

Chapter 59 - Transitional arrangements on the introduction of Disability Living Allowance

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Statutes commonly referred to in Chapter 59

Full Title	Abbreviation
Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977	SS (Misc Prov) (NI) Order 77
Social Security (Northern Ireland) Act 1975	SS (NI) Act 75
Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991	DLA and DWA (NI) Order 91
Social Security Administration (Northern Ireland) Act 1992	SS A (NI) Act 92
Social Security Contributions and Benefits (Northern Ireland) Act 1992	SS C&B (NI) Act 92
Social Security (Northern Ireland) Order 1998	SS (NI) Order 98

Statutory Rules commonly referred to in Chapter 59

Short description	Full title	Abbreviation
Claims and Payments Regulations	The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 No 465	SS (C & P) Regs (NI)
Commissioners Procedure Regulations	The Social Security Commissioners Procedure Regulations (Northern Ireland) 1987 No 112	SS Commissioners Procedure Regs (NI)
Adjudication Regulations	The Social Security (Adjudication) Regulations (Northern Ireland) 1987 No 82	SS (Adj) Regs (NI)
Introduction of Disability Living Allowance Regulations	The Social Security (Introduction of Disability Living Allowance) Regulations (Northern Ireland) 1992 No 38	SS (Introduction of DLA) Regs (NI)
Decisions and Appeals Regulations	The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999	SS & CS (D&A) Regs (NI)

Chapter 59 - Transitional arrangements on the introduction of Disability Living Allowance

Introduction

- 59001 AA is a non contributory benefit designed to help severely disabled people aged 65 or over who need attention or supervision or watching over from another person.
- 59002 Severely disabled people whose care needs begin after they reach age 65 can claim AA.
- 59003 DLA was introduced from "A" day, 06.04.92, replacing Mob A completely, and AA for those whose care needs normally start before the age of 65.
- 59004 This Chapter gives guidance on the changeover from AA and Mob A to DLA. The majority, if not all, of transitional cases should have been adjudicated on and fully converted to DLA before the introduction of the new decision making provisions on 18.10.99. In the unlikely event that a decision has to be given on a transitional case on or after 18.10.99 read 'decision maker' for AO (adjudication officer).
- 59005 In this Chapter references to the care component mean the care component of DLA while references to the mobility component mean references to the mobility component of DLA.
- 59006 - 59010

Attendance Allowance

Existing award in payment

59011 A person under 65 on "A" day 06.04.92 who had an award of AA which spanned "A" day will

1. have had that award terminated immediately before "A" day¹ **and**
2. be treated as having been awarded the care component from "A" day. But see 59014 or 59015².

This award will end on the same date as the award of AA would have ended.

1 SS (Introduction of DLA) Regs (NI), reg 2(1)(a); 2 reg 3(1)

59012

Award starts after "A" day

59013 An award of AA to a person under age 65 on "A" day which started on or after "A" day is cancelled¹. The person is treated as having been awarded the care component from the latest of

1. "A" day² **or**
2. 3 months before the cancelled AA award would have started³ **or**
3. the day after any award of care component made under 59011 ends⁴.

The award of care component will end at the same date as an award of AA would have ended provided the person satisfies 59014 or 59015⁵.

1 SS (Introduction of DLA) Regs (NI), reg 2(1)(b); 2 reg 3(2)(a); 3 reg 3(2)(b); 4 reg 3(2)(c); 5 reg 3(2)

Rates of care component

Highest rate

59014 People to whom 59011 or 59013 applies will receive the highest rate of care component if they

1. had been, or were to have been, awarded the higher rate of AA **and**
2. continue to satisfy the residence and presence conditions at Chapter 07¹ **and**
3. are so severely disabled either physically or mentally that
 - 3.1 at night they
 - 3.1.a continue to require prolonged or repeated attention from another person in connection with their bodily functions **or**
 - 3.1.b continue to require another person to be awake for a prolonged period or at frequent intervals to watch over them to avoid substantial danger to themselves or others **and**
 - 3.2 throughout the day they
 - 3.2.a continue to require frequent attention from another person in connection with their bodily functions **or**
 - 3.2.b continue to need continual supervision throughout the day in order to avoid substantial danger to themselves or others².

¹ SS (Introduction of DLA) Regs (NI), reg 3(4)(a)(c); SS C&B (NI) Act 92, sec 71;

² SS (Introduction of DLA) Regs (NI), reg 3(8)(a) & (9)

Middle rate

59015 A person to whom 59011 or 59013 applies will receive the middle rate of care component if they

1. had been awarded or were to have been awarded the lower rate of AA **and**
2. continue to satisfy the residence and presence conditions at Chapter 07 **and**
3. are so severely disabled either physically or mentally that
 - 3.1 at night they
 - 3.1.a continue to require prolonged or repeated attention from another person in connection with their bodily functions **or**

3.1.b continue to require another person to be awake for a prolonged period or at frequent intervals to watch over them to avoid substantial danger to themselves or others **and**

3.2 throughout the day they

3.2.a continue to require frequent attention from another person in connection with their bodily functions **or**

3.2.b continue to need continual supervision from another person in order to avoid substantial danger to themselves or others¹.

