Chapter 03 - Revision

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Legislation Used in Chapter 03

Abbreviation	Full Title
Interpretation Act 78	Interpretation Act 1978
Pensions Act (NI) 2015	Pensions Act (Northern Ireland) 2015
SP Regs (NI)	State Pension Regulations (Northern Ireland) 2015 No 315
SS A (NI) Act 92	Social Security Administration (Northern Ireland) Act 1992
SS C&B (NI) Act 92	Social Security Contributions and Benefits (Northern Ireland) Act 1992
SS & CS (D&A) Regs (NI)	The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 No 162
SS (IW) (Gen) Regs (NI)	The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 No 41
SS (NI) Order 98	Social Security (Northern Ireland) Order 1998 No 1506
VDP Act 79	Vaccine Damage Payments Act 1979
SSC (T of F) (NI) Order	Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 No 671
SS (C&P) Regs (NI)	Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 No 465
JSA Regs (NI)	The Jobseeker's Allowance Regulations (Northern Ireland) 1996 No 198
SS (DRP, SAP & GRB) (Misc Provs) Regs (NI)	Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations (Northern Ireland) 2006 No 104
SS (GRB) Regs (NI)	Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005 No 121

WR Act (NI) 07	Welfare Reform Act (Northern Ireland) 2007
SS (Credits, and Crediting and Treatment of Contributions) (Conseq Misc Amdts) Regs (NI) 16	Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2016 No 409
SS (Crediting and Treatment of Contributions, and NI Numbers) Regs (NI) 01	Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001 No 102
ESA Regs (NI)	The Employment and Support Allowance Regulations (Northern Ireland) 2008 No 280
ESA (WRA) Regs (NI)	The Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011 No 265
ESA (TP&HB) (EA) Regs (NI)	The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 No 312
IS (Gen) Regs (NI)	The Income Support (General) Regulations (Northern Ireland) 1987 No 459
SPC Regs (NI)	The State Pension Credit Regulations (Northern Ireland) 2003 No 28
SS Fraud Act (NI) 2001	Social Security Fraud Act (Northern Ireland) 2001
JS (NI) Order 95	The Jobseekers (Northern Ireland) Order 1995 No 2705

Chapter 03 - Revision

Revising decisions and handling appeals

[See DMG Memo Vol 1/132]

Introduction

3000 The revision process allows the decision maker to re-examine the facts of the case, the law used and other issues such as how discretion was applied when making a decision. Revising a decision at an early stage, for example where an appeal is made, can avoid the need for cases to proceed to a formal tribunal hearing.

3001 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.

3002 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. It is only after a mandatory reconsideration 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.

3003 At the end of the 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 (**Note:** 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 in dispute. See DMG 3210 et seq for further details.

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

3004 **[See DMG Memo Vol 1/126]** A decision cannot be revised where claimants report a change of circumstances during the application period. The claim or supersession rules apply instead (see DMG 3012 - 3015, 3021 and DMG Chapter 4). Where the claimant makes an appeal, see DMG Chapter 6. See DMG 3063 - 3065 for guidance on the meaning of application period.

3005 The revision process applies to the following

1. all benefits including State Pension Credit and Social Fund maternity, funeral, cold weather and winter fuel payments

2. decisions on credits and home responsibilities protection

3. whether a Jobseeker's Agreement is reasonable

4. a proposal to vary a Jobseeker's Agreement.

3006 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 DMG 3250 et seq).

3007 Where

1. an application was made within the application period (see DMG 3063) **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 DMG Chapter 6) 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?

3008 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

to this Volume. A list of the decisions and determinations that are not appealable[2] is at Annex E to this Volume.

1 SS (NI) Order 98, art 13 & Sch 3; SS & CS (D&A) Regs (NI), reg 26;
2 SS (NI) Order 98, art 13 & Sch 2; SS & CS (D&A) Regs (NI), reg 27 & Sch 1

3009 Decisions of tribunals and Commissioners cannot be revised. For guidance on superseding decisions of tribunals or Commissioners, see DMG Chapter 4.

3010 Decision makers can also make corrections to accidental errors in decisions of the Department. Further details are at DMG 3050 - 3054.

When should the decision maker consider revision?

3011 The decision maker should reconsider a decision when a claimant challenges a decision 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

3012 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 DMG 42810 - 42813). Otherwise, decisions notified on or after 23.5.16 can only[2] be appealed if the claimant has applied for a revision and the notice of the decision includes a statement to that effect. 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 of the decision **and**

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

Note: There is no time limit within which the decision maker must carry out the mandatory reconsideration. Once a decision has been subjected to mandatory reconsideration, further dispute rights are not dependent upon a further mandatory reconsideration.

1 [2020] EWHC 1999 (Admin); 2 SS & CS (D&A) Regs (NI), reg 3ZA(2); 3 reg 3ZA(1) & 3ZA(3)

3013 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 DMG 3060 for guidance on the time limits for making an application.

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

3014 The normal time limit for applying for reconsideration (DMG 3063) can be extended if certain conditions are met which includes satisfying the "tests" of "reasonableness" and "special circumstances". See DMG 3070. 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 and is reasonable. 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 Commission for Human Rights - right to a fair trial - see Annex G of DMG Volume 1

3015 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 SS & CS (D&A) Regs (NI), reg 3ZA(4)

3016 Where there is no right of appeal against a decision as there has been no request for reconsideration, then any purported appeal may be treated as an application for revision[1].

1 SS & CS (D&A) Regs (NI), reg 3ZA(5)

Example 1

An Employment and Support Allowance claimant attends a work capability assessment and the decision maker subsequently determines that they do not have Limited Capability for Work. The award is superseded so as to end entitlement to Employment and Support Allowance. The claimant disputes the decision and asks for a reconsideration. No pending appeal award of Employment and Support Allowance can be made and they make a claim to Jobseeker's Allowance. Jobseeker's Allowance is awarded to the claimant. The decision maker decides that the decision cannot be revised and informs the claimant. The claimant lodges an appeal with The Appeals Service and submits medical evidence. They ask for Employment and Support Allowance to be re-awarded. The award of Jobseeker's

Allowance is terminated by means of a supersession and a pending appeal award of Employment and Support Allowance is made without the need for a claim. Employment and Support Allowance is awarded from the day after the Jobseeker's Allowance award ends.

Example 2

A claim for Attendance Allowance is disallowed. The claimant disputes the decision in time and asks for reconsideration. The decision maker revises the decision to disallow benefit and makes an award of Attendance Allowance at the lower rate. The claimant considers that they are entitled to Attendance Allowance at the higher rate, decides to appeal this decision and sends the appeal form to The Appeals Service within the time limit, including a copy of the mandatory reconsideration notice which shows the revised award of Attendance Allowance at the lower rate. Since the claimant has already had a mandatory reconsideration against the decision to disallow Attendance Allowance, the appeal can be accepted without a further mandatory reconsideration.

Reporting changes during the application period

3017 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 relevant 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 SS & CS (D&A) Regs (NI), reg 3(9)(a); 2 MW v SSWP (IS) [2022] UKUT 59 (AAC)

3018 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.

3019 If the original decision awarded benefit, the supersession provisions apply instead[1].

1 SS & CS (D&A) Regs (NI), reg 6(5)

3020 Where the original decision was a disallowance, and the change occurred

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

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

See also DMG 3026, where the change is notified in an application for revision.

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

Advance award

3021 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 DMG 3410 - 3411 for changes removing entitlement which occur before the relevant or renewal date, but are notified after that date. Any changes which occur after the date the decision was made, but before the relevant or the renewal date and are notified before that date, should be considered under the supersession rules. See DMG Chapter 4 for guidance on supersession.

1 SS (C&P) Regs (NI), reg 13, 13A, 13C & 13D; 2 SS & CS (D&A) Regs (NI), reg 3(9)(a); R(DLA) 4/05

Example

The claimant made a renewal claim for Disability Living Allowance on 14.11.05 and the decision maker awarded the lowest rate care component and lower rate mobility component from the renewal date, 12.4.06. The decision was made and notified on 9.3.06, and a week later the claimant reported that his condition had deteriorated following a stroke accident on 7.12.05. The decision maker revises the decision made on 9.3.06 to award middle rate care and higher rate mobility from the renewal date. The decision maker also considers whether the existing award should be superseded on a relevant change of circumstances.

3022 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 does not satisfy the conditions of entitlement at the date of claim, but will do so within three months of that date (four months for State Pension Credit)[1]. The **renewal** date is the date the claim is treated as made where it is a claim for Attendance Allowance or Disability Living Allowance made during the period of six months before the expiry of a current award[2]. See DMG Chapter 2 for further details.

1 SS (C&P) Regs (NI), reg 13(1), 13A(1) & 13D(2); 2 reg 13C(2)

Revision and supersession

3023 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 SS & CS (D&A) Regs (NI), reg 6(3)

Example

The claimant has been awarded the higher rate of the mobility component of Disability Living Allowance. 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 care component. The decision maker revises the decision to extend the period of the award, and supersedes the decision as revised to award the lowest rate of the care component.

What if an application for revision is not accepted/ admitted?

3024 Where the decision maker is unable

1. to accept an application for revision because it is late please see DMG 3013 **or**

2. to admit an application for revision outside the maximum period (see DMG 3070 - 3073)

the decision maker should consider whether the provisions allowing revision at any time apply (see DMG 3250 - 3401).

