

Chapter D1: Overpayments, Recoverability, Adjustments and Recoupment - Universal Credit, Jobseeker's Allowance and Employment and Support Allowance

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Chapter D1: Overpayments, Recoverability, Adjustments and Recoupment - Universal Credit, Jobseeker's Allowance and Employment and Support Allowance

Scope of Chapter

D1001 This Chapter gives guidance on overpayment decision making. The topics covered are

1. the requirement for revision or supersession
2. the determination of an overpayment period
3. the calculation of an overpayment
4. the recoverability of an overpayment
5. any adjustments to be made to the amount of an overpayment
6. recoupment.

Note: This Chapter does not give guidance on the **methods** of overpayment recovery as this is the responsibility of Debt Management.

Which benefits this guidance applies to

D1002 This guidance only applies to

1. Universal Credit
2. new style Jobseeker's Allowance (hereafter referred to as Jobseeker's Allowance)
3. new style Employment and Support Allowance (hereafter referred to as Employment and Support Allowance).

Note 1: ADM Chapter M1 contains guidance on the meaning of new style Jobseeker's Allowance and new style Employment and Support Allowance.

Note 2: DMG Chapter 09 contains guidance on overpayment decision making for other benefits, including Personal Independence Payment, not listed above.

When this guidance applies from

D1003 This guidance applies to Universal Credit, Jobseeker's Allowance and Employment and Support Allowance overpayments which have arisen on claims for those benefits, made on or after 27.9.17¹.

1 SS (Op & Rec) Regs (NI), reg 1(3)

Meaning of “overpayment”

D1004 Subject to D1275, overpayment¹ means an amount of Universal Credit, Jobseeker’s Allowance or Employment and Support Allowance which may be recovered under specified legislation².

1 SS (Op & Rec) Regs (NI), reg 2; 2 SS A (NI) Act 92, sec 69ZB(1)

How Universal Credit, Jobseeker's Allowance and Employment and Support Allowance overpayments happen

General

D1005 Overpayments of Universal Credit, Jobseeker's Allowance and Employment and Support Allowance happen in a variety of circumstances and may be caused by

1. the claimant **or**
2. the Department **or**
3. the landlord (in cases where Universal Credit housing costs are being paid directly to the landlord).

Overpayments caused by a claimant

D1006 A claimant may cause an overpayment by

1. giving wrong information when making their claim **or**
2. failing to give relevant information when making their claim **or**
3. being late in reporting a change of circumstances which affects their existing benefit award **or**
4. giving wrong information when reporting a change of circumstances which affects their existing benefit award.

Overpayments caused by the Department

D1007 The Department may cause an overpayment by

1. making a mistake when calculating a benefit award **or**
2. making a mistake when taking action on a reported change of circumstances which affects an existing benefit award **or**
3. failing to act promptly on a reported change of circumstances which affects an existing benefit award.

Overpayments caused by a landlord

D1008 A landlord may cause an overpayment when

1. the claimant no longer lives in the dwelling for which the landlord is paid Universal Credit housing costs **or**
2. the claimant has never lived in the dwelling for which the landlord is paid Universal Credit housing costs **or**
3. the amount of Universal Credit housing costs paid to the landlord is based on incorrect information supplied by the landlord.

Decision maker's action

D1009 When information affecting entitlement to Universal Credit, Jobseeker's Allowance or Employment and Support Allowance is identified, the decision maker must take the following action

1. except where D1036 applies, give a new entitlement decision by revising or superseding all relevant awarding decisions **and**
2. determine the period of the resulting overpayment **and**
3. calculate the total overpayment, that is, the difference between the amount to which there is entitlement or which is properly payable and the amount which has been paid **and**
4. where appropriate, offset the benefit paid against the new amount awarded **and**
5. determine the person(s) from whom the overpayment is recoverable **and**
6. give an overpayment decision.

D1010 – D1030

The requirement for revision or supersession

Introduction

- D1031 The guidance in this section deals with the requirement to give a new entitlement decision by way of revision or supersession when information emerges that affects entitlement to Universal Credit, Jobseeker's Allowance or Employment and Support Allowance and which results in an overpayment.

Note: ADM Chapter A3 contains guidance on revision. ADM Chapter A4 contains guidance on supersession.

The new entitlement decision

- D1032 Overpayments of Universal Credit, Jobseeker's Allowance or Employment and Support Allowance are only recoverable when, following the emergence of information affecting entitlement to Universal Credit, Jobseeker's Allowance or Employment and Support Allowance, the decision maker has first made a new entitlement decision. Except where D1036 applies, the decision maker must ensure that the new entitlement decision revises or supersedes all the awarding decisions which operated during the period of the overpayment or were varied or reversed on appeal¹.

1 R(SB) 7/91; SS A (NI) Act 92, sec 69ZB(3)

Example 1

Gavin claims Universal Credit from 3 September and it is awarded from and including that date. On 4 October new information emerges showing that Gavin gave incorrect information when he completed his on-line Universal Credit claim. Had the correct information been given at the time, Gavin would not have been entitled to Universal Credit. The decision maker revises the award of Universal Credit from and including 3 September.

Example 2

Damian has been awarded Universal Credit from and including 4 June and he has been paid up to and including 3 October. On 7 October a change of circumstances emerges which affects Damian's entitlement to Universal Credit from 31 July. The decision maker supersedes the award of Universal Credit from 4 July to 3 October.

Has revision or supersession taken place

General

- D1033 The decision maker must be able to produce evidence that revision or supersession has taken place, otherwise they will have failed to meet the burden of proof required¹. Where that evidence is unclear to anyone reading it, for example, when included as evidence in an appeal response to an appeal tribunal and fails to clearly illustrate that a valid revision or supersession has taken place, there must be a full explanation of its contents².

1 R(IS) 2/96; 2 R(IB) 2/04

Types of evidence

- D1034 Computer print-outs are commonly presented as evidence that revision or supersession has taken place and these will usually require an explanation. If available, a copy of the letter notifying the claimant of the (new entitlement) decision will be useful, additional evidence. However, this too will usually require explanation of its contents.

Revision or supersession decision not properly made

- D1035 If it is realised after an overpayment decision has been made that there has been no proper alteration of entitlement for all or some part of the overpayment period, the overpayment decision is of no force or effect. The decision maker must ensure that the awarding decisions for the entire overpayment period are revised or superseded and a further overpayment decision made.

Example

Asif has been awarded Universal Credit from and including 4 June and he has been paid up to and including 3 October. On 7 October information emerges that affects Asif's entitlement to Universal Credit from 31 July. The decision maker incorrectly supersedes the award of Universal Credit from 4 September to 3 October. As the resulting decision does not include proper alteration of entitlement to Universal Credit for all of the overpayment period, the associated overpayment decision is of no force or effect. The decision maker revises the previously incorrect superseding decision to correctly remove entitlement from 4 July to 3 October. A new overpayment decision is then made.