¹ SS (Introduction of DLA) Regs (NI), reg 3(8)(b)

59016 The DLA care conditions in 59014 and 59015 do not apply to people whose entitlement to AA began before the law changed in 1988. In those cases the conditions in 59014 **3.1.b** and 59015 **3.1.b** are modified as follows -

continue to need continual supervision in order to avoid substantial danger to themselves or others¹

The modifications do not apply to review cases, when the normal care conditions at 61051 et seq apply².

¹ SS (Introduction of DLA) Regs (NI), reg 3(9); ² reg 3(10)

Entitled but Attendance Allowance not payable

59017 If, immediately before "A" day a person was entitled to AA, but benefit was not payable¹ because

1. they lived in certain other accommodation²
2. they were undergoing medical treatment as an in patient in a hospital or similar institution³
3. they were detained in legal custody⁴ **or**
4. the overlapping benefit provisions applied⁵

the care component will not be payable from "A" day. AA will not be payable for as long as any of these conditions apply even though they may be entitled to it.

¹ SS (Introduction of DLA) Regs (NI), reg 3(5) & (6); ² SS C&B (NI) Act 92, sec 67(2);

³ SS A (NI) Act 92, sec 71(1)(b); ⁴ SS C&B (NI) Act 92, sec 113(1); ⁵ SS A (NI) Act 92, sec 71(1)(a)

59018 If any of the conditions of AA in 59017 no longer apply, the care component will be payable

1. at the highest rate where the higher rate of AA had been payable **or**
2. at the middle rate where the lower rate of AA had been payable¹.

¹ SS (Introduction of DLA) Regs (NI), reg 3(5)(a) & (b)

Claims on behalf of children

59019 Any "treated as made" award of the care component

1. made for a terminated or cancelled award of AA **and**
2. which was awarded to a person for a child under 16

is treated as having been awarded to the child¹ (see also 59146).

¹ SS (Introduction of DLA) Regs (NI), reg 3(3)

59020 To decide the rate of DLA, the child is treated as the person to whom AA was awarded immediately before it was cancelled or terminated¹.

¹ SS (Introduction of DLA) Regs (NI), reg 3(3)

Claims for, or applications for review of Attendance Allowance made before "A" day

59021 Any renewal or review of AA will be decided under pre "A" day rules¹ where a person under 65 on "A" day

1. has an award of AA which expires after 05.04.92 and makes a renewal claim to start immediately after its expiry **or**
2. applies for review of an AO's or AA Board's decision
 - 2.1 to award benefit at a particular rate **or**
 - 2.2 not to award benefit **or**
 - 2.3 that the conditions for entitlement are not satisfied.

¹ SS (Introduction of DLA) Regs (NI), reg 4(1), (2) & (3); SS (NI) Act 75, sec 35(1)

59022 Any resulting award of AA will then be terminated or cancelled and DLA treated as having been awarded (59011-59013¹).

1 SS (Introduction of DLA) Regs (NI), reg 4(4)

59023

Claim for care component treated as having been made

59024 A claim for care component only will be treated as having been made on 03.02.92 if

1. a claim for or a request for a review of AA is
 - 1.1 made after 02.02.92 **or**
 - 1.2 made before 03.02.92 but has not been determined by that date **and**
2. the AO is satisfied the conditions for AA are not satisfied **and**
3. solely on the evidence the person would from "A" day or later satisfy the conditions for the lowest (but not the middle or highest) rate of the care component **and**
 - 3.1 there is no existing award of AA **or**
 - 3.2 any existing award of AA expires before "A" day **and**
4. no claim for DLA has been made at the time the claim for or review of AA is determined¹.

Such a claim will be determined by an AO.

1 SS (Introduction of DLA) Regs (NI), reg 5(1) & (2)

59025 A claim for the care component only will also be treated as having been made on 03.02.92 and referred to an AO if a person has applied for review to the AA Board before 03.02.92, and is still awaiting a decision on that date, provided that

1. the Department is notified that the question has been decided against the person **and**
2. at the date of notification there is no claim for DLA **and**
3. the Department is satisfied solely on the evidence that the person satisfies the conditions for the lowest (but not the middle or highest) rate of the care component¹.

1 SS (Introduction of DLA) Regs (NI), reg 5(3)

59026 - 59030

Termination of awards of Attendance Allowance - persons aged between 65 and 66

59031 If a person

1. who is aged 65 but under 66 on "A" day **and**
2. who is entitled to AA **and**
3. claims and is awarded mobility component¹

their award of AA will terminate on the day immediately before the award of mobility component starts². Any further award of AA due to start after the terminated award would have ended is cancelled³.

1 SS C&B (NI) Act 92, sec 75; 2 SS (Introduction of DLA) Regs (NI), reg 6(1) & (2); 3 reg 6(3)

59032 The person will be treated as having been awarded the care component¹ from the day after the terminated award of AA ends **until**

1. the day when the terminated award of AA would have ended² **or**
2. the day any subsequently cancelled award of AA would have ended³.

1 SS (Introduction of DLA) Regs (NI), reg 6(4); 2 reg 6(5)(a); 3 reg 6(5)(b)

59033 Subject to 59014-59017 the person will be awarded

1. the highest rate care component if the award terminated or cancelled was the higher rate AA **or**
2. the middle rate care component if that award had been the lower rate of AA.

Note Any reference to "A" day in 59014-59017 means the date the award of care component made under the above provisions starts¹.

