Chapter A3: Revision

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Chapter A3: Revision

Revising decisions and handling appeals
[See ADM Memo 11/25]

Introduction

A3001 This chapter is about revising decisions and handling appeals for

1. Universal Credit

2. Personal Independence Payment

3. new style Jobseeker's Allowance (hereafter referred to as Jobseeker's Allowance)

4. new style Employment and Support Allowance (hereafter referred to as Employment and Support Allowance).

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

Note 2: Guidance on revision and handling appeals for benefits not listed above is in DMG Chapter 03.

Note 3: The guidance comes into effect[1] from 20.6.16 for Personal Independence Payment and from 27.9.17 for Universal Credit, Jobseeker's Allowance and Employment and Support Allowance. Decision makers should note that mandatory reconsideration is being introduced from 20.6.16 for Personal Independence Payment, 27.9.17 for Universal Credit and 27.9.17 for Jobseeker's Allowance and Employment and Support Allowance.

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

A3002 The revision process allows the decision maker to re-examine the facts of the case, take any further evidence into consideration, the law used and other issues such as how discretion was applied when making a decision. Revising a decision can avoid the need for cases to proceed to the Tribunal.

A3003 Where a decision is challenged, the decision maker reconsiders it, and revises the decision if it is appropriate to do so. Where it cannot be revised, supersession may be appropriate. The decision maker should always consider revision first.

A3004 The revision process applies to

1. Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance

2. decisions on credits.

A3005 Where a claimant or other eligible person wants to challenge a decision, they should be encouraged to contact the Department to discuss the decision or ask for an explanation. If they want to challenge the decision formally they **must** apply for a revision so that the decision maker reconsiders the decision. This is known as mandatory reconsideration - see A3014. It is only after this has been considered that the claimant can exercise their right of appeal. An appeal made directly to the Department before a mandatory reconsideration has been requested will be treated by the decision maker as a request for mandatory reconsideration. Reconsideration is the process by which

1. an application for revision of a decision is considered **or**

2. a decision is looked at again following an appeal application.

The process includes making a record that a reconsideration has been carried out and what the result is.

Note: When a claimant or other eligible person wishes to appeal a decision, notice of the appeal will be sent directly to The Appeal Service rather than the Department. If an appeal is lodged with The Appeal Service which has not been subject to the mandatory reconsideration process then it will be treated as invalid and the claimant will be advised to request reconsideration.

A3006 At the end of the mandatory reconsideration process the decision maker

1. revises favourably and issues a new outcome decision **or**

2. revises unfavourably and issues a new outcome decision **or**

3. refuses to revise, i.e. makes a decision not to revise (this is not an outcome decision).

A decision not to revise is **not** appealable, but its effect may be to renew the appeal rights arising from the original decision (see A3075).

Note: There is no limit to the number of times that a decision (including a supersession decision) can be revised.

Example

A claim for Personal Independence Payment is disallowed. The claimant asks for a reconsideration and supplies further evidence. The decision maker determines that although the claimant's ability to carry out mobility and daily living activities are more limited than originally determined the limitations are not sufficient to enable an award of Personal Independence Payment to be made. The decision maker decides not to revise the original decision.

A3007 A decision cannot be revised where claimants report a change of circumstances after the decision was made. The claim or supersession rules apply instead (see A3019 et seq).

A3008 There is no limit to the number of times a claimant can apply for a decision to be revised. The timing of the further application may affect the reconsideration process. For example, if the further application is made outside the application period, only the limited revision provisions apply (see ADM A3094 et seq).

A3009 Where

1. an application was made within the application period **and**

2. the decision maker has not revised the original decision **and**

3. a further application is made outside the application period **and**

4. the decision maker finds no grounds to revise the original decision **and**

5. the extended time limit for an appeal (see ADM Chapter A5) has not expired

the claimant should be reminded about the right of appeal against the original decision when the refusal to revise is notified.

Which decisions can be revised

A3010 The revision process applies to all the decisions of the Department that can be superseded or appealed. A list of the decisions that can be appealed[1] is at Annex D. A list of decisions and determinations that are not appealable[2] is at Annex E.

1 SS (NI) Order 98, art 13(2) & Sch 3; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 49(1) & Sch 2;
2 SS (NI) Order 98, Sch 2; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 49(2) & Sch 3

A3011 Decisions of the Tribunal and Commissioner cannot be revised. For guidance on superseding decisions of the Tribunal and Commissioner see ADM Chapter A4.

A3012 Decision makers can also make corrections to accidental errors in decisions of the Department. Further details are at A3041 et seq.

When should the decision maker consider revision

A3013 The decision maker should reconsider a decision when a claimant challenges it by applying for revision for example by asking for it to be looked at again. This should not be confused with the occasions when a claimant is looking for clarification of a decision by asking for more information. Where a claimant has asked for, and been given, an explanation of a decision, the decision maker should ensure that the claimant is satisfied with the explanation and is not challenging it.

Mandatory reconsideration before an appeal can be made

A3014 Where the conditions are potentially met for an award of Employment and Support Allowance pending a limited capability for work appeal, mandatory reconsideration is not required[1] (see ADM U7020 - U7023). Otherwise, a person has a right of appeal in relation to a decision **only**[2] if the decision maker has considered, on application, whether the decision should be revised. The claimant must be given a notice that informs them[3]

1. of the decision, whether as originally made or as revised **and**

2. of the time limit for making an application for revision **and**

3. that where the notice does not include a statement of reasons for the decision, the person may, within one month of the date of notification of the decision, request that a written statement is provided for the reasons for the decision **and**

4. that there is a right of appeal against the decision but this can be exercised only if the Department has considered an application for revision.

Note: The mandatory reconsideration process was introduced on 27.9.17 for Universal Credit and 20.6.16 for Personal Independence Payment and 27.9.17 for Employment and Support Allowance and Jobseeker's Allowance.

1 [2020] EWHC 1999 (Admin); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 7(2); 3 reg 7(1) & 7(3)

A3015 Where a claimant makes a late application for revision and the reasons for lateness are not accepted by the decision maker, a decision refusing to revise should be given and the claimant will have appeal rights against the decision as not revised[1]. See A3046 for guidance on the time limits for making an application.

1 R(CJ) and SG v SSWP (ESA) [2017] UKUT 0324 (AAC) [2018] AACR5

A3016 The normal time limit for applying for a reconsideration can be extended if certain conditions are met (see A3050) which includes satisfying the "tests" of "reasonableness" and "special circumstances". These tests are not defined in legislation but should be interpreted broadly. Decision makers should therefore allow an application for an extension of time where the person is able to explain why their application for a revision is late. Applicants are **not** expected to show unexpected or exceptional circumstances. But, if an applicant cannot explain why their application was not made in time, then the decision maker may not be able to consider their case. When considering whether to extend the time limit decision makers should also have regard to the claimant's rights under article 6 of the European Convention on Human Rights - see Annex G.

A3017 Where a written statement of reasons is requested it must be provided within 14 days of receipt of request or as soon as practicable afterwards[1]. If the notification of the decision contains a statement of reasons then any further requests for a written notification has no effect.

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

A3018 Where there is no right of appeal against a decision as there has been no request for reconsideration then the purported appeal may be treated as an application for revision[1].

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

Reporting changes during the application period

A3019 During the application period where

1. a claimant reports a change of circumstances **or**

2. evidence or information is received indicating that there has been a change of circumstances

the decision maker may **only** revise the decision to take account of the change where it occurred **before** the decision had effect[1].

