Chapter 04 - Supersession, suspension and termination

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Legislation Used in Chapter 04

|  |  |
| --- | --- |
| Abbreviation | Full Title |
| CS Departure Regs (NI)CS (MAP) Regs (NI)CS (MA) (No 2) Regs (NI)CS (NI) Order 91Interpretation Act (NI) 54IS (Gen) Regs (NI)IS (Trans) Regs (NI)JSA Regs (NI)Presumption of Death (Scotland) Act 77SS (Adj) Regs (NI) 87SS A (NI) Act 92SS C&B (NI) Act 92SS & CS (D&A) Regs (NI)SS (Gen Ben) Regs (NI) | The Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996 No 541The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 No 340The Child Support (Miscellaneous Amendments) (No 2) Regulations (Northern Ireland) 1995 No 475The Child Support (Northern Ireland) Order 1991Interpretation Act (Northern Ireland) 1954The Income Support (General) Regulations (Northern Ireland) 1987 No 459The Income Support (Transitional) Regulations (Northern Ireland) 1987 No 460The Jobseeker's Allowance Regulations (Northern Ireland) 1996 No 198Presumption of Death (Scotland) Act 1977The Social Security (Adjudication) Regulations (Northern Ireland) 1987The Social Security Administration (Northern Ireland) Act 1992The Social Security Contributions and Benefits (Northern Ireland) Act 1992The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999The Social Security (General Benefit) Regulations (Northern Ireland) 1984 |
| SS (C&P) Regs (NI)SS (DRP) Regs (NI) 06SS (DRP, SAP & GRB) (Misc Provs) Regs (NI) 06SS (NI) Order 98SPC Act (NI) 02SPC Regs (NI)SPC (Misc Amdts) Regs (NI) SS (WFIFP) Regs (NI)SS Fraud Act (NI) 2001SS (IfW) (Gen) Regs (NI) | The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987Social Security (Deferral of Retirement Pensions etc) Regulations (Northern Ireland) 2006 No 113Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations (Northern Ireland) 2006 No 104The Social Security (Northern Ireland) Order 1998The State Pension Credit Act (Northern Ireland) 2002The State Pension Credit Regulations (Northern Ireland) 2003The State Pension Credit (Miscellaneous Amendments) Regulations (Northern Ireland) 2004 No 110The Social Security (Work-focused Interviews for Partners) Regulations (Northern Ireland) 2003 No 405The Social Security Fraud Act (Northern Ireland) 2001The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 |

Chapter 04 - Supersession, suspension and termination

Introduction to supersession

4000 Supersession means changing a decision of a decision maker, a tribunal or a Commissioner and replacing it, from a later date than the original decision. Certain conditions have to be satisfied before a decision can be superseded. There is no time limit for making an application for supersession.

What type of decisions can be superseded?

4001 The following decisions may be superseded by a decision made by the Department1

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

 but this is subject to regulations.

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

4002 The decisions under relevant Acts described in DMG 4001 **2.** include the following

1. a decision to “disqualify [a claimant] for receiving benefit” on imprisonment1
2. a decision to “adjust” benefit where the claimant is receiving treatment as an in-patient in a hosptial2
3. a decision to “adjust” benefit under the overlapping benefit provisions2 (but see DMG 4140 - 4142)
4. a decision whether an overpayment of benefit is recoverable under specific provisions3.

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

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

4003 A decision of an Appeal Tribunal or a Commissioner can also be superseded

1. where there has been a change of circumstances since that decision had effect1 **or**
2. where the decision maker is satisfied that the decision was made in ignorance of a material fact or was based on a mistake as to a material fact2 **or**
3. where the decision maker is required to supersede an Appeal Tribunal or Commissioner’s decision made under the stayed appeals procedures3 (see DMG 4315 - 4316 and DMG Chapter 06) **or**
4. where an Appeal Tribunal confirms a decision maker’s decision terminating Income Support after the claimant had been found not incapable of work, and a later tribunal finds that they are incapable of work4.

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

1 SS & CS (D&A) Regs (NI), reg 6(2)(a); 2 reg 6(2)(c)(i); 3 reg 6(2)(c)(ii);
4 reg 6(2)(m); IS (Gen) Regs (NI), Sch 13, para 7

When can a decision be superseded?

4004 **[See DMG Memo 9/38][See DMG Memo Vol 1/104, 4/123, 5/98, 6/85 & 9/27]** A decision (referred to below as the “original decision”) can be superseded either when an application has been made by the claimant or on the decision maker’s own initiative where

1. there has been a relevant change of circumstances since the original

**1.1** had effect **or**

**1.2** in the case of an advance award, was made1

1. a relevant change of circumstances is anticipated2
2. the original decision was

**3.1** erroneous in law (decision maker's decisions only) **or**

**3.2** made in ignorance of a material fact or was based on a mistake as to a material fact

 and the application period for revision has expired3

1. the original decision is a decision without a right of appeal (see Annex E to this Volume)4
2. the original decision is a decision awarding one benefit and at a later date the claimant or a member of the claimant’s family or a non-dependant becomes entitled to another benefit or an increase of another benefit5
3. the original decision is that jobseeker’s allowance is payable and a sanction has subsequently been imposed6
4. the original decision is an Incapacity Benefit decision where there has been an incapacity determination, and where medical evidence has later been received following an examination by a health care professional approved by the Department7
5. the original decision relates to a claimant who, since the original decision was made, has been the subject of a decision as to whether or not they took part in a work-focused interview8
6. subsequent to the original decision a claimant has been held not to have taken part in a work-focused interview, the award has been reduced as a result and, subsequent to the supersession that brought the reduction into effect the claimant has9 either

**9.1** attained pensionable age **or**

**9.2** ceased to reside in an area where there is a requirement to take part in a work-focused interview

1. a partner has been held not to have taken part in a work-focused interview, the claimant's benefit has been reduced as a result and subsequently the partner either9

**10.1** ceases to be a partner as defined in specific regulations10 **or**

**10.2** ceases to be a partner subject to those regulations11

1. the original decision is that a sanctionable benefit is payable and that benefit ceases to be payable or is to be reduced under the provisions for the restriction of benefit following convictions for benefit fraud offences12
2. the decision to be superseded is that a joint claim Jobseeker’s Allowance is payable where that allowance ceases to be payable or is reduced under the provisions for the restrictions on the payment of benefit following convictions for benefit fraud offences13
3. the original decision is a decision on a claim for State Pension Credit, or revising or superseding a State Pension Credit decision and the assessed income period has ended or is about to end14
4. at the end of an assessed income period15

**14.1** the claimant has failed to provide the information needed to set a fresh assessed income period **and**

**14.2** the decision maker has superseded the award of State Pension Credit without setting an assessed income period **and**

**14.3** the claimant subsequently provides the information needed.

 **Note:** The purpose of this ground for supersession is to allow a fresh assessed income period to be set from the date the necessary information is received.

**15.** the original decision awards State Pension Credit and the claimant or partner

**15.1** makes or is treated as having made an election for a lump sum **or**

**15.2** repays a lump sum

 after deferring entitlement to Retirement Pension16

**16.** the original decision awarded Employment and Support Allowance and there has been a failure determination17

**17.** the decision was made in consequence of a failure determination where the reduction ceases to have effect under specified legislation18

**18.** the original decision awarded Employment and Support Allowance and since that decision was made

**18.1** the Department has received medical evidence from a health care professional **or**

**18.2** a determination has been made that the claimant is to be treated as having limited capability for work in accordance with specified legislation19

**19.** on or after the original decision was made a late or unpaid contribution is treated as paid20.

1 SS & CS (D&A) Regs (NI), reg 6(2)(a)(i); SS (C&P) Regs (NI), reg 13, 13A or 13C;
2 SS & CS (D&A) Regs (NI), reg 6(2)(a)(ii); 3 reg 6(2)(b); 4 reg 6(2)(d) & 27; SS (NI) Order 98, Sch 2;
5 SS & CS (D&A) Regs (NI), reg 6(2)(e) or (ee); 6 reg 6(2)(f); JS (NI) Order 95, art 21(1) & 22(5);
7 SS & CS (D&A) Regs (NI), reg 6(2)(g) & 1(2); 8 reg 6(2)(h)(i); 9 reg 6(2)(h)(ii);
10 SS (WFIFP) Regs (NI), reg 11; 11 reg 11; 12 SS & CS (D&A) Regs (NI), reg 6(2)(j);
SS Fraud Act (NI) 01, Ch 6 or 8; 13 SS & CS (D&A) Regs (NI), reg 6(2)(k); SS Fraud Act (NI) 01, Ch 7;
14 SS & CS (D&A) Regs (NI), reg 6(2)(l); SPC Act (NI) 02, Ch 6;
15 SS & CS (D&A) Regs (NI), reg 6(2)(l); 16 reg 6(2)(n); 17 reg 6(2)(o); 18 reg 6(2)(p),
ESA Regs (NI), reg 64; 19 SS & CS (D&A) Regs (NI), reg 6(2)(q); 20 ESA Regs (NI), reg 20, 25, 26 or 33(2);
SS & CS (D&A) Regs (NI), reg 6(2)(r)

4005 To supersede a decision maker’s decision on the ground of ignorance or mistake as to a fact, or on the ground that it was erroneous in law, the application for supersession or the decision to initiate supersession must be made after the period in DMG 4008 has ended1.

1 SS & CS (D&A) Regs (NI), reg 6(2)(b)(ii)

4006 If the application is made on any of the grounds listed in DMG 4004, other than a change of circumstances, during the period in DMG 4008, the decision should be changed by revision1.

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

4007 If during the period in DMG 4008 a claimant reports a relevant change of circumstances or information or evidence of a future change is received, the decision maker should supersede the original decision1.

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

4008 The application period for revision is either

1. one month from the date of notification of the decision to be superseded1 **or**
2. a longer period (but not more than 13 months) allowed for a late application for revision2.

 The one month period can be extended by 14 days where reasons for the decision were not included in the decision notification and the claimant asks for a written statement of reasons. See DMG Chapter 03 for detailed guidance.

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

4009 A decision which can be revised should not be superseded except where there are grounds allowing revision and further grounds arise allowing supersession1. This allows a decision to be revised and then superseded as part of one process.

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

 **Example**

 A claimant has an award of the higher rate of the mobility component of Disability Living Allowance. He disputes the decision, as he feels the period of the award is too short. He also notifies that his condition has deteriorated and applies for the care component. The decision maker revises the decision to extend the period of the award of the mobility component and supersedes the decision as revised to award the lowest rate of the care component from a later date.

Applications

Introduction

4010 When an application for supersession is received, the decision maker should consider whether or not to admit it in order to establish whether an application is hopeless. See DMG 4015 for guidance on admitting applications.

4011 If the application is not admitted because it is hopeless, the decision maker should notify that no decision has been made and there is no right of appeal1. Decision makers should note that this is not a “refusal to supersede” decision. The existing award remains in place. The claimant should be notified why no action has been taken on the matters raised by the application. See DMG Chapter 06 for guidance if the claimant sends an appeal following the notification.

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

4012 If the application is admitted, the decision maker should

1. make a decision to supersede where the outcome is changed (DMG 4016 - 4018) **or**
2. make a decision not to supersede where the outcome is not changed (DMG 4019 - 4020).

Hopeless applications

4013 A communication from the claimant should not be admitted as an application for supersession if no further investigation of fact or law could possibly produce a different decision from the one that has been made. This means that a communication will not be an application if

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

1 R(DLA) 1/03

4014 Decision makers should note that it will be exceptional to reject an application for supersession as hopeless.

Admitting an application

4015 Where there is a possibility that one or more of the conditions for supersession may be satisfied, the decision maker should admit a communication as an application for supersession.

Making a decision to supersede

4016 The decision maker should make a decision to supersede where

1. one or more of the conditions (grounds) are satisfied, for example where there has been

**1.1** an actual or anticipated relevant change of circumstances

 **1.2** ignorance of or mistake as to a material fact

 **1.3** an error of law **and**

1. the outcome is changed1.

1 R(DLA) 1/03

4017 An outcome is changed where

1. the rate or period of entitlement to benefit is altered **or**
2. the rate or period for which benefit is payable is altered **or**
3. the period, amount or recoverability of an overpayment is altered **or**
4. for Industrial Injuries Scheme Benefits, a decision on diagnosis or assessment of disablement is changed, even if there is no change in the rate of benefit.

4018 Where the decision maker supersedes the previous decision, that decision is replaced by the new decision from the effective date which carries the right of appeal.

Making a decision not to supersede

4019 The decision maker makes a decision not to supersede where the outcome is not changed whether or not the conditions (grounds) to supersede a decision are satisfied. The decision not to supersede carries the right of appeal1.

1 R(DLA) 1/03

**Example 1**

 Davy Murray is in receipt of an award of Industrial Injuries Scheme Benefit for an industrial accident and notifies that his condition has worsened. The decision maker considers on the basis of medical reports and advice that there has been no change. The decision maker decides not to supersede the earlier decisions on assessment of disablement and entitlement to benefit as there has not been a relevant change of circumstances.

**Example 2**

 The claimant’s appointee notifies that the claimant, who is entitled to Attendance Allowance at the higher rate, has transferred from hospital to a private nursing home. The appointee asks for payment of Attendance Allowance to be reinstated as the claimant has left hospital. The decision maker establishes that the nursing home fees are being met entirely by the National Health Service, who are paying the nursing home to continue providing the claimant with the same treatment she was receiving in hospital. Although there has been a relevant change of circumstances, Attendance Allowance still cannot be paid. The outcome is not changed, and the decision maker decides not to supersede the earlier decision given on the claim to Attendance Allowance made whilst the claimant was in hospital.

 **Example 3**

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

4020 A decision not to supersede has no effective date. It does **not** replace the earlier decision1. If it is revised or overturned on appeal, it then becomes a decision to supersede with the effective date calculated in the normal way. Decision makers should ensure that

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

 are retained.

1 R(DLA) 1/03

Treating as an application for supersession

4021 A decision maker may treat an application for revision or a notification of a change of circumstances as an application for supersession1.

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

Providing information

4022 Where claimants apply for supersession, the onus is on them to prove (on the balance of probabilities) the facts upon which that application is based. They should supply information to support their application.

Further information needed

4023 Where a decision maker requires further information or evidence in order to consider all the issues raised by an application for supersession the applicant should be notified that more information or evidence is required and the decision may be superseded1

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

1 SS & CS (D&A) Regs (NI), reg 6(4)

 **Example**

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

Information provided late

4024 Where the information is provided after the time limit allowed by the decision maker in DMG 4023 **and**

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

Issues for decision by Her Majesty’s Revenue and Customs

4025 Since 1.4.99 Her Majesty’s Revenue and Customs (formerly the Board of the Inland Revenue) has been responsible for making decisions on social security contributions issues previously determined by the Department1. See Annex N for a list of these decisions.

1 SSC (ToF) (NI) Order 99, art 8(1)

4026 Entitlement to social security contributory benefits depends on the contribution conditions being satisfied. In practice the national insurance contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. See DMG Chapter 1 for further guidance about making assumptions. However, where there is a dispute about the record, the matter must be referred by the Department to Her Majesty’s Revenue and Customs for a formal decision.

4027 Where the Department has decided a claim or another matter on an assumption of facts about which

1. it appeared to him there was no dispute **but**
2. had an issue arisen, that issue would have fallen to be decided by an officer of Her Majesty’s Revenue and Customs as in DMG 4026

 then the provisions of DMG 4028 - 4032 may apply.

4028 Where an application is made for a supersession and the decision maker considers that an issue arises about some question that should be decided by Her Majesty’s Revenue and Customs, that matter should be referred to Her Majesty’s Revenue and Customs1.

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

4029 While a decision of Her Majesty’s Revenue and Customs is awaited, the decision maker can1

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

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

4030 Once the final decision of Her Majesty’s Revenue and Customs is received, the action to take depends on whether the decision maker has made a supersession decision or has deferred that decision.

4031 If the decision maker has made a decision on the basis of a preliminary opinion, he should consider whether the decision should be revised or superseded1 in accordance with the final decision of Her Majesty’s Revenue and Customs.

1 SS & CS (D&A) Regs (NI), reg 11A(4)(a)

4032 Where the decision maker has decided to defer making the supersession decision, a decision should be made in accordance with the final decision of Her Majesty’s Revenue and Customs1.

1 SS & CS (D&A) Regs (NI), reg 11A(4)(b)

4033 A final decision of Her Majesty’s Revenue and Customs includes a decision on an appeal against a decision of the Her Majesty’s Revenue and Customs1.

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

 4034 – 4039

What if the decision to be superseded is set aside on appeal

4040 Where

1. a decision is or is not superseded following an application **and**
2. the original decision is set aside on appeal to a tribunal or Commissioner

 the decision to supersede or not may be of no effect1.

1 R(DLA) 2/04

4041 An application for supersession on the basis that the original decision was made in ignorance of a material fact lapses where the original decision is set aside on appeal.

 **Example**

 The claimant is awarded the lowest rate of the care component of Disability Living Allowance following a renewal claim. He lodges an appeal against this decision. Before the appeal is heard, the claimant also applies for the decision to be superseded on the grounds that the decision maker was ignorant of material facts. The decision maker decides not to supersede the original decision. On appeal, the tribunal sets aside the decision makers’ decision and awards the middle rate of the care component. The decision makers’ decision not to supersede is of no effect and there is no requirement to consider whether the tribunal’s decision should be superseded, because they were deciding the original claim afresh.

4042 An application for supersession for a relevant change of circumstances may need to be processed again, including treating it as an application for supersession of a different decision, or as a new claim.

 **Example**

 The claimant’s award of Disability Living Allowance came to an end and was disallowed on renewal. On appeal, the tribunal awarded the lower rate of the mobility component. The claimant then made a further appeal to the Commissioner, who set aside the tribunal’s decision and remitted the appeal for rehearing. While the Commissioner’s appeal was pending, the claimant had applied for supersession of the tribunal’s decision so as to award the care component on the grounds of a change of circumstances. The decision maker refused to supersede and the claimant made a further appeal. Both appeals were heard together. The tribunal upheld the disallowance of the renewal claim, and held that the second appeal lapsed as there was no awarding decision to supersede. The decision maker treats the application as a claim and makes a decision accordingly.

 4043 – 4049

The process of supersession

4050 Once it has been decided that there are grounds for supersession, the decision maker should

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

4051 The decision maker need not consider any issue1 that

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

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

 4052 – 4054

Recording the decision

4055 It is important that a record be made of the supersession decision. That record needs to

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

 4056 – 4099

Change of circumstances

Relevant change of circumstances

4100 Where

1. there has been a relevant change of circumstances since the decision

**1.1** had effect **or**

**1.2** was made in the case of an advance award1 **or**

1. it is expected that a change will occur

 the decision maker may supersede the decision which is currently in force2. The application period for revision is irrelevant in these cases. See DMG 4115 - 4116.

1 SS (C&P) Regs (NI), reg 13, 13A & 13C; 2 SS & CS (D&A) Regs (NI), reg 6(2)(a)

Which decisions can be superseded on the ground of change of circumstances?

4101 The following decisions can be superseded on the grounds of a change of circumstances

1. any decision on a claim for relevant benefit1
2. any decision made under relevant Acts2 (but see DMG 4140 - 4142)
3. any decision in DMG 4101 **1.** or DMG 4101 **2.** which has been revised by a decision maker3
4. any decision made by an Appeal Tribunal or Commissioner4.

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

What is a relevant change of circumstance?

4102 For the purposes of supersession a relevant change of circumstance is a change which happens after the original decision had effect and which has a relevance to the award of benefit. A decision disallowing a benefit cannot be superseded if there is a change of circumstances from a date after the decision had effect. The claimant must make a fresh claim1. But see DMG 4103 for an exception to this general rule.

1 SS (NI) Order 98, art 9(2); R(A) 4/81

4103 The claim continues to exist until it is decided1. A new claim may not be required where

1. a claim is disallowed **and**
2. a change occurs after the date of claim but before the claim was decided **and**
3. the claimant notifies the change within the time limits (see DMG 4201 - 4211).

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

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

 **Example**

 A lone parent claims Income Support on 20.12.07. She is working part time in a high street store for 20 hours a week, and the claim is disallowed on 10.1.08. On 22.1.08 she notifies that her employment, which was a temporary job over Christmas, had ended on 5.1.08. The change has been reported within one month, so the decision maker supersedes the disallowance and awards entitlement to Income Support from 6.1.08.

4104 To be relevant a change does not have to be a change in the claimant's own circumstances. The phrase “relevant change of circumstances” should be given a broad meaning. A relevant change must

1. be of sufficient substance to give serious consideration to supersession
2. have the potential effect of altering some component part of the award of benefit even if the end result does not actually change the amount of the award (see DMG 4106).

