Chapter 9 - Overpayments, Recoverability, Adjustments and Recoupments

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**Appendix 1** – Spare

**Appendix 2** – Calculation of amount to be abated

Legislation used in Chapter 09

|  |  |  |
| --- | --- | --- |
| **Full Title**  |  | **Abbreviation** |
| The Child Benefit (General) Regulations (Northern Ireland) 1979 No 5 |  | CHB (Gen) Regs (NI) |
| Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 No 340 |  | CS (MAP) Regs (NI) |
| The Employment Rights (Northern Ireland) Order 1996 |  | ER (NI) Order 96 |
| The Employment Protection (Recoupment of Jobseeker’s Allowance and Income Support) Regulations (Northern Ireland) 1996 No 459  |  | EP (Recoupment of JSA and IS) Regs (NI) |
| The Income Support (General) Regulations (Northern Ireland) 1987 No 459 |  | IS (Gen) Regs (NI) |
| The Jobseeker’s (Northern Ireland) Order 1995 |  | JS (NI) Order 95 |
| The Jobseeker’s Allowance Regulations (Northern Ireland) 1996 No 198 |  | JSA Regs (NI) |
| Social Security Administration (Northern Ireland) Act 1992 |  | SS A (NI) Act 92 |
| The Social Security (Adjudication) Regulations (Northern Ireland) 1995 No 293 |  | SS (Adj) Regs (NI) |
| Social Security Contributions and Benefits (Northern Ireland) Act 1992 |  | SS C&B (NI) Act 92 |
| The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996 No 520 |  | SS (C of E) Regs (NI) |
| The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 No 465 |  | SS (C&P) Regs (NI) |
| The Social Security (General Benefit) Regulations (Northern Ireland) 1984 No 92 |  | SS (Gen Ben) Regs (NI) |
| Social Security (Incapacity for Work) (Northern Ireland) Order 1994 |  | SS (IW) (NI) Order 94 |
| The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 No 41 |  | SS (IW) (Gen) Regs (NI) |
| The Social Security (Northern Ireland) Order 1998 |  | SS (NI) Order 98 |
| The Social Security (Overlapping Benefit) Regulations (Northern Ireland) 1979 No 242 |  | SS (OB) Regs (NI) |
| The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 No 142 |  | SS (POR) Regs (NI) |
| The Social Security (Severe Disablement Allowance) Regulations (Northern Ireland) 1984 No 317 |  | SS (SDA) Regs (NI) |
| The Welfare Reform (Northern Ireland) Order 2015 (Commencement No 8 and Transitional and Transitory Provisions) Order 2017 No 190 |  | WR (NI) Order 15 (Commencement No 8 etc) Order 17 |
| Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016 No 223 |  | SS (POAOB) Regs (NI) 16 |

Chapter 9 - Overpayments, Recoverability, Adjustments and Recoupments

Introduction

9001 This chapter gives guidance on

1. **Overpayments** - including revision and supersession and the calculation of overpayments (see DMG 9023 - 9150)
2. **Recoverability** - including misrepresentation, failure to disclose and causation (see DMG 9161 - 9300)
3. **Adjustments** - including offsets, abatements and interim payments (see DMG 9320 - 9412)
4. **Recoupments** - payments under the Industrial Tribunals (Northern Ireland) Order (see DMG 9501 - 9513)

 and relates to periods of overpayments of those benefits listed at DMG 9161 beginning on or after 6.4.87.

 **Note 1:** ADM Chapter D1 contains guidance on the above topics for Universal Credit, new style Jobseeker’s Allowance and new style Employment and Support Allowance. ADM Chapter M1 contains guidance on the meaning of new style Jobseeker’s Allowance and new style Employment and Support Allowance.

 **Note 2:** If decision makers require guidance on periods of overpayments ending before 6.4.87 please contact Decision Making Services.

 9002 – 9009

Action by the decision maker

General

9010 When the decision maker is considering an overpayment question involving any of the benefits listed in DMG 9161 they must

 **1.** except where DMG 9026 applies, give a new entitlement decision by revising or superseding all relevant awarding decisions1 **and**

 **2.** where appropriate, offset the benefit paid against the new amount awarded2 **and**

 **3.** determine the period of any overpayment **and**

 **4.** calculate the total overpayment, that is, the difference between the amount to which there is entitlement or which is properly payable and the amount which has been paid **and**

 **5.** calculate the amount of the recoverable overpayment3 **and**

 **6.** give a decision on the overpayment question, stating

**6.1** the amount that is recoverable4 **and**

**6.2** the period during which the amount was paid5 **and**

**6.3** the person from whom it is recoverable6.

1 SS A (NI) Act 92, sec 69(5A); 2 sec 69(6); SS (POR) Regs (NI), reg 5;
3 SS A (NI) Act 92, sec 69(2)(a); 4 sec 69(2)(a); 5 sec 69(2)(b); 6 sec 69(3)

 9011 – 9022

The requirement for revision and supersession

General

9023 The following guidance deals with the requirement for a valid revision or supersession decision to be made before, or at the same time that an overpayment recoverability decision is made. Detailed guidance on revision is in DMG Chapter 03. Detailed guidance on supersession is in DMG Chapter 04.

9024 Overpayments involving the benefits listed in DMG 9161 are only recoverable when the decision maker has made

 **1.** a new entitlement decision1 (see DMG 9025) **and**

 **2.** an overpayment recoverability decision2 (see DMG 9029).

1 R(SB) 7/91; SS A (NI) Act 92, sec 69(5A); 2 sec 69(2)

The new entitlement decision

9025 Except where DMG 9026 applies, the decision maker must ensure that the new entitlement decision revises or supersedes all the awarding decisions which operated during the period of the overpayment or were varied or reversed on appeal1. There must be proper decisions altering entitlement for all parts of the period of the alleged overpayment

1. before the date on which the overpayment recoverability decision is made **or**
2. at the same time as the overpayment recoverability decision is made.

1 R(SB) 7/91; SS A (NI) Act 92, sec 69(5A)

Exceptions

9026 There are exceptions to the general rule at DMG 9025. These are

1. where the facts and circumstances of the misrepresentation or the failure to disclose do not provide a basis for revising or superseding the decision1 (see DMG 9031) **or**
2. certain Jobseeker’s Allowance overpayments to 16/17 year olds2 (see DMG 9295 - 9300).

1 SS (POR) Regs (NI), reg 12; 2 SS A (NI) Act 92, sec 69A

Evidence that revision or supersession has taken place

General

9027 Evidence must be provided to show that revision or supersession has taken place, otherwise the decision maker will have failed to meet the burden of proof required in overpayment cases1. If that evidence is unclear to anyone who may read it, for example when included as evidence in an appeal submission to a tribunal, and fails to illustrate that a valid revision or supersession has taken place, then there must be some explanation of what is set out in it2.

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

Types of evidence

9028 Computer print-outs are commonly presented as evidence that revision or supersession has taken place and these will usually require such an explanation. If available, a copy of the letter notifying the claimant of the decision will be useful, additional evidence. However, this too will usually require explanation of its contents.

The overpayment recoverability decision

9029 The decision maker must make an overpayment recoverability decision at the same time as, or after the new entitlement decision. The decision must state

1. the amount that is recoverable1 **and**
2. the period during which the amount was paid2 **and**
3. the person from whom it is recoverable3.

1 SS A (NI) Act 92, sec 69(2)(a); 2 sec 69(2)(b); 3 sec 69(3)

Revision or supersession decision not properly made

9030 If it is realised after an overpayment recoverability decision has been made that there has been no proper alteration of entitlement for all or some part of the period of the alleged overpayment, the recoverability decision in relation to the period not covered is of no force or effect. The decision maker must ensure that the awarding decisions for the entire period of the alleged overpayment are revised or superseded and a further recoverability decision made.

Revising or superseding recoverability decisions

9031 Overpayment recoverability decisions can be revised or superseded in the same way as any other decision. It is reasonable to revise or supersede a decision that the overpayment was not recoverable where new evidence comes to light that the claimant had previously concealed. However, if evidence was overlooked by the decision maker in the original decision, revision or supersession may not be appropriate. This is because the claimant may have destroyed evidence which was favourable to them on being told that the overpayment was not recoverable.

Recovery not dependent on revision or supersession

9032 Recovery is not dependent on revision or supersession where the misrepresentation or non-disclosure does not support revising or superseding the original decision1. The decision maker may still consider recovery but in relation to the payment of benefit and not its award.

 Cases covered

 **1. Retirement Pension-lncomplete decisions**

 Decisions awarding Category A Retirement Pension made before 1.10.86 are incomplete because they were subject to the earnings rule2. It is not possible to revise or supersede these awards on account of the claimant’s personal earnings. Past and current awards of an increase for a child3 are also incomplete and cannot be revised or superseded on account of earnings.

 **2. Irregular encashments**

 See DMG 9224 - 9228. The regulations cannot be used to avoid a revision or supersession which could properly be made4. The decision maker should first see whether the revision or superseding provisions apply5.

 **3. Correction of accidental errors**

 Where an accidental error in a decision can be corrected there should be no revision or supersession. Examples of accidental errors are given in DMG Chapter 036.

1 SS A (NI) Act 92, sec 69(5A); SS (POR) Regs (NI), reg 12; 2 R(P) 3/84;
3 SS C&B (NI) Act 92, sec 80(1); 4 SS (POR) Regs (NI), reg 12;
5 SS (NI) Order 98, art 10 & 11; 6 SS & CS (D&A) Regs (NI), reg 9A

 9033 − 9039

Calculation of the overpayment - period of the overpayment

Introduction

9040 Guidance on overpayment periods is given at DMG 9041 - 9045. There must be sufficient evidence of an overpayment to support the decision for the whole period concerned. Otherwise, the decision maker may be unable to prove that an overpayment is recoverable.

Start of the overpayment

9041 Where the decision maker has evidence that a change of circumstances occurred but the exact date is not known, the claimant should be asked to state the exact date. If

 **1.** after making reasonable efforts, the claimant cannot provide the information, the decision maker should take the date as the last day of the month involved **or**

 **2.** the claimant refuses to provide the information, the decision maker should take the date as the first day of the month involved.

 The decision maker may use an earlier or later date if it is unlikely that the change could have occurred on the date fixed as above.

 **Example**

 An income is normally payable on a Thursday and the last day of the month is a Sunday. The date of change of circumstances should be taken as the Thursday before the last day of the month.

Start of the recoverable overpayment

Failure to disclose

9042 The decision maker should note the following

 **1.** the period of a recoverable1 overpayment starts on the day the claimant’s benefit entitlement or payability would have altered had the material fact been disclosed when it occurred2. This is because a decision maker can only decide that an overpayment is recoverable from the date the award would have been revised or superseded had the material fact been notified on time

 **2.** where earnings affect the payability of benefit the claimant or dependant must have received the earnings in question

 **3.** where payment of benefit is affected for a period before the date of receipt, for example where a retrospective pay award is made, any overpayment before that date is not normally recoverable

 **4.** if earnings cannot immediately be found out in Social Security benefit cases, the material fact, as at DMG 9042 **1.**, is the starting of work itself

 **5.** in Income Support, State Pension Credit, income-based Jobseeker’s Allowance and income-related Employment and Support Allowance cases, late payments of income can be recovered3 (see DMG 9370 and for State Pension Credit see also DMG 85063 - 85065).

 **Example**

 A claimant who is receiving income-based Jobseeker’s Allowance starts part time work on 4 August and is first paid on 15 August. The claimant signs at the Jobs and Benefits Office on 12 August and on 14 August receives a payment of income-based Jobseeker’s Allowance only for the fortnight ending 12 August. He discloses working on 27 October. The period of the recoverable overpayment starts on 13 August.

 The material fact is the receipt of wages and not the part time work. Had the 1st wage been disclosed on 15 August it would have affected the amount payable on 26 August.

1 SS A (NI) Act 92, sec 69; 2 R(SB) 12/84; 3 SS A (NI) Act 92, sec 72

Misrepresentation

9043 The recoverable overpayment starts on the day on which the correct decision would have taken effect, had the claimant not misrepresented. If a misrepresentation occurs on an initial claim for a daily or weekly benefit, the overpayment is recoverable from the beginning of the award.

End of the recoverable overpayment

Failure to disclose

9044 Where a claimant has failed to disclose, the recoverable overpayment stops at the end of the period covered by the payment issued immediately before

1. the claimant discloses the material fact(s) as instructed to the office administering their benefit (see DMG 9236) **or**
2. a third party makes sufficient disclosure (see DMG 9258).

Misrepresentation

9045 Where a claimant has misrepresented, the recoverable overpayment stops at the end of the period covered by the payment issued immediately before the claimant contacts the office administering their benefit and corrects the misrepresentation.

 9046 – 9059

Calculation of the overpayment - principles affecting particular benefits

Effect of earnings on increases of Social Security benefits

9060 The instructions in the INF4 leaflet (or benefit specific equivalent) require a claimant to disclose a dependant’s work.

Pay awards

9061 The effect of a pay award on earnings can be calculated at the time the pay award is settled. Although the dependant may not receive the increase until a later date the claimant will know the new amount being earned. Disclosure of the settled award can reasonably be expected.

Fluctuating earnings

9062 In the case of fluctuating earnings the claimant is also bound by the instructions in the INF4 leaflet (or benefit specific equivalent).

 **Example**

 A man was in receipt of Retirement Pension and increase of Retirement Pension for a dependant payable on Thursday. He had received a copy of leaflet BR2215 which instructs claimants to report changes in a spouse’s earnings. His wife’s earnings fluctuated above and below the limit and the ‘all or nothing’ rule applied. She was paid at 12 noon on Thursdays and told the claimant on Thursday evening of her wages. He disclosed the material fact on Fridays. The claimant’s wife worked Monday to Friday, 5 days per week and the earnings for the Monday to Friday period were payable on the following Thursday. The Department was aware that the claimant’s wife had fluctuating earnings. The question of an overpayment was referred to the decision maker and the following schedule drawn up

 Calendar Retirement Pension Earnings Period earnings Earnings
week payday affected payday paid for received
commencing (“pay weeks”)

 18 May 29 May 29 May 19 May - 23 May £30

 25 May 5 June 5 June 26 May - 30 May £40

 1 June 12 June 12 June 2 June - 6 June £70

 8 June 19 June 19 June 9 June - 13 June £60

 15 June 26 June 26 June 16 June - 20 June £35

 The earnings limit was £60.50 a week and the earnings earned in one calendar week affected the increase of Retirement Pension for a dependant due on the pay day immediately following that week as follows

 25 May 1 June 8 June 15 June 22 June
 Sun - Sat Sun - Sat Sun - Sat Sun - Sat Sun - Sat

 Earnings paydays 29 May 5 June 12 June 19 June 26 June

 Retirement Pension
paydays 29 May 5 June 12 June 19 June 26 June

 Amount paid £30 £40 £70 £60 £35

 **Note:**  The earnings pay days are irrelevant to the calculation of the amount of the increase of Retirement Pension for a dependant payable but are shown because they are relevant to the recoverability of the overpayment.

 The result of the above was as follows

 Pension payable 29 May, earnings £30, no effect.

 Pension payable 5 June, earnings £40, no effect.

 Pension payable 12 June, earnings £70, no increase of Retirement Pension for a dependant payable.

 Pension payable 19 June, earnings £60, no effect.

 Pension payable 26 June, earnings £35, no effect.

 In this case the decision maker decided that it was reasonable for the claimant to make disclosure of earnings on Fridays. His payment was available to him from Thursday mornings, so even a disclosure on Thursday afternoon (the earliest possible time) would not have prevented the overpayment. The decision maker therefore decided that none of the overpayment was recoverable.

9063 If the Department was not aware that

 **1.** the claimant’s dependant had earnings at all **or**

 **2.** the claimant’s fluctuating earnings had substantially changed for example because of a change of job or taking on an additional job

 there may be a small initial non-recoverable overpayment because of the delay in receiving first or increased earnings. But the rest of the overpayment is recoverable because of the claimant’s failure to disclose earnings or change in level of earnings. This applies even in odd weeks in which there is no overpayment1.

1 R(SB) 11/86

 9064 – 9065

Earnings not immediately ascertainable

9066 Where the claimant or dependant has earnings which are not immediately ascertainable and the claimant fails to disclose the starting of work the material fact is the starting of work itself. This applies where the earnings affect

 **1.** personal Retirement Pension **or**

 **2.** an increase for an adult dependent of Incapacity Benefit, Severe Disablement Allowance, Retirement Pension or Disability Pension with Unemployability Supplement.

 This is because had the starting of work been disclosed the Department would have

 **1.** suspended benefit until information from Her Majesty’s Revenue and Customs was available

 **2.** referred the case to the decision maker to decide the amount of benefit payable during the period of suspension.

 **Example**

 A man in receipt of an increase of Incapacity Benefit for his wife fails to disclose that his wife has bought a hairdressing salon which she is operating as a business. She is not a director of the business as it is not a limited company. The claimant is aware of what his wife has done but does not realise he has to disclose it.

 When the Department discovers that the claimant’s wife was working the Department suspends payment of the increase of Incapacity Benefit, obtains accounts and refers the matter to the decision maker.