Recovery not dependent on revision or supersession

D1036 D1032 does not apply where the circumstances of the overpayment, e.g. where there has been an overprovision of benefit, do not provide a basis for the original awarding decision to be¹

1. revised under relevant legislation² **or**
2. superseded under relevant legislation³.

1 SS (Op & Rec) Regs (NI), reg 5; 2 SS (NI) Order 98, art 10; 3 art 11

The overpayment decision

D1037 At the same time as or after the decision maker makes the new entitlement decision they must make an overpayment decision. The overpayment decision must state

1. the period during which the amount was overpaid **and**
2. the amount that is recoverable **and**
3. the person(s) from whom it is recoverable.

D1038 – D1050

Determination of an overpayment period

Introduction

- D1051 The guidance in this section deals with when a Universal Credit, Jobseeker's Allowance or Employment and Support Allowance overpayment period starts and ends.

Start date of Universal Credit overpayment period

Beginning of a Universal Credit claim

- D1052 Where evidence exists that an overpayment of Universal Credit has occurred from the beginning of a claim, the decision maker must revise the award from its beginning¹. The overpayment period will start on the same date.

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

Example

Alison claimed Universal Credit from 4 June and declared that she held capital in the form of an inheritance to the value of £20,000. Despite providing this information, Alison is wrongly awarded Universal Credit from and including 4 June. On 9 August the decision maker realises that Alison's capital affects her entitlement to Universal Credit. The decision maker revises the award of Universal Credit from 4 June and the start date of the Universal Credit overpayment period is 4 June.

During an existing Universal Credit award

- D1053 Where evidence exists that an overpayment of Universal Credit has occurred during the currency of an award, the decision maker must supersede the award from the first day of the assessment period in which the change occurred¹. The overpayment period will start on the same date.

Note: ADM Chapter E2 contains guidance on assessment periods for Universal Credit.

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, Part 3, para 20

Example

Oscar and Ellie are a Universal Credit joint claim couple. Universal Credit has currently been paid for the monthly assessment period running from 2 May to 1 June. On 10 June Ellie reports that Oscar left the United Kingdom on 6 May to work

abroad for 12 months. Oscar's absence from the United Kingdom affects their Universal Credit entitlement as a couple. The decision maker supersedes the award of Universal Credit, made on the basis that Oscar and Ellie were a joint claim couple, from 2 May and the start date of the Universal Credit overpayment period is 2 May.

End date of Universal Credit overpayment period

- D1054 Where evidence exists that an overpayment of Universal Credit has occurred, the end date of the overpayment period is the last day of the assessment period immediately before the award is corrected or terminated.

Example

Mary claimed Universal Credit on 4 June and declared that she held capital in the form of an inheritance to the value of £20,000. Despite providing this information, Mary is wrongly awarded Universal Credit for the monthly assessment periods running from 4 June to 3 July and from 4 July to 3 August. On 9 August the decision maker realises that Mary's capital affects her entitlement to Universal Credit. The decision maker revises the award of Universal Credit from and including 4 June and the Universal Credit overpayment period ends on 3 August.

Start date of Jobseeker's Allowance or Employment and Support Allowance overpayment period

Beginning of a Jobseeker's Allowance or Employment and Support Allowance claim

- D1055 Where evidence exists that an overpayment of Jobseeker's Allowance or Employment and Support Allowance has occurred from the beginning of a claim, the decision maker must revise the award from its beginning¹. The overpayment period will start on the same date.

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

Example

Bradley claimed Jobseeker's Allowance from 4 June and declared that he was not in employment. He was awarded Jobseeker's Allowance from 7 June. Subsequently, the decision maker became aware that Bradley had been working on a part-time basis since 20 May. This affected his entitlement to Jobseeker's Allowance. The decision maker revises the award of Jobseeker's Allowance from 7 June and the start date of the Jobseeker's Allowance overpayment is 7 June.

During an existing Jobseeker's Allowance or Employment and Support Allowance award - entitlement ends

- D1056 Where evidence exists that an overpayment of Jobseeker's Allowance or Employment and Support Allowance has occurred during the currency of an award and entitlement ends, the decision maker must supersede the award from the date of the change¹. The overpayment period will start on the same date.

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

Example

Ed has been paid Employment and Support Allowance up to and including 21 November. He started full time employment on 4 November meaning that he no longer had limited capability for work and was therefore not entitled to Employment and Support Allowance. He reported the change in his circumstances by letter which was received in the local Jobs and Benefits office on 5 November. However, the decision maker does not take action to supersede the award of Employment and Support Allowance until 22 November. The start date of the Employment and Support Allowance overpayment is 4 November.

During an existing Jobseeker's Allowance or Employment and Support Allowance award - entitlement reduces

- D1057 Where evidence exists that an overpayment of Jobseeker's Allowance or Employment and Support Allowance has occurred during the currency of an award, but entitlement reduces, the decision maker will usually supersede the award of benefit effective from the beginning of the week in which the change occurs¹. The start date of the overpayment period will be the same date.

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

Example

Emma has been paid Jobseeker's Allowance up to and including 21 November. Her benefit week ends on a Thursday. She started part-time employment on 4 November meaning that her entitlement to Jobseeker's Allowance is reduced. The decision maker supersedes the award of Jobseeker's Allowance from 1 November. However, the start date of the Jobseeker's Allowance overpayment is 4 November.

End date of Jobseeker's Allowance or Employment and Support Allowance overpayment period

D1058 Where evidence exists that an overpayment of Jobseeker's Allowance or Employment and Support Allowance has occurred, the end date of the overpayment period is the last day of the payment period immediately before the award is corrected or terminated.

Example

Jessica has been paid Employment and Support Allowance up to and including 21 November. She started full time employment on 4 November meaning that she no longer had limited capability for work and was therefore not entitled to Employment and Support Allowance. She reported the change in her circumstances to the local Jobs and Benefits office by letter which was received in the local office on 5 November. However, the decision maker does not take action to supersede the award of Employment and Support Allowance until 22 November. The end date of the Employment and Support Allowance overpayment is 21 November.

D1059 – D1070

Calculation of an overpayment

Introduction

D1071 The guidance in this section deals with

1. the diminution of capital **and**
2. the circumstances when a deduction is required from the amount of a Universal Credit, Jobseeker's Allowance or Employment and Support Allowance overpayment.

Diminution of capital

Universal Credit

D1072 D1073 applies where

1. there is an overpayment of Universal Credit which has occurred because of an error relating to the amount of a person's capital **and**
2. the overpayment period is 3 months or more¹.