4105 The following are examples of a relevant change of circumstances.

 **Example 1**

 Retirement Pension is awarded and the claimant is later imprisoned. This is a relevant change of circumstances because a person is disqualified from receiving benefit whilst in prison1. The award might not be superseded if one of the exceptions from disqualification applies2.

 **Example 2**

 An award of Widow’s Benefit is made and the claimant later goes abroad. This is a relevant change because a person is disqualified from receiving benefit when absent from Northern Ireland. But the award might not be superseded if one of the exceptions in regulations or in agreements with other States apply.

 **Example 3**

 A woman receiving Category B Retirement Pension based on her husband’s insurance is widowed. This is a relevant change of circumstances because the rate of Retirement Pension changes from the lower to the higher rate specified in the Act3.

 **Example 4**

 In income-based Jobseeker's Allowance cases, the withdrawal of a Departmental severe hardship direction, on a claim from a 16 or 17 year old, is a relevant change of circumstances.

 **Example 5**

 A jobseeker decides to go on holiday outside the United Kingdom, this is a relevant change because the jobseeker is absent from Northern Ireland.

 **Example 6**

 A child with walking difficulties for whom the Disability Living Allowance is being claimed reaching the age of three is a relevant change because at that age the mobility component can be considered.

 **Example 7**

 In Attendance Allowance and Disability Living Allowance cases a person with an existing award for daytime care needs requiring help at night on a regular basis is a relevant change because it may give entitlement to a higher rate of care component.

 **Example 8**

 For Incapacity Benefit cases a determination that the claimant is not incapable of work following a personal capability assessment is a relevant change of circumstances where the claimant has not previously been found incapable of work4.

1 SS C&B (NI) Act 92, sec 37(4)(b); 2 sec 113(1)(b); 3 SS (Gen Ben) Regs (NI), reg 2;
4 SS (IW) (Gen) Regs (NI), regs 10, 24 or 27; SS & CS (D&A) Regs (NI), regs 1(2) & 6(2)(a)

When a change has the potential to be relevant

4106 There will be situations where a change has the potential to affect an award of benefit but the decision maker ultimately decides that the change does not affect the amount of benefit awarded. This could happen, for example, because a claimant in receipt of a benefit based on incapacity or disability maintains that their medical condition has deteriorated. The decision maker may, having considered the evidence, decide that the change does not affect the existing award.

4107 The decision maker should make a decision not to supersede. See DMG 4010 et seq for further guidance.

Is a change of opinion a relevant change of circumstances?

4108 A change of opinion is not in itself a relevant change of circumstances. This should be noted when a medical opinion has been obtained after a certificate has been issued by a claimant’s doctor. A report containing a further medical opinion may however contain evidence of a change of circumstances, for example if a condition has been wholly cured as a matter of medical fact1.

 **Note:** In Incapacity Benefit and Severe Disablement Allowance where new evidence is received following examination by a health care professional approved by the Department, the decision maker does not have to identify a change of circumstances in order to supersede (see DMG 4430).

1 R(DLA) 6/01

Can a change in law be a relevant change of circumstance?

4109 A change in the law can be a relevant change of circumstances. However, where a claim has been disallowed before a change in legislation takes effect, it cannot be superseded due to a change of circumstance. This is because the claim has already been disposed of and the decision was correct under the law current at that time1. A fresh claim is needed.

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

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

4110 A decision may be superseded when it is expected that a relevant change of circumstances will occur at a future date1. The decision maker should be satisfied on the balance of probabilities that it is likely that the expected change will actually take place.

1 SS & CS (D&A) Regs (NI), reg 6(2)(a)(ii)

4111 Where a decision is given for an expected change of circumstances the decision maker must record that it might need to be revised1 if the change

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

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

4112 Where DMG 4111 **1.** applies, the decision as revised is that there are no grounds to supersede. Where DMG 4111 **2.** applies, the revised decision takes account of the fresh information about the date of change and changes the effective date where appropriate.

 4113 – 4114

Supersession of advance awards

4115 An award on an advance claim is conditional on the claimant’s circumstances at the relevant or renewal date1. Changes of circumstances occurring and effective

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

 can be dealt with by way of supersession where the circumstances in DMG 4116 apply. See also DMG Chapter 03 for revision of advance awards.

1 SS (C&P) Regs (NI), reg 13, 13A & 13C; R(DLA) 4/05

4116 Where

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

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

1 SS & CS (D&A) Regs (NI), reg 6(2)(a)

 **Example**

 Current award expires 1 August. Renewal claim decided 1 March, effective from 2 August. Award is for lowest rate care component and lower rate mobility component.

 On 1 April the claimant gets worse and starts to need frequent attention throughout the day. The change is reported 15 July. The decision maker supersedes the decision made on 1 March awarding middle rate care component from 2 August. The decision on the previous award is also superseded with effect from 15th July.

Supersession for closed period

4117 A decision awarding benefit may be superseded for a fixed period to take account of a change of circumstances which has already come to an end. The supersession only replaces the original decision for that period.

 **Example 1**

 A claimant is in receipt of Incapacity Benefit. Following a fraud investigation, it is established that he was working on a building site for over a year. The work finished when he was laid off after injuring himself. The decision maker determines that he is treated as capable for the period of work as it was not exempt work, and supersedes the awarding decision to disallow Incapacity Benefit for the same period. The conditions of entitlement should be determined from the first day of the fresh period of entitlement.

 **Example 2**

 The claimant had been entitled to Income Support on the basis of incapacity for work since 1999. He was imprisoned for the period 30 August 2011 to 5 September 2011. Entitlement for this closed period should be removed by way of supersession for that period only. The claimant is entitled to Income Support without the need to make a new claim from 6 September 2011.

 4118 – 4119

Relinquishment of benefit

4120 A claimant may decide that they do not want entitlement to benefit to continue, for example where it is not payable through overlapping benefit rules, or where the amount of benefit is small. The request should be treated as an application for supersession.

4121 The claimant may ask not to receive payment of benefit while underlying entitlement continues. The decision maker should refuse to supersede following such a request. This is because if entitlement exists, the Department has an obligation to pay benefit in accordance with an award, other than where legislation such as overlapping benefit rules prevents this.

Effectiveness of the relinquishment

4122 The decision maker should investigate to ensure that the claimant’s relinquishment is a genuine statement of intention, and the consequences explained where appropriate. For example, one consequence is that for the purposes of income related benefits the claimant may be fixed with notional income equivalent to the amount of benefit they have relinquished.

4123 A request to surrender benefit might not be effective where

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

4124 Where the decision maker is not satisfied that the claimant

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

 the request should be refused. The decision maker should make a decision that the awarding decision is not superseded (see DMG 4019 - 4020).

4125 Where

1. the claimant has been advised of the consequences **and**
2. the request is genuine **and**
3. DMG 4123 does not apply

 the decision maker should end entitlement accordingly.

4126 Once entitlement has been ended as in DMG 4129 - 4131, a further claim is required if the claimant wishes to receive the benefit again. A change of mind about relinquishment is not grounds for revision, because it was not a fact in existence at the time the original decision was made.

4127 The decision ending entitlement can be revised within the application period if it is established that the original request to surrender entitlement was not effective as in DMG 4123. Where the application is made outside the time limits, the decision maker should consider whether to revise for official error. See DMG Chapter 03 for advice on revision.

4128 If ending entitlement was not in their best interests, and a further claim is made, the decision maker has no authority to fix a date of claim to cover a period when the claimant was not entitled. The normal rules about the prescribed time for claiming still apply (see DMG Chapter 02). For example, a person who reclaims Incapacity Benefit two months after surrendering an award can be entitled from the day following the end of that award.

Ending entitlement

4129 Where a claimant no longer wishes to receive a benefit, and the decision maker accepts that the request is effective, the decision maker should supersede the awarding decision on a relevant change of circumstances1, and terminate the award. The claimant has the right of appeal. The supersession ends entitlement to, as well as payability of, benefit, because the award has come to an end with the withdrawal of consent.

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

4130 The relevant change is that the claimant no longer consents to be entitled to receive the benefit, or no longer wishes it to be payable. The date of the change is

1. the date specified by the claimant where appropriate **or**
2. the first pay day following the date of the application **or**
3. the first pay day following the date the decision is made, where benefit continues to be paid after the application is made and is not returned.

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

4131 For guidance on the effective date of the supersession1, see DMG 4230 et seq. Decision makers should note that although some changes of circumstances must be notified in writing2, an application for supersession can be made orally or in writing.

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

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

 **Example**

 A claimant is in receipt of Carer’s Allowance as she is caring for her mother in law. She reaches pension age, and Carer’s Allowance is not payable as it overlaps with her award of Retirement Pension. Her husband was also caring for his mother after early retirement. His only income is an occupational pension. In order to maximise benefit entitlement, the claimant writes to say that she no longer wishes to get Carer’s Allowance, and her husband wishes to claim it instead. The decision maker accepts that her relinquishment is genuine. The decision awarding Carer’s Allowance is superseded on a relevant change of circumstances to end entitlement, effective from the date of the application.

 **Note 1:** An award of benefit cannot be surrendered in part.

 **Note 2:** Relinquishment is not the same as de-retirement. See DMG Chapter 75.

 4132

Relinquishment of Industrial Injuries Scheme Benefits

4133 Where an award of Industrial Injuries Scheme Benefits is surrendered, the assessment of disablement remains in place. Should the claimant make a further claim for the accident or prescribed disease for which an award has been surrendered, and for which an assessment of disablement remains current, there is no need to refer again to Medical Support Services for advice.

 4134 – 4139

Overlapping benefits

4140 Where a decision has been made that

1. a benefit is not payable, or is payable at a reduced rate, because of the overlapping benefit provisions1 **and**
2. the overlapping benefit provisions cease to apply

 the type of decision made to restore or increase payment depends on the reason the overlapping benefit provisions ceased to apply. See DMG Chapter 17 for guidance on overlapping benefits.

1 SS (OB) Regs (NI)

4141 Where a benefit was adjusted because it overlapped with another benefit administered by the Department for Social Development, a supersession decision is not appropriate when that adjustment ends1. The decision maker should make an outcome decision to end the adjustment, effective from the date the overlapping benefit stops2.

1 R(G) 1/03; 2 SS (NI) Order 98, art 9(1)(c)

 **Example**

 The claimant is entitled to Carer’s Allowance and is later awarded Incapacity Benefit. His award of Carer’s Allowance is adjusted to nil under the overlapping benefit provisions. The claimant’s award of Incapacity Benefit is terminated on 14.7.05 when he fails to score 15 points on the personal capability assessment, and his appeal against the Incapacity Benefit decision is unsuccessful. The Carer’s Allowance Unit learns of the ending of the Incapacity Benefit award on 25.1.06 following a routine review. The decision maker decides to end the adjustment of Carer’s Allowance with effect from 14.7.05. As this is not a supersession, the effective date rules do not apply.

4142 Where benefit is adjusted because it overlaps with a benefit or allowance not administered by the Department for Social Development, the normal supersession provisions apply. For example, where a dependency benefit is adjusted because it overlaps with a training allowance paid by or on behalf of the Department for Employment and Learning, a supersession decision is required when the training allowance ends.

 4143 – 4144

Death of claimant

4145 The death of the claimant is a relevant change of circumstances affecting entitlement to benefit. In the majority of cases, there is no requirement for an awarding decision to be superseded so as to end entitlement. However, where there is an overpayment of benefit as a result of late notification of the death, the awarding decision must be superseded before the decision maker can consider whether the overpayment is recoverable1.

1 SS A (NI) Act 92, sec 69(5A); SS (NI) Order 98, art 11(1)

 4146 – 4149

Notification of changes

Introduction

4150 The process of supersession on a change of circumstances is closely linked to the legal requirement that certain changes be notified to the Department.

When should a change be notified?

4151 Beneficiaries and every person by whom, or on whose behalf, sums by way of benefit are receivable are required1 to notify the Department of any change of circumstance which they might reasonably be expected to know might affect

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

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

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

4152 **[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]** Notification of the changes set out in DMG 4151 must be made1 to an appropriate office

1. in writing **or**
2. by telephone unless the Department in any case or class of case requires written notice.

 **Note:** Persons can notify changes of circumstances by means of an electronic communication in relation to awards of Attendance Allowance, Carer’s Allowance, Disability Living Allowance, Employment and Support Allowance, Incapacity Benefit, Income Support, Jobseeker’s Allowance, Retirement Pension and State Pension Credit2.

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

Who can notify the change?

4153 A change of circumstances can be notified by

1. the person claiming the benefit
2. any person appointed to act as an appointee for a claimant who is unable to act for themselves
3. any person who is an authorised representative for the claimant
4. a representative or agent of the Department
5. in overseas cases, social security authorities of European Community countries, or other countries who have reciprocal arrangements with the UK.

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

How can a change be notified?

4154 The general rule up to 5.1.04 was that a change should be reported in writing. However the Department can determine in any particular case that some other form of notification be accepted such as by telephone or in person.

4155 With effect from 6.1.04 notification of the changes set out in DMG 4151 must be made1 to an appropriate office

1. in writing **or**
2. by telephone, unless the Department in any case or class of cases requires written notice.

 **Note 1:** This does not apply to Jobseeker's Allowance, which has its own rules2 concerning reporting changes.

 **Note** **2:** It remains the case that, in relation to Carer’s Allowance only, changes can be reported by means of electronic communication (see Annex B to this Volume for further guidance).

 **Note 3:** Notification3 of a death may be given by means of electronic communication4, for Attendance Allowance, Disability Living Allowance, Employment and Support Allowance, Incapacity Benefit, Income Support, Jobseeker’s Allowance, Retirement Pension and State Pension Credit.

1 SS (C&P) Regs (NI), reg 32(1B); 2 JSA Regs (NI), reg 24; 3 SS (C&P) Regs (NI), reg 32ZA & Sch 8D;
4 The Social Security (Electronic Communications) Order (NI) 2011, art 2(3)

Where should a change be notified?

4156 A change of circumstances should be notified to an appropriate office1. An office of

1. the Social Security Agency whose address is shown on the original decision notice
2. for Jobseeker’s Allowance, the office specified by the Department
3. in the case of a person who is or would be required to take part in a work-focuses interview, Jobs and Benefits Office.

 **Note:** Where a notification is received in a different office of the Department of Social Development, and is forwarded to and received by the appropriate office, it should be treated as received in the appropriate office on the date of receipt in the different office. But see DMG Chapter 09 in overpayment cases.

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

4157 A “designated authority” means1

1. the Department
2. the Department for Employment and Learning
3. a person providing services to either of those Departments.

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

4158 A work-focused interview means1 an interview which a person is required to take part in under specific regulations2.

1 SS & CS (D&A) Regs (NI), reg 1(2); 2 SS (WfI) Regs (NI) 03

4159 – 4199

Supersession on a change of circumstances - effective dates

Introduction

4200 The effective date of a supersession on a change of circumstances depends upon whether the result of the supersession would be advantageous or disadvantageous to the claimant and whether the change has been notified within certain time limits. DMG 4201 to 4240 describe the general rules. However, these paragraphs should be read together with any of the special rules relating to specific benefits described in DMG 4395 to 4710.

Time limits

4201 The general rule is that an advantageous change of circumstances is to be notified within one month of the date the change occurred.

 4202 – 4203

Late notification of change of circumstances

4204 The one month time limit can be extended provided certain conditions are satisfied1.

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

Application for an extension of time

4205 Firstly an application for an extension of time needs to be made either by the claimant or a person acting on the claimant’s behalf1.

1 SS & CS (D&A) Regs (NI), reg 8(2)

4206 That application must1

1. contain details of the relevant change of circumstances **and**
2. include the reasons for the failure to notify the change on an earlier date **and**
3. be made within 13 months of the date the change occurred.

 **Note:** See DMG 4395 et seq for benefit specific guidance.

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

Grounds

4207 The following conditions1 must **all** be satisfied for a late dispute to be accepted

1. it is reasonable to grant the application **and**
2. the notified change is relevant to the decision to be superseded **and**
3. special circumstances are relevant to the application **and**
4. as a result of those special circumstances it was not practicable for the claimant or person acting on behalf of the claimant to notify the change of circumstances within one month of the date it happened.

1 SS & CS (D&A) Regs (NI), reg 8(4)

Meaning of special circumstances

4208 The phrase “special circumstances” is not defined in legislation. It can include factors such as

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

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

Deciding whether it is reasonable to grant the extension of time

4209 When deciding whether it is reasonable to grant an extension of time the decision maker should take account of the principle that the later the application, the more compelling the special circumstances causing the lateness must be1.

1 SS & CS (D&A) Regs (NI), reg 8(5)

4210 The decision maker must take **no** account of the following1

1. that the applicant was ignorant of or misunderstood the law applicable to his case (including the one month time limit for reporting changes of circumstance)
2. the fact that a Commissioner or a court has taken a different view of the law from that which was previously understood and applied.

1 SS & CS (D&A) Regs (NI), reg 8(6)

4211 An application which has been refused cannot be renewed1.

1 SS & CS (D&A) Regs (NI), reg 8(7)

 4212 – 4219

Decisions advantageous to the claimant

Meaning of advantageous

4220 A decision is advantageous1 to the claimant where the outcome is that

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

1 SS & CS (D&A) Regs (NI), reg 7(4) & 30(2); 2 SS (NI) Order 98, arts 10(4), 11(6)

Change notified within the time limits

4221 Where an appropriate office is notified of a change of circumstances within one month of the date that change occurred or within such longer period as may be allowed under DMG 4204 - 4210, the effective date of the supersession will be the date the change occurred1.

1 SS & CS (D&A) Regs (NI), reg 7(2)(a)

Change notified outside the time limits

4222 Where a change of circumstances is notified later than one month after it occurred (or such longer period as the decision maker may have allowed under DMG 4204 - 4210) then the effective date of the supersession will be the date **notification** of the change of circumstances was received in an appropriate office1.

1 SS & CS (D&A) Regs (NI), reg 7(2)(b)

Decision maker’s own initiative

4223 Where decision makers supersede of their own initiative to deal with a change of circumstances and the result is advantageous to the claimant the effective date takes effect from the beginning of the week in which action was started with a view to supersession1.

 **Note:** A request for information by way of a routine case check does not count as action with a view to supersession.

1 SS & CS (D&A) Regs (NI), reg 7(2)(bb)(i)

4224 Where

1. a claimant is in receipt of Income Support, Jobseeker’s Allowance or State Pension Credit **and**
2. benefit is paid in advance **and**
3. the Department started action with a view to supersede on a day which was not the first day of the benefit week

 the supersession takes effect from the beginning of the benefit week following the week in which action to supersede started1.

1 SS & CS (D&A) Regs (NI), reg 7(2)(bb)(ii)

4225 It will often be useful for the decision maker to make a note of the date he first noticed that action was needed to deal with a change so that there is evidence of the basis for the effective date subsequently used.

Award of Carer’s Allowance ends

4226 Where

**1.** the claimant is a disabled person or a disabled person’s partner **and**

**2.** a decision awarding benefit is superseded to the claimant’s advantage **and**

**3.** the reason for the supersession is that payment of an award of Carer’s Allowance relating to that disabled person has ended

the decision is effective from the day after the last day that Carer’s Allowance was paid to a person other than the claimant or the claimant’s partner1.

1 SS & CS (D&A) Regs (NI), reg 7(2)(bc)

 **Example**

 The claimant lives with his disabled wife and is in receipt of Income Support. He is not entitled to the Severe Disability Premium because his daughter receives Carer’s Allowance for his wife. The daughter returns to work, and the award of Carer’s Allowance is superseded and terminated from and including 16.10.08. The claimant does not find out about the end of the award until late January 2009. He notifies the Income Support section, and the decision maker supersedes the Income Support decision to award Severe Disability Premium from 16.10.08.

 **Note:** Where the Carer’s Allowance was being paid to the claimant or the claimant’s partner the usual rules for an advantageous supersession decision will apply.

 4227 – 4229

Decisions not advantageous to the claimant

The general rule

4230 The general rule is that a supersession for a change of circumstances which is not advantageous to the claimant takes effect from the date of the change1. However there are exceptions.

1 SS & CS (D&A) Regs (NI), reg 7(2)(c)(v)

Incapacity benefit and disability benefit decisions and Employment and Support Allowance decisions

Meaning of incapacity benefit decision

4231 An incapacity benefit decision is1 a decision to award benefit or credits

1. which embodies a determination that the person is or is to be treated as incapable of work2 **or**
2. necessary to which is a determination that the person is or is to be treated as incapable of work2.

 **Note:** Incapacity decisions are made in respect of Incapacity Benefit (including transitional long term Incapacity Benefit), Income Support, National Insurance credits and Severe Disablement Allowance.