 The decision maker supersedes the decision on the increase of Incapacity Benefit for a change of circumstances from the date of the change and determines that the whole of the overpayment is recoverable. This is because had the claimant disclosed that his wife had a business at the time it started the Department would have suspended benefit and no overpayment would have occurred.

9067 In the case of all Social Security benefits other than those in DMG 9066, the material fact is still the starting of work where

 **1.** a claimant or dependant has earnings that are not immediately ascertainable **and**

 **2.** the claimant fails to disclose starting work **and**

 **3.** earnings affect benefits other than personal Retirement Pension and increases for adult dependants of Incapacity Benefit, Severe Disablement Allowance, Retirement Pension or Disability Pension with Unemployability Supplement.

 This is because had the claimant declared the starting of work the decision maker would have estimated the claimant’s likely earnings and that estimate would become the fact of earnings. This would apply even if the eventual earnings received were less than the estimate.

 **Note:** There is no need for the decision maker to estimate in overpayment cases based on the information which **might** have been available at the time. The earnings as eventually revealed when disclosure was made should be taken as the same as the estimate which would have been made.

 **Example**

 A man in receipt of Incapacity Benefit increase for his wife fails to report that she has set up as a self employed market trader and wholesale vegetable supplier. She owns the business but it is not a limited company.

 When the Department discovers that the claimant’s wife is working the claimant submits her accounts which show a profit of £50 per week. The claimant states that he did not disclose her business earlier because she did not know whether the profits would be high enough to affect his increase for her.

 The decision maker decides that the whole of the overpayment is recoverable because had the business been disclosed at the time the decision maker would have estimated earnings to be £100 per week.

 9068 – 9078

Calculation of the overpayment - deductions

Introduction

9079 When calculating the amount of a recoverable overpayment, the decision maker must deduct

1. any amount that has been offset1 (see DMG 9340 et seq for guidance on offsetting) **and**
2. certain underpayments of Income Support, income-based Jobseeker’s Allowance, State Pension Credit or income-related Employment and Support Allowance or Universal Credit2.

1 SS A (NI) Act 92, sec 69(6); SS (POR) Regs (NI), reg 13(a); 2 reg 13(b)

Effect of offsets on overpayments

9080 Where an amount has been offset the decision maker should deduct that amount from the gross amount calculated as overpaid1.

 **Note:** A recoverable overpayment cannot be offset2.

1 SS A (NI) Act 92, sec 69(6); SS (POR) Regs (NI), reg 13; 2 reg 6

 **Example 1**

 The decision maker supersedes an award of income-based Jobseeker’s Allowance and decides that it is not payable. Income-related Employment and Support Allowance is awarded for the same period. Arrears of income-related Employment and Support Allowance are due under this decision but the income-based Jobseeker’s Allowance already paid is not offset against and treated as paid on account and the income-related Employment and Support Allowance arrears are paid in full.

 There is no offset amount to be deducted when calculating any recoverable income-based Jobseeker’s Allowance overpayment1.

 **Example 2**

 Income-related Employment and Support Allowance is awarded and paid for a period of ten weeks. The decision maker supersedes this award and decides that income-related Employment and Support Allowance is not payable. Income-based Jobseeker’s Allowance is subsequently awarded for the entire period for which income-related Employment and Support Allowance has been paid and for a further two weeks. Twelve weeks’ income-based Jobseeker’s Allowance are due under the subsequent award. The decision maker revises the subsequent award of income-related Employment and Support Allowance. The decision maker is not restricted to offsetting for the common period and the income-related Employment and Support Allowance paid is offset against the whole of the arrears for income-based Jobseeker’s Allowance2.

 The decision maker later notices that a balance of income-related Employment and Support Allowance remained after offset and the overpayment question is considered. The decision maker finds that the whole of the income-related Employment and Support Allowance is recoverable and reduces the recoverable overpayment by the amount of income-related Employment and Support Allowance which was offset against the income-based Jobseeker’s Allowance3.

 Apart from the examples in this paragraph and in DMG 9340 et seq no other offsets can be made against any overpayments.

1 SS A (NI) Act 92, sec 69(6); SS (POR) Regs (NI), reg 6; 2 reg 5(1) & (2), Case 2; 3 reg 13(1)(a)

Effect of certain underpayments of Income Support, income-based Jobseeker’s Allowance, State Pension Credit, income-related Employment and Support Allowance or Universal Credit on recoverable overpayments

9081 Subject to DMG 9082, when calculating a recoverable amount under specified legislation1, the decision maker must deduct2

1. any amount which has been offset under specified legislation3
2. any additional amount of a specified benefit which was not payable under the original, or any other, determination but which should have been determined to be payable in respect of all or part of the overpayment period to the claimant or their partner

**2.1** on the basis of the claim as presented to the decision maker **or**

**2.2** on the basis that any misrepresentation or failure to disclose a material fact had been remedied prior to the award being made.

1 SS A (NI) Act 92, sec 69(1), SS (POR) Regs (NI), reg 11; 2 reg 13(1); 3 reg 5

Other deductions

9082 No other deduction is to be made in respect of any other entitlement to benefit which may be, or might have been, determined to exist1.

1 SS (POR) Regs (NI), reg 13(1)(1C)

Meaning of “specified benefit”

9083 Specified benefits are1

1. Universal Credit
2. Income Support
3. State Pension Credit
4. income-based Jobseeker’s Allowance
5. income-related Employment and Support Allowance.

1 SS (POR) Regs (NI), reg 13(1)(1A)

Meaning of “overpayment period”

9084 Overpayment period means the period over which the overpayment accrued1.

1 SS (POR) Regs (NI), reg 13(1)(1B)

Underpayment identification

9085 Decision makers do not have to show that there is no relevant underpayment1. If claimants want to rely on an additional entitlement reducing the overpayment it is for them to show on a balance of probabilities there is an underpayment.

1 R(IS) 1/05

 9086 – 9095

Deduction of additional State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance from Social Security benefit overpayments

9096 This section DMG 9096 - 9106 gives guidance on deductions of additional State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance from Social Security benefit overpayments, where decisions on both Social Security benefit and State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance claims were made before the overpayment arose. It explains how the decision maker should calculate the

 **1.** State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance overpayment or additional entitlement **and**

 **2.** Social Security benefit overpayment.

 **Note 1:** “Additional” may mean additional to nil.

 **Note 2:** See ADM Chapter D1 for equivalent guidance for Universal Credit.

9097 Social Security benefits and State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance normally affect each other in one of the following ways

 **Case 1**

 Social Security benefit paid on time and taken into account as a resource in determining State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance. No arrears of Social Security benefit and therefore no question of abatement **or**

 **Case 2**

 Social Security benefit not paid on time and arrears abated by the amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which would not have been paid had the Social Security benefit been paid on time1 **or**

 **Case 3**

 Social Security benefit not paid on time but abatement of arrears not made. The State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which would not have been paid had the Social Security benefit been paid on time is recovered later2.

1 SS A (NI) Act 92, sec 72; SS C&B (NI) Act 92, sec 121; SS (POR) Regs (NI), reg 8;
2 SS A (NI) Act 92, sec 72, 69(8); SS C&B (NI) Act 92, sec 121;
SS (POR) Regs (NI), reg 7

 Detailed guidance on abatement is contained in DMG 9370 et seq.

Case 1 - Social Security benefit paid on time, reduction unnecessary

9098 If State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance has been paid to supplement Social Security benefit, the circumstances which caused the overpayment of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance may also have caused an overpayment of the Social Security benefit. The decision maker must base recalculation of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance on the revised or superseded entitlement to the Social Security benefit. The result may be an additional entitlement to State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance rather than an overpayment. This additional entitlement to State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance may affect the overpayment of Social Security benefit. The decision maker should deal with these cases as follows.

 **1.** State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance, calculate the difference between State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance overpaid **and** the amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance payable had the true position been known and the correct entitlement to Social Security benefit been paid. The result may be an overpayment or an additional entitlement.

 **2.** Social Security benefit, calculate the difference between the Social Security benefit actually paid and the correct amount of Social Security benefit payable.

 **3.** Where the State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance calculation under the first point results in an additional entitlement to State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance, that additional amount should be deducted from the Social Security benefit overpayment calculated as inthe secondpoint (see **Example** where the correct Social Security benefit entitlement is NIL).

 **Example**

 Anne Thompson received Widowed Mother’s Allowance of £58 and Income Support of £37.65 weekly. It was later discovered that she had remarried and was living with her new husband who did not work.

 Because she was no longer a widow, Anne was no longer entitled to Widowed Mother’s Allowance.

 **1.** The Income Support calculation is

 **1.1** Income Support actually paid £37.65

 **1.2** amount payable if correct Widowed Mother’s Allowance
 had been known £123.00

 **1.3** result, an additional Income Support entitlement £85.35

 **2.** The first Widowed Mother’s Allowance calculation is

 **2.1** Widowed Mother’s Allowance paid £58.85

 **2.2** correct Widowed Mother’s Allowance entitlement Nil

 **3.** The final Widowed Mother’s Allowance overpayment is the difference between **2.1** and **2.2** less the Income Support additional entitlement at **1.3**. The Widowed Mother’s Allowance overpayment is Nil.

Case 2 - Social Security benefit arrears abated by State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance

9099 If during the period of an overpayment

 **1.** State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance is paid pending payment of an Social Security benefit, or increase of Social Security benefit **and**

 **2.** the arrears of the Social Security benefit, when due, are reduced by the amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which would not have been paid had the Social Security benefit been paid on time

 the amount of the reduction is recoverable as State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance. There is no statutory provision to convert it into the Social Security benefit.

No entitlement to State Pension Credit, Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance or Social Security benefit

9100 Where the withdrawal of Social Security benefit would not produce entitlement to State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance, and the arrears of Social Security benefit were previously reduced by State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance then

 **1.** the State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance overpayment is the total amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance actually paid, even though part of the total amount was recovered by reduction of the Social Security benefit arrears **and**

 **2.** the Social Security benefit overpayment is the amount of Social Security benefit actually paid, that is the total payable less any amount by which arrears were reduced.

 **Example**

 Income Support and Widowed Mother’s Allowance are claimed at the same time by Rosemary McAlinden and Income Support is awarded at £40 a week pending a decision on Widowed Mother’s Allowance. Widowed Mother’s Allowance is later awarded at £54.20 a week and lncome Support ceases. The Widowed Mother’s Allowance arrears are reduced by Income Support previously paid, to only £14.20 a week for that period.

 It is later discovered that Rosemary McAlinden had misrepresented the material fact that throughout her claim she was living together as husband and wife with Peter Fulton who was in full time work.

 The decision maker decides that there was no entitlement to either Income Support or Widowed Mother’s Allowance and revises both decisions.

 The Income Support overpayment is £40 x the number of weeks paid, during the period of reduction.

 The Widowed Mother’s Allowance overpayment is £14.20 x number of weeks for which arrears were reduced + £54.20 x number of weeks paid, following reduction.

No entitlement to State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance only

9101 The principles as in DMG 9100 apply where there is no entitlement to State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance but

 **1.** the Social Security benefit is unaffected, for instance capital exceeds the prescribed limit **and**

 **2.** Social Security benefit was previously reduced by State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance.

 But the overall result is different because there is no overpayment of Social Security benefit.

 **Example**

 Jenny Smith claims Income Support and Maternity Allowance at the same time and Income Support is awarded at £40 a week pending a decision on Maternity Allowance. Maternity Allowance is later awarded at £29.45 a week and Income Support reduced. The arrears of Maternity Allowance are reduced in full. It is later discovered that the woman had misrepresented the material fact that she had capital of £15000. This did not affect entitlement to Maternity Allowance but removed entitlement to Income Support.

 The Income Support overpayment is £40 x the number of weeks paid (including the period of reduction) + £10.55 x the number of weeks Income Support paid in addition to Maternity Allowance.

 There is no Maternity Allowance overpayment. The Department could waive recovery of the amount recovered from the arrears of Maternity Allowance so that Jenny Smith would not be in a worse position than a claimant whose Maternity Allowance was paid on time. But this should not affect the decision maker’s decision in any way.

No entitlement to Social Security benefit only

9102 Where the material fact affects only the entitlement to the Social Security benefit and the Social Security benefit was previously reduced by State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance, the Social Security benefit overpayment is reduced by the amount of additional State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance now due.

 **Example**

 Income-based Jobseeker’s Allowance and Widowed Mother’s Allowance are claimed at the same time and income-based Jobseeker’s Allowance is awarded at £40 a week pending a decision on Widowed Mother’s Allowance. Widowed Mother’s Allowance is later awarded at £54.20 a week and the decision maker decides on revision that there is no entitlement to income-based Jobseeker’s Allowance. The Widowed Mother’s Allowance arrears are reduced by the income-based Jobseeker’s Allowance previously paid so that Widowed Mother’s Allowance of £14.20 a week was paid for that period. It is later discovered that the claimant had misrepresented the material fact that her ‘husband’ had been married before and that their “marriage” was invalid. The decision maker decides that there was no entitlement to Widowed Mother’s Allowance.

 There is no income-based Jobseeker’s Allowance overpayment.

 The Widowed Mother’s Allowance overpayment is

 **1.** £14.20 x number of weeks paid (period of reduction) **plus**

 **2.** £14.20 a week for the period after the decision maker’s decision on reduction.

The additional income-based Jobseeker’s Allowance of £40 a week payable had there been no misrepresentation has been deducted from the overpayment of Widowed Mother’s Allowance. (Compare with DMG 9098 **Example**.)

Social Security benefit and State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance remain payable

9103 Where both Social Security benefit and State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance continue to be payable the effect of the reduction is to substitute for an overpayment of Social Security benefit an overpayment of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance during the period of the overpayment.

Deduction of additional State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance from Social Security benefit overpayments

9104 When State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance and a Social Security benefit are claimed at the same time and State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance is awarded pending a decision on the Social Security benefits, the arrears of the social security benefit when it is awarded will be abated. If subsequently it is found that the correct entitlement to the Social Security benefit is less than that originally awarded, the overpayment is calculated as in the following example.

 **Example**

 State Pension Credit and Retirement Pension are claimed at the same time and State Pension Credit is awarded at £123.00 a week pending a decision on Retirement Pension. Retirement Pension is later awarded at £94.10 a week and State Pension Credit reduced to £28.90. The award of Retirement Pension makes no practical difference to the claimant since State Pension Credit and Retirement Pension are paid together at a combined rate of £123.00 a week and all the Retirement Pension arrears are abated. It is later discovered that the claimant had failed to disclose the fact that his wife had gone to live permanently abroad. The Retirement Pension properly payable was £58.85.

 Adopting the same approach as in DMG 9098 the result is as follows

 **Period before the award of Retirement Pension**

 **1.** the State Pension Credit calculation is

**1.1** State Pension Credit actually paid £123.00

**1.2** amount payable had the true facts been known £96.50

**1.3** result, a State Pension Credit overpayment. £26.50

 **Period after the Retirement Pension award**

 **1.** the State Pension Credit calculation is

**1.1** State Pension Credit actually paid £28.90

**1.2** State Pension Credit payable if correct Retirement
Pension payable £37.65

**1.3** result, an additional State Pension Credit entitlement £8.75

 **2.** the first Retirement Pension calculation is

**2.1** Retirement Pension paid £94.10

**2.2** correct Retirement Pension entitlement £58.85

**2.3** Retirement Pension overpayment is the difference
between **£94.10** and **£58.85** less the additional
State Pension Credit entitlement £26.50

 Where the weekly State Pension Credit overpayment during the period of reduction as calculated above is **greater** than the Social Security benefit overpayment after the period of reduction the same consideration as in DMG 9101 applies.

Case 3 - Reduction of arrears not made

9105 If during the period of an overpayment

 **1.** State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance was paid pending payment of a Social Security benefit **and**

 **2.** the arrears of Social Security benefit were not reduced

 the rate and payability of the Social Security benefit paid in error is irrelevant when calculating the recoverable State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance overpayment for the period the Social Security benefit was not taken into account.

 **Example**

 Jimmy Armstrong is paid income-based Jobseeker’s Allowance of £40 a week for 10 weeks. He then receives Social Security benefit arrears of £200 (10 x £20 a week) due to failure of reduction procedures and income-based Jobseeker’s Allowance is reduced to £20 a week. At that time it is also discovered that Jimmy had earnings after disregard of £30 a week.

 If he had declared the earnings at the start, income-based Jobseeker’s Allowance would have been paid at £10 a week for the first 10 weeks. As a result the income-based Jobseeker’s Allowance overpayment is 10 x (40-10) = £300. The balance of £10 for ten weeks which should have been recovered from the arrears of the Social Security benefit, but was not, is not a recoverable overpayment. This is because it was not the consequence of a misrepresentation or failure to disclose. But it is recoverable by other means (DMG 9393)1.

1 SS A (NI) Act 92, sec 72 & para 1, Sch 7; SS (POR) Regs (NI), reg 7 & 8

9106 If the earnings also affect the Social Security benefit

 **1.** a separate calculation should be carried out for that benefit **and**

 **2.** the recoverable overpayment of Social Security benefit should be reduced by the amount recoverable to avoid the same amount being recovered1 twice.

1 SS A (NI) Act 92, sec 72

 9107 – 9122

Recovery of overpayments attributable to the method of payment

9123 The guidance in this section explains the recoverability of overpayments1 of those benefits2 specified at DMG 9161 which are attributable to the method of payment, i.e. direct payment3 (see DMG 8006 for further information about direct payments).

