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STATUTORY INSTRUMENTS

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**1999 No. 991**

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

**PART II**

**REVISIONS, SUPERSESSIONS AND OTHER MATTERS SOCIAL SECURITY**

**CHAPTER II**

**SUPERSESSIONS**

**Supersession of decisions**

**6.—(1)** Subject to the following provisions of this regulation, for the purposes of section 10, the cases and circumstances in which a decision may be superseded under that section are set out in paragraphs (2) to (4).

(2) A decision under section 10 may be made on the Secretary of State's own initiative or on an application made for the purpose on the basis that the decision to be superseded—

- (a) is one in respect of which—
  - (i) there has been a relevant change of circumstances since the decision was made; or
  - (ii) it is anticipated that a relevant change of circumstances will occur;
- (b) is a decision of the Secretary of State other than a decision to which sub-paragraph (d) refers and—
  - (i) the decision was erroneous in point of law, or it was made in ignorance of, or was based upon a mistake as to, some material fact; and
  - (ii) an application for a supersession was received by the Secretary of State, or the decision by the Secretary of State to act on his own initiative was taken, more than one month after the date of notification of the decision which is to be superseded or after the expiry of such longer period of time as may have been allowed under regulation 4;
- (c) is a decision of an appeal tribunal or of a Commissioner that was made in ignorance of, or was based upon a mistake as to, some material fact;
- (d) is a decision which is specified in Schedule 2 to the Act or is prescribed in regulation 27 (decisions against which no appeal lies); or
- (e) is a decision where—
  - (i) the Secretary of State has awarded a relevant benefit; and
  - (ii) on a date after the date that entitlement arises, the claimant or a member of his family becomes entitled to another relevant benefit or to an increase in the rate of another such benefit;

- (f) is a decision of the Secretary of State that a jobseekers allowance is payable to a claimant where the Secretary of State subsequently determines that the allowance is not payable in accordance with section 19 of the Jobseekers Act.
- (3) A decision which may be revised under regulation 3 may not be superseded under this regulation except where—
- (a) circumstances arise in which the Secretary of State may revise that decision under regulation 3; and
  - (b) further circumstances arise in relation to that decision which are not specified in regulation 3 but are specified in paragraph (2) or (4).
- (4) Where the Secretary of State requires further evidence or information from the applicant in order to consider all the issues raised by an application under paragraph (2) (“the original application”), he shall notify the applicant that further evidence or information is required and the decision may be superseded—
- (a) where the applicant provides further relevant evidence or information within one month of the date of notification or such longer period of time as the Secretary of State may allow; or
  - (b) where the applicant does not provide such evidence or information within the time allowed under sub-paragraph (a), on the basis of the original application.
- (5) The Secretary of State may treat an application for a revision or a notification of a change of circumstances as an application for a supersession.
- (6) The following events are not relevant changes of circumstances for the purposes of paragraph (2)—
- (a) the repayment of a loan to which regulation 66A of the Income Support Regulations<sup>(1)</sup> or regulation 136 of the Jobseeker’s Allowance Regulations applies;
  - (b) the absence from a nursing home or residential care home for a period of less than one week of a resident who is—
    - (i) in receipt of income support or a jobseeker’s allowance; and
    - (ii) not a claimant to whom Part II of Schedule 4 to the Income Support Regulations applies.
- (7) In paragraph (6)(b), “nursing home” and “residential care home” have the same meanings as they have in regulation 19 of the Income Support Regulations.

#### **Date from which a decision superseded under section 10 takes effect**

7.—(1) This regulation contains exceptions to the provisions of section 10(5) as to the date from which a decision under section 10 which supersedes an earlier decision is to take effect.

(2) Where a decision under section 10 is made on the ground that there has been, or it is anticipated that there will be, a relevant change of circumstances since the decision was made, the decision under section 10 shall take effect—

- (a) where the decision is advantageous to the claimant and the change was notified to an appropriate office within one month of the change occurring or within such longer period as may be allowed under regulation 8 for the claimant’s failure to notify the change on an earlier date—
  - (i) subject to head (ii), from the date the change occurred or, where the change does not have effect until a later date, from the first date on which such effect occurs;

(1) Regulation 66A was inserted by S.I.1990/1549; relevant amending instruments are S.I. 1991/236, S.I. 1991/1559 and S.I. 1996/462.