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

Meaning of incapacity determination

4232 An incapacity determination is1 a determination whether

1. a person is incapable of work following application of the personal capability assessment2
2. a person is to be treated as incapable of work in accordance with certain regulations3.

 **Note:** This does not include determinations of incapacity made pending the personal capabilities assessment (see DMG 4431).

1 SS & CS (D&A) Regs (NI), reg 1(2); 2 SS (IW) (Gen) Regs (NI), reg 24; 3 regs 10 or 27

Meaning of disability benefit decision

4233 A disability benefit decision is1 a decision to award benefit which includes a disability benefit determination. These are Attendance Allowance, Disability Living Allowance, Severe Disablement Allowance and Industrial Injuries Scheme Benefits.

 **Note:** Although an award of Reduced Earnings Allowance relies on an assessment of disablement, a decision awarding Reduced Earnings Allowance is **not** a disability benefit decision.

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

Meaning of disability determination

4234 A disability determination is1 a determination

1. in the case of a decision on Attendance Allowance or Disability Living Allowance, whether the person satisfies the disability conditions2
2. in the case of Severe Disablement Allowance whether a person is disabled3
3. in the case of Industrial Injuries Scheme Benefit whether the existence or extent of any disablement is sufficient4.

1 SS & CS (D&A) Regs (NI), reg 1(2); 2 SS C&B (NI) Act 92, sec 64, 72(1) to (3);
3 sec 68; 4 sec 103 or 108

Meaning of Employment and Support Allowance decision

4235 An Employment and Support Allowance decision1 is a decision to award benefits or credits which embodies a determination that the person is or is to be treated as having limited capability for work.

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

Meaning of limited capability for work determination

4236 A limited capability for work determination1 is a determination whether

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

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

Effective date

4237 In the case of

1. an incapacity decision where there has been an incapacity determination as in DMG 4232 **or**
2. a disability benefit decision where there has been a disability determination as in DMG 4234 **or**
3. an Employment and Support Allowance decision where there has been a limited capability for work determination as in DMG 4236.

 where the decision maker is satisfied that the claimant failed to notify an appropriate office of a change of circumstances **relating to incapacity, disability** **or limited capability for work** which the claimant is required to notify, then the effective date of the supersession will depend upon whether the claimant knew or could reasonably have been expected to know that the change of circumstances should have been notified.

 **Note:** See DMG 4245 where the change is not relevant to an incapacity or disability determination.

4238 If the claimant knew or could reasonably have been expected to know that the change should have been notified then the effective date is the date he should have notified it1. If it is not reasonable for the claimant to know that the change should have been notified then the supersession decision takes effect from the date the decision is made2.

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

4239 If there has been more than one change to which DMG 4237 - 4238 apply between the effective date of the original decision and the date the supersession decision is made then the effective date will be the date the first change should have been notified1.

1 SS & CS (D&A) Regs (NI), reg 7(2)(c)(ii)(bb)

Meaning of “reasonably have been expected to know”

4240 The test of reasonableness is not defined in law. It is similar to the test established by case law for recoverable overpayments arising from failure to disclose material facts (see DMG Chapter 09). When considering that guidance the decision maker should take into account such matters as

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

4241 A slight change in the claimant’s ability to carry out activities would not normally be a change that a person could reasonably be expected to notify. However, where the change is gradual there may be a point at which the person could reasonably have been expected to know that a change should be reported.

 **Example 1**

 A claimant has an award of higher rate mobility and highest rate care components of Disability Living Allowance because of the effects of progressive heart disease. On 8.11.99 the claimant undergoes a successful heart bypass operation, but does not report this until 1.6.00. Further evidence is obtained from the hospital showing a significant improvement in his walking ability and reduced care needs, within 3 months of the operation.

 The decision maker decides that the claimant is not entitled to either component from 9.2.00, and that he was aware of the basis of the award and could reasonably have been expected to know that the improvement should have been notified. The supersession decision takes effect from 9.2.00.

 **Example 2**

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

 **Example 3**

 The claimant has a heart condition and is receiving out-patient treatment at a hospital. He scores points for walking, lifting and carrying, and reaching, satisfying the personal capability assessment. At first he was unable to walk further than 200 metres. But with exercise this has improved and he can now walk 400 metres. The doctor reports that he still has problems with lifting, carrying and reaching. The decision maker decides that it was not reasonable for him to know that the change should be notified, because the improvement was gradual and only affected one activity. The supersession decision takes effect from the date it is made.

 4242 – 4244

Change not related to incapacity, disability or limited capability for work determination

4245 Where the change is not related to the incapacity, disability or the limited capability for work determination, the effective date rule in DMG 4237 does not apply. The effective date is the date of change1 (but cannot be earlier than 10.4.062).

1 SS & CS (D&A) Regs (NI), reg 7(2)(c)(iv) & (v); 2 [2012] AACR 14

Adult dependency increase

4246 An adult dependency increase is awarded by a decision made on a separate claim - see DMG 16115. The conditions of entitlement to adult dependency increase do not include a requirement that the person is incapable of work (see DMG 16134), so that the decision awarding adult dependency increase is not an Incapacity Benefit decision1 as defined in DMG 4231. There is no requirement to supersede the decision awarding Incapacity Benefit so as to include the award of adult dependency increase.

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

4247 Where payability of or entitlement to adult dependency increase is affected by earnings, the decision awarding the adult dependency increase should be superseded to take account of the change effective from the date of change1.

1 SS & CS (D&A) Regs (NI), reg 7(2)(c)(v)

 4248 – 4249

Changes in legislation

4250 Where the relevant change of circumstances is a change in legislation, the effective date is the date the change in legislation had effect1. Decision makers should note that this applies to all benefits including Income Support, Jobseeker’s Allowance and State Pension Credit. Where a decision is superseded on the basis of an anticipated relevant change of circumstances and that change is the coming into force of a change in legislation then the decision will take effect from the date on which the change in legislation has effect2.

1 SS & CS (D&A) Regs (NI), reg 7(9)(a)(ii) & (29); 2 reg 7(30A)

 **Example**

 A Disability Living Allowance claimant is in receipt of the lower rate mobility component due to visual impairment. A change in legislation from 11.4.11 means that the claimant will be entitled to the higher rate. The decision maker identifies that the claimant will become entitled and supersedes the award in advance of the coming into force of the legislation and awards the higher rate mobility component from 11.4.11.

 4251 – 4279

Error of law

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

4280 Some decisions of a decision maker can be superseded either on an application or on the decision maker’s own initiative in the circumstances set out in DMG 4281. These are

1. any decision on a claim for a relevant benefit1
2. any decision under relevant acts2
3. any decision as in DMG 4280 **1.** or DMG 4280 **2.** which has been revised3.

 **Note:** A decision of an appeals tribunal or Commissioner cannot be superseded on these grounds.

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

In what circumstances can a decision be superseded on the grounds of error of law

4281 Supersession on the grounds of error of law will only apply where1

1. an application was received more than one month (or such longer period as might be allowed under DMG 4204 - 4210) after the date the original decision was notified **or**
2. the Department decided to act on its own initiative more than one month after the date the original decision was notified.

 **Note:** There will be cases where the decision maker is able to revise a decision which was wrong in law on the grounds of official error. This route would be available where the error is solely the responsibility of the decision maker (see DMG Chapter 03 for further guidance).

1 SS & CS (D&A) Regs (NI), reg 6(2)(b)

Meaning of error of law

4282 Commissioners have set out1 categories of circumstances in which errors of law may be found. These are

1. making perverse or irrational findings on a matter or matters that were material to the outcome (“material matters”)
2. failing to give reasons or any adequate reasons for findings on material matters
3. failing to take into account and/or resolve conflicts of fact or opinion on material matters
4. giving weight to immaterial matters
5. making a material misdirection on law on any material matter
6. committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings
7. making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.

 **Note:** As errors in law will usually also be official errors allowing revision, this provision has limited use. See DMG Chapter 03 for guidance on the meaning of official error.

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

Effective date

4283 Except where DMG 4290 - 4292 apply, where a decision is superseded on the grounds of error of law the effective date is1

1. where the supersession is made on an application, the date the application is received
2. where the supersession is made on the decision maker’s own initiative, the date the decision is made.

 **Note:** This applies to Income Support, Jobseeker’s Allowance and State Pension Credit.

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

 4284 – 4289

Reinterpretation of the law

4290 Sometimes the Commissioners and higher courts give decisions that change a previously held interpretation of the law. These decisions will sometimes mean that earlier decisions of decision makers were wrong in law.

4291 A decision by a Commissioner or a court that the decision of the decision maker or a tribunal out of which the appeal arose was wrong in law is known as the “relevant determination”.

4292 Where

1. an application is made for a supersession decision relating to entitlement to benefit (regardless of whether it is made before or after the relevant determination) **and**
2. a decision on that application falls to be made in accordance with the relevant determination

 then the effective date of that supersession will be the date of the relevant determination1. But see DMG 4500 for Income Support and Jobseeker’s Allowance, DMG 4640 for State Pension Credit, and DMG 4696 for Employment and Support Allowance.

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

1 SS & CS (D&A) Regs (NI), reg 7(6)

 4293 – 4294

Appeal against a relevant determination

4295 Where

1. a Northern Ireland Commissioner or court makes a relevant determination (see DMG 4291) **and**
2. the Department appeals against that determination and does not stay decisions (see DMG 6800 et seq) **and**
3. an award of benefit made in consequence of the relevant determination is suspended **and**
4. the relevant determination is reversed on appeal

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

Effective date

4296 Where a decision maker’s decision is superseded as in DMG 4295, the decision takes effect from the date on which the earlier decision took effect. No arrears are paid when the suspension is lifted. See DMG 4500 for Income Support and Jobseeker’s Allowance, and DMG 4640 for State Pension Credit, and DMG 4696 for Employment and Support Allowance.

1 SS & CS (D&A) Regs (NI), reg 7(6A)

 **Example**

 The claimant appeals against a decision maker’s decision. A tribunal dismisses the appeal, upholding the decision maker’s view of the law. The claimant appeals to the Commissioner, but this is again dismissed on the same point. The claimant then makes an appeal to the Court of Appeal, which succeeds. The Department appeals this to the House of Lords. At the same time the Department receives applications in look-alike cases seeking benefit on the basis of the Court’s decision. The Department supersedes existing decisions but suspends payment under these new awards pending the outcome of the appeal of the House of Lords. The House of Lords then upholds the Department’s appeal. The Department then lifts the suspensions and supersedes the decision made following the Court of Appeal’s decision, effective from the same date as those decisions. This ensures that no benefit is paid in consequence of the Court of Appeal’s (erroneous) decision.

 4297 – 4299

Superseding a tribunal or Commissioner’s decision

4300 A tribunal’s or Commissioner’s decision can only be superseded1 where

1. there has been a relevant change of circumstances2 **or**
2. the decision arose from ignorance of or mistake as to some material fact3 **or**
3. it was made after the appeal was stayed4.

1 SS (NI) Order 98, art 11(1)(b) and 26(4) & (5); 2 SS & CS (D&A) Regs (NI), reg 6(2)(a);
3 reg 6(2)(c)(i); 4 reg 6(2)(c)(ii)

No outcome decision made

4301 Where the tribunal does not give an outcome decision after allowing an appeal, the decision maker must follow the tribunal’s decision on the issues it has dealt with when dealing with the matters referred back for subsequent decision unless

1. there are grounds to supersede the tribunal’s decision **or**
2. the decision maker considers it is erroneous in law and applies for leave to appeal (see DMG Chapter 06)1.

1 R(IS) 2/08

4302 Where

1. the decision maker incorporates the tribunal’s decision into a new decision

 **1.1** on a claim **or**

 **1.2** revising or superseding an earlier decision **and**

1. the facts have changed since the time of the decision under appeal

 the decision maker should not supersede the tribunal’s decision in order to take account of the change in the facts. This is because the decision maker must determine all the facts down to the date of the new decision - see DMG 1010. The tribunal cannot take account of circumstances which had not arisen at the time of the decision under appeal1.

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

4303 Similarly, if a tribunal’s decision, other than an outcome decision, is incorporated into a decision maker’s decision, and there are grounds to supersede, it is the decision maker’s decision which must be superseded, not the tribunal’s decision.

4304 Note that the claimant cannot ask for the decision maker’s decision to be

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

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

 4305 – 4314

Stayed appeals

4315 DMG Chapter 06 describes the procedure where appeals are stayed at tribunal or Commissioner level. Where

1. the tribunal or Commissioner decides the appeal as if the lead appeal has been determined in the most unfavourable terms for the appellant1
2. the decision maker is required to supersede the tribunal or Commissioner’s decision once the lead appeal is determined2

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

1 SS (NI) Order 98, art 26(4)(b); 2 art 26(5); SS & CS (D&A) Regs (NI), reg 6(2)(c)(ii); 3 reg 7(32)

4316 Decision Making Services will give guidance following the determination of lead cases on whether supersession is required.

 4317 – 4319

Ignorance of or mistake as to a material fact

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

4320 Supersession of

1. any decision on a claim for a relevant benefit1
2. any decision made under relevant Acts2
3. any decision in DMG 4320 **1.** or DMG 4320 **2.** which has been revised by a decision maker3
4. any decision made by an Appeal Tribunal or Commissioner4

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

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

What is a material fact?

4321 A material fact is one which is relevant to a decision on a claim or application. Any fact which has to be determined before a decision can be given is a material fact.

4322 A fact which is itself not immediately relevant can be important to a decision if the process of reaching a decision has been influenced by it.

Example

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

4323 An application for supersession because of ignorance of, or a mistake as to, a material fact may not always result in a supersession decision. See DMG 4010 - 4020 for further guidance.

4324 There is a distinction between a primary fact and a secondary fact. A primary fact is a fact established directly by evidence. A secondary fact is found by applying the process of reasoning to evidence.

4325 Decision makers often make an inference of fact by reasoning from the evidence before them. If, however, they are wrong because the reasoning was wrong, the decision is not based on a mistake as to a material fact. Decision makers cannot supersede decisions just because they would have reached a different decision on the same evidence1 (but see DMG 4329).

1 R(I) 3/75

Ignorance of a material fact

4326 A decision may be superseded if the decision maker is satisfied that it was given in ignorance of some material fact. A material fact is one which is relevant to

1. an award of benefit
2. a Jobseeker’s agreement or sanction
3. a labour market question
4. an overpayment recoverability decision

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

1 CAO v Combe (Court of Session 1999)

4327 It is presumed that a decision maker is aware of the facts included in the papers available to make a decision. This presumed knowledge prevents supersession because of the ignorance, but supersession because of a mistake as to a material fact may be possible.

4328 Sometimes a question has to be decided by making an adverse assumption about a relevant fact because the decision maker has been unable to obtain sufficient evidence1. If evidence is then provided which shows the decision maker’s assumption is wrong the original decision can be superseded because of ignorance of a material fact. If evidence is provided within the dispute period, revision would be appropriate.

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

Example 1

A Retirement Pension claimant does not provide evidence of his date of birth. The decision maker makes the adverse assumption that he will not reach the age of 65 within four months of the date of claim and disallows the claim. Five months later the claimant produces a birth certificate showing that at the date of claim he was within four months of his 65th birthday. The decision maker supersedes the original decision from the date on which the claimant provided the evidence of his date of birth. The ground for supersession is that the decision was made in ignorance of the fact that at the date of claim the claimant was within four months of his 65th birthday.

 Example 2

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

Mistake as to a material fact

4329 A decision maker may misinterpret the evidence and make a mistake as to a material fact1. If the mistake was wholly the responsibility of the decision maker, or of another official of the Department, it would be an official error and the decision would be revised (DMG Chapter 03). If the claimant had contributed to the mistake, it would not be an official error and the decision would be superseded2.

1 R(G) 8/55; 2 SS & CS (D&A) Regs (NI), reg 3 & 6

4330 The mistake may be made when dealing with the claim, for example by a decision maker misreading information in a document. It may be made by another official, for example by a receptionist recording an incorrect date. The revision provisions should always be considered where the new decision would be advantageous to the claimant.

 **Example 1**

 A claimant has an award of the middle rate of the care component of Disability Living Allowance for daytime needs. Two years later she reports that her night-time needs have increased. The decision maker examines the case and finds that the evidence obtained at the time of the original claim shows that the claimant needed attention twice a night. The decision maker revises the original decision for official error. The effective date is the date of the original award.

 Example 2

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

Are opinions material facts?

4331 Opinions should be distinguished from facts. Decision makers take into account opinions of other persons, for example doctors, in making decisions. Medical opinion does not form a material fact1.

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

4332 Because it is not a material fact, a change of medical opinion is not of itself a ground for supersession. A decision maker’s decision awarding benefit as a result of a medical opinion cannot be superseded because it was based on a mistake as to a material fact, if another doctor provides a different opinion based on the same facts. This is because there is no specific or primary fact about which the decision maker was mistaken1. For further guidance on medical opinion/fact see benefit specific guidance.

1 R(S) 4/86

4333 However, medical opinions are often expressed in reports which may contain evidence, such as clinical findings or statements by the claimant from which the decision maker can infer facts. This may enable the decision maker to show that the original facts would not have been found, or were found incorrectly if new facts had been known1. A change of opinion where there are different facts may be evidence that the original decision was based on ignorance of or mistake as to some material fact2.

1 R(I) 3/75; 2 R(DLA) 6/04

When can a decision of a decision maker be superseded on these grounds?

4334 Where the decision to be superseded is one made by a decision maker, it can be superseded on the grounds of ignorance of or mistake as to a material fact where either1

1. an application is made more than one month after the original decision was notified (or a late dispute is not admitted - see DMG Chapter 03)
2. the decision maker commenced action with a view to supersession more than one month after the original decision was notified.

1 SS & CS (D&A) Regs (NI), reg 6(2)(b)

4335 A decision based on ignorance of, or mistake as to, a material fact may have arisen because of official error. In that case revision may be appropriate1. Decision makers should also consider whether revision is appropriate where the decision was more advantageous than it would have been if the material fact was known2 (see DMG Chapter 03).

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

Effective date

4336 The effective date of a supersession to which DMG 4334 applies will be1

1. in the case of a supersession made on an application, the date that application was received
2. in the case of a supersession undertaken on the decision maker’s own initiative, the date the supersession decision is made.

 **Note:** This applies to Income Support, Jobseeker’s Allowance and State Pension Credit.

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

When can a decision of an Appeal Tribunal or a Commissioner be superseded on the grounds of ignorance of or mistake as to a material fact?

4337 A decision of an Appeal Tribunal or a Commissioner may be superseded at any time on the grounds of ignorance of/mistake as to a material fact1.

1 SS & CS (D&A) Regs (NI), reg 6(2)(c)

Effective date

4338 The effective date will depend upon whether the effect of the supersession is advantageous or not advantageous. See DMG 4500 for Income Support and Jobseeker’s Allowance.

Advantageous

4339 If the effect of the supersession would be advantageous to the claimant, the effective date is1

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

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

Disadvantageous

4340 Where the effect of the supersession of the Appeal Tribunal or Commissioner’s decision would be to the disadvantage of the claimant then where

1. the decision relates to

**1.1** a disability benefit decision where there has been a disability determination **or**

**1.2** an incapacity benefit decision where there has been an incapacity determination **or**

**1.3** an Employment and Support Allowance where there has been a limited capability for work determination **and**

1. the decision maker is satisfied that, at the time the Appeal Tribunal or Commissioner’s decision was made, the claimant knew or could reasonably have been expected to know of the fact in question and that it was relevant to the decision **or**
2. the decision does not relate to a disability benefit, incapacity benefit or Employment and Support Allowance

 the effective date of the superseding decision will be the same as the date on which the decision of the Appeal Tribunal or the Commissioner took effect1.

1 SS & CS (D&A) Regs (NI), reg 7(5); Sch 2C, para 8

Decisions which cannot be appealed to a tribunal

Introduction

4341 Annex E to this Volume lists decisions and determinations that are not appealable. Such decisions can be superseded at any time either on the application or at the decision maker’s own initiative1.

1 SS & CS (D&A) Regs (NI), reg 6(2)(d)

Effective date

4342 The effective date will be1

1. in the case of a supersession made as a result of an application, the date the application was received
2. in the case of a supersession made at the decision maker’s own initiative, the date the decision is made.

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

 4343 – 4349

Award of qualifying benefit

Introduction [See Dear SAO Letter 2/11]

4350 Where the Department has

1. awarded a relevant benefit (benefit 1) to a claimant **and**
2. after the first day of the period of entitlement to benefit 1 that claimant (or a member of his family) becomes entitled to

**2.1** another relevant benefit (benefit 2) **or**

**2.2** an increase in another relevant benefit (benefit 2) **and**

1. the award of or increase to benefit 2 has an effect on benefit 1, benefit 1 may be superseded1.

