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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 221**

**SOCIAL SECURITY**

**The Universal Credit, Personal Independence  
Payment, Jobseeker's Allowance and Employment  
and Support Allowance (Decisions and  
Appeals) Regulations (Northern Ireland) 2016**

*Made* - - - - *4th May 2016*

*Laid before Parliament* *10th May 2016*

*Coming into operation in accordance with  
regulation 1(1)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 5(1A), 139D(1) and (6), 165(1) and (4) to (6) and 167(1) of the Social Security Administration (Northern Ireland) Act 1992(1) and Articles 2(2), 8(6), 10(1), (4) and (6), 11(3) and (6), 11A, 12(1), 13(2), (3), (3A), (3B), (5A) and (6), 16(1), 17, 18(1), 20(2), 21(1) to (3), 22, 23, 25(3)(b) and (5)(c), 26(6)(c), 28(1), 31(2) and 74(1) and (3) to (6) of, and paragraph 9 of Schedule 2, paragraphs 1, 4 and 9 of Schedule 3 and Schedule 4 to, the Social Security (Northern Ireland) Order 1998(2).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015(3).

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- (1) 1992 c. 8; section 5(1A) is inserted by Article 104(3) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I.1)), section 139D is inserted by paragraph 19 of Schedule 2 to that Order and is further amended by paragraph 9 of Schedule 3 and Part 1 of Schedule 12 to that Order; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 18(5) of the National Insurance Contributions Act 2014 (c. 7) and subsections (5A) and (5B) of section 165 are inserted by Article 108(1) of the Welfare Reform (Northern Ireland) Order 2015 and section 165(6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)). Section 167(1) is cited for the meaning it gives to 'prescribe' and 'regulations'.
- (2) S.I. 1998/1506 (N.I. 10); Article 10(1) is amended by Part 7 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015, Article 11A was inserted by paragraph 18 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and amended by paragraph 42 of Schedule 2 to S.I. 2009/56, Article 13(2) was substituted by paragraph 19(3) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and is amended by Article 107(2) of the Welfare Reform (Northern Ireland) Order 2015 and paragraphs (3A), (3B) and (5A) of Article 13 are inserted by Article 107(3) and (4) of that Order, Article 18(1) was amended by paragraph 23 of Schedule 6 to Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, Article 20(2) was amended by section 55(4) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)), Article 22 was amended by paragraph 8 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and is amended by Article 104(5) and Part 9 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015, Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002 (c. 21) and is amended by Article 108(2) of the Welfare Reform (Northern Ireland) Order 2015 and paragraphs (5A) and (5B) of Article 74 are inserted by Article 108(1) of that Order. Article 2(2) is cited for the meaning it gives to 'prescribe' and 'the Administration Act'.
- (3) S.I. 2015/2006 (N.I.1).

## PART 1

### General

#### Citation, commencement and application

1.—(1) These Regulations may be cited as the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 and come into operation—

- (a) in so far as they relate to personal independence payment and for the purposes of this regulation, on 20th June 2016; and
- (b) for all remaining purposes, immediately after the coming into operation of the Universal Credit Regulations.

(2) These Regulations apply in relation to—

- (a) an employment and support allowance payable under Part 1 of the 2007 Act as amended by Schedule 3 and Part 1 of Schedule 12 to the 2015 Order (to remove references to an income-related allowance);
- (b) a jobseeker’s allowance payable under the Jobseekers Order as amended by Part 1 of Schedule 12 to the 2015 Order (to remove references to an income-based allowance);
- (c) personal independence payment; and
- (d) universal credit.

#### Interpretation

2.—(1) In these Regulations—

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998;

“the 2007 Act” means the Welfare Reform Act (Northern Ireland) 2007<sup>(4)</sup>;

“the 2015 Order” means the Welfare Reform (Northern Ireland) Order 2015;

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992<sup>(5)</sup>;

“appeal” means an appeal to an appeal tribunal;

“appropriate office” means—

- (a) in the case of a contributions decision which falls within Part II of Schedule 3 to the 1998 Order<sup>(6)</sup> (decisions against which an appeal lies), any National Insurance Contributions office of HMRC or any office of the Department; or
- (b) in any other case, the office of the Department or other place, the address of which is specified on the notification of the original decision referred to in regulation 5(1) (revision on any grounds);

“assessment period” is to be construed in accordance with regulation 22 of the Universal Credit Regulations (assessment periods);

“benefit” means a benefit or an allowance in relation to which these Regulations apply;

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<sup>(4)</sup> 2007 c. 2 (N.I.).

<sup>(5)</sup> 1992 c. 8 (N.I.).

<sup>(6)</sup> Part II of Schedule 3 was amended by Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

“benefit week” has the same meaning as in—

- (a) regulation 2 of the Employment and Support Allowance Regulations (interpretation), in the case of an employment and support allowance;
- (b) regulation 2 of the Jobseeker’s Allowance Regulations (general interpretation), in the case of a jobseeker’s allowance;

“child” means a person under the age of 16;

“claimant” means—

- (a) any person who has claimed—
  - (i) an employment and support allowance,
  - (ii) a jobseeker’s allowance,
  - (iii) personal independence payment;
- (b) in the case of universal credit, any person who is a claimant for the purposes of Article 46 of the 2015 Order (interpretation of Part 2); and
- (c) any other person from whom an amount of benefit is alleged to be recoverable;

“the Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland ) 2016(7);

“the date of notification”, in relation to a decision of the Department, means the date on which the notification of the decision is treated as having been given or sent in accordance with—

- (a) regulation 3 (service of documents); or
- (b) where the notification is given or sent using an electronic communication, Schedule 1 to the Claims and Payments Regulations;

“designated authority” means—

- (a) the Department; or
- (b) a person providing services to the Department;

“electronic communication” has the same meaning as in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001(8);

“employment and support allowance” means an employment and support allowance in relation to which these Regulations apply;

“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2016(9);

“family” means the claimant’s partner and any—

- (a) child; or
- (b) qualifying young person, within the meaning of regulation 6 of the Universal Credit Regulations (meaning of “qualifying young person”),

who is a member of the same household as the claimant and for whom the claimant or the claimant’s partner is, or both of them are, responsible;

“the Fraud Act” means the Social Security Fraud Act (Northern Ireland) 2001(10);

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(7) S.R. 2016 No. 220.

(8) 2001 c. 9 (N.I.); the definition of “electronic communication” was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21).

(9) S.R. 2016 No. 219.

(10) 2001 c. 17 (N.I.).

“fraud penalty”, in relation to any claimant of an employment and support allowance, a jobseeker’s allowance or universal credit, means any period during which the provisions of section 5B, 6 or 8 of the Fraud Act(11) apply to the award;

“HMRC” means Her Majesty’s Revenue and Customs;

“jobseeker’s allowance” means a jobseeker’s allowance in relation to which these Regulations apply;

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 2016(12);

“the Jobseekers Order” means the Jobseekers (Northern Ireland) Order 1995(13);

“limited capability for work” has the same meaning as in—

- (a) section 1(4) of the 2007 Act in relation to an employment and support allowance;
- (b) Article 43(1) of the 2015 Order in relation to universal credit;

“limited capability for work determination” means—

- (a) where the determination relates to an employment and support allowance, a determination whether a person has limited capability for work following a limited capability for work assessment in accordance with regulation 15(1) of the Employment and Support Allowance Regulations or a determination that a person is to be treated as having limited capability for work in accordance with regulation 16 or 25 of those Regulations;
- (b) where the determination relates to universal credit, a determination whether a person has limited capability for work following a limited capability for work assessment referred to in regulation 40(2) of the Universal Credit Regulations or a determination that a person is to be treated as having limited capability for work in accordance with regulation 40(6) of those Regulations;

“negative determination” has the same meaning as in Article 85(6) of the 2015 Order (ability to carry out daily living activities or mobility activities);

“official error” means an error made by—

- (a) an officer of the Department or HMRC acting as such which was not caused or materially contributed to by any person outside the Department or HMRC;
- (b) a person employed by, and acting on behalf of, a designated authority which was not caused or materially contributed to by any person outside that authority,

but excludes any error of law which is shown to have been such by a subsequent decision of a Commissioner, or of the court (as defined in Article 27(7) of the 1998 Order(14));

“partner” means one of a couple within the meaning of Article 45 of the 2015 Order (couples);

“personal independence payment” means an allowance payable under Part 5 of the 2015 Order (personal independence payment);

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(11) Section 5B was inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)) and is amended by Articles 115(8)(a), 117(2) to (6) and 118(2) of, and paragraph 47 of Schedule 2, paragraph 14 of Schedule 3 and Part 1 of Schedule 12 to, the Welfare Reform (Northern Ireland) Order 2015. Section 6 was amended by paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, Schedule 6 to the Tax Credits Act 2002, section 45 of, and paragraph 14(2) and (3) of Schedule 3 to, the Welfare Reform Act (Northern Ireland) 2007, paragraph 1 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010, Articles 117(7), 118(3) to (11) of, and paragraph 48 of Schedule 2, paragraph 15 of Schedule 3 and Part 1 of Schedule 12, to the Welfare Reform (Northern Ireland) Order 2015. Section 8 was amended by paragraph 34 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 14(4) and (5) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007, paragraph 3 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010 and paragraph 50 of Schedule 2 and Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015.

(12) S.R. 2016 No. 218.

(13) S.I. 1995/2705 (N.I. 15).

(14) The definition of “the court” was amended by paragraph 67 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4)

“relevant benefit” has the same meaning as in Chapter II of Part II of the 1998 Order (decisions and appeals)(15);

“terminally ill”, in relation to a claimant, means that the claimant is suffering from a progressive disease and that death in consequence of that disease can reasonably be expected within 6 months;

“universal credit” means the benefit payable under Part 2 of the 2015 Order (universal credit);

“the Universal Credit Regulations” means the Universal Credit Regulations (Northern Ireland) 2016(16);

“writing” includes writing produced by means of electronic communications used in accordance with regulation 4 (electronic communications).

