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STATUTORY INSTRUMENTS

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**2013 No. 381**

The Universal Credit, Personal Independence Payment,  
Jobseeker's Allowance and Employment and Support  
Allowance (Decisions and Appeals) Regulations 2013

**PART 2**

REVISION

CHAPTER 2

REVISION ON SPECIFIC GROUNDS

**Introduction**

**8.** A decision of the Secretary of State under section 8 or 10 of the 1998 Act may be revised at any time by the Secretary of State 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—
- (a) specified in Schedule 2 (decisions against which no appeal lies) to the 1998 Act; or
  - (b) prescribed by regulation 50(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 Tribunal Procedure Rules but the appeal has not been decided.

- (2) Where—
- (a) the Secretary of State makes a decision under section 8 or 10 of the 1998 Act or such a decision is revised under section 9(1) of the 1998 Act (“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 First-tier Tribunal, the Secretary of State makes another decision (“decision B”) which—
    - (i) supersedes decision A; or

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- (ii) decides a further claim by the claimant;
  - (d) after the making of decision B, the First-tier Tribunal makes a decision on the appeal (“decision C”); and
  - (e) the Secretary of State would have made decision B differently if, at the time, the Secretary of State had been aware of decision C,
- the Secretary of State may revise decision B.

### Award of another benefit

#### 12. Where—

- (a) the Secretary of State makes a decision to award a benefit to a claimant (“the original award”); and
- (b) an award of another relevant benefit [<sup>F1</sup>or [<sup>F2</sup>Scottish disability benefit]] or of an increase in the rate of another relevant benefit [<sup>F1</sup>or [<sup>F2</sup>Scottish disability benefit]] is made to the claimant or, in the case of universal credit, to a member of their family, for a period which includes the date on which the original award took effect,

the Secretary of State may revise the original award.

- F1** Words in reg. 12(b) inserted (26.7.2021) by [The Social Security \(Scotland\) Act 2018 \(Disability Assistance for Children and Young People\) \(Consequential Modifications\) Order 2021 \(S.I. 2021/786\)](#), arts. 1(2), 21(3)
- F2** Words in reg. 12(b) substituted (21.3.2022) by [The Social Security \(Disability Assistance for Working Age People\) \(Consequential Amendments\) Order 2022 \(S.I. 2022/177\)](#), arts. 1(2), 17(3)

### Advance awards etc.

**13.** A decision pursuant to regulation 32, 33 or 34 of the Claims and Payments Regulations 2013 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—

- (a) a decision that the amount of an employment and support allowance is to be reduced by virtue of section 11J(1) (sanctions) <sup>M1</sup> of the 2007 Act;
- (b) a decision that the amount of a jobseeker's allowance is to be reduced by virtue of section 6J (higher-level sanctions) or 6K(1) (other sanctions) <sup>M2</sup> of the Jobseekers Act;
- (c) a decision that the amount of universal credit is to be reduced by virtue of section 26(1) (higher-level sanctions) or 27(1) (other sanctions) of the 2012 Act.
- (d) A decision under section 6B, 7 or 9 (“the loss of benefit provisions”) of the Fraud Act <sup>M3</sup> that benefit ceases to be payable or falls to be reduced as a result of the person—
- (e) being convicted of an offence; or
- (f) 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.

### Marginal Citations

- M1** Section 11J was inserted by section 57 of the 2012 Act.
- M2** Sections 6J and 6K were inserted by section 49 of the 2012 Act.
- M3** Section 6B was inserted by section 24(1) the 2009 Act. Section 6B is amended by section 113(8) of the 2012 Act and by the 2009 and 2012 Acts, from a date to be appointed. Section 7 was amended by paragraph 45 of Schedule 2 to the 2002 Act, by Schedule 6 to the Tax Credits Act, by section 49 of, and paragraph 23 to Schedule 3 to, the 2007 Act and by paragraph 2 of Schedule 4 to the 2009 Act. Section 7(4A) was inserted by paragraph 45(2) of Schedule 2 to the 2002 Act. Section 7(4B) was inserted by paragraph 23(2) of Schedule 3 to the 2007 Act. Section 9(4A) was inserted by paragraph 46(3) of Schedule 2 to the 2002 Act. Section 9(4B) was inserted by paragraph 23(5) of Schedule 3 to the 2007 Act.

### 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 Secretary of State 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) (conditions for treating claimant as having limited capability for work until a determination about limited capability for work has been made) of the Employment and Support Allowance Regulations 2013 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 (linking period) of the Employment and Support Allowance Regulations 2013.

[<sup>F3</sup>(4A) 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 or regulation 46A of the Jobseeker’s Allowance Regulations 2013 (extended period 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 2013 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made).]

(5) 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 (duration of contributory allowance) of the 2007 Act <sup>M4</sup>; and

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- (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.