3025 If it is not possible to revise the decision at any time, the decision maker should consider the supersession rules[1] instead. The application for revision can be treated as an application for supersession[2]. The outcome of the supersession depends on whether the decision maker considers the original decision is correct. The decision maker should notify that the decision is not revised and

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 (see also DMG 3026) **or**

2. make a decision not to supersede the original decision[3] **or**

3. exceptionally, make no decision and notify that the decision is not superseded[3] (see DMG Chapter 4).

Note: The decisions at DMG 3025 **1.** and 3025 **2.** only can carry the right of appeal.

1 SS & CS (D&A) Regs (NI), reg 6(2)(b)(i); 2 reg 6(5);
3 R(DLA) 1/03; Wood v Secretary of State for Work and Pensions [2003] EWCA Civ 53

3026 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 or that no decision has been made in response to the application for revision.

3027 Where DMG 3025 **1.** applies, the new decision is effective from

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

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

1 SS (NI) Order 98, art 11(5); 2 SS & CS (D&A) Regs (NI), reg 7(6)

Example

The claimant's appointee asks for a Disability Living Allowance 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?

3028 A claimant can ask for a decision to be revised[1] 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 a revision of decisions[2] where an appeal is received.

1 SS (NI) Order 98, art 10(1)(b), art 11(1) & art 13; SS & CS (D&A) Regs (NI), reg 3;
2 SS (NI) Order 98, art 10(1)(b) & art 11(1)

3029 Where a claimant applies for a decision to be revised on any ground the application or notification must be made to an appropriate office[1].

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

3030 An appropriate office is

1. an office of the Department whose address is shown on the original decision[1] **or**

2. for Jobseeker's Allowance, the office specified by the Department[2] **or**

3. for a claimant who is or would be required to take part in a work-focused interview an office of the Department designated by the Department as a Jobs and Benefits Offices[3] for the purposes of Social Security (Work-focused Interview) Regulations (Northern Ireland) 2003 **or**

4. for certain contributions decisions, any National Insurance Contributions Office of Her Majesty's Revenue and Customs or any office of the Department[4].

Note: Where an application for revision is received in a different office of the Department and is forwarded to and received by the appropriate office, it should be treated as received in the appropriate office on the date of receipt in the different office. But see Chapter 9 in overpayment cases.

1 SS & CS (D&A) Regs (NI), reg 3(11)(a); 2 reg 3(11)(b); JSA Regs (NI), reg 23; 3 SS & CS (D&A) Regs (NI), reg 3(11)(e); 4 SS (NI) Order 98, Sch 3 Pt II; SS & CS (D&A) Regs (NI), reg 3(11)(c)

Who reconsiders decisions?

3031 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 a mandatory reconsideration should be carried out by a different decision maker. This includes decisions given by the predecessors of decision makers[2]

1. adjudication officers

2. adjudicating medical authorities

3. insurance officers

4. benefit officers

5. supplementary benefit officers

6. social fund officers.

See DMG Chapter 1 for guidance on revision and supersession of decisions of former authorities.

1 SS (NI) Order 98, arts 10 & 11; 2 art 12

How are decisions revised?

3032 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, if appropriate, 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, conversations with the claimant

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

8. consider whether any off-set is appropriate and whether there is any overpayment (further details are in DMG Chapter 9).

Note: There is no need to look at the whole decision again (but see DMG 3160).

3033 Where a claimant makes an application for revision, the result will be either a

1. revision of the original decision (whether favourable or otherwise)

2. decision not to revise that decision i.e. a change or no change

3. refusal to give a decision.

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 operational guidance.

3034 On receipt of an appeal response request from The Appeals 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 claimant'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 DMG 3254. 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 Appeals Service where the appeal has been sent to them **must** be notified if an appeal is lapsed.

3035 The appeal proceeds if

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

2. the decision is revised, but not in the claimant's favour[1] **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 claimant's favour, see DMG Chapter 6.

1 SS & CS (D&A) Regs (NI), reg 30(1)

3036 – 3039

Burden of proof

3040 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

3041 The decision maker may need to consider the effect of law previously in force. If questions arise involving 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[2]. Any erosion in value, for example old benefit rates compared to new, is not considered[3].

1 R(SB) 48/83; 2 SS C&B (NI) Act 92, sec 103(7); 3 R(I) 1/86

Can revision apply to abolished benefits?

3042 Decisions on benefits which have been abolished can still be revised[1] in limited circumstances (see DMG Chapter 1).

1 SS A (NI) Act 92, Sch 7; Interpretation Act 78, sec 16

3043 – 3049

Correction of accidental errors

3050 Decision makers can correct accidental errors, including slips of the pen, in their own decisions or those of other decision makers[1].

1 SS & CS (D&A) Regs (NI), reg 9A(1)

What is an accidental error?

3051 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?

3052 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 SS & CS (D&A) Regs (NI), reg 9A(2)

3053 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 SS & CS (D&A) Regs (NI), reg 9A(3)

3054 Where the error is made by a tribunal it should be returned to the tribunal to consider correction. Further details are in DMG Chapter 6.

3055 – 3059

Time limits for revision

Introduction

3060 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 appeal tribunals, Commissioners and the Courts see Chapter 6.

3061 Where an application is made outside the time limits in DMG 3063 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.

3062 See DMG 3210 - 3215 for guidance on what happens when a decision is not revised.

What is the application period?

3063 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 calendar month of notification of the original decision **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 DMG 3072 - 3073).

1 SS (NI) Order 98, arts 9 & 11(1)(a); VDP Act 79, sec 3A(1)(a); SS & CS (D&A) Regs (NI), reg 3(1)

Examples of one month period

Example 1

On 18 November a claimant is notified of the decision on his claim for Income Support. The calendar month ends on the corresponding date of the following month. The one month period is 19 November to 18 December.

Example 2

On 31 December a claimant is notified of the decision on his claim for Incapacity Benefit. 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 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.

Social Fund

3064 In regulated social fund winter fuel and cold weather payment cases the date of notification is[1]

1. the date 7 days after the date on which the decision maker makes the decision to award payment to meet heating costs **or**

2. where the claimant collects the payment from the Post Office, the date on which the payment is collected **or**

3. where the payment was sent to a Post Office, but not collected, the date a replacement payment was issued **or**

4. the date on which the decision maker's response to a query on why an award has not been made is notified.

1 SS & CS (D&A) Regs (NI), reg 1(2)

3065 In Sure Start Maternity Grant and Social Fund Funeral Payment cases a decision may be revised where the application is made within[1]

1. one calendar month of notification of the decision **or**

2. the prescribed time for claiming a funeral or maternity payment if later[2] (see DMG Chapter 2) **or**

3. the appropriate period where a late application is accepted (see DMG 3072 - 3073)[2].

1 SS & CS (D&A) Regs (NI), reg 3(3) & 4; 2 SS (C&P) Regs (NI), reg 19 & Sch 4

Note 1: The decision maker should consider late applications for revision in the normal way (see DMG 3070 - 3079). For example, there may be no grounds to admit a late application where the claimant delays notification of a late award of the qualifying benefit or tax credit.

Note 2: Where the award of the qualifying benefit or tax credit is not backdated to the date of the original Sure Start Maternity Grant claim, the disallowance cannot be revised. The provisions allowing a further claim to be treated as made on an earlier date may still be considered (see DMG 2260).

Example

A claim for Sure Start Maternity Grant is disallowed because there is no entitlement to a qualifying benefit at the date of claim. Four months later, the claimant is awarded child tax credit at a rate above the family element which is backdated to a date earlier than the date of the Sure Start Maternity Grant claim. She immediately makes a further claim for Sure Start Maternity Grant. Her claim is now outside the prescribed time limit for claiming Sure Start Maternity Grant as it is more than three months since the child was born. Her claim for child tax credit was made more than 10 days after the first Sure Start Maternity Grant claim, so that the further Sure Start Maternity Grant claim cannot be treated as made on the date of the original Sure Start Maternity Grant claim. The decision maker treats the further claim as an application for revision, extends the time for applying for revision, and revises the disallowance to award Sure Start Maternity Grant.

3066 – 3069

Late applications

3070 The one month time limit for applying for revision can be extended where the conditions in DMG 3072 - 3074 apply[1].

1 SS & CS (D&A) Regs (NI), reg 4

3071 An application for an extension of the time limit can be made by

1. the claimant **or**

2. a person acting on behalf of the claimant[1].

1 SS & CS (D&A) Regs (NI), reg 4(2)

3072 The application must

1. give reasons for extending the time period **and**

2. identify the decision to be revised **and**

3. be made within 13 months of the date the decision to be revised was notified except where DMG 3073 applies[1].

1 SS & CS (D&A) Regs (NI), reg 4(3)

3073 Where the person applying for an extension of time for revision had requested a written statement of reasons within one month of notification of the decision, the 13 month period is extended by

1. where the statement was provided within one month of the notification, 14 days[1] **or**

2. where the statement was not provided until after the one month period ends, 14 days and as many days as had elapsed since the expiry of the one month period before the statement was provided[2].

1 SS & CS (D&A) Regs (NI), reg 4(3)(b)(i); 2 reg 4(3)(b)(ii)

Example 1

On 12.11.04 a claimant is notified of the decision on his claim for Income Support. The application period is 13.11.04 to 12.12.04 (ordinarily, a late application might be possible up to 12.12.05). The claimant requested a statement of reasons within the one month period, and this was provided on 10.12.04. A late application, where appropriate, can be made up to and including 26.12.05 (the 13 month late application period is extended by 14 days).

Example 2

On 9.2.05 a claimant is notified of the decision on his claim to Income Support. The application period is 10.2.05 to 9.3.05 (ordinarily, a late application might be possible up to 9.3.06). The claimant requested a statement of reasons. This was not provided until 15.3.05 (some 6 days after the initial one month application period ended). A late application, where appropriate, can be made up to and including 29.3.06 (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).