However, a decision by a decision maker or tribunal that reinstates a disallowed qualifying benefit is not a change of circumstances in this context. The decision maker can take the reinstatement into account even if it had occurred after the decision under reconsideration had effect[2].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5(2); 2 MW v SSWP (IS) [2022] UKUT 59 (AAC)

A3020 Where the change occurs **after** the original decision had effect, the decision maker cannot revise to take account of the change. The action to take depends on

1. whether the original decision disallowed or made an award of benefit **or**

2. in the case of disallowance, when the change occurs.

A3021 If the original decision awarded benefit, the supersession provisions apply instead[1].

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

A3022 Where the original decision was a disallowance, and the change occurred

1. before the decision was made, the supersession provisions apply **or**

2. after the decision was made, a further claim is required[1].

See also A3028 where the change is notified in an application for revision.

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

Advance award

A3023 This rule does not apply in the same way where the decision maker makes an advance award[1]. The decision maker can revise to take account of changes which occurred before the decision was made[2]. See also A3128 for changes removing entitlement which occur before the relevant date, but are notified after that date. Any changes which occur after the date the decision was made, but before the relevant date, and are notified before that date, should be considered under the supersession rules. See ADM Chapter A4 for guidance on supersession.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 32-34;
2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5(2); R (DLA) 4/05

Example

The claimant made an advance claim for Personal Independence Payment on 20.6.16, and the decision maker awarded the standard rate daily living component and the standard rate mobility component from 12.9.16. The decision was made and notified on 22.8.16, and a week later the claimant reported that his condition had deteriorated following a stroke on 22.7.16. The decision maker revises the decision made on 22.8.16 to award enhanced rate daily living component and enhanced rate mobility component. The decision maker also considers whether the existing award should be superseded on a relevant change of circumstances.

A3024 For the purposes of advance awards, the **relevant** date is the date the claim is treated as made where the decision maker is satisfied that the claimant[1]

1. does not satisfy the conditions of entitlement at the date of claim **but**

2. will do so within

2.1 one month for Universal Credit **or**

2.2 three months for Employment and Support Allowance and Jobseeker's Allowance

after the date of claim **or**

3. will do so within three months for Personal Independence Payment

after the date of the decision.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 32-34

Revision and supersession

A3025 Decisions should not be superseded where they can be revised instead. This rule does not apply where

1. the decision could be revised **and**

2. further circumstances arise which are not in the revision rules, but are in the supersession rules[1].

In these cases, the decision should be revised as appropriate, and then superseded to take account of the supersession rules.

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

Example

The claimant has been awarded the enhanced rate of the mobility component of Personal Independence Payment. He challenges 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 to extend the period of the award, and supersedes the decision as revised to award the standard rate of the daily living component.

What if an application for revision is not accepted/ admitted

A3026 Where the decision maker is unable

1. to accept an application for revision because it is late (please see A3015) **or**

2. to admit an application for revision outside the maximum period (see 43049 et seq)

the decision maker should consider whether the provisions allowing revision at any time apply (see A3096 et seq).

A3027 If it is not possible to revise the decision at any time, the decision maker should consider the supersession rules instead. The application for revision can be treated as an application for supersession[1]. The outcome of the supersession depends on whether the decision maker considers the original decision is correct. The decision maker should

1. supersede the decision on the grounds that it was erroneous in law or based on ignorance of or a mistake as to a material fact where the outcome is changed **or**

2. make a decision not to supersede the original decision[2] **or**

3. exceptionally, make no decision and notify that the decision is not superseded[2] (see ADM Chapter A4).

Note: It is still important to record and notify that no decision has been made in response to the application for revision. The decisions at A3027 **1.** and A3027 **2.** only carry the right of appeal.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg; 33; 2 R(DLA) 1/03; Wood v Department for Work and Pensions [2003] EWCA Civ 53

A3028 Where the decision maker considers that the application for revision should be dealt with as an application for supersession for a relevant change of circumstances, it is still important to record and notify that the decision is not revised.

A3029 Where A3027 **1.** applies, the new decision is effective from

1. the date of the application[1] **or**

2. the date of the relevant determination where appropiate[2].

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

Example

The claimant's appointee asks for a Personal Independence Payment award to be looked at again because the claimant has mental health problems that were not mentioned when the claim was made 18 months earlier. There was nothing on the claim form or the medical report suggesting mental health issues. Had the decision maker had this information at the outset, they would have made a higher award. The award can now be superseded on the grounds of ignorance of a material fact, but the effective date can only be the date on which the application was received.

How are applications for revision made

A3030 A claimant can ask for a decision to be revised, for example by asking for it to be looked at again, either orally or in writing. There is no application form for a revision. Where the application is made orally the Department must keep a record of the conversation. The Department can also instigate revision of decisions where an appeal is received. See A3102 for guidance on revision for official error.

A3031 Where a claimant applies for a decision to be revised on any ground the application or notification must be made at an appropriate office[1].

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

A3032 An appropriate office is[1]

1. in the case of a contribution decision, any National Insurance Contributions Office of Her Majesty's Revenue and Customs or any office of the Department **or**

2. the Department office or other place whose address is shown on the original decision.

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

Who reconsiders decisions

A3033 Decision makers can reconsider a decision that they or another decision maker has given[1]. Where possible, although not a legal requirement, the expectation is that the mandatory reconsideration should be carried out by a different decision maker.

See ADM Chapter A1 for guidance on revision and supersession of decisions of former authorities.

1 SS (NI) Order 98, arts 10 & 11

How are decisions revised

A3034 The decision maker should

1. clarify the grounds for reconsideration where appropriate

2. identify the decision to be reconsidered

3. identify the evidence used by the decision maker to make the original decision

4. telephone the claimant to ensure all available evidence has been considered

5. obtain further evidence as appropriate

6. keep a record of all the main steps taken during the reconsideration process such as requests for evidence and any conversations with the claimant

7. decide whether the decision needs to be revised and, if so, on what grounds where appropriate and when the decision takes effect

8. consider whether any offset is appropriate and whether there is any overpayment (further details are in ADM Chapter D1).

Note: There is no need to look at the whole decision again (but see A3065).

A3035 Where a claimant makes an application for revision, the result will be either a revision of the original decision (whether favourable or otherwise) or a decision not to revise that decision i.e. a change or no change. Whatever the resulting decision, it **must** be recorded properly. There is no legal prescription about the format the record should take, but whether the decision is given clerically or via information technology, offices must follow the procedures laid down in the relevant procedural guidance.

A3036 On receipt of an appeal response request from The Appeal Service, in response to a decision made following mandatory reconsideration, the decision maker should, in every case, consider whether the decision can be revised. If it can be revised to the appellant's advantage the decision maker should revise the decision and the appeal may lapse. However, where revision will not address all that has been asked for in the appeal see A3100. This paragraph gives guidance on when a decision should not be revised. The claimant can

1. apply for the decision as revised to be revised again **or**

2. make a further appeal.

Note: The claimant, and the Appeal Service, **must** be notified if an appeal is lapsed.

A3037 The appeal proceeds if

1. the decision is not revised **or**

2. the decision is revised, but not in the appellant's favour **or**

3. the decision maker considers that the decision could be revised partially in the claimant's favour but it has not been possible to contact the claimant to establish if they wish their appeal to continue, and so the decision is not revised **or**

4. the decision is superseded. In this case the appeal proceeds against the period from the date of the decision under appeal to the date of the superseding decision.

Note: Special rules apply where the decision is revised, but not in the appellant's favour (see ADM Chapter A5).

