STATUTORY RULES OF NORTHERN IRELAND

1999 No. 162

The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999

PART II

REVISIONS, SUPERSESSIONS AND OTHER NOTICES

CHAPTER II

Supersessions

Date from which a decision superseded under Article 11 takes effect

7.—(1) This regulation contains exceptions to the provisions of Article 11(5) as to the date from which a decision under Article 11 which supersedes an earlier decision is to take effect.

(2) Where a decision under Article 11 is made on the ground that there has been, or it is anticipated that there will be, a relevant change of circumstances since the decision was made, the decision under Article 11 shall take effect—

(a) where the decision is advantageous to the claimant and the change was notified to an appropriate office within one month of the change occurring or within such longer period as may be allowed under regulation 8 for the claimant's failure to notify the change on an earlier date—

(i) subject to head (ii), from the date on which the change occurred or, where the change does not take effect until a later date, from the first day on which such effect occurs, or

(ii) in a case where the date on which a change of circumstances it to take effect falls to be determined in accordance with regulation 26 or 26A of the Claims and Payments Regulations(**1**), from the date so determined;

(b) where the decision is advantageous to the claimant and the change was notified to an appropriate office more than one month after the change occurred or after the expiry of any such longer period as may have been allowed under regulation 8—

(i) in the case of a claimant who is in receipt of income support or a jobseeker's allowance and benefit is paid in arrears, from the beginning of the benefit week in which the notification was made,

(ii) in the case of claimant who is in receipt of income support or a jobseeker's allowance and benefit is paid in advance and the date of notification is the first day of a benefit week, from that date and otherwise, from the beginning of the benefit week following the week in which the notification was made, or

(**1**) Regulation 26A was inserted by regulation 2(14) of S.R. 1996 No. 354 and amended by S.R. 1998 No. 182

(iii) in any other case, from the date of notification of the relevant change of circumstances; or

(c) where the decision is not advantageous to the claimant—

(i) in a case where the date on which the change of circumstances is to take effect falls to be determined in accordance with regulation 26 or 26A of the Claims and Payments Regulations, from the date so determined, or

(ii) in any other case, from the date of the change.

(3) For the purposes of paragraphs (2) and (8) "benefit week" has the same meaning as in regulation 2(1) of the Income Support Regulations or, as the case may be, regulation 1(2) of the Jobseeker's Allowance Regulations.

(4) In paragraph (2), a decision which is advantageous to the claimant includes a decision specified in regulation 30(2).

(5) Where the Department supersedes a decision made by an appeal tribunal or a Commissioner on the grounds specified in regulation 6(2)(c), the decision under Article 11 shall take effect—

(a) in a case where, as a result of that ignorance of, or mistake as to, some material fact, the decision was more advantageous to the claimant than it would otherwise have been but for that ignorance or mistake, from the date on which the decision of the appeal tribunal or the Commissioner took, or was to take, effect; or

(b) in any other case, from the date of the decision under Article 11.

(6) A decision made under Article 11 in consequence of a decision which is a relevant determination for the purposes of Article 27 shall take effect from the date of the relevant determination.

(7) A decision to which regulation 6(2)(e) applies may be made so as to take effect from the date on which the decision which has been superseded took effect, or at any time thereafter which is reasonable in the particular circumstances of the case.

(8) A decision to which regulation 6(2)(f) applies may be made so as to take effect from—

(a) except where sub-paragraph (b) applies, the day immediately following the end of the benefit week in which the decision under Article 11 was made; or

(b) where, in accordance with regulation 26A(1) of the Claims and Payments Regulations, a jobseeker's allowance is paid otherwise than fortnightly in arrears, and notwithstanding the provisions of regulation 69 of the Jobseeker's Allowance Regulations, the day immediately following the end of the last benefit week in respect of which a jobseeker's allowance was paid.

(9) In any case relating to attendance allowance or disability living allowance in which the decision was made under Article 11 on the grounds of a relevant change of circumstances by virtue of regulation 6(2)(a)(i) and the decision is advantageous to the claimant, the decision shall take effect from whichever is the later of—

(a) the date declared by the Department to be the date on which the change of circumstances occurred;

(b) where more than one change has occurred between the date of the decision to be superseded ("the original decision") and the date of the application or, as the case may be, the date on which the Department determines on its own initiative to supersede the original decision, the date declared by the Department to be the date on which the most recent change took effect; or

(c) where the claimant notifies the change within one month of the date on which he first satisfies the conditions in, for the period of time specified in, section 65(1)(b) of the Contributions and Benefits Act or, as the case may be, section 72(2)(a) or 73(9)(a) of that

Act, following the change or most recent change of circumstances which gave rise to the decision under Article 11, the first pay day (as specified in Schedule 6 to the Claims and Payments Regulations) after the requirement is first satisfied.

(10) A decision as to an award of incapacity benefit, which is made under Article 11 because section 30B(4) of the Contributions and Benefits Act(**2**) applies to the claimant, shall take effect from the date on which he became entitled to the highest rate of the care component of disability living allowance.

(11) A decision as to an award of incapacity benefit or severe disablement allowance, which is made under Article 11 because the claimant is to be treated as incapable of work under regulation 10 of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**3**), shall take effect from the date on which he is to be treated as incapable of work.

(12) Where this paragraph applies, a decision under Article 11 may be made so as to take effect from such date, not more than eight weeks before—

(a) the application for supersession; or

(b) where no application is made, the date on which the decision under Article 11 is made,

as is reasonable in the particular circumstances of the case.

