. Any fact which has to be determined before a decision can be given is a material fact.

A4462 A fact which is itself not immediately relevant can be important to a decision if the process of reaching a decision has been influenced by it.

Example

The tribunal does not accept a claimant's evidence because they consider it not to be a true statement of the facts. The claimant then produces evidence to prove the fact was correct. The decision maker supersedes the decision because it is based on a mistake as to a material fact.

A4463 An application for supersession because of ignorance of, or a mistake as to, a material fact may not always result in a supersession decision. See A4017 - A4044 for further guidance.

A4464 There is a distinction between a primary fact and a secondary fact. A primary fact is a fact established directly by evidence. A secondary fact is found by applying the process of reasoning to evidence.

A4465 Decision makers often make an inference of fact by reasoning from the evidence before them. If, however, they are wrong because the reasoning was wrong, the decision is not based on a mistake as to a material fact. Decision makers cannot

supersede decisions just because they would have reached a different decision on the same evidence¹ (but see A4469).

I R(I) 3/75

Ignorance of a material fact

A4466 A decision may be superseded if the decision maker is satisfied that it was given in ignorance of some material fact. A material fact is one which is relevant to

1. an award of benefit
2. a claimant commitment
3. a labour market question
4. an overpayment recoverability decision

and has to be identified before a decision is given. The fact must exist at the time the original decision is given¹.

I CAO v Combe (Court of Session 1999)

A4467 It is presumed that a decision maker is aware of the facts included in the papers available to make a decision. This presumed knowledge prevents supersession because of the ignorance, but supersession because of a mistake as to a material fact may be possible.

A4468 Sometimes a question has to be decided by making an adverse assumption about a relevant fact because the decision maker has been unable to obtain sufficient evidence¹. If evidence is then provided which shows the decision maker's assumption is wrong the original decision can be superseded because of ignorance of a material fact. If the evidence is provided within the dispute period, revision would be appropriate.

I R(SB) 18/81; R(SB) 29/83

Example

A jobseeker fails to provide evidence that he is actively seeking work after a request from the Department. The decision maker decides that he is not actively seeking employment, and disallows the claim for Jobseeker's Allowance. The claimant later produces his record of job applications. The decision maker supersedes the original decision because it was made in ignorance of the material fact that the claimant was actively seeking employment.

Mistake as to a material fact

A4469 A decision maker may misinterpret the evidence and make a mistake as to a material fact¹. If the mistake was wholly the responsibility of the decision maker, or of another

official of the Department, it would be an official error and the decision would be revised (see ADM Chapter A3). If the claimant had contributed to the mistake, it would not be an official error and the decision would be superseded².

1 R(G) 8/55; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 9; 2 reg 22

A4470 The mistake may be made when dealing with the claim, for example by a decision maker misreading information in a document. It may be made by another official, for example by a receptionist recording an incorrect date. The revision provisions should always be considered where the new decision would be advantageous to the claimant.

Example 1

A claimant has an award of the standard rate of the daily living component of Personal Independence Payment. Two years later the claimant's appointee applied for supersession on the grounds that the claimant has care needs as a result of her mental health. The application included medical evidence from the claimant's doctor in which it is stated that these needs were present at the date of claim.

The decision maker examines the case and finds that the evidence obtained at the time of the original claim clearly shows that Personal Independence Payment should have been awarded from an earlier date as the required period condition was satisfied. The decision maker revises the original decision for official error so that Personal Independence Payment is awarded from 19.4.19 rather than 19.7.19.

The decision maker notes that there was no evidence on the claim form or the original medical evidence which indicated mental health issues. If the new evidence had been brought to the decision maker's attention at the time of the claim, they would have awarded Personal Independence Payment at a higher rate. The award can now be superseded on the grounds of ignorance as to a material fact, but the effective date can only be the date on which the application was received.

Example 2

The decision maker decides that the jobseeker was not available for work because he was in prison for the period 3 July to 28 August. The jobseeker later realises that he got his dates mixed up, and he was actually in prison for the period 28 July to 3 August. The decision maker supersedes his decision because it was based on a mistake as to a material fact.

A4471 – A4474

Opinions and material facts

A4475 Opinions should be distinguished from facts. Decision makers often take into account opinions of other persons, for example doctors, in making decisions. Medical opinion does not form a material fact¹.