1 SS (POR) Regs (NI), reg 11(1); 2 reg 11(A1); 3 SS (C&P) Regs (NI), reg 21

9124 In all cases the decision maker decides the amount and recoverability of the overpayment1 but if

 **1.** both conditions in DMG 9125 are satisfied the overpayment is recoverable whether or not the claimant has misrepresented or failed to disclose a material fact **or**

 **2.** both conditions in DMG 9125 are not satisfied the overpayment is only recoverable if the claimant has misrepresented or failed to disclose a material fact.

 In cases where the conditions in DMG 9125 **are not satisfied** the decision maker should apply the guidance contained in the rest of this Chapter.

1 SS (POR) Regs (NI), reg 11(1)

Conditions 1 and 2

9125 The conditions referred to in DMG 9124 are1

 **Condition 1**

 The Department has certified that the overpayment, or a specified part of it, is materially due to the arrangement for payments to be made by direct payment.

 **Condition 2**

 Notice of what would happen, if there was any overpayment, was given to the claimant, or to a person acting for the claimant, before the arrangement came into effect

1. in writing, where the claim was made in writing **or**
2. orally or in writing, where the claim was made by telephone.

1 SS A (NI) Act 92, sec 69(4); SS (POR) Regs (NI), reg 11(2)

9126 In deciding whether the Department is entitled to recover benefit under DMG 9124 and 9125 the decision maker should under

 **1. Condition 1**, require a certificate signed by the Department in the terms described

 **2. Condition 2**, find as fact that notice was given as required (see DMG 9131 et seq).

9127 Where the arrangement was agreed to before 6.4.87, DMG 9125 **Condition 2** need not be satisfied if claimants, or persons acting for them, completed a statement at the time direct payment was arranged, that

 **1.** they had read and understood the conditions applying at that time to credit transfer payments **and**

 **2.** they understood that they would have to repay any overpayment, if the decision awarding benefit was reviewed or varied on appeal1.

 **Note:** Before deciding that the benefit is recoverable under this provision the decision maker will need evidence that such a statement was made (see DMG 9132 and 9134).

1 SS (POR) Regs (NI), reg 11(3); SS (C&P) Regs (NI), reg 21

BACS processing period and cut off period

9128 The BACS processing period is a 3 day cycle as follows

 Day 1 – the input day

 Day 2 – the processing day

 Day 3 – the crediting day.

9129 The cut off period is the period beginning on input day and ending when the time limit for recalling payments expires. The time limit expires during the processing day. If the claimant discloses a change of circumstance before the payment has credited but after the time limit for recalling the payment has expired, there is a system caused overpayment.

 **Note 1:** It is possible to have a system caused overpayment followed by a non-recoverable overpayment where a further payment is credited to the claimant’s account following their notification of a change of circumstances.

 **Note 2:** Where it is established that the overpayment is **not** materially due to the system for payments, the decision maker should consider whether claimant error has caused the overpayment.

 **Example 1**

 A payment of income-based Jobseeker’s Allowance is issued to Kenny in respect of the period 1.2.18 to 14.2.18. The crediting day for this payment is 14.2.18. The deadline for recalling this payment is 11am on 13.2.18. Kenny contacts the Jobseeker’s Allowance office at 2pm on 13.2.18 to disclose that he started full-time work on 1.2.18. The payment has not yet credited to Kenny’s account and is still in the system, but it cannot be recalled. This is a system caused overpayment.

 **Example 2**

 A payment of income-related Employment and Support Allowance is issued to Matt in respect of the period 1.3.18 to 14.3.18. The crediting day for this payment is 14.3.18. The deadline for recalling this payment is 11am on 13.3.18. Matt contacts the Employment and Support Allowance office at 10am on 14.3.18 to disclose that he started full-time work on 1.3.18. The payment has already credited to Matt’s account. The overpayment is therefore not materially due to the system for payments. Matt’s failure to disclose the material fact to Employment and Support Allowance on 1.3.18 is however a cause of the overpayment and the overpayment is recoverable from him on that basis.

 **Example 3**

 A payment of Personal Independence Payment is issued to Nick in respect of the period 1.6.18 to 28.6.18. The crediting day for this payment is 28.6.18. The deadline for recalling this payment is 11am on 27.6.18. Nick telephones the Personal Independence Payment office at 9am on 26.6.18 to disclose that he emigrated to America on 1.6.18. The Personal Independence Payment office do not take prompt action and no attempt is made to recall the payment. The overpayment is not materially due to the system for payments, nor is it materially due to a failure to disclose the material fact, as when Nick disclosed the material fact the Personal Independence Payment office had a reasonable window of opportunity to recall the payment. The overpayment is not recoverable from Nick.

9130 Where all or part of the overpayment is not covered by a certificate (see DMG 9125 **Condition** **1**), or notice was not issued or signed (DMG 9125 **Condition 2**, or DMG 9127), the overpayment, or the overpayment not covered by the certificate, is only recoverable if the claimant has misrepresented or failed to disclose a material fact.

Evidence that notice was given or signed

Strongest evidence

9131 Where the Department is required to give notice as in DMG 9126 the strongest evidence that the notice was given is

 **1.** where the automated or direct credit transfer form which the claimant completed contains the notice - the completed form **or**

 **2.** where the automated or direct credit transfer form has a “tear-off” to be retained by the claimant - the form completed by the claimant and a specimen uncompleted form showing that the tear off would have been attached **or**

 **3.** where a separate form gives notice to be retained by the claimant - a record on the claimant’s papers showing that such a form was issued **or**

 **4.** where the claimant has retained the notice and options two and three do not apply - a copy of the notice as retained by the claimant.

 If the Department supplies none of the above DMG 9133 should be considered.

9132 Where the claimant had to sign a declaration that he had read and understood the conditions relating to direct payment, the best evidence of this is

 **1.** the form the claimant signed **or**

 **2.** a record on the claimant’s papers that such a form had been signed, together with a specimen form.

 If the Department supplies neither of the above DMG 9134 should be considered.

Secondary evidence

9133 Where the Department is required to give notice and none of the evidence as in DMG 9131 is available

 **1.** the Department may provide a general statement by an officer who administers the benefit paid by direct payment **and**

 **2.** if the general statement states that the benefit branch’s procedural arrangements would have prevented the operation of direct payment arrangements unless notice of the conditions had been issued, the decision maker should accept that notice was given **and**

 **3.** if an appeal is made on this point, the officer who provided the general statement may have to be called to give evidence to the tribunal.

9134 Where claimants had to sign that they had read and understood the conditions relating to automated or direct credit transfer and evidence as in DMG 9132 is not available

1. the Department may provide a general statement by an officer who administers the benefit paid by automated or direct credit transfer **and**
2. if the general statement states that the benefit branch’s procedural arrangements would have prevented the operation of direct credit transfer arrangements unless the claimant had signed that he had read and understood its conditions, the decision maker should accept that this was done **and**
3. if an appeal is made on this point, the decision maker should consider calling the officer who provided the general statement to give evidence to the tribunal.

 9135 – 9142

Child maintenance collected by the Department

Income Support, income-based Jobseeker’s Allowance and income-related Employment and Support Allowance

9143 If a court order or voluntary payment in respect of child maintenance was collected by the Department for any part of the period of the overpayment, and that payment has been treated as income, the decision maker should do the same in calculating the correct amount of Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance payable and incorrect amount of these benefits paid1. Any payment of child maintenance not treated as income is ignored.

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

 **Example**

 John is entitled to child maintenance of £50 per week. This is collected by the Department. He is entitled to income-based Jobseeker’s Allowance of £138 per week because the child maintenance is not treated as relevant income. It is discovered that John has been overpaid and for the period of the overpayment his entitlement is nil. However, although child maintenance has been paid to the Department for the period of overpayment, there is no provision for reducing the overpayment on account of the child maintenance collected by the Department, therefore the recoverable overpayment is the full amount of income-based Jobseeker’s Allowance entitlement.

 **Note:** Although the claimant is **liable** to repay the full amount of income-based Jobseeker’s Allowance received, the Department cannot recover the overpayment twice. The claimant is only **required** to repay the gross overpayment less the amount the Department has already recovered in the form of child maintenance collected by the Department for the same period.

The diminishing capital calculation

Misrepresentation or failure to disclose capital

9144 If an overpayment occurs because a claimant has misrepresented or failed to disclose an amount of capital the decision maker should note that

 **1.** the decision maker should treat that capital as having been reduced at the end of each quarter from the start of the overpayment period by the amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance overpaid in that quarter1. These reductions are cumulative and a quarter means a period of 13 weeks starting with the first day on which the overpayment period began and ending on the 90th day thereafter2. This calculation is only valid when deciding the amount recoverable. In cases involving State Pension Credit, increases of actual capital within the assessed income period should be ignored in the application of the diminishing capital calculation

 **2. if** a repeat claim is made after the period of the overpayment, the decision maker should decide any entitlement to State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance by reference to the claimant’s actual capital

 **3.** the decision maker cannot treat the capital as having been reduced over any period other than a quarter or in any other circumstances3. Applying this does not prevent the normal disregards from being allowed, such as expenses in connection with the sale of a house4

 **4.** the decision maker does not have to guess about what a claimant might have done had they been informed by the Department that their capital was over the capital limit.

 **Note:** The capital a claimant possesses includes cases where the capital concerned is possessed by a child or young person who is a member of the family of the claimant and is part of their applicable amount5.

1 SS A (NI) Act 92, sec 69(6)(a); SS (POR) Regs (NI), reg 14(1); 2 reg 14(3);
3 SS (POR) Regs (NI), reg 14(2); 4 IS (Gen) Regs (NI), regs 49(a) & 50;
JSA Regs (NI), regs 111(a) & 112; 5 R(IS) 10/08

 **Example**

 A claimant states that had the capital limit been known the capital would have been used to buy a larger house to avoid it being taken into account as a resource. The decision maker does not accept this speculation which is entirely different in principle from the diminishing capital calculation.

9145 The decision maker should not apply a diminishing capital calculation if

 **1.** it is clear that a diminishing capital calculation does not affect the amount recoverable (that is the amount of undeclared or under declared capital above the cut off point is considerably greater than the actual amount of “wrongly” paid benefit). But see DMG Chapter 29 for Income Support and Jobseeker’s Allowance, DMG Chapter 52 for Employment and Support Allowance and DMG Chapter 84 for State Pension Credit where the undisclosed capital resource is property **or**

 **2.** the overpayment is not caused by undeclared or under declared capital.

Evidence

9146 The decision maker should note that

 **1.** the decision maker needs evidence of all capital changes during the period of the overpayment. This is because the onus is upon the decision maker to show that tariff income was at a particular level or that capital was over the limit throughout that period

 **2.** in cases where the claimant has failed to make reasonable efforts to provide requested information, the decision maker may make assumptions about the capital held and in doing so, discharge the burden of proof1

 **3.** the decision maker should consider the question with reference to the regulations and case law relevant at the time1 if there is any dispute as to whether the capital was available orwas income rather than capital

**3.1** where the capital is in the form of unit trusts, stocks or shares, monthly valuations can be obtained from Network Support Branch

**3.2** in the case of stocks the enquiry should quote the redemption date. Also the exact figure for one particular day of each month is provided as this is the only information held by Network Support Branch. The decision maker should assume a value on the working day after the date of valuation most beneficial to the claimant

**3.3** for unit trusts the valuation provided by Network Support Branch is a monthly average figure which should be used for all paydays which fall within the quoted month.

1 R(SB) 2/83; R(SB) 35/83

 **Example**

 Friday 14 August total share value £1,500

 Monday 28 September total share value £1,200

 Here the decision maker assumes that the share value dropped to £1,200 on Monday 17 August. The decision maker should accept alternative evidence unless it can be refuted or is inherently improbable.

Calculating the overpayment

9147 As explained at DMG 9144 there is no diminishing capital calculation until the end of the first quarter of the overpayment1. If the overpayment is for less than a quarter any overpayment should be calculated on the basis of the claimant’s actual capital.

1 SS (POR) Regs (NI), reg 14

 **Example**

 A claimant fails to disclose receipt of capital of £16,050 and Income Support remains in payment at £100 a week for 10 weeks following the receipt of capital. He has been overpaid £100 x 10 = £1000 despite the fact that capital was only £50 over the limit.

9148 At the end of the first quarter following the start of the overpayment (that is 89 days after the first day of the overpayment period) the decision maker should deduct from the actual capital held on that date the amount of State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance **overpaid** in the quarter.

 **Note:** This amount is not necessarily the same as the State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance entitlement during the quarter, for example payment may have been delayed. It is the Department’s responsibility to provide evidence of the amount of State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance actually paid in the quarter.

9149 At the end of the second quarter the decision maker should deduct from the actual capital held on that date the amount of **overpaid** State Pension Credit, lncome Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance in that quarter plus the amount **overpaid** in the first quarter and so on for each successive quarter.

9150 The period of the recoverable overpayment should be decided as in DMG 9041 - 9044 even though for part of that period there may be no **recoverable** overpayment because of the diminishing capital calculation. For the purposes of the diminishing capital calculation the start of the overpayment period is the start of the **recoverable** overpayment period.

 9151 – 9160

Recoverability - principles governing benefits

Benefits covered

9161 **[See DMG Memo Vol1/107, 2/61, 3/94, 4/113, 5/103, 7/44, 9/32, 10/66, 12/20, 13/65 & 14/60]** This guidance applies to the following benefits1

1. benefits under the Acts2
2. Child Benefit3
3. Income Support4
4. Jobseeker’s Allowance5 (but see DMG 9295 - 9300 for certain overpayments of Jobseeker’s Allowance to 16/17 year olds and ADM Chapter D1 for overpayments of new style Jobseeker’s Allowance)
5. Social Fund payments6 as prescribed
6. benefits under the National Insurance Acts (Northern Ireland) 1946 & 19667
7. benefits under the National Insurance (Industrial Injuries) Act (Northern Ireland) 1946 & 19668
8. benefits under the National Assistance Act (Northern Ireland) 19489
9. Supplementary Benefit (including Housing Benefit Supplement and single payments)10
10. State Pension Credit11 (but see ADM Chapter D1 for overpayments of housing credit)
11. Employment and Support Allowance12 (but see ADM Chapter D1 for overpayments of new style Employment and Support Allowance)
12. Personal Independence Payment13
13. Bereavement Support Payment14
14. health in pregnancy grant15
15. State Pension16.

1 SS A (NI) Act 92, sec 69(11); 2 SS C&B (NI) Act 92, sec 121; SS A (NI) Act 92, sec 69(11)(a);
3 sec 69(11)(f); 4 sec 69(11)(b); 5 WR (NI) Order 15 (Commencement No 8 etc) Order 17, art 3(3);
6 SS A (NI) Act 92, sec 69(11)(e); 7 sec 69(11)(a); 8 sec 69(11)(a); 9 sec 162 & Sch 7, para 2(c);
10 sec 162 & Sch 7, para 2(d) & 2(E); 11 sec 69(11)(ab);
12 WR (NI) Order 15 (Commencement No 8 etc) Order 17, art 3(3); 13 SS A (NI) Act 92, sec 69(11)(ac);
14 sec 69(11(ae); 15 sec 69(11)(ea); 16 sec 69(11)(za)

Benefits not covered

9162 The following payments are not recoverable

 **1.** refunds of National Health Service charges for prescriptions, dentures, dental treatment, glasses, wigs and fabric supports claimed on or after 1.11.74

 **2.** travelling expenses of patients attending hospital

 **3.** payments for welfare foods

 **4.** travelling expenses for prison visits etc

 **5.** direct payments for rent or fuel made in error to Northern Ireland Housing Executive/Rates Office or fuel authority

 **6.** fares to the Social Security Office or Jobs and Benefits Office

 **7.** Christmas bonus payments

 **8.** Housing Benefit

 **9.** any extra-statutory payments

 **10.** Statutory Sick Pay and Statutory Paternity Pay

 **11.** Industrial Injuries and Diseases (Northern Ireland Old Cases) Benefits (i.e. workmen’s compensation supplement).

General principles

9163 Misrepresentation and failure to disclose have different meanings in law. The decision maker should decide at the outset, under DMG 9196 et seq and DMG 9234 et seq, which ground is appropriate bearing in mind that

1. both grounds can occur during the period of an overpayment for the same or different parts of that period
2. the decision maker should identify each misrepresentation or failure to disclose
3. the misrepresentation and failure to disclose may be wholly innocent.

9164 When considering the recoverability of an overpayment, the law1 says that

1. where any person
2. whether fraudulently or otherwise2
3. misrepresents **or**
4. fails to disclose
5. a material fact **and**
6. this results in an overpayment of benefit for any period

the amount of the overpayment is recoverable from the person misrepresenting or failing to disclose that material fact.

1 SS A (NI) Act 92, sec 69(1); 2 R(SB) 21/82; R(SB) 2/92 Appendix

9165 This guidance also applies to the recovery of Jobseeker’s Allowance overpaid to 16/17 year olds in severe hardship cases where the Department certificate has been revoked1.