(13) Paragraph (12) applies where—

(a) the effect of a decision under Article 11 is that there is to be included in a claimant's applicable amount an amount in respect of a loan which qualifies under—

(i) paragraph 15 or 16 of Schedule 3 to the Income Support Regulations(**4**), or

(ii) paragraph 14 or 15 of Schedule 2 to the Jobseeker's Allowance Regulations; and

(b) that decision could not have been made earlier because information necessary to make that decision, requested otherwise than in accordance with paragraph 9(3)(b) of Schedule 8B to the Claims and Payments Regulations(**5**), had not been supplied to the Department by the lender.

(14) Subject to paragraph (23), where a claimant is in receipt of income support and his applicable amount includes an amount determined in accordance with Schedule 3 to the Income Support Regulations, and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 15 or 16 of that Schedule, a decision made under Article 11 shall take effect—

(a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or

(b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.

(15) Where a claimant is in receipt of income support and payments made to that claimant which fall within paragraph 29 or 30(1)(a) to (c) of Schedule 9 to the Income Support Regulations(**6**) have been disregarded in relation to any decision under Article 9 or 11 and there is a change in the amount of interest payable—

(a) on a loan qualifying under paragraph 15 or 16 of Schedule 3 to those Regulations to which those payments relate; or

(**2**) Section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I. 12)) and amended by paragraphs 14(b) and 18(3) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(**3**) S.R. 1995 No. 41; relevant amending regulations are S.R. 1995 No. 149, S.R. 1996 No. 601 and S.R. 1997 No. 174

(**4**) Schedule 3 was substituted by Schedule 1 to S.R. 1995 No. 301

(**5**) Schedule 8B was inserted by regulation 5 of S.R. 1992 No. 271

(**6**) Paragraphs 29 and 30 were substituted by paragraph 1 of Schedule 3 to S.R. 1995 No. 301

(b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

a decision under Article 11 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (16) is appropriate in the claimant's case.

(16) The date on which a decision under Article 11 takes effect for the purposes of paragraph (15) is—

(a) the date on which the claimant's housing costs are first met under paragraph 6(1)(a), 8(1)(a) or 9(2)(a) of Schedule 3 to the Income Support Regulations; or

(b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

(17) In paragraph (16), "standard rate" has the same meaning as in paragraph 1(2) of Schedule 3 to the Income Support Regulations.

(18) Subject to paragraph (24) and, except in a case to which paragraph (23) applies, where a claimant is in receipt of a jobseeker's allowance and his applicable amount includes an amount determined in accordance with Schedule 2 to the Jobseeker's Allowance Regulations, and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 14 or 15 of that Schedule, a decision under Article 11 made as a result of that reduction shall take effect—

(a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or

(b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.

(19) Where a claimant is in receipt of a jobseeker's allowance and payments made to that claimant which fall within paragraph 30 or 31(1)(a) to (c) of Schedule 6 to the Jobseeker's Allowance Regulations have been disregarded in relation to any decision under Article 9 or 11 and there is a change in the amount of interest payable—

(a) on a loan qualifying under paragraph 14 or 15 of Schedule 2 to those Regulations to which those payments relate; or

(b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

a decision under Article 11 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (20) is appropriate in the claimant's case.

(20) The date on which a decision under Article 11 takes effect for the purposes of paragraph (19) is—

(a) the date on which the claimant's housing costs are first met under paragraph 6(1)(a), 7(1)(a) or 8(2)(a) of Schedule 2 to the Jobseeker's Allowance Regulations; or

(b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

(21) In paragraph (20), "standard rate" has the same meaning as in paragraph 1(2) of Schedule 2 to the Jobseeker's Allowance Regulations.

(22) Where—

(a) a claimant was paid benefit in respect of 6th October 1996 in accordance with an award of income support;

(b) that claimant's applicable amount includes an amount determined in accordance with Schedule 3 to the Income Support Regulations;

(c) the claimant is treated as having been awarded a jobseeker's allowance by virtue of regulation 7 of the Jobseeker's Allowance (Transitional Provisions) (No. 2) Regulations (Northern Ireland) 1996(**7**); and

(d) a decision is made under Article 11 in consequence of a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 15 or 16 of Schedule 3 to the Income Support Regulations,

the decision under Article 11 referred to in sub-paragraph (d) shall take effect on the next anniversary of the date on which housing costs were first met which occurs after the reduction.

(23) Where, in any case to which paragraph (14) or (18) applies, a claimant has been continuously in receipt of, or treated as having been continuously in receipt of, income support or a jobseeker's allowance, or one of those benefits followed by the other, and he or his partner continues to receive either benefit, the anniversary to which those paragraphs refer shall be the anniversary of the earliest date on which benefit (whether income support or a jobseeker's allowance) in respect of those mortgage interest costs became payable.

(24) Where—

(a) it has been determined that the amount of a jobseeker's allowance payable to a young person is to be reduced under regulation 63 of the Jobseeker's Allowance Regulations because paragraph (1)(b)(iii), (c), (d), (e) or (f) of that regulation applied in his case; and

(b) the decision made in consequence of sub-paragraph (a) falls to be superseded by a decision under Article 11 because the Department has subsequently issued a certificate under Article 19(4) of the Jobseekers Order with respect to the failure in question,

the decision under Article 11 shall take effect from the same date as the decision made in consequence of sub-paragraph (a) has effect.

(**7**) S.R. 1996 No. 518, to which there are amendments not relevant to these regulations