

Draft Regulations laid before Parliament under section 80(1) of the Social Security Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

SOCIAL SECURITY

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

Made - - - -

Coming into force in accordance with Regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by:

- sections 5(1A), 159D(1) and (6), 189(1), (4) to (6) and section 191 of the Social Security Administration Act 1992(1);
- sections 9(1), (4) and (6), 10(3) and (6), 10A, 11(1), 12(2), (3), (3A), (3B), (6) and (7)(b), 16(1), 17, 18(1), 21(1) to (3), 22 and 23, 25(3)(b) and (5)(c), 26(6)(c), 28(1), 31(2), 79(1) and (4) to (7) and 84 of, and paragraph 9 of Schedule 2, paragraphs 1, 4 and 9 of Schedule 3 and Schedule 5 to, the Social Security Act 1998(2).

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 80(1) of the Social Security Act 1998.

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- (1) 1992 c.5. Section 5(1A) was inserted by section 99(1) and (3) of the Welfare Reform Act 2012 (c. 5) (“the 2012 Act”). Section 159D was inserted by section 31 of, and paragraph 23 of Schedule 2 to, the 2012 Act, and was further amended by the 2012 Act, sections 33(3) and 147 and by Schedule 3, paragraph 8, and Schedule 14, Part 1. Section 198(1) was amended by paragraph 109(a) of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14) (“the 1998 Act”), by paragraph 75(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) (“the Contributions Act 1999”) and by Schedule 6 to the Tax Credits Act 2002 (c.21) (“the Tax Credits Act”). Section 189(4), (5) and (6) were amended by paragraphs 109(c), (d) and (e) of Schedule 7 and Schedule 8 to the 1998 Act, paragraph 57(1) and (2) of Schedule 3 to the Contributions Act 1999 and by Schedule 6 to the Tax Credits Act. Subsections (5A) and (5B) are inserted by section 104(1) of the 2012 Act. Section 191 is an interpretation provision and is cited for the meaning of the word “prescribe”. The definition of “prescribe” was amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007 (c.5) (“the 2007 Act”).
- (2) 1998 c. 14. Section 9(1) was amended by section 147 of, and Schedule 14, Part 8 to the 2012 Act. Section 10A was inserted by section 18 of, and paragraph 24 of Schedule 7 to, the Contributions Act 1999 and was amended by S.I. 2009/56. Section 12(2) was substituted by section 18 of, and paragraphs 25(1) and (3) of Schedule 7 to, the Contributions Act 1999, and was amended by S.I. 2008/2833 and by section 102(1) and (2) of the 2012 Act. Subsections (3A) and (3B) were inserted by section 102(1) and (3) of the 2012 Act. Subsection (7) was amended by section 102(4)(b) of the 2012 Act. Schedule 5 was amended by S.I. 2008/2833. Section 17 was amended by S.I. 2008/2833. Section 18(1) was amended by section 18 of, and paragraph 29 of Schedule 7 to, the Contributions Act 1999, and by S.I. 2008/2833. Section 21(2) and (3) was amended by S.I. 2008/2833. Section 22(3) was amended by section 99(5) of the 2012 Act. Section 22(4) was repealed by section 147 and Part 10 of Schedule 14 to the 2012 Act. Section 28(1) was amended by S.I. 2008/2833. Section 79(1) was amended by paragraphs 12 and 13 of Schedule 4 to the Tax Credits Act and by S.I. 2008/2833. Subsections (6A) and (6B) were inserted by section 104(2) of the 2012 Act. Section 84 is an interpretation provision and is cited for the meaning of the word “prescribe”. Schedule 5 was amended by S.I. 2008/2833.

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it⁽³⁾.

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.

(2) They come into force—

- (a) in so far as they relate to personal independence payment and for the purposes of this regulation, on 8th April 2013;
- (b) for all remaining purposes, on 29th April 2013.

(3) These Regulations apply in relation to—

- (a) an employment and support allowance payable under Part 1 of the 2007 Act as amended by Schedule 3 and Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-related allowance);
- (b) a jobseeker's allowance payable under the Jobseekers Act as amended by Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-based allowance);
- (c) personal independence payment; and
- (d) universal credit.