(2) Subject to paragraph (3), the Interpretation Act (Northern Ireland) 1954(17) applies to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

### **Service of documents**

3.—(1) Where, under any provision of these Regulations, any notice or other document is given or sent by post to the Department, it is to be treated as having been given or sent on the day on which it is received by the Department.

(2) Where, under any provision of these Regulations, the Department sends a notice or other document by ordinary post to a person’s last known address, it is to be treated as having been given or sent on the day on which it was posted.

### **Electronic communications**

4. Schedule 1 to the Claims and Payments Regulations (electronic communications) applies to the delivery of electronic communications to or by the Department for the purposes of these Regulations in the same manner as it applies to the delivery of electronic communications for the purposes of those Regulations.

## **PART 2**

### **Revision**

#### **CHAPTER 1**

##### **Revision on any grounds**

### **Revision on any grounds**

5.—(1) Any decision of the Department under Article 9 or 11 of the 1998 Order(18) (“the original decision”) may be revised by the Department if—

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(15) The definition of “relevant benefit” was amended by Part VII of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 6 to the Tax Credits Act 2002, paragraph 6(a) of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002 and paragraph 10(3)(a) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and is amended by paragraph 36(a) of Schedule 2 and paragraph 37(a) of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015.

(16) S.R. 2016 No. 216.

(17) 1954 c. 33 (N.I.).

(18) Article 9 was amended by paragraph 16 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, Part VII of Schedule 13 to the Welfare Reform and Pensions Act 1999, Schedule 6 to the

- (a) the Department commences action leading to the revision within one month of the date of notification of the original decision; or
- (b) an application for a revision is received by the Department at an appropriate office within —
  - (i) one month of the date of notification of the original decision (but subject to regulation 38(4) (correction of accidental errors)),
  - (ii) 14 days of the expiry of that period if a written statement of the reasons for the decision is requested under regulation 7 (consideration of revision before appeal) or 50 (notice of a decision against which an appeal lies) and that statement is provided within the period specified in head (i),
  - (iii) 14 days of the date on which that statement was provided if the statement was requested within the period specified in head (i) but was provided after the expiry of that period, or
  - (iv) such longer period as may be allowed under regulation 6 (late application for a revision).
- (2) Paragraph (1) does not apply—
  - (a) in respect of a relevant change of circumstances which occurred since the decision had effect or, in the case of an advance award under regulation 31, 32 or 33 of the Claims and Payments Regulations, since the decision was made;
  - (b) where the Department has information or evidence which indicates that a relevant change of circumstances will occur;
  - (c) in respect of a decision which relates to an employment and support allowance or personal independence payment where the claimant is terminally ill, unless the application for a revision contains an express statement that the claimant is terminally ill.

### **Late application for a revision**

**6.—(1)** The Department may extend the time limit specified in regulation 5(1) (revision on any grounds) for making an application for a revision if all of the following conditions are met.

(2) The first condition is that the person wishing to apply for the revision has applied to the Department at an appropriate office for an extension of time.

(3) The second condition is that the application—

- (a) explains why the extension is sought;
- (b) contains sufficient details of the decision to which the application relates to enable it to be identified; and
- (c) is made within 13 months of the latest date by which the application for revision should have been received by the Department in accordance with regulation 5(1)(b)(i) to (iii).

(4) The third condition is that the Department is satisfied that it is reasonable to grant the extension.

(5) The fourth condition is that the Department is satisfied that due to special circumstances it was not practicable for the application for revision to be made within the time limit specified in regulation 5(1)(b)(i) to (iii).

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Tax Credits Act 2002, paragraph 6 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 10(3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and is amended by paragraph 36 of Schedule 2 and paragraph 37 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015 and Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

(6) In determining whether it is reasonable to grant an extension of time, the Department must have regard to the principle that the greater the amount of time that has elapsed between the end of the time limit specified in regulation 5(1)(b)(i) to (iii) and the date of the application, the more compelling should be the special circumstances on which the application is based.

(7) An application under this regulation which has been refused may not be renewed.

### **Consideration of revision before appeal**

7.—(1) This regulation applies in a case where—

- (a) the Department gives a person written notice of a decision under Article 9 or 11 of the 1998 Order (whether as originally made or as revised under Article 10 of that Order); and
- (b) that notice includes a statement to the effect that there is a right of appeal in relation to the decision only if the Department has considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under Article 13(2) of the 1998 Order<sup>(19)</sup> in relation to the decision only if the Department has considered on an application whether to revise the decision under Article 10 of that Order.

(3) The notice referred to in paragraph (1) must inform the person—

- (a) of the time limit under regulation 5(1) (revision on any grounds) for making an application for a revision; and
- (b) that, where the notice does not include a statement of the reasons for the decision (“written reasons”), the person may, within one month of the date of notification of the decision, request that the Department provide written reasons.

(4) Where written reasons are requested under paragraph (3)(b), the Department must provide that statement within 14 days of receipt of the request or as soon as practicable afterwards.

(5) Where, as the result of paragraph (2), there is no right of appeal against a decision, the Department may treat any purported appeal as an application for a revision under Article 10 of the 1998 Order.

## **CHAPTER 2**

### **Revision on specific grounds**

#### **Introduction**

8. A decision of the Department under Article 9 or 11 of the 1998 Order may be revised at any time by the Department in any of the cases and circumstances set out in this Chapter.

#### **Official error, mistake etc.**

9. A decision may be revised where the decision—

- (a) arose from official error; or
- (b) was made in ignorance of, or was based on a mistake as to, some material fact and as a result is more advantageous to a claimant than it would otherwise have been.

#### **Decisions against which no appeal lies**

10. A decision may be revised where the decision is one which is—

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<sup>(19)</sup> Article 13(2) was substituted by paragraph 19(2) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and amended by Article 107(2) of the Welfare Reform (Northern Ireland) Order 2015.

- (a) specified in Schedule 2 to the 1998 Order<sup>(20)</sup> (decisions against which no appeal lies); or
- (b) prescribed by regulation 49(2) (decisions which may or may not be appealed).

### **Decisions where there is an appeal**

**11.**—(1) A decision may be revised where there is an appeal against the decision within the time prescribed by the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>(21)</sup> but the appeal has not been decided.

(2) Where—

- (a) the Department makes a decision under Article 9 or 11 of the 1998 Order or such a decision is revised under Article 10(1) of that Order (“decision A”);
- (b) the claimant appeals against decision A;
- (c) after the appeal has been made, but before it results in a decision by the appeal tribunal, the Department makes another decision (“decision B”) which—
  - (i) supersedes decision A, or
  - (ii) decides a further claim by the claimant;
- (d) after the making of the decision B, the appeal tribunal makes a decision on the appeal (“decision C”); and
- (e) the Department would have made decision B differently if, at the time, it had been aware of decision C,

the Department may revise decision B.

### **Award of another benefit**

**12.** Where—

- (a) the Department makes a decision to award a benefit to a claimant (“the original award”); and
- (b) an award of another relevant benefit or of an increase in the rate of another relevant benefit is made to the claimant or, in the case of universal credit, to a member of the claimant’s family, for a period which includes the date on which the original award took effect,

the Department may revise the original award.

### **Advance awards etc.**

**13.** A decision pursuant to regulation 31, 32 or 33 of the Claims and Payments Regulations to make an advance award of benefit may be revised if the conditions for entitlement are found not to have been satisfied at the start of the period for which the claim is treated as having been made.

### **Sanctions cases etc.**

**14.**—(1) The following decisions may be revised—

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(20) Schedule 2 was amended by paragraph 61 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), paragraph 10 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10 (N.I.)), paragraph 11 of Schedule 1 and Schedule 3 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 10(8) of Schedule 3 and Schedule 8 to the Welfare Reform Act (Northern Ireland) 2007 and Article 2(2) of S.R. 2002 No. 321 and is amended by paragraph 41 of Schedule 2 and paragraph 37 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015.

(21) S.R. 1999 No. 162.



- (a) a decision that the amount of an employment and support allowance is to be reduced by virtue of section 11J(1) of the 2007 Act<sup>(22)</sup> (sanctions);
  - (b) a decision that the amount of a jobseeker's allowance is to be reduced by virtue of Article 8J(1) or 8K(1) of the Jobseekers Order<sup>(23)</sup> (higher-level and other sanctions);
  - (c) a decision that the amount of universal credit is to be reduced by virtue of Article 31(1) or 32(1) of the 2015 Order (higher-level and other sanctions).
- (2) A decision under section 5B, 6 or 8 of the Fraud Act (the loss of benefit provisions) that benefit ceases to be payable or falls to be reduced as a result of the person—
- (a) being convicted of an offence; or
  - (b) agreeing to pay a penalty as an alternative to prosecution,
- may be revised where that conviction is quashed or set aside by a court or where the person withdraws the agreement to pay the penalty.

### **Other decisions relating to an employment and support allowance**

**15.**—(1) A decision awarding an employment and support allowance may be revised in any of the following circumstances.