1 R v. Secretary for Social Services ex parte Loveday [15.2.83]

A4476 Because it is not a material fact, a change of medical opinion is not of itself a ground for supersession. A decision maker's decision awarding benefit as a result of a medical opinion cannot be superseded because it was based on a mistake as to a material fact, if another doctor provides a different opinion based on the same facts. This is because there is no specific or primary fact about which the decision maker was mistaken¹. For further guidance on medical opinion/fact see benefit specific guidance.

1 R(S) 4/86

A4477 However, medical opinions are often expressed in reports which may contain evidence, such as clinical findings or statements by the claimant, from which the decision maker can infer facts. This may enable the decision maker to show that the original facts would not have been found, or were found incorrectly, if the new facts had been known¹. A change of opinion where there are different facts may be evidence that the original decision was based on ignorance of or mistake as to some material fact².

1 R(I) 3/75; 2 R(DLA) 6/01

A4478 – A4479

Supersession of a decision of a decision maker on grounds of ignorance or mistake

A4480 Where the decision to be superseded is one made by a decision maker, it can be superseded on the grounds of ignorance of or mistake as to a material fact where either¹

1. an application is made more than one month after the original decision was notified (or a late dispute is not admitted - see ADM Chapter A3)
2. the decision maker commenced action with a view to supersession more than one month after the original decision was notified.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 24

A4481 A decision based on ignorance of, or mistake as to, a material fact may have arisen because of official error. In that case revision may be appropriate¹. Decision makers should also consider whether revision is appropriate where the decision was more

advantageous than it would have been if the material fact was known (see ADM Chapter A3).

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 9

Effective date

A4482 The effective date of a supersession to which A4480 applies will be for

1. Jobseeker's Allowance or Employment and Support Allowance, the first day of the benefit week in which the superseding decision or application for supersession was made¹
2. Universal Credit, the first day of the assessment period in which the superseding decision or application for supersession was made²
3. Personal Independence Payment, on the date the decision is made or the date of application³.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(3); 2 reg 35(4); 3 SS (NI) Order 98, art 11(5)

Supersession of a decision of the tribunal or the Commissioner

A4483 A decision of the tribunal or Commissioner may be superseded at any time on the grounds of ignorance or mistake as to a material fact¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 31(a)

Effective date

Advantageous

A4484 If the effect of the supersession would be advantageous to the claimant the effective date is¹

1. where the supersession is made as a result of an application, the date the application was received **or**
2. where the supersession was undertaken at the decision maker's own initiative, the date the decision was made.

1 SS (NI) Order 98, art 11(5)

Disadvantageous

A4485 Where the effect of the supersession of the tribunal or Commissioner decision would be to the disadvantage of the claimant the effective date is for

1. Jobseeker's Allowance and Personal Independence Payment, from the date on which the decision of the tribunal or Commissioner took or was to take effect¹
2. Employment and Support Allowance or Universal Credit² where the fact does not relate to the limited capability for work determination or does relate to it and the decision maker is satisfied that at the time the decision was made the claimant knew or could reasonably be expected to know of it and that it was relevant, from the first day of the benefit week or the first day in the assessment period in which the decision of the tribunal or Commissioner took or was due to take effect.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 37(2); 2 reg 37(3)

A4486 – A4489

Decisions which cannot be appealed to a tribunal

Introduction

A4490 Annex E lists decisions and determinations that are not appealable. Such decisions can be superseded at any time either on an application or at the decision maker's own initiative¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 25

Effective date

A4491 The effective date will be¹

1. the date of the application for supersession **or**
2. the date the decision was made when made on the decision maker's own initiative.

1 SS (NI) Order 98, art 11(5)

A4492 – A4499

Sanction cases

A4500 Employment and Support Allowance, Jobseeker's Allowance and Universal Credit claimants can be sanctioned under certain circumstances¹. A superseding decision to apply a sanction takes effect for Employment and Support Allowance²

1. where the claimant has not been paid Employment and Support Allowance for the benefit week in which the Department determines that the amount of the award of Employment and Support Allowance is to be reduced, the first day of that benefit week **or**
2. where the claimant has been paid Employment and Support Allowance for the benefit week referred to in **1.** the first day of the first benefit week for which the claimant has not been paid Employment and Support Allowance **or**
3. where the amount of the award of Employment and Support Allowance for the benefit week referred to in paragraph **1.** or **2.** is already subject to a reduction because of a previous sanctionable failure, the first day in respect of which the amount of the award is no longer subject to that reduction.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 27; 2 ESA Regs (NI) 16, reg 54 & reg 35(10)(a)