1 SS (Introduction of DLA) Regs (NI), reg 6(6)

59034 - 59040

Mobility Allowance

Existing award in payment

59041 Any award of Mob A which spans “A” day automatically terminates immediately before “A” day¹. Provided the criteria in 59044 are satisfied, a person with a Mob A award is treated as having been awarded the mobility component from “A” day²

1. until the date the award of Mob A would have ended³ **or**
2. for life, if the award of Mob A would have ended on the day before the 80th birthday⁴.

1 SS (Introduction of DLA) Regs (NI), reg 7(1); 2 reg 8(1); 3 reg 8(1)(a); 4 reg 8(1)(b)

Award starts after “A” day

59042 Any award of Mob A which starts on or after “A” day is automatically cancelled¹. Provided the conditions in 59044 are satisfied a person is treated as having been awarded the mobility component²

1. starting and ending on the same dates as the cancelled award of Mob A³ **or**
2. for life where the award of Mob A ended on the day before the 80th birthday.

The award as in **2.** starts on the same date as the cancelled Mob A award would have started⁴.

1 SS (Introduction of DLA) Regs (NI), reg 7(2); 2 reg 8(2); 3 reg 8(2)(a); 4 reg 8(2)(b)

Rate of mobility component

59043 The weekly rate of DLA will be the higher of the 2 rates of the mobility component¹.

1 SS (Introduction of DLA) Regs (NI), reg 8(3); SS C&B (NI) Act 92, sec 73(10)

59044 People to whom an award of DLA is treated as having been made under 59041 or 59042 will be entitled to the award provided that they

1. continue to satisfy the residence and presence conditions¹ **and**

2. satisfy or are treated as satisfying² one of the following conditions
 - 2.1 they are unable or virtually unable to walk because of a physical disability³
or
 - 2.2 they are both deaf and blind and satisfy the conditions in 61387-61392⁴ **or**
 - 2.3 they are severely mentally impaired and display severe behavioural problems, and they also satisfy the conditions for the highest rate care component⁵ **or**
 - 2.4 they are an IVS beneficiary and the appropriate certificate has been issued⁶.

*SS (Introduction of DLA) Regs (NI), reg 8(4)(a); SS C&B (NI) Act 92, sec 71(6);
2 SS (Misc Prov) (NI) Order 77, art 10(1); 3 SS C&B (NI) Act 92, sec 73(1)(a); 4 sec 73(2); 5 sec 73(3);
6 SS (Introduction of DLA) Regs (NI), reg 8(4)(b); SS (C&B) (NI) Act 92, sec 74(1)*

Claims for, or applications for review of Mob A made before “A” day

59045 Where a person who is under the age of 65 on “A” day

1. has an award of Mob A which expires after 05.04.92 and makes a renewal claim to start immediately after the Mob A award expires **or**
2. applies for a review of the decision to award, or not to award benefit

any renewal or subsequent award of Mob A will be decided under pre "A" day rules subject to 59048¹.

1 SS (Introduction of DLA) Regs (NI), reg 9(1) (2) & (3); SS (NI) Act 75, sec 37A

59046 Any resulting award of Mob A will be terminated or cancelled and DLA treated as having been awarded (59041-59042¹).

1 SS (Introduction of DLA) Regs (NI), reg 9(4)

59047

59048 When determining a person's entitlement to Mob A for any period after 05.04.92 under 59045, the Mob A provisions are modified as follows¹

1. apply the residence and presence conditions for DLA (Chapter 07²) **and**

2. the period a person's inability or virtual inability to walk is likely to persist will be **9 months** rather than 12 months³.

1 SS (Introduction of DLA) Regs (NI), reg 9(5); 2 reg 9(5)(a); 3 reg 9(5)(b)

Claim for mobility component treated as having been made

59049 A claim for mobility component only will be treated as having been made on 03.02.92 if

1. a claim or application for review of Mob A is made
 - 1.1 after 02.02.92 **or**
 - 1.2 before 03.02.92 but has not been determined by that date **and**
2. the AO is satisfied the conditions for Mob A are not satisfied **and**
3. solely on the evidence, the person would satisfy the conditions for mobility component from "A" day or later for
 - 3.1 the lower, but not the higher, rate **or**
 - 3.2 the higher rate because they are severely mentally impaired and display severe behavioural problems, and they also satisfy the conditions for the highest rate care component **and**
 - 3.2.a there is no existing award of Mob A **or**
 - 3.2.b any existing award of Mob A expires before "A" day **and**
4. no claim for DLA has been made at the time the Mob A claim or review is determined¹.

These claims will be determined by an AO.

1 SS (Introduction of DLA) Regs (NI), reg 10(1) & (2)

59050 Where a Med Board or MAT have determined a question on a Mob A claim that is unfavourable to the claimant but on the evidence before them the claimant may satisfy the conditions of entitlement for the mobility component from "A" day or later

1. **at the higher rate** because the claimant is severely mentally impaired and displays severe behavioural problems, and also satisfies the conditions for the highest rate of the care component¹ **or**

2. **at the lower rate** because although the claimant is able to walk they are so severely disabled mentally or physically that, disregarding any familiar routes, they need guidance and supervision from another person most of the time when walking out of doors²

a claim for mobility component will be treated as having been made on 03.02.92, and passed to an AO to decide.