Burden of proof

A3038 The person who wants to change the decision has the burden of proving, where necessary, that it should be changed. The claimant has the responsibility of proving the case if they apply for a revision[1]. The onus is on the decision maker if the Department initiates revision. In a case where documents have been lost or destroyed the burden of proof does not alter[2].

1 R(I) 1/71; 2 R(IS) 11/92

Consideration of previous law

A3039 The decision maker may need to consider the effect of law previously in force. If questions arise involving the revision of awards for past periods, decisions must be made in accordance with the law as it was at that time[1]. If particular rates are to be applied, the rates are those which applied at the period of time. Any erosion in value, for example old benefit rates compared to new, is not considered[2].

1 R(SB) 48/83; 2 R(I) 1/86

Can revision apply to abolished benefits

A3040 Decisions on benefits which have been abolished can still be revised in limited circumstances[1] (see ADM Chapter A1).

1 SS A (NI) Act 92, Sch 1; Inte Act 78, s 16

Correction of accidental errors

A3041 Decision makers can correct accidental errors, including slips of the pen, in their own decisions or those of other decision makers[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 38

What is an accidental error

A3042 An error is only accidental when the intended decision is clear, and it is obvious that the error occurred when recording it. Accidental errors include

1. slips of the pen

2. arithmetical mistakes

3. errors in the text

4. text entered in the incorrect place.

How are accidental errors corrected

A3043 A decision can be corrected by striking out the wrong words or date, inserting the correct ones, and signing and dating the correction. If the correction is more complex a fresh decision should be given and clearly identified as a corrected decision. If the correction is made after a copy of the decision has been sent to the claimant then a written notice of the correction should be given to the claimant[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 38(3)

A3044 Where a decision of a decision maker is corrected, the time for applying for revision and for making an appeal begins on the day the corrected decision is notified[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 38(4)

A3045 Where the error is made by the Tribunal it should be returned to the Tribunal to consider correction. Further details are in ADM Chapter A5.

Time limits for revision

Introduction

A3046 Claimants can apply for revision of decisions if they think they are wrong or unfair. The timing of the application determines how it is dealt with by the decision maker. For appeals to the Tribunal, Commissioner and the Courts see ADM Chapter A5.

A3047 Where an application is made outside the time limits as in A3049 et seq and it does not satisfy the criteria for a late application, the decision maker should consider the 'any time' revision procedure. Where this is not applicable the decision maker should consider whether the decision can be superseded.

A3048 See A3074 for guidance on what happens when a decision is not revised.

What is the application period

A3049 For claimants, the period begins on the day following the date of notification of a decision by the Department on a claim or supersession[1]. A decision may be revised where the application is made

1. within one month of notification of the original decision (subject to A3041 - correction for accidental errors) **or**

2. where a written statement of reasons is requested and is provided within the one month period, within 14 days of expiry of the one month period **or**

3. where a written statement is provided after the one month period, within 14 days of notification of the written statement **or**

4. within the appropriate period where a late application is accepted (see A3050).

Note: A month means a calendar month[2].

1 SS (NI) Order 98, arts 9 & 11; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5(1)(b);
2 Inte Act (NI) 54, sec 39(6)(c)

Examples of one month period

Example 1

On 18 November a claimant is notified of the decision on his claim for Employment and Support Allowance. The one month period is 19 November to 18 December.

Example 2

On 31 December a claimant is notified of the decision on her claim for Jobseeker's Allowance. The one month period begins on 1 January. The calendar month ends on 31 January.

Example 3

On 29 January a claimant is notified of the decision on his claim for Jobseeker's Allowance. The calendar month ends on the last **date** of the following month - 28 February. In a leap year use 29 February.

Note: The decision maker can only determine the date of posting on the balance of probabilities. Unless the decision maker is certain that a notification was posted on a particular date, the one calendar month must always be extended by one day where the claimant makes an application on the day following the end of the one month period.

Late applications

A3050 The one month time limit for applying for revision can be extended where all of the conditions in A3051 - A3054 are met[1].

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

A3051 The first condition is that an application for an extension of time has been made to an appropriate office[1]. The application need not be in writing, it may be made in person or by telephone.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 6(2)

A3052 The second condition is that the application must

1. explain why the extension is sought **and**

2. include sufficient information to enable the decision to be revised to be identified **and**

3. be made within 12 months of the latest date by which the application for revision should have been received[1] as in A3049.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 6(3)

Example 1

On 1.11.17 a claimant is notified of the decision on his claim for Jobseeker's Allowance. The application period is 2.11.17 to 1.12.17 (ordinarily, a late application might be possible up to 1.12.18). The claimant requested a statement of reasons within the one month period, and this was provided on 29.11.17. A late application, where appropriate, can be made up to and including 15.12.18 (the 13 month late application period is extended by 14 days).

Example 2

On 9.2.18 a claimant is notified of the decision on his claim to Employment and Support Allowance. The application period is 10.2.18 to 9.3.18 (ordinarily, a late application might be possible up to 9.3.19). The claimant requested a statement of

reasons. This was not provided until 15.3.18 (some 6 days after the initial one month application period ended). A late application, where appropriate, can be made up to and including 29.3.19 (i.e. the 13 month late application period is extended by a total of 20 days, being 14 days plus 6 days for the delayed issue of the written statement of reasons).

A3053 The third condition which must be satisfied for a late application to be accepted is that it is reasonable to grant the application for the extension of time[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 6(4)

A3054 The fourth (and final) condition is that[1]

1. there are special circumstances for the lateness **and**

2. as a result of the special circumstances the application for revision could not be made within the time limit.

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

A3055 The term "special circumstances" is not defined in legislation and should be interpreted broadly. It can include factors such as

1. the applicant, partner or dependant has died or suffered serious illness

2. the applicant is not resident in UK

3. normal postal services were adversely affected

4. the claimant has learning or language difficulties

5. the claimant has difficulty in obtaining evidence or information to support their application

6. ignorance or misunderstanding of the law or time limits.

The list is not exhaustive, and each application should be considered on its merits. For example, where the application concerns a benefit awarded because of limited capability for work or disability, it may be appropriate to accept serious illness as a special circumstance.

A3056 Note that the later the application the more compelling the special circumstances for lateness must be[1] although applicants are not expected to show that their circumstances are exceptional. Where the delay is not excessive, the person's circumstances can be less compelling.

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

Example 1

A claimant is awarded Personal Independence Payment at the standard rate of the daily living component. Three months after the decision is notified the claimant contacts the Department asking for that decision to be reconsidered on the basis that

they have been waiting for a written report from a hospital consultant which, in their view, supports the case for an award at the enhanced rate. They say that they could not obtain this evidence earlier as the consultant was unable to provide it. The decision maker considers that the reasons for the late application are reasonable and that there are special circumstances. The decision maker reconsiders the decision.

Example 2

A Universal Credit claimant contacts the Department nine months after their award was made querying the date from which Universal Credit was first awarded. They say that they had heard from a neighbour that they could receive extra money if their award was back dated but were unsure and had not contacted the Department as they had been busy and had sufficient money to live off. The decision maker decides not to allow an extension of time.

A3057 Where a late application has not been accepted, an application for an extension of time cannot be renewed[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 6(7)

Revision instigated by the decision maker

A3058 The decision maker can instigate a revision within one month of notification of the original decision and revise it in the same way as for a claimant's application[1].

Note: In cases where a decision maker considers that the decision may be subject to revision on their own initiative then a note to this effect should be made on the case.

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

A3059 Decisions can also be revised at any time on the decision maker's own initiative in limited circumstances. For example, where an award of benefit is affected by an award of or change to another benefit which takes effect from the date of the original decision, or the decision is based on official error, the any time revision provisions apply. For further advice, see A3094 et seq.