A4501 A superseding decision to apply a sanction takes effect for Jobseeker's Allowance¹

1. where the claimant has not been paid Jobseeker's Allowance for the benefit week in which the sanctionable failure occurred, the first day of that benefit week **or**
2. where the claimant has been paid Jobseeker's Allowance for the benefit week referred to in **1.** the first day of the first benefit week for which the claimant has not been paid Jobseeker's Allowance **or**
3. where the amount of the award of Jobseeker's Allowance for the benefit week referred to in **1.** or **2.** is already subject to a reduction because of a previous sanctionable failure, the first day of the first benefit week in respect of which the amount of the award is no longer subject to that reduction.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(10)(c); JSA Regs (NI) 16, reg 23

A4502 A superseding decision to apply a sanction takes effect for Universal Credit¹ from

1. the first day of the assessment period in which the decision maker determines that the amount is to be reduced **or**
2. if the amount of the award is not reduced as in **1.** the first day of the next assessment period **or**
3. if the amount of the award for the assessment period as in **1.** or **2.** is already subject to a reduction because of a previous sanctionable failure, the first day

in respect of which the amount of the award is no longer subject to that reduction

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(10)(e); UC Regs (NI) 16, reg 103

Reduction in benefit ceases to apply

A4503 Where a person has had an award of benefit sanctioned as above and the reduction is suspended or terminated then the decision to impose the reduction can be superseded¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 27(2)

Effective date

A4504 For Employment and Support Allowance, Jobseeker's Allowance and Universal Credit the reduction is suspended for any period during which a fraud sanction applies. The reduction ceases to have effect on the day that period begins¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(11)(a), 35(11)(c) & 35(11)(e); ESA Regs (NI) 16, reg 56; JSA Regs (NI) 16, reg 25; UC Regs (NI) 16, reg 105

A4505 The reduction is terminated where, since the date of the most recent sanctionable failure, the claimant has been in paid work¹

1. for a period of at least 26 weeks (Employment and Support Allowance) or 182 days (Jobseeker's Allowance) **or**
2. for more than one period where the total of those periods amounts to at least 26 weeks (Employment and Support Allowance) or 182 days (Jobseeker's Allowance).

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(11)(b) & 35(11)(d); ESA Regs (NI) 16, reg 57; JSA Regs (NI) 16, reg 25

A4506 For Universal Credit claimants the reduction is terminated where since the date of the most recent sanctionable failure, the claimant has been in paid work for a period of, or for periods amounting to at least 26 weeks and the claimant's weekly earnings during that period or periods were equal to or exceed their individual threshold or prescribed legislation in relation to apprenticeships apply¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(11)(f); UC Regs (NI) 16, reg 106(1)

A4507 The effective date is either the first day of the assessment period in which A4506 is satisfied or where that date falls outside a period of entitlement to Universal Credit, from the beginning of the first assessment period in relation to any subsequent award¹.

1 UC Regs (NI) 16, reg 109(2)

A4508 – A4519

Loss of benefit following benefit fraud offences

Sanctionable benefit

A4520 A decision can be superseded¹ where

1. it is a decision that a sanctionable benefit is payable **and**
2. that benefit ceases to be payable or is reduced under the provisions allowing restrictions on the payment of benefit following convictions for benefit fraud offences.

Note: See ADM Chapter B2 for further guidance.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 28

Effective date

A4521 The effective date¹ will be the first day of the disqualification period as set out in regulations².

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(12); 2 SS (Loss of Benefit) Regs (NI), reg 2

A4522 – A4524

Special rules - uprating

A4525 The uprating of benefit will not normally require a supersession decision¹.

1 SSA (NI) Act 92, sec 139A; sec 139C; sec 139D; sec 139E

Special rules - late or unpaid contributions

A4526 Where a late or unpaid contribution is treated as paid at an earlier date then the decision maker can supersede¹ the original decision. The superseding decision takes effect from the date on which the contribution is treated as paid². See ADM Chapter A3 where a late paid contribution or credit is treated as paid on or before the date of the original decision.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 29; 2 reg 35(13)

Special rules - Universal Credit housing costs

A4527 Where the housing costs element is reduced following a determination made under specified legislation then the award of Universal Credit may be superseded¹. The effective date is the first day of the assessment period following the day on which that determination is received by Department².