- (2) The first circumstance is where—
- (a) the decision was made on the basis that the claimant had made and was pursuing an appeal against a decision of the Department that the claimant did not have limited capability for work (“the original decision”); and
  - (b) the appeal in relation to the original decision is successful.
- (3) The second circumstance is where—
- (a) the decision incorporates a determination that the conditions in regulation 26(2) of the Employment and Support Allowance Regulations (conditions for treating claimant as having limited capability for work until a determination about limited capability for work has been made) are satisfied;
  - (b) those conditions were not satisfied when the claim was made; and
  - (c) a decision falls to be made concerning entitlement to that award in respect of a period before the date on which the award took effect.
- (4) The third circumstance is where the claimant's current period of limited capability for work is treated as a continuation of another such period under regulation 86 of the Employment and Support Allowance Regulations (linking period).
- (5) The fourth circumstance is where the decision—
- (a) immediately follows the last day of a period for which the claimant was treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker's Allowance Regulations (Northern Ireland) 1996<sup>(24)</sup> or regulation 46 of the Jobseeker's Allowance Regulations (extended periods of sickness) and that period lasted 13 weeks; and
  - (b) is not a decision which embodies a determination that the person is treated as having limited capability for work under regulation 26 of the Employment and Support Allowance Regulations (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made).

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<sup>(22)</sup> Section 11J is inserted by Article 63(2) of the Welfare Reform (Northern Ireland) Order 2015.

<sup>(23)</sup> Sections 8J and 8K are inserted by Article 55(4) of the Welfare Reform (Northern Ireland) Order 2015.

<sup>(24)</sup> S.R. 1996 No. 198, regulation 55ZA was inserted by regulation 2(5) of S.R. 2015 No. 138.

(6) A decision terminating a person's entitlement to an employment and support allowance may be revised where—

- (a) that entitlement was terminated because of section 1A of the 2007 Act<sup>(25)</sup> (duration of contributory allowance); and
- (b) it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity.

### **Other decisions relating to a jobseeker's allowance**

16.—(1) A decision awarding a jobseeker's allowance may be revised in any of the following circumstances.

(2) The first circumstance is where—

- (a) the Department makes a conversion decision (within the meaning of regulation 5(2)(b) of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010<sup>(26)</sup> (deciding whether an existing award qualifies for conversion) in respect of a person;
- (b) the person appeals against that decision;
- (c) before or after the appeal is made, there is a decision to award a jobseeker's allowance as the result of a claim being made by that person; and
- (d) the appeal in relation to the conversion decision referred to in sub-paragraph (a) is successful.

(3) The second circumstance is where—

- (a) a person's entitlement to an employment and support allowance is terminated because of a decision which embodies a determination that the person does not have limited capability for work;
- (b) the person appeals against that decision;
- (c) before or after that appeal is made, there is a decision to award a jobseeker's allowance as the result of a claim being made by that person; and
- (d) the appeal in relation to the termination decision referred to in sub-paragraph (a) is successful.

### **Contributions cases**

17.—(1) A decision ("the original decision") may be revised where—

- (a) on or after the date of the original decision—
  - (i) a late paid contribution is treated under regulation 5 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations (Northern Ireland) 2001<sup>(27)</sup> ("the Crediting Regulations") (treatment for the purpose of any contributory benefit of late paid primary Class 1 contributions where there was no consent, connivance or negligence by the primary contributor) as paid on a date which falls on or before the date on which the original decision was made,
  - (ii) a direction is given under regulation 6 of the Crediting Regulations<sup>(28)</sup> (treatment for the purpose of any contributory benefit of contributions under the Act paid late

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<sup>(25)</sup> Section 1A is inserted by Article 57(1) of the Welfare Reform (Northern Ireland) Order 2015.

<sup>(26)</sup> S.R. 2010 No. 312.

<sup>(27)</sup> S.R. 2001 No. 102; regulation 5 was amended by regulation 20(2) of S.I. 2002/2366 and regulation 28(4) of S.R. 2008 No. 286.

<sup>(28)</sup> Regulation 6 was amended by regulation 20(3) of S.I. 2002/2366.

through ignorance or error) that a late paid contribution is to be treated as paid on a date which falls on or before the date on which the original decision was made, or

- (iii) an unpaid contribution is treated under regulation 60 of the Social Security (Contributions) Regulations 2001<sup>(29)</sup> (treatment for the purpose of contributory benefits of unpaid contributions where no consent, connivance or negligence by the primary contributor) as paid on a date which falls on or before the date on which the original decision was made; and

- (b) either an award of benefit would have been made or the amount of benefit awarded would have been different.

(2) A decision may be revised where, by virtue of regulation 6C of the Crediting Regulations<sup>(30)</sup> (treatment of Class 3 contributions paid under section 13A of the Act), a contribution is treated as paid on a date which falls on or before the date on which the decision was made.

### **Other decisions relating to personal independence payment**

**18.**—(1) Where the Department makes a decision awarding personal independence payment which takes effect immediately after the expiry of an existing award under regulation 32(3) of the Claims and Payments Regulations (advance claim for and award of personal independence payment), that decision may be revised if the requirements for entitlement are found not to have been met on the date on which the decision takes effect.

(2) A decision that personal independence payment is not payable to a person for any period may be revised where—

- (a) the Department determines that the person meets the condition in Article 90(2) of the 2015 Order (care home residents) on incomplete evidence in accordance with regulation 39(5); and
- (b) after that determination is made, any of the costs of the qualifying services are recovered from the person for whom they are provided.

(3) A decision of the Department made in consequence of a negative determination may be revised at any time if it contains an error to which the claimant did not materially contribute.

### **Other decisions relating to universal credit**

**19.**—(1) Where the Department has reduced the amount of an award of universal credit as a consequence of regulation 81 of the Universal Credit Regulations, that decision may be revised.

(2) A decision in relation to universal credit which adopts a determination made under the Universal Credit Housing Costs (Executive Determinations) Regulations (Northern Ireland) 2016<sup>(31)</sup> may be revised at any time in consequence of a redetermination made by the Northern Ireland Housing Executive under those Regulations which resulted in an increase in the amount which represents rent for the purposes of calculating the housing costs element in universal credit.

## **CHAPTER 3**

### **Procedure and effective date**

#### **Procedure for making an application for a revision**

**20.**—(1) The Department may treat an application for a supersession under Article 11 of the 1998 Order as an application for a revision under Article 10 of that Order.

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<sup>(29)</sup> S.I. 2001/1004; regulation 60 was amended by regulation 11 of S.I. 2002/2366 and regulation 5 of S.I. 2007/1056.

<sup>(30)</sup> Regulation 6C was inserted by regulation 3(3) of S.R. 2009 No. 105.

<sup>(31)</sup> S.R. 2016 No. 222.

(2) The following paragraph applies where the Department, in order to consider all the issues raised by the application, requires further information or evidence from a person who has applied for a revision (“the applicant”).

(3) The Department must notify the applicant that—

- (a) the further information or evidence specified in the notification is required;
- (b) if the applicant provides the relevant information or evidence within one month of the date of notification or such longer period as the Department may allow, the decision may be revised taking such information or evidence into account; and
- (c) if the applicant does not provide such information or evidence within that period, the decision may be revised using such information or evidence as was submitted with the application for revision.

### **Effective date of a revision**

**21.** Where, on a revision under Article 10 of the 1998 Order, the Department decides that the date from which the decision under Article 9 or 11 of that Order (“the original decision”) took effect was wrong, the revision takes effect from the date from which the original decision would have taken effect had the error not been made.

## **PART 3**

### **Supersessions**

#### **CHAPTER 1**

#### **Grounds for supersession**

### **Introduction**

**22.** Subject to regulation 32 (decisions which may not be superseded), the Department may make a decision under Article 11 of the 1998 Order (“a superseding decision”) in any of the cases and circumstances set out in this Chapter.

### **Change of circumstances**

**23.—(1)** The Department may supersede a decision in respect of which—

- (a) there has been a relevant change of circumstances since the decision to be superseded had effect or, in the case of an advance award under regulation 31, 32, or 33 of the Claims and Payments Regulations, since it was made; or
- (b) it is expected that a relevant change of circumstances will occur.

(2) The fact that a person has become terminally ill is not a relevant change of circumstances for the purposes of paragraph (1) unless an application for supersession is made which contains an express statement that the person is terminally ill.

### **Error of law, ignorance, mistake etc.**

**24.** A decision of the Department, other than one to which regulation 25 (decisions against which no appeal lies) refers, may be superseded where—

- (a) the decision was wrong in law, or was made in ignorance of, or was based on a mistake as to, some material fact; and

- (b) an application for a supersession was received, or a decision was taken by the Department to act on its own initiative, more than one month after the date of notification of the decision to be superseded or after the expiry of such longer period as may have been allowed under regulation 6 (late application for a revision).

### **Decisions against which no appeal lies**

**25.** A decision specified in Schedule 2 to the 1998 Order (decisions against which no appeal lies) or prescribed in regulation 49(2) (decisions which may or may not be appealed) may be superseded.

### **Medical evidence and limited capability for work etc.**

**26.—**(1) An employment and support allowance decision, a personal independence payment decision or a universal credit decision may be superseded where, since the decision was made, the Department has—

- (a) received medical evidence from a healthcare professional or other person approved by the Department; or
- (b) made a determination that the claimant is to be treated as having—
  - (i) limited capability for work in accordance with regulation 16, 21, 22 or 29 of the Employment and Support Allowance Regulations; or
  - (ii) limited capability for work or for work and work-related activity in accordance with Part 5 (capability for work or work-related activity) of the Universal Credit Regulations.

(2) The decision awarding personal independence payment may be superseded where there has been a negative determination.

(3) In this regulation—

“an employment and support allowance decision”, “a personal independence payment decision” and “a universal credit decision” each has the meaning given in Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances);

“healthcare professional” means—

- (a) a registered medical practitioner;
- (b) a registered nurse; or
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999<sup>(32)</sup> (regulation of health professions, social workers, other care workers etc.).

### **Sanctions cases**

**27.—**(1) A decision as to the amount of an award of benefit may be superseded where the amount of that award is to be reduced by virtue of—

- (a) section 11J(1) of the 2007 Act (sanctions);
- (b) Article 8J(1) or 8K(1) of the Jobseekers Order (higher-level and other sanctions); or
- (c) Article 31(1) or 32(1) of the 2015 Order (higher-level and other sanctions).

