

## SCHEDULE 1

Regulation 35

Effective dates for superseding decisions made on the ground of a change of circumstances

### PART 1

#### Employment and support allowance and jobseeker's allowance

1. Subject to the following provisions of this Part and Part 4, in the case of an employment and support allowance or a jobseeker's allowance, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur.

2. Paragraph 1 does not apply where—

- (a) the superseding decision is not advantageous to the claimant; and
- (b) there has been an employment and support allowance decision where the Department is satisfied that, in relation to a limited capability for work determination, the claimant—
  - (i) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify, and
  - (ii) could not reasonably have been expected to know that the change of circumstances should have been notified.

3. Where a relevant change of circumstances results, or is expected to result, in a reduced award and the Department is of the opinion that it is impracticable for a superseding decision to take effect from the day set out in paragraph 1, that superseding decision takes effect—

- (a) where the relevant change has occurred, from the first day of the benefit week following that in which that superseding decision is made; or
- (b) where the relevant change is expected to occur, from the first day of the benefit week following that in which that change of circumstances is expected to occur.

4. Where entitlement ends, or is expected to end, as the result of a change of circumstances, the superseding decision takes effect from the day on which the relevant change of circumstances occurs or is expected to occur.

5. In the case of an employment and support allowance where a person who is subject to Article 44 or 53 of the Mental Health (Northern Ireland) Order 1986(1) (power of courts to order hospital admission or guardianship and removal to hospital of persons serving sentences of imprisonment, etc.) ceases, or is expected to cease, to be detained in a hospital (as defined in that Order) for a period of less than a week, a superseding decision related to that person's departure from, or return to, hospital takes effect from the day on which that change of circumstances occurs or is expected to occur.

6. Where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office more than one month after the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the beginning of the benefit week in which the notification was given.

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(1) [S.I. 1986/595 \(N.I. 4\)](#); Article 44 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 ([S.I. 1994/429 \(N.I. 2\)](#)), paragraph 25 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 ([S.I. 1998/1504 \(N.I. 9\)](#)), paragraph 5(1) of Schedule 5 to the Criminal Justice (Northern Ireland) Order 2008 ([S.I. 2008/1216 \(N.I. 1\)](#)) and paragraphs 1(1) and 8(1) of Schedule 6 to the Health and Social Care (Reform) Act (Northern Ireland) 2009 ([c. 1 \(N.I.\)](#)) and Article 53 was amended by paragraph 27 of Schedule 5 to Criminal Justice (Children) (Northern Ireland) Order 1998 and paragraph 8(1) of Schedule 6 to the Health and Social Care (Reform) Act (Northern Ireland) 2009.

*Status: This is the original version (as it was originally made).*

7. In the case of an employment and support allowance decision where the Department is satisfied that, in relation to a limited capability for work determination, the claimant—

- (a) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
- (b) could reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect in accordance with paragraph 8.

8. The superseding decision takes effect—

- (a) from the date on which the claimant ought to have notified the change of circumstances; or
- (b) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the date on which the first change ought to have been notified.

9. In the case of a claimant who makes an application for a supersession which contains an express statement that that claimant is terminally ill, the superseding decision takes effect from the date on which the claimant became terminally ill.

10. Where the superseding decision is advantageous to the claimant and is made on the Department's own initiative, the decision takes effect from the beginning of the benefit week in which the Department commenced action with a view to supersession.

11. In this Part—

“employment and support allowance decision” means a decision to award an employment and support allowance embodied in or necessary to which is a determination that the claimant has, or is to be treated as having, limited capability for work;

“week” means a period of 7 days, beginning with midnight on Saturday.

## PART 2

### Personal independence payment

12. Subject to the following provisions of this Part and Part 4, in the case of personal independence payment, a superseding decision made on the ground of a change of circumstances takes effect on the date on which the relevant change of circumstances occurs or is expected to occur.

13. Paragraph 12 does not apply where—

- (a) the superseding decision is not advantageous to the claimant; and
- (b) there has been a personal independence payment decision where the Department is satisfied that, in relation to such a decision, the claimant—
  - (i) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify, and
  - (ii) could not reasonably have been expected to know that the change of circumstances should have been notified.

14. Except in a case where paragraph 15 or 31 applies, where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office more than one month after the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the date of notification of the change.

15. Where—

- (a) the change is relevant to entitlement to a particular rate of personal independence payment; and
- (b) the claimant notifies an appropriate office of the change no later than one month after the date on which the claimant first satisfied the conditions of entitlement to that rate or within such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late),

the superseding decision takes effect from the date on which the claimant first satisfied those conditions.