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 30; 2 reg 35(14)

A4528 – A4529

Special rules - Personal Independence Payment [See ADM Memo 6/26]

Receipt of Health Professional report

A4530 A Personal Independence Payment decision (whether originally made by a decision maker or an Appeal Tribunal) can be superseded where since the decision was made, the Department has received medical evidence from an approved Health Professional or other approved person approved by the Department¹. The effective date of supersession is either

1. the date on which the decision is made **or**
2. the date on which the claimant applied for supersession².

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 26(1)(a); 2 SS (NI) Order 98, art 11(5)

Reasons for decision

A4531 If it is appropriate to supersede as in A4530, the decision maker does not have to identify a change of circumstances. However, if the outcome is less favourable than the existing award and the claimant says their condition has not improved or has worsened, the reasons for decision must show that it is based on a proper evaluation of all relevant evidence. The reasons should explain why it differs from the decision which informed the earlier award.

Considering other grounds for supersession

A4532 When superseding a Personal Independence Payment decision, any ground of supersession could apply as long as the conditions they contain are satisfied. Superseding on the basis of receipt of medical evidence from an approved Health Professional should not be regarded as a ground of supersession of last resort. Where a decision will be advantageous to the claimant, the decision maker should supersede on the ground that will be most beneficial to the claimant¹ e.g. advantageous change of circumstances (see A4350 - A4369).

1 [2017] AACR 19 (DS v SSWP) & R(M)1/96

Terminally ill

A4533 For the purpose of Personal Independence Payment, the fact that a person is terminally ill is not a relevant change of circumstances, **unless**¹ an application for supersession contains an express statement that the person is terminally ill and is made by

1. the terminally ill person **or**

2. any other person claiming to act on that person's behalf whether or not that other person is acting with the knowledge or authority of the terminally ill person.

Note: Where an application for supersession is made without an express statement of terminal illness but evidence is received of terminal illness from either the claimant or on behalf of the claimant then the application for supersession should be treated as one made on the grounds of terminal illness.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 23(2)

- A4534 If the application for supersession is made expressly on the grounds of terminal illness then this constitutes a relevant change of circumstances. The effective date of the supersession is the date of the change¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(1)

A4535 – A4539

Special rules - Employment and Support Allowance

A4540 Where a claimant applies for supersession on the grounds that they have limited capability for work-related activity the effective date of the supersession is the date of the application¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(6)

A4541 Where a determination is made that the claimant has

1. limited capability for work **or**
2. limited capability for work-related activity **or**
3. limited capability for work and limited capability for work-related activity

and it is the first determination then the effective date of the supersession takes effect from the day after the last day of the relevant period as defined under prescribed legislation¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 26(1) & 35(7); ESA Regs (NI) 16, reg 5(4)

A4542 Where

1. the claimant was previously entitled to Employment and Support Allowance for no more than 13 weeks **and**
2. the assessment phase had not ended in the previous award **and**
3. the claimant's current period of limited capability for work is treated as a continuous period of limited capability for work

the supersession decision takes effect from the beginning of the 14th week of the claimant's continuous period of limited capability for work¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(8)

A4543 – A4544

Special rules - Universal Credit

A4545 A decision that embodies a determination that the claimant has limited capability for work or limited capability for work and limited capability work-related activity takes effect from the beginning of the assessment period in which the decision is made (decision maker's own initiative) or the application for supersession was made¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(9)(b)

A4546 Some awards of Universal Credit are **not** to include the limited capability for work or limited capability work-related activity elements until certain circumstances are satisfied. In these cases the elements are not included until the beginning of the assessment period that follows the assessment period in which the relevant period ends¹. See ADM Chapter F5.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 35(9)(a)

A4547 – A4549

Determinations on incomplete evidence

A4550 Where, for the purposes of deciding a claim or making a supersession decision, a determination has to be made as to whether

1. a person is to be treated as receiving relevant education under specific regulations¹ **and**
2. it appears to the decision maker that he is not in possession of all the evidence or information needed to make that determination

the determination shall be made on the assumption that the missing evidence or information is adverse to the claimant².