**F3** Reg. 15(4A) inserted (30.3.2015) by [The Jobseeker's Allowance \(Extended Period of Sickness\) Amendment Regulations 2015 \(S.I. 2015/339\)](#), regs. 1, **8(2)**

#### Marginal Citations

**M4** Section 1A was inserted by section 51 of the 2012 Act.

### 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 Secretary of State makes a conversion decision (within the meaning of regulation 5(2) (b) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (deciding whether an existing award qualifies for conversion))<sup>M5</sup> 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 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 termination decision referred to in sub-paragraph (a) is successful.

#### Marginal Citations

**M5** [S.I. 2010/1907](#).

### 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 (treatment of late paid contributions where no consent, connivance or negligence by the primary contributor) of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 (“the Crediting Regulations”) <sup>M6</sup> 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 (treatment of contributions paid late through ignorance or error)<sup>M7</sup> of those Regulations 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 (treatment of unpaid contributions where no consent, connivance or negligence by the primary contributor) of the Social Security (Contributions) Regulations 2001<sup>M8</sup> 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 (treatment of Class 3 contributions paid under section 13A of the Act) of the Crediting Regulations<sup>M9</sup>, a contribution is treated as paid on a date which falls on or before the date on which the decision was made.
- [<sup>F4</sup>(3) A decision in relation to a claim for a jobseeker's allowance or an employment and support allowance may be revised at any time where—
- (a) on or after the date of the decision a contribution is treated as paid as set out in regulation 7A of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (treatment of Class 2 contributions paid on or before the due date); and
  - (b) by virtue of the contribution being so treated, the person satisfies the contribution conditions of entitlement specified in paragraph (6) in relation to that benefit.
- (4) A decision to award a jobseeker's allowance or an employment and support allowance may be revised at any time where on or after the date of the decision—
- (a) any of the circumstances in paragraph (5) occur; and
  - (b) by virtue of the circumstance occurring, the person ceases to satisfy the contribution conditions of entitlement specified in paragraph (6) in relation to that benefit.
- (5) The circumstances are—
- (a) a Class 2 contribution is repaid to a person in consequence of an amendment or correction of the person's relevant profits under section 9ZA or 9ZB of the Taxes Management Act 1970 (amendment or correction of return by taxpayer or officer of the Board);
  - (b) a Class 2 contribution is returned to a person under regulation 52 of the Social Security (Contributions) Regulations 2001 (contributions paid in error); or
  - (c) a Class 1 or a Class 2 contribution paid by a person to Her Majesty's Revenue and Customs under section 223 of the Finance Act 2014 (accelerated payment in respect of notice given while tax enquiry is in progress) is repaid to the person.
- (6) The contribution conditions of entitlement are—
- (a) in relation to a jobseeker's allowance, the conditions set out in section 2(1)(a) and (b) of the Jobseekers Act (the contribution-based conditions); or
  - (b) in relation to an employment and support allowance, the first and second conditions set out in paragraphs 1(1) and 2(1) of Schedule 1 to the 2007 Act (conditions relating to national insurance).
- (7) In this regulation "relevant profits" has the meaning given in section 11(3) of the Contributions and Benefits Act.]

**Changes to legislation:** There are currently no known outstanding effects for the The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013, CHAPTER 2. (See end of Document for details)

**F4** Reg. 17(3)-(7) inserted (1.1.2017) by The Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations 2016 (S.I. 2016/1145), regs. 1, 6(2)

#### Marginal Citations

- M6** S.I. 2001/769. Regulation 5 was amended by S.I. 2008/1554 and S.I. 2002/2366.  
**M7** S.I. 2001/769. Regulation 6 was amended by S.I. 2002/2366.  
**M8** S.I. 2001/1004. Regulation 60 was amended by S.I. 2002/2366 and S.I. 2007/1056.  
**M9** Regulation 6C was inserted by S.I. 2009/659.

#### Other decisions relating to personal independence payment

**18.**—(1) Where the Secretary of State makes a decision awarding personal independence payment which takes effect immediately after the expiry of an existing award under regulation 33(3) (advance claim for and award of personal independence payment) of the Claims and Payments Regulations 2013, 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 Secretary of State determines that the person meets the condition in section 85(2) of the 2012 Act (care home residents where the costs of qualifying services are borne out of local or public funds) 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 Secretary of State made in consequence of a negative determination <sup>M10</sup> may be revised at any time if it contains an error to which the claimant did not materially contribute.

#### Marginal Citations

- M10** See section 80(6) of the 2012 Act for the meaning of “negative determination”.

#### Other decisions relating to universal credit

**19.**—(1) Where the Secretary of State has reduced the amount of an award of universal credit as a consequence of regulation 81 (reduction of universal credit) 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 Rent Officers Order 2013 may be revised at any time in consequence of a rent officer's redetermination made under that Order which resulted in an increase in the amount which represents rent for the purposes of calculating the housing costs element in universal credit.

**Changes to legislation:**

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