3074 The following conditions must **all** be satisfied for a late application to be accepted[1]

1. it is reasonable to grant the application for the extension of time

2. the application for revision has merit (i.e. it may be successful if the application for an extension of time is granted)

3. there are special circumstances for the lateness

4. as a result of the special circumstances the application for revision could not be made within the one month limit.

1 SS & CS (D&A) Regs (NI), reg 4(4)

3075 The term “special circumstances” is not defined in legislation. 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 Northern Ireland

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.

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 incapacity or disability, it may be appropriate to accept serious illness as a special circumstance.

3076 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 SS & CS (D&A) Regs (NI), reg 4(5)

Example 1

A claimant was awarded the middle rate of the care component of Disability Living Allowance. Three months after the decision was notified the claimant’s appointee contacted the Department asking for that decision to be reconsidered on the basis that they were waiting for a written report from a hospital consultant which, in their view, supported the case for an award at the highest rate of the care component. They said that they could not obtain the evidence earlier as the consultant was unable to provide it. The decision maker considers that the reasons for the late application were reasonable and that there were special circumstances. The decision maker reconsiders the decision.

Example 2

A claimant contacted the Department nine months after a decision awarding her Jobseeker’s Allowance was notified querying the date from which Jobseeker’s Allowance was first awarded. She said that she had heard from a neighbour that she could receive extra money if she made an application for revision. She also explained that she had not contacted the Department earlier as she was too busy and had sufficient money to live off. The decision maker decides not to allow an extension of time.

3077

3078 Where an application for revision is received but no reason for lateness is given and the application has merit (i.e. is likely to succeed) the decision maker should make enquiries as to whether there are special circumstances for the late application.

3079 Where a late application has not been accepted, an application for an extension of time cannot be renewed[1].

1 SS & CS (D&A) Regs (NI), reg 4(7)

3080 – 3100

Revision instigated by the decision maker

3101 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 SS & CS (D&A) Regs (NI), reg 3(1)(a)

3102 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 DMG 3250 et seq.

3103 – 3110

Challenging a revised decision

3111 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.

3112 – 3149

Revising decisions during the application period

Introduction

3150 Decisions challenged during the application period in DMG 3060 - 3079 et seq 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 revision and the clamant should be so advised. The claimant has a further right to appeal the decision as revised. See DMG Chapter 6 for further guidance.

3151 Where the decision is revised, but not to the claimant's advantage the appeal proceeds, but the appeal will be treated as being against the decision as revised[1]. The claimant will be given a further month in which to make representations against the revised decision[2]. See DMG Chapter 6 for further details.

1 SS & CS (D&A) Regs (NI), reg 30(3); 2 reg 30(4)

3152 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 a revision. The decision maker may need further evidence or information to establish if the decision was based on incorrect facts or law.

3153 Where the decision maker notices an error, the decision can be looked at again even if it is noticed outside the time limits. (See DMG 3250 et seq.)

3154 – 3159

When should a decision be revised?

3160 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 the 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); VDP Act 79, sec 3A(2)

Example 1

A lone parent claims Income Support for herself and two children. She works part-time in the evenings as an office cleaner. The decision maker awards Income Support 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 claimant leaves employment. The decision maker decides that just cause has not been shown, and a 16 week sanction is imposed. The claimant disputes the period of the sanction because the maximum period for a sanction is 26 weeks and the claim for jobseeker's allowance was not made until 12 weeks after leaving the job. The decision maker decides to change the sanction to 4 weeks because the fact that the claim had not been made until 12 weeks after leaving the employment had not been taken into account. No other aspect of the decision is considered.

3161 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 claimant 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?

3162 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 DMG 3160).

3163 Although it is **not** a requirement to obtain any further evidence, there will be occasions when further evidence may be 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.

3164 Should further evidence be required the claimant should be contacted by the most appropriate method such as by telephone, letter, office interview or visit.

3165 Where further evidence or information is required from the claimant in order to deal with an application for revision, the claimant is notified that the 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.

3166 The decision may be revised on the basis of the

1. evidence where this is supplied with 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 SS & CS (D&A) Regs (NI), reg 3(2)

3167 – 3199

Which decisions cannot be revised?

Social Fund

3200 Decisions on discretionary Social Fund payments, such as budgeting loans, crisis loans and community care grants, are not subject to the revision process[1]. These decisions are reviewed by an appropriate officer[2] (see Social Fund specific guidance).

1 SS (NI) Order 98, art 10; 2 art 36 & art 38

Attendance Allowance, Disability Living Allowance and Employment and Support Allowance - special rules for the terminally ill

3201 A decision on Attendance Allowance or Disability Living Allowance cannot be revised, where the application is made within the one month time limit[1], on the grounds that the person is terminally ill[2], unless the person or another person intending to act on their behalf with or without their knowledge applies for revision or supersession expressly on the ground that the person is terminally ill. For Employment and Support Allowance the application for revision can only be made by the terminally ill claimant, not by any other person[3].

1 SS & CS (D&A) Regs (NI), reg 3(9)(b); 2 SS C&B (NI) Act 92, sec 66(2)(a); 3 SS & CS (D&A) Regs (NI), reg 3(9)(c)

3202 This applies even though the claim may not have been made expressly because the person was terminally ill[1].

1 SS C&B (NI) Act 92, sec 66(1), 72(5) & 73(12)

Industrial accident decisions

3203 Decisions about industrial accidents can only to be revised in limited circumstances. See DMG 3300 - 3306 for further guidance.

3204 – 3209

What happens when a decision is not revised?

3210 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.

3211 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 DMG 3024 - 3027 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(IS) 15/04

Example

Following an industrial accident and medical advice, the decision maker determines that the claimant is 7% disabled and disallows his claim for Industrial Injuries Disablement benefit. The claimant challenges the assessment and the benefit decision. Following re-assessment, the decision maker determines that the degree of disablement should have been 11% and revises the assessment decision, but decides not to revise the disallowance. The claimant has one month from the date of notification that the benefit decision is not revised in which to appeal the original benefit decision. The revised assessment decision has a fresh right to appeal.

3212 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 4.11.05 the decision maker awards the higher rate of the mobility component from 22.6.05, the date of the Disability Living Allowance claim. The claimant appeals on 18.11.05 on the grounds that he is also entitled to the care 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 lowest rate of care component in addition to the mobility component is effective from 31.10.05, after the qualifying period is satisfied. The appeal goes ahead, and the tribunal is limited to considering whether the care component should be awarded for the period 22.6.05 to 30.10.05. If the tribunal awards a higher rate of the care component, the supersession decision may be revised to take account of the tribunal's decision.

3213 If the decision maker revises the decision to the detriment of the claimant, the notification to the claimant should make clear that the appeal will proceed against the original decision as revised unless the claimant asks for it to be withdrawn. For further details, see DMG Chapter 6.

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

3214 – 3221

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

3222 The decision maker may decide not to make a decision on a lookalike case while a lead case appeal is pending before the Courts (see DMG Chapter 6 for guidance on staying cases).

3223 – 3229

Issues for decision by Her Majesty's Revenue and Customs

Introduction

3230 Since 5.7.99, Her Majesty's Revenue and Customs (formerly the Board of the Inland Revenue) has been 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 (T of F) (NI) Order, art 8(1)

3231 Entitlement to Social Security contributory benefits depends on the contribution conditions being satisfied. In practice the National nsurance contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. See DMG Chapter 1 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.

Note: There are restrictions on revision in industrial accident cases - see DMG 3300 - 3306.

When to refer to Her Majesty's Revenue and Customs

3232 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 SS & CS (D&A) Regs (NI), reg 11A(1) & (2)

Example

A claim for contribution-based 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.

3233 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 application.

1 SS & CS (D&A) Regs (NI), reg 11A(3)

3234 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. The appeal should not be lodged with The Appeals Service.

Action when Her Majesty's Revenue and Customs' decision received

3235 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.

3236 Where a decision had been made on an application for revision in accordance with DMG 3233 **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 SS & CS (D&A) Regs (NI), reg 11A(4)(a)

3237 Where no decision had been made on an application for revision in accordance with DMG 3233 **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 SS & CS (D&A) Regs (NI), reg 11A(4)(b)

Example

A claim for Incapacity Benefit 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.

3238 Where the reference was made following an appeal as in DMG 3234 the decision maker should consider whether the decision under appeal can be revised or superseded. See DMG Chapter 6 for guidance.

3239 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 SS & CS (D&A) Regs (NI), reg 11A(5)

Late award of contributions and credits

3240 A decision not to award a contributory benefit, or to award it at a lesser rate, may be revised at any time if 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 as a result of the late contribution or credit the original decision would have awarded benefit or would have awarded it at a higher rate[1].

1 SS & CS (D&A) Regs (NI), reg 3(8B)

Class 2 national insurance contributions

3241 The deadline for the payment of Class 2 national insurance contributions from the 2015/16 tax year onwards is 31 January of the following calendar year[1]: for example, Class 2 national insurance contributions due in the 2015/2016 tax year are due to be paid by 31.1.17. This means the deadline for paying these contributions does not coincide with the start of the benefit year, so it is possible that a claim may be made for a contributory benefit where entitlement relies on as yet unpaid contributions. This is likely to have a particular impact on claims for contribution-based Employment and Support Allowance and contribution-based Jobseeker's Allowance.