1 JSA Regs (NI) 16, reg 45; 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 39(3)

A4551 Where

1. a determination falls to be made as to what housing costs are to be included in an award of Universal Credit **and**
2. it appears to the decision maker that he is not in possession of all the evidence or information needed to make that determination

the determination may be made on the assumption that the housing costs to be included in the award are those that can be determined¹ using evidence or information that is in the decision maker's possession¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 39(4)

A4552 Where

1. a determination falls to be made as to whether a Personal Independence Payment claimant meets the condition in prescribed legislation regarding costs of qualifying services for care home residents¹ **and**
2. it appears to the decision maker that he is not in possession of all the evidence or information needed to make that determination after having made reasonable enquiries

the determination may be made on the basis of the information or evidence that is in the decision maker's possession².

1 WR (NI) Order 15, art 90(2); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 39(5)

Determination as to limited capability for work

A4553 When a decision maker determines (including after a change of circumstances) that for the purposes of Employment and Support Allowance or Universal Credit a claimant

1. has or does not have limited capability for work **or**
2. is to be treated as having or not having limited capability for work

then this determination is conclusive for any further decisions on Employment and Support Allowance or Universal Credit¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 40(1) & reg 40(2)

Universal Credit

A4554 When the decision maker determines (including after a change of circumstances) that for the purposes of Universal Credit a claimant

1. has or does not have limited capability for work **or**
2. is to be treated as having or not having limited capability for work

then this determination is conclusive for any further decisions on Universal Credit¹.

Note: Please see Chapters G1 and U2 for guidance on determining limited capability for work.

1 UC, PIP, JSA & ESA (D&A) Regs (NI), reg 40(2)

A4555 Where an issue arises¹ as to whether a person is or is to be treated as having or not having limited capability for work or is terminally ill for the purposes of Universal Credit or Employment and Support Allowance then that issue should be determined by the decision maker. This is notwithstanding any other matters that fall to be determined by another authority.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 40(3)

Alterations affecting Universal Credit

A4556 Where a person disputes the figure used to calculate earnings from employment for any assessment period for Universal Credit then the Department must

1. inform the person that they may request a decision in relation to the amount of Universal Credit payable in relation to that assessment period **and**
2. where such a decision is requested, provide it within 14 days of receiving the request or as soon as practicable afterwards

In these cases the decision takes effect on the same date on which the alteration of the person's employed earnings takes effect¹.

Note: Alterations to the rate of Universal Credit as a consequence of information provided via the real time interface do not require a further decision.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 41; SS A (NI) Act 92, sec 139D(1)(b)(vi)

A4557 – A4559

Claimant fails to attend for or participate in a consultation - Personal Independence Payment

A4560 Where a Personal Independence Payment claimant fails without good reason to attend for or participate in a consultation a negative determination shall be made¹. This only applies if written notice of the date, time and place of the consultation was issued at least 7 days in advance or unless the claimant agreed to accept a shorter period of notice. A negative determination means that the claimant does not meet the requirements of entitlement to the daily living component or the mobility component². A supersession decision can be made to end entitlement to Personal Independence Payment³. The effective date of the decision is the date of the decision maker's decision⁴.

Good reason includes the claimant's state of health at the relevant time and the nature of their disability. The decision maker should exercise discretion when determining good reason.

Note 1: A decision made in consequence of a negative determination may be revised at any time if it contains an error to which the claimant did not materially contribute⁵.

Note 2: See Chapter P2 for guidance on Personal Independence Payment assessments.

1 PIP Regs (NI) 16, reg 9; 2 WR (NI) Order 15, art 85(6);

3 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 26(2);

4 SS (NI) Order 98, art 11(5); 5 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 18(3)

Example 1

Jackie is sent a written request to attend a consultation but does not attend. She tells the decision maker that she did not attend because she was in hospital and did not receive the letter. The decision maker accepts that Jackie has shown good reason for not attending.

Example 2

Kevin is sent a written request to attend a consultation but does not attend. He tells the decision maker that he didn't go because he didn't want his award of Personal Independence Payment to be looked at again. The decision maker decides that Kevin has not shown good reason for not attending and makes a negative determination.

Example 3

Warren does not attend the consultation. He tells the decision maker that he didn't attend because on the day of the consultation he suffered an epileptic seizure and was admitted to hospital. The decision maker accepts that Warren has shown good reason.