Challenging a revised decision

A3060 Where an existing decision is revised, following a mandatory reconsideration, there are fresh appeal rights and a fresh application period. A claimant can challenge the revised decision provided the application is lodged within the time limit. A further application for revision is not required by the claimant who can appeal the decision as revised immediately.

Revising decisions during the application period

Introduction

A3061 Decisions challenged during the application period can be revised by the decision maker on any ground. Where the claimant appeals directly to the Department before mandatory reconsideration has been considered then the appeal should be treated as an application for mandatory reconsideration and the claimant is advised that the appeal has been treated as a request for mandatory reconsideration. The claimant has a right to appeal the decision as revised. See ADM Chapter A5 for further guidance.

A3062 Where the decision is revised but not to the claimant's advantage and an appeal is then received, the appeal will be treated as against the decision as revised[1]. The appellant will be given a further month in which to make representations against the revised decision[2]. See ADM Chapter A5 for further details.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 51(1) & 51(2); 2 reg 51(3)

A3063 The decision maker should always reconsider decisions challenged during the application period. Claimants do not have to give reasons why they think the decision is wrong when making an application for revision. The decision maker may need further evidence or information to establish if it was based on incorrect facts or law.

A3064 Where the decision maker notices an error, the decision can be looked at again even if it is noticed outside the time limits (see A3096 et seq).

When should a decision be revised

A3065 The decision maker looking at a decision during the application period need not examine all the facts and circumstances of the case again[1]. For example, only one fact may be at issue. The decision maker should exercise discretion depending on the circumstances of each case when deciding what determinations embodied in a decision need to be looked at again. If the decision maker notices an obvious error which is not mentioned in the claimant's application it should be dealt with as part of the revision process.

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

Example 1

A person claims Universal Credit as a single claimant. She works part time in the evenings in a call centre. The decision maker awards Universal Credit taking gross earnings into account. The claimant disputes the amount of the award. The decision maker revises the original decision because the amount of earnings has not been

reduced to take account of tax and national insurance deductions. No other changes are made to the decision.

Example 2

A jobseeker leaves employment. The decision maker decides that good reason has not been shown, and a 546 day sanction is imposed. The jobseeker disputes the period of the sanction because there has been no previous sanctionable failure. The decision maker decides to change the sanction to 91 days. No other aspect of the decision is considered.

A3066 The original decision can be revised during the application period on any ground. This includes if the decision maker

1. reaches a different conclusion about the facts of the case

2. decides that the original decision was based on a mistaken view of the facts

3. considers the original decision was based on an incorrect interpretation of the law

4. considers the original decision was based on insufficient evidence

5. decides that there are new relevant facts which were not known at the time the decision was made.

Example

A jobseeker fails to attend as required. She makes a statement in writing within five working days about the failure to attend. The decision maker supersedes and terminates entitlement to Jobseeker's Allowance because it is not accepted that good cause was shown. Following a request to reconsider the decision, it later comes to light that there was additional evidence in the claimant's verbal explanation to a member of staff in the Jobcentre. Taking this additional evidence into account, the decision maker accepts that good cause was shown within five working days, and revises the disallowance to reinstate benefit.

What if more information is needed

A3067 Decision makers are not bound by what the previous decision maker concluded about the facts, but they need to consider cases thoroughly and conscientiously in order to make the reconsideration process a reality. In particular they must make sure that all existing evidence is looked at carefully and, where necessary, further evidence obtained. If the claimant provides any fresh evidence that also must be looked at carefully. However, in looking at the decision afresh the decision maker need only look at issues raised by the application for revision or the appeal (see A3065).

A3068 Although it is **not** a requirement to obtain any further evidence, there will be occasions when further evidence is necessary. For example if a decision is not revised wholly in the claimant's favour. In such cases it should be obtained and looked at carefully along with the existing evidence.

A3069 Should further evidence be required the claimant should be contacted by the most appropriate method such as by telephone, letter, office interview or visit.

A3070 Where further evidence or information is required from the claimant in order to deal with an application for revision, the claimant is notified what information or evidence is required, and given one month to supply it. The one month period can be extended where the decision maker thinks it is reasonable to do so[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 20(3)(a) & reg 20(3)(b)

A3071 The decision may be revised on the basis of the

1. evidence where this is supplied within one month of the notification (or within any extended period) **or**

2. original application where no response is received within the time allowed[1].

1 UC, PIP, JSA (D&A) Regs (NI) 16, reg 20(3)(b) & 20(3)(c)

Which decisions cannot be revised

Personal Independence Payment and Employment and Support Allowance - Special rules for the terminally ill

A3072 A decision on Personal Independence Payment or Employment and Support Allowance cannot be revised where the application is made within the one month time limit, on the grounds that the person is terminally ill[1], unless the application for revision contains an express statement that the person is terminally ill[1].

Note 1: Evidence of terminal illness submitted by or on behalf of the claimant enables the decision to be revised on these grounds.

Note 2: Legislation uses the terminology '**terminally ill**' but for operational purposes and communications in Employment and Support Allowance the term 'end of life' is used. Decision makers may see reference to either terminology but both have the same meaning as defined in U1305.

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

A3073 This applies even though the original claim may not have been made expressly because the person was terminally ill[1].

1 WR (NI) Order 15, art 87

What happens when a decision is not revised

A3074 Although the decision maker should always look again at a decision following an application for revision, there may not be any reason to revise it. Where

1. the claimant has requested mandatory reconsideration of the decision **and**

2. the application is within the time limits or a late application is accepted **and**

3. there is no reason to revise it

the claimant is notified that the decision maker has decided not to revise the decision.

A3075 The decision not to revise does not of itself carry the right of appeal, although the claimant has a further period of one month to appeal the original decision[1]. See A3026 point **1.** for action to take when a late application is not accepted.

1 SS & CS (D&A) Regs (NI), reg 31(2); R(IB) 2/04; R(CJ) and SG v SSWP (ESA) [2017] UKUT 0324 (AAC) [2018]

A3076 Where the decision maker is reconsidering a case because the claimant has appealed following a reconsideration, and it is decided that revision is not appropriate but supersession is then the claimant must be notified of this decision.

Example

On 4.11.16 the decision maker awards the enhanced rate of the mobility component from 22.6.16 the date of the Personal Independence Payment claim. The claimant asks for the decision to be reconsidered. The decision maker does not revise the decision and the claimant subsequently appeals on 18.11.16 on the grounds that he is also entitled to the daily living component. He sends in a consultant's report with his appeal. The decision maker considers that the evidence shows that the claimant's condition has got worse since the award began. He treats the appeal as an application for supersession and supersedes the awarding decision on the grounds that there has been a relevant change of circumstances. The new decision awarding the standard rate of daily living component in addition to the mobility component is effective from 31.10.16, after the qualifying period is satisfied. The appeal goes ahead, and the Tribunal is limited to considering whether the daily living component should be awarded for the period 22.6.16 to 30.10.16. If the Tribunal awards an enhanced rate of the daily living component, the supersession decision may be revised to take account of the Tribunal decision (see A3119 - A3120).

A3077 If the decision is revised to the detriment of the claimant, the notification to the claimant should make clear that the appeal will proceed unless the claimant asks for it to be withdrawn. For further details, see ADM Chapter A5.

Note: The decision should always be notified where the decision maker revises the decision to the detriment of the claimant.

Revision where an appeal is pending before a court in another case

A3078 The decision maker may decide not to make a decision on a look-alike case while a lead case appeal is pending before the courts (see ADM Chapter A4 for guidance on staying cases).

