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 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 Subject to regulation 32 (decisions which may not be superseded), the Department may make a decision under Article 11 of the 1998 Order ("a superseding decision") in any of the cases and circumstances set out in this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(a) there has been a relevant change of circumstances since the decision to be superseded had effect or, in the case of an advance award under regulation 31, 32, or 33 of the Claims and Payments Regulations, since it was made; or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of the Department, other than one to which regulation 25 (decisions against which no appeal lies) refers, may be superseded where—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the Department to act on its own initiative, more than one month after the date of notification of the decision to be superseded or after the expiry of such longer period as may have been allowed under regulation 6 (late application for a revision).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against which no appeal lies) or prescribed in regulation 49(2) (decisions which may or may not be appealed) may be superseded.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and support allowance decision, a personal independence payment decision or a universal credit decision may be superseded where, since the decision was made, the Department has—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 [M1] (regulation of health professions, social workers, other care workers etc.).

Modifications etc. (not altering text)

C1 Reg. 26 applied (with modifications) (temp.) (13.3.2020) by The Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020 (S.R. 2020/33), regs. 1(1), **3** (with reg. 5), as amended (30.3.2020) by The Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020 (S.R. 2020/53), regs. 1(1), **10(3)**

Marginal Citations

M1 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.

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).

(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) [M2].

Marginal Citations

M2 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.

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.

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.

[[F1](4) In relation to an applicant who is supplying information or evidence of a change of circumstances which is advantageous to the applicant in relation to an award of universal credit, paragraph (3)(b) has effect as if for "one month" there were substituted "14 days".**]**

Textual Amendments

F1 Reg. 33(4) added (8.5.2018) by The Universal Credit (Persons Required to Provide Information, Miscellaneous Amendments and Saving and Transitional Provision) Regulations (Northern Ireland) 2018 (S.R. 2018/92), regs. 1(2), **8(2)**

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 [M3] (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;

(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.

Modifications etc. (not altering text)

C2 Reg. 35(6)-(9) applied (with modifications) (temp.) (13.3.2020) by The Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020 (S.R. 2020/33), regs. 1(1), **3** (with reg. 5), as amended (30.3.2020) by The Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020 (S.R. 2020/53), regs. 1(1), **10(3)**

Marginal Citations

M3 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.

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 [M4] (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 [M5] which supersedes an earlier decision of the Department under paragraph (5)(b) takes effect from the date on which the earlier decision took effect.

Marginal Citations

M4 The definition of "the court" was amended by paragraph 67 of Schedule 9 to the Constitutional Reform Act 2005.

M5 Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

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 (Northern Ireland) 2016, PART 3.