¹ SS C&B (NI) Act 92, sec 73(1)(c); ² sec 73(1)(d); SS (Introduction of DLA) Regs (NI), reg 10(3) & (4)

Transitional awards

Separate awards of attendance allowance and mobility allowance

59051 Awards of DLA treated as made following the cancellation or termination of awards of AA and Mob A are treated as separate awards of DLA¹ (59061).

1 SS (Introduction of DLA) Regs (NI), reg 11(1)

59052 Where a person is treated as having an award of either of the DLA components from "A" day to replace the previous award of AA or Mob A **and**

1. makes or is treated as making a claim for the other component **and**
2. an award of the other component is made from or after "A" day but before 05.04.93

the award will be in addition to the existing award¹.

1 SS (Introduction of DLA) Regs (NI), reg 11(2)

Backdating of awards - reviews and claims

59053 The backdating provisions apply to claims and reviews. In the case of reviews

1. the application for review is treated as "the claim" **and**
2. "the decision" is the one given on that review¹.

These provisions exist for the specific circumstances in 59054-59056.

1 SS (Introduction of DLA) Regs (NI), reg 12(6)

Backdating awards of disability living allowance

59054 If a person claimed, or is treated as having claimed, AA or Mob A before "A" day and

1. the decision is the first decision given on that claim after 02.02.92¹ **and**
2. the decision is that the person is not entitled to the benefit claimed² **and**
3. that person goes on to claim DLA within 3 months of the date that decision was notified

the determining authority may decide that any subsequent award of DLA can start when the person satisfied the appropriate conditions as long as this is on or after "A" day³.

1 SS (Introduction of DLA) Regs (NI), reg 12(1)(b) & 12(5); 2 reg 12(1)(c); 3 reg 12(2)

59055

Backdating of awards - people aged between 65 and 66

59056 People aged between 65 and 66 on "A" day may be entitled to DLA. They must claim within 3 months of being notified of a decision on a claim that they are not entitled to AA or Mob A provided that¹

1. they claimed, or are treated as having claimed AA or Mob A before "A" day² **and**
2. the decision on that claim is the **first** decision given by an adjudicating authority after 02.02.92³ **and**
3. they satisfy the appropriate conditions of entitlement for DLA.

Any subsequent award of DLA will start on "A" day, or if later, the date they first satisfied the appropriate conditions of entitlement⁴.

1 SS (Introduction of DLA) Regs (NI), reg 12(3); 2 reg 12(5); 3 reg 12(5); 4 reg 12(4)

59057 - 59060

Treatment of two awards of disability living allowance

59061 Where a person has two awards of DLA, both of which

1. start before 27.12.93 **and**
2. end after 26.12.93 **and**
3. are not for different fixed periods **ending on different days**¹

both awards will terminate immediately before 27.12.93².

1 SS (Introduction of DLA) Regs (NI), reg 13(1); 2 reg 13(1A)

59062 Separate awards as in 59061 will be treated as one award from 27.12.93¹ provided that the person satisfies

1. the residence and presence conditions² **and**
2. the appropriate conditions of entitlement³.

1 SS (Introduction of DLA) Regs (NI), reg 13(2); 2 SS C&B (NI) Act 92, sec 71(6); 3 sec 71-73, 75 & 76;

SS (Introduction of DLA) Regs (NI), reg 13(4)

Both awards for life

59063 Both awards become a single award payable for life at the total of the weekly rates of the two components¹.

1 SS (Introduction of DLA) Regs (NI), reg 13(2)(a) & (3)

One award for life, the other for a fixed period

59064 Where a person has two awards of DLA, both awards become a single award consisting of two components

1. one component for life equivalent to the component which was for life under the terminated award **and**
2. one component for a fixed period.

59065 The award is payable at the total weekly rate of the two components from 27.12.93 until the day the fixed period award ends. From then on, it is payable at the weekly rate of the life award¹.

1 SS (Introduction of DLA) Regs (NI), reg 13(2)(b) & (3)

Both awards for different fixed periods

59066 After 26.12.93 a person who has two separate awards of DLA for different fixed periods **ending on different days** will have both awards terminated from the date the award which expires first (the shorter award) ends if on renewal or review

1. that component is re-awarded **and**
2. the award is

2.1 for life **or**

2.2 for a fixed period ending **on the same day** as the award for the longer period¹.

If the AO re-awards the “shorter” award for a further fixed period which still ends before the “longer” award, the two awards will remain separate. See 59069 if the shorter award is re-awarded for a period which ends after the longer award.

1 SS (Introduction of DLA) Regs (NI), reg 13(2A)

59067 Where two awards are terminated as in 59066, they become one award of DLA. This single award consists of both components payable at the following rates

1. where the shorter period is re-awarded for life, at the total weekly rate of both components until the fixed period award ends, and thereafter at the weekly rate of the life award **or**
2. where the shorter period is re-awarded for a fixed period ending **on the same day** as the longer award, at the total weekly rate of both components until the award ends¹.

1 SS (Introduction of DLA) Regs (NI), reg 13(2B)

Review or renewal where different fixed periods

59068 On review or renewal the longer award may not be extended for a **fixed period unless** the shorter award is

1. removed **or**
2. extended for life **or**
3. awarded to expire on the same date as the new longer award¹.

1 SS (Introduction of DLA) Regs (NI), reg 13(2C)

59069 The longer award can be

1. removed **or**
2. extended for life **or**
3. awarded for a different rate **or**
4. shortened.