Interpretation

2. In these Regulations—

“the 1998 Act” means the Social Security Act 1998⁽⁴⁾;

“the 2007 Act” means the Welfare Reform Act 2007⁽⁵⁾;

“the 2012 Act” means the Welfare Reform Act 2012⁽⁶⁾;

“the Administration Act” means the Social Security Administration Act 1992⁽⁷⁾;

“appeal”, except where the context otherwise requires, means an appeal to the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007⁽⁸⁾;

“appropriate office” means—

- (a) in the case of a contributions decision which falls within Part 2 (contributions decisions) of Schedule 3 (decisions against which an appeal lies) to the 1998 Act, any National Insurance Contributions office of HMRC or any office of the Department for Work and Pensions; or

⁽³⁾ See section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

⁽⁴⁾ 1998 c. 14.

⁽⁵⁾ 2007 c. 5.

⁽⁶⁾ 2012 c. 5.

⁽⁷⁾ 1992 c. 5.

⁽⁸⁾ 2007 c. 15.

- (b) in any other case, the office of the Department for Work and Pensions, or other place, the address of which is specified on the notification of the original decision referred to in regulation 5(1) (revision on any grounds);

“assessment period” is to be construed in accordance with regulation 21 (assessment periods) of the Universal Credit Regulations;

“benefit” means a benefit or an allowance in relation to which these Regulations apply;

“benefit week” has the same meaning as in—

- (a) regulation 2 (interpretation) of the Employment and Support Allowance Regulations 2013⁽⁹⁾ in the case of an employment and support allowance;
- (b) regulation 2 (general interpretation) of the Jobseeker's Allowance Regulations 2013⁽¹⁰⁾, in the case of a jobseeker's allowance;

“child” means a person under the age of 16;

“claimant” means—

- (a) any person who has claimed—
- (i) an employment and support allowance;
 - (ii) a jobseeker's allowance;
 - (iii) personal independence payment;
- (b) in the case of universal credit, any person who is a claimant for the purposes of section 40 (interpretation) of the 2012 Act; and
- (c) any other person from whom an amount of benefit is alleged to be recoverable;

“the Claims and Payments Regulations 2013” means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013⁽¹¹⁾;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992⁽¹²⁾;

“the date of notification”, in relation to a decision of the Secretary of State, means the date on which the notification of the decision is treated as having been given or sent in accordance with—

- (a) regulation 3 (service of documents); or
- (b) where the notification is given or sent using an electronic communication, Schedule 2 (electronic communications) to the Claims and Payments Regulations 2013;

“designated authority” means—

- (a) the Secretary of State; or
- (b) a person providing services to the Secretary of State;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000⁽¹³⁾;

“employment and support allowance” means an employment and support allowance in relation to which these Regulations apply;

⁽⁹⁾ S.I. 2013/XXXX.

⁽¹⁰⁾ S.I. 2013/XXXX.

⁽¹¹⁾ S.I. 2013/XXXX.

⁽¹²⁾ 1992 c. 4.

⁽¹³⁾ 2000 c.7. The definition of “electronic communication” was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

“the Fraud Act” means the Social Security Fraud Act 2001(**14**);

“fraud penalty”, in relation to any claimant of an employment and support allowance, a jobseeker's allowance or universal credit, means any period during which the provisions of section 6B, 7 or 9 of the Fraud Act(**15**) apply to the award;

“family” means the claimant's partner and any—

- (a) child; or
- (b) qualifying young person, within the meaning of regulation 5 (meaning of “qualifying young person”) of the Universal Credit Regulations,

who is a member of the same household as the claimant and for whom the either the claimant or their partner is, or both of them are, responsible;

“HMRC” means Her Majesty's Revenue and Customs;

“the Jobseekers Act” means the Jobseekers Act 1995(**16**);

“jobseeker's allowance” means a jobseeker's allowance in relation to which these Regulations apply;

“limited capability for work” has the same meaning as in—

- (a) section 1(4) of the 2007 Act in relation to an employment and support allowance;
- (b) section 37(1) of the 2012 Act in relation to universal credit;

“limited capability for work determination” means—

- (a) where the determination relates to an employment and support allowance, a determination whether a person has limited capability for work following a limited capability for work assessment in accordance with regulation 15(1) (determination of limited capability for work) of the Employment and Support Allowance Regulations 2013, or a determination that a person is to be treated as having limited capability for work in accordance with regulation 16 (certain claimants to be treated as having limited capability for work) or 25 (exceptional circumstances) of those Regulations;
- (b) where the determination relates to universal credit, a determination whether a person has limited capability for work following a limited capability for work assessment referred to in regulation 39(6) (limited capability for work) of the Universal Credit Regulations, or a determination that a person is to be treated as having limited capability for work in accordance with regulation 39(4) of those Regulations;

