
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 221

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

PART 3

Supersessions

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⁽¹⁾ (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—

- (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;

(1) 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.

- (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⁽²⁾ (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⁽³⁾ which supersedes an earlier decision of the Department under paragraph (5)(b) takes effect from the date on which the earlier decision took effect.

(2) The definition of "the court" was amended by paragraph 67 of Schedule 9 to the Constitutional Reform Act 2005.

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