Issues for decision by Her Majesty's Revenue and Customs

Introduction

A3079 Her Majesty's Revenue and Customs is responsible for making decisions on national insurance contributions issues previously determined by the Department[1]. A list of these, together with exceptions is at Annex C to this Volume.

1 SSC (TofF) (NI) Order 99, art 7(1)

A3080 Entitlement to Employment and Support Allowance and Jobseeker's Allowance 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.

When to refer to Her Majesty's Revenue and Customs

A3081 Where the decision maker considers that before deciding an application for revision of a decision made on an assumption of facts a formal decision by Her Majesty's Revenue and Customs is required, the issue must be referred to Her Majesty's Revenue and Customs[1].

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

Example

A claim for Jobseeker's Allowance is disallowed because the national insurance record shows no contributions for the two tax years before the benefit year in which the date of claim fell. All other conditions of entitlement are satisfied. The claimant applies for the decision to be revised on the ground that she was employed for several years immediately before claiming benefit and her wage slips show national insurance deductions. The decision maker refers the question of whether contributions should be treated as paid to Her Majesty's Revenue and Customs. Her Majesty's Revenue and Customs decides that contributions should be treated as paid for the period of employment. The decision maker revises the disallowance and awards Jobseeker's Allowance.

A3082 While a decision of Her Majesty's Revenue and Customs is awaited, the decision maker can[1]

1. determine any other matter on the application (leaving the application undecided)

2. decide the application on the basis of a preliminary opinion of Her Majesty's Revenue and Customs on the issue referred to them

3. defer making a decision on the claim or application.

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

A3083 Where the referral was made following an appeal, it is not possible to make a further decision until Her Majesty's Revenue and Customs' decision is received.

Action when Her Majesty's Revenue and Customs decision received

A3084 Once the final decision of Her Majesty's Revenue and Customs is received, the action depends on what decision had been made before it was received.

A3085 Where a decision had been made on an application for revision in accordance with A3082 **2.,** the decision maker should consider whether to revise or supersede in the light of Her Majesty's Revenue and Customs' final decision[1].

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

A3086 Where no decision had been made on an application for revision in accordance with A3084 **1.** or **3.**, the decision maker should make a decision taking Her Majesty's Revenue and Customs' decision into account[1]. However, if Her Majesty's Revenue and Customs' decision shows no error or change in the original decision, the decision maker should notify that the decision is not revised.

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

Example

A claim for Jobseeker's Allowance is disallowed because the contribution conditions are not satisfied. The claimant applies for revision on the basis that some contributions from employment in the relevant tax years have not been included in his record. The decision maker defers making a decision pending Her Majesty's Revenue and Customs' decision. Her Majesty's Revenue and Customs decide that all appropriate contributions have been included. The decision maker notifies that the disallowance decision is not revised.

A3087 Where the referral was made following an appeal as in A3083 the decision maker should consider whether the decision under appeal can be revised or superseded. See ADM Chapter A5 for guidance.

A3088 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 Customs[1].

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

Late award of contributions and credits

A3089 A decision not to award a contributory benefit, or to award it at a different rate, may be revised at any time. The decision may be revised if

1. on or after that decision is made a late paid contribution or credit is treated as paid at the same time as or before the date on which the original decision not to award, or award at a lesser rate was made **and**

2. as a result of the late contribution or credit the original decision would have awarded benefit or would have awarded it at a different rate[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 17

Revision of Employment and Support Allowance and Jobseeker's Allowance - effects of changes to collection of Class 2 National Insurance

A3090 As a consequence of the reform of the method of collection and payment of Class 2 National Insurance contributions[1], the deadline for the payment of Class 2 National Insurance contributions from the 2015/2016 tax year onwards is now 31st January of the following calendar year. For example Class 2 National Insurance contributions due in the 2015/2016 tax year are due to be paid by 31.1.17. This date falls after the start of the benefit year for Employment and Support Allowance and Jobseeker's Allowance, which means that there is an increased possibility of a claim for these benefits being made in circumstances where entitlement relies on as yet unpaid contributions. Class 2 National Insurance contributions are only relevant in Jobseeker's Allowance claims from share fishermen and volunteer development workers.

Example

A claim to Employment and Support Allowance is made on 21.1.17 in respect of a period of limited capability for work which started on 14.1.17. The claimant started self-employment in June 2015. Entitlement to Employment and Support Allowance relies on satisfaction of the contribution conditions in the tax years 2014/2015 and 2015/2016. The claimant was previously unemployed and has Class 1 credits for the whole of 2014/2015 and for the weeks in 2015/2016 before he started self-employment. At the point the claim is made the claimant had not filed his self-assessment return for 2015/2016 - he has until 31.1.17 to do so. Consequently, it has not been established whether he has any Class 2 National Insurance contributions liability for 2015/2016, and so no Class 2 National Insurance contributions have been paid. Neither contribution condition is satisfied and the claim for Employment and Support Allowance is disallowed.

A3091 In order to address this regulations provide for payments of Class 2 National Insurance contributions which are made by 31st January to be treated as having been made at an earlier date, in appropriate cases, to ensure that claimants are not disadvantaged by the changes. In such cases a decision to disallow Employment and Support Allowance and Jobseeker's Allowance may be revised in the claimant's favour.

A3092 **[See ADM Memo 11/25]** A decision on a claim to Jobseeker's Allowance or Employment and Support Allowance may be revised[1] at any time where

1. on or after the date of the decision a contribution that is paid by the due date is treated as paid[2], in relation to Jobseeker's Allowance, before the week for which Jobseeker's Allowance is claimed, or in relation to Employment and Support Allowance before the relevant benefit week **and**

2. as a result the person now satisfies the contribution conditions.

Example

A claim to Employment and Support Allowance is made on 21.1.18 in respect of a period of limited capability for work starting on 14.1.18. Entitlement relies on the satisfaction of the contribution conditions for the tax years 2015/2016 and 2016/2017. The claimant started self-employment in April 2015. The claimant has previously paid his Class 2 National Insurance contributions for 2015/16, but, at the point of claim, has not yet filed his self-assessment return for 2016/2017. His Class 2 National Insurance contributions liability for this year has not yet been established and no Class 2 National Insurance contributions have been paid. As a result, although the first contribution condition is satisfied, the second contribution condition isn't and his claim to Employment and Support Allowance is disallowed. The Department is subsequently notified that the claimant has paid his Class 2 National Insurance contributions for 2016/2017 on 31.1.18. These National Insurance contributions are treated as having been paid before 14.1.18. Both contribution conditions are now satisfied and the original decision to award Employment and Support Allowance is revised in the claimant's favour.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 17(3);
2 SS (Crediting and Treatment of Contributions, and NINOs) Regs (NI) 2001, reg 7A(2)

A3093 A decision to award Jobseeker's Allowance or Employment and Support Allowance may be revised[1] at any time where contributions are repaid or returned to the contributor where this means the person no longer satisfies the contribution conditions of entitlement to the benefit.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 17(4) & 17(5)

Example

Employment and Support Allowance is awarded in January 2018 to a claimant who is self-employed. The award was based on Class 2 National Insurance contributions paid in respect of 2015/2016 and 2016/2017 relevant income tax years. Class 2 National Insurance contributions for 2016/2017 were paid on the basis of profits declared on a self-assessment return filed on 31st January 2018. In March 2018 Her Majesty's Revenue and Customs adjusts the declared profits for 2016/2017 to a figure below which no Class 2 liability actually arose. Her Majesty's Revenue and Customs informs the claimant of this. The claimant pursues and accepts a refund of National

Insurance contributions. These National Insurance contributions are removed from the claimant's National Insurance record. As a consequence of this the claimant does not satisfy the contribution conditions for Employment and Support Allowance. The decision is revised so as to disallow the award.

