
DRAFT STATUTORY INSTRUMENTS

2003 No.

**The Child Benefit and Guardian's Allowance
(Decisions and Appeals) Regulations 2003**

PART 3

SUPERSEDING DECISIONS

Cases and circumstances in which superseding decisions may be made

13.—(1) Subject to regulation 15, the Board may make a decision under section 10 or Article 11 (“a superseding decision”), either on their own initiative or on an application received by them at an appropriate office, in any of the cases and circumstances prescribed by paragraph (2).

(2) The cases and circumstances prescribed by this paragraph are cases and circumstances where the decision to be superseded is—

- (a) a decision in respect of which—
 - (i) there has been a relevant change of circumstances since it had effect; or
 - (ii) it is anticipated that there will be such a change;
- (b) a decision (other than one to which sub-paragraph (d) refers)—
 - (i) which was erroneous in point of law, or was made in ignorance of, or was based upon a mistake as to, some material fact; and
 - (ii) in relation to which an application for a superseding decision was received by the Board, or a decision by the Board to act on their own initiative was taken, more than one month after the date of notification of the decision to be superseded or after the expiry of such longer period of time as may have been allowed under regulation 6;
- (c) a decision of an appeal tribunal or a Commissioner which—
 - (i) was made in ignorance of, or was based upon a mistake as to, some material fact;
 - (ii) in a case to which subsection (5) of section 26 applies, was dealt with in accordance with subsection (4)(b) of that section; or
 - (iii) in a case to which paragraph (5) of Article 26 applies, was dealt with in accordance with paragraph (4)(b) of that Article;
- (d) a decision—
 - (i) specified in Schedule 2 to the 1998 Act;
 - (ii) specified in Schedule 2 to the 1998 Order; or
 - (iii) prescribed by regulation 25 (decisions against which no appeal lies); or
- (e) a decision where—
 - (i) the claimant has been awarded entitlement to child benefit or guardian's allowance; and

- (ii) subsequent to the first day of the period to which that entitlement relates, the claimant or a member of his family becomes entitled to, or to an increase in the rate of, another relevant benefit.

Procedure for making superseding decisions on an application

14.—(1) The Board may treat—

- (a) an application for a revision under section 9 as an application for a decision under section 10;
- (b) an application for a revision under Article 10 as an application for a decision under Article 11.

(2) Paragraph (3) applies where, in order to consider all the issues raised by an application for a superseding decision, the Board require further evidence or information from the applicant.

(3) Where this paragraph applies, the Board must notify the applicant that further evidence or information is required and—

- (a) if the applicant provides further relevant evidence or information within one month of the date of notification or such longer period of time as the Board may allow, the decision to be superseded may be superseded;
- (b) if the applicant does not provide such evidence or information within that period, the decision to be superseded may be superseded on the basis of the application.

Interaction of revisions and superseding decisions

15.—(1) This regulation applies to any decision in relation to which circumstances arise in which the decision may be revised under section 9 or Article 10.

(2) A decision to which this regulation applies may not be superseded by a superseding decision unless—

- (a) circumstances arise in which the Board may revise the decision in accordance with Part 2; and
- (b) further circumstances arise in relation to the decision which—
 - (i) are not specified in any of the regulations in Part 2; but
 - (ii) are prescribed by regulation 13(2) or are ones where a superseding decision may be made in accordance with regulation 14(3).

Date as from which superseding decisions take effect

16.—(1) This regulation prescribes cases or circumstances in which a superseding decision shall take effect as from a prescribed date other than the date on which it was made or, where applicable, the date on which the application for it was made.

(2) If a superseding decision is made on the basis that—

- (a) there has been a relevant change of circumstances since the decision to be superseded had effect; or
- (b) it is anticipated there will be such a change,

it shall take effect as from the earliest date prescribed by paragraphs (3) to (8).

(3) In any case where the superseding decision is advantageous to the claimant and notification of the change was given in accordance with any enactment or subordinate legislation under which that notification was required, the date prescribed by this paragraph is—

- (a) if the notification was given within one month of the change occurring or such longer period as may be allowed under regulation 17, the date the change occurred or, if later, the first date on which the change has effect; or
 - (b) if the notification was given after the period mentioned in sub-paragraph (a), the date of notification of the change.
- (4) In any case where the superseding decision is advantageous to the claimant and is made on the Board's own initiative, the date prescribed by this paragraph is the date on which the Board commenced action with a view to the supersession.
- (5) In any case where the superseding decision is not advantageous to the claimant, the date prescribed by this paragraph is the date of the change.
- (6) Decisions which are advantageous to claimants include those mentioned in regulation 27(5).
- (7) If—
- (a) the Board supersede a decision made by an appeal tribunal or a Commissioner in accordance with paragraph (i) of regulation 13(2)(c); and
 - (b) as a result of the ignorance or mistake referred to in that paragraph, the decision to be superseded was more advantageous to the claimant than it would otherwise have been,
- the superseding decision shall take effect as from the date on which the decision of the appeal tribunal or the Commissioner took, or was to take, effect.
- (8) If the Board supersede a decision made by an appeal tribunal or a Commissioner in accordance with paragraph (ii) or (iii) of regulation 13(2)(c), the superseding decision shall take effect as from the date on which it would have taken effect had it been decided in accordance with the determination of the Commissioner or the court in the appeal referred to in section 26(1)(b) or Article 26(1)(b).
- (9) If a superseding decision is made in consequence of a decision which is a relevant determination for the purposes of section 27(1) or Article 27, it shall take effect as from the date of the relevant determination.
- (10) If the Board supersede a decision in accordance with sub-paragraph (e) of regulation 13(2), the superseding decision shall take effect as from the date on which entitlement arises—
- (a) to the other relevant benefit referred to in paragraph (ii) of that sub-paragraph; or
 - (b) to an increase in the rate of that benefit.

Effective date for late notifications of change of circumstances

- 17.—(1) For the purposes of paragraph (3) of regulation 16, the Board may allow a longer period of time than the period of one month mentioned in sub-paragraph (a) of that paragraph for the notification of a change of circumstances if the first and second conditions are satisfied.
- (2) The first condition is that an application for the purposes of regulation 16(3) must be made by the claimant or a person acting on his behalf.
- (3) The second condition is that the application for the purposes of regulation 16(3) must—
- (a) contain particulars of the relevant change of circumstances and the reasons for the failure to notify the change on an earlier date; and
 - (b) be made within 13 months of the date on which the change occurred.
- (4) An application under this regulation must not be granted unless the Board are satisfied that—
- (a) it is reasonable to grant it;

(1) Section 27 was amended by paragraph 9 of Schedule 1 to the State Pension Credit Act 2002.

- (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 as a result of which 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 an application for the purposes of regulation 16(3), the Board must 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 is made, the more compelling the special circumstances mentioned in paragraph (4) (c) should be.
- (6) In determining whether it is reasonable to grant an application for the purposes of regulation 16(3), the Board must take no account 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 being unaware of, or misunderstanding, 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 for the purposes of regulation 16(3) which has been refused may not be renewed.