Note: Class 2 national insurance contributions are only relevant in contribution-based Jobseeker's Allowance claims from share fishermen and volunteer development workers.

1 The National Insurance Contributions Act 2015

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 contribution-based Employment and Support Allowance relies on satisfaction of the contribution conditions in the tax years 2014/15 and 2015/2016. At the point of claim the claimant had not fled his self-assessment return for 2015/2016 – he has until 31.1.17 to do so. Consequently his Class 2 national insurance liability has not been established and so no Class 2

national insurance contributions have been paid. The claim to Employment and Support Allowance is therefore disallowed.

3242 Payments of Class 2 national insurance contributions which are made by 31 January are 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 claims to contribution-based Employment and Support Allowance and contribution-based Jobseeker's Allowance may be revised in the claimant's favour. Similarly, where a decision on Retirement Pension, State Pension or Bereavement Benefit is made on a claim from a self-employed person before the contributions for the relevant benefit year have been paid, and the person pays Class 2 national insurance contributions for that tax year by the due date, the decision to award the benefit may be revised or superseded if the payment of the contributions means that the benefit should be paid at a higher rate or that the benefit is now payable.

3243 The Regulations also provide for cases where benefit has been awarded and the national insurance contributions upon which an award of benefit was based are repaid or refunded to the contributor. In these cases the decision to award benefit may be revised to reduce the amount of benefit payable or to disallow benefit.

Contributions paid by due date

3244 A decision on a claim to contribution-based Jobseeker's Allowance or contribution-based 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 after the due date is treated as paid by the due date for the purpose of entitlement to the benefit[2] **and**

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

1 SS & CS (D&A) Regs (NI), reg 3(8E);
2 SS (Crediting and Treatment of Contributions, and NI Numbers) Regs (NI) 01, reg 7

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 satisfaction of the contribution conditions for the tax years 2015/2016 and 2016/2017. The claimant started self-employment in April 2016. At the point of claim he has not fled his self-assessment for 2016/2017. His Class 2 liability has not yet been established and no Class 2 national insurance contributions have been paid. 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 and the original decision to disallow Employment and Support Allowance is revised in the claimant's favour.

3245 Decisions to award or to decide that

1. Bereavement Benefit **or**

2. Category A or Category B Retirement Pension **or**

3. State Pension

is not payable may be revised[1] at any time where on or after the date of the decision a late paid contribution is treated as paid for the purpose of entitlement to the benefits by Regulations and as a result the person is now entitled to the benefit.

1 SS & CS (D&A) Regs (NI), reg 3(8J);
2 SS (Crediting and Treatment of Contributions, and NI Numbers) Regs (NI) 01, reg 7(1)

Contributions are refunded

3246 A decision to award

1. contribution-based Jobseeker's Allowance

2. contribution-based Employment and Support Allowance

3. Bereavement Support Payment

4. Widowed Parent's Allowance

5. Bereavement Payment

6. Category A or Category B Retirement Pension **or**

7. State Pension

may be revised[1] at any time where contributions are repaid or returned to the contributor who is in receipt of a contributory benefit, where this means the person no longer satisfies the contribution conditions of entitlement to the benefit.

1 SS & CS (D&A) Regs (NI), reg 3(8F); 2 reg 3(8H)

Example

Contribution-based 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 2015/16 and 2016/17 relevant income tax years. Class 2 national insurance contributions for 2016/17 were paid on the basis of profits declared on a Self-Assessment return filed on 31 January 2018. In March 2018 Her Majesty's Revenue and Customs adjusts the declared profits for 2016/17 to a figure below which no liability for Class 2 national insurance contributions 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 ceases to satisfy the contribution conditions for contribution-based Employment and Support Allowance. The decision to award contribution-based Employment and Support Allowance is revised so as to disallow the award.

3247 A decision to award

1. Bereavement Benefit **or**

2. Category A or Category B Retirement Pension **or**

3. State Pension

may be revised[1] at any time where on or after the date of the decision contributions are returned to the contributor[2] and, as a result, the original decision was more advantageous to the claimant than it would otherwise have been.

1 SS & CS (D&A) Regs (NI), reg 3(8I); reg 3(8J); 2 reg 3(8H)

Retirement Pension - late payment of class 3 contributions

3248 Where

1. a person reaches pensionable age **and**

2. that person makes a late claim for Retirement Pension **and**

3. the decision maker disallows the claim because

3.1 for category A Retirement Pension, the claimant does not satisfy the contribution conditions **or**

3.2 for category B Retirement Pension, the claimant's spouse or civil partner does not satisfy the contribution conditions **and**

4. Her Majesty's Revenue and Customs accepts late payment of class 3 contributions by the claimant, spouse or civil partner[1] **and**

5. the contributions are treated as paid on an earlier date[2]

the decision maker should revise the disallowance[3].

1 SS (Contributions) Regs 2001, reg 50A;
2 SS (Crediting and Treating of Contributions, and NI Numbers) Regs (NI) 01, reg 6A;
3 SS & CS (D&A) Regs (NI), reg 11A(4)(a)

Note: See DMG 3471 for guidance on the effective date of this decision.

Payment of additional class 3 contributions for past periods

3249 The decision maker may revise a decision, either to award or disallow Retirement Pension, at any time where a class 3 contribution is

1. paid under special rules[1] (see DMG Chapters 58 and 75) **and**

2. treated as paid on a date on or before the date the decision was made[2].

Note: The normal rules on revision and supersession apply if the contributions are treated as paid on a date after the decision is made.

1 SS C&B (NI) Act 92, sec 13A; 2 SS & CS (D&A) Regs (NI), reg 3(8C)

Revising decisions at any time

[See DMG Memo Vol 1/132]

Introduction

3250 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)

Revision while appeal is going on

3251 The decision maker may revise at any time **before** the appeal is determined where an appeal, including a late appeal, is made within the time limits - see DMG Chapter 6[1].

1 SS & CS (D&A) Regs (NI), reg 3(4A)

3252 This allows the decision maker to revise the decision under appeal where action to revise does not start within the one month time limit (see DMG 3101). 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.

3253 Where new information is provided after the response has been written and sent to The Appeals Service, a revision should be considered. Where the decision is revised, the Appeals Service should be informed **immediately**, especially where the appeal is to be lapsed.

When should a decision not be revised

3254 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 where

1. the revision does not address the issue which is the subject of the appeal **and**

2. it is clear that a further appeal will be made.

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

- with Disability Living Allowance you can award the highest rate of the care and mobility component

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

Where the decision would not give the claimant everything as above, you would be making a 'partial revision' - see examples below. Before you make a partial revision you must contact the claimant and/or their representative, to discuss the new decision.

Example 1

The decision maker awards the lowest rate care and mobility component of Disability Living Allowance. On appeal the decision maker can award the highest rate of the care component, but not the mobility component. As the Disability Living Allowance award is still less than the maximum allowable, the decision maker contacts the claimant to discuss the potential revision. If agreement is reached, the decision can be revised and the appeal will lapse.

Example 2

The decision maker decides that there is a Jobseeker's Allowance overpayment of £3000. There is no change at mandatory reconsideration stage. 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. If agreement is reached, the decision can be revised and the appeal will lapse.

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 17.1.07 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 19.1.07. 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 response.

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 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 response to the tribunal should point out the error in the calculation.

Example 4

The decision maker awards the lowest rate care and mobility component of Disability Living Allowance. The claimant appeals on the grounds that they satisfy the conditions for the higher 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.

3255 Where the decision is not revised, but the decision maker considers it to be incorrect, the response 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 DMG Memo Vol 1/132]

3256 A decision made by the Department either initially or on a supersession can be revised at any time for official error[1]. See DMG 3270 et seq where the official error is due to incorrect recording of credits[2].

1 SS & CS (D&A) Regs (NI), reg 3(5)(a); 2 reg 3(5ZA)

3257 Where the claimant applies for a decision to be revised for official error outside the application period in DMG 3063 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] AACR 14

Meaning of official error

3258 An official error is an error made by an officer of the

1. Department **or**

2. Her Majesty's Revenue and Customs **or**

3. a person employed by a designated authority acting on behalf of the authority[1]

which no person outside the Department or authority caused, or materially contributed to[1].

Example

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

1 SS & CS (D&A) Regs (NI), reg 1(2)

3259 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, Upper Tribunal or Court cannot be revised. The decision should be superseded instead (see DMG Chapter 4).

3260 Applications for supersession may be treated as applications for revision where it would be more appropriate to apply the revision rules[1].

1 SS & CS (D&A) Regs (NI), reg 3(10)

3261 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.

3262 – 3269

When should a decision not be revised for official error

3270 Where

1. the decision which would otherwise be revised for official error is one awarding a benefit in DMG 3271 **and**

2. the award was based on the contributions conditions being satisfied wholly or partly due to credits in the tax years[1] from 1993-94 to 2007-08 for

2.1 incapacity for work **or**

2.2 approved training **and**

3. the official error is because the credits information sent from the Department to Her Majesty's Revenue and Customs was not recorded correctly **and**

4. the error resulted in an award which is more advantageous than it should be

the decision should not be revised[2].

1 SS C&B (NI) Act 92, sec 121(1); 2 SS & CS (D&A) Regs (NI), reg 3(5ZA), (5ZB) & (5ZC)

3271 The benefits in DMG 3270 are

1. Bereavement Benefit

2. Bereavement Support Payment

3. Contribution-based Employment and Support Allowance

4. contribution-based Jobseeker's Allowance

5. Incapacity Benefit

6. Retirement Pension

7. Widow's Benefit.

3272 – 3279

Revision for error of fact

3280 **[See DMG Memo Vol 1/128]** Decisions can be revised at any time where the decision maker's decision was more favourable to 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 DMG Chapter 4.