“official error” means an error made by—

- (a) an officer of the Department for Work and Pensions or HMRC acting as such which was not caused or materially contributed to by any person outside the Department or HMRC;
- (b) a person employed by, and acting on behalf of, a designated authority which was not caused or materially contributed to by any person outside that authority,

but excludes any error of law which is shown to have been such by a subsequent decision of the Upper Tribunal, or of the court as defined in section 27(7) of the 1998 Act(**17**);

(14) 2001 c. 11 (“the Fraud Act”).

(15) Section 6B was inserted by section 24(1) of the Welfare Reform Act 2009 (c. 24) (“the 2009 Act”). Section 6B was amended by section 113(8) of the 2012 Act and is amended by the 2009 and 2012 Acts, from a date to be appointed. Section 7 was amended by paragraph 45 of Schedule 2 to the State Pension Credit Act 2002 (“the 2002 Act”) (c. 16), 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. Subsection (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 2007 Act. Sections 7 to 9 were amended by Schedule 4 to the 2009 Act.

(16) 1995 c. 18.

(17) Relevant amendments were made to section 27(7) by section 40 of, and paragraph 64 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), section 28 of, and paragraph 17 of Schedule 3 to, the 2007 Act, by S.I. 2011/1043, and by sections 31 and 91 of, and paragraphs 43 and 47 of Schedule 2 and paragraphs 37 and 41 of Schedule 9 to, the 2012 Act.

“partner” means one of a couple within the meaning of section 39 (couples) of the 2012 Act;

“personal independence payment” means an allowance payable under Part 4 (personal independence payment) of the 2012 Act;

“relevant benefit” has the same meaning as in Chapter 2 (social security decisions and appeals) of Part 1 (decisions and appeals) of the 1998 Act;

“the Rent Officers Order 2013” means the Rent Officers (Universal Credit Functions) Order 2013⁽¹⁸⁾;

“terminally ill”, in relation to a claimant, means that the claimant is suffering from a progressive disease and that death in consequence of that disease can reasonably be expected within 6 months;

“the Tribunal Procedure Rules” means the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008⁽¹⁹⁾;

“the Universal Credit Regulations” means the Universal Credit Regulations 2013⁽²⁰⁾;

“universal credit” means the benefit payable under Part 1 (universal credit) of the 2012 Act;

“writing” includes writing produced by means of electronic communications used in accordance with regulation 4 (electronic communications).

Service of documents

3.—(1) Where, under any provision of these Regulations, any notice or other document is given or sent by post to the Secretary of State, it is to be treated as having been given or sent on the day on which it is received by the Secretary of State.

(2) Where, under any provision of these Regulations, the Secretary of State sends a notice or other document by post to a person's last known address, it is to be treated as having been given or sent on the day on which it was posted.

Electronic communications

4. Schedule 2 (electronic communications) to the Claims and Payments Regulations 2013 applies to the delivery of electronic communications to or by the Secretary of State for the purposes of these Regulations in the same manner as it applies to the delivery of electronic communications for the purposes of the Claims and Payments Regulations 2013.

PART 2

REVISION

CHAPTER 1

REVISION ON ANY GROUNDS

Revision on any grounds

5.—(1) Any decision of the Secretary of State under section 8 or 10 of the 1998 Act (“the original decision”)⁽²¹⁾ may be revised by the Secretary of State if—

⁽¹⁸⁾ S.I. 2013/XXXX.

⁽¹⁹⁾ S.I. 2008/2685.

⁽²⁰⁾ S.I. 2013/XXXX.