59070 The shorter award cannot be awarded for a period which ends after the longer award ends, unless

1. the longer award can also be renewed or reviewed to end on the same date **or**
2. one of the awards is for life¹.

1 SS (Introduction of DLA) Regs (NI), reg 13(2C)

59071 Where a person has two awards for fixed periods **ending on the same date** or where one is for life, they will

1. both terminate immediately after they would have started **and**
2. become one award of DLA consisting of both components.

59072 Where both components have been awarded for the same fixed period the award will

1. be payable at the weekly rate of the two components **and**
2. end when the fixed period ends.

59073 Where one component has been awarded for life and the other for a fixed period, the award will be payable at the total weekly rate of both components until the fixed period award ends. It is then payable at the weekly rate of the life award¹.

1 SS (Introduction of DLA) Regs (NI), reg 13(2D) & (2E)

59074

59075 Both awards become a single award consisting of both components. The award is payable at the total weekly rate of the two components. The award ends on the same day as the terminated awards would have ended¹.

1 SS (Introduction of DLA) Regs (NI), reg 13(2)(d) & (3)

Reviews

59076 If claimants are treated as having been awarded DLA, the decision on their original claim counts as a decision on that award. Subject to the conditions of 59077, the award of DLA can be reviewed as follows¹

1. review on any grounds if the application for review is made within the prescribed period of 3 months² **or**
2. application for review made outside the prescribed period - review only where certain conditions are satisfied³ **or**
3. special rules cases (terminally ill) decisions may be reviewed after the prescribed period if there is a change in the person's medical condition or prognosis⁴ **or**
4. any decision of DAT, SSAT or Commissioners may be reviewed at any time if certain conditions are satisfied⁵.

1 SS (Introduction of DLA) Regs (NI), reg 14(1); 2 SS A (NI) Act 92, sec 28(1); 3 sec 28(2);

4 sec 28(4); 5 sec 33(1) & (2)

59077 The original decision counts as a decision for the award of DLA if

1. it was a decision awarding AA or Mob A which was terminated or cancelled and replaced by the current award of DLA¹ **or**
2. the current award of DLA itself replaced an award of DLA subsequently terminated because two awards - which replaced the AA or Mob A award - were in payment² **or**
3. it was a decision awarding DLA which was terminated because two awards were in payment and replaced by the current award of DLA³ **or**
4. the decision to award AA (see 1.) was based on a decision of the AA Board⁴ **or**
5. the decision to award Mob A (see 1.) was based on a medical question decided by a Med Board or MAT⁵.

1 SS (Introduction of DLA) Regs (NI), reg 14(2)(a); 2 reg 14(2)(a); 3 reg 14(2)(b);

4 reg 14(3)(a); 5 reg 14(3)(b)

59078 The expressions used in 59077 **5.** have the following meanings

1. **Med Board** - 2 or more adjudicating medical practitioners appointed by the Department to act jointly in consideration of a medical question¹.
2. **Medical question** - the following questions on a claim for or award of Mob A
 - 2.1 whether claimants have a physical disablement so that they are unable or virtually unable to walk
 - 2.2 whether such inability or virtual inability to walk is likely to persist for 12 months (amended to 9 months - see 59048 **2.**)
 - 2.3 for what period the inability or virtual inability to walk will last
 - 2.4 whether those claimants can benefit from enhanced facilities for locomotion
 - 2.5 whether claimants who are over 65 but under 66 satisfied the conditions of entitlement at **2.1**, **2.2** and **2.4** on the day before they reached age 65².

¹ SS (Introduction of DLA) Regs (NI), reg 14(4); ² reg 14(4); SS (Adj) Regs (NI) 87, reg 53

59079 - 59080

Claims, payments and adjudication

Second tier adjudication

59081 For the purposes of **this part**, “second tier adjudication” means adjudication by an AO. A person will have the right of appeal against any such decision¹ to

1. a DAT where one or more questions to be decided on appeal is a disability question²
2. a SSAT in any other case³.

It does not matter if the decision is not given on review.

1 SS A (NI) Act 92, sec 28(1); 2 sec 31(1); 3 SS (Introduction of DLA) Regs (NI), reg 15

Claims for a single component of DLA

59082 If a person

1. has an award of either AA or Mob A commencing before “A” day **and**
2. that award is terminated and treated as an award of the appropriate component of DLA from “A” day

they can make a claim for the other component of DLA¹.

1 SS (Introduction of DLA) Regs (NI), reg 16(1)

59083 If a person does claim the other component of DLA, an award may be made in addition to the “treated as made” award, and that award may start on **any** date on or after “A” day and before 05.04.93¹.

1 SS (Introduction of DLA) Regs (NI), reg 16(3), (4) & (5)

59084 Such a claim made after 04.04.93 is treated as an application for review of the current award of DLA as follows

1. claim made within 3 months of the decision on the current claim - review on any grounds **or**
2. claim made more than 3 months after the decision on the current claim - review on specific grounds¹.

1 SS (Introduction of DLA) Regs (NI), reg 16(2); SS A (NI) Act 92, sec 28(1)

Claim for DLA treated as a claim for AA or Mob A (Claims in addition)

- 59085 If a person makes a claim for or applies for a review of DLA and
1. satisfies the conditions for
 - 1.1 the highest or middle rate care component **or**
 - 1.2 the higher rate of mobility component **and**
 2. is neither entitled to, nor awaiting a decision of a claim, review or appeal for AA or Mob A **and**
 3. satisfies the conditions for AA or Mob A as appropriate for a period before “A” day
- the DLA claim is treated by the adjudicating authority as a **claim also** for AA or Mob A, or Mob A **and** AA for a period beginning before “A” day and ending not later than 05.04.92¹ and determined accordingly.