Note: ADM Chapter H1 contains guidance on capital for Universal Credit purposes.

1 SS (Op & Rec) Regs (NI), reg 7(1)

D1073 For the purpose only of calculating the recoverable amount of the overpayment as in D1072, the decision maker must

1. at the end of the first 3 months of the overpayment period, treat the amount of that capital as having been reduced by the amount of Universal Credit overpaid during those 3 months **and**
2. at the end of each subsequent period of 3 months, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of Universal Credit overpaid during the immediately preceding 3 months¹.

1 SS (Op & Rec) Regs (NI), reg 7(2)

D1074 The decision maker cannot treat capital as reduced over any period other than 3 months, in any circumstances other than those provided for in D1073¹.

1 SS (Op & Rec) Regs (NI), reg 7(3)

Circumstances when a deduction is required

D1075 When calculating the amount of an overpayment of Universal Credit, Jobseeker's Allowance or Employment and Support Allowance, the decision maker must deduct¹

1. any amount which has been offset under specified legislation² **and**
2. any additional amounts of Universal Credit.

1 SS A (NI) Act 92, sec 69ZB(4); SS (Op & Rec) Regs (NI), reg 8; 2 reg 16

Offsetting

D1076 D1077 applies where a claimant has been paid benefit under the original decision which is subsequently

1. revised or further revised **or**
2. superseded or further superseded **or**
3. set aside on an appeal¹.

1 SS A (NI) Act 92, sec 69ZF; SS (Op & Rec) Regs (NI), reg 16(1)

D1077 Any Universal Credit, Jobseeker's Allowance or Employment and Support Allowance paid in respect of a period covered by the subsequent decision is to be offset against arrears of entitlement to benefit under that decision and, except to the extent that the Universal Credit, Jobseeker's Allowance or Employment and Support Allowance exceeds the arrears, is to be treated as properly paid on account of them¹.

1 SS (Op & Rec) Regs (NI), reg 16(2)

Example

Nathan has been paid Universal Credit for the assessment periods running from 5 November to 4 December and from 5 December to 4 January. Nathan becomes entitled to Jobseeker's Allowance and an arrears payment for the period from 2 December to 4 January is calculated. The amount of Universal Credit paid to Nathan for the period from 2 December to 4 January is to be offset against the arrears of Jobseeker's Allowance now payable to him.

D1078 Where an amount has been deducted as in D1081 or D1085 to D1087, an equivalent sum is to be offset against any arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and is to be treated as paid on account of them¹.

1 SS (Op & Rec) Regs (NI), reg 16(3)

D1079 The decision maker should note that

1. they can make an offset decision at any time before arrears of Universal Credit, Jobseeker's Allowance or Employment and Support Allowance are paid **and**
2. whenever possible, they should include the offset in the new entitlement decision.

The decision maker should ensure that any offset of benefit is dealt with before considering whether any Universal Credit, Jobseeker's Allowance or Employment and Support Allowance has been overpaid. This is because an overpayment decision prevents the recoverable amount from being considered for offset later on¹.

1 SS (Op & Rec) Regs (NI), reg 16(4)

Meaning of “subsequent decision”

D1080 Subsequent decision means the decision referred to in D1076 **1.**, **2.** or **3.** which was taken in relation to the original decision¹.

1 SS (Op & Rec) Regs (NI), reg 16(5)

Additional amounts of Universal Credit

D1081 When calculating the recoverable amount of a Jobseeker's Allowance or Employment and Support Allowance overpayment, the decision maker must deduct¹

1. any amount which has been offset under specified legislation² **or**
2. any additional amount of Universal Credit which was not payable to the claimant or their partner under the original or any other determination, but which should have been determined to be payable in respect of all or part of the overpayment period, to the claimant, or the claimant and their partner jointly
 - 2.1 on the basis of the Universal Credit claim as presented to the decision maker **or**
 - 2.2 on the basis of that claim as it would have appeared if any change of circumstances, except a change of the dwelling which the claimant occupies as their home, had been notified at the time that change occurred **or**
 - 2.3 where the overpayment arose from a misrepresentation or failure to disclose a material fact, on the basis that that misrepresentation or failure to disclose had been remedied prior to the award being made **or**

- 2.4** where the overpayment arose because of an error made by, or on behalf of, the Department, on the basis that that error had not been made.

1 SS A (NI) Act 92, sec 69ZB(4); SS (Op & Rec) Regs (NI), reg 8; 2 reg 16

Meaning of “overpayment period”

- D1082 Overpayment period means the period over which the overpayment accrued¹.

1 SS (Op & Rec) Regs (NI), reg 2

Meaning of “partner”

- D1083 Partner means, where the person being referred to is a member of a couple, the other member of the couple¹.

1 SS (Op & Rec) Regs (NI), reg 2

Overpayments of Universal Credit housing costs

Meaning of “housing costs”

- D1084 Housing costs¹ means any amount included in an award of Universal Credit in respect of rent payments as defined in legislation².

Note: ADM Chapters F2, F3 and F4 contain guidance on Universal Credit housing costs.

1 SS (Op & Rec) Regs (NI), reg 2; 2 UC Regs (NI) 16, Sch 1, para 2

Change of dwelling

- D1085 The guidance in D1086 and D1087 applies when an overpayment of housing costs has occurred in the following circumstances

1. the claimant has moved from their previous home (dwelling A) to another home (dwelling B) **and**
2. they have been awarded housing costs for dwelling A to which they are no longer entitled because they do not, or are treated as not, living there **and**
3. housing costs are paid to the same person in respect of the claimant's occupation of dwelling B as it was paid in respect of dwelling A¹.

1 SS (Op & Rec) Regs (NI), reg 9(1)

- D1086 When the decision maker is calculating the recoverable overpayment, they may at their discretion, deduct an amount equal the claimant's entitlement to housing costs for the assessment period in respect of dwelling B for the number of assessment periods equal to the number of assessment periods during which the claimant was overpaid housing costs for dwelling A¹.

1 SS (Op & Rec) Regs (NI), reg 9(2)

- D1087 Where a sum has been deducted as in D1086, an equivalent sum is to be treated as having been paid in respect of the claimant's entitlement to housing costs for dwelling B for the number of assessment periods equal to the number of assessment periods during which the claimant was overpaid housing costs for dwelling A¹.

1 SS (Op & Rec) Regs (NI), reg 9(3)

Child support maintenance collected by the Department

Universal Credit

- D1088 When the decision maker is calculating an overpayment of Universal Credit involving a case where child support maintenance payments are being collected by the Department for the whole or part of the overpayment period, the amount of child support maintenance collected is to be disregarded in the calculation of the overpayment¹.