1 SS & CS (D&A) Regs (NI), reg 3(5)(b)

Exceptions for disability and incapacity benefits

3281 This does not apply where the error of fact relates to disability and incapacity determinations for Attendance Allowance, Disability Living Allowance, Industrial Injuries Disablement Benefit, Severe Disablement Allowance and Incapacity for Work and limited capability for work determinations for Employment and Support Allowance. See DMG 3283 - 3294 for further guidance.

Note: Where the error relates to disability or incapacity determinations, and the conditions in DMG 3283 - 3287 do not apply, the supersession rules apply instead. See DMG Chapter 4 for guidance.

3282 Where the material fact is about other issues, such as payability or earnings, the normal rule in DMG 3280 applies[1].

1 SS & CS (D&A) Regs (NI), reg 3(5)(d)

Attendance Allowance/Disability Living Allowance

3283 A decision by the decision maker awarding Attendance Allowance/Disability Living Allowance may be revised at any time where[1]

1. the decision maker was ignorant of, or mistaken as to, a fact relevant to the question of whether the claimant satisfies any of the disability conditions for Attendance Allowance or for the care or mobility components of Disability Living Allowance **and**

2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**

3. the decision maker is satisfied that when the original decision was made, the claimant knew or could reasonably have been expected to know the fact, and that it was relevant to the disability determination.

1 SS & CS (D&A) Regs (NI), reg 1(2) & 3(5)(c)

Industrial Injuries Disablement Benefit

3284 A decision awarding an Industrial Injuries Disablement Benefit following a determination as to the existence or extent of any disablement[1], that a disease is prescribed in relation to him or her and when he or she developed that disease[2], may be revised at any time where[3]

1. the decision maker was ignorant of, or mistaken as to a fact relevant to those questions **and**

2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**

3. the decision maker is satisfied that when the original decision was made, the claimant knew or could reasonably have been expected to know the fact, and that it was relevant to the disability determination.

1 SS C&B (NI) Act 92, sec 103; 2 sec 108; 3 SS & CS (D&A) Regs (NI), reg 1(2) & 3(5)(c)

Severe Disablement Allowance

3285 A decision to award Severe Disablement Allowance following a determination that a person is at least 80% disabled[1], may be revised at any time where[2]

1. the decision maker was ignorant of, or mistaken as to a fact relevant to that question **and**

2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**

3. the decision maker is satisfied that when the original decision was made the claimant knew or could reasonably have been expected to know the fact and that it was relevant to that decision.

1 SS C&B (NI) Act 92, sec 68; 2 SS & CS (D&A) Regs (NI), reg 1(2) & 3(5)(c)

Incapacity for work

3286 A decision awarding Incapacity Benefit, Income Support, Severe Disablement Allowance or credits[1] where there has been a determination that a person is incapable of work following a personal capability assessment, or is to be treated as incapable of work under certain regulations[2], may be revised at any time where[3]

1. the decision maker was ignorant of, or mistaken as to any fact relevant to the question of incapacity for work **and**

2. as a result of the ignorance or mistake, the decision was better for the claimant than it would otherwise have been **and**

3. the decision maker is satisfied that when the original decision was made the claimant knew or could reasonably have been expected to know the fact and that it was relevant to the incapacity for work determination.

1 SS C&B (NI) Act 92, sec 22(5); 2 SS (IW) (Gen) Regs (NI), regs 10 & 27; 3 SS & CS (D&A) Regs (NI), reg 1(2) & 3(5)(c)

3287 For guidance on the meaning of "reasonably expected to know", see DMG Chapter 4.

Employment and Support Allowance

3288 A decision awarding Employment and Support Allowance or credits where there has been a determination that a person has, or is treated as having limited capability for work, may be revised at any time where

1. the decision maker was ignorant of, or was mistaken as to some material fact in relation to the limited capability for work determination **and**

2. as a result of the ignorance or mistake the decision was better for the claimant than it would otherwise have been **and**

3. the decision maker is satisfied that when the original decision was made the claimant knew or could reasonably have been expected to know the fact and that it was relevant to the limited capability for work determination[1].

1 SS & CS (D&A) Regs (NI), reg 1(2) & 3(5)(c)

3289 Where the facts relate to the limited capability for work determination and the condition in DMG 3288 **3.** is not satisfied, the supersession rules apply instead[1].

1 SS & CS (D&A) Regs (NI), reg 6(2)(b); SS (NI) Order 98, art 11(5)

3290 Where the fact is not in relation to the limited capability for work determination, the normal revision rules apply[1].

1 SS & CS (D&A) Regs (NI), reg 3(5)(d)

3291 A limited capability for work determination[1] is a determination whether a person

1. has limited capability for work following application of the test for limited capability for work **or**

2. is treated as having limited capability for work[2].

1 SS & CS (D&A) Regs (NI), reg 1(2); 2 ESA Regs (NI), reg 20

3292 A person has limited capability for work if

1. their capability for work is limited by their physical or mental condition **and**

2. the limitation is such that it is not reasonable to require them to work[1].

1 WR Act (NI) 07, sec 1(4); SS & CS (D&A) Regs (NI), reg 1(2)

3293 A supersession decision made in consequence of a failure determination can be revised at any time if it contained an error to which the claimant did not materially contribute[1].

1 SS & CS (D&A) Regs (NI), reg 3(5C)

3294 A failure determination means a determination by the decision maker under prescribed legislation[1] that a claimant has failed without good cause to satisfy a requirement to

1. take part in a work-focused interview[2] **or**

2. undertake work related activity[3].

1 SS & CS (D&A) Regs (NI), reg 1(2); ESA Regs (NI), reg 61(2); ESA (WRA) Regs (NI), reg 8(2); 2 ESA Regs (NI), reg 54; 3 ESA (WRA) Regs (NI), reg 3

Awards made to impostors

3295 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 DMG 2701 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

3296 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

3297 When considering the most likely explanation for the way a claimant has acted for the purposes of DMG 3296, 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.

3298 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.

3299 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.

Industrial accident decisions

3300 A decision that an accident was or was not an industrial accident may only be revised[1] if

1. there has been a non-disclosure or misrepresentation of fact **and**

2. the fact was material **and**

3. the non-disclosure or misrepresentation was wilful[2].

1 SS & CS (D&A) Regs (NI), reg 3(5)(b); 2 SS (NI) Order 98, art 29(7)

3301 Misrepresentation occurs when a person represents, as a material fact, information which is found to be incorrect or incomplete.

3302 The Courts have considered the meaning of the word wilful:

"Wilful is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used, is a free agent, and that what has been done arises from a spontaneous action of his will. It amounts to nothing more than this that he knows what he is doing, and intends to do what he is doing, and is a free agent"[1].

Example

The claimant, a market stall attendant stated that his eye was injured by hot ash from a passer-by's pipe blowing into his eye. Later, it became apparent that this was a wilful misrepresentation because this version of events was never the claimant's genuine belief[2].

1 per Browen LJ Re Young and Harston 31 ChD, 174; 2 R(I) 71/54

Decisions where the restriction does not apply

3303 The restriction in DMG 3300 does not apply to any decision which was based on any of the preliminary questions on industrial accidents[1]. These are

1. whether an accident happened at all

2. whether the claimant suffered personal injury

3. whether the claimant suffered personal injury by accident.

1 SS (NI) Order 98, art 29(6); R(I) 11/62

Decisions where the restriction applies

3304 An accident whereby a person suffers personal injury shall be deemed in relation to that person to be an industrial accident if

1. it arises out of and in the course of the person's employment[1] **and**

2. that employment is employed earner's employment for the purposes of the Order[2] **and**

3. payment of benefit is not precluded because the accident happened outside Northern Ireland[3].

1 SS (NI) Order 98, art 29(6)(a); 2 art 29(6)(b); SS C&B (NI) Act 92;
3 SS C&B (NI) Act 92, sec 94(5); SS (NI) Order 98, art 29(6)(c)

3305 Decisions given based on the conditions in DMG 3304 can only be revised where the criteria in DMG 3300 apply[1].

1 SS (NI) Order 98, art 29(7)

3306 A decision that an accident was not an industrial accident because the employment was not employed earner's employment can only be revised where DMG 3300 applies. This is because the employed earner's employment question is one of the deeming provisions under which an accident is deemed to be an industrial accident.

3307 – 3319

Revision following appeal against an earlier decision

3320 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 a supersession.

3321 Where the decision maker

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

2. the claimant makes an appeal 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 A **or**

3.2 on a further claim **and**

4. decision A is changed on appeal **and**

5. the decision maker would have made decision B differently if, at the time they had been aware of the tribunal's decision

the decision maker may revise decision B[1].

1 SS & CS (D&A) Regs (NI), reg 3(5A)

Example 1

A claimant in receipt of Incapacity Benefit is disallowed following a personal capability assessment in which he scored 5 points. He makes an appeal against the disallowance. He also claims Incapacity Benefit again. The second Incapacity Benefit claim is disallowed. The appeal against the first disallowance is successful, and the tribunal awards Incapacity Benefit for the period up to date of the second claim. The decision maker revises the second disallowance, and awards Incapacity Benefit.