1 SS & CS (D&A) Regs (NI), reg 6(2)(e)

4351 The word “family” is defined1 as having the same meaning as in the Social Security Contributions and Benefits (Northern Ireland) Act2 1992, (see DMG 22003 - 22004).

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

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

4352 Where

1. the decision maker awards entitlement to Income Support, income-related Employment and Support Allowance, State Pension Credit or income-based Jobseeker’s Allowance **and**
2. the claimant has a non-dependant living with them1 **and**
3. as a result the claimant is not entitled to severe disability premium2 or an additional amount as a severely disabled person3 **and**
4. the non-dependant is awarded benefit from a later date so that severe disability premium4 or an additional amount5 is now applicable.

 The Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance or State Pension Credit award can be superseded6.

1 IS (Gen) Regs (NI), reg 3; SPC Regs (NI), Sch 1, para 1(1)(a)(ii) or (c)(iii); JSA Regs (NI), reg 2;
ESA Regs (NI), reg 71; 2 IS (Gen) Regs (NI), reg 17(1)(d); JSA Regs (NI), reg 83(e); ESA Regs (NI), reg 67(b);
3 SPC Regs (NI), reg 6(4); 4 IS (Gen) Regs (NI), Sch 2, para 13(3)(a); JSA Regs (NI), Sch 1, para 15;
ESA Regs (NI), Sch 4, para 6; 5 SPC Regs (NI), Sch 1, para 2(2)(a);
6 SS & CS (D&A) Regs (NI), reg 6(2)(ee)

 4353

Effective date

4354 Where DMG 4350 or 4352 applies, the effective date will be the first day of the period of entitlement for which benefit 2 (or an increase to benefit 2) is awarded1. See DMG 4500 for Income Support and Jobseeker’s Allowance2, DMG 4640 for State Pension Credit3 and DMG 4696 for Employment and Support Allowance4. In cases where this rule would apply but for the presence of a non-dependant the effective date of the supersession is when the non dependant ceased to reside with the claimant5.

1 SS & CS (D&A) Regs (NI), reg 7(7)(a); 2 Sch 2A, paras 12 & 13; 3 Sch 2B, paras 7 & 8;
4 SS & CS (D&A) Regs (NI), reg 7(7); 5 SS & CS (D&A) Regs (NI), reg 7(7)(b)

4355 Where

**1.** a claimant or their partner has received a late award of a benefit which would otherwise give entitlement to a severe disability premium for the purposes of Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance or an amount for severe disability for State Pension Credit1 **and**

**2.** at the date from which the other benefit is awarded, they had a non-dependant living with them2 **and**

**3.** the non-dependant has since left the household

 the Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance or State Pension Credit supersession decision awarding severe disability premium or an amount for severe disability is effective from the date the non-dependant leaves the household3.

 The supersession decision however takes effect from

1. the first day of the benefit week in which the non-dependant left the household in Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance cases paid in arrears4
2. the first day of the benefit week, when benefit is paid in advance, if that is the day on which the non-dependant left the household, otherwise from the first day of the next benefit week5.

1 SS C&B (NI) Act 92, sec 135(5); SPC Act (NI) 02, sec 2(7);
2 IS (Gen) Regs (NI), reg 3; SPC Regs (NI), Sch 1, paras 1 & 2;
3 SS & CS (D&A) Regs (NI), reg 7(7)(b); 4 Sch 2A, para 12, 13 & 1(a);
5 Sch 2A, para 12, 13 & 1(b) & Sch 2B, para 7, 8 & 1(b)

**Example**

The claimant, who is incapable of work and in receipt of Disability Living Allowance highest rate care, and his partner are in receipt of Income Support which is payable in arrears. Their son aged 25 lives with them. The claimant’s partner claims Disability Living Allowance on 5.12.07 and the claim is disallowed. On 22.2.08 the son moves out of the household. The claimant’s partner is awarded Disability Living Allowance middle rate care from the date of claim by a tribunal sitting on 20.5.08. The Income Support benefit week ending day is Tuesday. The Income Support award is superseded to include the severe disability premium and the decision takes effect from 20.2.08 ie the first day of the benefit week.

Exception

4356 There may be exceptional cases where the late award of qualifying benefit rules are less advantageous than the normal change of circumstances rules. In such cases, the more advantageous provisions should be applied instead.

 **Example**

 A claimant is in receipt of Income Support with a Monday benefit week ending day has a baby on 18.3.02. She notifies the birth to the Income Support local office on 14.4.02. She also claims Child Benefit, which is backdated and payable from 26.3.02. The decision maker supersedes the award on a relevant change effective from 12.3.02. Under the late award rules, the effective date would be 26.3.02 which is less favourable.

 4357 – 4359

Linked Benefits

Introduction

4360 In a case where the receipt of or entitlement to a benefit (“benefit 1”) is a condition of entitlement to another benefit, allowance or advantage (“benefit 2”) a special rule may apply1.

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

Effective date

4361 Where benefit 1 is superseded on the grounds of a relevant change of circumstances then

1. where the decision to be superseded is neither

**1.1** a disability benefit decision **or**

**1.2** an Employment and Support Allowance where there has been a limited capability for work determination **or**

**1.3** an incapacity benefit decision where there has been an incapacity determination **and**

1. the result is not advantageous to the claimant **and**
2. the effect (on benefit 1) is that either

**3.1** it ceases to be payable **or**

**3.2** it becomes payable at a lower rate

 then the effective date of any consequent supersession of benefit 2 will be the same as the effective date as of the supersession of benefit 1, namely the date the change or circumstances affecting benefit 1 occurred1. See DMG 4231 - 4236 for guidance on the meaning of disability benefit, Incapacity Benefit, incapacity determination, Employment and Support Allowance and limited capability for work determination.

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

 **Note:** This applies to Income Support, Jobseeker’s Allowance and State Pension Credit.

 4362 – 4369

Work-focused interviews

Failure to take part

4370 Where a determination has been made that a claimant failed, without good cause to take part in an interview, then the original decision may be superseded1 in order to bring into effect the resultant reduction of benefit.

1 SS & CS (D&A) Regs (NI), reg 6(2)(h)(i)

Effective Date

4371 The effective date of the supersession is1 the first day of the benefit week to commence for that person following the date of the **relevant decision**.

 **Note:** This does not apply to Employment and Support Allowance. See DMG 4703 for guidance.

1 SS & CS (D&A) Regs (NI), reg 7(25)

4372 In cases where a partner has failed, without good cause to take part in an interview then the effective date of the supersession1 is

1. the first day of the benefit week to commence for the claimant following the date of the **relevant decision or**
2. if that date arises five days or less after the day on which the relevant decision was made, as from the first day of the second benefit week to commence for the claimant following the date of the relevant decision.

1 SS & CS (D&A) Regs (NI), reg 7(25)(b)

Reduction in benefit ceases to apply

4373 Where a person has been the subject of a determination that they have failed, without good cause, to take part in a work-focused interview and a decision has been made reducing benefit then that decision may be superseded where the person1

1. is no longer required to take part in an interview as a condition of continuing entitlement to benefit **or**
2. reaches pensionable age.

1 SS & CS (D&A) Regs (NI), reg 6(2)(h)(ii)

Effective date

4374 The effective date of the superseding decision will be set in accordance with the normal rules concerning an advantageous change of circumstances.

 4375 – 4379

Loss of benefit following benefit fraud offences

Sanctionable benefit

4380 A decision can be superseded1 where

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

1 SS & CS (D&A) Regs (NI), reg 6(2)(i)

Effective date

4381 The effective date1 will be the first day of the disqualification period as set out in regulations2.

1 SS & CS (D&A) Regs (NI), reg 7(27); 2 SS (Loss of Benefit) Regs (NI), reg 2

Joint claim Jobseeker’s Allowance

4382 A decision can be superseded1 where

1. it is a decision that a joint claim Jobseeker’s Allowance is payable **and**
2. the joint claim Jobseeker’s Allowance ceases to be payable or is reduced under the provisions for restrictions on the payment of benefit following convictions for benefit fraud offences.

1 SS & CS (D&A) Regs (NI), reg 6(2)(j)

Effective date

4383 The effective date1 will be the first day of the disqualification period as set out in regulations2.

1 SS & CS (D&A) Regs (NI), reg 7(27); 2 SS (Loss of Benefit) Regs (NI), reg 2

 4384 – 4389

Special Rules - Uprating

Introduction

4390 The uprating of benefit will not normally require a supersession decision.

Exception

4391 In some Reduced Earnings Allowance cases the uprating gives grounds for supersession.

Example

Mark Gallagher has an award of Reduced Earnings Allowance of £38 weekly, which is the maximum rate. The difference between the former earnings and his present earnings is £39. The maximum rate of Reduced Earnings Allowance is increased on uprating to £40. As this is more than the difference in earnings a supersession is necessary to award Reduced Earnings Allowance at £39.

Special rules - late or unpaid contributions

4392 Where a late or unpaid contribution is treated as paid at an earlier date then the decision maker can supersede1 the original decision. The superseding decision takes effect from the date on which the contribution is treated as paid2. See DMG 3240 where a late paid contribution or credit is treated as paid on or before the date of the original decision.

1 SS & CS (D&A) Regs (NI), reg 6(2)(r); 2 reg 7(8A)

 4393 – 4394

Special rules - Attendance Allowance and Disability Living Allowance

Advantageous change

4395 When a supersession decision is made in relation to Attendance Allowance or Disability Living Allowance on the grounds of a change of circumstances where the result is advantageous to the claimant, the effective date of the decision depends on the date of notification and nature of the change.

4396 If the change

1. relates to the disability conditions **and**
2. the claimant notified the change within one month of the end of the qualifying period, or such longer period as may be allowed under DMG 4204 - 4210

 the effective date of the supersession decision is1 the first pay day after the end of the qualifying period. If the one month time limit for notification of a change is extended, the change must be notified within 13 months of the date on which the claimant satisfied the conditions of entitlement to the particular rate of benefit2.

1 SS & CS (D&A) Regs (NI), reg 7(9)(b); 2 reg 8(3)(b)(ii)

4397 Where the change

1. relates to the payability of the benefit **and**
2. is notified within one month of the date of change or within such longer period as may be allowed

 the effective date of the supersession is1 the date of change.

1 SS & CS (D&A) Regs (NI), reg 7(9)(c), reg 8

4398 If the decision is made on the initiative of the decision maker, the effective date is1 the date on which the decision maker begins action leading to supersession.

1 SS & CS (D&A) Regs (NI), reg 7(9)(a)

4399 In any other case where the change is advantageous to the claimant, the effective date is1 the date of the application for supersession.

1 SS & CS (D&A) Regs (NI), reg 7(9)(d)

4400 It may be difficult to identify the date of the relevant or most recent change in a claimant’s medical condition, for example where the claimant has a progressive disease. The decision maker should consider all the available evidence, and decide on the balance of probabilities when the change occurred. Where only the month of the change can be determined, the change is effective from the last day of the month.

4401 Where more than one change has occurred since the decision to be superseded was made, the rules for deciding the effective date apply to each change.

 Example

 A claimant has an award of lower rate Attendance Allowance for day attention. On 8.6.00 she has a stroke and goes into hospital for free in-patient treatment. After the stroke she needs repeated attention at night. She is discharged from hospital on 26.7.00. On 4.1.01 she asks for her Attendance Allowance to be increased after her stroke. The decision maker asks for further information and learns about the period in hospital. The decision maker decides that benefit is not payable for the period 7.7.00 to 26.7.00 and that the claimant is entitled to higher rate Attendance Allowance effective from the date the qualifying conditions were met, 8.12.00.

Terminally ill

4402 For the purpose of Attendance Allowance or Disability Living Allowance the fact that a person is terminally ill is not a relevant change of circumstances, **unless**1 an application for supersession that contains an express statement that the person is terminally ill is made by

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

 **Note:** The decision maker may proceed to a supersession on the application notwithstanding the fact that no claim2 has been made for Attendance Allowance or Disability Living Allowance care or mobility components on the specific grounds of terminal illness.

1 & 2 SS & CS (D&A) Regs (NI), reg 6(6)(c)

Renewal claims

4403 An award of Disability Living Allowance may consist of one component awarded for an indefinite period, and the other awarded for a fixed period1. An application to review the award of the fixed period component is an application for supersession of the whole award of Disability Living Allowance, whether or not the components were originally awarded by separate decisions. If the decision maker decides to extend the award of the fixed component, the ground for supersession is that there has been a relevant change of circumstances2. The change is that the original award was based on a prediction that the claimant's condition would improve by the expiry date, but it had not improved.

1 SS C&B (NI) Act 92, sec 71(3); 2 SS (NI) Order 98, art 11; SS & CS (D&A) Regs (NI), reg 6(2)(a)

 4404

Special rules - Industrial Injuries Benefit

Disablement determinations made before 5.7.99

4405 From 5.7.99 determinations on

1. diagnosis
2. percentage of disablement
3. period of assessment

 are treated as decisions of the Department1. They can be superseded as appropriate even if the original claim is disallowed and there is no award of Disablement Benefit. See DMG 4410 to 4420 for further guidance.

1 SS (NI) Order 98, Commencement Order No 7

4406 This guidance also applies where the determination was made by a Medical Appeal Tribunal or a Commissioner.

Disablement decisions made on or after 5.7.99

4407 Decision maker decisions on the assessment of the extent of disablement arising from a claim for an industrial accident or a prescribed disease are outcome decisions and can therefore be superseded1. This applies even if there is no award of Disablement Benefit when the application for supersession is made. See DMG 4410 - 4420 for further guidance.

1 SS & CS (D&A) Regs (NI), reg 26(c)

Recrudescence of a prescribed disease

4408 Where

1. the claimant notifies a deterioration in his condition relating to certain prescribed diseases **and**
2. medical advice is that there has been a recrudescence of that prescribed disease

 no further claim is required in order to award benefit1. The previous claim continues to exist.

1 SS & CS (D&A) Regs (NI), reg 12A

4409 The previous decision on the assessment of disablement and the claim to Disablement Benefit, as appropriate, will need to be superseded on a relevant change of circumstances from the effective date1.

1 SS & CS (D&A) Regs (NI), regs 6(2)(a), 7(2) & 8

Worsening after assessment period has ended

4410 In industrial disease cases, and in industrial accident cases where the assessment decision was made on or after 5.7.99, the assessment decision only remains operative during the period of the assessment. This means that, in these cases, where

1. the claimant notifies that their condition has worsened **and**
2. medical advice is that

**2.1** there is a loss of faculty or an industrial disease is diagnosed **and**

**2.2** the change of circumstances occurred **after** the period of the assessment has ended

the decision maker should give a fresh assessment decision (note, however, that previous determinations on diagnosis and date of onset may still be binding and therefore affect the start date of any new assessment - see DMG 1190) and treat the notification as a new claim and give a decision on it.

 **Note:** No supersession is required.

4411 However, in industrial accident cases where a no loss of faculty decision was made before 5.7.99, that decision remains in operation indefinitely. Additionally, in accident cases where an assessment decision covering a finite period was given before 5.7.99, that decision is treated as incorporating a decision that there is no loss of faculty from the day after the end of that period onwards indefinitely1. In those cases, where a claimant notifies that their condition has worsened, the guidance in DMG 4414 - 4416 applies.

1 SS A (NI) Act 92, sec 45(5) & (6) (as then in force); R(I) 5/02

Worsening during an assessment period

4412 If a claimant notifies that their condition has worsened and medical advice is that the change occurred during the period of an assessment, the decision maker should treat the notification as both

1. an application for supersession of the assessment decision on the grounds of a relevant change of circumstances **and**
2. **either**

**2.1** an application for supersession of the decision awarding benefit, if it is in payment **or**

**2.2** a new claim, if there is no current award of benefit. This is necessary in order to give the claimant full appeal rights.

4413 Two outcome decisions must therefore be made

1. a decision superseding or not superseding the assessment decision **and**
2. **either**

**2.1** a decision superseding or not superseding the decision awarding benefit, if it is in payment **or**

**2.2** a decision awarding or disallowing benefit on the new claim (see DMG 4417 - 4419).

Worsening in accident cases - no loss of faculty decision made before 5.7.99

4414 Prior to 5.7.99, when it was found that an accident had not resulted in a loss of faculty, two separate decisions were made

1. a decision that there was no loss of faculty **and**
2. a decision disallowing the benefit claim.

4415 Additionally, in accident cases where an assessment decision covering a finite period was given before 5.7.99, that decision is treated as incorporating a decision that there is no loss of faculty from the day after the end of that period onwards indefinitely.

4416 In cases where a no loss of faculty decision was given prior to 5.7.99 or where a no loss of faculty decision is treated as having been given in the circumstances in DMG 4415, if the claimant makes a further claim for the same accident, the claim must be treated as

1. an application for supersession of the no loss of faculty decision on the grounds of a relevant change of circumstances **and**
2. a new claim for benefit.

 **Example**

 Following a claim for an industrial accident, decisions were made in 1998 that there was no loss of faculty and that the claim was disallowed. The claimant makes a further claim for the same accident on 22.1.07. The decision maker treats it as an application for supersession of the no loss of faculty decision and as a new claim. Medical advice is that the claimant has been 15% disabled as a result of the accident since 22.1.06. The decision maker supersedes the no loss of faculty decision on the grounds that there has been a relevant change of circumstances and gives an assessment decision that the claimant is 15% disabled from 22.1.06 to 11.6.08. The effective date of the supersession is 22.1.07 the date of the application, and benefit is awarded from 22.1.07.

 If the decision maker had accepted that special circumstances prevented the claimant from applying for supersession earlier, they could have superseded the no loss of faculty decision with effect from 22.1.06 and benefit could have been awarded from 22.10.06, three months before the date of claim.

Claimant’s condition has deteriorated

4417 If medical advice is that the claimant’s condition has deteriorated during the period of an assessment (but see DMG 4414 - 4416 in accident cases), the decision maker should

1. supersede the existing assessment on the grounds of a relevant change of circumstances (see DMG 4200 for guidance on the effective date of supersession) **and**
2. **either**

**2.1** if an award of benefit was in payment at the effective date, give a decision superseding or not superseding (if the new assessment does not alter it) the award **or**

**2.2** if there is no award of benefit in payment, treat the application as a new claim and decide it.

 **Example**

 The claimant has an assessment of 6% for life in respect of an industrial accident and no award of benefit. He notifies on 15.12.06 that his condition has worsened and this is accepted as an application for supersession of the assessment and a new claim for benefit. Medical advice is that the claimant has been 15% disabled due to the accident since 10.6.06. The decision maker supersedes the previous assessment decision on the grounds that there has been a relevant change of circumstances and gives a new assessment of 15% from 10.6.06. The decision maker does not accept that special circumstances prevented the claimant from applying for supersession earlier, and makes the new assessment effective from 15.12.06, the date of application. Benefit is awarded from 15.12.06.

 If the decision maker had accepted that special circumstances prevented the claimant from applying for supersession of the assessment earlier, they could have superseded it with effect from 10.6.06 and benefit could have been awarded from 15.9.06, three months before the date of claim.

Claimant’s condition is unchanged

4418 If medical advice is that the claimant’s condition remains the same during the period of an assessment (but see DMG 4414 - 4416 in accident cases), the decision maker should

1. make a decision not to supersede the assessment decision **and**
2. either

**2.1** if there is an award of benefit in payment, give a decision not to supersede the awarding decision **or**

**2.2** if there is no award of benefit in payment, treat the application as a new claim and disallow it.

 **Example**

The claimant has an assessment of 6% for life in respect of an industrial accident and notifies on 15.12.06 that his condition has worsened. This is accepted as an application for supersession of the assessment and a new claim for benefit. Medical advice is that there has been no change in the claimant’s condition. The decision maker gives a decision not to supersede the assessment decision and disallows the claim.

Claimant’s condition has improved

4419 If medical advice is that the claimant’s condition has improved during the period of an assessment (but see DMG 4414 - 4416 in accident cases), and decision maker is satisfied that there had been a relevant change of circumstances and not merely a new medical opinion, they should

1. supersede the assessment on the grounds of a relevant change of circumstances (see DMG 4200 for guidance on the effective date of supersession) **and**
2. either

**2.1** if there is an award of benefit in payment, supersede it from the effective date of the new assessment or give a decision not to supersede it if it is unaffected by the new assessment **or**

**2.2** if there is no award of benefit in payment, the application should be treated as a new claim and disallowed.

Diagnosis or loss of faculty in doubt

4420 In exceptional cases, evidence may come to light that casts doubt on the assessment decision, for example a Compensation Recovery Unit or tribunal decision. Further medical evidence may show that

1. there was no loss of faculty **or**
2. there was a pre-existing condition **or**
3. the diagnosis of the disease was incorrect.