- (ii) in a case where the date a change of circumstances is to take effect falls to be determined in accordance with regulation 26 or 26A(2) of the Claims and Payments Regulations, the date so determined;
  - (b) where the decision is advantageous to the claimant and the change was notified to an appropriate office more than one month after the change occurred or after the expiry of any such longer period as may have been allowed under regulation 8—
    - (i) in the case of a claimant who is in receipt of income support or a jobseeker's allowance and benefit is paid in arrears, from the beginning of the benefit week in which the notification was made;
    - (ii) in the case of a claimant who is in receipt of income support or a jobseeker's allowance and benefit is paid in advance and the date of notification is the first day of a benefit week from that date and otherwise, from the beginning of the benefit week following the week in which the notification was made; or
    - (iii) in any other case, the date of notification of the relevant change of circumstances; or
  - (c) where the decision is not advantageous to the claimant—
    - (i) in a case where the date a change of circumstances is to take effect falls to be determined in accordance with regulation 26 or 26A of the Claims and Payments Regulations, the date so determined; or
    - (ii) in any other case, from the date of the change.
- (3) For the purposes of paragraphs (2) and (8) “benefit week” has the same meaning as in regulation 2(1) of the Income Support Regulations or, as the case may be, regulation 1(3) of the Jobseeker's Regulations.
- (4) In paragraph (2) a decision which is to the advantage of the claimant includes a decision specified in regulation 30(2)(a) to (f).
- (5) Where the Secretary of State supersedes a decision made by an appeal tribunal or a Commissioner on the grounds specified in regulation 6(2)(c) (grounds of ignorance of, or mistake as to, a material fact), the decision under section 10 shall take effect—
- (a) in a case where, as a result of that ignorance of or mistake as to some material fact, the decision was more advantageous to the claimant than it would otherwise have been but for that ignorance or mistake, from the date on which the decision of the appeal tribunal or the Commissioner took, or was to take effect; or
  - (b) in any other case, from the date of the decision under section 10.
- (6) Any decision made under section 10 in consequence of a decision which is a relevant determination for the purposes of section 27 shall take effect as from the date of the relevant determination.
- (7) A decision to which regulation 6(2)(e) applies may be made so as to take effect as from the date on which the decision which has been superseded had effect, or at any time thereafter which is reasonable in the particular circumstances of the case.
- (8) A decision to which regulation 6(2)(f) applies may be so as to take effect from—
- (a) except where sub-paragraph (b) applies, the date immediately following the end of benefit week in which the decision under section 10 was made; or
  - (b) where in accordance with regulation 26A(1) of the Claims and Payments Regulations, a jobseeker's allowance is paid otherwise than fortnightly in arrears, and notwithstanding the provisions of regulation 69 of the Jobseeker's Allowance Regulations, from the day

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(2) Regulation 26A was inserted by the Social Security (Claims and Payments) (Jobseeker's Allowance Consequential Amendments) Regulations 1996.

immediately following the end of the last benefit week in respect of which a jobseeker's allowance was paid.

(9) In any case relating to attendance allowance or disability living allowance in which the decision was made under section 10 on the grounds of a relevant change of circumstances by virtue of regulation 6(2)(a)(i) and the decision is advantageous to the claimant, the decision shall take effect as from whichever is the later of—

- (a) the date declared by the Secretary of State to be the date on which the change of circumstances occurred;
- (b) where more than one change has occurred between the date of the decision to be superseded (“the original decision”) and the date of the application, or, as the case may be, the date the Secretary of State determines on his own initiative to supersede the original decision, the date declared by the Secretary of State to be the date on which the most recent change took effect; or
- (c) where the claimant notifies the change within one month of the date he first satisfies the conditions in, for the period of time specified in, section 65(1)(b) of the Contributions and Benefits Act<sup>(3)</sup> or, as the case may be, section 72(2)(a) or 73(9)(a) of that Act, following the change or most recent change of circumstances which gave rise to the decision under section 10, the first pay day (as specified in Schedule 6 to the Claims and Payments Regulations) after the requirement is first satisfied.

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

(11) A decision as to an award of incapacity benefit or severe disablement allowance, which is made under section 10 because the claimant is to be treated as incapable of work under regulation 10 of the Social Security (Incapacity for Work) (General) Regulations 1995<sup>(4)</sup> (certain persons with a severe condition to be treated as incapable of work), shall take effect as from the date he is to be treated as incapable of work.

(12) Where this paragraph applies, a decision under section 10 may be made so as to take effect as from such date not more than eight weeks before—

- (a) the application for supersession; or
- (b) where no application is made, the date on which the decision under section 10 is made,

as is reasonable in the particular circumstances of the case.

(13) Paragraph (12) applies where—

- (a) the effect of a decision under section 10 is that there is to be included in a claimant's applicable amount an amount in respect of a loan which qualifies under—
  - (i) paragraph 15 or 16 of Schedule 3 to the Income Support Regulations; or
  - (ii) paragraph 14 or 15 of Schedule 2 to the Jobseeker's Allowance Regulations; and
- (b) that decision could not have been made earlier because information necessary to make that decision, requested otherwise than in accordance with paragraph 10(3)(b) of Schedule 9A to the Claims and Payments Regulations<sup>(5)</sup> (annual requests for information), had not been supplied to the Secretary of State by the lender.

(14) Subject to paragraph (23), where a claimant is in receipt of income support and his applicable amount includes an amount determined in accordance with Schedule 3 to the Income Support

<sup>(3)</sup> Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

<sup>(4)</sup> S.I. 1995/311; relevant amending instruments are S.I. 1995/987, S.I. 1996/3207 and S.I. 1997/1009.