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<sup>(32)</sup> 1999 c. 8; section 60 was amended by section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) and paragraph 1 of Schedule 8, paragraph 10 of Schedule 10 and Part 2 of Schedule 15 to the Health and Social Care Act 2008 (c. 14), sections 209(1) to (10), 210 and 213(7)(i) of, and paragraphs 60 and 72(2) of Schedule 15 to, the Health and Social Care Act 2012 (c. 7) and paragraph 8(a) of Schedule 4 to S.I. 2002/254.

(2) A decision reducing an award of benefit by virtue of any of those provisions may be superseded where the reduction falls to be suspended or terminated.

### **Loss of benefit cases**

**28.** A decision that a benefit is payable to a claimant may be superseded where that benefit ceases to be payable or falls to be reduced by virtue of section 5B, 6 or 8 of the Fraud Act (the loss of benefit provisions)(33).

### **Contributions cases**

**29.** The Department may supersede a decision (“the original decision”) where, on or after the date on which the decision is made, a late or an unpaid contribution is treated as paid under—

- (a) regulation 5 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations (Northern Ireland) 2001 (treatment for the purpose of any contributory benefit of late paid primary Class 1 contributions where there was no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made;
- (b) regulation 6 of those Regulations (treatment for the purpose of any contributory benefit of contributions under the Act paid late through ignorance or error) on a date which falls on or before the date on which the original decision was made; or
- (c) regulation 60 of the Social Security (Contributions) Regulations 2001 (treatment for the purpose of contributory benefits of unpaid contributions where no consent, connivance or negligence by the primary contributor) on a date which falls on or before the date on which the original decision was made.

### **Housing costs: universal credit**

**30.** A decision in relation to universal credit which adopts a determination made under the Universal Credit Housing Costs (Executive Determinations) Regulations (Northern Ireland) 2016 may be superseded where, in consequence of a redetermination by the Northern Ireland Housing Executive made under those Regulations, the amount which represents rent for the purposes of calculating the housing costs element in universal credit is reduced.

### **Appeal tribunal and Commissioner’s decisions**

**31.** The Department may supersede a decision of an appeal tribunal or a Commissioner which—

- (a) was made in ignorance of, or was based on a mistake as to, some material fact; or
- (b) in a case where Article 26(5) of the 1998 Order (appeals involving issues that arise on appeal in other cases) applies, was made in accordance with Article 26(4)(b) of that Order.

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(33) Section 5B was inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)) and is amended by Articles 115(8)(a), 117(2) to (6) and 118(2) of, and paragraph 47 of Schedule 2, paragraph 14 of Schedule 3 and Part 1 of Schedule 12 to, the Welfare Reform (Northern Ireland) Order 2015. Section 6 was amended by paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, Schedule 6 to the Tax Credits Act 2002, section 45 of, and paragraph 14(2) and (3) of Schedule 3 to, the Welfare Reform Act (Northern Ireland) 2007, paragraph 1 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010, Articles 117(7), 118(3) to (11) of, and paragraph 48 of Schedule 2, paragraph 15 of Schedule 3 and Part 1 of Schedule 12 to, the Welfare Reform (Northern Ireland) Order 2015. Section 8 was amended by paragraph 34 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 14(4) and (5) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007, paragraph 3 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010 and paragraph 50 of Schedule 2 and Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015.

## CHAPTER 2

### Superseding decisions: limitations and procedure

#### **Decisions which may not be superseded**

**32.** A decision which may be revised under Article 10 of the 1998 Order may not be superseded under Chapter 1 unless—

- (a) circumstances arise in which the Department may revise the decision under Part 2; and
- (b) further circumstances arise in relation to that decision which—
  - (i) are not set out in that Part, but
  - (ii) are set out in Chapter 1 or are circumstances where a superseding decision may be made in accordance with regulation 33(3).

#### **Procedure for making an application for a supersession**

**33.—**(1) The Department may treat an application for a revision under Article 10 of the 1998 Order, or a notification of a change of circumstances, as an application for a supersession under Article 11 of that Order.

(2) Paragraph (3) applies where the Department, in order to consider all the issues raised by the application, requires further information or evidence from a person who has applied for a supersession (“the applicant”).

(3) The Department must notify the applicant that—

- (a) the further information or evidence specified in the notification is required;
- (b) if the applicant provides the relevant information or evidence within one month of the date of notification or such longer period as the Department may allow, the decision may be superseded taking such information or evidence into account; and
- (c) if the applicant does not provide such information or evidence within that period, the decision to be superseded may be superseded taking into account only such information or evidence as was submitted with the application for a supersession.

## CHAPTER 3

### Effective dates for supersessions

#### **Introduction**

**34.** This Chapter and Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) contain exceptions to the provisions of Article 11(5) of the 1998 Order as to the date from which a decision under that Article which supersedes an earlier decision takes effect.

#### **Effective dates: Department’s decisions**

**35.—**(1) Schedule 1 makes provision for the date from which a superseding decision takes effect where there has been, or it is anticipated that there will be, a relevant change of circumstances since the earlier decision took effect.

(2) This paragraph applies where the Department supersedes a decision—

- (a) on the ground that the decision was wrong in law, or was made in ignorance of, or was based on a mistake as to, some material fact, in accordance with regulation 24 (error of law, ignorance, mistake etc.); or
- (b) under regulation 25 (decisions against which no appeal lies).

(3) In a case where paragraph (2) applies and the superseding decision relates to a jobseeker's allowance or an employment and support allowance, the superseding decision takes effect from the first day of the benefit week in which the superseding decision, or where applicable, the application for supersession, was made.

(4) In a case where paragraph (2) applies and the superseding decision relates to universal credit, the superseding decision takes effect from the first day of the assessment period in which the superseding decision, or where applicable, the application for supersession, was made.

(5) A superseding decision made in consequence of a decision which is a relevant determination for the purposes of Article 27 of the 1998 Order<sup>(34)</sup> (restrictions on entitlement to benefit in certain cases of error) takes effect from the date of the relevant determination.

(6) In the case of an employment and support allowance, a superseding decision made in accordance with regulation 26(1) (medical evidence and limited capability for work etc.), following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity, takes effect from the date of the application.

(7) In the case of an employment and support allowance, a superseding decision made on the Department's own initiative in accordance with regulation 26(1) that embodies a determination that the claimant has—

- (a) limited capability for work;
- (b) limited capability for work-related activity; or
- (c) limited capability for work and limited capability for work-related activity,

takes effect from the day after the last day of the relevant period as defined in regulation 5(4) of the Employment and Support Allowance Regulations where the determination is the first such determination.

(8) In the case of an employment and support allowance where regulation 6 of the Employment and Support Allowance Regulations (assessment phase – previous claimants) applies, a superseding decision made in accordance with regulation 26(1) of these Regulations that embodies a determination that the claimant has—

- (a) limited capability for work;
- (b) limited capability for work-related activity; or
- (c) limited capability for work and limited capability for work-related activity,

takes effect from the beginning of the 14th week of the claimant's continuous period of limited capability for work.

(9) In the case of universal credit, a superseding decision made in accordance with regulation 26(1) that embodies a determination that the claimant has limited capability for work or limited capability for work and work-related activity takes effect—

- (a) in a case to which paragraph (1) of regulation 29 of the Universal Credit Regulations (period for which the LCW or LCWRA element is not to be included) applies, from the beginning of the assessment period specified in that paragraph; or
- (b) in any other case, from the beginning of the assessment period in which the decision (if made on the Department's own initiative) or the application for a supersession was made.

(10) A superseding decision to which regulation 27(1) (sanctions cases) applies takes effect from the beginning of the period specified in—

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<sup>(34)</sup> Article 27 was amended by paragraph 9 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 67 of Schedule 9 to the Constitutional Reform Act 2005 and paragraph 10(5) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007.



- (a) regulation 54 of the Employment and Support Allowance Regulations, where the decision relates to the start of a reduction in the amount of an employment and support allowance;
  - (b) regulation 56 of those Regulations, where the decision relates to ending the suspension of such a reduction where a fraud penalty ceases to apply;
  - (c) regulation 23 of the Jobseeker's Allowance Regulations, where the decision relates to the start of a reduction in the amount of jobseeker's allowance;
  - (d) regulation 25 of those Regulations, where the decision relates to ending the suspension of such a reduction where a fraud penalty ceases to apply;
  - (e) regulation 103 of the Universal Credit Regulations, where the decision relates to the start of a reduction in the amount of universal credit;
  - (f) regulation 105 of those Regulations, where the decision relates to ending the suspension of such a reduction where a fraud penalty ceases to apply.
- (11) A superseding decision to which regulation 27(2) applies takes effect from the beginning of the period specified in—
- (a) regulation 56 of the Employment and Support Allowance Regulations, where the decision relates to the start of a suspension where a fraud penalty applies;
  - (b) regulation 57 of those Regulations, where the decision relates to the termination of a reduction in the amount of an employment and support allowance;
  - (c) regulation 25 of the Jobseeker's Allowance Regulations, where the decision relates to the start of a suspension where a fraud penalty applies;
  - (d) regulation 26 of those Regulations, where the decision relates to the termination of a reduction in the amount of a jobseeker's allowance;
  - (e) regulation 105 of the Universal Credit Regulations, where the decision relates to the start of a suspension where a fraud penalty applies;
  - (f) regulation 106 of those Regulations, where the decision relates to the termination of a reduction in the amount of an award of universal credit.
- (12) A superseding decision to which regulation 28 (loss of benefit cases) applies takes effect from the date prescribed for the purposes of section 5B or 6 of the Fraud Act.
- (13) Where a decision is superseded in accordance with regulation 29 (contributions cases), the superseding decision takes effect from the date referred to in regulation 29(a), (b) or (c) on which the late or unpaid contribution is treated as paid.
- (14) A superseding decision made in consequence of a redetermination in accordance with regulation 30 (housing costs: universal credit) takes effect on the first day of the first assessment period following the day on which that redetermination is received by the Department.