¹ SS (Introduction of DLA) Regs (NI), reg 17(1), (2) & (4)

- 59086 If a single component only of DLA has been claimed as in 59082, the AO should consider a **claim also** as being made for
1. AA, where the claim is for the care component **or**
 2. Mob A, where the claim is for the mobility component and determined as in AOG 75085¹.

¹ SS (Introduction of DLA) Regs (NI), reg 17(3)

- 59087 A person who satisfies the conditions of entitlement for Mob A for a period before “A” day does not also have to satisfy the 3 month qualifying period for mobility component¹.

¹ SS (Introduction of DLA) Regs (NI), reg 17(5)

59088 - 59090

Claim for DLA treated as not having been made

- 59091 A claim for DLA will be treated as not having been made¹ (but see 59092) if a person already has
1. an award of **both** AA and Mob A and these expire after 05.04.92² **or**
 2. an existing award of DLA consisting of both components³ **or**

3. two existing awards of DLA, one being for the care component the other for the mobility component⁴ **or**
4. an award of DLA for one component and has submitted a claim for the other component as in 59082-59084⁵.

1 SS (Introduction of DLA) Regs (NI), reg 18(1); 2 reg 18(1)(a); 3 reg 18(1)(b); 4 reg 18(1)(c);
5 reg 18(1)(d)

59092 The provisions in 59091 do not apply where the claim for DLA is made in anticipation of the expiry of the award of AA, Mob A or DLA¹.

1 SS (Introduction of DLA) Regs (NI), reg 18(2)

Claim for AA or Mob A treated as not having been made

59093 If a person makes a claim for DLA after 02.02.92, any subsequent claim for AA or Mob A made on or after the DLA claim date is treated as not having been made¹.

1 SS (Introduction of DLA) Regs (NI), reg 19(1)

Person has an existing award of AA or Mob A

59094 Unless the claim was made in anticipation of the expiry of the award of AA¹ the claim for the care component will be treated as **not** made if a person

1. has an award of AA **and**
2. makes a claim for DLA.

1 SS (Introduction of DLA) Regs (NI), reg 20(1), (3)

59095 Unless the claim was made in anticipation of the expiry of the award of Mob A¹ the claim for the mobility component will be treated as **not** made if a person

1. has an award of Mob A **and**
2. makes a claim for DLA.

1 SS (Introduction of DLA) Regs (NI), reg 20(2), (3)

59096 - 59100

Claims for AA or Mob A and DLA outstanding

59101 Where a person

1. has a claim for AA or Mob A outstanding at 03.02.92 **or**
2. has a review or appeal to an appeal tribunal against a decision that no award shall be made outstanding at 03.02.92

and also makes a claim for DLA before the claim or appeal has been determined, the guidance in 59102 should be followed¹.

1 SS (Introduction of DLA) Regs (NI), reg 21(1)

59102 The claim for DLA is split into two component specific claims. These are determined separately and treated as follows

1. **claim/review/appeal for AA** - DLA claim treated as a claim for mobility component only until the AA claim or appeal is determined¹
2. **claim/review/appeal for Mob A** - DLA claim treated as a claim for care component only until the Mob A claim or appeal is determined²
3. **claim/review/appeal for AA and Mob A** - DLA claim treated as not having been made until AA and Mob A claims or appeals are determined³.

1 SS (Introduction of DLA) Regs (NI), reg 21(2)(a); 2 reg 21(2)(b); 3 reg 21(2)(c)

59103 When the claim or appeal for AA or Mob A has been determined and the person is

1. **awarded AA** - the claim for care component is treated as not having been made¹ **or**
2. **awarded Mob A** - the claim for mobility component is treated as not having been made² **or**
3. **awarded both AA and Mob A** - the claim for DLA will continue to be treated as not having been made³ **or**
4. **not awarded AA or Mob A** - the claim for DLA can be referred to the AO for determination⁴.

1 SS (Introduction of DLA) Regs (NI), reg 21(3)(a); 2 reg 21(3)(b); 3 reg 21(3)(c); 4 reg 21(3)(d)

59104 - 59105

Determination of claims and applications for reviews of AA

59106 Claims or reviews for AA made after 15.03.92 were determined using the new adjudication system¹. The AA Board did not consider any questions on claims or applications for review made after that date². Any questions referred to the AA Board which are still outstanding at 05.04.92 were

1. referred to the AO for determination³ **or**
2. determined as a second tier adjudication (see 59081), if the application for review is made within 3 months of the AA Board's decision being given⁴.

1 DLA & DWA (NI) Order 91, art 6(1) & Sch 1; SS A (NI) Act 92, sec 22;

2 SS (Introduction of DLA) Regs (NI), reg 22(1) & (2); 3 reg 22(4)(a); 4 reg 22(4)(b);

59107 Any application for review which previously required the leave of the AA Board is treated as an application for review¹.