Example 2

A claimant in receipt of an indefinite award of Disability Living Allowance care and mobility components at the lower rates notifies on 21.5.02 that he has more care needs. The decision maker does not accept that a higher rate of care component is appropriate, and on 4.6.02 decides not to supersede the awarding decision. The claimant appeals. He also applies to the decision maker for a higher rate of mobility component following an accident on 28.6.02. On 18.7.02 the decision maker supersedes the awarding decision to award the higher rate mobility component for two years from 28.9.02, but does not increase the care component. The tribunal hears the appeal on 16.9.02, and awards the middle rate of the care component from 21.5.02. The decision maker revises the decision of 18.7.02 to award the middle rate of the care component from 28.9.02 and the higher rate of mobility component for the period 28.9.02 - 27.9.04.

3322 – 3329

Revision of Incapacity Benefit awards

3330 If a person cannot be treated as incapable because they make a claim within six months of a previous personal capability assessment and the incapacity is the same or not significantly worse (see DMG 13630 - 13631), their claim cannot be decided straight away[1]. The person normally has to wait for a decision on their claim until the personal capability assessment is actually carried out. However, the person can be treated as incapable of work if the six months period ends before application of the personal capability assessment. This means that the claim can be decided, and Incapacity Benefit awarded from that date. No award can be made for the period before the claimant is treated as incapable.

1 SS (IW) (Gen) Regs (NI), reg 28(2)(b)

3331 If the person subsequently passes the personal capability assessment, and is found to be actually incapable of work, the personal capability assessment determination applies to all periods of incapacity not covered by the determination treating them as incapable. The decision awarding Incapacity Benefit can be revised at any time so as to award from the date of claim[1].

1 SS & CS (D&A) Regs (NI), reg 3(5B)

3332 – 3339

Revising decisions on Jobseeker's Allowance sanctions

3340 Decisions on whether Jobseeker's Allowance is payable for any period because a sanction has been imposed[1] can be revised at any time. For further guidance on sanctions, see DMG Chapter 34. In order to allow an intermediate level sanction to take effect on a new claim a decision to award Jobseeker's Allowance can be revised[2] where a decision is made under prescribed regulations that the amount of that award is to be reduced[3].

1 SS & CS (D&A) Regs (NI), reg 3(6); JS (NI) Order 95, art 19A, 19B, 21, 22 & 22A; JSA Regs (NI), reg 27A;
2 SS & CS (D&A) Regs (NI), reg 3(6B); 3 JSA Regs (NI), reg 69B & 70

Example

A claimant in receipt of Jobseeker's Allowance fails to attend a course as directed. A sanction was imposed for two weeks. The decision is appealed to a tribunal. A second sanction of four weeks is imposed after the jobseeker fails to attend another course as directed. This decision is also appealed. The appeal for the first sanction is allowed. The decision maker revises the second sanction to reduce the period to two weeks, and lapses the appeal.

Revision of Employment and Support Allowance awards

3341 A decision awarding Employment and Support Allowance can be revised[1] if

1. the decision was made on the basis that the claimant has made and is pursuing an appeal against a decision that they did not have limited capability for work (the original decision) **and**

2. the appeal to the tribunal in relation to the original decision is successful.

1 SS & CS (D&A) Regs (NI), reg 3(5E)

3342 A decision awarding Employment and Support Allowance can be revised[1] if

1. 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 the linking rules[2] **and**

2. the assessment phase ended in the previous award, or the period of limited capability for work was more than 13 weeks[3].

1 SS & CS (D&A) Regs (NI), reg 3(5F); 2 ESA Regs (NI), reg 145(1); 3 reg 7(1)(b)

3343 An award of 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 condition in DMG 3343 **1.** was not satisfied at the time when the claim was made **and**

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

1 SS & CS (D&A) Regs (NI), reg 3(5D); 2 ESA Regs (NI), reg 30

Example

A claimant is sent a questionnaire on 2.7.12 but it is not returned within the prescribed time. The decision maker determines that the claimant is to be treated as not having limited capability for work and the award of Employment and Support Allowance is terminated from 1.8.12. A fresh claim to Employment and Support Allowance is made on 3.9.12. The questionnaire is not returned until 5.11.12 and Employment and Support Allowance is paid from that date. The claimant attends a work capability assessment in February 2013 and the decision maker determines that they have limited capability for work. The decision awarding Employment and Support Allowance from 5.11.12 is revised so that Employment and Support Allowance is awarded from 3.9.12.

3344

3345 Where a claimant is reassessed for the purposes of Employment and Support Allowance[1] and Employment and Support Allowance is not awarded and

1. they appeal that decision to the appeal tribunal **and**

2. before or after that decision is appealed they are awarded Income Support or Jobseeker's Allowance **and**

3. their appeal is successful

then the decision to award Income Support or Jobseeker's Allowance may be revised[2].

1 ESA (TP&HB) (EA) Regs (NI); 2 SS & CS (D&A) Regs (NI), reg 3(5H)

3346 Where a decision has been made to terminate the award of contribution-based Employment and Support Allowance under specified legislation[1] and it is subsequently determined, in relation to the period of entitlement before that decision that the claimant has or is treated as having limited capability for work related activity, then the decision to terminate entitlement may be revised[2]. The previous decision awarding contribution-based Employment and Support Allowance should be superseded to award the support component. See DMG 4709 for guidance on the effective date rule.

1 WR Act (NI) 07, sec 1A; 2 SS & CS (D&A) Regs (NI), reg 3(5J)

3347 A decision awarding Employment and Support Allowance may be revised at any time where

1. it is made immediately following the last day for which the claimant was treated as capable of work or not having limited capability for work under specified legislation[1] and the period lasted 13 weeks **and**

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

1 SS & CS (D&A) Regs (NI), reg 3(5I)(a); 2 reg 3(5I)(b)

Revision of Income Support and Jobseeker's Allowance awards following successful Employment and Support Allowance appeal

3348 Where a claimant's award of Employment and Support Allowance is terminated because they do not have limited capability for work and

1. they appeal that decision to the Appeal Tribunal **and**

2. before or after that decision is appealed they are awarded Income Support or Jobseeker's Allowance **and**

3. their appeal is successful

then the decision to award Income Support or Jobseeker's Allowance may be revised[1].

1 SS & CS (D&A) Regs (NI), reg 3(5G)

3349

Revising decisions where there is a late award of a qualifying benefit

3350 **[See DMG Memo Vol 1/123, 4/151, 6/97, 8/100, 9/49 & 13/123 & DMG Memo Vol 1/124, 4/135, 5/117, 8/102, 9/51, 10/79 & 13/125] [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]** Where

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

2. the claimant or a member of his family is awarded another relevant benefit or an increase in another relevant benefit for a period which includes the date on which the award of the first benefit took effect

the first decision can be revised[1].

1 SS & CS (D&A) Regs (NI), reg 3(7)

Example

A claimant is awarded Income Support from 19.6.00 because he is incapable of work. His wife is also entitled to Disability Living Allowance care component at the lowest rate from 6.4.92. On 25.10.00 a tribunal allows an appeal, and increases the wife's Disability Living Allowance care component award to the middle rate from the date of claim. The decision maker revises the Income Support award to include the disability premium from 19.6.00.

3351 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. Scottish Adult Disability Living Allowance[2]

12. Adult Disability Payment[2]

13. Child Disability Payment[2].

1 SS (NI) Order 98, art 9(3); 2 SS & CS (D&A) Regs (NI), reg 1(2)

3352 Credits are not an award of a relevant benefit. For example, a claimant in receipt of Income Support because of incapacity cannot be awarded the disability premium earlier than the 365th day, even if it is subsequently determined for the purposes of incapacity credits that he was incapable of work from a date earlier than the date he became entitled to Income Support.

3353 The term "family" in DMG 3350 has the same meaning as in Income Support legislation[1]. For further guidance, see DMG Chapter 22.

1 SS & CS (D&A) Regs (NI), reg 1(2); SS C&B (NI) Act 92, sec 133(1)

Income-related Employment and Support Allowance, Income Support, income-based Jobseeker's Allowance and State Pension Credit

3354 Where

1. the decision maker awards entitlement to income-related Employment and Support Allowance, Income Support, income-based Jobseeker's Allowance or State Pension Credit **and**

2. the claimant has a non-dependant living with them[1] **and**

3. as a result the claimant is not entitled to severe disability premium[2] or an additional amount as a severely disabled person[3] **and**

4. the non-dependant is awarded benefit for a period which includes the date on which the claimant's income-related Employment and Support Allowance, Income Support, income-based Jobseeker's Allowance or State Pension Credit award took effect so that severe disability premium[4] or an additional amount is now applicable[5]

5. the income-related Employment and Support Allowance, Income Support, income-based Jobseeker's Allowance or State Pension Credit award can be revised[6]. See DMG Chapters 23, 44 and 78 for further guidance.

1 ESA Regs (NI), reg 71; IS (Gen) Regs (NI), reg 3; JSA Regs (NI), reg 2; SPC Regs (NI), Sch 1, para 1(1)(a)(ii), (b)(ii) or (c)(iii); 2 ESA Regs (NI), reg 67; IS (Gen) Regs (NI), reg 17(1)(d); JSA Regs (NI), reg 83(e) & 86A(c); 3 SPC Regs (NI), reg 6(4); 4 ESA Regs (NI), Sch 4, para 6(4)(a); IS (Gen) Regs (NI), Sch 2, para 13(3)(a); JSA Regs (NI), Sch 1, para 20I(3)(a); 5 SPC Regs (NI), Sch 1, para 2(2)(a); 6 SS & CS (D&A) Regs (NI), reg 3(7ZA)

Example

A non-dependant is living with an Income Support claimant. The non-dependant, who was awarded Disability Living Allowance at the lowest rate (from 15.3.04) is appealing the relevant decision. The presence of the non-dependant means that the Income

Support claimant cannot receive any severe disability premium in connection with their Income Support claim which they made on 19.6.04. On 25.10.04 an appeal tribunal awards Disability Living Allowance to the non-dependant at the middle rate from 15.3.04. This now means that the non-dependant no longer disqualifies the Income Support claimant from receiving the severe disability premium. The decision maker revises the claimant's Income Support award to include the severe disability premium from 19.6.04.

