

Department for Work and Pensions

ADJUDICATION AND CONSTITUTIONAL ISSUES DIVISION

Suspension and Termination Guide Amendment 08 package April 2010

- To:** All benefit processing staff
- Subject:** Suspension and Termination Guide
- Action:** When you receive this guide note areas of revised guidance that are to be followed immediately.
- Content:** The Suspension and Termination guide, now the responsibility of Decision making and Appeals (DMA Leeds), who maintain the DMG, has been brought up to date to reflect current legislation.

This amendment package replaces **all** material within the guide.

If you require further copies of the Suspension and Termination guide or wish to amend your current quota, please contact Corporate Document Services on 0113 399 4040.

Remove the sheets in the left hand column and insert new sheets in the right hand column. When the revised sheets have been inserted, note the record of amendments at the back of the guide.

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About this guide

About this guide

- 1 The main contents list at the front of this guide:
 - lists the main headings within every section of this guide **and**
 - is a quick reference to the structure of the guide and its subject.
- 2 This guide is divided into four sections. Each section has its own comprehensive contents. Each section contents gives a detailed list of that section's subject headings.

3 - 49

What this guide includes

- 50 This guide includes instructions to staff:
 - involved in suspending and terminating a customer's payment of benefit
 - who have to stay a decision on a customer's claim to benefit.
- 51 This guidance applies to all benefits except Incapacity for Work decisions.

See the Income Support Guide for details about suspending and terminating IS payments.

52 - 99

What this guide does not include

- 100 This guide does not include:
 - details of the action to take on computer systems to suspend, terminate entitlement to benefit or stay a decision. This action can be found in the relevant guidance for individual benefits
 - details of the issues that will lead to a case being stayed. This information can be found in the relevant guidance for individual benefits
 - instructions for IS cases.

101 - 999

ABBREVIATIONS

Abbreviations

A

AA	Attendance Allowance
ACI	Law Governance and Special Policy Group, Adjudication & Constitutional Issues Division
ADI	Adult Dependency Increase
AS(TAS)	Appeals Service
AT	Appeal Tribunal

C

CAP	Code of Appeals Procedure
CIS	Customer Information System
CS	Child Support
CTB	Council Tax Benefit

D

D&A Regs	Social Security and Child Support (Decisions and Appeals) Regulations 1999
DCI	Departmental Central Index
DLA	Disability Living Allowance
DM	Decision Maker
DMG	Decision Maker's Guide

G

GAP	Guidance and Procedures
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Abbreviations

H

HB Housing Benefit

I

IIDB Industrial Injuries Disablement Benefit

IBLT Incapacity Benefit Long Term

IOP Instrument of Payment

IS Income Support

J

JSA Jobseeker's Allowance

JSA(IB) Jobseeker's Allowance (Income-Based)

JSAPS Jobseeker's Allowance Payment System

L

LA Local Authority

LGSPG Law Governance and Special Policy Group

P

POD Pensions and Overseas Directorate

S

SS Social Security

STB Short-term benefit

Introduction

General

1000 The Secretary of State has the discretion to suspend payment, wholly, or in part, terminate entitlement to benefit or stay a decision to award benefit. The powers to do this are exercised by DMs acting on behalf of the Secretary of State and are set out in sections 21, 22, 23, 24 and 25 of the Social Security Act 1998. The legislation governing the use of these powers is in the D&A Regs.

1001 Having discretion means that officers performing these duties must consider:

- each case on its own merits before suspending payments, terminating entitlement to benefit or staying a decision **and**
- whether hardship will occur if these powers are used.

1002 - 1049

Responsibilities when suspending payments, terminating entitlement to benefit or staying a decision

1050 The officer suspending payments of, or terminating entitlement to benefit or staying a decision must:

- consider each case carefully on its merits, taking into account all factors that might make the decision unacceptable
- consider whether it is appropriate to suspend payments or stay a decision in full, in part or not at all
- give the customer the opportunity to give any reasons they may have for not suspending, terminating or staying a decision
- be able to show they acted reasonably whenever they exercise their discretion **and**

1051-1099

- record the decision, advise the customer of it in writing and keep a copy of the letter with the customer's papers.