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

The material fact

9166 Material fact means any fact which had it been known about and properly acted upon by the Department would have prevented all or part of the overpayment in question. It is a fact which is objectively material to the decision of the Department to make an award of benefit. A fact is material where, on disclosure, it would prompt further enquiries or investigations by the decision maker in order to decide whether an existing entitlement continued or required some change. Whether the particular person considers it material is of no relevance1.

1 R(IS) 7/94

 **Example 1**

 The disclosure of widowhood is not disclosure of an income from Widowed Mother’s Allowance.

 **Example 2**

 An overpayment of an increase of Incapacity Benefit in respect of a dependant occurred where the claimant had failed to disclose that his wife was in receipt of Retirement Pension. The overpayment was recoverable from the claimant and the ‘material fact’ in relation to the overpayment was the payment of Retirement Pension to the claimant’s wife.

 9167

Recoverability not dependent on misrepresentation or non disclosure

9168 The Department may sometimes recover overpaid benefit even though there was no misrepresentation or failure to disclose a material fact. Guidance on these cases is given as follows

1. overpayments of Income Support, income-based Jobseeker’s Allowance, State Pension Credit and income-related Employment and Support Allowance caused by late payments of income (see DMG 9370)1
2. some overpayments where payment was made by direct payment (see DMG 9123 - 9128).

1 SS A (NI) Act 92, sec 72, 69(8) & Sch 7; SS (POR) Regs (NI), reg 8;
IS (Gen) Regs (NI), Part V; JSA Regs (NI), Part VIII

Non-recoverable overpayments

9169 Overpayments may arise in circumstances other than a misrepresentation or failure to disclose, for example arithmetical errors in a claimant’s favour. These should normally be excluded from the calculation of the amount of the overpayment that is recoverable.

Social Fund funeral, maternity and cold weather payments

9170 If a claimant misrepresents or fails to disclose in a claim for Social Fund1 funeral, maternity or cold weather payments the amount recoverable2 is the difference between

 **1.** the amount paid **and**

 **2.** the amount which would have been properly payable had all the relevant facts been known.

1 SS C&B (NI) Act 92, sec 134; 2 SS A (NI) Act 92, sec 69 & 69ZA

 9171 – 9174

Recoverability - evidence

Consideration of evidence

9175 The onus of proving that overpaid benefit is recoverable initially rests with the decision maker1.

1 SS A (NI) Act 92, sec 69(1); R(SB) 34/83

9176 The decision maker should

 **1.** examine all the evidence provided and decide whether it is sufficient to determine the overpayment and the recoverability question1 **and**

 **2.** make further enquiries where evidence is insufficient **and**

 **3.** bear in mind that if statements made by the decision maker are contested at any appeal hearing, the tribunal will look for supporting evidence2.

1 SS A (NI) Act 92, sec 69; 2 R(SB) 10/86

9177 When considering the evidence the decision maker should bear in mind that

 **1.** there is no general rule of law that corroboration of a claimant’s own evidence is necessary1

 **2.** the strict rules of evidence do not apply to the decision making authorities

 **3.** the standard of proof required in decision making is less stringent than that required in criminal proceedings

 **4.** a case should be decided on the balance of probabilities and not beyond reasonable doubt.

1 R(I) 2/51; R(SB) 33/85

9178 The practical effect of DMG 9177 is that the decision maker should only reject a claimant’s evidence when it is

 **1.** self-contradictory **or**

 **2.** inherently improbable.

 **Note:** Where there is no evidence to support a claimant’s statement, the decision maker should consider all the relevant circumstances before deciding to accept it on the balance of probabilities.

 **Example 1**

 Lucy White has in the past failed to report changes in the amount of her part time earnings. On this occasion she says that she told the office in writing of a change but no record of disclosure can be found. The decision maker decides, on the balance of probabilities, that the evidence provided by Lucy White is inherently improbable and that she did not disclose the latest change in her earnings.

 **Example 2**

 John Matthews, interviewed in connection with an overpayment of benefit, says that the change in circumstances leading to the overpayment was reported to the Jobs and Benefits Office in a letter. But in a later interview it is alleged that his partner called into the Jobs and Benefits Office and reported the change. No trace of either disclosure can be found. The decision maker decides that the two statements are self contradictory and, on the balance of probabilities, no disclosure of the material fact took place.

9179 If a claimant states disclosure has been made to the office orally or in writing, the decision maker should

 **1.** ensure that all records, both paper and computer-based have been checked including any linked casepaper or associated file **and**

 **2.** give a statement that the above action has been taken.

Destruction of documents

9180 Documents relating to benefit claims are routinely destroyed at intervals. Where this has happened there can be no presumption as to the content of the missing documents1. Decision makers can take account of all available evidence, including secondary evidence, and decide on the balance of probabilities what the original documents might have contained.

 **Note:** There is special guidance when recoverability is being considered under direct payment arrangements (see DMG 9123).

 **Example 1**

 There is an overpayment because of capital which has not been taken into account. The claim form has been destroyed. The decision maker obtains a copy of the claim form in use at the time to establish what the claimant was asked. Having established there was a question about how much capital the claimant had, it is possible to ask the question whether, on the balance of probabilities, the claimant properly declared the capital amount, entered the wrong amount, or left the question blank.

 **Example 2**

 A State Pension Credit overpayment was discovered when the claimant completed a review form and disclosed that he was in receipt of an occupational pension. The State Pension Credit claim form had been destroyed. The decision maker applied the principle2 that the law presumes that where administrative processes are conducted, things are done correctly unless it is proven otherwise ie there must have been a State Pension Credit claim form for the award of benefit to have been made. The fact that the overpayment occurred is far stronger than the possibility that the correct information was on the claim form.

 The claimant argued he was sure he had put details of the occupational pension on the State Pension Credit claim form, asking why would he put it in the review form but not the original claim form? The decision maker considered the claimant’s assertion and whether there were any other sources of evidence which would, on the balance of probabilities, support or disprove it.

1 R(IS) 11/92; 2 CS/27/87

9181 There may be cases where it is not possible to reconstruct the contents of the missing documents and decision makers cannot show that the claimant misrepresented or failed to disclose. The overpayment is not recoverable unless

 **1.** there is a criminal conviction for an offence which gave rise to the overpayment **or**

 **2.** the claimant says there was misrepresentation or failure to disclose **or**

 **3.** the claimant has made a later misrepresentation in which case the overpayment may be recoverable from the date of that misrepresentation.

Oral admissions

9182 Where documentary evidence to support the overpayment decision cannot be obtained, an oral admission by a claimant may be sufficient evidence for the period to which it relates, if

 **1.** there is a factual record of that admission **or**

 **2.** the officer to whom the admission was made is available to confirm it in writing or in the event of an appeal be called as a witness.

 **Note:** The oral admission by the claimant should contain enough information to support the overpayment decision.

9183 To support a decision on the grounds that a claimant was in paid full time work the admission must

 **1.** cover the whole of the recoverable part of the overpayment **and**

 **2.** show that the definition of full time work in the particular benefit regulation is satisfied.

 **Example**

 Michael Thompson is in receipt of Income Support. Sometime after he claims he states that his partner has been working part time since before his claim.

 Enquiries are made of his partner’s employer and all the wages details are sent to the Department.

 The decision maker calculates the overpayments of Income Support from his date of claim on the basis of the information held by the Department and decides it is recoverable because of Michael Thompson’s admitted innocent misrepresentation.

Criminal conviction

9184 A criminal conviction for an offence which caused an overpayment shifts the burden of proof to the claimant for the period of the charges1. The decision maker needs a certificate of conviction from the appropriate court to show that the conviction is for the benefit and period at issue. Once this has been done the onus shifts to the claimant. This is because the onus of proof on the prosecution in criminal proceedings is a heavier one than on a decision maker before a Tribunal.

1 R(S) 2/80

Refusal to give evidence

9185 If there is some evidence (for example intermittent observation) of undiscIosed work

 **1.** the decision maker should regard the onus of proof as discharged if the claimant refuses to make a statement **and**

 **2.** since the claimant has refused to state when the work started, it is reasonable to decide that the claimant was in work from the date the suspicion arose.

 See DMG Chapter 29 for Income Support and Jobseeker’s Allowance, DMG Chapter 52 for Employment and Support Allowance and DMG Chapter 84 for State Pension Credit, where a legal personal representative refuses to disclose how the capital in a late claimant’s estate arose.

Direct payments

9186 See DMG 9131 about evidence that the required notice was given.

 9187 – 9195

Recoverability - misrepresentation

General

9196 Misrepresentation can occur where

 **1.** a written statement made by a claimant in connection with a claim is incorrect or incomplete even where there has been a full disclosure of the material fact in connection with an earlier claim for benefit1 **or**

 **2.** a written statement made by an interviewing officer based on information supplied by the claimant is found to be incorrect or incomplete (see DMG 9197) **or**

 **3.** part of a claim form is left blank (see DMG 9198) **or**

 **4.** an oral statement is incorrect or incomplete (see DMG 9199) **or**

 **5.** an instrument of payment is presented for payment following a relevant change of circumstances (see DMG 9200) **or**

 **6.** a coupon JS24 is signed.

1 R(SB) 3/90

9197 Where a claimant alleges that disclosure of a material fact was made during an interview, but was not properly recorded by the interviewing officer, the decision maker should

 **1.** consider the written documents and any evidence from the claimant about how the alleged disclosure took place **and**

 **2.** decide, on the balance of probabilities whether the written statement was qualified orally at the interview1.

 **Note:** The claimant is responsible for the correct completion of forms. The fact that a form was completed on the claimant’s behalf does not lift this responsibility2.

1 R(SB) 18/85; 2 R(IS) 14/96

Incomplete statements

9198 Misrepresentation is a positive act by the claimant1. However, it can also be an act of omission. The decision maker should give particular attention to what a claimant has actually represented on any incomplete statement.

 **Example 1**

 Margaret has claimed contribution-based Jobseeker’s Allowance and receives two occupational pensions. At Part 6 of the JSA1 claim form she declares receipt of one pension and is instructed to complete Part 19 of the form if she receives more than one pension. Margaret fails to declare receipt of the second pension. The omission is a misrepresentation.

 **Example 2**

 Robert claims an increase of Incapacity Benefit for his wife. His wife has boarders and on the claim form he is asked.

 “Does your spouse or partner have boarders or lodgers? (Yes or No) If yes, please say how much each of them pays”.

 Robert makes no entry on this part of the form. The circumstances are such that it is reasonable for the decision maker to infer that there are no boarders or lodgers. The failure to answer the question is a misrepresentation.

1 R(SB) 9/85

Oral misrepresentation

9199 If there is evidence of information provided orally by a claimant, such as a report on form A6 by the interviewing officer, and that information is found to be incorrect, the decision maker should regard the oral statement as a misrepresentation.

 **Note:** It is difficult to prove that an oral statement was made and so difficult to prove the misrepresentation where reliance is placed on an oral statement. If the claimant appeals the written record should be produced as evidence, and the interviewing officer may be called as a witness.

Misrepresentation by action

9200 Most payments are made by direct payment but in a few cases payment may be made by cheque. Each cheque contains a declaration to be signed by the claimant (when the declaration is signed see DMG 9215). In some cases declarations are not signed. When this happens, then the claimant, when presenting the cheque for encashment represents that they

 **1.** believe there is currently an award in their favour **and**

 **2.** are the beneficiary or they are acting on behalf of the beneficiary or estate.

 If they know this is not so that is a misrepresentation.

Circumstantial evidence of misrepresentation

9201 If direct evidence of misrepresentation is unavailable the decision maker may still consider misrepresentation where there is circumstantial evidence to support this. Examples of circumstantial evidence are

 **1.** the claimant does not deny receiving the payments

 **2.** benefit was paid by means of a cheque

 **3.** the casepaper holds evidence of the amount awarded.

Directing further enquiries

9202 The decision maker

 **1.** should not normally ask for direct evidence to be produced, or for circumstantial evidence to be sought, where it is not already available **and**

 **2.** can usually decide recoverability on the alternative ground of failure to disclose, on the evidence already available (see also DMG 9175 and 9176).

Knowledge of the material fact

9203 Misrepresentation can occur even though a claimant is not aware of the true position1. For example, if a claimant’s wife conceals from him the fact that she has earnings of her own, a declaration by the claimant that she has none may still be a misrepresentation.

1 R(SB) 21/82; R(SB) 9/85

9204 Whether a misrepresentation has occurred when the claimant was not aware of the material fact depends upon the wording of the declaration on the form that has been signed.

 **1.** There is **no** misrepresentation1 if the declaration on the form is qualified, as on many older postal claim forms, for example

“Declaration: as far as l know, the information on this form is true and complete” **and** the claimant was not aware of the material fact at the time of signing.

In this case the decision maker may go on to consider whether the claimant failed to disclose a material fact if there is evidence that the claimant became aware of the fact at a later date (see DMG 9234 et seq).

 **2.** The statement **is** a misrepresentation if the declaration on the form is not qualified, for example

 “Declaration: the information on this form is true and complete”.

 Whether the claimant knew the material fact is irrelevant. The only exception is where claimants state that they did not know what they were signing (see DMG 9206 and 9207).

1 Jones & Sharples v CAO [1994] 1 All ER (CA) 225

9205 Where the declaration is made as in DMG 9204 **1.** and the material fact is income which was not entered on the claim form

 **1.** if the income belongs to the claimant, the decision maker should accept without further enquiry that the claimant knew that it was being received

 **2.** if the income belongs to a claimant’s partner, the claimant should be asked why it was not declared at the time the form was signed. If the claimant did not know of the income there is no misrepresentation. The decision maker should go on to consider whether the claimant failed to disclose a material fact. It is important to remember that knowledge of the material fact has to be shown in failure to disclose cases.

9206 A claimant or representative may state that an incorrectly completed form with a signed declaration is not a misrepresentation because the claimant completing the form did not know what they were doing1. This may happen where someone should have been appointed to run that claimant’s affairs, and the claimant completed the forms in question. That claimant may not then be held responsible for the completion.

1 R(IS) 4/06

9207 Where it is claimed that a person is not responsible, the decision maker should consider the following points1.

 **1.** Non-responsibility is limited to those who are blind, illiterate or do not fully understand a particular form they have signed. This may be caused by poor education, illness or inborn incapacity and can be temporary or permanent.

 **2.** Poor education, illness or inborn incapacity alone is not sufficient to show non-responsibility. People are expected to take reasonable steps to understand what they sign.

 **3.** The burden of proof rests with persons who contend that they are not responsible. Those who are merely content to sign without taking the trouble to find out the general effect of the form cannot claim to be non-responsible.

 **4.** People may contend that they are not responsible because, having signed the form, they believe it had one effect when in fact its effect was quite different. They must show that they had taken steps or been given information which gave grounds for the belief **and** there was a radical, serious or very substantial difference between what they signed and what they thought they were signing.

 **5.** People are responsible where they were merely mistaken as to the legal effect of the form, whether the mistake was their own or that of an advisor.

 **Note:** Non-responsibility may also be referred to as non est factum, which means “it is not his deed”.

1 Saunders v Anglian Building Society [1971] AC 1004

Declarations on order book foils

9208 Order Book foils include the declaration “l declare that l have read and understand all the instructions in this order book, that I have correctly reported any facts which could affect the amount of my payment and that I am entitled to the above sum”.

 There may be a misrepresentation when this statement is signed if the claimant

 **1.** has not reported a material fact **and**

 **2.** knew the fact.

 The material fact which is misrepresented in these circumstances is that the claimant had reported any facts which could affect the amount of benefit1. This declaration also incorporates a representation of the underlying facts themselves.

1 Jones & Sharples v CAO [1994] 1 All ER (CA) 225

 **Example**

 Tim Wilson works whilst in receipt of benefit, does not report that fact but continues to cash his Order Book. The material fact which he misrepresented on the Order Book foil is the fact that the work had been reported. There is also a misrepresentation of the underlying fact that he was working.

9209 The words of the declaration “any facts which could affect the amount of my payment” are too wide to be limited to what a reasonable person would think would affect the amount of the payment1. Therefore the declaration is not qualified by a test of reasonableness.

1 Jones & Sharples v CAO [1994] 1 All ER (CA) 225

9210 Signed Order Book foils are not usually available as evidence of misrepresentation unless there have been fraud investigations. The decision maker may consider whether

 **1.** there is any circumstantial evidence of the misrepresentation on the Order Book foils (see DMG 9201) **or**

 **2.** there is a misrepresentation on any other form or letter.

9211 The Northern Ireland Commissioner has held that a person misrepresents a material fact when they sign the declaration on an order book foil knowing full well that they are **not** entitled to the “above sum”1. Such misrepresentations are likely to occur where

 **1.** the claimant reports to the Department a fact which clearly affects entitlement to benefit but continues to encash order book foils after the notification. (**Example 1**)

 **2.** the claimant continues to encash order book foils although they had received notice of a revision/supersession of the award before the date on which the order book was cashed (**Example 2**).

1 R 6/94 (IS)

 **Example 1**

 Peter Kennedy who is in receipt of Incapacity Benefit sends a closed doctors statement and states that he is returning to work. The instructions in the order book tell claimants not to cash any more orders when capable of work. Peter encashes the order book foils for the next two weeks after returning to work.

 The decision maker subsequently supersedes on the grounds of a relevant chance of circumstances and decides that the whole of the overpayment is recoverable. Peter Kennedy has misrepresented entitlement to the amount of benefit due on each of the order book foils.