1 SS (Introduction of DLA) Regs (NI), reg 22(5)

59108 From "A" day any decision on a claim or review made by the AA Board on a question of entitlement together (if applicable) with any certificate issued or altered as a consequence of that decision, is treated as an AO's decision. The decision is subject to the same rights of review¹. The effect of this is to ensure that claimants will have the same rights of review whether or not the original decision was to award or refuse benefit.

1 SS (Introduction of DLA) Regs (NI), reg 22(9)

Treatment of evidence

59109 When determining an undecided question which had been referred for determination by the AA Board, the AO

1. could take into account as evidence
 - 1.1 any correspondence between the AA Board and claimant relating to the question to be determined¹ **and**
 - 1.2 any submissions made by or on behalf of the claimant in response to such correspondence **and**

2. treat as evidence any certificate issued by the AA Board before “A” day **but** which had not yet been decided upon by the AO².

1 SS (Introduction of DLA) Regs (NI), reg 22(6); 2 reg 22(7)

59110 The AO will treat a decision made by the AA Board and their reasons for not issuing a certificate, as evidence that a person does not satisfy the conditions for AA on any determination made on or after “A” day to which that decision relates¹.

1 SS (Introduction of DLA) Regs (NI), reg 22(8)

59111 - 59115

Appeals to the Commissioner against AA Board decisions

59116 From “A” day, an appeal made by the claimant or Department or AO against an AA Board’s determination on any question of law arising from

1. a review made by AA Board¹ **or**
2. a refusal of the AA Board to review a determination²

lies to the Commissioner³, and is subject to the provisions for applications or appeals in force on 05.04.92⁴.

1 SS (Introduction of DLA) Regs (NI), reg 23(1)(a); 2 reg 23(1)(b); 3 reg 23(1);

4 reg 23(1A); SS Commissioners Procedure Regs (NI) 87

59117 Where, on or after 16.03.92 a Commissioner decides that the AA Board’s decision is erroneous in law, the decision will be set aside. The Commissioner may then

1. give the decision the AA Board should have given **or**
2. refer any other case for second tier adjudication (see 59081) with appropriate directions for its determination¹.

1 SS (Introduction of DLA) Regs (NI), reg 23(1) & (2)

59118 The Commissioner’s decision will be referred to the AO, with appropriate directions to enable the claim or review being appealed against to be decided¹.

1 SS (Introduction of DLA) Regs (NI), reg 23(3)

59119 Commissioners have the power to consider both appeals and applications for leave to appeal against AA Board decisions outstanding on 16.03.92¹.

59120

1 SS (Introduction of DLA) Regs (NI), reg 23

Mobility Allowance claims

59121 Subject to the provisions of the following paragraphs the DLA adjudicating system¹ is used for

1. any claim for Mob A made after 15.03.92 **or**
2. any application for review relating to both medical and non-medical questions made after 09.02.92 **or**
3. any claim or review which has not been determined by "A" day.

1 SS (Introduction of DLA) Regs (NI), reg 24(2) & (3)

Medical questions

59122 If a medical question (see 59078) had arisen on a claim or review which was outstanding at "A" day, the AO would have had regard to any medical practitioner's report. But note that, if such a report had not been received and still outstanding 6 weeks after being referred to the medical practitioners, the claim could be determined without waiting for it¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(4)(a) & (b)

59123 The AO is bound by any decision given by a MAT on a medical question¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(4)(f)

59124 Medical questions will no longer be referred to a med board after 09.02.92. Any such questions arising after then will be referred for second tier adjudication (59081) under the new adjudication system¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(5) & (6)

Medical question to med board outstanding at “A” day

59125 The AO will take into account as evidence any report on a medical question determined by a med board before “A” day¹. However, if in any case except an appeal 59126) the med board has not determined the question by “A” day, the AO will consider it as though

1. the question had not been referred to the med board **and**
2. the DLA provisions for referring claims to EMPs or DLAA Board apply (61021-61028)².

*1 SS (Introduction of DLA) Regs (NI), reg 24(4)(c); 2 SS A (NI) Act 92, sec 52;
SS (Introduction of DLA) Regs (NI), reg 24(4)(d)*

59126 If the medical question was referred to a med board following an appeal and it has not been determined by “A” day, the AO will consider it as though

1. it was an application for review of the decision appealed against **and**
2. the DLA provisions for referring claims to EMPs or DLAA Board apply (61021-61028)¹.

1 SS A (NI) Act 92, sec 52; SS (Introduction of DLA) Regs (NI), reg 24(4)(e)

59127 - 59130

Appeals on medical questions

59131 An appeal against a med board decision made on or after 10.02.92 is treated as if it is an appeal against a review decision made under the new adjudication system, and dealt with by a DAT¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(7), (8)

59132 No new appeals will be made to a MAT on or after 10.02.92. A medical question referred to a MAT before 10.02.92 but which has not been determined by “A” day can still be heard by the MAT if the appellant agrees. If they do not agree it will be determined by a DAT¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(9)

59133 If a DAT is considering an appeal which has previously been adjourned by a MAT to get further information or report, the DAT shall wait for up to three months from the date of request for it to be produced. If the information or report is made available within 3 months of being requested, the DAT shall take this into account¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(10)

59134 Any decision made by an AO, med board or MAT on a medical question may be reviewed by an AO at any time¹, if

1. there has been a relevant change of circumstances since the decision was made **or**
2. in the case of a MAT decision on fresh evidence, the decision was
 - 2.1 given in ignorance of **or**
 - 2.2 based on a mistake as to a material fact².