<sup>(5)</sup> Schedule 9A was inserted by S.I. 1992/1026.

Regulations (housing costs), and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 15 or 16 of that Schedule, a decision made under section 10 shall take effect—

- (a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or
- (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.

(15) Where a claimant is in receipt of income support and payments made to that claimant which fall within paragraph 29 or 30(1)(a) to (c) of Schedule 9 to the Income Support Regulations have been disregarded in relation to any decision under section 8 or 10 and there is a change in the amount of interest payable—

- (a) on a loan qualifying under paragraph 15 or 16 of Schedule 3 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

a decision under section 10 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (16) is appropriate in the claimant's case.

(16) The date on which a decision under section 10 takes effect for the purposes of paragraph (15) is—

- (a) the date on which the claimant's housing costs are first met under paragraph 6(1)(a), 8(1)(a) or 9(2)(a) of Schedule 3 to the Income Support Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

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

(18) Subject to paragraph (24) and, except in a case to which paragraph (23) applies, where a claimant is in receipt of a jobseeker's allowance and his applicable amount includes an amount determined in accordance with Schedule 2 to the Jobseeker's Allowance Regulations (housing costs), and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 14 or 15 of that Schedule, a decision under section 10 made as a result of that reduction shall take effect—

- (a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or
- (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.

(19) Where a claimant is in receipt of a jobseeker's allowance and payments made to that claimant which fall within paragraph 30 or 31(1)(a) to (c) of Schedule 7 to the Jobseeker's Allowance Regulations have been disregarded in relation to any decision under section 8 or 10 and there is a change in the amount of interest payable—

- (a) on a loan qualifying under paragraph 14 or 15 of Schedule 2 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

any decision under section 10 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (20) is appropriate in the claimant's case.

(20) The date on which a decision under section 10 takes effect for the purposes of paragraph (19) is—

- (a) the date on which the claimant's housing costs are first met under paragraph 6(1)(a), 7(1)(a) or 8(2)(a) of Schedule 2 to the Jobseeker's Allowance Regulations; or
- (b) where the changes in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

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

(22) Where—

- (a) a claimant was paid benefit in respect of 6th October 1996 in accordance with an award of income support;
- (b) that claimant's applicable amount includes an amount determined in accordance with Schedule 3 to the Income Support Regulations (housing costs);
- (c) that claimant is treated as having been awarded a jobseeker's allowance by virtue of regulation 7 of the Jobseeker's Allowance (Transitional Provisions) Regulations 1996<sup>(6)</sup> (jobseeker's allowance to replace income support and unemployment benefit); and
- (d) a decision is made under section 10 in consequence of a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 15 or 16 of Schedule 3 to the Income Support Regulations,

the decision under section 10 referred to in sub-paragraph (d) shall take effect on the next anniversary of the date on which housing costs were first met which occurs after the reduction.

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

(24) Where—

- (a) it has been determined that the amount of a jobseeker's allowance payable to a young person is to be reduced under regulation 63 of the Jobseeker's Allowance Regulations because paragraph (1)(b)(iii), (c), (d), (e) or (f) of that regulation (reduced payments under section 17 of the Jobseekers Act) applied in his case; and
- (b) the decision made in consequence of sub-paragraph (a) falls to be superseded by a decision under section 10 because the Secretary of State has subsequently issued a certificate under section 17(4) of the Jobseekers Act with respect to the failure in question,

the decision under section 10 shall take effect as from the same date as the decision made in consequence of sub-paragraph (a) has effect.

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(6) S.I. 1996/2567.

### **Effective date for late notifications of change of circumstances**

8.—(1) For the purposes of regulation 7(2), a longer period of time may be allowed for the notification of a change of circumstances in so far as it affects the effective date of the change where the conditions specified in the following provisions of this regulation are satisfied.

(2) An application for the purposes of regulation 7(2) shall be made by the claimant or a person acting on his behalf.

(3) The application referred to in paragraph (2) shall—

- (a) contain particulars of the relevant change of circumstances and the reasons for the failure to notify the change of circumstances on an earlier date; and
- (b) be made within 13 months of the date the change occurred.

(4) An application under this regulation shall not be granted unless the Secretary of State is satisfied that—

- (a) it is reasonable to grant the application;
- (b) the change of circumstances notified by the applicant is relevant to the decision which is to be superseded; and
- (c) special circumstances are relevant to the application and as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances within one month of the change occurring.

(5) In determining whether it is reasonable to grant the application, the Secretary of State shall have regard to the principle that the greater the amount of time that has elapsed between the date one month after the change of circumstances occurred and the date the application for the purposes of regulation 7(2) is made, the more compelling should be the special circumstances on which the application is based.

(6) In determining whether it is reasonable to grant an application, no account shall be taken of the following—

- (a) that the applicant or any person acting for him was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that a Commissioner or a court has taken a different view of the law from that previously understood and applied.

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