 **Example 2**

 Following an all work test assessment, the decision maker decides that Paula Wright is capable of work and supersedes the award of benefit on the grounds that there is a relevant change of circumstances1. In the meantime Paula continued cashing her order book unaware that she was capable of work. The decision maker determines the recoverable overpayment from the first order cashed after they are satisfied that Paula Wright has received notification of the supersession.

1 SS (NI) Order; SS (C&P) Regs (NI), reg 17(7)

 9212 – 9213

Declarations on cheques

9214 When claimants sign girocheques they sign a declaration which states

 “I am entitled to the money on this cheque”.

 Since no mention is made of reporting of facts which could affect the amount of payments, signing the declaration is normally only a misrepresentation where the award of benefit

1. ceased (see DMG 9031 option 2 - irregular encashments) **or**
2. continues and the claimant reports the giro as lost, stolen or destroyed and a duplicate payment has been issued (see DMG 9224 - irregular encashments) **or**
3. has been corrected (see DMG 9031 option 3 - correction of accidental errors) **or**
4. was revised/superseded before any declaration is signed.

 **Note:** If none of the above apply, consider misrepresentation by action (DMG 9200).

 9215

Declarations on Jobseeker’s Allowance coupons (JS24)

9216 Where a claimant does not report a relevant change of circumstance the decision maker should consider the declaration on the signed coupons (JS24) and, if necessary, form JSA1 (initial claim for Jobseeker’s Allowance) to decide whether the claimant misrepresented.

9217 Claimants will have misrepresented by signing a coupon if

 **1.** they have failed to report a change in their own or their dependants circumstances (but see DMG 9221 where the change occurs after signing for an advance period) **or**

 **2.** they have done any work which has not been declared.

 **Example 1**

 A claimant who signs every fortnight on a Wednesday starts full time work, continues to sign and does not declare the work. Some time later the Department receives information that he has been working continuously. The claimant misrepresented on each coupon JS24 signed during the period of the overpayment.

 **Example 2**

 A claimant making a fresh claim for Jobseeker’s Allowance on form JSA1 does not admit to working as a window cleaner. The situation comes to light many months later by which time a substantial overpayment has occurred. The decision maker decides that the direct cause of the overpayment was the claimant’s misrepresentations on the JS24s, during the overpayment period.

9218 To rely on misrepresentation on JS24 coupons the decision maker should have

 **1.** all the signed coupons relevant to the overpayment period (but see DMG 9201 and 9219 where only a sample of coupons are available) **or**

 **2.** an admission by the claimant that the misrepresentation had been made, with dates and specific periods covered.

9219 Where

 **1.** only a sample of signed coupons is available for the overpayment period **and**

 **2.** the claimant does not deny receiving the payments

 the decision maker may still consider misrepresentation for those portions of the period for which no coupons are available, on any circumstantial evidence available (see DMG 9201).

9220 Misrepresentation cannot be relied on for any period for which the claimant has been excused signing. Failure to disclose should be considered for that portion of the overpayment period. This is because the payment of benefit was not made in consequence of a declaration.

 **Example**

 A claimant does not declare employment which lasts 14 weeks (seven fortnights) and continues to sign for five of the fortnights involved, being excused signing for the remaining two fortnights. The decision maker decides that the claimant has misrepresented on signing the five coupons and the Jobseeker’s Allowance overpaid in the remaining two fortnights was caused by the claimant’s failure to disclose.

9221 If a change of circumstances occurs on a day after the claimant signs for an advance period, there is no misrepresentation on the coupon (see DMG 9222). The decision maker should consider failure to disclose.

9222 If the claimant is asked whether a specific change is likely to occur in the foreseeable future when signing for an advance period and

 **1.** the reply is recorded **and**

 **2.** there is evidence that the claimant knew of the impending material change when signing the coupon

 then the decision maker may still rely on misrepresentation.

Declarations on form JSA1 - compensation or occupational pensions

9223 Claimants will misrepresent if they answer “no” to the relevant question in part six of form JSA1 and they are expecting to receive a compensation or an occupational pension. In order to rely on the claimant’s misrepresentation on form JSA1, where signed coupons are not available

 **1.** there must be evidence, for example from an employer that the claimant knew, when signing form JSA1 that a compensation would be paid **and**

 **2.** the decision maker must be able to show that Jobseeker’s Allowance would not have been paid had the question been answered correctly (see DMG 9201 - 9202). Note if there was a considerable delay before the compensation was received this action may not be possible because, had the correct answer been given, it would have been unreasonable to delay awarding Jobseeker’s Allowance.

Irregular encashments

9224 Irregular encashments arise where money has been obtained by the misuse of instrument of payments or by false representation.

 **Example 1**

 Instrument of payment stolen and cashed by a third party.

 **Example 2**

 Encashment by another person for a period after the death of the claimant. Where there is an overpayment of benefit as a result of late notification of death, the awarding decision must be superseded before the decision maker can consider whether the overpayment is recoverable1.

 **Example 3**

 Duplicate payment obtained by a false declaration that the original instrument of payment was lost, stolen or destroyed when in fact it was cashed.

 **Example 4**

 Alteration of the amount on an instrument of payment.

 **Example 5**

 Duplicate or multiple claims (DMG 9225).

1 SS A (NI) Act 92, sec 69(5A); SS (NI) Order, art 11(1)

9225 Although payments as a result of duplicate or multiple claims are irregular encashments, there are grounds to revise or supersede the awards as there was

 **1.** no entitlement to any of the payments **or**

 **2.** some entitlement **under the person’s real identity** but not to the amount paid.

 **Example 1**

 A claimant who is receiving Income Support makes duplicate claims under a variety of names at four other Jobs and Benefits Offices. There are grounds to revise the awards on the fraudulent claims. The decisions were made in ignorance of the fact that the claimant was already receiving benefit under the proper name and at the correct rate.

 **Example 2**

 Someone with no personal entitlement to contribution-based Employment and Support Allowance impersonates a relative and makes a claim in that person’s name. Contribution-based Employment and Support Allowance is awarded on the relative’s National Insurance contribution record. There are grounds to revise the award as the decision was made in ignorance of a material fact. The claimant was not the person declared on the claim form and was not entitled to benefit under their true identity.

9226 The decision maker should consider the following evidence

 **1.** the identity of the person alleged to have misrepresented **and**

 **2.** either the certificate of conviction, where that person has been prosecuted in connection with the irregular encashment **or**

 **3.** a written admission **or**

 **4.** both a certificate of conviction and a written admission.

 As fraud investigations will have been made some or all of the relevant instruments of payment should also be available. The decision maker may therefore decide recoverability on the evidence of the instrument of payment and the above points in this paragraph.

 **Note:** Where a written admission by the claimant or a certificate of conviction is not available, the decision maker should consider other evidence. This may be a record of the interview under caution.

9227 Where no instruments of payment are held for some or all of the overpayment period the decision maker should decide recoverability on

 **1.** the evidence of the certificate of conviction **or**

 **2.** the admission **or**

 **3.** any other evidence that may be available.

9228 Conviction shifts the burden of proof from the decision maker to the claimant (see DMG 9184) but an admission of misrepresentation on its own does not. If no certificate of conviction or cashed instrument of payments are held and the person denies misrepresenting despite an earlier admission, the decision maker may only satisfy the burden of proof if

 **1.** the denial is inherently improbable or self-contradictory (see DMG 9179) **or**

 **2.** there is other evidence available for example the testimony of a handwriting expert or direct evidence from a witness such as a Post Office clerk, who saw the act of misrepresentation (see DMG 9201).

 9229 – 9233

Recoverability - failure to disclose

Department’s instructions

9234 The Department may require a claimant or beneficiary to provide information or evidence or to notify changes of circumstances that may affect either

1. continuing entitlement to the award of benefit **or**
2. the payment of benefit1.

1 SS (C&P) Regs (NI), reg 32(1A); reg 32(1B); JSA Regs (NI), reg 24

Knowledge of the material fact

9235 Claimants have a duty to disclose1

1. material facts (see DMG 9166) that are known to them **and**
2. material facts which they ought to know by making reasonable enquiries2.

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

1 SS (C&P) Regs (NI), reg 32(1); 2 R(SB) 28/83

 **Example 1**

 David failed to disclose that his wife had earnings even though she was away from home at regular intervals, leaving the children in his care. In this case, it is reasonable to suppose that David ought to have known why she was absent.

 **Example 2**

 Asif’s solicitor received £15,000 damages on behalf of his claimant who did not know that his solicitor had received the money. If Asif is unskilled in business matters it is unreasonable to suppose that he ought to have known about the money unless he

1. had turned a blind eye to whether his solicitor had received the money **or**
2. made enquiries about the receipt of the money.

Disclosure

9236 In order for the claimant to discharge their duty to disclose, a disclosure must

 **1.** be of the material fact itself **and**

 **2.** be made in relation to the claimant’s own claim for benefit **and**

 **3.** be made in the manner and to the place instructed by the Department1 (see also DMG 9245).

1 R(SB) 54/83; R(SB) 15/87; Hinchy v Department for Work & Pensions; R(IS) 7/05

9237 Except in cases where regulations1 specifically require the claimant to report changes of circumstances in writing, an oral disclosure will suffice if it meets the above criteria2.

1 SS (C&P) Regs (NI), reg 32; JSA Regs (NI), reg 24; 2 R(SB) 12/84

Meaning of failure to disclose

9238 Disclosure means “to reveal”1. If the relevant decision maker knows the material fact, a claimant cannot fail to disclose, even though he may have failed in his duty to do so. It should be accepted that the relevant decision maker has actual knowledge where there is evidence that the information had reached the relevant section2.

1 Hinchy v Secretary of State for Work and Pensions EWCA [2003] Civ 138; R(IS) 7/05;
2 C004/09-10(IS) para 37

Effect of a failure to disclose

9239 Where the claimant has not complied with issued instructions and therefore fails to disclose information or notify a change of circumstances, known as the ‘material fact’ (see DMG 9166), any resulting overpayment may be recoverable from them1. The recoverable amount is limited to the amount of benefit that would not have been paid if the claimant had actually disclosed at the correct time. However, the decision maker must ensure that the claimant was under a duty to disclose2.

1 SS A (NI) Act 92, sec 69(1); 2 SS (C&P) Regs (NI), reg 32(1), 32(1A) & 32(1B)

When a failure to disclose arises

9240 A failure to disclose a material fact arises

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

1 SS A (NI) Act 92, sec 69(1); SS (C&P) Regs (NI), reg 32

 **Example**

 Joe claims Jobseeker’s Allowance on form JSA1 dated 1.9.09. At that time he was not receiving an occupational pension. He is awarded contribution-based Jobseeker’s Allowance from 4.9.09. However, he is subsequently awarded a pension and payments begin on 4.1.10. On 25.2.10, the local office conduct a periodical review of Joe’s entitlement to benefit and he completes a review form declaring that he has been in receipt of an occupational pension since 4.1.10. Joe has failed to declare receipt of an occupational pension throughout the period from 4.1.10 to 24.2.10.

When a failure to disclose does not arise

9241 Disclosure is not expected where the information is within public knowledge and therefore known to the decision maker.

 **Example**

 Frank is in receipt of Retirement Pension and State Pension Credit. He is not expected to report to the office handling his State Pension Credit payments that his Retirement Pension payments have increased due to annual uprating.

Duty to disclose other than for Jobseeker’s Allowance

9242 The claimant must disclose a material fact where they

1. have been clearly and unambiguously advised of the need to disclose the fact1 **and**
2. were aware of the fact **or**
3. ought to have been aware of the fact by making reasonable enquiries2.

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

1 R(IB) 4/07; R(IS) 9/06; 2 R(SB) 28/83

Instructions to claimants

9243 Instructions to claimants about the notification of information are usually given in claim forms, notes that accompany claim forms and leaflets. These can be accepted as sufficient to inform the claimant of their obligation to disclose any change of circumstances as listed therein. However, the instructions must be clear and unambiguous1.

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

9244 The claimant should comply with the instructions given to them. They are not entitled to form views about how the benefit system works or what knowledge the relevant decision maker might have1. As claim forms and leaflets are periodically updated, the decision maker will need to ensure that they have a copy of the relevant version when looking at what instructions the claimant has been given and when.

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

 **Example**

 Susan was in receipt of Disability Living Allowance and Income Support with a disability premium. She received an INF4 leaflet in relation to her Income Support award which told her to report if her income went up or down. Her award of Disability Living Allowance came to an end. She did not tell the office administering her Income Support benefit payments. She failed to disclose the material fact that her level of income had changed. The overpayment of the disability premium was recoverable from her.

Modification of instructions

9245 Notwithstanding the claimant’s instructions regarding their duty to disclose as discussed in DMG 9236 to DMG 9238, it is possible for those instructions to be modified by an officer acting on behalf of the Department. The effect of this modification is that the claimant no longer has to do all or part of what they were originally required to do1. A modification can be done orally or in writing and where a duty to disclose has been modified, the decision maker should consider what the modified duty was. This should be based on what was said to the claimant. For example

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

1 R(A) 2/06

 9246

Additional duty to disclose

9247 In addition to the duty described in DMG 9242, the claimant also has a duty to disclose if

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

**4.1** to the appropriate office2 or postal address

**4.2** in writing or by telephone **or**

**4.3** in whatever form specified by the Department.

1 SS (C&P) Regs (NI), reg 32(1B); 2 reg 2(1)

Reasonably to be expected

9248 The test is what could reasonably be expected of the claimant concerned, having regard to their circumstances. It is not necessary for the claimant to understand the actual impact of the change. The decision maker must look at the information given to the claimant about

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

 **Example**

 Martin was in receipt of the mobility component of Disability Living Allowance at the higher rate. He had a hip replacement operation and after a period of recuperation, his mobility has improved. The “Notes” he was given with his claim form included - “We need to know if anything you told us changes about how your illness or disability affects you. Please tell us if things get easier or more difficult for you. And tell us if you need more or less help”. This is sufficient to put him under a duty to disclose the improvement in his condition.

Timing of the disclosure

9249 Disclosure has to be made as soon as possible to be effective. However, there is no requirement for a claimant who is aware of a change that is about to take place, to notify the relevant office in advance1. However, see DMG 9250 - 9252 for Jobseeker’s Allowance claimants.

 **Example**

 Karen is entitled to contribution-based Employment and Support Allowance and began permitted work higher limit on 5.7.10. The earnings limit for permitted work higher limit is £93.00 a week, but Karen currently earns £91.00 a week. Karen’s employer has told her that she will receive a wage increase in November 2010. Karen is not required to disclose the increase in her earnings until it comes into effect.

1 R(SB) 3/81

Duty to disclose for Jobseeker’s Allowance

9250 Just as for other benefits the Department may give the person instructions to notify specific changes in connection with payment of Jobseeker’s Allowance claimed or awarded1. This may be contained in, for example, information leaflets, letters or notes. Provided that the person has been instructed to disclose a particular fact, and that instruction is clear and unambiguous, an omission to do so will be a breach of their duty to disclose2.

1 JSA Regs (NI), reg 24(5); reg 24(5A); 2 R(IB) 4/07; R(IS) 9/06

9251 In addition to the duty set out in DMG 9250 above the claimant must tell the Department of any change of circumstances which has occurred or they are aware is likely to occur which they might reasonably be expected to know might affect

 **1.** the continuing entitlement to Jobseeker’s Allowance, or in the case of a joint-claim couple, the entitlement of the couple to a joint-claim for Jobseeker’s Allowance **or**

 **2.** the payment of Jobseeker’s Allowance **or**

 **3.** the amount of Jobseeker’s Allowance.

9252 They must notify such changes as soon as reasonably practicable after

 **1.** the change occurs **or**

 **2.** they become aware of the likely change

 by giving notice in writing or by telephone, unless the Department accepts it in another form, to an office of the Department specified by it1.

1 JSA Regs (NI), reg 24(7)

Disclosure where one benefit affects another

9253 A claimant’s duty to report changes in circumstances may include reporting the award of, or changes to, other benefits where one benefit affects another. The essential fact which the decision maker should identify is what the Department directed the claimant to do, including whether there has been any modification of those instructions (see DMG 9245). The claimant is not entitled to make any assumptions about the administrative arrangements of the Department. In particular they are not entitled to assume the existence of infallible channels of communication between one office and another1.

1 R(IS) 7/05

 **Example**

 Edward is in receipt of Retirement Pension and State Pension Credit on behalf of himself and his wife, Barbara. Local office A administers his payments of State Pension Credit. Local office B administers his payments of Retirement Pension. These offices are not in the same building and there are no channels of communication between them. Edward has received leaflet INF4(PC) which instructs him to telephone or write to the office shown in the letter that advised him of his State Pension Credit award if a change of circumstances, such as the death of a spouse or partner occurs. The address and telephone number is that of local office A. Edward has received similar instructions to report changes of circumstances, in respect of his Retirement Pension award, to local office B. When Barbara dies, Edward reports her death to local office B and assumes that the information will be passed on to the relevant officials at local office A. As there is no process for such an exchange of information between local office A and B, Edward has not discharged his duty to disclose until he reports Barbara’s death to local office A.