1 SS (Introduction of DLA) Regs (NI), reg 24(11)

59135 If following a decision by a MAT an appeal is upheld by a Commissioner on a point of law, the Commissioner will

1. set the decision aside **and**
2. refer the question to an AO for second tier adjudication (59081) with directions for its determination¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(13)

59136 Any decision on a question referred by a Commissioner as in 59133 is treated under the new adjudication system as a second tier adjudication (59081), and will have the same appeal rights¹.

1 SS (Introduction of DLA) Regs (NI), reg 24(14)

59137 - 59140

Appeals referred to AO by DAT/MAT

59141 Special provisions apply where, on or after 03.02.92

1. a DAT is determining an AA appeal **or**
2. a DAT or a MAT is determining a Mob A appeal¹.

1 SS (Introduction of DLA) Regs (NI), reg 25(1)

59142 A DAT or MAT may refer the question of the DLA entitlement to an AO to decide¹ where it is unable to make an award of the appropriate benefit. Solely on the evidence before it, the DAT or MAT must be satisfied that the claimant may qualify for, in the case of

1. an AA claim, the lowest rate of care component² **or**
2. a Mob A claim
 - 2.1 the higher rate of the mobility component if they
 - 2.1.a are severely mentally impaired **and**
 - 2.1.b display severe behavioural problems **and**
 - 2.1.c satisfy the conditions for the highest rate care component³ **or**
 - 2.2 the lower rate of mobility component in any other case⁴.

1 SS (Introduction of DLA) Regs (NI), reg 25(2); 2 reg 25(2)(a); 3 reg 25(2)(b)(ii); 4 reg 25(2)(b)(i)

59143 If a question of entitlement is referred to an AO, they will treat the claim

1. for AA as being a claim for the care component of DLA only **or**
2. for Mob A as a claim for the mobility component of DLA only

as having been made on 03.02.92. If entitlement to DLA is established, DLA will be awarded from "A" day or later¹.

1 SS (Introduction of DLA) Regs (NI), reg 25(3) & (4)

59144 The AO is not restricted solely to the evidence which was before the DAT or MAT. The AO may request that further evidence on any question of entitlement to DLA be obtained.

59145

Person appointed to act for the claimant

AA claims

59146 A person who was entitled to AA for a child will be regarded as the child's appointee for DLA¹ (59019-59020). This appointment may be terminated

1. when the child reaches the age of 16 **or**
2. when the child ceases to be entitled to DLA **or**
3. under certain other provisions².

1 SS (Introduction of DLA) Regs (NI), reg 27(1); 2 reg 27(2); SS (C&P) Regs (NI), reg 42

Mob A claims

59147 If on 05.04.92, some person other than the person in 59146 is the appointee for Mob A, that appointment will end on "A" day. The Department will make a new appointee from "A" day¹.

1 SS (Introduction of DLA) Regs (NI), reg 27(3)

59148 - 59155

Method and manner of payment

59156 The Department may, before 27.12.93 decide the method and manner of payment¹ where a person

1. had an award of AA and Mob A before 06.04.92, and these are treated as awards of the appropriate components of DLA **or**
2. has been granted an award in addition the other component of DLA (59051).

1 SS (Introduction of DLA) Regs (NI), reg 26(12) & (13)

59157 A request for a different method of payment must be made within 4 weeks of the Department's decision as in 59156. The Department will still determine when the new method of payment will start¹.

1 SS (Introduction of DLA) Regs (NI), reg 26(13A)

Direct credit transfer

59158 Where payment is already made by direct credit transfer, these arrangements will continue until further notice but, at any time before 28.12.93¹ if 2 awards of DLA are to be paid

1. into the same account they will be combined **or**
2. into separate accounts, they will be combined and paid into one account of the payee's choice with Department consent.

1 SS (Introduction of DLA) Regs (NI), reg 26(2), (3), (4), (5) & (6)

Different methods of payment

59159 If AA and Mob A were in payment and were paid by different methods, the payee will be asked to nominate a single method of payment acceptable to the Department. DLA will continue to be paid in the same way as the awards of AA and Mob A until

1. a reply is received **and**
2. the Department determines otherwise¹.

1 SS (Introduction of DLA) Regs (NI), reg 26(12) & (13)

Paydays

59160 The mobility component is always paid on Wednesday. The care component will be paid on a Wednesday if the mobility component is also in payment. However, if AA had previously been combined with another benefit, the care component will be paid on the same payday as the combined payment¹.

¹ SS (Introduction of DLA) Regs (NI), reg 26(9) & (10)

Adjustment of benefits on change of payday

59161 If there are more than 7 days between paydays because of a change of payday, benefit for the intervening period will be paid at the daily rate multiplied by the number of days in that period (1/7 of the weekly rate rounded up to the nearest penny). This payment will be included with the first Wednesday payment¹.

¹ SS (Introduction of DLA) Regs (NI), reg 26(11)

59162 If a person aged under 65 has an award of AA

1. made after 02.02.92 following
 - 1.1 a claim for AA or DLA **or**
 - 1.2 a review of an AO or AA Board decision not to award benefit **and**
2. that award begins before "A" day

that award and any subsequent award of DLA will be paid 4 weekly on Wednesdays unless the Department specifies otherwise¹.

¹ SS (Introduction of DLA) Regs (NI), reg 26(14)

59163 - 59999