### **Effective dates for superseding decisions where changes notified late**

**36.—**(1) For the purposes of regulation 35(1) (effective dates: Department's decisions) and paragraphs 6, 14 and 21 of Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances), the Department may extend the time allowed for a person ("the applicant") to give notice of a change of circumstances in so far as it affects the effective date of the change if all of the following conditions are met.

(2) The first condition is that an application is made to the Department at an appropriate office for an extension of time.

(3) The second condition is that the application—

- (a) contains particulars of the change of circumstances and the reasons for the failure to give notice of the change of circumstances on an earlier date; and

- (b) is made—
  - (i) within 13 months of the date on which the change occurred, or
  - (ii) in the case of personal independence payment where a notification is given under paragraph 15 of Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) within 13 months of the date on which the claimant first satisfied the conditions of entitlement to the particular rate of personal independence payment.
- (4) The third condition is that the Department is satisfied that it is reasonable to grant the extension.
- (5) The fourth condition is that the change of circumstances notified by the applicant is relevant to the decision which is to be superseded.
- (6) The fifth condition is that the Department is satisfied that, due to special circumstances, it was not practicable for the applicant to give notice of the change of circumstances within the relevant notification period.
- (7) In determining whether it is reasonable to grant an extension of time—
  - (a) the Department must have regard to the principle that the greater the amount of time that has elapsed between the end of the relevant notification period and the date of the application, the more compelling should be the special circumstances on which the application is based;
  - (b) no account is to be taken of the fact that the applicant or any person acting for the applicant was unaware of, or misunderstood, the law applicable to the case (including ignorance or misunderstanding of the time limits imposed by these Regulations); and
  - (c) no account is to be taken of the fact that a Commissioner or a court has taken a different view of the law from that previously understood and applied.
- (8) An application under this regulation which has been refused may not be renewed.
- (9) In this regulation “the relevant notification period” means—
  - (a) in the case of universal credit, the assessment period in which the change of circumstances occurs; or
  - (b) in any other case, a period of one month, beginning with the date on which the change of circumstances occurred.

**Effective dates: tribunal and Commissioner’s cases**

- 37.—**(1) This paragraph applies where—
- (a) the Department supersedes a decision of an appeal tribunal or a Commissioner on the ground that it is made in ignorance of, or based on a mistake as to, a material fact in accordance with regulation 31(a) (appeal tribunal and Commissioner’s decisions); and
  - (b) as a result of that ignorance or mistake, the decision to be superseded was more advantageous to the claimant than it would otherwise have been.
- (2) In a case where paragraph (1) applies where the decision relates to—
- (a) a jobseeker’s allowance;
  - (b) personal independence payment,
- the superseding decision takes effect from the date on which the decision of the appeal tribunal or Commissioner took, or was to take, effect.
- (3) In a case where paragraph (1) applies and the decision relates to an employment and support allowance or universal credit where—

- (a) the material fact does not relate to a limited capability for work determination embodied in or necessary to the decision; or
- (b) the material fact does relate to such a determination and the Department is satisfied that at the time the decision was made the claimant knew or could reasonably be expected to know of it and that it was relevant,

the superseding decision takes effect from the first day of the benefit week or (as the case may be) the assessment period in which the appeal tribunal's or Commissioner's decision took, or was to take, effect.

(4) Where the Department supersedes a decision of an appeal tribunal or a Commissioner in accordance with regulation 31(b), the decision takes effect—

- (a) if the decision relates to personal independence payment, from the date on which the decision of the appeal tribunal or the Commissioner would have taken effect had it been decided in accordance with the determination of a Commissioner or a court in the appeal referred to in Article 26(1)(b) of the 1998 Order;
- (b) if the decision relates to a jobseeker's allowance or an employment and support allowance, from the first day of the benefit week in which the appeal tribunal's or Commissioner's decision would have taken effect had it been so decided;
- (c) if the decision relates to universal credit, from the first day of the assessment period in which the appeal tribunal's or Commissioner's decision would have taken effect had it been so decided.

(5) Paragraph (6) applies where—

- (a) a Commissioner, or the court (within the meaning of Article 27 of the 1998 Order<sup>(35)</sup> (restrictions on entitlement to benefit in certain cases of error)), determines an appeal as mentioned in paragraph (1)(a) of that Article ("the relevant determination");
- (b) the Department makes a decision of the kind specified in Article 27(1)(b) of that Order;
- (c) there is an appeal against the relevant determination;
- (d) after the Department's decision, payment is suspended in accordance with regulation 43 (suspension in prescribed cases); and
- (e) on appeal the court (within the meaning of Article 27 of the 1998 Order), reverses the relevant determination in whole or in part.

(6) A consequential decision by the Department under Article 11 of the 1998 Order<sup>(36)</sup> which supersedes an earlier decision of the Department under paragraph (5)(b) takes effect from the date on which the earlier decision took effect.

## PART 4

### Other matters relating to decision-making

#### Correction of accidental errors

**38.**—(1) An accidental error in a decision of the Department, or in any record of such a decision, may be corrected by the Department at any time.

(2) Such a correction is to be treated as part of that decision or of that record.

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<sup>(35)</sup> The definition of "the court" was amended by paragraph 67 of Schedule 9 to the Constitutional Reform Act 2005.

<sup>(36)</sup> Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

(3) The Department must give written notice of the correction as soon as practicable to the person to whom the decision was given.

(4) In calculating the time within which an application may be made under regulation 5 (revision on any grounds) for a decision to be revised, no account is to be taken of any day falling before the day on which notice of the correction was given.

#### **Determinations on incomplete evidence**

**39.**—(1) The following provisions of this regulation apply for the purposes of a decision under Article 9 or 11 of the 1998 Order.

(2) Where—

- (a) a determination falls to be made by the Department concerning the matter mentioned in paragraph (3); and
- (b) it appears to the Department that it is not in possession of all of the information or evidence which is relevant for the purposes of the determination,

the Department must make the determination on the assumption that the relevant information or evidence which is not in the Department's possession is adverse to the claimant.

(3) The matter is whether, for the purposes of regulation 44 of the Jobseeker's Allowance Regulations (relevant education) a person is by virtue of that regulation to be treated as receiving relevant education.

(4) Where—

- (a) a determination falls to be made by the Department as to what costs are to be included in the claimant's award of universal credit under Article 16 of the 2015 Order (housing costs); and
- (b) it appears to the Department that it is not in possession of all of the information or evidence which is relevant for the purposes of the determination,

the Department may make the determination on the assumption that the costs to be included in the claimant's award under that Article are those that the Department is able to determine using such information or evidence as is in its possession.

(5) Where, in the case of personal independence payment—

- (a) a determination falls to be made by the Department as to whether a person meets the condition in Article 90(2) of the 2015 Order (care home residents); and
- (b) it appears to the Department that, having made reasonable enquiries, it is not in possession of all of the information or evidence which is or could be relevant for the purposes of the determination,

the Department may make the determination using such information or evidence as is in its possession.

#### **Determinations as to limited capability for work**

**40.**—(1) Where, in relation to an award of an employment and support allowance, the Department makes a determination (including a determination made following a change of circumstances) whether a person—

- (a) has or does not have limited capability for work; or
- (b) is to be treated as having or not having limited capability for work,

which is embodied in or necessary to a decision under Chapter II of Part II of the 1998 Order (social security decisions and appeals) or on which such a decision is based, that determination is to be conclusive for the purposes of any further decision relating to such an allowance.

(2) Paragraph (1) applies to determinations made in relation to universal credit as it applies in the case of an employment and support allowance.

(3) Where, in relation to any purpose for which Part 1 of the 2007 Act (employment and support allowance) or Part 2 of the 2015 Order (universal credit) applies, a determination falls to be made as to whether a person—

- (a) has, or is to be treated as, having or not having, limited capability for work; or
- (b) is terminally ill,

that issue is to be determined by the Department, notwithstanding the fact that any other matter falls to be determined by another authority.

### **Effect of alterations affecting universal credit**

**41.**—(1) Subject to paragraph (3), an alteration in the amount of a person’s employed earnings (within the meaning of regulation 55(1) of the Universal Credit Regulations) made in accordance with Chapter 2 of Part 6 (earned income) of those Regulations in consequence of information provided to the Department by HMRC is prescribed for the purposes of section 139D(1)(b)(vi) of the Administration Act(37).

(2) For the purposes of this regulation “alteration” means an increase or decrease in such earnings.

(3) Where the person disputes the figure used in accordance with regulation 55 of the Universal Credit Regulations (employed earnings) to calculate employed earnings in relation to any assessment period, the Department must—

- (a) inform the person that the person may request that the Department gives a decision in relation to the amount of universal credit payable in relation to that assessment period; and
- (b) where such a decision is requested, give it within 14 days of receiving the request or as soon as practicable afterwards.

(4) Paragraph (3) does not affect the validity of anything done under section 139D(2) or (3) of the Administration Act in relation to the person’s award.

(5) A decision made in accordance with paragraph (3) takes effect on the date on which the alteration under section 139D(2) or (3) of the Administration Act came into force in relation to the person.

### **Issues for HMRC**

**42.**—(1) Where, on consideration of any claim or other matter, it appears to the Department that an issue arises which, by virtue of Article 7 of the Transfer of Functions Order(38), falls to be decided by an officer of HMRC, it must refer the issue to HMRC.