A4561 An existing Personal Independence Payment claimant may be required to provide any information or evidence required to determine if they have limited or severely limited ability to carry out daily living or mobility activities, for example on the form "How your disability affects you".

In such cases the claimant must provide the information or evidence within one month from the date of the request or within such longer period as is considered reasonable.

Where the claimant fails without good reason to provide the information or evidence then a negative determination must be made¹. The effective date is the date of the decision maker's decision².

1 PIP Regs (NI) 16, reg 8; 2 SS (NI) Order 98, art 10(5)

A4562 – A4569

Change from Jobseeker's Allowance to Employment and Support Allowance or Employment and Support Allowance to Jobseeker's Allowance

A4570 Where

1. a person is awarded Employment and Support Allowance or Jobseeker's Allowance ("the existing award") **and if**
2. that award did not exist, an award could be made for Employment and Support Allowance or Jobseeker's Allowance ("the alternative benefit") were a claim made for it

then when a claim is made for the alternative benefit, the decision maker may supersede the existing award to bring it to an end¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 47(1), (2) & (3)

A4571 Where A4570 applies the existing award ends on the day immediately before the first day on which the award of the alternative benefit takes effect¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 47(4)

A4572 Waiting days do not have to be served in where either an award of Employment and Support Allowance or Jobseeker's Allowance is made¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 47(5) & 47(6)

A4573 – A4599

Suspension and termination of benefit

Hardship

- A4600 Decision makers should always have regard to the question of whether hardship will result from their decision when considering suspension of benefit, either wholly or in part. This applies both to circumstances where the decision maker is considering an immediate suspension or where the claimant has been asked to provide information.
- A4601 For issues to be considered when deciding if hardship would result see benefit specific guidance.

Loss of contact with claimant

- A4602 If contact with the claimant is lost the decision maker should consider suspension and termination to help prevent the accumulation of long periods of arrears.

Immediate suspension

- A4603 The decision maker may suspend the payment of benefit immediately, either wholly or in part, where a question has arisen about the claimant's entitlement to benefit or some component part of it¹. Payment can also be suspended after 14 days, where there has been a failure to satisfy information requirements².

1 SS (NI) Order 98, art 21 & UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43; 2 reg 44

- A4604 Suspension may be appropriate where a question has arisen during the currency of an award
1. about whether the claimant satisfies the conditions of entitlement to benefit¹
 2. about whether an award of benefit should be revised or superseded²
 3. about whether an overpayment of benefit is recoverable³
 4. about whether the claimant is still residing at the last address notified to the Department⁴
 5. about the award of benefit because an appeal is pending against a decision made by an appeal Tribunal, a Commissioner, or a court⁵
 6. because an appeal is pending in a different case before a Commissioner or a court, and it appears to the decision maker that the outcome of that case might require the award to be revised or superseded⁶.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43(2)(a)(i); 2 reg 43(2)(a)(ii); 3 reg 43(2)(a)(iii); 4 reg 43(2)(a)(iv); 5 reg 43(2)(b); 6 reg 43(2)(c)

Suspension where a question arises as to whether benefit should be revised or superseded

A4605 Where a question arises about whether a decision awarding benefit should be revised¹ or superseded² the decision maker should consider whether a suspension of the payment of benefit is appropriate. If it looks as though the revised or superseded decision would result in

1. an increase in entitlement, there is no need to consider suspension
2. a decrease in entitlement, consider suspending payments of the amount in question
3. a loss of entitlement to benefit, consider suspending the whole of the payment.

1 SS (NI) Order 98, art 10; 2 art 11

Example

If a question arises about a claimant's entitlement to a Universal Credit housing element consider suspending payment of the element pending enquiries to resolve the doubt.

Suspension where an appeal is pending

A4606 The decision maker may suspend payment of benefit, wholly or in part, where an appeal is pending against the decision¹, if in the opinion of the decision maker the likely outcome of the appeal is that there would be no entitlement to the benefit or part of the benefit in question.

1 SS (NI) Order 98, art 21(2)(c); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43(3)

A4607 Appeal in this context means an appeal against a decision by

1. an Appeal Tribunal
2. a Commissioner or tribunal of Commissioners
3. the High Court, the Court of Appeal, the Court of Session in Scotland and the Supreme Court.