1 SS A (NI) Act 92, sec 72A

Example

Louise is entitled to child support maintenance of £150 per month. This is collected by the Department. She is entitled to Universal Credit of £583.63 per assessment period. Child support maintenance is not treated as income for the purposes of Universal Credit entitlement. A change of circumstances means that Louise is no longer entitled to Universal Credit and an overpayment has been calculated. There is no provision for reducing the amount of the overpayment on account of the child support maintenance collected by the Department. Therefore, the overpayment is the full amount of Louise's entitlement to Universal Credit. However, although Louise would be liable to repay the full amount of overpaid Universal Credit, the Department cannot recover the overpayment twice. Louise is required to repay the gross amount of the Universal Credit overpayment **less** the amount of any child support maintenance that has been collected.

D1089 – D1100

Recoverability of an overpayment

Introduction

D1101 The guidance in this section deals with

1. the meaning of a recoverable amount
2. the person(s) from whom an overpayment may be recovered
3. misrepresentation
4. failure to disclose
5. causation.

Meaning of “recoverable amount”

D1102 Recoverable amount¹ means

1. subject to D1072 to D1087, the amount of any overpayment **or**
2. any other amount recoverable under specified legislation².

1 SS (Op & Rec) Regs (NI), reg 3; 2 SS A (NI) Act 92, sec 69ZE(1); sec 69ZG; sec 69ZH; sec 109B(4)(2)

Person(s) from whom an overpayment may be recovered

D1103 Overpayments of Universal Credit, Jobseeker’s Allowance and Employment and Support Allowance will normally be recoverable from the claimant. This includes overpayments that have arisen as a result of the circumstances described in D1007. However, in certain circumstances, overpayments may be recovered from someone other than or, in addition to, the claimant. D1105 to D1111 gives guidance on deciding the person from whom an overpayment is recoverable and in which circumstances¹.

1 SS (Op & Rec) Regs (NI), reg 4(1)

Meaning of “payee”

D1104 Payee means the person to whom the overpayment has been paid¹.

1 SS (Op & Rec) Regs (NI), reg 4(9)

Appointee or another person acting on the claimant's behalf

D1105 Where the payee is a person¹

1. appointed under specified legislation² to act on the claimant's behalf **or**
2. who the decision maker has directed that payment be made in accordance with specified legislation³

then the overpayment is recoverable from the claimant and the payee.

1 SS (Op & Rec) Regs (NI), reg 4(2); 2 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 52; 3 reg 53

Payments to Third Parties

D1106 Where the payee is a person to whom Universal Credit, Jobseeker's Allowance or Employment and Support Allowance has been paid under specified legislation¹, then, to the extent that the amount paid does not exceed the amount payable to the payee under that legislation, the overpayment is recoverable from the claimant instead of the payee².

Note: ADM Chapter D2 contains guidance on Third Party deductions.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, Sch 5; 2 SS (Op & Rec) Regs (NI), reg 4(3)

Overpayments of Universal Credit housing costs

Change of dwelling

D1107 Where the decision maker is satisfied that an overpayment of Universal Credit housing costs has occurred because of any change of the claimant's dwelling, then, if the claimant and the payee are not the same person, the overpayment is recoverable from the claimant and the payee¹.

1 SS (Op & Rec) Regs (NI), reg 4(5)

Misrepresentation or failure to disclose

D1108 Where the decision maker is satisfied that the overpayment of Universal Credit housing costs occurred because of a misrepresentation of, or failure to disclose a material fact (in either case, whether fraudulently or otherwise) by any person ("M"), then, if "M" and the payee are not the same person, the overpayment is recoverable from "M" instead of the payee¹.

Note: D1131 et seq gives guidance on misrepresentation and failure to disclose.

I SS (Op & Rec) Regs (NI), reg 4(6)

Meaning of “material fact”

D1109 Material fact means any fact which had it been known about and properly acted upon by the decision maker would have prevented all or part of the overpayment in question. It is a fact which is objectively material to the decision maker’s decision to make an award of benefit. A fact is material where, on disclosure, it would prompt further enquiries or investigations by the decision maker in order to decide whether an existing entitlement continued or required some change¹.

I R(IS) 7/94

Other reasons

D1110 Where the decision maker is satisfied that an overpayment of Universal Credit housing costs has occurred for a reason other than as in D1107 or D1108, then, except where D1105 or D1111 applies in relation to the overpayment, if the claimant and the payee are not the same person, the overpayment is recoverable from the claimant instead of the payee¹.

I SS (Op & Rec) Regs (NI), reg 4(7)

D1111 For the purposes of D1110, this refers to overpayments that have occurred due to the amount of the payment exceeding the amount of Universal Credit housing costs for which the claimant is liable¹.

I SS (Op & Rec) Regs (NI), reg 4(8)

D1112 – D1130

Misrepresentation

Introduction

D1131 Where an overpayment of Universal Credit housing costs as in D1108 has occurred, either

1. the claimant **or**
2. both members of a joint-claim couple **or**
3. the landlord

could be responsible for the misrepresentation that caused the overpayment.

What is misrepresentation

D1132 Misrepresentation occurs when inaccurate information is provided or information is omitted. It can be done either innocently or deliberately¹ and can be by either by word or action. It does not matter if the person providing the information believed it to be correct - once it is shown to be incorrect, misrepresentation has occurred.

1 R(SB) 2/92

Example 1

Eric has claimed Universal Credit and states on his on-line claim form that he is liable for rent amounting to £300.00 per week. He is awarded Universal Credit including an amount to cover his housing costs. It is later discovered that Eric's rent liability is actually £200.00 per week. This means that he has been overpaid an amount of housing costs. Eric's declaration that his rent liability amounted to £300.00 per week is a misrepresentation.

Example 2

Ben is George's landlord. George is a Universal Credit claimant. In support of George's claim for Universal Credit housing costs, Ben provides a copy of George's tenancy agreement which says that he is liable for £300.00 per week in rent. Universal Credit housing costs are awarded and paid to George on that basis. It is later discovered that George is in fact liable for rent of £250.00 per week resulting in an overpayment of housing costs. Ben's declaration that George's rent liability is £300.00 per week is a misrepresentation.

Has misrepresentation occurred

Written statements

- D1133 Whether a misrepresentation has occurred may depend on the precise wording of any declaration that has been signed¹. In principle, a person can misrepresent a fact that he is unaware of. However, if he declares that “*as far as I know*, the information on this form is true and complete” (or something similar), there will only be a misrepresentation if the person misstates or omits a fact which he knows about.

1 R(IS) 7/94

- D1134 However, if the person simply declares that the information he has given is “*true and complete*”, any error or omission about the facts will be a misrepresentation. It will not matter that the person did not know the fact in question.