(2) Where—

- (a) the Department has decided any claim or other matter on an assumption of facts—
  - (i) which appeared to it not to be in dispute, but
  - (ii) concerning which, had an issue arisen, that issue would have fallen, by virtue of Article 7 of the Transfer of Functions Order, to be decided by HMRC;

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(37) Section 139D is inserted by paragraph 19 of Schedule 2 to the Welfare Reform (Northern Ireland) Order 2015.

(38) Article 7 was amended by sections 80(6) and 81(5) of, and Part VIII(2) of Schedule 9 to, the Child Support, Pensions and Social Security Act 2000 (c. 19) and Article 10(2) and (3) of the Employment (Northern Ireland) Order 2002 (S.I.2002/2836 (N.I. 2)).

- (b) an application for a revision or supersession is made, or an appeal is brought, in relation to that claim or other matter; and
- (c) it appears to the Department on receipt of that application or appeal that such an issue arises,

the Department must refer that issue to HMRC.

(3) Pending the final decision of any issue which has been referred to HMRC in accordance with paragraph (1) or (2), the Department may—

- (a) determine any other issue arising on consideration of the claim, application or other matter;
- (b) seek a preliminary opinion from HMRC on the issue referred and decide the claim, application or other matter in accordance with that opinion; or
- (c) defer making any decision on the claim, application or other matter.

(4) On receipt by the Department of the final decision of an issue which has been referred to HMRC under paragraph (1) or (2), it must—

- (a) in a case where the Department made a decision under paragraph (3)(b), decide whether to revise the decision under Article 10 of the 1998 Order or to supersede it under Article 11 of that Order;
- (b) in a case to which paragraph (3)(a) or (c) applies, decide the claim, application or other matter in accordance with the final decision of the issue so referred.

(5) In this regulation—

“final decision” means the decision of HMRC under Article 7 of the Transfer of Functions Order or the determination of any appeal in relation to that decision; and

“the Transfer of Functions Order” means the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999(39).

## PART 5

### Suspension

#### Suspension in prescribed cases

**43.**—(1) The Department may suspend, in whole or in part, payment of any benefit to a person (“P”) in the circumstances described in paragraph (2).

(2) The circumstances are where—

- (a) it appears to the Department that—
  - (i) an issue arises whether the conditions for entitlement to the benefit are or were fulfilled,
  - (ii) an issue arises whether a decision relating to an award of the benefit should be revised under Article 10 of the 1998 Order or superseded under Article 11 of that Order,
  - (iii) an issue arises whether any amount of benefit paid to P is recoverable under or by virtue of section 69ZB, 69ZG or 69ZH of the Administration Act(40),
  - (iv) the last address of P notified to the Department is not the address at which P resides;
- (b) an appeal is pending in P’s case against a decision of an appeal tribunal, a Commissioner or a court; or

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(39) S.I. 1999/671.

(40) Sections 69ZB, 69ZG and 69ZH are inserted by Article 109(1) of the Welfare Reform (Northern Ireland) 2015.

- (c) an appeal is pending against a decision given by a Commissioner or a court in a different case and it appears to the Department that, if the appeal were to be decided in a particular way, an issue would arise as to whether the award of any benefit to P (whether the same benefit or not) ought to be revised or superseded.
- (3) For the purposes of Article 21(2)(c) of the 1998 Order (suspension in prescribed circumstances), where an appeal against the decision has not been brought or an application for leave to appeal against the decision has not been made but the time for doing so has not yet expired, an appeal is pending in the circumstances described in paragraph (4).
- (4) The circumstances are where a decision of an appeal tribunal, a Commissioner or a court has been made and the Department—
  - (a) is awaiting receipt of that decision;
  - (b) in the case of a decision of an appeal tribunal, is considering whether to apply for a statement of reasons for the decision or has applied for such a statement and is awaiting receipt; or
  - (c) has received that decision or, if it is a decision of an appeal tribunal has received the statement of reasons for it, and is considering whether to apply for leave to appeal, or where leave to appeal has been granted, is considering whether to appeal.
- (5) Where payment of any benefit is suspended as the result of paragraph (2)(b) or (c), the Department must, as soon as reasonably practicable, give written notice to P of any proposal to—
  - (a) request a statement of the reasons for a tribunal’s decision;
  - (b) apply for leave to appeal; or
  - (c) make an appeal.

**Provision of information or evidence**

- 44.**—(1) This regulation applies where the Department requires information or evidence from a person mentioned in paragraph (2) (“P”) in order to determine whether a decision awarding a benefit should be revised under Article 10 of the 1998 Order or superseded under Article 11 of that Order.
- (2) The persons are—
    - (a) a person in respect of whom payment of any benefit has been suspended in the circumstances set out in regulation 43(2)(a) (suspension in prescribed cases);
    - (b) a person who has made an application for a decision of the Department to be revised or superseded;
    - (c) a person from whom the Department requires information or evidence under regulation 37(2) of the Claims and Payments Regulations (evidence and information in connection with an award);
    - (d) a person from whom the Department requires documents, certificates or other evidence under regulation 31(3) of the Jobseeker’s Allowance Regulations (provision of information and evidence);
    - (e) a person whose entitlement to an employment and support allowance or universal credit is conditional on that person having, or being treated as having, limited capability for work.
  - (3) The Department must notify P of the requirements of this regulation.
  - (4) P must either—
    - (a) supply the information or evidence within—
      - (i) a period of 14 days beginning with the date on which the notification under paragraph (3) was given or sent to P or such longer period as the Department allows in that notification, or

- (ii) such longer period as P satisfies the Department is necessary in order to comply with the requirements; or
- (b) satisfy the Department within the period applicable under sub-paragraph (a)(i) that either
  - (i) the information or evidence does not exist, or
  - (ii) it is not possible for P to obtain it.
- (5) In relation to a person to whom paragraph (2)(d) refers, paragraph (4)(a)(i) has effect as if for “14 days” there were substituted “7 days”.
- (6) The Department may suspend the payment of a benefit, in whole or in part, to any person to whom paragraph (2)(b), (c), (d) or (e) applies who fails to satisfy the requirements of paragraph (4).
- (7) In this regulation “evidence” includes evidence which a person is required to provide in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976<sup>(41)</sup> (evidence of incapacity for work, limited capability for work and confinement).

#### **Making of payments which have been suspended**

- 45.** The Department must pay a benefit which has been suspended where—
- (a) in a case where regulation 43(2)(a) (suspension in prescribed cases) applies, it is satisfied that the benefit is properly payable and that there are no outstanding issues to be resolved;
  - (b) in a case to which regulation 44(6) (provision of information or evidence) applies, it is satisfied that the benefit is properly payable and that the requirements of regulation 44(4) have been satisfied;
  - (c) in a case to which regulation 43(2)(b) applies, it—
    - (i) does not, in the case of a decision of an appeal tribunal, apply for a statement of the reasons for that decision within the period specified under regulation 53(4) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>(42)</sup>,
    - (ii) does not, in the case of a decision of an appeal tribunal, a Commissioner or a court, make an application for leave to appeal or (where leave to appeal is granted) make the appeal within the time prescribed for the making of such application or appeal,
    - (iii) withdraws an application for leave to appeal or withdraws the appeal, or
    - (iv) is refused leave to appeal, in circumstances where it is not open to the Department to renew the application for leave or to make a further application for leave to appeal;
  - (d) in a case to which regulation 43(2)(c) applies, the Department, in relation to the decision of a Commissioner or a court in a different case—
    - (i) does not make an application for leave to appeal or (where leave to appeal is granted) make the appeal within the time prescribed for the making of such application or appeal,
    - (ii) withdraws an application for leave to appeal or withdraws the appeal,
    - (iii) is refused leave to appeal, in circumstances where it is not open to the Department to renew the application for leave or to make a further application for leave to appeal.

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<sup>(41)</sup> S.R. 1976 No. 175; regulation 2 was amended by regulation 2(3) of S.R. 1987 No. 117, regulation 2(3) of S.R. 1994 No. 468, regulation 3(3) of S.R. 2000 No. 4, regulation 2(2) of S.R. 2001 No. 308, regulation 8(3) of S.R. 2008 No. 286 and regulation 2(2) of S.R. 2010 No. 55.

<sup>(42)</sup> S.R. 1999 No. 162; regulation 53(4) was amended by regulation 6(15)(b) of S.R. 2000 No. 215, regulation 2(15) of S.R. 2002 No. 189 and regulation 7(10)(b) of S.R. 2005 No. 46.



## PART 6

### Termination

#### Termination for failure to furnish information or evidence

**46.**—(1) This regulation applies where payment of a benefit to a person (“P”) has been suspended in full under—

- (a) regulation 43 (suspension in prescribed cases) and P subsequently fails to comply with a requirement for information or evidence under regulation 44 (provision of information or evidence) and more than one month has elapsed since the requirement was made; or
- (b) regulation 44(6) and more than one month has elapsed since the first payment was suspended.

(2) In a case to which this regulation applies, except where entitlement ceases on an earlier date other than under this regulation, the Department must decide that P ceases to be entitled to that benefit with effect from the date on which the payment of the benefit was suspended.

#### Termination in the case of entitlement to alternative benefits

**47.**—(1) This paragraph applies where an award of a jobseeker’s allowance (“the existing benefit”) exists in favour of a person and, if that award did not exist and a claim were made by that person for an employment and support allowance (“the alternative benefit”), an award of the alternative benefit would be made on that claim.

(2) This paragraph applies where an award of an employment and support allowance (“the existing benefit”) exists in favour of a person and, if that award did not exist and a claim were made by that person for a jobseeker’s allowance (“the alternative benefit”), an award of the alternative benefit would be made on that claim.

(3) In a case where paragraph (1) or (2) applies, if a claim for the alternative benefit is made, the Department may bring to an end the award of the existing benefit if it is satisfied that an award of the alternative benefit will be made.