Claimant alleges that disclosure made

9254 Where a claimant alleges that the material fact was disclosed orally or in writing, but no trace of the disclosure can be found, the decision maker should decide whether disclosure was actually made as per DMG 9177 - 9179. If the decision maker decides that disclosure

1. was not made, they should consider recoverability of the overpayment in the normal way **or**
2. was made, the decision maker should consider whether the disclosure was sufficient as in DMG 9236.

 9255

Disclosure by person(s) other than the claimant

9256 The duty to disclose which is placed on the claimant, also extends to

1. appointees (see DMG 9280)
2. legally appointed representatives
3. both members of a joint-claim couple (see DMG 9250 - 9252)
4. guardians.

 Where recovery is sought from one of the people listed above, the decision maker must be able to show that the person has a legal duty to disclose.

9257 Where an appointee is in place, a disclosure by them is equivalent to a disclosure by the claimant.

9258 Where an appointee is not in place, disclosure by a third party (other than those listed at DMG 9256) is sufficient only if

1. the information is given in connection with the claimant’s own benefit and according to the Department’s instructions **and**
2. the claimant is aware that the information had been given in that way **and**
3. in the circumstances it is reasonable for the claimant to believe it is unnecessary to take any personal action1.

 A casual or incidental disclosure by some other person is not sufficient to satisfy the second or third condition. However, see DMG 9238.

1 R(SB) 15/87

Alternative methods of notification of a change of circumstances

9259 DMG 4150 - 4158 gives guidance on notifying changes of circumstances including alternative methods of notifying a death.

Effect on overpayment decision making

9260 A death is a relevant change of circumstances which will affect entitlement to, and payment of, benefit. If the death is notified late, this may result in an overpayment of benefit and the decision maker may be asked to consider whether any such an overpayment is recoverable on the basis that there has been a failure to disclose1. In the case of a death, the duty to disclose may be imposed on another person, i.e. an appointee, a legally appointed representative or both members of a Jobseeker’s Allowance joint-claim couple. If this is the case, the decision maker will need to establish whether the person concerned has discharged their duty to disclose by notifying the death using one of the alternative means described in DMG 4150 - 4158.

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

 9261 – 9265

Recoverability - other considerations

Causation

General

9266 For an overpayment to be recoverable1, other than as at DMG 9168, the decision maker must establish whether the overpayment has been caused by a failure to disclose or a misrepresentation of a material fact. If it has, then the necessary causal link has been established and the Department is entitled to recover the overpayment. Only the benefit paid that would not have been paid but for the failure to disclose or misrepresentation is recoverable.

1 SS A (NI) Act 92, sec 69(1); R(SB) 3/81; R(SB) 21/82; R(SB) 15/87

Causation and failure to disclose

9267 To determine whether an overpayment has been caused by a claimant’s failure to disclose a material fact, it is necessary to consider whether the overpayment would still have occurred if there had been proper disclosure of that fact. The decision maker should note that

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

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

9268 Where there has been a failure to disclose a material fact, the decision maker should consider whether the necessary causal link with the overpayment exists by establishing the following

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

9269 If the material fact which the claimant should have provided has, in fact, been provided by someone else, that does not **necessarily** mean that the claimant’s failure to disclose is not a cause of the overpayment. The decision maker should still establish whether, at any of the stages at DMG 9268 **1.**, **2.** and **3.**, disclosure from the claimant would have prompted the office to which disclosure should have been made, to take action that would have brought the overpayment to an end sooner than was the case.

9270 If, at any stage, it can be shown that the overpayment would have continued regardless of the disclosure of the material fact, then the causal link is broken. The recoverable amount should not therefore include any amount overpaid after the date on which that link is broken.

 **Example**

 Office A administers ongoing awards for Carer’s Allowance. Office B administers ongoing awards for Retirement Pension. Jack has been caring for his wife for a number of years and receives Carer’s Allowance. On reaching his 65th birthday, Jack claims and is awarded Retirement Pension. He does not tell office A about this. However, office B sends a note to office A to advise that Retirement Pension has been awarded. Julie, the officer in office A that handles Jack’s Carer’s Allowance award, receives the note but is unaware that Retirement Pension and Carer’s Allowance overlap and she takes no action to adjust Jack’s Carer’s Allowance. There is no causal link between Jack’s failure to disclose to office A and the overpayment of Carer’s Allowance. Had Jack told office A about his Retirement Pension, Julie would still not have adjusted the Carer’s Allowance. The overpayment would have happened anyway.

 Had Julie been aware of the overlapping rules, then she would have taken action to adjust Jack’s Carer’s Allowance and the overpayment would have come to an end at the time of the adjustment. The whole amount of the overpaid Carer’s Allowance would have been recoverable from Jack.

Burden of proof

9271 It is for the decision maker to show that the claimant’s failure to disclose was a cause of the overpayment. The decision maker should have regard to all available records and any background knowledge about office procedures and practices that the decision maker or other officers hold. If it is not possible to determine what would probably have happened if the claimant had made the required disclosure (eg. because the decision maker cannot establish what happened to a letter from a third party that contained the required information), the overpayment will not be recoverable.

Number of causes for an overpayment

9272 It is possible for there to be more than one cause for an overpayment. For example, the claimant may have failed to disclose a material fact but argues that the Department failed to take reasonable steps on its own initiative that would have brought the material fact that had to be disclosed, to the Department’s attention.

 Both failures helped bring about the overpayment. However, providing that one of the causes was the claimant’s failure to disclose, then the causal link is not broken1.

 The decision maker must consider if payments of benefit have been made that would not have been made but for the failure to disclose or misrepresentation. If payments would have been made even if correct and timeous disclosure had been made, the overpayment will not be recoverable.

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

 **Example 1**

 Ollie was in receipt of State Pension Credit including an extra amount for severe disability that was payable as he also received Attendance Allowance. He had been issued an INF4(PC) form that instructed him to tell the State Pension Credit office if he stopped receiving any benefits. His Attendance Allowance stopped, but he failed to disclose this fact to the State Pension Credit office. The computer system produced a print-out to inform the State Pension Credit office about the cessation of Attendance Allowance, but the State Pension Credit office did not immediately address the print-out due to the volume of work they had. The State Pension Credit office were still taking necessary action on claimant disclosure. An overpayment of State Pension Credit accrued. The overpayment only stopped when the State Pension Credit office became aware of the cessation of Ollie’s Attendance Allowance via the computer printout, some weeks after it was sent to the office, and took action to reduce State Pension Credit accordingly.

 For the overpayment to be recoverable it had to have occurred because of the failure to disclose the cessation in Attendance Allowance. The decision maker considers that as the State Pension Credit office were not responding to computer print-outs but were taking action on disclosure from a claimant, the overpayment would not have occurred if Ollie had disclosed the cessation of his Attendance Allowance as instructed. The decision maker also considered that a greater amount of State Pension Credit was paid than would ordinarily have been paid if the State Pension Credit office had been aware of the cessation of Ollie’s Attendance Allowance. The State Pension Credit that was paid that would not have been paid but for the failure to disclose the cessation of Attendance Allowance was recoverable from Ollie.

 **Example 2**

 Heather was in receipt of State Pension Credit with an extra amount for severe disability as she received Attendance Allowance. She had been issued an INF4(PC) form that instructed her to tell the State Pension Credit office if she stopped receiving any benefits. Her Attendance Allowance stopped, but she did not disclose this fact to the State Pension Credit office. The computer system sent a print-out to inform the State Pension Credit office that Heather was no longer in receipt of Attendance Allowance. The State Pension Credit office were very busy and were taking a number of weeks to respond to print-outs and claimant disclosure. An overpayment of State Pension Credit occurred. The overpayment stopped when the State Pension Credit office became aware of the cessation of Heather’s Attendance Allowance via the print-out.

 The decision maker considered the overpayment not to be recoverable, as no payments had been made that would not have been made but for the failure to disclose. This is as the State Pension Credit office were not responding to disclosure from claimants, so the State Pension Credit would still have been overpaid if Heather had made correct disclosure of the cessation in her Attendance Allowance.

When is the causal link not broken

9273 Examples of when the causal link is not broken include

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

1 Morrell v Department for Work and Pensions; R(IS) 6/03

Causation and misrepresentation

9274 To determine whether an overpayment has been caused by a claimant’s misrepresentation, it is necessary to consider whether a correction of that misrepresentation, by the claimant, would have made any difference to the overpayment.

 As is the case with failure to disclose, when the decision maker is considering whether the necessary causal link exists, it is useful to establish the following

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

 The decision maker should establish whether, at any of the stages above, correcting the misrepresentation would have prompted the office responsible for the payment of benefit, to take action that would have brought the overpayment to an end sooner than was the case.

 **Example 1**

 Stanislav’s Income Support claim form was completed by his wife because of his illiteracy. Stanislav’s wife receives a pension, but the questions on the Income Support claim form relating to pension payments were left unanswered. The decision maker did not seek to obtain answers to the questions at issue and an award of Income Support was made regardless. Here it may be argued that the claim form was incomplete rather than inconsistent and ambiguous and that it contained sufficient information to enable the decision maker to make an award of Income Support. Realising his error, Stanislav signed a letter written by his wife giving full details of her pension payments and this was sent to the Income Support office. On receipt of this letter, action was taken to revise the award of Income Support and an overpayment calculated. Here the causal link was broken on receipt of Stanislav’s letter. The whole amount of Income Support overpaid is recoverable from Stanislav up to the point of his disclosure.

 **Example 2**

 Mohammed claimed Incapacity Benefit and Income Support and answered ‘no’ to the question on the respective claim forms about whether he receives a pension payment from a former employment. Awards of Incapacity Benefit and Income Support are made on the basis of the information Mohammed has given in his claim forms. Mohammed realises his error and sends a letter to the Incapacity Benefit office giving sufficient information to allow a revision of the Incapacity Benefit award. However he makes no mention of the fact he also receives Income Support. His Incapacity Benefit award is adjusted and Mohammed is liable to repay the overpaid Incapacity Benefit up to the point of his disclosure. The Incapacity Benefit office takes no action to inform the Income Support office of the pension details. Payment of Income Support continues unadjusted and because Mohammed has taken no steps to correct the misrepresentation in respect of the Income Support award, the causal link in respect of the Income Support overpayment is not broken. Mohammed would be liable to repay all the Income Support overpaid until such time as the misrepresentation is corrected.

 9275 – 9277

Deciding from whom the overpayment is recoverable

9278 An overpayment is recoverable from any person who caused that overpayment because they misrepresented or failed to disclose a material fact1. Where a person is acting on the claimant’s behalf the overpayment may be recoverable from that person, as well as or instead of the claimant2. The decision maker’s decision should cover the liability of

 **1.** the claimant **or**

 **2.** both members of a joint-claim couple, in the case of a joint-claim to income-based Jobseeker’s Allowance **and**

 **3.** any person acting on the claimant’s behalf.

1 SS A (NI) Act 92, sec 69(1) & 69(3); 2 R(SB) 9/84; R(IS) 5/00

9279 “Any person” may mean1

 **1.** the claimant, or in the case of a joint-claim to income-based Jobseeker’s Allowance, both members of the joint-claim couple **or**

 **2.** a person, other than the claimant, whose misrepresentation or failure to disclose caused the overpayment.

1 R(SB) 21/82

9280 A claimant may require someone to collect or receive payments on their behalf. These people are known as “other payees”. They may be

 **1.** appointed by the Department or by a Court because the claimant is incapable of managing their affairs e.g. appointees, receivers, etc **or**

 **2.** authorised by the claimant e.g. attorneys, nominated agents.

9281 An appointee (see DMG 9280 **1.**) is fully responsible for acting on the claimant’s behalf in all of the claimant’s benefit dealings. As such they have a duty to disclose as if they were the claimant. This duty arises

 **1.** for those appointed by the Department, from the undertaking they make to the Department and from legislation1 **or**

 **2.** for those appointed by a Court, from legislation2.

1 SS (C&P) Regs (NI), reg 33(1); 2 reg 33(1)

9282 Persons authorised by the claimant (see DMG 9280 **2.**) do not have a duty to disclose but if they do make a disclosure it must be correct and complete. If it is not, a right of recovery exists against them from the date of the disclosure.

9283 Where a person, for example a partner or appointee, misrepresents or fails to disclose a material fact, a right of recovery exists against the person because they are directly responsible for the misrepresentation/failure to disclose. There may also be a right of recovery against the claimant who has misrepresented/failed to disclose the material fact through them.

 **Example**

 Mary is appointee for James who has been in receipt of Income Support since 1995. In May 2001 Mary completed form A2 in which she stated that James had savings of £4,000. The award of Income Support was superseded on a relevant change of circumstances and adjusted based on this savings figure. In March 2004 it came to light that James’ savings had increased to £5,790. Further inquiries established that the savings had grown between July 2002 and March 2004.

 The decision maker superseded the award of Income Support from July 2002 on a relevant change of circumstances and determined that the overpayment was in consequence of a failure to disclose by Mary, acting as the appointee, and by James, through the appointee. The decision maker decided that the overpayment is recoverable from both James and Mary.

 **Note:** Appointments end on the death of a claimant but the duty to disclose the death continues.

9284 For the claimant to be liable the decision maker must establish that the person was authorised by the claimant, or appointed by the Department, or a Court to act for the purposes of the relevant benefit or benefits1. Where an overpayment occurs on a case where there is an appointee, the recoverability decision should cover the liability of both the claimant and the appointee even when only one is found to be liable. The decision should be notified to both parties2.

1 R(SB) 9/84; 2 R(IS) 5/03

9285 In most cases where a person appointed by the Department misrepresents or fails to disclose a material fact the Department may recover the overpaid benefit from both the appointee and the claimant with two exceptions1.

1 R(IS) 5/03

9286 The first is where the appointee retained the benefit instead of paying it to, or applying it for, the benefit of the claimant. In this case the overpayment is recoverable only from the appointee unless the claimant is a party to the misrepresentation or failure to disclose. Unless there is evidence to the contrary the decision maker can presume that benefit paid to an appointee has been paid to or applied on behalf of the claimant.

9287 The second exception is where the appointee acted with due care and diligence, the overpayment is recoverable only from the claimant. This will occur most often in cases of misrepresentation. It is for the appointee to show that they have exercised due care and diligence. If decision makers require guidance on the meaning of due care and diligence please contact Decision Making Services.

9288 An overpayment is not recoverable from a person, other than those in DMG 9280, who assists the claimant by completing a claim form. If the claimant signs that form any misrepresentation or failure to disclose is the claimant’s own1.

1 R(IS) 14/96

 9289

Overpayment of personal benefit - adult dependency increase in payment

9290 An overpayment of arrears of personal benefit can occur when a dependant misrepresents or fails to disclose that adult dependency increase has already been paid for the same period. The overpayment is recoverable from the dependant because

 **1.** there is a causal link between the misrepresentation or failure to disclose and the payment of the arrears of personal benefit **and**

 **2.** the full arrears of personal benefit are not payable to the dependant because the decision maker would have deducted them from adult dependency increase paid had the decision maker been aware of the true position (see DMG 9350).

 **Example**

 A dependant for whom an increase of Retirement Pension is in payment makes a claim for personal Carer’s Allowance on 12 July. Benefit is awarded on 4 October and a payment of arrears from 12 July to 2 October is made to the claimant. When it is found that an adult dependency increase was in payment to the claimant’s husband the decision maker revises the Carer’s Allowance award for ignorance of a material fact, and decides that the Carer’s Allowance was not properly payable for the period 12 July to 2 October.

 The resulting overpayment is recoverable from the dependant because there was a misrepresentation on the claim for Carer’s Allowance. As a result, the payment of arrears had been made which would not have otherwise been made.

 If the person receiving the adult dependency increase had failed to report the dependant’s receipt of personal Carer’s Allowance there may be an overpayment of the increase of Retirement Pension from 4 October because this should have been adjusted for overlapping benefits. In these circumstances recovery should be considered as in DMG 9234 et seq.

Death of the claimant

9291 If the person who misrepresented or failed to disclose dies before a decision is given the executors of the deceased’s estate are duly constituted personal representatives of that estate. The overpayment is recoverable from the executors but limited to the contents of the estate1.

1 R(SB) 21/82; S of S for Social Services v Solly

 9292 – 9294

Misrepresentation or failure to disclose - 16/17 year olds

9295 Recoverability is decided under special arrangements1 where misrepresentation or failure to disclose results in overpaid Jobseeker’s Allowance where

 **1.** benefit was awarded to a 16/17 year old following the Department’s direction2 **and**

 **2.** the overpayment arose during the relevant period (see DMG 9297).

1 SS A (NI) Act 92, sec 69A(1); 2 JS (NI) Order 95, art 18

9296 The decision maker should revise or supersede the decision awarding Jobseeker’s Allowance before deciding recoverability.

9297 The **relevant period** for the purposes of DMG 9295 is

 **1.** the date the change of circumstances occurred up to and including the date the Department1 revokes its direction as a result of that change of circumstance **or**

 **2.** the whole of the period covered by a direction which the Department has revoked2 because it is satisfied that it gave it in ignorance of a material fact, or based it on a mistake as to a material fact.