Oral statements

- D1135 If there is evidence of information provided orally by a person and that information is found to be incorrect, the decision maker should regard the oral statement as a misrepresentation. Oral information is commonly given to an interviewing officer and recorded in a report. However, where the decision maker is relying on an oral statement and the person appeals, the written record should be produced as evidence and the interviewing officer may be called to the appeal tribunal hearing as a witness.

Circumstantial evidence of misrepresentation

- D1136 If direct evidence of misrepresentation is unavailable, the decision maker may still consider misrepresentation where there is circumstantial evidence to support this. However, the decision maker
1. should not normally ask for direct evidence to be produced, or for circumstantial evidence to be sought where it is not already available **and**
 2. can usually decide recoverability on the alternative ground of failure to disclose (see D1151 et seq) on the evidence already available.

Allegation of non-responsibility

D1137 A claimant or their representative may state that an incorrectly completed form with a signed declaration is not a misrepresentation because the claimant completing the form did not know what they were doing¹. This may happen where someone should have been appointed to run that claimant's affairs and the claimant completed the forms in question. That claimant may not be held responsible for the completion.

1 R(IS) 4/06

D1138 Where it is claimed that a claimant is not responsible, the decision maker should consider the following points¹

1. Non-responsibility is limited to those who are blind, illiterate or do not fully understand a particular form they have signed. This may be caused by poor education, illness or mental incapacity and can be temporary or permanent.
2. Poor education, illness or mental incapacity alone is not sufficient to show non-responsibility. People are expected to take reasonable steps to understand what they sign.
3. The burden of proof rests with persons who contend that they are not responsible. Those who are merely content to sign without taking the trouble to find out the general effect of the form cannot claim to be non-responsible.
4. People may contend that they are not responsible because, having signed the form, they believe it had one effect when in fact its effect was quite different. They must show that they had taken steps or been given information which gave grounds for their belief and there was a radical, serious or very substantial difference between what they signed and what they thought they were signing.
5. People are responsible where they were merely mistaken as to the legal effect of the form, whether the mistake was their own or that of an advisor.

1 Saunders v. Anglia Building Society [1971] AC 1004 HoL

D1139 – D1150

Failure to disclose

Introduction

D1151 Where an overpayment of Universal Credit housing costs as in D1108 has occurred, either

1. the claimant **or**
2. both members of a joint-claim couple **or**
3. the landlord

could be responsible for the failure to disclose that caused the overpayment.

Decision maker's requirements

Information and evidence in connection with a claim

D1152 The decision maker may require a claimant or where applicable, a landlord, to provide information or evidence in connection with a claim for Universal Credit that may include in the calculation of an award, an amount in respect of housing costs¹.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 36(1) to (6)

Information and evidence in connection with an award

D1153 The decision maker may require a person to provide information or evidence in such a way and at such times as the decision maker may determine, in connection with the payment of Universal Credit housing costs that have been awarded¹.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37(1) to (3)

Notification of any change of circumstances

D1154 A person must notify the decision maker of any change of circumstances which that person might reasonably be expected to know might affect¹

1. continuing entitlement to Universal Credit housing costs **or**
2. the amount of Universal Credit housing costs awarded **or**
3. the payment of Universal Credit housing costs

as soon as reasonably practicable after the change occurs.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37(4)

D1155 A notification as in D1154 must be given¹

1. in writing or by telephone (unless the decision maker decides that notice must be given in another way or accepts notice given other than in writing or by telephone) **or**
2. in writing where the decision maker requires written notice (unless the decision maker accepts notice given other than in writing)

and must be sent or delivered to, or received at, the appropriate office.

Note: ADM Chapter A2 gives guidance on the meaning of appropriate office.

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

Knowledge of the material fact

D1156 Persons have a duty to disclose

1. material facts that are known to them **and**
2. material facts which they ought to know by making reasonable enquiries¹.

Note: The burden of enquiry placed upon them, varies from case to case depending on the nature of the material fact and how easily they could have discovered it.

1 R(SB) 28/83

Discharging the duty to disclosure

D1157 In order for a person to discharge their duty to disclose, a disclosure must

1. be of the material fact itself **and**
2. be made in relation to the claim for Universal Credit housing costs **and**
3. be made in the manner and to the place instructed by the decision maker¹.

1 R(SB) 54/83; R(SB) 15/87; Hinchy v Secretary of State for Work and Pensions; R(IS) 7/05

D1158 Disclosure means “to reveal”¹ a material fact which, as far as the claimant (the discloser) knows, is unknown to the person who is owed the disclosure² (i.e. the decision maker).

1 Hinchy v Secretary of State for Work and Pensions EWCA [2003] Civ 138; R(IS) 7/05; 2 R(SB) 15/87

Effect of a failure to disclose

D1159 Where a person has not complied with issued instructions and therefore fails to disclose information or notify a change of circumstances, any resulting overpayment

of Universal Credit housing costs will be recoverable¹. The recoverable amount is limited to the amount of benefit that would not have been paid if the person had actually disclosed at the correct time. However, the decision maker must ensure that the person was under a duty to disclose².

1 SS A (NI) Act 92, sec 69ZB(1) & (2); 2 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, regs 36 & 37

When a failure to disclose arises

D1160 A failure to disclose arises

1. when a change of circumstances occurs between written statements of circumstances, e.g. the on-line claim form and a review form, and the change is not reported **or**
2. where a written statement is inaccurate or incomplete.

Clear and unambiguous duty to disclose

D1161 A person must disclose a material fact where they¹

1. have been clearly and unambiguously advised of the need to disclose the fact² **and**
2. were aware of the fact **or**
3. ought to have been aware of the fact by making reasonable enquiries³.

Note: The burden of enquiry placed upon the person varies from case to case depending on the nature of the material fact and how easily they could have discovered it.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37(1) to (3); 2 R(IB) 4/07; R(IS) 9/06; 3 R(SB) 28/83

Instructions to notify

D1162 Instructions to persons about the notification of information are usually given in on-line claim forms, notes that accompany claim forms and leaflets. These can be accepted as sufficient to inform the person of their obligation to disclose any change of circumstances as listed therein. However, the instructions must be clear and unambiguous¹.

1 R(IS) 9/06; R(IB) 4/07

D1163 The person should comply with the instructions given to them. They are not entitled to form views about how the benefit system works or what knowledge the relevant decision maker might have¹. As claim forms and leaflets are periodically updated,

the decision maker will need to ensure that they have a copy of the relevant version when looking at what instructions the person has been given and when.