Revising decisions at any time

Introduction

A3094 In the following circumstances decisions made by the decision maker can be revised at any time either during or outside the application period without an application from the claimant[1].

1 SS (NI) Order 98, art 10(1); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 8

Revision while appeal is going on

A3095 The decision maker may revise at any time[1] **before** the appeal is determined where an appeal, including a late appeal, is made within the time limits (see ADM Chapter A5).

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

A3096 This allows the decision maker to revise the decision under appeal where action to revise does not start within the one month time limit. For example, the claimant may produce further evidence after an adjourned hearing which was not previously available to the decision maker, but which allows the decision to be revised.

A3097 Where new information is provided after the response has been written and sent to The Appeal Service, a revision should be considered. Where the decision is revised, The Appeal Service should be informed **immediately**, especially where the appeal is to be lapsed.

When should a decision not be revised **[See ADM Memo 11/25]**

A3098 The purpose of lapsing an appeal is to prevent unnecessary appeals going ahead. The power to revise is discretionary rather than mandatory, and should not be used in order to prevent an appeal being heard. Decision makers are therefore advised to consider whether a decision under appeal should be revised.

You can revise and lapse an appeal where the decision will give the claimant everything they could get from the tribunal. For example

– with Personal Independence Payment you can award enhanced/enhanced

– with Employment and Support Allowance you can put the claimant in the support group

– with Universal Credit you can award the limited capability for work related activity element

Note: It is important to contact the claimant and/or their representative, in cases where you could revise advantageously - but this would not give the claimant

everything. If they cannot be contacted, or they do not agree to the potential revision, you must not revise and the appeal must proceed (and submission should instead be made to the tribunal as to the revised decision the Department was prepared to make). Once the decision maker actually makes that revised decision then the appeal must lapse so it is important that the decision maker considers whether revision is the appropriate course of action to take. See Examples below.

Example 1

The decision maker decides that the claim for Personal Independent Payment should be disallowed. The award is reconsidered and the decision maker awards standard daily living but no mobility. On appeal the decision maker can award standard mobility. As the Personal Independence Payment award is still less than the maximum allowable, the decision maker contacts the claimant to discuss the potential revision.

Example 2

The decision maker disallows Employment and Support Allowance. There is no change at mandatory reconsideration. In his appeal the claimant says he should be in the support group. The decision maker decides that the claimant has limited capability for work but not limited capability for work related activity. The decision maker contacts the claimant to discuss the potential revision.

Example 3

The decision maker decides that there is a Universal Credit overpayment of £3000. There is no change at mandatory reconsideration. On appeal the decision maker decides that the overpayment should be £1000. Although this is a substantial reduction, as it has not reduced the overpayment to nil, the decision maker contacts the claimant to discuss the potential revision.

The following are examples where there is no need to contact the claimant:

Example 1

The decision maker decides that a claim for Jobseeker's Allowance should be disallowed from and including 17.1.17 on the grounds that the claimant's income exceeds. The decision is reconsidered on appeal, the issue being whether the claimant has income. The decision maker notices that the date of disallowance is incorrect and should have been 19.1.17. The decision maker does not revise the decision, and the appeal goes ahead. The error in the disallowance date should be addressed in the appeal response.

Example 2

The decision maker decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the overpayment is recoverable. The decision maker notices that the amount of the overpayment has been incorrectly calculated, and should be £10,835. The decision maker does not revise, and the appeal goes ahead. The error in the amount should be addressed in the appeal submission.

Example 3

The decision maker decides that an overpayment of benefit of £10,855 is recoverable. The decision is reconsidered on appeal, the issue being whether the amount of the overpayment is correct. The claimant contends that the amount of the overpayment is £5,000. The decision maker notices that the amount of the overpayment has been incorrectly calculated, and should be £10,835. The decision maker does not revise the decision as it is clear that the claimant will make a further appeal. The submission to the Tribunal should point out this error in calculation.

Example 4

The decision maker awards the standard rate of daily living and mobility components of Personal Independence Payment. The claimant appeals on the grounds that they satisfy the conditions for the enhanced rate of both components. The decision maker finds he could revise the decision awarding benefit at the same rate but 3 weeks earlier. The decision maker does not revise and the appeal goes ahead. The error in the date should be addressed in the appeal submission.

A3099 **[See ADM Memo 11/25]** Where the decision is not revised, but the decision maker considers it to be incorrect, the submission should

1. advise the Tribunal why the decision is not revised **and**

2. request that the correct decision is substituted for that of the decision maker.

Revision for official error **[See ADM Memo 11/25]**

A3100 A decision made by the Department either initially or on a supersession can be revised at any time for official error[1].

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

A3101 **[See ADM Memo 11/25]** Where the claimant applies for a decision to be revised for official error outside the application period in A3049 et seq, and the decision maker does not accept that there was an official error, the decision not to revise may still renew appeal rights against the original decision. This will depend on whether the application for revision discloses an arguable case for official error[1].

1 PH v SSWP (DLA) [2018] UKUT 404 (AAC) [2019] AACR14

Meaning of official error

A3102 An official error[1] is an error made by

1. an officer of the Department or Her Majesty's Revenue and Customs acting as such which was not caused or materially contributed to by any person outside the Department or Her Majesty's Revenue and Customs **or**

2. a person employed by and acting on behalf of a designated authority which was not caused or materially contributed to by any person outside that authority.

Designated authority[2] means the Department or a person providing services to the Department.

Example: A General Practitioner provides an incorrect report on a person who claims Personal Independence Payment. The General Practitioner is also employed part-time by the service provider to provide a report for the purposes of the Personal Independence Payment claim. The report from the General Practitioner in his capacity as an employee of the National Health Service cannot constitute an official error as the General Practitioner is not providing services to the Department.

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

A3103 In considering whether a decision was based on an official error, decision makers should note that

1. an official error refers only to a clear mistake of fact or law arising because an officer has failed to make a decision or take an administrative act that was required under Social Security legislation. The officer must not have been acting in a private capacity for example giving advice to a neighbour

2. the official error must have made the appropriate decision wrong

3. the error must lie in the decision and not merely in the circumstances surrounding its issue

4. "mistake" refers only to obvious mistakes made by officers on the facts told to them by claimants or which they had reason to believe were relevant

5. officers of the Department, for example visiting officers, do not have a duty to interrogate claimants about their circumstances. It is up to the claimant to make the point about the circumstances to the visiting officers

6. decision makers have a duty to consider whether the claimant has caused or contributed to any mistake

7. there is no general duty on an officer to keep all cases constantly under review in order to see whether a particular provision might apply in a particular case, even when that provision may be beneficial to a claimant

8. an alleged failure of consideration is not equivalent to a mistake of fact

9. the provision cannot apply where the mistake, act or omission occurred after the decision being reconsidered was made. To be relevant, it must have occurred before or have existed at the time of the decision

10. an error of law by a decision maker is an official error.

Note: Decisions which are found to be erroneous in law because of a later decision of a Commissioner or Court cannot be revised on this basis as this does not constitute an official error[1]. The decision should be superseded instead (see ADM Chapter A4).

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

A3104 Applications for supersession may be treated as applications for revision where it would be more appropriate to apply the revision rules[1].

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

A3105 This is most likely to be where the decision ought to be revised to the claimant's advantage because it was based on an official error. In these circumstances revision is more appropriate because the effective date of the revised decision is more advantageous to the claimant than the effective date of the superseded decision.

