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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 the PDCS 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

Who can suspend payment, terminate entitlement or stay a decision

1100 Only suitably trained and experienced officers can:

- suspend payments
- terminate entitlement to benefit **or**
- stay a decision.

See DMG Chapter 01 for information on the different roles of the Secretary of State

1101 Officers carrying out these duties must be able to:

- use the discretionary powers in an objective and unbiased way
- appreciate the effect their decision may have on customers **and**
- give a reasoned account of the factors that were considered when making a decision.

1102 Evidence will be needed if the decision is challenged by judicial review.

1103 When possible, the officer making the suspension or termination should be a different person from the officer who determined the award.

1104 The decision to suspend payment is open to possible challenge by judicial review if, among other things, it is taken by the same officer who awarded benefit. Ensuring a different officer makes the decision on suspending payment avoids a possible conflict of interest.

See Judicial review in this part

1105 There may be exceptional circumstances when an officer suspends a payment or terminates entitlement without realising that they themselves made the award. However, business units should try to ensure this does not happen.

1106-1149

- 1106 Before suspending payments or terminating entitlement, officers are advised to check available information on their computer system to identify the officer who made the award of benefit, e.g. on JSAPS, use dialogue JA570: Enquiry/Notification to identify the staff number of the awarding officer.
- 1107 For the same reason, if an officer has had previous involvement with the claim, e.g. appeals officers, fraud officers or presenting officers who have dealt with the customer's appeal, they should not usually be involved when considering a suspension or termination.
- 1108 Unit Managers must consider these factors carefully when deciding which officers should carry out these duties.

1109 -1149

When to consider suspending payment

- 1150 Consider suspending payment if questions arise about whether:
- the conditions of entitlement to benefit are or were fulfilled
 - an award should be revised or superseded
 - any amount paid or payable by way of, or in connection with a claim is recoverable
 - the last address you were notified of, is not the address where the customer is residing
 - the customer is required to be medically examined and fails to attend a medical, on at least two consecutive occasions, without good cause

Note: This does not apply to incapacity for work cases.

See IIDB and STB guides

- an appeal is pending against a decision of an AT, Commissioner or Higher Court
- an appeal is pending in a different case, i.e. the lead case. The result of that appeal may affect the case you are considering, i.e. the lookalike case.

- 1151 The customer has no right of appeal against the decision to suspend payments. However, the customer can ask for the decision to be changed at any time. Ultimately, the customer can challenge the decision through the courts by way of judicial review.

See Judicial review in this part

1152 - 1199

When entitlement to benefit must be terminated

1200 Entitlement to benefit must be terminated when:

- benefit has been suspended in prescribed circumstances and it has not been possible to resolve the problem
- a customer has failed to provide relevant information within one calendar month **and**
- the whole amount of benefit payable has been suspended **or**

Note: Where you have difficulty in contacting the customer, i.e. they are no longer at the address known to the Department, consider extending this period,

- payment of benefit has been suspended because the customer failed to attend a medical on at least two consecutive occasions, without good cause, and following the suspension, the customer continues to fail to have a medical

Note: This does not apply to incapacity for work cases.

See IIDB and STB guides

1201 The customer has a right of appeal against a decision to terminate their award of benefit.

1202 - 1249

When to consider staying a decision relating to entitlement

- 1250 Consider staying a decision relating to an award of benefit when:
- a decision is outstanding about whether an award of benefit should be made, revised or superseded **and**
 - an appeal is pending in another case and the outcome of that case may have an effect on the case that is currently being considered.

1251 - 1299

Judicial review

- 1300 To avoid the possibility of a judicial review, when you are suspending payment or staying a decision relating to an award of benefit you **must**:
- follow the legislation in the D&A Regs **and**
 - apply the procedures in this guide.
- 1301 If a decision to suspend payments or stay a decision relating to an award is challenged in the courts, the Secretary of State **must** defend the decision. The procedure by which these challenges are usually made is called a judicial review.
- 1302 A judicial review is usually brought on one or more of the following grounds:
- **the decision was illegal.** The DM has a duty to:
 - act legally
 - act within the purposes of the Act (or provision of the regulations)
 - use their discretion in a manner consistent with the law
 - **the decision was unreasonable.** The DM has a duty to:
 - act reasonably

1303-1349

- use their discretion so that any reasonable person could have reached the same decision
- **the decision was improperly made.** The DM has a duty to:
 - act fairly, following proper procedures
 - be satisfied that the person affected by the decision has been given a fair chance to put their case forward about the matters being decided.
- **the decision was delayed.** The DM has a duty to:
 - act promptly
 - ensure a decision on a claim to benefit is given as soon as all relevant information and evidence is available.

1303 Take these factors into account when considering suspending payments or staying a decision relating to an award of benefit.

1304 - 1349

Hardship

- 1350 Hardship must be considered when making a decision in connection with suspending payment or “staying”, and each case must be considered on its own merits.

Example 1

A customer receiving a British SS benefit with another income who lives abroad may be less at risk of hardship in their particular location than a customer who is living in the United Kingdom.

Example 2

A customer living in the home of relatives may not suffer hardship if you suspend all their benefit payments, whereas the situation of a homeowner with mortgages or secured loans to pay may need more careful consideration.

- 1351 In all cases, the final determining factor about whether hardship will or will not occur, must be the particular circumstances of the individual customer.
- 1352 Keep in mind the general principles outlined in this guide and benefit specific guidance when considering hardship.

1353 - 1399

Notifying the customer of a decision to suspend payment, terminate entitlement or stay a decision

- 1400 Notifications must be sent to customers to inform them of decisions to:
- suspend payment
 - terminate entitlement to benefit **or**

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1401-1999

- stay a decision

if you have been unable to contact the customer, the notification must be sent to the last known address.

1401 Use the draft letters at Appendix 2 for this purpose.

1402 Keep a copy of all letters that you send and file them with the customer's records.

1403 - 1999