

## 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(1) (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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(1) [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.

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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

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- (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(2); 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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(2) 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<sup>(3)</sup> (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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(3) 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(4).

### *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(5) 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(6), except a decision of the Department under the following provisions of those Regulations—

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(4) 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.

(5) 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.

(6) S.R. 1988 No. 142.

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- (a) regulation 5(7) 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(8) 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(9), 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(10), 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(11) (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\(12\)](#) 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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(7) 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](#).

(8) 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](#).

(9) [S.R. 2016 No. 223](#).

(10) [S. R. 2016 No. 224](#).

(11) 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.

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