Revision for error of fact

A3106 **[See ADM Memo 3/25]** Decisions can be revised at any time where the decision maker's decision was better for the claimant than it should have been, because it was made in ignorance of, or based on a mistake as to, a material fact[1]. For guidance on the meaning of a material fact, see ADM Chapter A4.

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

Awards made to impostors

A3107 An award made in respect of a person can be revised if it is found that the person who made the claim was pretending to be the person in whose name the claim was made. The ground of revision is that the award was based on a mistake as to who made the claim. It is not necessary to consider the conditions of entitlement in A2149 when revising the award. A claim is inherently made in respect of the particular person who is stated to be the claimant when the claim is made[1]. This means:

1. If the person in whose name the claim was made did not then exist (e.g. because they were dead or were a fiction), there was never any benefit entitlement in respect of them.

2. If the person in whose name the claim was made had their identity hijacked and a claim made without their knowledge, the claim was not properly made on their behalf. The stranger who took on their identity had no standing to make a claim for them. As a result, the condition of entitlement that requires a claim to be made[2] was never satisfied.

1 R(S) 2/70 & CP/1516/2004; 2 SS A (NI) Act 92, sec 1

A3108 The circumstances in which it can be found that the person who made a claim is an impostor include the following:

1. On the basis of evidence that positively shows that the person who claimed was not the person in whose name the claim was made (e.g. a confession or identity documents obtained by a fraud investigation).

2. By way of an adverse inference from the claimant's failure to comply with a request for evidence as to their identity or answer questions about this matter. An adverse inference is not an automatic penalty for such non-compliance. It can only be made if the decision maker is satisfied that the most likely reason for the claimant's silence or failure to comply is that the claimant is

2.1 seeking to hide damaging facts or

2.2 making assertions (for example as to why documentary evidence of their identity is not available) for which independent evidence should be available but has not been submitted.

3. By way of a finding that the most likely explanation for a claimant's inability accurately to answer questions about the past or present circumstances of the person they claim to be is that they are not the person they claim to be[1].

1 Secretary of State for Work and Pensions v HS (JSA) [2016] UKUT 0272 (AAC); [2017] AACR 29

A3109 When considering the most likely explanation for the way a claimant has acted for the purposes of A3108, the decision maker must always take into account any evidence that exists as to the claimant's illnesses, disabilities, domestic circumstances or other vulnerabilities. The decision maker should consider the extent to which an explanation for the claimant's actions and inactions other than that they are an impostor is plausible in the particular circumstances of the person's case.

A3110 The burden of showing that a claim was made by an impostor is on the decision maker. The decision maker should record the evidence that has been considered and why this shows that the claim was made by an impostor.

A3111 A decision to disallow a claim on revision because the claimant is an impostor is a decision against the impostor. The person found to be an impostor has the right to dispute the decision, first on mandatory reconsideration and afterwards on appeal.

Employment and Support Allowance

A3112 A decision awarding Employment and Support Allowance may be revised at any time[1] if

1. the awarding decision was made on the basis that the claimant had made and was pursuing an appeal against a determination that they did not have limited capability for work **and**

2. the appeal to the Tribunal in relation to that original determination was successful.

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

A3113 A decision awarding Employment and Support Allowance may be revised at any time[1] if

1. it incorporates a determination that treats a claimant as having limited capability for work until a determination about limited capability for work has been made[2] **and**

2. the conditions for treating a claimant as having limited capability for work as referred to in A3112 **1.** were not satisfied at the time the claim was made **and**

3. there is a period before the award took effect which falls to be decided.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 15(3); 2 ESA Regs (NI) 16, reg 26

A3114 A decision awarding Employment and Support Allowance may also be revised at any time[1] where the claimant's current period of limited capability for work is treated as a continuation of another period of limited capability for work by virtue of linking rules[2].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 15(4); 2 ESA Regs (NI) 16, reg 86

A3115 Where a decision has been made to terminate Employment and Support Allowance because the claimant has received 365 days benefit[1] and it is subsequently determined that, in relation to the period of entitlement before that decision was made that the claimant had or is treated as having had limited capability for work related activity then the decision to terminate Employment and Support Allowance may be revised[2].

1 WR Act (NI) 07, sec 1A; 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 15(6)

A3116 A decision awarding Employment and Support Allowance may be revised at any time where the decision

1. immediately follows the last day of a period for which the claimant was treated as capable of work or as not having limited capability for work under prescribed legislation[1] and that period lasted 13 weeks **and**

2. is not a decision which embodies a determination that the person is treated as having limited capability for work under specified legislation[2].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 15(5); 2 ESA Regs (NI) 08, reg 6

Revision following appeal against an earlier decision

A3117 The decision maker may revise a decision at any time following determination of an appeal against an earlier decision. These decisions may be a decision on a claim or supersession[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 11(2)(a)

A3118 Where

1. the decision maker makes a decision, or revises or supersedes a decision ("decision A") **and**

2. the claimant appeals against decision A **and**

3. after the appeal has been made but before it is decided the decision maker makes another decision ("decision B")

3.1 which supersedes decision A **or**

3.2 on a further claim **and**

4. decision A is changed on appeal ("decision C") **and**

5. the decision maker would have made decision "B" differently if, at the time, they had been aware of the Tribunal's decision ("decision C")

the decision maker may revise decision B[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 11(2)

Example

A claimant in receipt of indefinite awards of Personal Independence Payment daily living and mobility components at the standard rate notifies on 21.7.16 that he has more care needs. The decision maker does not accept that an enhanced rate of care is appropriate, and on 4.8.16 decides not to supersede the awarding decision. The claimant appeals. He also applies to the decision maker for an enhanced rate of mobility component following an accident on 28.8.16. On 18.9.16 the decision maker supersedes the awarding decision to award the enhanced rate mobility component for two years from 28.11.16, but does not increase the daily living component. The Tribunal hears the appeal on 16.11.16, and awards the enhanced rate of the daily living component from 21.7.16. The decision maker revises the decision of 18.9.16 to award the enhanced rate of the daily living component from 28.11.16 and the enhanced rate of mobility component for the period 28.11.16 - 27.11.18.

Revising decisions on Jobseeker's Allowance

A3119 A decision awarding Jobseeker's Allowance may be revised at any time where a person claims Jobseeker's Allowance because

1. a **"**conversion" decision[1] has been made that they do not qualify for Employment and Support Allowance **or**

2. a decision has been made terminating Employment and Support Allowance[2] because they do not have limited capability for work

and the claimant appeals and is successful at the Tribunal.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 16(2); ESA (TP & HB) (EA) (Amdt) Regs (NI), reg 5(2)(b);
2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 16(3)

Revising decisions on Personal Independence Payment

A3120 An advance claim decision can be revised at any time if the circumstances expected at the effective date of the award do not materialise. This also applies to advance awards where the claimant does not satisfy the conditions or level of conditions at the date of claim but would be expected to do so within 3 months of the date of the decision maker's decision[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 18(1) & reg 13

A3121 A decision that Personal Independence Payment is not payable for any period may be revised at any time[1] where

1. a determination is made, on incomplete evidence, having made reasonable enquiries, as to whether the claimant meets the condition that they are a care home resident where the costs are met out of public funds **and**

2. after that determination has been made any of the costs of the qualifying services are recovered from the person for whom they were provided[2].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 18(2); WR (NI) Order 15, art 90(2);
2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 39(5)

Example

David is in receipt of Personal Independence Payment and goes into a care home. The decision maker, after making reasonable enquiries is unable to obtain all the evidence and determines that David's costs are met out of Health and Social Care Trust funds. A decision is made that Personal Independence Payment is not payable. It later comes to light that David has his own property and has sold the house. The Trust recovers the qualifying costs from David. The decision that Personal Independence Payment is not payable is revised.