(4) Where the Department brings an award of the existing benefit to an end under paragraph (3), it must end the award on the day immediately preceding the first day on which an award of the alternative benefit takes effect.

(5) Where an award of a jobseeker’s allowance is made in accordance with this regulation, paragraph 4 of Schedule 1 to the Jobseekers Order (waiting days) does not apply.

(6) Where an award of an employment and support allowance is made in accordance with this regulation, paragraph 2 of Schedule 2 to the 2007 Act (waiting days) does not apply.

## PART 7

### Appeals

#### Other persons with a right of appeal

**48.** In addition to the claimant, but subject to regulation 7 (consideration of revision before appeal), the following persons have the right of appeal under Article 13(2) of the 1998 Order<sup>(43)</sup>—

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<sup>(43)</sup> Article 13(2) was substituted by paragraph 19(2) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and amended by Article 107(2) of the Welfare Reform (Northern Ireland) Order 2015.

- (a) any person appointed by the Department under regulation 51 of the Claims and Payments Regulations (payments on death) to proceed with the claim of a person who claimed benefit and subsequently died;
- (b) any person appointed by the Department under regulation 52 of those Regulations (persons unable to act) to act on behalf of another;
- (c) any person claiming personal independence payment on behalf of another under Article 87(5) of the 2015 Order (terminal illness); and
- (d) in the case of a decision under section 69ZB, 69ZG or 69ZH of the Administration Act to recover any amount paid by way of benefit, any person from whom such an amount is recoverable, but only if that person's rights, duties or obligations are affected by that decision.

### **Decisions which may or may not be appealed**

**49.**—(1) An appeal lies against a decision set out in Schedule 2 (decisions against which an appeal lies).

(2) No appeal lies against a decision set out in Schedule 3 (decisions against which no appeal lies).

(3) In paragraph (2) and Schedule 3 “decision” includes a determination embodied in or necessary to a decision.

### **Notice of a decision against which an appeal lies**

**50.**—(1) This regulation applies in the case of a person (“P”) who has a right of appeal under the 1998 Order or these Regulations.

(2) The Department must—

- (a) give P written notice of the decision and of the right to appeal against that decision; and
- (b) inform P that, where that notice does not include a statement of the reasons for the decision, P may, within one month of the date of notification of that decision, request that the Department provide a written statement of the reasons for that decision.

(3) If the Department is requested under paragraph (2)(b) to provide a written statement of reasons, it must provide such a statement within 14 days of the request or as soon as practicable afterwards.

### **Appeals against decisions which have been revised**

**51.**—(1) An appeal against a decision of the Department does not lapse where—

- (a) the decision is revised under Article 10 of the 1998 Order before the appeal is decided; and
- (b) the decision of the Department as revised is not more advantageous to the appellant than the decision before it was revised.

(2) In a case to which paragraph (1) applies, the appeal must be treated as though it had been brought against the decision as revised.

(3) The Department must inform the appellant that the appellant may, within one month of the date of notification of the decision as revised, make further representations as to the appeal.

(4) After the end of that period, or within that period if the appellant consents in writing, the appeal to the appeal tribunal must proceed, except where—

- (a) the Department further revises the decision in light of further representations from the appellant; and
- (b) that decision is more advantageous to the appellant than the decision before it was revised.

(5) Decisions which are more advantageous for the purpose of this regulation include those where

- (a) the amount of any benefit payable to the appellant is greater, or any benefit is awarded for a longer period, as a result of the decision;
- (b) the decision would have resulted in the amount of benefit in payment being greater but for the operation of any provision of the Administration Act or the Contributions and Benefits Act restricting or suspending the payment of, or disqualifying a claimant from receiving, some or all of the benefit;
- (c) as a result of the decision, a denial or disqualification for the receipt of any benefit is lifted, wholly or in part;
- (d) the decision reverses a decision to pay benefit to a third party instead of to the appellant;
- (e) in consequence of the decision, benefit paid is not recoverable under section 69ZB, 69ZG or 69ZH of the Administration Act or regulations made under any of those sections, or the amount so recoverable is reduced; or
- (f) a financial gain accrued or will accrue to the appellant in consequence of the decision.

#### **Decisions involving issues that arise on appeal in other cases**

**52.**—(1) For the purposes of Article 25(3)(b) of the 1998 Order (decisions involving issues that arise on appeal in other cases)—

- (a) a prescribed case is a case in which the claimant would be entitled to the benefit to which the decision relates, even if the other appeal referred to in Article 25(1)(b) of the 1998 Order were decided in a way which is the most unfavourable to the claimant; and
- (b) the prescribed basis on which the Department may make the decision is as if—
  - (i) the other appeal referred to in Article 25(1)(b) of the 1998 Order had already been decided, and
  - (ii) that appeal had been decided in a way which is the most unfavourable to the claimant.

(2) For the purposes of Article 25(5)(c) of the 1998 Order the prescribed circumstances are that the Department—

- (a) certifies in writing that it is considering appealing against that decision; and
- (b) considers that, if such an appeal were to be decided in a particular way—
  - (i) there would be no entitlement to benefit in that case, or
  - (ii) the appeal would affect the decision in that case in some other way.

#### **Appeals involving issues that arise in other cases**

**53.** For the purposes of Article 26(6)(c) of the 1998 Order (appeals involving issues that arise on appeal in other cases) the prescribed circumstances are that the Department—

- (a) certifies in writing that it is considering appealing against that decision; and
- (b) considers that, if such an appeal were already decided, it would affect the determination of the appeal referred to in Article 26(1)(a) of the 1998 Order.

## PART 8

### Consequential amendments

#### Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

**54.**—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>(44)</sup> are amended in accordance with paragraphs (2) to (8).

(2) In regulation 1 (citation, commencement and interpretation)—

(a) in the heading after “commencement” insert “, application”;

(b) after paragraph (1) insert—

“(1A) In so far as Parts II and III and regulations 25 to 30 relate to—

(a) an employment and support allowance payable under the Welfare Reform Act, they shall apply only so far as that Act has effect apart from the amendments made by Schedule 3 and Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015 (“the 2015 Order”) (removing references to an income-related allowance);

(b) a jobseeker’s allowance payable under the Jobseeker’s Order, they shall apply only in so far as that Order has effect apart from the amendments made by Part 1 of Schedule 12 to the 2015 Order (removing references to an income-based allowance).

(1B) Parts II and III and regulations 25 to 30 shall not apply to universal credit (within the meaning of Part 2 of the 2015 Order) or personal independence payment (within the meaning of Part 5 of that Order).”;

(c) in paragraph (2)—

(i) after the definition of “the Welfare Reform Act”<sup>(45)</sup> insert—

““the 2016 Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016;”;

(ii) in the definition of “out of jurisdiction appeal”<sup>(46)</sup> after paragraph (b) add—

“(c) prescribed in regulation 49(2) of the 2016 Regulations.”.

(3) In regulation 31(1)(a)<sup>(47)</sup> (time within which appeals are to be brought) after “regulation 9A(3)” insert “or, as the case may be, regulation 38(4) of the 2016 Regulations”.

(4) In regulation 36<sup>(48)</sup> (composition of appeal tribunals)—

(a) in paragraph (6) after “of that Act” insert “or a personal independence payment under Part 5 of the Welfare Reform (Northern Ireland) Order 2015”;

(b) in paragraph (7)—

(i) in the definition of “determination of limited capability for work-related activity” after “Allowance Regulations” insert “or, as the case may be, regulations 30 and 31 of the Employment and Support Allowance Regulations (Northern Ireland) 2016”;

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<sup>(44)</sup> S.R. 1999 No. 162; relevant amending Regulations are S.R. 1999 No. 272, S.R. 2000 No. 215, S.R. 2002 No. 189, S.R. 2003 No. 224 and S.R. 2008 Nos. 286 and 490.

<sup>(45)</sup> The definition of “Welfare Reform Act” was inserted by regulation 22(2)(a) of S.R. 2008 No. 286.

<sup>(46)</sup> The definition of “out of jurisdiction appeal” was substituted by regulation 3(2) of S.R. 2003 No. 224.

<sup>(47)</sup> Regulation 31(1)(a) was substituted by regulation 2(8) of S.R. 2002 No. 189.

<sup>(48)</sup> Regulation 36(6) was amended by regulation 6(11)(f) of S.R. 2000 No. 215 and regulation 36(7) was substituted by regulation 2(2)(b) of S.R. 2008 No. 490.

- (ii) in the definition of “limited capability for work assessment” after “Allowance Regulations” insert “or, as the case may be, regulation 2 of the Employment and Support Allowance Regulations (Northern Ireland) 2016”.
- (5) In regulation 38(2) and (3) (consideration and determination of appeals and referrals), after “these Regulations” insert “or the 2016 Regulations”.
- (6) In regulation 38A(4)(49) (appeals raising issues for decision by officers of the Inland Revenue), after “11A(5)” insert “or, as the case may be, regulation 42(5) of the 2016 Regulations”.
- (7) In regulation 41(50) (medical examination required by appeal tribunal)—
  - (a) at the end of sub-paragraph (iv) of paragraph (a) omit “or”;
  - (b) after sub-paragraph (vi) of paragraph (a) add—
    - “(vii) the daily living component of personal independence payment specified in Article 83 of the Welfare Reform (Northern Ireland) Order 2015, or
    - (viii) the mobility component of personal independence payment specified in Article 84 of that Order.”;
  - (c) after paragraph (j) add—
    - “(k) is the rate at which the daily living component or mobility component of personal independence payment (within the meaning of Article 83 or 84, as the case may be, of the Welfare Reform (Northern Ireland) Order 2015) is payable.”.
- (8) After regulation 45 insert—
  - “45A. In this Chapter, “claimant” includes a claimant within the meaning of regulation 2 of the 2016 Regulations.”.