1 Hinchy v. Secretary of State for Work and Pensions [2005] 1 WLR 967; R(IS) 7/05

Modification of instructions

D1164 Notwithstanding the person's instructions regarding their duty to disclose as discussed in D1157, it is possible for those instructions to be modified by an officer acting on behalf of the Department. The effect of this modification is that the claimant no longer has to do all or part of what they were originally required to do¹. A modification can be done orally or in writing and where a duty to disclose has been modified, the decision maker should consider what the modified duty was. This should be based on what was said to the claimant. For example

1. if the claimant was, in effect, told that further disclosure was unnecessary, there will be no duty to disclose from that point onwards. It follows that there will be no failure to disclose from then on **or**
2. if the claimant was not, in effect, told that further disclosure was unnecessary, the decision maker should consider what the claimant was, in effect, still required to do. The decision maker should consider which parts of the previous instructions were changed and which were not changed. The decision maker should then determine what the claimant still had to disclose, and when, how and to whom it had to be disclosed. This will form the claimant's new duty to disclose from the date of modification onwards. There will be a failure to disclose only if the claimant does not comply with the new duty.

1 R(A) 2/06

Additional duty to disclose

D1165 In addition to the duty described in D1161, the person also has a duty to disclose if

1. they were aware of the material fact **and**
2. the fact represented a change of circumstances **and**
3. it was reasonable to expect the person to know that their benefit might be affected by the change in circumstances **and**
4. they did not report the change as soon as reasonably practicable after it occurred¹.

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 37(4)

D1166 A notification as in D1165 must be given¹

1. in writing or by telephone (unless the decision maker decides that notice must be given in a particular way or accepts notice other than in writing or by telephone) **or**
2. in writing where the decision maker requires written notification (unless the decision maker decides to accept notice other than in writing)

and must be sent or delivered to, or received at, the appropriate office.

Note: ADM Chapter A2 gives guidance on the meaning of appropriate office.

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

Reasonably to be expected

D1167 The test is what could reasonably be expected of the person concerned, having regard to their circumstances. It is not necessary for the person to understand the actual impact of the change. The decision maker must look at the information given to the person about

1. the conditions of entitlement to Universal Credit housing costs **and**
2. why it had been decided that the person satisfied those conditions and thus became entitled to Universal Credit housing costs **and**
3. what changes the person may have been told to notify.

Timing of the disclosure

D1168 Disclosure has to be made as soon as reasonably practicable to be effective. However, there is no requirement for a person who is aware of a change that is about to take place, to notify the relevant office in advance¹.

1 R(SB) 3/81

Person alleges that disclosure made

D1169 Where a person alleges that the material fact was disclosed orally or in writing, but no trace of the disclosure can be found, the decision maker should decide whether disclosure was actually made. If the decision maker decides that disclosure

1. was not made, they should consider recoverability of the overpayment in the normal way **or**
2. was made, the decision maker should consider whether the disclosure was sufficient as in D1157.

Disclosure by landlord

D1170 In the case of an overpayment as in D1108, the duty to disclose which is placed on the claimant(s) may also be placed on the landlord. Where recovery is sought from the landlord, the decision maker must be able to show that the landlord has a legal duty to disclose.

D1171 – D1190

Causation

General

- D1191 For an overpayment as in D1108 to be recoverable, the decision maker must establish whether the overpayment has been caused by a misrepresentation of or failure to disclose a material fact. If it has, then the necessary causal link has been established and the decision maker is entitled to recover the overpayment¹.

1 R(SB) 3/81; R(SB) 21/82; R(SB) 15/87

Causation and misrepresentation

- D1192 To determine whether an overpayment has been caused by a misrepresentation, it is necessary to consider whether, at any of the stages described at D1193 below, correcting the misrepresentation would have made any difference to the overpayment.

- D1193 When the decision maker is considering whether the necessary causal link exists, it is useful to establish the following

1. when, and what, if any, information was received by the Department **and**
2. what, if anything, happened to that information after it was received by the Department in the office where disclosure should have been made **and**
3. what, if any, action was taken by the Department in response to receiving that information.

Causation and failure to disclose

- D1194 To determine whether an overpayment has been caused by a failure to disclose a material fact, it is necessary to consider whether the overpayment would still have occurred if there had been proper disclosure of that fact. The decision maker should note that

1. if the overpayment **would not** have occurred, if there had been proper disclosure of the material fact, a failure to make that disclosure is a cause of the overpayment, **whereas**
2. if the overpayment **would have** occurred, even if there had been proper disclosure of the material fact, a failure to make that disclosure is not a cause of the overpayment.

Is there a causal link between the failure to disclose and the overpayment

D1195 Where there has been a failure to disclose a material fact, the decision maker should consider whether the necessary causal link with the overpayment exists by establishing the following

1. when, and what, if any, information about the material fact was received by the Department **and**
2. what, if anything, happened to that information after it was received by the Department in the office where proper disclosure should have been made **and**
3. what, if any, action was taken by the Department in response to receiving that information.

D1196 If the material fact which the person should have provided has, in fact, been provided by someone else, that does not **necessarily** mean that the person's failure to disclose is not a cause of the overpayment. The decision maker should still establish whether, at any of the stages at D1195 **1.**, **2.** **and 3.**, disclosure from the person would have prompted the office to which disclosure should have been made, to take action that would have brought the overpayment to an end sooner than was the case.

D1197 If, at any stage, it can be shown that the overpayment would have continued regardless of the disclosure of the material fact, then the causal link is broken. The recoverable amount should not therefore include any amount overpaid after the date on which that link is broken.

Burden of proof

D1198 It is for the decision maker to show that the person's failure to disclose was a cause of the overpayment. The decision maker should have regard to all available records and any background knowledge about office procedures and practices that the decision maker or other officers hold. If it is not possible to determine what would probably have happened if the person had made the required disclosure (eg. because the decision maker cannot establish what happened to a letter from a third party that contained the required information), the overpayment will not be recoverable.

Number of causes for an overpayment

D1199 It is possible for there to be more than one cause for an overpayment. For example, the person may have failed to disclose a material fact but argues that the Department failed to take reasonable steps on its own initiative that would have brought the material fact that had to be disclosed, to the Department's attention. Both failures helped bring about the overpayment. However, providing that one of the causes was the person's failure to disclose, then the causal link is not broken¹.

1 Duggan v CAO; R(SB) 13/89

When is the causal link not broken

D1200 Examples of when the causal link is not broken include

1. wrong assumptions are made about a person's circumstances which give rise to an overpayment **or**
2. administrative duties are performed negligently in some way, eg. a failure to link two cases in the same household **or**
3. the discovery of the material fact by an office other than the one to which disclosure must be made¹ **or**
4. receipt by the office to which disclosure must be made, of information that does not allow a revision or supersession to be done, eg. receipt of a letter alleging fraud, but which does not contain sufficient detail to identify the relevant claimant **or**
5. the discovery of information that might allow revision or supersession but the details of which must be put to the person first, eg. the receipt of a General Matching Service (GMS) printout.