Revision in Reduced Earnings Allowance cases

3355 Where

1. a decision that the claimant is not suffering from a prescribed disease, or has no loss of faculty[1], is revised by the decision maker or changed on appeal to a tribunal **and**

2. a claim to Reduced Earnings Allowance has been disallowed because there was no assessment of disablement[2]

the decision maker can revise the Reduced Earnings Allowance decision so as to award Reduced Earnings Allowance[3] where the remaining conditions of entitlement are satisfied.

1 SS C&B (NI) Act 92, sec 103; 2 Sch 7, paras 11 & 12; 3 SS & CS (D&A) Regs (NI), reg 3(7A)

Revising Income Support decisions when incapacity decisions are appealed

3356 Where

1. the decision maker awards Income Support at a reduced rate pending an appeal against a decision which includes a determination that they are not incapable of work[1] **and**

2. the appeal

2.1 succeeds **or**

2.2 lapses

the Income Support decision may be revised[2].

1 IS (Gen) Regs (NI), reg 22A; 2 SS & CS (D&A) Regs (NI), reg 3(7B)

Example

The Incapacity Benefit decision maker supersedes and terminates an award of Incapacity Benefit after the claimant scored less than 15 points on the personal capability assessment and the claimant immediately appeals. The Income Support

decision maker supersedes the Income Support award to remove the disability premium. The claimant remains entitled to Income Support at a reduced rate pending the Incapacity Benefit appeal. When an appeal tribunal allows the appeal against the Incapacity Benefit decision maker's decision, the Income Support decision maker revises their own decision, restoring Income Support in full, including the disability premium.

3357 When

1. an award of Income Support is superseded and terminated following a determination that the claimant is not incapable of work **and**

2. they claim and are awarded Jobseeker's Allowance **and**

3. the decision that embodies the determination that they are not incapable of work is revised or successfully appealed

the decisions to terminate Income Support and to award Jobseeker's Allowance can be revised[1].

1 SS & CS (D&A) Regs (NI), reg 3(7CC)

3358 Where

1. an award of Income Support is superseded and terminated following a determination that the claimant is not incapable of work **and**

2. the decision including that determination is

2.1 revised **or**

2.2 the subject of an appeal so that entitlement to Income Support at a reduced rate can be awarded[1]

the Income Support termination may be revised[2]. For guidance on reduced rate Income Support, see DMG Chapter 20.

1 IS (Gen) Regs (NI), reg 22A; 2 SS & CS (D&A) Regs (NI), reg 3(7C)

Example

The Incapacity Benefit decision maker supersedes and terminates an award of Incapacity Benefit after the claimant scored less than 15 points on the personal capability assessment. The Income Support decision maker supersedes the Income Support award and ends entitlement as there has not yet been an appeal against the Incapacity Benefit decision. The last day the claimant is paid Income Support is 11.2.05. The claimant later appeals the Incapacity Benefit decision and the Income Support decision maker revises the decision ending Income Support, which is then paid at a reduced rate, from 12.2.05, pending determination of the Incapacity Benefit

appeal. When later the claimant's appeal against the Incapacity Benefit decision is upheld by the tribunal, the Income Support decision maker revises the decision which held Income Support was payable at a reduced rate and restores it in full, including the disability premium.

Note: Where the Income Support termination is confirmed on appeal, the tribunal's decision can be superseded - see DMG Chapter 4.

3359 Where the claimant is entitled to Income Support on the basis of incapacity for work, and is also in another prescribed category of person such as being a lone parent, the effect of a decision embodying a determination that they are capable of work is that the Income Support awarding decision is superseded to remove the disability premium. From 10.4.06, the Income Support supersession decision can be revised where the decision about incapacity is revised, or an appeal against it is successful[1].

1 SS & CS (D&A) Regs (NI), reg 3(7F)

Example

The claimant, a lone parent, has an award of Income Support including the disability premium. Following application of the personal capability assessment, she is found not to be incapable of work, and her award of Incapacity Benefit is superseded and disallowed. Her Income Support award is superseded to remove the disability premium. On appeal against the Incapacity Benefit decision, the tribunal decides that she is still incapable of work and allows her appeal. The Incapacity Benefit award is restored. The Income Support decision maker revises the Income Support supersession decision to restore the disability premium.

Revision on change of election - deferred entitlement

State Pension Credit

3360 Where

1. a person elects for an increase of a Category A or Category B Retirement Pension, a Shared Additional Pension, a Graduated Retirement Benefit or State Pension[1] **and**

2. the decision maker decides that the person or their partner is entitled to State Pension Credit and takes the increase into account when deciding the State Pension Credit claim, or superseding an award made on that claim **and**

3. the person's election is later changed to a lump sum[2]

the decision maker may revise the State Pension Credit decision[3]. See DMG Chapter 75 for guidance about deferring entitlement and making elections.

1 SS C&B (NI) Act 92, Sch 5, para A1 or 3C; Sch 5A, para 1; SS (GRB) Regs (NI), Sch 1, para 12 or 17; 2 SS (DRP, SAP & GRB) (Misc Provs) Regs (NI); SS (GRB) Regs (NI), reg 5; Sch 1, para 20F; 3 SS & CS (D&A) Regs (NI), reg 3(7D); Pensions Act (NI) 2015, sec 8(2), 9 & 10; SP Regs (NI), reg 6

Category A or Category B Retirement Pension, Shared Additional Pension, Graduated Retirement Benefit or State Pension

3361 Where

1. a person is awarded a Category A or Category B Retirement Pension, Shared Additional Pension, Graduated Retirement Benefit or State Pension **and**

2. an election is made or treated as made[1] **and**

3. the election is subsequently changed[2]

the decision maker may revise the awarding decision[3]. See DMG Chapter 75 for guidance about deferring entitlement and making elections.

1 SS C&B (NI) Act 92, Sch 5, para A1 or 3C; Sch 5A, para 1; SS (GRB) Regs (NI), Sch 1, para 12 or 17; 2 SS (DRP, SAP & GRB) (Misc Provs) Regs (NI), reg 5; SS (GRB) Regs (NI), Sch 1, para 20F; 3 SS & CS (D&A) Regs (NI), reg 3(7E); Pensions Act (NI) 2015, sec 8(2) & 10; SP Regs (NI), reg 6

Example

The claimant defers claiming Retirement Pension for twelve months. He claims and is awarded Retirement Pension and State Pension Credit from 10.4.06 before he has chosen a deferral option. On 1.5.06 he notifies that he wishes to be paid increments. The decision awarding Retirement Pension is revised to include an increase of Retirement Pension from 10.4.06. The decision awarding State Pension Credit is also revised to take account of the revised Retirement Pension award. The arrears of Retirement Pension are offset against the excess payment of State Pension Credit. On 1.7.06 the claimant notifies that he wishes to change his election to a lump sum payment. The decisions awarding Retirement Pension and State Pension Credit are revised again to take account of the change of election. The lump sum is reduced by the amount of increments already paid. The arrears of State Pension Credit, taking the reduced rate of Retirement Pension into account from 10.4.06, are paid to the claimant.

Revision of termination decisions - Retirement Pension, Shared Additional Pension, Graduated Retirement Benefit and State Pension

3362 Where a decision has been made to terminate entitlement[1] to

1. Category A or Category B Retirement Pension **or**

2. Shared Additional Pension **or**

3. Graduated Retirement Benefit **or**

4. State Pension

then the Department may revise that decision at any time[2].

1 SS & CS (D&A) Regs (NI), reg 18(1); 2 reg 3(7EA & 7EB)

Revision where no election made

3363 Where a claim to Category A or Category B Retirement Pension, Shared Additional Pension, Graduated Retirement Benefit or State Pension is made and a choice may be made between[1]

1. a lump sum **or**

2. a pension increase **and**

3. no choice is made[2]

the decision maker may decide the claim before a choice is made[2].

1 SS C&B (NI) Act 92, Sch 5, para A1 or 3C; Sch 5A, para 1; SS (GRB) Regs (NI), Sch 1, para 12 or 17; Pensions Act (NI) 2015, sec 8(2) & sec 10; 2 SS & CS (D&A) Regs (NI), reg 13A & 13B

3364 The decision maker may revise[1] the decision when the person makes a choice, is treated as making a choice or becomes entitled to a lump sum.

1 SS & CS (D&A) Regs (NI), reg 13A & 13B

3365 – 3369

Revising decisions and determinations with no appeal rights

3370 Decisions and determinations which have no right of appeal1 can be revised at any time. These are mostly administrative decisions such as timing and manner of payment. See DMG Chapter 1 for details. The rule for housing cost determination is different - see DMG 3372.

1 SS (NI) Order 98, Sch 2; SS & CS (D&A) Regs (NI), reg 3(8), 27 & Sch 1

3371 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 be challenged by means of judicial review. See DMG Chapter 6 for further guidance.

3372 When all of the evidence or information which is relevant for determining housing costs for Employment and Support Allowance, Income Support or State Pension Credit are not available, the decision maker should make a decision based on the available evidence or information[1]. This decision is not appealable[2]. If further information or evidence is supplied then the decision maker can revise the decision at any time[3]. This only applies to cases where housing costs would otherwise be due from the beginning of the award.