Signed by authority of the Secretary of State for Work and Pensions

4th May 2016

*Freud*  
Minister of State,  
Department for Work and Pensions

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(49) Regulation 38A was inserted by regulation 2(4) of S.R. 1999 No. 272.

(50) Regulation 41 was amended by regulation 2(5) of S.R. 1999 No. 272 and regulation 2(3) of S.R. 2008 No. 490.

## 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<sup>(51)</sup> (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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<sup>(51)</sup> 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.

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



- (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(52); 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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(52) 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.

## SCHEDULE 2

Regulation 49(1)

### Decision against which an appeal lies

1. A decision as to whether a person is entitled to a benefit for which no claim is required by virtue of regulation 6, or 8(6) and (7) of the Claims and Payments Regulations.

SCHEDULE 3

Regulation 49(2)

Decisions against which no appeal lies

*Claims and payments*

1. A decision under any of the following provisions of the Claims and Payments Regulations—
  - (a) regulation 17 (special provisions where it is certified that a woman is expected to be confined or where she has been confined);
  - (b) regulation 24 (interchange with claims for other benefits);
  - (c) regulation 36 (evidence and information in connection with a claim);
  - (d) regulation 41 (direct credit transfer);
  - (e) regulation 42 (payment of universal credit);
  - (f) regulation 43 (payment of personal independence payment);
  - (g) regulation 44 (days for payment of personal independence payment);
  - (h) regulation 45(1) (payment of personal independence payment at a daily rate between periods in hospital or other accommodation);
  - (i) regulation 46 (payment of an employment and support allowance);
  - (j) regulation 47 (payment of a jobseeker's allowance);
  - (k) regulation 50 (extinguishment of right to payment if payment is not obtained within the prescribed period), except a decision under paragraph (4) of that regulation;
  - (l) regulation 51 (payments on death);
  - (m) regulation 52 (persons unable to act);
  - (n) regulation 53 (payment to another person on the claimant's behalf);
  - (o) regulation 54 (direct payment to lender of deductions in respect of interest on secured loans);
  - (p) Part 6 (mobility component of personal independence payment).

*Other jobseeker's allowance decisions*

2. A decision made in accordance with regulation 39(2) of these Regulations (jobseeker's allowance determinations on incomplete evidence).

*Other decisions relating to universal credit*

3. A decision in default of an election under regulation 30 of the Universal Credit Regulations (award to include the carer element).

4. A decision as to the amount of universal credit to which a person is entitled, where it appears to the Department that the amount is determined by reference to the claimant's entitlement to an increased amount of universal credit in the circumstances referred to in section 140C(2) of the Administration Act(53) (implementation of increases in universal credit due to attainment of a particular age).

5. So much of a decision as adopts a determination made under the Universal Credit Housing Costs (Executive Determinations) Regulations (Northern Ireland) 2016.

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(53) Section 140C is inserted by paragraph 20 of Schedule 2 to the Welfare Reform (Northern Ireland) Order 2015.

### *Suspension*

6. A decision of the Department relating to suspending payment of benefit, or to the payment of a benefit which has been suspended, under Part 5 of these Regulations (suspension).

### *Decisions depending on other cases*

7. A decision of the Department in accordance with Article 25 or 26 of the 1998 Order (decisions and appeals dependent on other cases).

### *Expenses*

8. A decision of the Department whether to pay travelling expenses under section 156 of the Administration Act<sup>(54)</sup>.

### *Loss of benefit*

9.—(1) In the circumstances referred to in sub-paragraph (2), a decision of the Department that a sanctionable benefit as defined in section 5A(1) of the Fraud Act<sup>(55)</sup> is not payable (or is to be reduced) pursuant to section 5B, 6 or 8 of that Act as a result of—

- (a) a conviction for one or more benefit offences in one set of proceedings;
- (b) an agreement to pay a penalty as an alternative to prosecution;
- (c) a caution in respect of one or more benefit offences; or
- (d) a conviction for one or more benefit offences in each of two sets of proceedings, the later offence or offences being committed within the period of 5 years after the date of any of the convictions for a benefit offence in the earlier proceedings.

(2) The circumstances are that the only ground of appeal is that any of the convictions was erroneous, or that the offender (as defined in section 5B(1) of the Fraud Act) did not commit the benefit offence in respect of which there has been an agreement to pay a penalty or a caution has been accepted.

### *Payments on account, overpayments and recovery*

10. In the case of personal independence payment, a decision of the Department under the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988<sup>(56)</sup>, except a decision of the Department under the following provisions of those Regulations—

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<sup>(54)</sup> Section 156 was amended by paragraph 49 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, paragraph 85 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and paragraph 20 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002.

<sup>(55)</sup> Sections 5A and 5B were inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010. Section 5A(1) is amended by paragraph 46 of Schedule 2 to the Welfare Reform (Northern Ireland) Order 2015. Section 5B is amended by Articles 115(8)(a), 117(2) to (6) and 118(2) of, and paragraph 47 of Schedule 2, paragraph 14 of Schedule 3 and Part 1 of Schedule 12 to, the Welfare Reform (Northern Ireland) Order 2015. Section 6 was amended by paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, Schedule 6 to the Tax Credits Act 2002, section 45 of, and paragraph 14(2) and (3) of Schedule 3 to, the Welfare Reform Act (Northern Ireland) 2007, paragraph 1 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010, Articles 117(7), 118(3) to (11) of, and paragraph 48 of Schedule 2, paragraph 15 of Schedule 3 and Part 1 of Schedule 12 to, the Welfare Reform (Northern Ireland) Order 2015, Section 8 was amended by paragraph 34 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 14(4) and (5) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007, paragraph 3 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010 and paragraph 50 of Schedule 2 and Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015.

<sup>(56)</sup> S.R. 1988 No. 142.

- (a) regulation 5(57) as to the offsetting of a prior payment against a subsequent award;
- (b) regulation 11(1) as to whether a payment in excess of entitlement has been credited to a bank or other account;
- (c) regulation 13(58) as to the sums to be deducted in calculating recoverable amounts.

11. A decision of the Department under the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016(59), except a decision under regulation 10 (bringing payments on account of benefit into account) of those Regulations.

12. A decision of the Department under the Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016(60), except a decision of the Department under the following provisions of those Regulations—

- (a) regulation 4(3), as to the person from whom an overpayment of a housing payment is recoverable;
- (b) regulation 7 as to the treatment of capital to be reduced;
- (c) regulation 8 as to the sums to be deducted in calculating recoverable amounts;
- (d) regulation 9 (sums to be deducted: change of dwelling).

#### *Reciprocal agreements*

13. A decision of the Department made in accordance with an order made under section 155 of the Administration Act(61) (reciprocal agreements with countries outside the United Kingdom).

#### *European Community regulations*

14. An authorisation given by the Department in accordance with Article 22(1) or 55(1) of Council Regulation (EEC) No. 1408/71(62) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the European Union.

#### *Up-rating*

15. A decision of the Department relating to the up-rating of benefits under Part IX of the Administration Act (alteration of contributions and benefits).

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(57) Regulation 5 was amended by Article 11(4) of S. R. 1999 No. 472 (C. 36), regulation 5 of S.R. 2000 No. 404, regulation 26(5) of S.R. 2003 No. 191, regulation 7 of S.R. 2005 No. 299, regulation 3 of S.R. 2006 No. 113, regulation 15(5) of S.R. 2008 No. 286 and regulation 4 of S.R. 2010 No. 200.

(58) Regulation 13 was amended by regulation 26(5) of S.R. 2003 No. 191, regulation 15(8) of S.R. 2008 No. 286, regulation 2(2) of S.R. 2012 No. 108 and is substituted by regulation 31(6) of S.R. 2016 No. 224.

(59) S.R. 2016 No. 223.

(60) S. R. 2016 No. 224.

(61) Section 155 was amended by paragraph 48 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, paragraph 84 of Schedule 6 to the Social Security (Northern Ireland) Order 1998, paragraph 19 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 4(25) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and regulation 3 of S.R. 2011 No. 357 and is amended by paragraph 23 of Schedule 2 and paragraph 24 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015.

(62) O.J. No. L149/2, 5.7.1971 (O.J./S.E. 1971 (II) p. 416).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision about decision-making and appeals in relation to employment and support allowance and jobseeker's allowance (as those benefits have effect as amended by provisions of the Welfare Reform (Northern Ireland) Order 2015 ("the Order") which remove references to an income-related employment and support allowance and income-based jobseeker's allowance), personal independence payment and universal credit.

Part 1 contains general provisions including definitions, the service of notices or documents and the use of electronic communications.

Parts 2 and 3 and Schedule 1 provide for the circumstances in which the Department for Social Development ("the Department") may revise or supersede decisions, when such decisions take effect and related procedural matters. Part 2 also makes provision for persons to be required to apply for a decision to be revised before they may be permitted to appeal.

Part 4 contains miscellaneous provisions relating to decisions of the Department including the correction of accidental errors, determinations on incomplete evidence and additional cases where no superseding decision needs to be made in the case of alterations affecting universal credit.

Part 5 makes provision for the suspension of benefit and Part 6 deals with termination of benefit.

Part 7 makes provision for additional persons to have a right of appeal and for decisions (additional to those listed in the Social Security (Northern Ireland) Order 1998) against which there is or is not a right of appeal and in relation to decisions, appeals involving issues that arise on appeal in other cases.

Part 8 makes consequential amendments to the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 concerning the application of those Regulations to appeals relating to universal credit, personal independence payment, an employment and support allowance and a jobseeker's allowance.

An impact assessment has not been produced for this Rule as no impact on the private or voluntary sector is foreseen.