A3122 A decision may be revised at any time where that decision was made in consequence of a negative determination if it contains an error to which the claimant did not materially contribute[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 18(3)

Example

Gerard is in receipt of Personal Independence Payment. He is told to attend for a consultation with a Health Professional. Gerard fails to attend the consultation and does not reply to letters asking him why he did not attend. The decision maker makes a negative determination and terminates Gerard's award. Gerard contacts the Department asking why his award of Personal Independence Payment has stopped. In the course of the conversation Gerard says that he notified a change of address some time ago and that is why he didn't receive the letter telling him to go for a consultation. The decision maker notes that a letter from Gerard was received but was never actioned. The decision to terminate Personal Independence Payment is revised.

Revising decisions on Universal Credit

A3123 A decision to apply a benefit cap to Universal Credit may be revised at any time[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 19(1); UC Regs (NI) 16, reg 81

Example

Kevin is awarded Universal Credit. The award is subject to a benefit cap as the award is in excess of the prescribed amount. Kevin contacts the Department to say that he thinks the decision to reduce his award is incorrect as when he made his claim to Universal Credit he incorrectly told the Department that he was in receipt of Child Benefit for 4 children when in fact he was only entitled to Child Benefit for 2 children. The decision maker determines that Kevin was in fact in receipt of Universal Credit for only one child and had become confused as to what benefits he was in receipt of. The decision maker decides that a benefit cap should not apply to Kevin and revises the awarding decision accordingly.

A3124 A decision which adopts a determination under prescribed legislation[1] may be revised at any time in consequence of a Northern Ireland Housing Executive Officer's re-determination. This applies when the re-determination resulted in an increase in the amount which represents rent for the purposes of calculating the housing costs element in Universal Credit[2].

1 UC HC (Exec Determinations) Regs (NI) 16; 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 19(2)

Example

Warren is in receipt of Universal Credit. The award includes the housing costs element. A rent officer re-determines Warren's rent and increases it. The award of Universal Credit is revised to take into account this re-determination.

Revision of sanction decisions

A3125 A decision may be revised at any time[1] where

1. an Employment and Support Allowance award is reduced as a result of the claimant's failure to participate in work related requirements[2] **or**

2. a Jobseeker's Allowance award is reduced as a result of a sanction[3] **or**

3. a Universal Credit award is reduced as a result of a sanction[4].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 14(1)(a-c); 2 WR Act (NI) 07, sec 11J(1); 3 JS (NI) Order 95, art 8J & 8K(1); 4 WR (NI) Order 15, art 31(1) & 32(1)

Revising decisions on sanctionable benefits (loss of benefit provisions)

A3126 Where a restriction is imposed on a person[1] as a result of

1. being convicted of an offence by a court **or**

2. agreeing to pay a penalty as an alternative to prosecution **and**

that conviction is quashed or set aside or the person withdraws the agreement to pay a penalty then a decision[1] that benefit ceases to be payable may be revised at any time[2].

1 SS Fraud Act (NI) 2001, sec 5B, sec 6 & sec 8; 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 14(2)

Revising decisions on linked benefits

A3127 Where

1. the decision maker awards entitlement to a benefit **and**

2. the claimant (or in the case of Universal Credit a member of their family[1]) is awarded another relevant benefit or an increase in another benefit for a period which includes the date on which the award of the first benefit took effect

the first decision can be revised[2].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 2; 2 reg 12

Example

A claimant is awarded Universal Credit. His child is entitled to Disability Living Allowance from a date prior to the award of Universal Credit. The award of Universal Credit can be revised to include the disabled child addition.

A3128 A relevant benefit[1] includes

1. Incapacity Benefit

2. Attendance Allowance

3. Severe Disablement Allowance

4. Disability Living Allowance

5. Carer's Allowance

6. Jobseeker's Allowance

7. Income Support

8. Child Benefit

9. State Pension Credit

10. Employment and Support Allowance

11. Personal Independence Payment

12. Universal Credit

13. Scottish Adult Disability Living Allowance

14. Pension Age Disability Payment

15. Adult Disability Payment[2]

16. Child Disability Payment[3]

17. Scottish Disability or Carer Benefit[4].

Note: Credits are not an award of a relevant benefit.

1 SS (NI) Order 98, art 9(3); 2 DA (Scot ADLA) Regs 25, reg 2;
3 DA for Children & Young People (Scot) Regs 21, reg 2; 4 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 2

Revising decisions and determinations with no appeal rights

A3129 Decisions and determinations which have no right of appeal[1] can be revised at any time. These are mostly administrative decisions such as timing and manner of payment. See ADM Chapter 1 for details.

1 SS (NI) Order 98, Sch 2; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 10 & 49(2) & Sch 3

A3130 Decisions that are not appealable are listed in Annex E to this Volume. Where such decisions are challenged, the Department can look again at the decision, and revise or supersede it if it is reasonable to do so, but this is at the discretion of the Department. These decisions can also be challenged by means of judicial review. See ADM Chapter 1 for further guidance.

Decisions given without authority

A3131 Decisions given by decision makers which are outside their jurisdiction are nevertheless effective and may be revised[1]. The effect of the revision includes deciding that the decision should not have been made.

1 R(S) 13/81

A3132 A decision of a decision maker given without authority because no claim has been made for the period covered by the decision can be revised because of official error[1]. It does not matter whether or not the error was a reasonable one to have made. The statutory provision is a wide one which is applicable as long as the error on which the revision was based is genuine.

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

Revision of advance awards

A3133 An award on an advance claim is conditional on the claimant's circumstances at the relevant date. See A3024 for the meaning of relevant date. Changes of circumstances occurring and effective

1. after the date the claim is decided **and**

2. before the relevant date

can be dealt with by way of revision where the circumstances in A3127 apply. See also A3020 for revision where the change is advantageous to the claimant and occurred before the decision was made.

A3134 Where a change

1. is notified **after** the relevant date **and**

2. has the effect that the conditions of entitlement are not satisfied from that date the award can be revised[1].

The result of the revision is that the claim is disallowed from the date of claim. It is important to note that, whilst the effect is the same, revision in this context is done not under the normal rules[2] but under a free-standing provision. It must therefore be exercised with discretion and cases where a change is notified long after it occurred

should be referred to Decision Making Services for advice. See also ADM Chapter A4 for guidance on supersession of advance awards.

1 SS (NI) Order 98, art 10; UC, PIP, JSA & ESA (C&P) Regs (NI) 16, regs 31-33; UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 13; R(DLA) 4/05;
2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5(2)

Example

The current award of Personal Independence Payment expires 25 September. An advance award is decided on 14 April, effective from 26 September. An award is made for standard rate daily living component. On 4 June the claimant has a successful kidney transplant operation that is notified to the decision maker on 12 October. Although the claimant has limited care needs, the decision maker decides that these are insufficient for an award of Personal Independence Payment. The decision maker revises the decision made on 14 April to disallow the award from 26 September.

Effective date of a revised decision

A3135 A revised decision usually takes effect from the date of the original decision[1]. For details of the exception to this general rule, see A3129.

1 SS (NI) Order 98, art 10(3)

A3136 When a decision is revised but the decision maker decides that the date of the original decision was wrong then the revision takes effect from the date on which the original decision would have taken effect had the error not been made[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 21

A3137 – A3999

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