A4608 An appeal is pending¹ where a decision of an Appeal Tribunal, a Commissioner or a court has been made **and**

1. the Department is waiting to receive that decision **or**
2. in the case of the tribunal decision the Department
 - 2.1 is considering whether to apply for a statement of reasons **or**
 - 2.2 has applied for a statement of reasons and is waiting to receive it **or**

- 2.3** has received the statement of reasons and is considering whether to apply for leave to appeal to the Commissioners **or**
3. the Department has received the decision and is considering whether to apply for permission to appeal against it **or**
 4. an application for permission to appeal has been made but not determined **or**
 5. permission to appeal has been granted and the Department is considering whether to proceed with an appeal **or**
 6. an appeal has been made but has not yet been determined.

1 SS (NI) Order 98, art 21 & UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43(4)

Notification

A4609 The Department must give written notice¹ to the claimant of its proposal to

1. in the case of the tribunal decision, apply for a statement of reasons
2. apply for permission to appeal **or**
3. make an appeal

as soon as reasonably practicable.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43(5)

Note: As the regulations require the Department to notify its **proposal** to take the actions listed above, it must send the notification **before** taking the action.

When benefit suspended must be paid - appeal no longer pending

A4610 Payment of benefit that has been suspended must be made if¹

1. in the case of the tribunal decision, the Department does not apply for a statement of reasons within one month of the day it receives notice of the tribunal's decision
2. in the case of any decision, the Department does not
 - 2.1 make an application for permission to appeal **or**
 - 2.2 when permission is granted, make an appeal within the relevant time limit
3. the Department withdraws its appeal or application for permission to appeal
4. the Department is refused permission to appeal where it cannot renew its application or make a further application for permission to appeal.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 45(c) & 45(d)

Suspension where an appeal is pending against a decision in a different case

- A4611 The decision maker may suspend benefit wholly or in part where¹
1. an appeal is pending in another case (the lead case) before a Commissioner or a court **and**
 2. it seems to the decision maker that, if the lead case were determined in a particular way an issue would arise as to whether the award of benefit in the case before the decision maker (the look-alike case) should be revised or superseded².

1 SS (NI) Order 98, art 21(2)(d); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43(2)(c)

- A4612 The appeal in question does not have to involve the same benefit. But if it appears the outcome of the appeal would have an effect on the award being considered by the decision maker then suspension can still be considered.

A4613 – A4619

What happens if the suspension is lifted

- A4620 When the suspension is lifted the decision maker
1. reinstates all or part of the benefit where it is appropriate to do so
 2. revises or supersedes the award of benefit
 3. makes, revises or supersedes the award of benefit in accordance with the directions of the appeal tribunal, Commissioner or court
 4. makes, refuses to make, revises or supersedes the award of benefit in accordance with the directions of the Commissioner or court given in the different case.

Suspension where information has been requested

- A4621 The decision maker can suspend¹ payment of benefit when they are considering whether an award of benefit should be revised or superseded. This applies to²
1. a person who has had benefit suspended as in A4600
 2. a person who has applied for a decision to be revised or superseded
 3. a person who is required to provide information or evidence
 4. a Jobseeker's Allowance claimant who has been asked to provide documents, certificates or other evidence

5. a person whose entitlement to Employment and Support Allowance or Universal Credit is conditional on their having or being treated as having limited capability for work.

1 SS (NI) Order 98, art 21(2)(b); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43(2)(a)

A4622 When the decision maker has asked the claimant to provide information¹ they must

1. supply that information² within a period of 14 days beginning with the date on which the notification was sent or such longer period as the decision maker allows in that notification **or**
2. supply that information³ within such longer period as he satisfies the decision maker is necessary in order to enable him to comply with the requirement

in default of which payment of benefit may be suspended.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 44(1) & 44(3); 2 reg 44(4)(a)(i); 3 reg 44(4)(a)(ii)

Example

Matt is self-employed and is in receipt of Universal Credit. He is asked to send in details of his earnings within 14 days and told that if he doesn't his Universal Credit may be suspended. Matt fails to do this and his award of Universal Credit is suspended.

A4623 Alternatively, the claimant must satisfy the decision maker within 14 days beginning with the date on which the notification was sent that either¹

1. the information does not **exist or**
2. it is not possible for him to obtain it.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 44(4)(b)

A4624 Where the decision maker requires documents, certificates or other evidence from a Jobseeker's Allowance claimant under other legislation¹ then this must be supplied within 7 days beginning with the date on which notification was sent in default of which payment of Jobseeker's Allowance may be suspended².