1051 If the correspondence you have sent to the customer is returned, i.e. the customer no longer lives at that address, you must take steps to ensure that you have tried to trace the customer, i.e.:

- check CIS to see if there is a new address
- telephone the customer
- arrange a visit to the last known address.

1052 If suspending payment will result in hardship, a decision to suspend should not be made. If an existing suspension is causing hardship, the payment of benefit must be re-instated immediately. If staying a decision would result in hardship the DM should make the decision and pay benefit.

Note: Interim payments cannot be made to prevent hardship in these circumstances.

1053 - 1099

Appeals to the Commissioner and higher courts

2350 Where an award of benefit is made by an AT, a Commissioner or a higher court, payment of benefit may be suspended when **an appeal is pending**.

CAP

2351 In the case of a tribunal decision, the law says an appeal is pending when the Secretary of State:

- is considering whether to apply for a statement of reasons for the tribunal decision **or**
- has applied for a statement of reasons and is waiting to receive it **or**
- has received the statement of reasons and is considering whether to apply for leave to appeal to the Commissioners.

2352 Also, in the case of a decision by an AT, a Commissioner or a court, the law states an appeal is pending when the Secretary of State:

- is waiting to receive the decision **or**
- has received the decision and is considering whether to apply for leave to appeal against it **or**
- has applied for leave to appeal but that application has not yet been decided **or**
- has been granted leave to appeal and is considering whether to proceed to make an appeal **or**
- has made an appeal but that appeal has not yet been decided

2353 In all cases in which an appeal is being considered it is important to bear in mind the time limits for appealing. In the case of an appeal to a SS Commissioner the time limit is one month from the date a written statement of the reasons for the tribunal's decision is issued. In the case of an appeal to the higher courts, i.e. Court of Appeal, Court of Session (in Scotland) or The Supreme Court, the time limit is three months from the date judgement is given by the Commissioner or court.

2354-2451

2354 Where payment of benefit has been suspended, pending an appeal to the Courts or where DMA Leeds are considering taking such action, the decision to suspend payment should be kept under review. This is best done by the unit best informed about the claimant's circumstances. Ordinarily this will be the local office or central unit handling the claim or award since they are likely to be the ones to whom the claimant would report any change of circumstance, e.g. the emergence of hardship.

2355 - 2449

Notifying the customer of a suspension

Appeal cases

2450 If it is decided to refer a case to DMA (Leeds) to consider whether an appeal should be made, the customer should be kept informed at all stages.

2451 The law says that the customer must be notified in **each** of the following circumstances:

- after the decision of the tribunal is received and **before** you apply for the written statement of reasons
- where the Secretary of State proposes to apply to the tribunal chairman for leave to appeal to the Commissioner
- if leave to appeal is refused by the tribunal chairman and the Secretary of State proposes to apply direct to a Commissioner for leave to appeal against the tribunal's decision
- where leave to appeal has been granted by the tribunal Chairman and the Secretary of State proposes to make an appeal
- where the Secretary of State proposes to apply for leave to appeal/appeal to the Court of Appeal, Court of Session or the the Supreme Court.

Note: In some cases as many as three separate letters will have to be issued.

Appendix 2

DL/SUSTERM 9

Letter to tell the customer that a decision on their benefit has been stayed

Dear (Title) (Surname)

About your claim for (a)

I am writing to tell you that we cannot pay (b) (a). This is because there is a case like yours that has an appeal to the (c). We will make a decision on (d) when we know the result of that appeal.

(e) We will pay you £(f) from (g) because this is not affected by the case with the (c).

You cannot appeal against this decision. However, if the decision will cause you hardship, or if your circumstances change, please let us know.

If you want more information, please get in touch with us. Our address and phone number are at the top of this letter.

Yours sincerely

(insert initials and surname of sender)

Notes for completion

- (a) insert name of benefit
- (b) use correct option
 - (b.1) some of your
 - (b.2) you
- (c) use correct option
 - (c.1) Social Security Commissioner
 - (c.2) Court of Appeal
 - (c.3) Court of Session
 - (c.4) The Supreme Court
- (d) use correct option
 - (d.1) your claim
 - (d.2) your application for a reconsideration of the decision on your claim
 - (d.3) your application for a reconsideration of your award
- (e) insert this paragraph if a part payment of benefit is payable
- (f) insert amount of benefit payable
- (g) insert the date benefit payable from