1 SS & CS (D&A) Regs (NI), reg 13(1); 2 Sch 1, para 11; 3 reg 3(8)

3373 – 3374

Revising decisions on sanctionable benefits

3375 Where a court quashes or sets aside a conviction which had resulted in a decision that a restriction on payment of benefit was to be imposed

1. that decision may be revised at any time **and**

2. payments and other adjustments made as if no restriction had been imposed[1].

See DMG Chapter 4 for further guidance on sanctionable benefits.

1 SS Fraud Act (NI) 2001, sec 6(7); sec 7(6); sec 8(6); SS & CS (D&A) Regs (NI), reg 3(8A)

3376 This applies to the offender who may be

1. the claimant **or**

2. in the case of a joint-claim Jobseeker's Allowance, any member of a couple **or**

3. a family member.

3377 Where

1. the offender withdraws their agreement to pay the administrative penalty **or**

2. it is decided that the overpayment to which that agreement relates is not recoverable or due

any decision that a restriction on the payment of benefit was to be imposed may be revised at any time and payments and other adjustments made as if no restrictions had been imposed[1].

1 SS Fraud Act (NI) 2001, sec 5C(2); sec 7(7); sec 8(7); SS & CS (D&A) Regs (NI), reg 3(8A)

3378 – 3399

Decisions given without authority

3400 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 (T)

3401 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 SS & CS (D&A) Regs (NI), reg 1(2) & 3(5)(a)

3402 – 3409

Revision of advance awards

3410 An award on an advance claim is conditional on the claimant's circumstances at the relevant or renewal date. See DMG 3022 for the meaning of relevant and renewal date. Changes of circumstances occurring and effective

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

2. before the relevant or renewal date

can be dealt with by way of revision where the circumstances in DMG 3411 apply. See also DMG 3021 for revision where the change is advantageous to the claimant and occurred before the decision was made.

3411 Where a change

1. is notified **after** the relevant or renewal 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 DMG Chapter 4 for guidance on supersession of advance awards.

1 SS (NI) Order 98, art 10; SS (C&P) Regs (NI), reg 13, 13A & 13C(3); R(DLA) 4/05;
2 SS & CS (D&A) Regs (NI), reg 3

Example

The current award of Disability Living Allowance expires 25 September. A renewal claim is decided on 14 April, effective from 26 September. An award is made for middle rate care component under the deemed provisions for renal dialysis. 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 Disability Living Allowance. The decision maker revises the decision made on 14 April under regulation 13C(3), to disallow the claim from 26 September.

3412 – 3459

Effective date of a revised decision

3460 A revised decision usually takes effect from the date of the original decision[1]. For details of the exception to this general rule, see DMG 3461.

1 SS (NI) Order 98, art 10(3); SS & CS (D&A) Regs (NI), reg 5

Example

A claimant is awarded Income Support from 6 May. The decision maker decides, on the evidence provided, that he has part-time earnings. The part-time earnings are taken into account when calculating the amount of benefit.

On 21 May the claimant disputes the decision because the part-time earnings had in fact ceased prior to the award of benefit. The decision maker reconsiders the evidence and decides the claimant is entitled to benefit with no part-time earnings taken into account. A new decision is made excluding part-time earnings from 6 May.

3461 The effective date of the original decision may be part of the dispute. If the new decision includes revision of the date of the decision, the new decision takes effect from the revised date1.

1 SS (NI) Order 98, art 10(4); SS & CS (D&A) Regs (NI), reg 5

Example

A claimant makes a claim to Jobseeker's Allowance on 25 June. The decision maker decides that the claimant is not available for work for the first three days of the jobseeking period. He then has to serve three waiting days. Benefit is awarded from 1 July.

The claimant disputes the decision that he was not available for work from 25 June to 27 June. The decision maker reconsiders the evidence and makes a new decision that the claimant was not available for work on 25 June but available from 26 June and awards benefit from 29 June.

3462 – 3470

Effective date where Retirement Pension decision revised due to late paid class 3 contributions

3471 Where a disallowance of Retirement Pension is revised due to late payment of class 3 contributions (see DMG 3248), the decision as revised is effective from

1. 1.10.98 **or**

2. for category

2.1 A Retirement Pension, the date on which the claimant reached pensionable age **or**

2.2 B Retirement Pension, the date on which the claimant's spouse or civil partner reached pensionable age

whichever is the later.

1 SS & CS (D&A) Regs (NI), reg 5(2)

Revision as a result of changes to class 2 national insurance collection

3472 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 2015/16 tax year onwards is now 31 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 means that there is an increased possibility of a claim being made for a contributory benefit where entitlement relies (either wholly or partly) on as yet unpaid contributions. This is likely to have a particular impact on claims for contribution-based Employment and Support Allowance and contribution-based Jobseeker's Allowance.

Note: Class 2 national insurance contributions are only relevant in contribution-based Jobseeker's Allowance claims from share fishermen and volunteer development workers.

1 The National Insurance Contribution Act 2015

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 contribution-based Employment and Support Allowance relies on satisfaction of the contribution conditions in the tax years 2014/15 and 2015/16. The claimant was previously unemployed and has Class 1 credits for the whole of 2014/15 and for the weeks in 2015/16 before he started self-employment. At the point of claim the claimant had not filed his self-assessment return for 2015/16 – he has until 31.1.17 to do so. Consequently his class 2 national insurance contributions liability has not been established and so no class 2 national insurance contributions have been paid. Neither contribution condition is satisfied and the claim to Employment and Support Allowance is disallowed.

3473 In order to address this the regulations[1] provide for payments of class 2 national insurance contributions which are made by 31 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 claims may be revised in the claimant's favour.

1 SS (Credits, and Crediting and Treatment of Contributions) (Conseq and Misc Amdts) Regs (NI) 16

3474 Similarly, where a decision on Retirement Pension, State Pension or Bereavement Benefit is made on a claim from a self-employed person before the contributions for the tax year have been paid, and the person pays class 2 national insurance contributions for that tax year by the due date, the decision to award the benefit may be revised if the payment of the contribution means that the benefit should be paid at a higher rate or that benefit is now payable.

3475 The regulations also provide for cases where benefit has been awarded and the national insurance contributions upon which an award of benefit was based are repaid or refunded to the contributor. In these cases the decision to award benefit may be revised to reduce the amount of benefit payable or to disallow benefit.

Revision of decision: Contributions paid by due date

3476 A decision on a claim to contribution-based Jobseeker's Allowance or contribution-based 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 after the due date is treated as paid by the due date for the purpose of entitlement to the benefit by regulations[2] **and**

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

1 SS & CS (D&A) Regs (NI), reg 3(8D);
2 SS (Crediting and Treatment of Contributions, and NI Numbers) Regs (NI) 01, reg 7A

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 satisfaction of the contribution conditions for the tax years 2015/16 and 2016/17. The claimant started self-employment in April 2015. The claimant had previously paid his class 2 national insurance contributions for 2015/16, but, at the point of claim, has not yet filed his self-assessment for 2016/17. His class 2 liability has not yet been established and no class 2 national insurance contributions have been paid. As a result, the second contribution condition isn't satisfied 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 2016/17 on 31.1.18. These national insurance contributions are treated as having been paid before 14.1.18 and the original decision to disallow Employment and Support Allowance is revised in the claimant's favour.

3477 Decisions to award or to decide that

1. Bereavement Benefit

2. Category A or Category B Retirement Pension **or**

3. State Pension

is not payable may be revised[1] at any time where on or after the date of the decision a contribution is treated as paid by the relevant day for the purposes of entitlement to the benefit by regulations[2], and as a result the person is now entitled to the benefit, or to a higher rate of benefit.

1 SS & CS (D&A) Regs (NI), reg 3(8I) & 3(8J);
2 SS (Crediting and Treatment of Contributions, and NI Numbers) Regs (NI) 01, reg 7(1)

Revision of decision: Contributions are refunded

3478 A decision to award

1. contribution-based Jobseeker's Allowance

2. contribution-based Employment and Support Allowance

3. Bereavement Allowance

4. Widowed Parent's Allowance

5. Bereavement Payment

6. Category A or Category B Retirement Pension **or**

7. State Pension

may be revised[1] at any time where contributions are repaid or returned to the contributor who is in receipt of a contributory benefit, where this means the person no longer satisfies the contribution conditions for entitlement to the benefit.

1 SS & CS (D&A) Regs (NI), reg 3(8E) & reg 3(8G)

Example

Contribution-based Employment and Support Allowance is awarded in January 2018 to a claimant who was self-employed. The award was based on class 2 national insurance contributions paid in respect of 2015/16 and 2016/17 Relevant Income Tax Years. class 2 national insurance contributions for 2016/17 were paid on the basis of profits declared on a self-assessment return filed on 31.1.18. In March 2018 Her Majesty's Revenue and Customs adjusts the declared profits for 2016/17 to a figure below which no liability for class 2 national insurance contributions 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 ceases to satisfy the contribution conditions for contribution-based Employment and Support Allowance. The decision to award contribution-based Employment and Support Allowance is revised so as to disallow the award.

3479 A decision to award

1. Bereavement Benefit

2. Category A or Category B Retirement Pension **or**

3. State Pension

may be revised[1] at any time where on or after the date of the decision contributions are returned to the contributor[2] and, as a result, the original decision was more advantageous to the claimant than it would otherwise have been.

1 SS & CS (D&A) Regs (NI), reg 3(8H) & reg 3(8J); 2 reg 3(8G)

3480 – 3999

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