16. Where the Department is satisfied that, in relation to a personal independence payment decision, the claimant—

- (a) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
- (b) could reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect in accordance with paragraph 17.

17. The superseding decision takes effect—

- (a) from the date on which the claimant ought to have notified the change of circumstances; or
- (b) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the date on which the first change ought to have been notified.

18. Where the superseding decision is advantageous to the claimant and is made on the Department's own initiative, the decision takes effect from the date on which the Department commenced action with a view to supersession.

19. In paragraphs 13 and 16 “personal independence payment decision” means a decision to award personal independence payment, embodied in or necessary to which is a determination whether the claimant satisfies any of the requirements in Article 83(1) and (2) or 84(1) and (2) of the 2015 Order (daily living component and mobility component).

## PART 3

### Universal credit

20. Subject to the following provisions of this Part and to Part 4, in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur.

21. Except in a case to which paragraph 22 or 31 applies, where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office after the end of the assessment period in which the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the first day of the assessment period in which the notification was given.

22. In the case of a person to whom regulation 62 of the Universal Credit Regulations (information for calculating earned income) applies, where—

- (a) the relevant change of circumstances is that the person's employed earnings are reduced; and

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- (b) the person provides such information for the purposes of calculating those earnings at such times as the Department may require,

the superseding decision takes effect from the first day of the assessment period in which that change occurred.

23. In the case of a universal credit decision where the Department is satisfied that, in relation to a limited capability for work determination, the claimant—

- (a) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify; and
- (b) could reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect in accordance with paragraph 24.

24. The superseding decision takes effect—

- (a) from the first day of the assessment period in which the claimant ought to have notified the change of circumstances; or
- (b) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the first day of the assessment period in which the first change ought to have been notified.

25. Where—

- (a) the superseding decision is not advantageous to the claimant; and
- (b) there has been a universal credit decision where the Department is satisfied that, in relation to a limited capability for work determination, the claimant—
  - (i) failed to notify an appropriate office of a change of circumstances which the claimant was required by regulations under the Administration Act to notify, and
  - (ii) could not reasonably have been expected to know that the change of circumstances should have been notified,

the superseding decision takes effect on the first day of the assessment period in which it makes that decision.

26. Where, in any assessment period, a claimant—

- (a) reaches the qualifying age for state pension credit under the State Pension Credit Act (Northern Ireland) 2002(2); and
- (b) has made an advance claim for an award of state pension credit,

a superseding decision made in consequence of the person reaching that age takes effect on the date on which that change of circumstances occurs or is expected to occur.

27. A superseding decision of the Department to make or cease making a hardship payment takes effect in accordance with regulation 112 of the Universal Credit Regulations (period of hardship payments).

28. In the case of a claimant who makes an application for a supersession which contains an express statement that that claimant is terminally ill, the superseding decision takes effect from the first day of the assessment period in which the claimant became terminally ill.

29. Where the superseding decision is advantageous to a claimant and is made on the Department's own initiative, it takes effect from the first day of the assessment period in which the Department commenced action with a view to supersession.

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(2) 2002 c. 14 (N.I.).

30. In this Part “a universal credit decision” means a decision to award universal credit embodied in or necessary to which is a determination that the claimant has or is to be treated as having limited capability for work.

## PART 4

### Common provisions

31.—(1) This paragraph applies in relation to an award of personal independence payment or universal credit where the change of circumstances is that the claimant or, in the case of universal credit, a member of the claimant’s family, becomes entitled to another relevant benefit, ceases so to be entitled or the rate of another such benefit alters.

(2) Where this paragraph applies, the superseding decision takes effect from—

(a) where the superseding decision concerns universal credit, the first day of the assessment period in which—

- (i) the entitlement to the other benefit arises,
- (ii) the entitlement to the other benefit ends, or
- (iii) entitlement to a different rate of the other benefit arises;

(b) where the superseding decision concerns personal independence payment, the date on which—

- (i) the entitlement to the other benefit arises,
- (ii) the entitlement to the other benefit ends, or
- (iii) entitlement to a different rate of the other benefit arises.

(3) For the purpose of sub-paragraph (1), where the superseding decision relates to personal independence payment, “relevant benefit” includes any payment made under any of the provisions mentioned in regulation 56(1) of the Claims and Payments Regulations (cases where mobility component of personal independence payment not payable).

32. Where the change of circumstances is that there has been a change in the legislation in relation to any benefit, the superseding decision takes effect from the date on which that change in the legislation had effect.

33. Where the change of circumstances is the expected coming into operation of a change in the legislation in relation to any benefit, the superseding decision takes effect from the date on which that change in the legislation takes effect.