 If that is the case, and the decision maker is satisfied that this is not merely a new medical opinion (see DMG 4108), they should consider whether there are any grounds for revising or superseding the assessment decision and any award of benefit.

 **Example**

 The claimant has an assessment of 16% from 31.1.90 for life for an injury to his knee following an industrial accident, and has an award of benefit at the rounded rate of 20%. A Compensation Recovery tribunal decision was received, which held there was no continuing loss of faculty. The consultant for the compensator reported that the doctor and hospital notes showed that the claimant injured the same knee in a biking accident two years before the date of the industrial accident. He further reported that the effects of the industrial accident would have healed after three years. The case was referred for further medical advice and the medical adviser was of the opinion that had the claimant disclosed details of his previous injury an offset of 14% would have been made. He advised that a 2% assessment for life was appropriate.

 The decision maker revises the original assessment on the grounds that it was made in ignorance of a material fact, was more advantageous than it would otherwise have been, and that the claimant could reasonably have been expected to know the fact and that it was relevant to the assessment. The revised decision gives an assessment of 2% from 31.1.90 for life. They also revise and disallow the benefit award, and refer the case to Debt Management.

 4421 – 4424

Posthumous claims

4425 Where a claim is made after death, the normal rules on appointment after death apply1 (see DMG 2450). If the conditions are satisfied, the claim is treated as made on the date of death and in certain circumstances benefit can be awarded for the three month period prior to death.

1 SS (C&P) Regs (NI), reg 30(7)

Superseding current assessments and awards

4426 If there is no current assessment for the same or a different industrial accident or prescribed disease, the decision maker should make an assessment decision and decide the claim for benefit in the normal way. But if there is a current assessment of disablement for the same industrial accident or prescribed disease, the decision maker should treat it as

1. an application for supersession of the assessment decision **and**
2. **either**

**2.1** an application for supersession of the decision awarding benefit, if benefit is in payment **or**

**2.2** a new claim, if there is no award of benefit.

4427 If, following medical advice, it is appropriate to supersede the assessment decision on the grounds of a relevant change of circumstances the effective date of supersession will be the date of death unless there are grounds for accepting a late application for supersession (see DMG 4204). This means that in cases where there is a current assessment of disablement for the same accident or disease, the claim can only result in payment of benefit if the decision maker accepts that special circumstances prevented the claimant or their appointee from applying for supersession earlier.

 **Example**

 The claimant’s appointee makes a claim for prescribed disease D1 on 1.3.07 following the claimant’s death on 1.12.06 and it is treated as made on the day the claimant died. The claimant had an assessment of 1% for life from January 2005 for the same disease and benefit was in payment at 10%. Medical advice is that there was a worsening of the claimant’s condition and he was 16% disabled from 1.5.06. The decision maker accepts the claim as an application for supersession of the existing assessment of disablement and an application for supersession of the decision awarding benefit. If the decision maker accepts that special circumstances prevented the claimant and their appointee from applying for supersession earlier, they can supersede the assessment and the decision awarding benefit and pay benefit at 20% with effect from 1.5.06. However, if the decision maker does not accept that special circumstances prevented the claimant from applying for supersession earlier, there will be no grounds for superseding either decision before the date of application and no additional benefit can be awarded.

4428 If there is an existing assessment for a different industrial accident or disease, the decision maker should given an assessment decision for the new accident or disease and consider whether aggregation is appropriate before deciding the outcome of the benefit claim.

 **Example**

 The claimant had an assessment of 16% for life from December 2002 in respect of an industrial accident and benefit was awarded at the round rate of 20%. He died on 7.12.06 and a post mortem showed that one of the conditions he had been suffering from was nasal carcinoma. His appointee made a posthumous claim for prescribed disease D6 on 6.2.07. Following medical advice the decision maker decides that he was 10% disabled due to the disease from 3.6.05. As the second assessment is less than 14% it cannot produce a separate award of benefit. As the two assessments are concurrent the decision maker considers aggregation. Aggregation would produce a rounded award of 30% but because the change took place more than 13 months before 6.2.07, the supersession effective date rules means that the existing rounded award of 20% could only be superseded from the date of application. The new claim is disallowed.

 4429

Special rules - Incapacity Benefit and Severe Disablement Allowance

Incapacity Benefit and Severe Disablement Allowance decisions - Medical examination

4430 A decision can be superseded1 where

1. It is an Incapacity Benefit, credits or Severe Disablement Allowance decision where an incapacity determination has been made (whether before or after the Incapacity Benefit, credits or Severe Disablement Allowance decision) **and**
2. since the original decision was made the Department has received medical evidence following an examination conducted by a health care professional approved by the Department2 **and**
3. after considering all the medical evidence, including the report from the health care professional, the decision maker determines that the claimant is not incapable of work as at the effective date of the decision.

1 SS & CS (D&A) Regs (NI), reg 6(2)(g); 2 SS (IW) (Gen) Regs (NI)

4431 Supersession under DMG 4430 **only** applies after an incapacity determination has been made (see DMG 4232 for the definition of incapacity determination). This provision does not apply to the situation, for example, where a person has been treated as incapable of work because he is submitting medical evidence and then the personal capability assessment is completed. In these cases the decision should be superseded on a relevant change of circumstances, the change being the personal capability assessment determination.

4432 The receipt of medical evidence as in DMG 4430 is itself a **ground** for supersession but it will only be appropriate to supersede where, after looking at all the medical evidence, the decision maker decides that the claimant is not incapable of work. The onus of proof (on the balance of probabilities) lies with the Department1.

1 R(IB) 5/05

Effective date

4433 The effective date of a supersession made in accordance with DMG 4430 is the date the superseding decision is made1.

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

 4434 – 4439

Change in the rate of Incapacity Benefit

4440 Where an award of Incapacity Benefit is superseded and a higher rate is awarded because a claimant is entitled to the highest rate of the care component of Disability Living Allowance1, the decision takes effect from the date on which he became entitled to the highest rate2.

1 SS C&B (NI) Act 92, sec 30B(4); 2 SS & CS (D&A) Regs (NI), reg 7(10)

Advance personal capability assessment testing

4441 Where

1. a person is subject to the own occupation test1 **and**
2. is subject to and fails the personal capability assessment2 before the end of the own occupation test period

 the decision to award benefit or entitlement to credits should be superseded on the grounds of an anticipated relevant change of circumstances3. The effective date is the day after the own occupation test no longer applies to the person4 i.e. the 197th day.

1 SS C&B (NI) Act 92, sec 167B(2); SS (IW) (Gen) Regs (NI), reg 24;
3 SS & CS (D&A) Regs (NI), reg 6(2)(a)(ii); 4 reg 7(31) & (32)

 4442 – 4449

Medical evidence expires

4450 A person may be treated as capable of work1 if

1. they have supplied medical evidence in accordance with legislation2 **and**
2. the period covered by that medical evidence has ended **and**
3. the Department has requested further medical evidence **and**
4. they have not, within six weeks

**4.1** supplied further medical evidence **or**

**4.2** otherwise made contact with the Department to indicate that they wish to have the question of incapacity for work determined.

1 SS (IW) (Gen) Regs (NI), reg 16A; 2 reg 28(2)(a)

4451 The six weeks period begins on

1. the date of the Department’s initial request for further medical evidence **or**
2. the day after the date on which the period covered by the medical evidence has ended

 whichever is the later1.

1 SS (IW) (Gen) Regs (NI), reg 16A(d)

4452 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact the Department, the decision maker should treat the claimant as capable of work from the day after the medical evidence expired. The decision is effective from the date of change1, which is the date from which the claimant is treated as capable of work.

1 SS & CS (D&A) Regs (NI), reg 7(2)(c)(v)

 **Example**

 Sophia’s current medical certificate provides her with evidence of incapacity up to and including 19.5.10. A reminder that further medical evidence will be required was issued on 12.5.10. The six weeks period ends on 30.6.10 and Sophia has not contacted the Department by then. She is treated as capable of work from 20.5.10, the day after medical evidence expires.

4453 In cases where medical evidence expires and the claimant asks for the question of incapacity for work to be determined, the decision maker **must** apply the appropriate test of incapacity.

 4454

Own occupation test

4455 Where the own occupation test is the test of incapacity, the receipt of medical evidence is the condition of entitlement. Where medical evidence expires, and it is not appropriate to apply the personal capability assessment, the decision maker should supersede the awarding decision on the grounds that there has been a relevant change of circumstances1. The supersession is effective from the day after the last day covered by medical evidence2.

1 SS & CS (D&A) Regs (NI), reg 6(2)(a); 2 reg 7(2)(c)(v)

Personal capability assessment

4456 **[See DMG Memo Vol 4/135, 5/104, 6/89, 8/76, 9/33, 10/68, 12/21, 13/66 & 14/61]** Where the claimant asks for incapacity for work to be determined, and the own occupation test is not the relevant test, the decision maker will have to apply the personal capability assessment. This applies even if the claimant is treated as capable of work because they

1. fail to return the questionnaire **or**
2. fail to attend for or submit to a medical examination.

 In such cases a determination of incapacity must be made to cover all periods where the claimant is not treated as incapable or capable of work.

4457 The personal capability assessment may need to be applied on the balance of probabilities using all the available evidence, including evidence from the previous claim where appropriate. Where there is little or no evidence, the decision maker may draw adverse inferences and award no points when scoring the personal capability assessment. Advice should be sought from Medical Services in cases of doubt, for example, where the questionnaire is returned showing high scores. See DMG Chapter 01 for guidance on weighing evidence, and Chapter 13 for guidance on applying the test of incapacity for work.

 **Example**

 The claimant is treated as incapable of work while submitting medical certificates. The test of incapacity is the personal capability assessment. On 10.7.07 medical evidence expires, and despite reminders no further medical evidence is received. The questionnaire is issued on 23.7.07, but is not returned. A reminder is issued on 21.8.07. The claimant contacts the Department asking for incapacity for work to be determined. On 19.9.07 the decision maker determines that the claimant is treated as capable of work from 5.9.07. They also carry out the personal capability assessment and make a determination that for the period from 11.7.07 to 4.9.07 the claimant scores 0 points for the purposes of the personal capability assessment and is not incapable of work. The decision awarding Incapacity Benefit or credits is superseded to terminate entitlement from 11.7.07.

Effective date

4458 In all personal capability assessment cases where medical evidence ceases the effective date of the supersession to end entitlement to Incapacity Benefit or National Insurance credits is the date from which the claimant is first found not to be incapable of work1. This is because the determination that the claimant is not incapable of work following application of the personal capability assessment showed that there had been a change of circumstances when the claimant was no longer treated as incapable of work2.

1 SS & CS (D&A) Regs (NI), reg 7(2)(c)(v); 2 SS (IW) (Gen) Regs (NI), reg 28

Medical evidence received after personal capability assessment carried out

4459 Where

1. a person was treated as capable as in DMG 4454 **and**
2. the decision maker applied the personal capability assessment for periods when the person was not treated as incapable or capable of work **and**
3. the decision maker accepts that good cause is shown for the failure to return the questionnaire or attend the medical examination

 the decision maker may revise the supersession decision which ended entitlement so as to remove it, subject to the normal rules about time limits for revision - see DMG Chapter 03. This has the effect of removing all the determinations of incapacity, so that the claimant can be treated as incapable of work while submitting medical evidence, and is again subject to the personal capability assessment.

4460 If medical evidence is not received but good cause is shown for the failure, the supersession decision may be revised. However, if the person cannot be treated as incapable of work, the suspension provisions should be considered and the personal capability assessment applied as a matter of urgency.

4461 Where medical evidence is received for the period covered by the personal capability assessment and good cause is not shown for the failure, the supersession decision cannot be revised. This is because medical evidence is only relevant to the question of whether the person can be treated as incapable of work and is not relevant to the determinations which had the effect of ending entitlement.

 4462 – 4499

Special rules common to Income Support and Jobseeker’s Allowance

General effective date rule

4500 Unless otherwise stated in this Chapter, the effective date for any supersession decision in Income Support and Jobseeker’s Allowance follows the general rule for changes of circumstances1. See DMG 4551 and 4580.

1 SS & CS (D&A) Regs (NI), Sch 2A, paras 12 & 13

Advantageous change notified outside the time limits

4501 Where the result of the supersession would be advantageous to the Income Support or Jobseeker’s Allowance claimant and it is reported outside the time limits set out in paragraphs DMG 4201 to DMG 4210 the effective date will be

1. where Income Support or Jobseeker’s Allowance is paid in arrears, the first day of the benefit week in which the notification was made1
2. where Income Support or Jobseeker’s Allowance is paid in advance2 **and**

**2.1** the date of notification is the first day of the benefit week, that date **or**

**2.2** the date of notification is a day other than the first day of a benefit week, the first day of the benefit week following that in which the notification is made.

1 SS & CS (D&A) Regs (NI), reg 7(2)(b)(i); 2 reg 7(2)(b)(ii)

 **Note:** See DMG 4696 for guidance on Employment and Support Allowance.

 4502 – 4505

Changes not requiring supersession

Repayment of a student loan

4506 The repayment of a student loan is not a relevant change of circumstances1. This means that there are no grounds for supersession and the award of income-related Employment and Support Allowance, Income Support or income-based Jobseeker’s Allowance remains unchanged.

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

Alteration of component rates

4507 Uprating of Income Support and Jobseeker’s Allowance will not normally require a supersession decision. Where rates are changed on uprating the amount of benefit payable and the award will be the new amount without the need for any further decision of a decision maker1. The exceptions are set out below.

1 SS A (NI) Act 92, secs 139 & 139(A)

4508 A supersession will be needed on uprating1 in the case of Income Support where the award includes

1. an applicable amount under specific provisions2 relating to transitional additions **or**
2. a protected sum determined in accordance with specific regulations3 **or**
3. any transitional addition, personal expenses addition or special transitional addition under specific regulations4.

 Where these circumstances apply the supersession can be made solely to give effect to an uprating order5.

1 SS & CS (D&A) Regs (NI), reg 14(1); 2 IS (Gen) Regs (NI), reg 17(2)-(7); 3 Sch 3A or 3B;
4 IS (Trans) Regs (NI), part II; 5 SS & CS (D&A) Regs (NI), reg 14(2)

4509 A supersession will be needed on uprating in the case of income-based Jobseeker’s Allowance where1 the applicable amount includes a transitional supplement made in accordance with a specific regulation2. Where this applies the supersession can be made for the sole purpose of giving effect to an uprating order3.

1 SS & CS (D&A) Regs (NI), reg 14(3); 2 JSA Regs (NI), reg 87; 3 SS & CS (D&A) Regs (NI), reg 14(4)

Age changes

4510 Age changes in Income Support or Jobseeker’s Allowance do not need a supersession decision where

1. an award of Income Support or Jobseeker’s Allowance is in payment **and**
2. a component rate of Income Support and Jobseeker’s Allowance becomes payable, or payable at a different rate, because the claimant or a member of the family reaches a particular age even though some other component may cease for the same reason **and**
3. as a result of the change the claimant becomes entitled to a higher rate of Income Support or Jobseeker’s Allowance.

 In these circumstances the increased amount of Income Support or Jobseeker’s Allowance payable is changed automatically without the need for any further decision1.

 **Note:** Component means an amount listed in regulations which refer to personal allowances and premiums.

1 SS A (NI) Act 92, sec 140(1) & (2); sec 140A(1) & (2)

Change from Income Support to Jobseeker’s Allowance or Jobseeker’s Allowance to Income Support

4511 Where

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

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

1 SS & CS (D&A) Regs (NI), reg 14A(1) & (2)

4512 Where DMG 4511 applies the existing award ends on the day immediately before the first day on which the award of the alternative benefit takes effect1.

1 SS & CS (D&A) Regs (NI), reg 14A(3)

4513 Where the alternative benefit is Jobseeker’s Allowance the person does not have to serve waiting days1.

 **Note:** See DMG 4701 for guidance on Employment and Support Allowance.

1 SS & CS (D&A) Regs (NI), reg 14A(4); JSA Regs (NI), Sch 1, para 4

 4514 – 4549

Special rules relating to Income Support

Introduction

4550 The following special rules apply to the effective date of supersessions affecting Income Support **except**1 where a change of circumstances is notified outside the time limits set out in DMG 4201 - 4210.

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

Income Support - change of circumstances - the general rule

4551 When a supersession decision is made because of a change of circumstances in an Income Support case, the decision takes effect

1. where Income Support is paid in arrears, from the first day of the benefit week in which the change occurs or is expected to occur1
2. where Income Support is paid in advance, from the first day of the benefit week, if it coincides with the date of change. If it does not, from the first day of the next benefit week2.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 1(a); 2 para 1(b)

 **Example 1**

 A claimant’s Income Support is paid in arrears on Thursday. She notifies the Department that she gave birth to a baby on Tuesday 18 June 2002. The Decision Maker supersedes the award of Income Support with effect from Friday 14 June 2002.

 **Example 2**

 A claimant’s Income Support is paid in advance on Monday. He becomes entitled to Higher Pensioner’s Premium with effect from Friday 11 October 2002. The supersession decision will take effect from Monday 14 October 2002.

 4552 – 4554

Periods of temporary residence in connection with training

4555 Any period of residence in temporary accommodation under arrangements for training made under specific legislation1 which is expected to last for 7 days or less is **not** to be regarded as a change of circumstances2.

1 sec 2 & 3 Disabled Persons (Employment) Act 1945, sec 1(1) of the Employment and Training Act (NI) 1950;
2 SS & CS (D&A) Regs (NI), Sch 2A, para 1

Exceptions to the general rule - Income Support

4556 The supersession takes effect from the date when the change occurs or is expected to occur1 in the following circumstances

1. where Income Support is paid in arrears and entitlement ends for a reason other than income (for example if the claimant starts remunerative work or capital increases)2
2. where Income Support is superseded in order to bring Preserved Rights to an end, the effective date will be 8.4.023, the date the relevant legislation takes effect4
3. where a child or young person in the care of the Department or detained in custody, lives with the claimant for only part of the week5
4. where one of the following, or a member of their family, is an in-patient and ceases to be an in-patient for a period of less than a week6

**4.1** a single claimant

**4.2** a lone parent

**4.3** a member of a couple

**4.4** a member of a polygamous marriage

**4.5** a child or young person who is a member of a family, a person in a nursing home or in residential care

1. where7

**5.1** a person is detained in custody pending trial or sentence becomes a prisoner **or**

**5.2** a person cease to be a prisoner

1. where a person involved in a trade dispute becomes incapable of work or enters the maternity period8
2. where9, during the currency of the Income Support claim, a claimant

**7.1** makes a claim for a social security benefit and the result is that the Income Support benefit week changes **or**

**7.2** makes an advance claim for a social security benefit and the result is that the Income Support benefit week is expected to change.

1. where the claimant is precluded from entitlement to the Disability Premium or Severe Disability Premium solely because Personal Independence Payment is not payable for periods in hospital and Personal Independence Payment is paid at a daily rate for a period of less than a week.

 **Note:** See DMG 4696 for guidance on Employment and Support Allowance.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 2; 2 para 3(a); 3 para 3(aa);
4 SS Amdt (RC & NH) Regs 2002; 5 SS & CS (D&A) Regs (NI), Sch 3A, para 3(b);
6 para 3(d); 7 para 3(e); 8 para 3(f); 9 para 3(g)

Change ceases to apply

4557 Where

1. a supersession decision (“the first decision”) was made on the ground of a change of circumstances as in DMG 4556 **3.** to DMG 4556 **7.** **and**
2. the first decision is superseded by a subsequent decision (“the second decision”) because the change which led to the first decision ceased to apply

 the effective date of the second decision shall be1 the date on which the circumstances ceased to apply.

 **Note:** See DMG 4701 for guidance on Employment and Support Allowance.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 6

Income Support and residential care breaks

4558 The Income Support effective date rule is amended to allow payment of premiums where the care component of Disability Living Allowance or the daily living component of Personal Independence Payment is paid at a daily rate for periods of less than a week outside “certain accommodation” such as a care home, independent hospital or special residential school. Where

1. the claimant is precluded from entitlement to the Disability Premium or Severe Disability Premium1 **solely** because the care component of Disability Living Allowance or the daily living component of Personal Independence Payment is not payable for periods in certain accommodation2 **and**
2. Disability Living Allowance or Personal Independence Payment is paid at a daily rate for a period of less than a week

the Income Support decision is superseded effective from the date of the change3.