1 SS A (NI) Act 92, sec 69A(2); 2 sec 69A(3)

Departmental certificate

9298 Having revoked the direction the Department may provide a certificate1 stating

 **1.** that there has been a misrepresentation or failure to disclose **and**

 **2.** the identity of the person responsible for the misrepresentation or failure to disclose **and**

 **3.** that Jobseeker’s Allowance has been paid because of the misrepresentation or failure **and**

 **4.** the period of payment.

1 SS A (NI) Act 92, sec 69A(4)-(5)

9299 The decision maker should not consider any questions of recoverability unless the certificate as in DMG 9298 is provided.

The role of the decision maker

9300 The Departmental certificate is conclusive on all the matters certified1. The decision maker decides that

 **1.** there has been a misrepresentation or failure to disclose by the person certified as responsible **and**

 **2.** the misrepresentation or failure caused an overpayment of Jobseeker’s Allowance for the period certified.

 The Department is entitled to recover the amount overpaid.

1 SS A (NI) Act 92, sec 69A(6)

 9301 – 9319

Adjustments - prevention of duplication of payments

General

9320 This section explains how the decision maker deals with payments already made when awarding benefit for a past period. Note that a new award can be made on revision or supersession or appeal as well as on an original claim. For benefits other than Income Support, other provisions1 may apply (see DMG Chapter 17 for further guidance).

1 SS (OB) Regs (NI)

9321 The purpose of the provisions is to prevent double payment for the same period of

 **1.** two awards of the same benefit **or**

 **2.** awards of certain different benefits **or**

 **3.** an award of benefit and some other types of payment.

9322 Double payments may be prevented by

 **1.** taking payments on account of benefit into account (see DMG 9323 et seq)

 **2.** offset (see DMG 9340 et seq)

 **3.** abatement (see DMG 9370 et seq)

 **4.** recoupment (see DMG 9501 et seq).

 Separate provisions are made for Industrial Injuries Disablement Benefit offsets (see DMG Chapter 69).

Adjustments - payments on account of benefit

Introduction

9323 Under certain conditions1, payments can be made which are not covered by an award of benefit. These discretionary payments, formerly known as interim payments, are made by the Department and, with effect from 28.11.16, are known as payments on account of benefit.

 **Note:** Operational guidance is available for the circumstances when a payment on account of benefit can be made and how much may be paid.

1 SS A (NI) Act 92, sec 5(1)(s); SS (POAOB) Regs (NI), regs 3 to 10

Definition of “benefit”

9324 Benefit means1

1. Income Support
2. State Pension Credit
3. Benefits under specified legislation2 (except Attendance Allowance, Disability Living Allowance and Guardian’s Allowance).

 **Note:** Decision makers should note that this definition also includes Universal Credit, new style Employment and Support Allowance and new style Jobseeker’s Allowance. A version of this guidance for these benefits is in ADM Chapter D1. ADM Chapter M1 contains guidance on the meaning of new style Employment and Support Allowance and new style Jobseeker’s Allowance.

1 SS (POAOB) Regs (NI) 16, reg 3(1); 2 SS C&B (NI) Act 92, Parts II to V

Bringing payments on account of benefit into account

9325 Where it is practical to do so and where a payment on account of benefit was made in anticipation of an award of benefit, it should be brought into account by means of an offset against the sum payable to the claimant under the award1.

1 SS A (NI) Act 92, sec 69ZG, SS (POAOB) Regs (NI) 16, reg 10(a)

9326 Where an amount, whether or not made in anticipation of an award of benefit, is not offset as in DMG 9235 above, the decision maker must deduct a payment on account of benefit from

1. the sum payable to the claimant under the award of benefit on account of which it was made **or**
2. any sum payable under any subsequent award to that claimant of that benefit1.

1 SS (POAOB) Regs (NI) 16, reg 10(b)

Savings provision

9327 Decision makers should note that the previous provisions1 continue in respect of

1. interim payment applications made before 28.11.16 **and**
2. interim payments made before 28.11.162.

1 SS (POR) Regs (NI), reg 2; 2 SS (POAOB) Regs (NI) 16, reg 19

 9328 – 9339

Adjustments - offsets

Introduction

9340 Where a claimant is due arrears of benefit and has already received payment of the same or a different benefit under an award, the amount paid under the first award for a period covered by the subsequent award must be1

 **1.** offset against the total amount due under the second award **and**

 **2.** treated as properly paid on account of the arrears up to a maximum of the amount previously paid.

 Offsetting is usually needed where an award is varied on appeal or revised or superseded. This applies whether or not the amount of benefit payable under the new award is more than the original.

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

9341 The period of the arrears may include periods that are not common to the two awards. The only restrictions on offsetting1 are that

 **1.** there must be a period common to the two awards

 **2.** benefit paid can only be offset against arrears due before the date of the new decision2 but arrears due for a period of suspension cannot be included in the offset calculation3

 **3.** the circumstances set out in regulations must apply4. For guidance on the application of the offset rules to each case see DMG 9343

 **4.** any amount which has been determined to be a recoverable overpayment cannot be offset5.

1 SS (POR) Regs (NI), reg 5; 2 reg 5(1); 3 R(DLA) 2/07; 4 reg 5(2), Case 1-5;
5 SS A (NI) Act 92, sec 69(1); SS (POR) Regs (NI), reg 6

9342 The decision maker should note the following:

 **1.** The decision maker can make an offset decision at any time before the arrears are paid.

 **2.** Whenever possible decision makers should include the offset in the new awarding decision.

 The decision maker should ensure that any offset of benefit is dealt with before considering whether any benefit has been overpaid. This is because a recoverable overpayment decision prevents the recoverable amount from being considered for offset later on1.

1 SS (POR) Regs (NI), reg 6

Payment under an award which is revised, superseded or varied on appeal

9343 **[See DMG Memo Vol1/107, 2/61, 3/94, 4/113, 5/103, 7/44, 9/32, 10/66, 12/20, 13/65 & 14/60]** Arrears of benefit should be reduced by the amount already paid1 where

 **1.** a person has been paid benefit or shared additional pension2 under an award **and**

 **2.** following an appeal, revision or supersession, the same benefit is awarded at a different rate.

 Arrears of benefit means the whole amount awarded for the period. An offset is needed even where the new award is the same or less than the one it replaces.

1 SS (POR) Regs (NI), reg 5(1), (2) & (6), Case 1; 2 SS C&B (NI) Act 92, sec 55A

 **Example 1**

 A claimant is awarded and paid Retirement Pension. The contribution record is later revised and the decision maker revises the decision and awards full rate Retirement Pension. The revised decision includes an offset of the lower rate Retirement Pension paid against the arrears of the higher rate now awarded. The amount paid under the first award is treated as properly paid on account of the new award.

 **Example 2**

 Income Support is awarded and paid at the incorrect rates of £40 for seven weeks followed by £20 for ten weeks. On appeal the claimant, Tony Andrews, is found to be entitled to £30 a week for the whole period. The arrears under the new award amount to £510. The Appeal Tribunal is able to offset the whole of the amount paid under the previous award (£480).

 **Example 3**

 The claimant is awarded an increase of shared additional pension but later their election is changed to a lump sum. The award is revised and the amount of increase already paid is offset against the amount of lump sum now due.

Subsequent award or payment of another benefit in lieu

9344 Where

 **1.** a person has been paid one benefit **and**

 **2.** a different benefit becomes payable

 the amount already paid should be offset against the new award1.

1 SS (POR) Regs (NI), reg 5(1) & (2), Case 2

9345 This usually happens when the conditions for the two benefits cannot be satisfied at the same time. For example a condition for the payment of Jobseeker’s Allowance is that the claimant is capable of work and the condition for an Incapacity Benefit is that the claimant is incapable of work. A list of incompatible benefits is at Appendix one DMG Chapter 17.

 **Example**

 A claimant in receipt of Jobseeker’s Allowance suffers a broken leg playing football. Jobseeker’s Allowance is paid for a further three weeks because attendance at the Jobs and Benefits Office is excused due to the closure of the Jobs and Benefits Office during a holiday period. After liaison with the Jobs and Benefits Office a claim for Employment and Support Allowance is then made from the date of the accident. The decision maker supersedes and disallows Jobseeker’s Allowance on the ground that the claimant is not capable of work. The decision maker in Employment and Support Allowance Branch awards Employment and Support Allowance and offsets the amount of Jobseeker’s Allowance paid against the arrears of benefit under the new award.

 Although Jobseeker’s Allowance was paid at a higher rate than Employment and Support Allowance for the period in question, there are sufficient arrears of Employment and Support Allowance to offset the whole of the Jobseeker’s Allowance. This is because the decision maker in Employment and Support Allowance Branch did not make the new decision until two weeks after Jobseeker’s Allowance had ceased to be paid and the arrears amounted to five weeks Employment and Support Allowance.

9346 If a claim is made and the decision maker knows that another benefit is in payment, the decision maker should

 **1.** consider the conditions of entitlement for the whole period **and**

 **2.** make a decision including, where necessary, a revision of the original award.

 This is very important in the case of a late claim when disqualification may be involved, for example if a woman delays claiming Maternity Allowance and continues to receive Jobseeker’s Allowance into the Maternity Allowance period.

 **Note:** The decision maker should not make an award from a ‘safe date’ to avoid the need for an offset decision.

9347 If decisions on the two benefits are normally made by decision makers in different offices, the decision maker dealing with the new benefit should take all the action on the claim, including revision or supersession of the original award. Where necessary, a decision maker considering revision or supersession in these circumstances should liaise with the decision maker who is responsible for the benefit concerned.

9348 The decision maker should take similar action when

 **1.** claimants have been paid benefit to which they are **entitled and**

 **2.** it is later found that it should not have been payable because another benefit has priority.

Child Benefit and Severe Disablement Allowance, Incapacity Benefit (Youth) or Employment and Support Allowance (Youth)

9349 The offset provisions apply where either1

1. a person has been awarded and paid Child Benefit for a period in respect of which Severe Disablement Allowance, Incapacity Benefit (Youth) or Employment and Support Allowance (Youth) is subsequently determined to be payable to the child concerned **or**
2. Severe Disablement Allowance, Incapacity Benefit (Youth) or Employment and Support Allowance (Youth) is awarded and paid for a period in respect of which Child Benefit is subsequently awarded to someone else, the child concerned in the subsequent determination being the beneficiary of the original award.

 **Example**

 David becomes entitled to Employment and Support Allowance (Youth) from 4.8.10. However, his mother has been paid Child Benefit up to and including 15.8.10. The amount of Child Benefit paid to David’s mother for the period from 4.8.10 to 15.8.10 should be treated as paid on account of the Employment and Support Allowance (Youth) now awarded to David for the period from 4.8.10 to 15.8.10.

1 SS (POR) Regs (NI), reg 5(1) & (2), Case 3

Increase of benefit for dependants

9350 When a personal benefit is awarded to someone for whom a dependency increase has been paid, the award of dependency benefit should be revised or superseded1. The revised or superseded decision should make the dependency benefit

 **1.** not payable **or**

 **2.** payable at a reduced rate.

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

9351 The provision also applies when it is decided that another person

 **1.** is entitled to dependency benefit **and**

 **2.** has the right to be paid instead of the person who was originally awarded the dependency increase.

9352 In both these situations the amount paid under the first award should be offset and treated as paid on account of the later award1.

1 SS (POR) Regs (NI), reg 5(1) & (2), Case 4

 **Example 1**

 A man is paid Incapacity Benefit with an increase for his wife who later becomes entitled to Incapacity Benefit (Youth) in her own right. Arrears of Incapacity Benefit (Youth) are due for part of the period for which Incapacity Benefit was paid. The award of Incapacity Benefit is superseded from the date Incapacity Benefit (Youth) is awarded. The overpayment question is not considered by the decision maker. The amount of increase of Incapacity Benefit paid for the period after Incapacity Benefit (Youth) is awarded is offset and treated as paid on account of arrears of Incapacity Benefit (Youth) due.

 **Example 2**

 A man who is separated from his wife receives an increase of Retirement Pension for his child. The child lives with her mother who becomes entitled to Incapacity Benefit from a later date. An increase of Incapacity Benefit is awarded for the child in priority to the increase of Retirement Pension. The decision maker supersedes the award of Retirement Pension and decides the increase of Retirement Pension is not payable. The amount of the increase paid to the man from the date Incapacity Benefit is awarded is offset and treated as properly paid on account of Incapacity Benefit payable to the child’s mother.

Increase paid for a partner

9353 The offset provisions also apply where

 **1.** an increase of benefit is in payment to a claimant for a partner **and**

 **2.** that partner is awarded a personal benefit1.

 The decision maker should offset any amount paid as an increase for the partner and treat it as paid on account of the arrears of personal benefit awarded. “Partner” means the same as it does for Income Support2.

1 SS (POR) Regs (NI), reg 5(1) & (2), Case 5;
2 IS (Gen) Regs (NI), reg 2

 **Example**

 A man and woman, each receiving income-based Jobseeker’s Allowance, go to live at the same address. The decision maker decides that they are living together as husband and wife. The woman’s award of income-based Jobseeker’s Allowance is superseded and disallowed and the man is paid the rate for a couple. On appeal the tribunal decide that the man and woman are not, and have never been, living together as husband and wife. The difference between the income-based Jobseeker’s Allowance payable to the man as one of a couple, and the income-based Jobseeker’s Allowance payable to him as a single person, is offset and treated as paid on account of the arrears of income-based Jobseeker’s Allowance due to the woman.

State Pension Credit, Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance and Universal Credit- effects of deductions from overpayments on subsequent benefit awards

9354 Where

 **1.** the decision maker decides that there is a recoverable overpayment from a person or their partner **and**

 **2.** that overpayment has been reduced by an additional entitlement to State Pension Credit, Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance or Universal Credit1 (see DMG 9081 et seq) **and**

 **3.** it is then decided that the person or their partner with the additional entitlement is due arrears for the period for which the additional entitlement is also due

 the decision maker should offset the additional entitlement against the arrears due for that period2.

1 SS (POR) Regs (NI), reg 13(b); 2 reg 5(3)

 **Example**

 A recoverable overpayment is caused because an Income Support claimant represents on his claim form that he does no work, when in fact he is receiving earnings from part time work. In calculating the overpayment the decision maker discovers that the claimant has been paid for three children instead of four. The arrears due are deducted from the recoverable overpayment.

 Later it is established that the claimant was entitled to a disability premium. The amount due for the fourth child which had been deducted from the overpayment is offset against the arrears of the disability premium. The offset is limited to the period for which the increase for the fourth child and the disability premium are both awarded.

9355 If there are still some arrears of benefit which have not been paid, after offsetting as in DMG 9354, the decision maker cannot offset any additional amount of the recoverable overpayment. Recovery of the overpayment from the remaining arrears may be considered in the normal way.

 9356 – 9369

Adjustments - abatements

Introduction

9370 State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance may be recovered if it would not have been paid if another income had been paid at the correct time1. There are three methods of recovery2. These are

 **1.** abatement of arrears of United Kingdom benefits **or**

 **2.** receipt from arrears of European Community benefits **or**

 **3.** deductions from benefit or direct from the claimant where neither of the above applies.

1 SS A (NI) Act 92, sec 72; 2 SS (POR) Regs (NI), reg 7-11

 9371

Abatements of United Kingdom benefits

9372 The amount of a prescribed payment of a United Kingdom benefit is reduced by the amount calculated as in DMG 9375 where

 **1.** the prescribed payment (see DMG 9373) is not made on or before the prescribed date (see DMG 9374) for that payment **and**

 **2.** it is decided that an amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance has been paid that would not have been paid if the prescribed payment had been made at the correct time1.

 **Note:** Decision makers should note that, with the exception of joint-claim cases, a deduction cannot be made in relation to the claimant who is a member of a couple when the prescribed payment arrears are paid to the other member of that couple.

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

Prescribed payments

9373 **[See DMG Memo Vol1/107, 2/61, 3/94, 4/113, 5/103, 7/44, 9/32, 10/66, 12/20, 13/65 & 14/60] [See DMG Memo Vol 1/109, 3/97, 5/106, 6/91, 7/45, 8/83, 9/35, 10/73, 12/23, 13/69 & 14/63]** A prescribed payment can be

 **1.** any benefit under the Act1 except a gratuity or Widow’s payment2

 **2.** Child Benefit3

 **3.** War Disablement Pension or War Widow’s Pension which is not a gratuity and any payment which the Department accepts as similar to such a pension4

 **4.** an allowance paid under the Job Release Act5

 **5.** Training Allowance6

 **6.** child maintenance for the initial period7 (see DMG 9378)

 **7.** Widowed Parent’s Allowance8

 **8.** receipts from European Community benefits9

 **9.** contribution-based Jobseeker’s Allowance10

 **10.** Financial Assistance Scheme payments11

 **11.** contribution-based Employment and Support Allowance12

 **12.** Personal Independence Payment13

 **13.** State Pension14.

1 SS C&B (NI) Act 92; 2 R(SB) 28/85; 3 SS (POR) Regs (NI), reg 8(1)(b);
4 reg 8(1)(d); 5 reg 8(1)(e); 6 reg 8(1)(f); 7 reg 8(1)(b); 8 reg 8(1)(h);
9 reg 8(1)(g); 10 reg 8(1)(i); 11 reg 8(1)(j); 12 reg 8(1)(k);
13 reg 8(1)(aa); 14 reg 8(1)(za)

Prescribed date

9374 The prescribed date is the date the receipt of, or entitlement to the benefit would have to be notified to the Department in time for it to be taken into account in the State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance assessment1. This means that an amount can be recovered if

 **1.** the prescribed payment has not been made **and**

 **2.** the Department was notified of entitlement to the payment and the State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance award could not be revised or superseded.