1 Morrell v Secretary of State for Work and Pensions; R(IS) 6/03

D1201 – D1220

Adjustments

Introduction

- D1221 This section gives guidance on preventing duplicate payments, specifically
1. bringing Payments on Account of Benefit (formerly known as interim payments) into account **and**
 2. abatement and Universal Credit.

Payments on account of benefit

Introduction

- D1222 Under certain conditions¹ decision makers may make discretionary payments of Universal Credit, Jobseeker's Allowance or Employment and Support Allowance. These are called Payments on Account of Benefit.

Note: Operational guidance dealing with the circumstances when a Payment on Account of Benefit may be made, how much may be paid and repayment schedules is available.

1 SS A (NI) Act 92, sec 5(1)(s); SS (POAOB) Regs (NI), regs 3 to 9

Bringing payments on account of benefit into account

- D1223 Where it is practical to do so and where a Payment on Account of Benefit was made in anticipation of an award of benefit, it should be brought into account by means of an offset against the sum payable to the claimant under the award¹.

1 SS A (NI) Act 92, sec 69ZG; SS (POAOB) Regs (NI), reg 10(a)

- D1224 Whether or not made in anticipation of an award, a Payment on Account of Benefit which is not offset as in D1223 is to be deducted from
1. the sum payable to the claimant under the award of benefit on account of which it was made **or**
 2. any sum payable under any subsequent award of that benefit to the claimant¹.

1 SS (POAOB) Regs (NI), reg 10(b)

D1225 – D1240

Abatements and Universal Credit

Introduction

D1241 The guidance in this section concerns the recovery of Universal Credit if it would not have been paid if

1. a prescribed income **or**
2. a prescribed payment

had been paid on the prescribed date.

Prescribed income

General

D1242 The decision maker is entitled to recover any amount of Universal Credit that would not have been paid if the prescribed income had been made on the prescribed date¹.

1 SS A (NI) Act 92, sec 69ZB(5)

What is prescribed income

D1243 For the purposes of D1242, prescribed income is income that is to be taken into account¹ in accordance with specified legislation².

Note: ADM Chapters H3, H4 and H5 contain guidance on income for the purposes of Universal Credit.

1 UC Regs (NI) 16, Part 6, Chapters 2 & 3; 2 SS (Op & Rec) Regs (NI), reg 6(1)

What is the prescribed date

D1244 The date on which income as referred to in D1243 is to be treated as paid is

1. where the payment of income is made in respect of a specific day or period, that day or the first day of that period **or**
2. where the payment of income is not made in respect of a specific day or period, the day or the first day of the period to which it is fairly attributable¹.

1 SS (Op & Rec) Regs (NI), reg 6(2)

Example

Sam has been awarded Universal Credit from and including 5 November. He has been paid £450.00 for the monthly assessment period running from 5 November to 4 December. On 6 December Sam receives a letter from his former employer stating that he is entitled to an occupational pension amounting to £100.00 per month beginning on 11 November. Had the pension been paid without delay from 11 November, Sam's Universal Credit entitlement would have been £350.00 per monthly assessment period. The amount of Universal Credit to be recovered from Sam's next Universal Credit payment is £100.00 (i.e. £450.00 (the amount that Sam was paid) minus £350.00 (the amount that Sam should have been paid)).

Prescribed payment

General

D1245 The decision maker is entitled to recover an amount of Universal Credit that would not have been paid if a prescribed payment had been paid at the prescribed time. There are 2 methods of recovery. These are

1. abatement of arrears of United Kingdom benefit **or**
2. receipt from arrears of European Community benefits.

Abatement of arrears of United Kingdom benefit

D1246 The amount of the prescribed payment of a United Kingdom benefit is reduced by the amount calculated in D1249 where¹

1. the prescribed payment is not made on or before the prescribed date **and**
2. it is decided that an amount of Universal Credit has been paid that would not have been paid if the prescribed payment had been made at the prescribed time.

1 SS A (NI) Act 92, sec 72(2)

What is a prescribed payment

D1247 **[See ADM Memo 19/17]** For the purposes of D1246, prescribed payments¹ are

1. any benefit under specified legislation² (except any grant or gratuity or widow's payment³)
2. Personal Independence Payment⁴

3. Child Benefit⁵
4. War disablement pension or war widow's pension which is not a gratuity and any payment which the decision maker accepts as similar to such a pension⁶
5. an allowance paid under the Job Release Act⁷
6. a training allowance⁸
7. receipts from European Community benefits⁹
8. Widowed Parent's Allowance¹⁰
9. Jobseeker's Allowance¹¹
10. Financial Assistance Scheme payments¹²
11. Employment and Support Allowance¹³.

*1 SS (POR) Regs (NI), reg 8(1); 2 reg 8(1)(a); SS C&B (NI) Act 92, Parts II to V; 3 R(SB) 28/85;
 4 SS (POR) Regs (NI), reg 8(1)(aa); 5 reg 8(1)(b); 6 reg 8(1)(d); 7 reg 8(1)(e); 8 reg 8(1)(f);
 9 reg 8(1)(g); 10 reg 8(1)(h); 11 reg 8(1)(i); 12 reg 8(1)(j); 13 reg 8(1)(k)*

What is the prescribed date

D1248 For the purposes of D1246, the prescribed date is the date the receipt of, or entitlement to the prescribed payment, would have to be notified to the decision maker in time for it to be taken into account in the Universal Credit award¹. This means that an amount can be recovered if

1. the prescribed payment has not been made **and**
2. the decision maker was notified of entitlement to the prescribed payment and the Universal Credit award could not be revised or superseded.

1 SS (POR) Regs (NI), reg 8(2); R(SB) 28/85

Calculation of amount to be recovered

D1249 The amount to be recovered should be worked out by comparing the amount of

1. Universal Credit paid **and**
2. Universal Credit which would have been paid if the prescribed payment had been made at the prescribed time.

Receipts from arrears of European Community benefits

General

D1250 Where

1. a payment of European Community benefit (made under the legislation of any Member State other than the United Kingdom) is not made on or before the prescribed date for the payment **and**
 2. an amount of Universal Credit has been paid which would not have been paid
- the decision maker is entitled to receive, from the European Community benefit, the amount as in 2.¹.

Note: DMG Chapter 07 Part 1 contains a list of Member States.

1 SS A (NI) Act 92, sec 72(2); SS (POR) Regs (NI), reg 8(1)(g)

What is the prescribed date

D1251 For the purposes of D1250, the prescribed date is the date by which receipt of, or entitlement to the European Community benefit would have to be notified to the decision maker for it to be taken into account in the award¹. This means that receipt from an European Community benefit is possible only where

1. the European Community benefit has not been paid **and**
2. if it were to be paid, the Universal Credit award decision would not be revised or superseded

to take it into account.