 **Note:** See DMG Chapter 61 for guidance on the meaning of “certain accommodation”.

 **Example**

 The claimant normally lives in a care home, and receives Income Support. He is entitled to the highest rate care component of Disability Living Allowance, which is not payable while he is in the care home. He regularly spends weekends with his mother (who does not get Carer’s Allowance for caring for him), and Disability Living Allowance is paid for those days. The Income Support awarding decision can be superseded to award the Severe Disablement Premium for the days when Disability Living Allowance is paid.

1 IS (Gen) Regs (NI), Sch 2, paras 11-13; 2 SS C&B (NI) Act 92, sec 72(8);
SS (DLA) Regs (NI), reg 9; SS & CS (D&A) Regs (NI), Sch 2A, para 3(h)

 4559

Supersession resulting from payment of income

4560 Where a supersession decision is made as a result of income being treated as paid on a particular day under specific regulations1, the effective date will be the day on which the income is treated as paid2.

 **Note:** See DMG 4701 for guidance on Employment and Support Allowance.

1 IS (Gen) Regs (NI), regs 31(1)(b), (2) or (3) or reg 39C(3); 2 SS & CS (D&A) Regs (NI), Sch 2A, para 4

Reduction in Income Support

4561 Except where DMG 4556 **7.** (change of payday) or DMG 4560 (payment of income) apply where

1. Income Support is superseded on the grounds of a relevant change of circumstances and the result is a reduction in the amount **and**
2. the Department certifies that it is impracticable for the superseding decision to take effect from the day set by reference to DMG 4551 - 4560

 the effective date of the superseding decision shall be as set out in DMG 45621.

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

4562 The supersession shall take effect1

1. where the change has occurred, from the first day of the benefit week following that in which the supersession decision is made
2. where the change is expected to occur, from the first day of the benefit following that in which the change is expected to occur.

 **Note:** See DMG 4701 for guidance on Employment and Support Allowance.

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

 4563 – 4569

Incomplete evidence - housing costs

4570 Where, in order to make a supersession decision

1. a determination has to be made as to the amount of housing costs to be included in the claimant’s applicable amount **and**
2. it appears to the decision maker that not all the evidence or information needed to make that determination is in the possession of the Department

 the decision maker should make the supersession decision based on a determination that housing costs are those that can be determined immediately1.

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

Incomplete evidence - other issues

4571 Where, for the purposes of a supersession decision

1. a determination falls to be made

**1.1** whether in relation to a person the applicable amount is to be reduced or disregarded by virtue of the law relating to persons affected by trade disputes1 **or**

**1.2** whether a person is to be treated as receiving relevant education in accordance with a specific regulation2 **or**

**1.3** whether the applicable amount should include a severe disability premium3 **and**

1. it appears to the decision maker that not all of the evidence or information needed for the determination is in the possession of the Department

 then the decision maker will make the determination on the assumption that the missing evidence or information is adverse to the claimant4.

1 SS C&B (NI) Act 92, sec 125(3); 2 IS (Gen) Regs (NI), reg 12; 3 reg 17(1)(d) or 18(1)(e) & Sch 2, para 13;
4 SS & CS (D&A) Regs (NI), reg 13(2)

 4572 – 4579

Special rules relating to Jobseeker’s Allowance

Change of circumstances - the general rule

4580 Where a decision in respect of a claim for Jobseeker’s Allowance is superseded on the grounds of a change of circumstances the effective date will be1 the first day of the benefit week in which the change occurs or is expected to occur.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 7

Exceptions to the general rule

4581 The supersession takes effect from the date the change occurs or is expected to occur in the following circumstances

1. where Jobseeker’s Allowance is superseded in order to bring Preserved Rights to an end1, the effective date will be 8.4.02, the date the relevant legislation2 takes effect
2. where entitlement ends or is expected to end for a reason other than a change in income or the applicable amount (for example if the claimant starts remunerative work)3
3. where a child or young person in the care of a local authority or detained in custody lives with the claimant for only part of the benefit week4
4. where the partner of a claimant, or a member of the claimant’s family ceases to be a hospital in-patient for a period of less than a week5
5. where a joint couple ceases to be a couple6.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 8(aa); 2 SS Amdt (RC & NH) Regs 2002;
3 SS & CS (D&A) Regs (NI), Sch 2A, para 8(a); 4 para 8(b); 5 para 8(d); 6 para 8(e)

Change ceases to apply

4582 Where a supersession decision is made in any of the circumstances listed in DMG 4581 and that change ceases to apply, the second supersession decision takes effect from the date on which the circumstances cease to apply1.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 9

Payment of income

4583 Where income is treated as paid on a particular day, the supersession decision takes effect from that day1.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 10

Reduction in Jobseeker’s Allowance

4584 Where the effect of a supersession is to reduce the award of Jobseeker’s Allowance and the Department decides that it is impracticable for the supersession to take effect from the date set out in DMG 4580 - 4583, the supersession will take effect from the first day of the benefit week following the benefit week in which the change occurred1.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 11

Determinations on incomplete evidence

4585 Where, for the purposes of deciding a claim or making a supersession decision a determination has to be made as to whether

1. the applicable amount should be reduced in accordance with DMG 32606 (partner involved in a trade dispute)1
2. a person is to be treated as receiving relevant education under specific regulations (see DMG 20474 - 20475 and DMG 206312) **and**
3. it appears to the decision maker that he is not in possession of all the evidence or information needed to make that determination,

 the determination shall be made on the assumption that the missing evidence or information is adverse to the claimant3.

1 JS (NI) Order, art 17; 2 JSA Regs (NI), reg 54(2)-(4); 3 SS & CS (D&A) Regs (NI), reg 15

Young people - sanctions

4586 Where

1. Jobseeker’s Allowance is paid to a young person because a severe hardship direction has been issued **and**
2. a decision has been made that the amount payable is to be reduced because a sanction applies **and**
3. that decision is to be superseded because the Department has issued a certificate saying that there was good cause for the failure in question

 the effective date of the supersession decision will be the same as the date the decision to reduce the amount payable took effect1.

1 SS & CS (D&A) Regs (NI), reg 7(24)

Sanctions

4587 **[See DMG Memo Vol 1/104, 4/123, 5/98, 6/85 & 9/27]** Where a decision has been made that Jobseeker’s Allowance is payable and subsequently it ceases to be payable because a sanction under the Jobseeker’s (NI) Order1 has been imposed that decision may be superseded2.

1 JS (NI) Order 95, art 19A, 21(1), 22A(5); 2 SS & CS (D&A) Regs (NI), reg 6(2)(f)

4588 The effective date of the decision superseding the award is

1. where a sanction is imposed as in DMG 34626 or 34721, the first day of the week following the date on which it is determined that a sanction is to be applied1 **or**
2. where a sanction is imposed as in DMG 34060, 34220, 34388 or 34591, the first day of the period of the sanction2.

1 SS & CS (D&A) Regs (NI), reg 7(8)(a); 2 reg 7(8)(b)

 4589

Supersession of contribution-based Jobseeker’s Allowance awards

4590 Where

1. an award of contribution-based Jobseeker’s Allowance is about to or has exhausted **and**
2. a written application for supersession (form JSA3) is received

 the supersession provisions should be considered, irrespective of when the application was made.

4591 A new claim is not required where the conditions of entitlement to income-based Jobseeker’s Allowance are satisfied. The grounds for supersession depend on when entitlement to income-based Jobseeker’s Allowance begins. The effective date of supersession will also depend on

1. when the application is made **and**
2. whether the awarding decision is superseded on

**2.1** ignorance of a material fact **or**

**2.2** a relevant change of circumstances.

4592 Where form JSA3 shows that there is no entitlement to income-based Jobseeker’s Allowance after the award of contribution based Jobseeker’s Allowance has exhausted, the decision maker should decide not to supersede the awarding decision.

 **Example 1**

 A jobseeker claims Jobseeker’s Allowance on 18.1.99 and completes the contribution and income-based sections of form JSA1. Both conditions are satisfied, but as the personal rate is the same as the applicable amount, he is awarded contribution-based Jobseeker’s Allowance for 182 days. The award exhausts on 18.7.99. The jobseeker completes form JSA3 on 21.7.99, which shows no change in the information given on form JSA1. The decision maker supersedes the decision awarding contribution-based Jobseeker’s Allowance, on a relevant change of circumstances (the Jobseeker is now entitled to income-based Jobseeker’s Allowance) to make an indefinite award. The decision is effective from 19.7.99, as the application was made within one month of the change.

 **Example 2**

 A jobseeker claims Jobseeker’s Allowance on 18.1.99 and completes the contribution-based section of form JSA1. He is awarded contribution-based Jobseeker’s Allowance for 182 days. The award exhausts on 18.7.99. The jobseeker completes form JSA3 on 21.7.99, which shows that he has a partner who works part-time for less than 24 hours a week, and has done so since the date of claim. There are no special circumstances for a late dispute. The Jobseeker’s Allowance award is superseded on ignorance of a material fact (that the jobseeker was entitled to income-based Jobseeker’s Allowance throughout). The decision takes effect from 21.7.99.

 **Example 3**

 A jobseeker applies for Jobseeker’s Allowance on 18.1.99 and only completes the contribution-based section of form JSA1. He is awarded contribution-based Jobseeker’s Allowance for 182 days. Two weeks before exhaustion of the award on 18.7.99, he fills in form JSA3 which shows that he satisfies the conditions of entitlement to income-based Jobseeker’s Allowance (and has done since the date of the claim). The applicable amount is the same as the personal rate. Supersession on ignorance of a material fact is not appropriate as the jobseeker would still have been awarded contribution based Jobseeker’s Allowance from the date of claim. The decision maker supersedes the awarding decision on an anticipated relevant change of circumstances to make an indefinite award as in Example 1. The decision is effective from 19.7.99.

 **Example 4**

 A jobseeker claims Jobseeker’s Allowance on 11.1.99 and completes the contribution and income-based sections of form JSA1. He is not entitled to income-based Jobseeker’s Allowance, as his partner works more than 24 hours a week. He is awarded contribution based Jobseeker’s Allowance for 182 days. After the award expires on 11.7.99, he continues signing for credits. On 16.8.99 he is advised that he may have entitlement to income-based Jobseeker’s Allowance, as his partner’s hours reduced to 20 a week from 9.7.99. He completes form JSA3 at the interview. The decision maker supersedes the awarding decision on a relevant change of circumstances as in Example 1. The decision is effective from 16.8.99, as the change was not reported within one month and there are no special circumstances for the late application.

 4593 – 4599

Special rules - State Pension Credit

Information and evidence

4600 Once a claimant is receiving State Pension Credit under an award, the normal duty to provide evidence and report changes set out in DMG 4150 - 4158 apply to that claimant1. However a State Pension Credit claimant is not required to notify changes in his retirement provision in certain circumstances (DMG 4603).

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

At the end of an assessed income period

4601 There is an additional requirement that applies to State Pension Credit claimants. At the end of an assessed income period, the claimant will be required to provide such information and evidence as the Department may require in order to determine1

1. whether a further period should be specified as an assessed income period **and**
2. if such a period is to be specified, its length.

1 SS (C&P) Regs (NI), reg 32(6)

4602 The claimant is required to provide that information or evidence described in DMG 4601 within1

1. one month of the date the Department notifies the claimant of the requirement **or**
2. such longer period as the Department considers reasonable.

1 SS (C&P) Regs (NI), reg 32(6)(c)

Changes in retirement provisions

4603 Subject to the requirements in DMG 4601, State Pension Credit claimants are not required to report changes in an element of their retirement provision (see DMG 83070 for definition of retirement provision) during the following periods1

1. the currency of an assessed income period set in their case
2. the period described in DMG 4602 **1.** **and**
3. the period described in DMG 4602 **2.**.

1 SS (C&P) Regs (NI), reg 32(6)(b)

Rapid review

4604 Where the Department considers that the information already held is sufficient then the claimant does not have to provide information and evidence for a new assessed income period to be set1. The claimant is notified of the new assessed income period automatically. The notification includes a breakdown of the claimant’s income and circumstances, and invites them to notify the Department if their retirement provision has changed. This change to information requirements only applies when the assessed income period has ended because it has expired.

1 SS (C&P) Regs (NI), reg 32(6)(a)

4605 Cases where information is not required will be automatically selected according to specific criteria and decision notices will be computer generated. This process is known as rapid review.

4606 The criteria for rapid review are that

1. the claimant (and partner if appropriate) is aged 65 or over
2. any capital held is below the level at which deemed weekly income is calculated
3. any non state pension is a fixed amount
4. no other income is held.

4607 Where cases are automatically selected, the claimant is notified that a new assessed income period has been set on the basis of information already held. The notification includes details of the claimant’s retirement provision. The claimant is invited to notify corrections to their retirement provision and/or any other changes since the last assessed income period was set.

4608 Where a case is selected for rapid review but there is outstanding action, an assessed income period decision notice will not be generated until the action is cleared.

4609 Cases where an assessed income period is due to end and which

1. are not selected for rapid review **or**
2. are clerically maintained

 are subject to normal information requirements.

4610 Where a new assessed income period has been set following rapid review and the claimant notifies that the information already held is incorrect the decision maker should consider whether revision or supersession of the State Pension Credit award, and the new assessed income period, is required.

 **Example 1**

 The claimant’s assessed income period is due to end on 14.12.08. On 3.11.08 notification that a new assessed income period of 5 years is set from 15.12.08 is generated. The claimant phones on 20.1.09 to say that he had inherited £15,000 in 2006, bringing his savings to £15,300. As the change occurred in the period of the previous assessed income period, the decision maker determines that the change does not affect the amount of State Pension Credit during that period. The decision maker then determines the claimant’s retirement provision from 15.12.08, including deemed weekly income from capital, and supersedes the decision awarding State Pension Credit from the first day of the benefit week which includes 15.12.08.

 **Example 2**

 The claimant’s assessed income period is due to end on 14.12.08. On 3.11.08 notification that a new assessed income period of 5 years is set from 15.12.08 is generated. The claimant writes in on 13.11.08 to say that his non-state pension had reduced from 14.10.08. The decision maker determines retirement provision, and supersedes the decision awarding State Pension Credit to increase the amount from the first day of the benefit week which includes 14.10.08. The change does not affect the previous assessed income period, nor the date of the new assessed income period.

 **Example 3**

 The claimant’s assessed income period is due to end on 14.12.08. On 3.11.08 notification that a new assessed income period of 5 years is set from 15.12.08 is generated. The claimant’s son notifies that the claimant was admitted permanently to a care home on 5.11.08. His former home is up for sale. The decision maker supersedes the decision setting the original assessed income period and ends it from 5.11.08. The decision maker then undertakes a check of the claimant’s circumstances, and revises the new assessed income period decision on the grounds that a further assessed income period should not be set. The claimant’s retirement provision is now unstable because his house has not been sold.

Supersession - assessed income period

4611 A decision to set an assessed income period is a decision in its own right1 and is final unless and until it is revised or superseded2.

1 SS (NI) Order 98, art 9(1)(bb); 2 art 17

4612 The State Pension Credit Act and Regulations1 require an assessed income period to end in the circumstances set out in DMG 83050. Regulations2 provide that this will be the only relevant change of circumstances giving grounds for supersession of a decision to set an assessed income period.

1 SPC Act (NI) 02, sec 9(4); SPC Regs (NI), reg 12; 2 SS & CS (D&A) Regs (NI), reg 6(8)

4613 Where an assessed income period is superseded on the grounds set out in DMG 4612, the effective date is the day immediately following the day on which the last assessed income period ended1.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 1(a)

 4614

Supersession at the end of the assessed income period

4615 As an assessed income period comes to the end of its “natural” life, (in addition to the information/evidence required under DMG 4601) State Pension Credit claimants will be required to provide the information and evidence needed to bring the award of State Pension Credit up to date1. That will include information about their retirement provision. The Department will notify the claimant of the period of time within which that information or evidence must be provided1.

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

4616 The Regulations1 specifically provide for the supersession needed as a result of this periodic updating of State Pension Credit.

1 SS & CS (D&A) Regs (NI), reg 6(2)(k)

Information provided within time limits

4617 Where the claimant provides all the information and evidence needed to update the award of State Pension Credit within the time allowed by the Department under DMG 4615, the effective date of the supersession will be either1

1. the day immediately after the last day of the assessed income period if that is the first day of the claimant’s benefit week **or**
2. the first day of the claimant’s benefit week following the last day of the assessed income period.

 **Note:** Where a fresh assessed income period is set it will take effect from the same date as the supersession2.

1 SS & CS (D&A) Regs (NI), reg 7(28); 2 SPC Act (NI) 02, sec 9(1)

Information provided late

4618 Where the claimant provides the information required to update the award of State Pension Credit **after** the end of the period set out by the Department under DMG 4615, the effective date of the supersession will be

1. if the result of the supersession is **advantageous** to the claimant1

**1.1** the date the information or evidence required is provided if that is the first day of the claimant’s benefit week

**1.2** otherwise the first day of the benefit week immediately following the benefit week in which the information or evidence required is provided

1. if the result of the supersession is **disadvantageous** to the claimant, the day after the end of the period set by the Department under DMG 46152
2. if the result of the supersession is that there is **no change in the amount** of State Pension Credit payable under the award, the day after the day the old assessed income period ended if that is the first day of the claimant’s benefit week, otherwise the following such day3.

 **Note:** In each case where an assessed income period is set, that assessed income period will take effect from the same date as the supersession4.

1 SS & CS (D&A) Regs (NI), reg 7(28A); 2 reg 7(28B); 3 reg 7(28); 4 SPC Act (NI) 02, sec 9(1)

 **Example 1**

 Harry is being paid State Pension Credit weekly in advance on Mondays. His assessed income period is due to end on 5.11.04. On 29.9.04 a decision maker sends Harry a review form asking for details of his current income and circumstances. Harry is notified that he must complete and return the review form by 1.11.04. Despite reminders, Harry does not return the completed form until 25.11.04. The decision maker supersedes the award of State Pension Credit. As the result is an increase in the amount of State Pension Credit payable, the decision maker decides that the effective date of the supersession is 29.11.04. The decision maker also decides to set a new assessed income period. That assessed income period starts on 29.11.04.

 **Example 2**

 Marjorie is being paid State Pension Credit by direct payment. Her benefit week begins on a Monday and her assessed income period is due to end on 23.11.04. On 18.10.04 the decision maker sends Marjorie a review form which she is required to complete and return by 18.11.04. Following a telephone call from Marjorie the decision maker decides to allow her until 10.12.04 to provide the information needed. However it is not until 16.12.04 that Marjorie returns the completed form. The decision maker supersedes the award of State Pension Credit as the result is a decrease in the amount payable, the decision maker decides that the effective date of the supersession is 11.12.04. The decision maker also decides that it is appropriate to set a new assessed income period. That assessed income period starts on 11.12.04.

 **Example 3**

 Ray is being paid State Pension Credit by direct payment. His benefit week begins on a Monday and his assessed income period is due to end on 19.11.04. On 12.10.04, the decision maker sent Ray a review form which he is required to complete and return by 12.11.04. Despite reminders and attempts to contact Ray by telephone, he did not return his review form until 21.12.04. On examining the case, the decision maker found that there was no change in the amount of State Pension Credit payable. The decision maker therefore proceeded to supersede with an effective date of 22.11.04 simply in order to enable the creation of a new assessed income period. That assessed income period starts on 22.11.04.

 4619

State Pension Credit superseded but assessed income period cannot be set

4620 There will be cases where, at the end of an assessed income period, the claimant provides sufficient information to enable the award of State Pension Credit to be updated but fails to provide the information about the likelihood of future changes to retirement provisions needed to decide whether to set an assessed income period, or the length thereof, within the period of time allowed.

4621 The law1 allows the decision maker to proceed with the supersession of the award without at the same time setting an assessed income period in these circumstances. The effective date of the supersession will be set in accordance with DMG 4617 and DMG 4618 (depending on the circumstances).

1 SPC Regs (NI), reg 10(1)(c)

4622 Where

1. the claimant fails to provide the information or evidence needed to set the assessed income period **and**
2. the decision maker proceeds to supersede the award of State Pension Credit as in DMG 4621 without setting an assessed income period **and**
3. the claimant subsequently provides the necessary information.

 Then, unless there is a relevant change of circumstances between the supersession as in DMG 4622 **2.** and the receipt of the required information as in DMG 4622 **3.**, the decision maker will conduct a further supersession under specific legislation1 in order to bring a new assessed income period into effect. The effective date of that supersession and the assessed income period will be the date the necessary information is provided2.