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

Calculation of amount to be recovered

9375 The amount to be recovered should be worked out (see Appendix 2) by comparing the amount of

 **1.** State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance paid **and**

 **2.** State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which would have been paid if the prescribed payment had been made at the correct time.

 **Note:** The amount to be recovered in any week cannot be more than the amount of prescribed benefit which should have been taken into account in that week.

 9376

Social Fund payments

9377 Social Fund payments (including Social Fund maternity and funeral payments) are not part of the State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance schemes and should not be taken into account for recovery.

Child maintenance

9378 Recovery of Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance from arrears of child maintenance is limited to the amount paid in each week of the initial payment period1. This is the period between the date on which liability to pay maintenance begins and the date on which regular payments of child maintenance are to start.

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

9379 The initial payment period is made up of maintenance periods of seven days1. The prescribed date for each payment due within the period is the last day of

 **1.** the seven day maintenance period2 **or**

 **2.** the initial payment period if that is not a complete seven days3.

1 CS (MAP) Regs (NI), reg 32; 2 SS (POR) Regs (NI), reg 7(3); 3 reg 7(4)

9380 The Child Maintenance Enforcement Division will notify the decision maker of

 **1.** the dates of the initial payment period **and**

 **2.** the prescribed dates of each weekly maintenance period during the initial payment period.

9381 The decision maker should

 **1.** calculate the amount of Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which would not have been paid if the child maintenance had been paid at the correct time **and**

 **2.** decide the amount of Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which is recoverable.

 The Department will then consider recovery.

Receipts from European Community benefits

9382 From 1.1.94 the guidance in DMG 9383 - 9388 applies to payments of benefits from the European Economic Area1. This includes European Community benefits and those from certain European Free Trade Association countries (see DMG Vol 2). For ease of reference these benefits are all referred to as European Community benefits in the following paragraphs.

1 EEA Agreement; EEA Act 93

9383 Where

 **1.** a payment of European Community benefit is not made on or before the prescribed date for the payment (see DMG 9385) **and**

 **2.** an amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance has been paid that would not have been paid if the prescribed payment had been made on the prescribed date

 the Department is entitled to receive from the European Community benefit the amount calculated in the latter point1.

 **Note:** Decision makers should note that, with the exception of joint-claim cases, a deduction cannot be made in relation to the claimant who is a member of a couple when the prescribed payment arrears are paid to the other member of that couple.

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

European Community benefits

9384 In DMG 9382 a European Community benefit is any payment of benefit under the legislation of any European Economic Area country other than the United Kingdom1. But see DMG Vol 2 - International Subjects - where benefit is payable under a member state’s legislation before the member state joined the European Community **or** for reciprocal agreements with non European Community countries.

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

Prescribed date

9385 In DMG 9383 the prescribed date is the date by which receipt of, or entitlement to the European Community benefit would have to be notified to the Department for it to be taken into account in the assessment1. This means that receipt from an European Community benefit is possible only where

 **1.** the European Community benefit has not been paid **and**

 **2.** if it were to be paid the State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance decision would not be revised or superseded

to take it into account.

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

Calculation of amount to be recovered

9386 Where Network Support Branch is aware that State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance is in payment to the claimant, they ask for payments of arrears of benefit made by European Community countries to be paid direct to the Department’s account at the Northern Bank. The bank deduct charges and commission before notifying Network Support Branch of

 **1.** the net sterling amount due to the claimant **and**

 **2.** the period for which it is payable.

 When Network Support Branch receive this information, they ask the State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance decision maker to determine the amount of European Community benefit the Department is entitled to receive from the sum due to the claimant.

9387 Continuing payments of benefit by European Community countries are usually made monthly direct to the claimant. Recovery is not appropriate in these cases as the prescribed payments are made to the claimant (see DMG 9373). See DMG 9406 et seq for further guidance on these cases.

9388 In calculating the amount the Department is entitled to receive, the decision maker should

 **1.** use the sterling figure obtained when the European Community benefit was converted1 (there is no need to make independent valuations because of the arrangements the Department has adopted for conversion) **and**

 **2.** allow any banking charges or commission (if not already deducted)2.

1 SS (POR) Regs (NI), reg 10; 2 reg 10

Abatements - maintenance cases

9389 The Department is able to abate1 prescribed benefits (see DMG 9391)2 which are paid for someone for whom the person receiving the benefit is not paying maintenance.

1 SS A (NI) Act 92, sec 72(3)(c) & Sch 7, para 3(2); 2 SS (POR) Regs (NI), reg 9

9390 This only applies if

 **1.** the prescribed benefit is payable for someone who is in receipt of Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance **or** for whom a third person is receiving Income Support or income-based Jobseeker’s Allowance or income-related Employment and Support Allowance **and**

 **2.** entitlement to Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance had been determined on the basis that maintenance payments had not been made by the person in receipt of the prescribed benefit up to at least the rate of that benefit.

Prescribed benefits

9391 The prescribed benefits are

 **1.** Child Benefit1 including Child Benefit (lone parent)

 **2.** a child dependency increase or adult dependency increase payable with any Act benefit2

 **3.** Guardian’s Allowance3

 **4.** Child’s Special Allowance4.

1 SS (POR) Regs (NI), reg 9(a); 2 reg 9(b); 3 reg 9(d); 4 reg 9(c);
SS C&B (NI) Act 92, sec 56(6)

9392 There is no prescribed date for the payment of the prescribed benefit. Once the decision maker has determined the amount to be recovered, benefit may be withheld and recovered weekly.

Recovery when abatement or receipt procedure not applied or not applicable

9393 The Department is still entitled to recover an amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance where

 **1.** abatement or receipt procedures could have been applied but were not **or**

 **2.** abatement or receipt procedures could not have been applied because the income is not covered by DMG 9373, 9382 or 9389 andfalls within the regulations1.

1 IS (Gen) Regs (NI), Part V; JSA Regs (NI), Part VIII;
SS (POR) Regs (NI), reg 8(1)

9394 Where DMG 9393 **2.** applies the Department is entitled to recover the amount of benefit that would not have been paid if the income payment (see DMG 9395) had been made on the prescribed date (see DMG 93961).

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

Prescribed income

9395 Prescribed income1 is

 **1.** any income to be taken into account under the regulations2 **and**

 **2.** any income which, if it were actually paid, would be taken into account under the regulations but only that relating to the initial payment period3.

1 SS A (NI) Act 92, sec 72(1); SS (POR) Regs (NI), reg 7(1); 2 reg 7(1)(a); IS (Gen) Regs (NI), Part V
JSA Regs (NI), Part VIII; SPC Regs (NI), Part III; 3 SS (POR) Regs (NI), reg 7(1)(b);
IS (Gen) Regs (NI), Part V Chapter VIIA; JSA Regs (NI), Part III Chapter VIII

Prescribed date

9396 The prescribed date1 is if

 **1.** the income is for a period - the first day of that period **or**

 **2.** the income for a specific day - that day **or**

 **3.** neither of the above apply - the day or period for which it is fair to take the income into account.

1 SS (POR) Regs (NI), reg 7(2)

Calculation

9397 The decision maker should calculate the amount the Department is entitled to recover by comparing

 **1.** the amount of benefit actually paid **and**

 **2.** the amount of benefit which would have been paid if the prescribed income had been paid on time (for State Pension Credit see also DMG 85063 - 85065).

 The maximum recovery for any one week should not exceed the prescribed income payable for that week (see DMG 9377 for guidance on Social Fund payments).

Abatement or receipt procedures not applied

9398 Abatement or receipt procedures may not have been applied (see DMG 9393 **1.**) where a person

 **1.** claims or is in receipt of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance **and**

 **2.** informs the Department that a claim has been made for another Social Security benefit **and**

 **3.** either there is a delay in notifying those administering the Social Security benefit or Child Benefit, State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance award **or** those administering the Social Security benefit or Child Benefit fail to act on the notification that State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance is in payment.

 The Department1 is entitled to recover the amount of State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance which would not have been paid if the Social Security benefit had been paid on time.

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

9399 The Department is also entitled to make a recovery if the arrears of Social Security benefit or Child Benefit are not abated because the claimant did not declare that a claim for that benefit had been made.

 **Note:** In this case there may also be a further overpayment if the claimant fails to declare receipt of the Social Security benefit or Child Benefit1. The decision maker should consider the guidance in DMG 9234 et seq.

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

Conversion of foreign currency

9400 Where

 **1.** receipt procedures were not or could not be applied **and**

 **2.** payment is made to the claimant in a currency other than sterling

 the decision maker should decide the value of the payment **for the purposes of the recovery calculation** as being the net amount in sterling the claimant actually received from a bank1, that is after the deduction of any bank charges or commission.

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

9401 The term bank means1

 **1.** the Bank of England **or**

 **2.** a bank recognised by the Bank of England2.

1 SS (POR) Regs (NI), reg 10; 2 Banking Act 79, sec 3-5

9402 The claimant may convert foreign currency to sterling at an institution whose main place of business is outside the United Kingdom, if so, that institution may still be treated as a recognised bank by the Bank of England1 and should then be treated as a bank for the purposes of the recovery calculation.

1 Banking Act 79, sec 3(5)

9403 The decision maker should ask Network Support Branch for advice if there is reason to doubt whether

 **1.** a United Kingdom bank is a recognised bank **or**

 **2.** a bank whose main place of business is outside the United Kingdom is treated as a recognised bank.

9404 Where the claimant has converted foreign currency at a bank not recognised or treated as recognised by the Bank of England or through an informal dealing (for example relatives) the decision maker should note that

 **1.** The sterling value to be used is the value the claimant would have got had the currency exchange taken place through the Bank of England on the date the exchange actually took place.

 **2.** Network Support Branch can provide the exchange rate applying from the Monday of any week.

 **3.** In the absence of any more detailed information the decision maker should use the exchange rate at the beginning or end of any week which is most favourable to the claimant.

9405 If an award of a foreign income allowance includes arrears, the decision maker should convert the value of the foreign currency to sterling before calculating the recoverable amount1.

1 SS A (NI) Act 92, sec 72(1); SS (POR) Regs (NI), reg 10

9406 When deciding continuing entitlement the decision maker should

 **1.** calculate the sterling equivalent of a foreign resource on the exchange rate at the Bank of England on the date each periodical payment of the resource is due

 **2.** take no account of banking charges and commission1. For example, if the converted amount is £20 and the claimant pays charges of £3 leaving a net amount of £17, the amount to be abated is £20.

1 R(SB) 28/85

 9407 – 9410

Who recovery can be made from

Abatement permitted

9411 Where abatement procedures were not or could not be applied as in

 **1.** DMG 9372 - 9381 - recovery can be made only from the person received the prescribed payment1

 **2.** DMG 9389 - 9392 - recovery can be made only from the person who was paid the prescribed benefit2.

 **Example**

 Mary has been receiving Income Support for herself and her husband for some years. Her husband then separately claims and is awarded Incapacity Benefit. He receives arrears that take no account of the Income Support already paid to Mary. The overpayment that results is recoverable from the husband.

1 SS A (NI) Act 92, sec 72(4)(a); 2 sec 72(4)(b)

Receipt permitted or receipt or abatement not permitted

9412 Where

 **1.** receipt is permitted but not applied **or**

 **2.** neither receipt nor abatement is permitted

 recovery can only be made from the person who would have received less State Pension Credit, Income Support, income-based Jobseeker’s Allowance or income-related Employment and Support Allowance had the benefit or income been paid on time1.

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

 9413 – 9500

Recoupment from payments under the Industrial Tribunals (Northern Ireland) Order

Introduction

9501 The Department can recover Jobseeker’s Allowance, Income Support and income-related Employment and Support Allowance from certain Industrial Tribunal awards1. Recovery is made from the claimant’s employer who deducts it from the amount awarded by the Industrial Tribunal before payment. This is called recoupment.

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

9502 The recoverable amounts are those which are determined not to be payable1 following an award by an Industrial Tribunal.

1 IS (Gen) Regs (NI), reg 35(g); JS (NI) Order 95, Sch 1, para 6; JSA Regs (NI), reg 98

Recoverable awards

9503 Recovery can be made from the following Industrial Tribunal awards

 **1.** guarantee payments1

 **2.** guarantee payments under a collective agreement or wages order for which an exemption order has been made2

 **3.** remuneration on suspension on medical grounds3

 **4.** unfair dismissal payments under an order for reinstatement or re-engagement, or an award of compensation4

 **5.** unfair dismissal payments under an interim order for reinstatement or re-engagement, or an order for the continuation of the contract of employment or for compensation5

 **6.** remuneration in pursuance of a protective award6

 **7.** payments under an order made following the employer’s failure to pay remuneration due to the employee under a protective award7.

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

9504 The Department issues a notice to the employer stating the amount to be recouped1. A copy of the notice is also sent to the claimant2. The amount shown on the notice may be overestimated because the Department rounds up part week payments3.

1 EP (Recoupment of JSA & IS) Regs (NI), reg 8(1); 2 reg 8(4); 3 reg 8(2) & (3)

Action by the decision maker

9505 The case is referred to the decision maker if

 **1.** the claimant disagrees with the amount of the recovery1 **or**

 **2.** recoupment has been made and the award of Jobseeker’s Allowance, Income Support or income-related Employment and Support Allowance is revised or superseded.

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

1 EP (Recoupment of JSA & IS) Regs (NI), reg 10(2); 2 reg 10(3)

Claimant does not accept amount notified

9506 If the claimant does not accept the amount shown on the recoupment notice the decision maker is asked to decide the amount of benefit paid1. The decision maker should calculate the exact amount of Jobseeker’s Allowance, Income Support or income-related Employment and Support Allowance paid to the claimant in the prescribed period.

1 EP (Recoupment of JSA & IS) Regs (NI), reg 10

9507 The prescribed period is for awards listed at

 **1.** DMG 9503 **1**-**5** - the period of the award1 **or**

 **2.** DMG 9503 **6**-**7** - the part of the protected period which falls before the date of termination of employment **or** the date on which the Department receives details of the employees affected by the award from the employer whichever results in the lower amount being recouped2.

1 EP (Recoupment of JSA & IS) Regs (NI), reg 2(3); 2 reg 8(3)

9508 The prescribed period ends when the decision of the Industrial Tribunal is given verbally at the hearing or afterwards in writing1.

1 EP (Recoupment of JSA & IS) Regs (NI), reg 2(3)

Claimant raises other questions on recoupment

9509 An award of Income Support, Jobseeker’s Allowance or income-related Employment and Support Allowance can be revised or superseded if the claimant raises any question affecting the amount to be recouped1. The decision maker should revise or supersede the awarding decision as if

 **1.** the employer had paid the Industrial Tribunal award for the prescribed period **and**

 **2.** any Income Support, Jobseeker’s Allowance or income-related Employment and Support Allowance which is to be recouped had not been paid and was not payable.

1 EP (Recoupment of JSA & IS) Regs (NI), reg 10(1)

Revision or supersession after recoupment action completed

9510 Recoupment action ends when the

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

1 EP (Recoupment of JSA & IS) Regs (NI), reg 8(5)

9511 The decision maker should revise or supersede the awards of Jobseeker’s Allowance, Income Support or income-related Employment and Support Allowance and take into account the effect of the Industrial Tribunal award on entitlement to benefit1. Any overpayment which has not been recouped should be considered as in DMG 9079 et seq. The Department will repay to the claimant any amount which has been recovered in excess of the amount recoupable2.

1 JS (NI) Order 95, Sch 1, para 6; JSA Regs (NI), reg 98; IS (Gen) Regs (NI), reg 35;
2 EP (Recoupment of JSA & IS) Regs (NI), reg 10(3)

Partner or dependant entitled to Industrial Tribunal award

9512 Jobseeker’s Allowance, Income Support and income-related Employment and Support Allowance cannot be recouped from an Industrial Tribunal award payable to a claimant’s dependant or partner1.

1 EP (Recoupment of JSA & IS) Regs (NI), reg 8

Industrial Tribunal decision varied

9513 The decision maker may need to give a further decision if the Industrial Tribunal award is revised by the Industrial Tribunal.

 9514 – 9520

Prevention of duplication of payment - particular payment schemes

9521 In addition to abatement DMG 9370 - 9382 and recoupment DMG 9501 - 9513 there are provisions for recovery from particular payment schemes. One of these is in Shipbuilding Redundancy Payments Scheme (SRPS benefit). Any cases where SRPS is in payment should be referred to Decision Making Services for advice.

 9522 – 9999

Appendix 1 Spare

Appendix 2

Calculation of amount to be abated - DMG 9375

Schedule of abatement

|  |  |  |
| --- | --- | --- |
| **Child Benefit** | **Income Support** | **Abatement** |
| (1)Period to which payment relates | (2)Date payment would be properly payable | (3)Amount payable | (4)Benefit week to which Child Benefit attributable | (5)Amount of Income Support paid | (6)Date Income Support paid | (7)Amount of Child Benefit to be regarded as a resource | (8)Amount of abate-ment | (9)Pres-cribed date | (10)Date notification of Child Benefit award received by Depart-ment |
|  |  |  |  | Total abatement |  |  |  |