1 JSA Regs (NI) 16, reg 31(3); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 43(5)

A4625 The decision maker should impose the 14 day period where there is a serious doubt about the claimant's award. Examples are where

1. information has been received indicating that there may be undeclared income or capital or an undeclared non dependant or partner
2. a data match anomaly

3. the claimant has failed to co-operate with the Department review by failing to participate in a telephone review and subsequently fails to return a fully completed postal review form
4. the Department has no contact number and reverts immediately to the postal process
5. the Department has been unable to make contact by telephone and reverts to the postal process
6. the Department has conducted a telephone review but further information is required and sends a letter requesting this information.

A4626 When considering whether to extend the 14 day period the decision maker should take into account all the circumstances including

1. the claimant's circumstances and the nature of the information requested
2. whether there are difficulties in obtaining the information (e.g. where verification, which may not be readily available, has to be sought from a third party such as a bank)
3. any difficulty the claimant may have in obtaining the information due to disability, illness or family circumstances
4. circumstances beyond the claimant's control such as hospitalisation, bereavement or postal disruption
5. whether the nature of the award causes difficulties e.g. overseas awards.

This list is not exhaustive and each case should be considered on its merits. Extension is at the discretion of the decision maker. Before making a decision to suspend the decision maker must consider hardship.

Example 1

A claimant fails to return a review form to the Department. The decision maker issues a letter asking them to provide information relating to his award. This letter asks the claimant to provide the information within 14 days of the day it was sent. The letter also states that failure to provide the required information will result in suspension of benefit. The claimant does not respond to the letter and the decision maker decides to suspend benefit.

Example 2

An allegation is received that the claimant has a large amount of capital in numerous savings accounts. The decision maker issues a letter asking them to provide evidence of their capital within 14 days of the date of issue of the letter. The claimant responds within 14 days, denying the allegation and says that they have only small

amounts of capital in several accounts. The claimant says that it will take a month to provide this information. The decision maker considers this is reasonable and does not suspend benefit and allows the claimant a month in total to provide the information.

A4627 – A4629

Termination following suspension

A4630 **[See ADM Memo 3/25]** The decision maker must consider terminating benefit where

1. the claimant has been required to provide information (this applies where payment has been suspended both immediately and following failure to satisfy information requirements) **and**
2. has failed to do so within one month or such longer period as appropriate **and**
3. payment of benefit has been suspended in full¹.

It should be noted that it is not possible to terminate benefit if the suspension is a partial one. In this situation the suspension remains in place indefinitely.

1 SS (NI) Order 98, art 23; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 46

A4631 The time limit of one month may be extended where the decision maker considers in all the circumstances it is reasonable to do so. A decision terminating benefit in these circumstances will be a supersession decision. This decision carries the right of appeal¹.

1 SS (NI) Order 98, art 23; SS & CS (D&A) Regs (NI), reg 46

Extension of the time limit

A4632 When considering whether to extend the time limit for providing information, the decision maker should take into account all the circumstances including

1. the circumstances of the claimant and the nature of the information requested
2. whether there are difficulties in obtaining the information itself, for example where verification, which may not be readily available, has to be sought from another source such as a bank or a building society
3. any difficulty the claimant may have in obtaining the information due to disability, illness or family circumstances
4. where the nature of the benefit itself, for example, overseas cases, creates its own difficulties.

This list is not exhaustive. Each case must be based on its merits.

Date from which benefit is terminated

A4633 Benefit is terminated with effect from the date on which the payment of benefit was suspended.

A4634 Decision makers should note that if it transpires that entitlement should have terminated from an earlier date, then this termination provision cannot be used. Instead, the original decision should be revised or superseded, with the effective date of termination being determined as appropriate¹.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 46(2)

Example

Original outcome decision 1.4.18. Benefit suspended 1.7.18. Because the claimant does not respond to requests for information entitlement is terminated from 1.7.18. On 1.10.18 the Department discovers that entitlement should have ended on 1.5.18 as a result of new information coming to light. He revises the decision to terminate benefit and then supersedes the decision of 1.4.18, effective from 1.5.18.

A4635 – A4999

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