1 SS (POR) Regs (NI), reg 8(2)

Calculation of amount to be recovered

D1252 Where Benefit Guidance Centre is aware that Universal Credit is in payment to the claimant, they ask for arrears payments of European Community benefits to be paid directly into the Department's account at the Northern Bank. The bank deducts charges and commission before notifying the Benefit Guidance Centre of

1. the net sterling amount due to the claimant **and**
2. the period for which it is payable.

When Benefit Guidance Centre receive this information, the Universal Credit decision maker will be asked to determine the amount of European Community benefit they are entitled to receive from the sum due to the claimant.

Conversion of foreign currency

D1253 When working out the amount of European Community benefit that the decision maker is entitled to receive, they should

1. use the sterling figure obtained when the European Community benefit was converted **and**
2. allow any banking charges or commission (if not already deducted)¹.

1 SS (POR) Regs (NI), reg 10

Recovery otherwise than by way of abatement

D1254 Where an amount could have been recovered by way of abatement but has not been so recovered, the decision maker may recover it otherwise than by way of abatement from the person to whom it was paid¹.

1 SS A (NI) Act 92, sec 72(4)(a)

D1255 – D1350

Recoupment - payments under the Employment Protection Acts

Introduction

D1351 The Department can recover Universal Credit from certain Industrial Tribunal awards¹. Recovery is made from the claimant's employer who deducts it from the amount awarded by the Industrial Tribunal before payment. This is called recoupment.

1 IT (NI) Order 96, art 18 & 25(5); EP (Recoupment of JSA & IS) Regs (NI)

Recoverable awards

D1352 Recovery can be made from the following Employment Tribunal awards

1. guarantee payments¹
2. guarantee payments under a collective agreement or wages order for which an exemption order has been made²
3. remuneration on suspension on medical grounds³
4. unfair dismissal payments under an order for reinstatement or re-engagement, or an award of compensation⁴
5. unfair dismissal payments under an interim order for reinstatement or re-engagement, or an order for the continuation of the contract of employment or for compensation⁵
6. remuneration in pursuance of a protective award⁶
7. payments under an order made following the employer's failure to pay remuneration due to the employee under a protective award⁷.

*1 ER (NI) Order 96, art 60; 2 art 67; 3 art 96 & 140(2); 4 art 146, 148 & 151;
5 art 164 & 167; 6 art 217; 7 art 220*

D1353 The Department issues a notice to the employer stating the amount to be recouped¹. A copy of the notice is also sent to the claimant².

1 EP (Recoupment of Benefits) Regs, reg 8 & 9; 2 reg 8(4)

Monetary awards

D1354 In the case of monetary awards the appropriate amount shall be whichever is the less of the following two sums¹

1. the amount of the prescribed element (less any tax or social security contributions which fall to be deducted therefrom by the employer) **or**
2. in the case of an employee entitled to Universal Credit for any period (“the Universal Credit period”) which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of Universal Credit for the Universal Credit period that would not have been paid if the person’s earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

1 EP (Recoupment of Benefits) Regs, reg 8(2)

Protective awards

D1355 In the case of remuneration under a protective award the appropriate amount shall be whichever is the less of the following two sums¹

1. the amount (less any tax or social security contributions which fall to be deducted therefrom by the employer) accrued due to the employee in respect of so much of the protected award as falls before the date on which the Department receives from the required information² from the employer **or**
2. in the case of an employee entitled to Universal Credit for any period (“the Universal Credit period”) which coincides with any part of the protected period falling before the date described in 1. above, any amount paid by way of or on account of Universal Credit for the Universal Credit period that would not have been paid if the person’s earned income for that period was the same as immediately before the protected period.

1 EP (Recoupment of Benefits) Regs, reg 8(3); 2 reg 6

Meaning of “earned income”

D1356 For the purposes of D1354 2. and D1355 2. earned income¹ has the meaning specified in legislation².

1 EP (Recoupment of Benefits) Regs, reg 8(12); 2 UC Regs (NI) 16, reg 51

Action by the decision maker

D1357 The case is referred to the decision maker if

1. the claimant disagrees with the amount of the recovery¹ **or**
2. recoupment has been made and the award of Universal Credit is revised or superseded.

In these cases the decision maker needs to calculate the exact amount of benefit paid in the period of the award. Any amount recovered in excess of the decision maker calculation is refunded to the claimant².

1 EP (Recoupment of Benefits) Regs, reg 10(1); 2 reg 8

Claimant does not accept amount notified

D1358 If the claimant does not accept the amount shown on the recoupment notice the decision maker is asked to decide the amount of benefit paid¹. The decision maker should calculate the exact amount of Universal Credit paid to the claimant in the prescribed period.

1 EP (Recoupment of Benefits) Regs, reg 10

Prescribed period

D1359 The prescribed period is for awards listed at

1. D1352 1. to 5. - the period of the award¹ **or**
2. D1352 6. to 7. - the part of the protected period which falls before the date of termination of employment or the date on which the Department receives details of the employees affected by the award from the employer whichever results in the lower amount being recouped².

1 EP (Recoupment of Benefits) Regs, reg 2(3); 2 reg 8(3)

D1360 The prescribed period ends when the decision of the Employment Tribunal is given verbally at the hearing or afterwards in writing¹.

1 EP (Recoupment of Benefits) Regs, reg 2(3)

Claimant raises other questions on recoupment

D1361 An award of Universal Credit can be revised or superseded if the claimant raises any question affecting the amount to be recouped¹. The decision maker should revise or supersede the awarding decision as if

1. the employer had paid the Employment Tribunal award for the prescribed period **and**
2. any Universal Credit which is to be recouped had not been paid and was not payable.

1 EP (Recoupment of Benefits) Regs, reg 10(1)

Revision or supersession after recoupment action completed

D1362 Recoupment action ends when the

1. amount of benefit paid in the prescribed period has been recovered **or**
2. time limit¹ has ended and the Department has not issued a recoupment notice.

1 EP (Recoupment of Benefits) Regs, reg 8(5)

D1363 The decision maker should revise or supersede the award of Universal Credit and take into account the effect of the Employment Tribunal award on entitlement to benefit. The Department will repay to the claimant any amount which has been recovered in excess of the amount recoupable¹.

1 EP (Recoupment of Benefits) Regs, reg 10(3)

Partner or dependant entitled to Employment Tribunal award

D1364 Universal Credit cannot be recouped from an Employment Tribunal award payable to a claimant's dependant or partner¹.

1 EP (Recoupment of Benefits) Regs, reg 8(2)

Employment Tribunal decision varied

D1365 The decision maker may need to give a further decision if the Employment Tribunal award is revised by the Employment Tribunal.

D1366 – D1999

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