 **Note:** See DMG 4623 for action to take if there is an intervening change of circumstances.

1 SS & CS (D&A) Regs (NI), reg 6(2)(l); 2 reg 7(28C)

 **Example**

 Michael is receiving State Pension Credit payable on Mondays. His assessed income period is due to end on 16.11.04. On 11.10.04 the decision maker sends Michael a review form and notifies him that this must be completed and returned by 11.11.04. The form is returned on 8.11.04 but the decision maker finds that Michael has not completed the questions relating to the likelihood of changes to his Retirement Pension over the next twelve months. After a number of unsuccessful attempts to contact Michael, the decision maker decides to proceed with the supersession of the award of State Pension Credit without setting an accompanying assessed income period. The effective date of the supersession is 22.11.04. On 14.12.04, Michael telephones the decision maker and tells him that his retirement provision is unlikely to change over the next twelve months. The decision maker makes a further supersession decision. That decision does not change the amount of State Pension Credit payable but it results in the setting of a fresh assessed income related period effective from 14.12.04.

4623 If there is an intervening change of circumstances the decision maker would deal with it by means of a change of circumstances supersession. If, on reporting the change of circumstance, the claimant has still not provided the information needed to set an assessed income period then no assessed income period need be set. However, if the claimant does provide the necessary information, the decision maker can set an assessed income period which will have the same effective date as the change of circumstances supersession.

 4624 – 4629

Supersession - incomplete evidence

Housing costs

4630 Where, for the purpose of making a supersession decision in relation to State Pension Credit

1. a determination has to be made as to what housing costs are to be included in the claimant’s appropriate minimum guarantee by virtue of specific legislation1 **and**
2. it appears to the decision maker not all the information needed to make that determination is in the Department’s possession

 the decision maker should make the supersession decision on the basis of a determination that the housing costs to be included are those that can be immediately determined2.

1 SPC Regs (NI), reg 6(6)(c) & Sch 2; 2 SS & CS (D&A) Regs (NI), reg 13(1)

Additional amount for the severely disabled

4631 Where, for the purposes of making a supersession decision in relation to State Pension Credit

1. a determination has to be made as to whether the claimant’s appropriate minimum guarantee should include an additional amount for the severely disabled1 **and**
2. it appears to the decision maker that not all the evidence or information needed to make that determination is in the Department’s possession

 the decision maker should make the determination on the assumption that the missing evidence or information is adverse to the claimant2 and proceed to decide the claim or make the supersession accordingly.

1 SPC Regs (NI), reg 6(4) & Sch 1, para 1; 2 SS & CS (D&A) Regs (NI), reg 13(3)

 4632 – 4639

Supersession - change of circumstances

General effective date rule

4640 Unless otherwise stated in this Chapter, the effective date for any supersession decision for State Pension Credit (other than for assessed income period decisions) follows the general rule for changes of circumstances1. See DMG 4644.

1 SS & CS (D&A) Regs (NI), Sch 2B, paras 7 & 8

4641 Changes due to the automatic increasing of non state pensions are not subject to the normal rules regarding supersession1.

1 SPC Act (NI) 02, sec 10(2) & 10(3)

Advantageous change notified outside time limits

4642 Where a decision maker makes a supersession decision because of a change of circumstances

1. that is notified more than one month (or such longer period as the decision maker may allow under DMG 4204 to DMG 4210) after it occurred **and**
2. where the result of the supersession will be advantageous to the claimant

 the effective date of the supersession will be as set out in DMG 4643.

4643 In the circumstances described in DMG 4642, the effective date is

1. where State Pension Credit is paid in arrears, the first day of the benefit week in which the notification is made1 **or**
2. where State Pension Credit is paid in advance2 **and**

**2.1** the date of notification is the first day of the benefit week, that day **or**

**2.2** the date of notification is a day other than the first day of a benefit week, the first day of the benefit week **following** that in which notification is made.

1 SS & CS (D&A) Regs (NI), reg 7(2)(b)(i); 2 reg 7(2)(b)(ii)

Change of circumstances - the general rule

4644 Except where DMG 4642 and DMG 4643 apply, where a decision relating to State Pension Credit is superseded on the grounds of a change of circumstances, the general rule is that the effective date is1 either

1. where State Pension Credit is paid in advance, from the day that change occurs or is expected to occur if either of those days is the first day of a benefit week but if not from the next following such day **or**
2. where State Pension Credit is paid in arrears, from the first day of the benefit week in which that change occurs or is expected to occur.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 1

 4645

Exceptions to the general rule

4646 The exceptions to the general rule are set out below.

Changes in income

4647 **[See DMG Memo Vol 1/100, 5/93, 6/80, 9/23 & 14/51] [See DMG Memo Vol 1/102, 2/43, 3/90, 4/119, 5/95, 6/83, 8/53, 9/25, 10/58, 12/18, 13/56 & 14/53]** Where the claimant or their partner

1. has a change in income (other than income that is deemed to derive from capital) **or**
2. becomes entitled to Disability Living Allowance (middle or higher rate care) or Attendance Allowance or Personal Independence Payment or Armed Forces Independent Payment **or**
3. receives again any of the allowances or payments at DMG 4647 **2.** immediately after the end of a period where they are maintained free of charge while undergoing medical or other treatment as an in-patient in a hospital or similar institution defined under prescribed legislation

 then the effective date of the supersession is1 either

1. the first day of the claimant’s benefit week in which the change occurs **or**
2. if it is not **practicable** in the circumstances of the case to use the effective date in DMG 4647 **1.**, the first day of the next benefit week following the benefit week in which the change occurred.

 **Note:** This rule does not apply where the only change in income concerned is that Working Tax Credit becomes payable or payable at a higher rate2. This rule is subject to late notification of a change of circumstances as at DMG 4642.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 2; 2 Sch 2B, para 3

 **Example 1**

 Alice is in receipt of spousal maintenance for herself from her ex-husband and her benefit week commences on Monday. She informed the branch that her maintenance increased from Wednesday 12 May. The decision maker takes the spousal maintenance into account at the new weekly rate from Monday 10 May.

 **Example 2**

 Tim’s benefit week commences on Monday. On Wednesday 12 May he reports that his partner will start to receive an annuity from Friday 14 May. Because State Pension Credit has already been paid for benefit week commencing 10 May, the decision maker takes the annuity into account from the first day of the next benefit week ie Monday 17 May.

Prisoners

4648 Where the change of circumstances is that a person becomes or ceases to be a prisoner, the effective date is1 the date the change actually occurred or is expected to occur.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 4(a)

Change of benefit week

4649 Where, whilst entitled to State Pension Credit, a claimant is awarded another social security benefit and, as a consequence their benefit week changes, the effective date is1 the date the other social security benefit is awarded.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 4(b)

Claimant ceases to be a patient

4650 This exception to the general rule applies where the claimant ceases to be a patient but becomes a patient again **within the same benefit week**. Where that applies the effective date of the supersession to deal with the fact that the claimant ceased to be a patient is the first day of the benefit week in which the change occurred1.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 5

 **Note:** Remember that the date of admission **is not** a day in hospital and that the day of discharge **is** a day in hospital.

 **Example**

 A claimant has been in hospital for 52 weeks and consequently her State Pension Credit has been reduced. State Pension Credit is paid on Mondays in advance. On Monday 11.10.04 the claimant is discharged from hospital, however she is readmitted on Friday 15.10.04. The decision maker first supersedes to deal with the fact that the claimant ceased to be a patient on 12.10.04. He decides that the exception described in DMG 4650 **does apply** and that the effective date should therefore be 11.10.04. The decision maker then conducts a second supersession to deal with the readmission. The claimant again became a patient on 16.10.04. The decision maker applies the general rule in DMG 4644 and concludes that the effective date of the second supersession should be 18.10.04.

4651 In DMG 4650 “patient” means1 a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of specific legislation2.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 6; 2 SS (HIP) Regs (NI) 05

 4652

Death of the claimant

4653 Where State Pension Credit is paid in advance and the claimant dies, the superseding decision takes effect on the first day of the benefit week next following the date of death1.

1 SS & CS (D&A) Regs (NI), Sch 2B, para 10

4654 “Benefit week” means, where State Pension Credit is paid

1. in advance, the period of seven days beginning on the day on which, in the claimant’s case, that benefit is payable
2. in arrears, the period of seven days ending on the day on which, in the claimant’s case, that benefit is payable.

 4655 – 4679

Uprating

4680 Uprating of State Pension Credit will not normally require a supersession decision. Where rates are changed on uprating, the amount of benefit payable and the award will be the new amount without the need for any further decision of the decision maker1.

 See DMG 4681 for exception to this rule.

1 SS A (NI) Act 92, sec 139B

4681 There is an exception1 where the appropriate minimum guarantee includes an additional amount for former claimants of Income Support or income-based Jobseeker’s Allowance2 (known as the transitional amount see DMG 78120 et seq for guidance on when this additional amount applies).

1 SS & CS (D&A) Regs (NI), reg 14(5); 2 SPC Regs (NI), Sch 1, para 6

4682 Where DMG 4681 applies, uprating will need to be carried out by a means of supersession1.

1 SS & CS (D&A) Regs (NI), reg 14(6)

 4683 – 4684

Supersession on change of election - deferred entitlement

4685 **[See DMG Memo Vol 1/107, 2/61, 3/94, 4/133, 5/103, 7/44, 9/32, 10/67, 12/20, 13/65 & 14/60]** The decision maker may supersede1 a decision awarding State Pension Credit where

**1.** the claimant or partner makes or is treated as having made an election for a lump sum2 **or**

**2.** a lump sum is repaid after the person changes their election to an increase of Category A or Category B Retirement Pension, Shared Additional Pension or Graduated Retirement Benefit3.

See DMG Chapter 75 for guidance about deferring entitlement and making elections.

1 SS & CS (D&A) Regs (NI), reg 6(2)(n); 2 SS C&B (NI) Act 92, Sch 5, para A1 or 3C;
Sch 5A, para 1; SS (DRP, SAP & GRB) (Misc Provs) Regs (NI), Sch 1, para 12 or 17;
3 reg 5; Sch 1, para 20F; SPC Regs (NI), reg 4(4) & 6; Pensions Act (NI) 15, sec 10

4686 Where DMG 4685 applies, the new decision is effective1 from

**1.** the day on which the lump sum or payment on account of a lump sum is paid or repaid where that is the payday **or**

**2.** the following payday.

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

 **Example**

 The claimant is a single woman who was 60 on 8.5.05 and who deferred her Retirement Pension for twelve months. She has capital of £8,000. On 8.5.06 she claims Retirement Pension and State Pension Credit but does not immediately make an election on her deferral option. State Pension Credit is awarded to the claimant, taking into account her Retirement Pension and £4.00 deemed weekly income due to her capital. On 5.6.06 the claimant elects to receive increments. The decision awarding Retirement Pension is revised to include increments. The decision awarding State Pension Credit is also revised to take into account the claimant’s increased Retirement Pension. On 26.6.06 the claimant realises she would have been better off taking a lump sum so she changes her election. As she is liable for tax, the claimant receives a lump sum of £7,200 rather than the amount of £8,000 she would have received if she were not liable for tax. Of the claimant’s total capital of £15,200, the amount of £8,000 (the gross amount of the lump sum) is disregarded. The decision awarding State Pension Credit is superseded to reduce the amount of deemed weekly income to be taken into account to £3.00.

Special rules - Employment and Support Allowance, Income Support, Jobseeker’s Allowance and State Pension Credit

Special rules for housing costs - service charge adjustments

4687 Some leaseholders are liable to pay service charges. See DMG Chapter 44 on guidance for housing costs for Employment and Support Allowance, Chapter 23 for Income Support and Jobseeker’s Allowance and Chapter 78 for State Pension Credit. These service charges are sometimes adjusted during or after the relevant financial year. Guidance in DMG 4688 - 4695 applies only to Employment and Support Allowance, Income Support, Jobseeker’s Allowance and State Pension Credit.

4688 Housing costs should be calculated and awarded when the claimant becomes liable to pay on receipt of an invoice of estimated costs. The same principle applies when an invoice for the difference between the estimated and actual service charges is issued to the claimant. In each case, the amount of the invoice should be converted to give a weekly amount of housing costs from the date the liability arose1.

1 JSA Regs (NI), Sch 2, para 16(1); IS (Gen) Regs (NI), Sch 3, para 17(1); SPC Regs (NI), Sch 2, para 13(1)

4689 The liability for service charges arises in accordance with the terms of the lease. This will usually be

1. in the case of estimated charges, the first day of the relevant financial year **or**
2. in the case of finalised charges, the date the invoice is issued.

4690 The finalisation of service charges is a separate liability from the estimated charges. A decision awarding housing costs on the basis of estimated service charges is therefore not made in ignorance of or mistake as to some material fact, nor can it be revised either during the application period (DMG 3063) nor for official error, when those charges are finalised at a later date.

4691 A notification to the Department of a new liability for estimated or finalised service charges is treated as an application for supersession. In order to include such housing costs in an award of income-related Employment and Support Allowance, Income Support, income-based Jobseeker’s Allowance or State Pension Credit, the previous awarding decision should be superseded on the grounds that

1. there has been a relevant change of circumstances1 **or**
2. it is anticipated that there will be a relevant change of circumstances (in the case of estimated charges where the supersession is carried out before the period of liability has begun)2.

 The effect of the supersession is to award service charges for a fixed 52 week period from the date the liability arose. At any one time, a claimant’s award of housing costs for service charges may therefore be made up of housing costs arising from different liabilities notified at different times.

1 SS & CS (D&A) Regs (NI), reg 6(2)(a)(i); 2 reg 6(2)(a)(ii)

4692 Where the claimant sends invoices to the Department promptly, the supersession decision is normally effective

1. for income-related Employment and Support Allowance, Income Support and income-based Jobseeker’s Allowance, from the first day of the benefit week in which the change occurs1 **or**
2. for State Pension Credit, from the date of the change where that is the first day of the benefit week, or otherwise the first day of the benefit week following the date of change2
3. for State Pension Credit paid in arrears, the first day of the benefit week in which that change occurs3.

1 SS & CS (D&A) Regs (NI), Sch 2A, para 1(a) & 7 and Sch 2C, para 1;
2 Sch 2B, para 1(b)(i); 3 Sch 2B, para 1(b)(ii)

4693 The change occurs on the date the liability begins as in DMG 4692. This is the date the claimant is notified of the service charges by the landlord, or in the case of estimated charges the beginning of the financial year if later.

 **Example**

 The claimant’s award of Income Support includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.02 - 31.3.03. The amount for housing costs is due to end on 31.3.03. In February 2003 the claimant sends in an estimate of service charges for the 2003-04 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.03 - 31.3.04. On 9.9.03 the claimant receives an invoice for £243.85, being the balance of finalised service charges for the 2002-03 year, and sends it to the Department. The decision maker supersedes the decision of February 2003 to award housing costs of £10.87 and £4.69 for the period 9.9.03 - 31.3.04, and £4.69 for the period 1.4.04 - 6.9.04, the balance for the 2002-03 year charges being paid over a 52 week period. If a further estimate for charges for the 2003-04 year is received, the September 2003 decision may be superseded accordingly.

4694 If the claimant delays notifying the Department of a liability to pay service charges, the consequence may be that they do not receive their full allowable housing costs for the relevant period. The decision maker should consider whether there are special circumstances for the delay in notification1 (see DMG 4204 - 4211). If the liability is not notified until after the period of 13 months from the date the claimant became liable to pay service charges has ended, no housing costs can be awarded at all in relation to that liability.

1 SS & CS (D&A) Regs (NI), reg 7(2)(b) & 8

 **Example 1**

 The claimant’s award of State Pension Credit includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.02 - 31.3.03. The mount for housing costs ends on 31.3.03. In February 2003 the claimant receives notice that estimated service charges for the period 1.4.03 - 31.3.04 will be £564.94. He does not send this to the Department until 13.5.03, saying that he forgot to send it earlier. The decision maker decides that there are no special circumstances for the late application for supersession. He divides the total charges by 52 to produce a weekly amount of housing costs. The original decision awarding State Pension Credit is superseded to include housing costs of £10.87 weekly from 13.5.03 to 31.3.04.

 In March 2004 the claimant receives an invoice for estimated charges for the 2004-05 financial year and sends it to the Department straight away. The supersession decision of May 2003 is superseded in March 2004 on the grounds of an anticipated relevant change of circumstances to include weekly housing costs for the estimated service charges for the period 1.4.04 - 31.3.05.

 In November 2004 the claimant sends to the Department an invoice for £243.85, being the balance of finalised service charges for the 2002-03 financial year which he had received on 9.9.03. The decision maker refuses to supersede the decision of March 2004, because the application was made more than 13 months after the liability for the additional service charge first arose, and the period 9.9.03 - 6.9.04 had already ended.

 **Example 2**

 The claimant’s award of income-based Jobseeker’s Allowance includes a weekly amount of £8.31 for housing costs arising from estimated service charges of £431.84 for the period 1.4.02 - 31.3.03. In February 2003 the claimant sends in an estimate of service charges for the 2003-04 financial year. The awarding decision is superseded on the grounds of an anticipated relevant change of circumstances to include housing costs of £10.87 weekly arising from estimated service charges of £564.94 for the period 1.4.03 - 31.3.04.

 On 30.9.04 the claimant sends to the Department an invoice for £243.85, being the balance of finalised service charges for the 2002-03 financial year which he had received on 9.9.03. The application is made after the 52 week period beginning on 9.9.03, but within the 13 month period for notifying a change of circumstances. The decision maker accepts that there were special circumstances for the late notification, and supersedes the decision of February 2003 to award additional housing costs of £4.69 for the period 9.9.03 - 6.9.04. As the period has ended, arrears of £243.85 are paid as a lump sum.

4695 Care needs to be taken in establishing the claimant’s liability when awarding housing costs for service charges as part of an award on a claim. The claimant may have an outstanding liability for finalised service charges relating to a period before entitlement to benefit began, and may have started paying these. Where these are outstanding at the date of claim, and the 52 week period of liability has not ended, they may be included as housing costs. If payment has been made in full, or the period of liability has ended, there is no entitlement to housing costs for finalised service charges.

Special rules - Employment and Support Allowance

4696 The general rule is that an Employment and Support Allowance supersession decision on the grounds that there has been a relevant change of circumstances takes effect from the first day of the benefit week in which the change occurs1.

1 SS & CS (D&A) Regs (NI), reg 7(1)(a); Sch 2C, para 1

4697 “Benefit week” means the period of seven days ending on

1. the day before the first day of the first benefit week following the date of claim **or**
2. the last day of Employment and Support Allowance payment where it is paid for less than a week1.

1 ESA Regs (NI), reg 2(1); SS & CS (D&A) Regs (NI), reg 7(3)(d)

4698 Other supersession decisions where1

1. the supersession is on the grounds that the decision to be superseded

**1.1** is a decision maker’s decision which is erroneous in law2

**1.2** is a decision awarding Employment and Support Allowance where the claimant or a family member becomes entitled to a qualifying benefit3

**1.3** is a decision awarding Employment and Support Allowance where the Severe Disability Premium cannot be included in the award because there is a non-dependant, and the non-dependant is awarded a qualifying benefit4

**1.4** is as in DMG 4290 (reinterpretation of the law)5.

1 SS & CS (D&A) Regs (NI), Sch 2C, paras 9 & 10; 2 reg 6(2)(b);
3 reg 6(2)(e); 4 reg 6(2)(ee); 5 reg 7(6)

Exceptions

4699 The general rule in DMG 4696 does not apply

1. where the change is to the claimant’s advantage and was notified outside the one month time limit1 - see DMG 4501 **1.** which also applies to Employment and Support Allowance
2. where the change is because the claimant is terminally ill2 - see DMG 4710.

1 SS & CS (D&A) Regs (NI), reg 7(2)(b)(i); 2 reg 7(2)(be)

Other exceptions

4700 The guidance at DMG 4556 **1.**1, **3.**2, **4.**3, **5.**4 and **7.** on exceptions to the general rule in DMG 4696 also apply to Employment and Support Allowance. In these cases the decision is effective from the date of the change5.

1 WR Act (NI), Sch 1, para 6(1)(a); 2 ESA Regs (NI), reg 156(6)(d) or (g); 3 Sch 5, para 12;
4 Sch 5, para 3; 5 SS & CS (D&A) Regs (NI), Sch 2C, para 2 & 3

Other effective date rules

4701 Guidance on effective date rules for

1. supersession in incapacity cases1 (see DMG 4231 - 4245)
2. supersession of a Tribunal or Commissioner for error of fact2 (see DMG 4337 - 4340)
3. change between benefits including waiting days3 (see DMG 4511 - 4513)
4. payment of income4 (see DMG 4560)
5. reduction of benefit following supersession5 (see DMG 4561 - 4562)
6. change ceases to apply6 (see DMG 4557)

 also apply to Employment and Support Allowance.

1 SS & CS (D&A) Regs (NI), Sch 2C, para 7; 2 Sch 2C, para 8; 3 reg 14A(4); WR Act (NI), Sch 2, para 2
4 ESA Regs (NI), reg 93; SS & CS (D&A) Regs (NI), Sch 2C, para 4; 5 para 5; 6 para 6

Non-dependant entitled to Employment and Support Allowance

4702 Where the relevant change is that

1. the claimant has a non-dependant **and**
2. the non-dependent becomes entitled to main phase Employment and Support Allowance

 the supersession decision is effective from the date the main phase Employment and Support Allowance is first paid to the non-dependant1.

1 SS & CS (D&A) Regs (NI), reg 7(17H)

Failure determination

4703 **[See DMG Memo 9/38]** A decision awarding Employment and Support Allowance may be superseded where there has been a failure determination1. A failure determination is a determination by the decision maker that the claimant has failed without good cause to satisfy a requirement to take part in a work focused interview or undertake work related activity2. The supersession decision takes effect from

1. the first day of the benefit week following the 13th week of entitlement where the failure determination was made before that week3 **or**
2. the first day of the benefit week in which the failure determination is made where it was made after the 13th week of entitlement4.

1 SS & CS (D&A) Regs (NI), reg 6(2)(o); reg 1(3); 2 ESA Regs (NI), reg 54 & reg 63(1);
3 SS & CS (D&A) Regs (NI), reg 7(34); 4 reg 7(35)

4704 **[See DMG Memo 9/38]** Where an award of Employment and Support Allowance has been reduced as in DMG 4703 and the requirement to attend a work focused interview or work focused health related assessment ceases to apply the reduction decision may be superseded so as to restore full payment of Employment and Support Allowance1. The decision is effective from the first day of the benefit week in which the requirement was made or ceased to apply2.

1 SS & CS (D&A) Regs (NI), reg 6(2)(p); 2 reg 7(36); ESA Regs (NI), reg 64

Receipt of health care professional report and cases where no examination is carried out

4705 An Employment and Support Allowance decision may be superseded where the Department

1. has received medical evidence from an approved health care professional for the purposes of determining whether the claimant has limited capability for work or limited capability for work related activity1 **or**
2. has made a determination that the claimant is to be treated as having limited capability for work under specified legislation2.

 DMG 4705 **2.** allows the decision maker to move the claimant to a higher rate of Employment and Support Allowance on age grounds or award a component in cases where the claimant is not examined by a health care professional.

 **Note:** See DMG 42017 sub paras 1, 2, 3 & 5 for when a claimant can be treated as having limited capability for work under specified legislation.

1 SS & CS (D&A) Regs (NI), reg 6(2)(q); 2 ESA Regs (NI), reg 20, 25, 26 & 33(2)

 **Example**

 Danny is aged under 20 and is in receipt of Disability Living Allowance and is entitled to income-related Employment and Support Allowance as a disabled student at the rate for claimants aged under 25. He is treated as having limited capability for work as he has weekly dialysis. The decision awarding Employment and Support Allowance is superseded to award the higher applicable amount from week 14 although the work capability assessment has not been carried out.

4706 An Employment and Support Allowance decision is a decision awarding Employment and Support Allowance or credits where the decision maker has made a determination that the claimant has, or is treated as having, limited capability for work1.

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

4707 **[See DMG Memo Vol 1/105, 4/127 & 8/66]** Where a decision is made which embodies a determination that the claimant has

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

 which is the first such determination made in respect of the claim for Employment and Support Allowance then the decision is superseded effective from the last day of the relevant period as defined in specified legislation1.

1 SS & CS (D&A) Regs (NI), reg 7(37); ESA Regs (NI), reg 4(4)

4708 Where the claimant is found not to have limited capability for work, the Employment and Support Allowance decision is superseded from the date of the decision1.

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

 **Example**

 A claimant attends a work capability assessment on 2 April. After considering the report from the health care professional on 10 April, the decision maker decides that the claimant does not have limited capability for work. The decision maker supersedes the award of Employment and Support Allowance effective from 10 April.

4709 Where

1. the claimant’s entitlement to Employment and Support Allowance includes the work-related activity component **and**
2. the claimant applies for supersession **and**
3. following a report by an approved health care professional, the decision maker makes a determination that the claimant has limited capability for work-related activity

 the supersession decision takes effect from the date of the application1.

 **Note:** Where the decision maker makes a determination following a routine work capability assessment, the supersession takes effect from the date the decision maker makes their decision2.

1 SS & CS (D&A) Regs (NI), reg 7(38); 2 SS (NI) Order 98, art 11(5)

Terminally ill

4710 Where the claimant makes an application for supersession expressly on the grounds that they are terminally ill, the Employment and Support Allowance award is superseded from the date they became terminally ill1.

1 ESA Regs (NI), reg 2(1); SS & CS (D&A) Regs (NI), reg 7(2)(be)

Treated as having limited capability for work - medical evidence expires

4711 A claimant may be treated as not having limited capability for work1 if

1. they have supplied medical evidence in accordance with legislation2 **and**
2. the period covered by that medical evidence has ended **and**
3. the Department has requested further medical evidence **and**
4. the claimant has not, within six weeks

**4.1** supplied further medical evidence **or**

**4.2** otherwise made contact with the Department to indicate that they wish to have the question of limited capability for work determined.

1 ESA Regs (NI), reg 32A; 2 reg 30(2)(a)

4712 The six week period begins on

1. the date of the Department’s initial request for further medical evidence **or**
2. the day after the date on which the period covered by the medical evidence has ended

 whichever is the later1.

1 ESA Regs (NI), reg 32A(d)

4713 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact the Department, the decision maker should treat the claimant as not having limited capability for work from the day after the medical evidence expires. The decision is effective from the date of change1, which is the date from which the claimant is treated as not having limited capability for work.

1 SS & CS (D&A) Regs (NI), Sch 2C, para 2 & 3(a)

Employment and Support Allowance appeal withdrawn, struck out or dismissed

4714 Where

1. the claimant is entitled to Employment and Support Allowance after making an appeal **and**
2. they are treated as having limited capability for work while providing medical statements **and**
3. either

**3.1** there is no change of circumstances **or**

**3.2** following a change of circumstances the claimant is treated as having limited capability for work where they have been found not to have limited capability for work after application of the work capability assessment **and**

1. the appeal is withdrawn, struck out or dismissed

 the claimant is treated as not having limited capability for work from the first day of the benefit week following the date on which the decision maker is notified by the Tribunal that the appeal is withdrawn, struck out or dismissed1.

1 ESA Regs (NI), reg 30 & 147A(5)

4715 The decision awarding Employment and Support Allowance (pending the outcome of the appeal) is superseded on the grounds of a relevant change of circumstances1 and is effective from the date of change2. The change is that the claimant is treated as not having limited capability for work.

1 SS & CS (D&A) Regs (NI), reg 6(2)(a); 2 Sch 2C, para 2 & 3(a)

 **Example**

 Heather’s entitlement to Employment and Support Allowance ends when she fails the work capability assessment. She appeals and Employment and Support Allowance is awarded from the date of disallowance. Her appeal is dismissed. The Tribunal decision notice is received in the office administering her award on 13.7.10. Heather’s benefit week ends on Monday. The decision maker treats her as not having limited capability for work from 20.7.10, the first day of the next benefit week. The decision awarding Employment and Support Allowance is superseded and terminated from 20.7.10.

4716 Where, following an unsuccessful appeal

1. a claim for Jobseeker’s Allowance is made **and**
2. a fresh limited capability for work has not yet been made

 the decision maker should supersede on the grounds of a relevant change of circumstances, namely that the claimant is treated as not having limited capability for work and terminate the Employment and Support Allowance award from the date that the claimant is awarded Jobseeker’s Allowance.

Previous period of limited capability for work less than 13 weeks

4717 Where

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

 the assessment phase ends on the day when the continuous period of limited capability for work is 13 weeks or the date of determination that claimant has, or is treated as having limited capability for work (other than DMG 42201 - 42204) where that is later1.

1 ESA Regs (NI), reg 5(2) & (3)

4718 The effective date of supersession in cases described at DMG 4717 is the beginning of the 14th week of entitlement1.

1 SS & CS (D&A) Regs (NI), reg 7(37)

4719 Where a decision which embodies a determination that the claimant has

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

 and specific legislation applies1 then the effective date of the supersession takes effect from the beginning of the 14th week of entitlement2.

 **Note:** The assessment phase ends after the later of 13 weeks (in two or more linked spells of limited capability for work) or the decision on whether the claimant has, or is treated as having, limited capacity for work.

1 ESA Regs (NI), reg 5; 2 SS & CS (D&A) Regs (NI), reg 7(39)

 4720 – 4799

Suspension and termination of benefit

Hardship

4800 Decision makers should always have regard to the question of whether hardship will result from their decision when considering suspension of benefit either wholly or in part. This applies both to circumstances where the decision maker is considering an immediate suspension or where the claimant has been asked to provide information.

4801 For issues to be considered when deciding if hardship would result see benefit specific guidance.

Loss of contact with claimant

4802 If contact with the claimant is lost the decision maker should consider suspension and termination to help prevent the accumulation of long periods of arrears.

 4803 – 4809

Immediate suspension

4810 The decision maker may suspend the payment of benefit immediately, either wholly or in part where a question has arisen about the claimant's entitlement to benefit or some component part of it1. Payment can also be suspended after 14 days where there has been a failure to satisfy information requirements (see DMG 4841)2.

1 SS (NI) Order 98, art 21; SS & CS (D&A) Regs (NI), reg 16; 2 reg 17

4811 Suspension may be appropriate where a question has arisen during the currency of a claim

1. about whether the claimant satisfies the conditions of entitlement to the benefit1
2. about whether an award of benefit should be revised or superseded2
3. about the award of benefit because an appeal is pending against a decision made by an appeal tribunal, a Commissioner or a court3
4. because an appeal is pending in a different case before a Commissioner or a court, and it appears to the decision maker that the outcome of that case might require the award to be revised or superseded4
5. about whether an overpayment of benefit is recoverable5
6. about whether the claimant is still residing at the last address notified to the Department6.

1 SS (NI) Order 98, art 21(2)(a); SS & CS (D&A) Regs (NI), reg 16(3)(a)(i);
2 SS (NI) Order 98, art 21(2)(b); SS & CS (D&A) Regs (NI), reg 16(3)(a)(ii);
3 SS (NI) Order 98, art 21(2)(c); SS & CS (D&A) Regs (NI), reg 16(3)(b)(i);
4 SS (NI) Order 98, art 21(2)(d); SS & CS (D&A) Regs (NI), reg 16(3)(b)(ii);
5 SS (NI) Order 98, art 21(1)(a); SS & CS (D&A) Regs (NI), reg 16(3)(a)(iii);
6 SS (NI) Order 98, art 21(1)(a); SS & CS (D&A) Regs (NI), reg 16(3)(a)(iv)

4812 Jobseeker’s Allowance must be suspended if there is a doubt as to whether the claimant is or was available for work or actively seeking employment1.

1 SS & CS (D&A) Regs (NI), reg 16(2)

 4813 – 4816

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

4817 Where a question arises about whether a decision awarding benefit should be revised1 or superseded2, the decision maker should consider whether a suspension of payment of benefit is appropriate. If it looks as though the revised or superseded decision would result in

1. an increase in entitlement, there is no need to consider suspension
2. a decrease in entitlement, consider suspending payments of the amount in question
3. a loss of entitlement to benefit, consider suspending the whole of the payment3.

1 SS (NI) Order 98, art 10; SS & CS (D&A) Regs (NI), reg 3;
2 SS (NI) Order 98, art 11; SS & CS (D&A) Regs (NI), reg 6;
3 SS (NI) Order 98, art 21(2)(a), art 22(3) and SS & CS (D&A) Regs (NI), reg 16

 **Example 1**

 If a question arises as to whether a claimant not presently entitled to a disability premium is in fact registered blind, payment of the existing award should continue unchanged whilst appropriate enquiries are made.

 **Example 2**

 If a question arises about a claimant’s entitlement to a premium, consider suspending the payment of the premium pending enquiries to resolve the doubt.

Suspension where an appeal is pending

4818 The decision maker may suspend payment of benefit, wholly or in part, where an appeal is pending against the decision1, if in the opinion of the decision maker the likely outcome of the appeal is that there would be no entitlement to the benefit or part of the benefit in question.

1 SS (NI) Order 98, art 21(2)(c); SS & CS (D&A) Regs (NI), reg 16(3)(b)(i)

4819 Appeal in this context means an appeal against a decision by

 **1.** an Appeal Tribunal

 **2.** a Commission or tribunal of Commissioners

 **3.** the High Court, the Court of Appeal, the Courts of Session in Scotland and the House of Lords.

4820 An appeal is pending1 where a decision of an Appeal Tribunal, a Commissioner or a court has been made **and**

1. the Department is waiting to receive that decision
2. in the case of a tribunal decision the Department

**2.1** is considering whether to apply for a statement of reasons **or**

**2.2** has applied for a statement of reasons and is waiting to receive it **or**

**2.3** has received the statement of reasons and is considering whether to apply for leave to appeal to the Commissioners

1. the Department has received the decision and is considering whether to apply for leave to appeal against it
2. an application for leave to appeal has been made but not determined
3. leave to appeal has been granted and the Department is considering whether to proceed with an appeal
4. an appeal has been made but has not yet been determined.

1 SS (NI) Order 98, art 21; SS & CS (D&A) Regs (NI), reg 16(4)

Notification

4821 The Department must give written notice1 of its proposal to

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

 as soon as reasonably practicable.

1 SS & CS (D&A) Regs (NI), reg 16(4)

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

When benefit suspended must be paid - appeal no longer pending

4822 Payment of benefit suspended shall be made if1

1. in the case of a tribunal decision, the Department does not apply for a statement of reasons within one month of the day it receives notice of the tribunal’s decision
2. in the case of any decision, the Department does not

**2.1** make an application for leave to appeal **or**

**2.2** when leave is granted, make an appeal

 within the relevant time limit

1. the Department withdraws its appeal or application for leave
2. the Department is refused leave to appeal where it cannot renew its application or make a further application for leave to appeal.

1 SS & CS (D&A) Regs (NI), reg 20(3)

 4823 – 4829

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

4830 The decision maker may suspend benefit wholly or in part where

1. an appeal is pending (see DMG 4820) in another case (the lead case) before a Commissioner or a court **and**
2. it seems to the decision maker that, if the lead case were determined in a particular way, an issue would arise as to whether the award of benefit in the case before the decision maker (the look-alike case) should be revised or superseded1.

1 SS (NI) Order 98, art 21(2)(d); SS & CS (D&A) Regs (NI), reg 16(3)(b)(ii)

4831 The appeal in question does not have to involve the same benefit, but if the outcome of the appeal would have an effect on the award being considered by the decision maker then suspension can still be considered.

Example

 The Department has appealed to the Court of Appeal against a decision of a Commissioner awarding Disability Living Allowance. This is the lead case. The decision maker considers the separate case of a claimant currently entitled to Carer’s Allowance. Because the award of Carer’s Allowance in the separate case is dependent upon an award of Disability Living Allowance where the same legal issue arises as in the lead case, the decision maker decides that it is a look-alike case. Suspension of payment of the Carer’s Allowance in the look-alike case should be considered pending the outcome of the appeal in the lead case.

 4832 – 4839

What happens if the suspension is lifted

4840 When the suspension is lifted the decision maker

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

Suspension where information has been requested

4841 The decision maker can suspend1 payment of benefit when they are considering whether an award of benefit should be revised or superseded. When the decision maker has asked the claimant to provide information2 they must

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

 in default of which payment of benefit may be suspended.

1 SS & CS (D&A) Regs (NI), reg 17; 2 SS (C&P) Regs (NI), reg 32(1);
3 SS & CS (D&A) Regs (NI), reg 17(4)

4842 Alternatively, the claimant must satisfy the decision maker within 14 days beginning with the date on which the notification was sent that either

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

4843 Where the decision maker requires documents, certificates or other evidence from a Jobseeker’s Allowance claimant under other legislation1 then this must be supplied within 7 days beginning with the date on which notification was sent in default of which payment of Jobseeker’s Allowance may be suspended2.

1 JSA Regs (NI), reg 24(5), 24(5A) & 24(9A); 2 SS & CS (D&A) Regs (NI), reg 17(4A)

4844 The decision maker should impose the 14 day period where there is a serious doubt about the claimant’s award. Examples are where

1. information has been received indicating that there may be undeclared income or capital or an undeclared non dependent or partner
2. a data match anomaly
3. the claimant has failed to co-operate with the Department by failing to participate in a telephone review and subsequently fails to return a fully completed postal review form
4. the Department has no contact number and reverts immediately to the postal process
5. the Department has been unable to make contact by telephone and reverts to the postal process
6. the Department has conducted a telephone review but further information is required and sends a letter requesting this information.

4845 When considering whether to extend the 14 day period the decision maker should take into account all the circumstances including

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

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

 **Example 1**

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

 **Example 2**

 An allegation is received that the claimant has a large amount of capital in numerous savings accounts. The decision maker issues a letter asking them to provide evidence of their capital within 14 days of the date of issue of the letter. The claimant responds within 14 days, denying the allegation and says that they have only small amounts of capital in several accounts. The claimant says that it will take a month to provide this information. The decision maker considers this reasonable and does not suspend benefit and allows the claimant a month in total to provide the information.

Termination following suspension

4846 The decision maker must consider terminating benefit where

1. the claimant has been required to provide information (this applies where payment has been suspended both immediately and following failure to satisfy information requirements) **and**
2. has failed to do so within one month (or such longer period as appropriate - see DMG 4850) **and**
3. payment of benefit has been suspended in full1.

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

1 SS (NI) Order 98, art 23; SS & CS (D&A) Regs (NI), reg 18

4847 The time limit of one month may be extended where the decision maker considers in all the circumstances it is reasonable to do so (see DMG 4850). A decision terminating benefit in these circumstances will be a supersession decision. This decision carries the right of appeal1.

1 SS (NI) Order 98, art 23; SS & CS (D&A) Regs (NI), reg 18

 4848 – 4849

When is it appropriate to extend the time limit?

4850 When considering whether to extend the time limit for providing information, the decision maker should take into account all the circumstances including

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

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

 4851

Date from which benefit is terminated

4852 Benefit is terminated from a date not earlier than the date from which the benefit was suspended1.

1 SS (NI) Order 98, art 23; SS & CS (D&A) Regs (NI), reg 18

4853 Decision makers should note that if it transpires that entitlement should have terminated from an earlier date, then this termination provision cannot be used. Instead, the original decision should be revised, superseded with the effective date of termination being determined as appropriate.

 **Example**

 Original outcome decision 1.4.99. Benefit suspended 1.7.99. Because the claimant does not respond to requests for information entitlement is terminated from 1.7.99. On 1.10.99 the Department discovers that entitlement should have ended on 1.5.99 as a result of new information coming to light. He revises the decision to terminate benefit and then supersedes the decision of 1.4.99, effective from 1.5.991.

1 SS & CS (D&A) Regs (NI), reg 3(5) & 18(1)

 4854 – 4856

Suspension where claimant fails to have a medical examination

4857 Where a claimant is required, as a condition of receiving benefit, to have a medical examination, but fails, without good cause, to do so on at least two consecutive occasions, the decision maker may suspend payment of benefit entirely or in part1. It should be noted that this does not apply to incapacity for work and limited capability for work cases. See benefit specific guidance for further details.

1 SS (NI) Order 98, art 24; SS & CS (D&A) Regs (NI), reg 19(2)

 **Example**

 A claimant is in receipt of the higher rate of mobility component for Disability Living Allowance, because she has arthritis in both hips. A letter is received stating that she has been seen out walking normally and has received hip replacements.

 The decision maker asks for a health care professional to visit to prepare a medical report. Despite being notified of visits on two occasions the claimant is not at home when the health care professional calls. The decision maker suspends benefit from the date of the second visit because the claimant has not shown good cause for failing to be medically examined.

 4858 – 4859

Termination where claimant fails to have a medical examination

4860 Where

1. a claimant has failed, without good cause, to attend for medical examination on at least two consecutive occasions when requested to do so **and**
2. as a result benefit has been suspended **and**
3. following the suspension, continues to fail to have a medical examination or provide an explanation as to why he will not submit to such an examination

 the decision maker can terminate the benefit in question1.

1 SS (NI) Order 98, art 24(d); SS & CS (D&A) Regs (NI), reg 19

4861 At least one month must have elapsed since the date of suspension. Benefit is terminated from a date not earlier than the date on which benefit was suspended1.

1 SS (NI) Order 98, art 24(d); SS & CS (D&A) Regs (NI), reg 19

 4862 – 4999