⁽²¹⁾ Relevant amendments were made to section 8 by section 18 of, and paragraph 22 of Schedule 7 to, the Contributions Act 1999, by section 11 of, and paragraphs 4 and 6 of Schedule 1 to, the 2002 Act, by section 28 of, and paragraph 17 of Schedule 3 to,

- (a) the Secretary of State commences action leading to the revision within one month of the date of notification of the original decision; or
- (b) an application for a revision is received by the Secretary of State at an appropriate office within—
 - (i) one month of the date of notification of the original decision (but subject to regulation 38(4)(correction of accidental errors));
 - (ii) 14 days of the expiry of that period if a written statement of the reasons for the decision is requested under regulation 7 (consideration of revision before appeal) or regulation 51 (notice of a decision against which an appeal lies) and that statement is provided within the period specified in paragraph (i);
 - (iii) 14 days of the date on which that statement was provided if the statement was requested within the period specified in paragraph (i) but was provided after the expiry of that period; or
 - (iv) such longer period as may be allowed under regulation 6 (late application for a revision).
- (2) Paragraph (1) does not apply—
 - (a) in respect of a relevant change of circumstances which occurred since the decision had effect or, in the case of an advance award under regulation 32, 33 or 34 of the Claims and Payments Regulations 2013, since the decision was made;
 - (b) where the Secretary of State has evidence or information which indicates that a relevant change of circumstances will occur;
 - (c) in respect of a decision which relates to an employment and support allowance or personal independence payment where the claimant is terminally ill, unless the application for a revision contains an express statement that the claimant is terminally ill.

Late application for a revision

6.—(1) The Secretary of State may extend the time limit specified in regulation 5(1) (revision on any grounds) for making an application for a revision if all of the following conditions are met.

(2) The first condition is that the person wishing to apply for the revision has applied to the Secretary of State at an appropriate office for an extension of time.

(3) The second condition is that the application—

- (a) explains why the extension is sought;
- (b) contains sufficient details of the decision to which the application relates to enable it to be identified; and
- (c) is made within 13 months of the latest date by which the application for revision should have been received by the Secretary of State in accordance with regulation 5(1)(b)(i) to (iii).

(4) The third condition is that the Secretary of State is satisfied that it is reasonable to grant the extension.

(5) The fourth condition is that the Secretary of State is satisfied that due to special circumstances it was not practicable for the application for revision to be made within the time limit specified in regulation 5(1)(b)(i) to (iii) (revision on any grounds).

the 2007 Act and by sections 31 and 91 of, and paragraphs 43 and 45 of Schedule 2 and paragraphs 37 and 39 of Schedule 9, to the 2012 Act. Section 10 was amended by sections 18 and 26 of, and paragraph 23 of Schedule 7 and Schedule 10 to, the Contributions Act 1999, by amended [S.I. 2008/2833](#) and by sections 103 and 147 of, and paragraph 4 of Schedule 12 and Schedule 14 to, the 2012 Act.

(6) In determining whether it is reasonable to grant an extension of time, the Secretary of State must have regard to the principle that the greater the amount of time that has elapsed between the end of the time limit specified in regulation 5(1)(b)(i) to (iii) (revision on any grounds) and the date of the application, the more compelling should be the special circumstances on which the application is based.

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

Consideration of revision before appeal

7.—(1) This regulation applies in a case where—

- (a) the Secretary of State gives a person written notice of a decision under section 8 or 10 of the 1998 Act (whether as originally made or as revised under section 9 of that Act)⁽²²⁾; and
- (b) that notice includes a statement to the effect that there is a right of appeal in relation to the decision only if the Secretary of State has considered an application for a revision of the decision.

(2) In a case to which this regulation applies, a person has a right of appeal under section 12(2) of the 1998 Act in relation to the decision only if the Secretary of State has considered on an application whether to revise the decision under section 9 of that Act.

(3) The notice referred to in paragraph (1) must inform the person—

- (a) of the time limit under regulation 5(1) (revision on any grounds) for making an application for a revision; and
- (b) that, where the notice does not include a statement of the reasons for the decision (“written reasons”), the person may, within one month of the date of notification of the decision, request that the Secretary of State provide written reasons.

(4) Where written reasons are requested under paragraph (3)(b), the Secretary of State must provide that statement within 14 days of receipt of the request or as soon as practicable afterwards.

(5) Where, as the result of paragraph (2), there is no right of appeal against a decision, the Secretary of State may treat any purported appeal as an application for a revision under section 9 of the 1998 Act.

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—

(22) Section 9 was amended by section 147 of, and Schedule 14 to, the 2012 Act.

- (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
 - (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 or of an increase in the rate of another relevant 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.

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)(**23**) 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)(**24**) of the Jobseekers Act;

(23) Section 11J was inserted by section 57 of the 2012 Act.

(24) Sections 6J and 6K were inserted by section 49 of the 2012 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.
- (2) A decision under section 6B, 7 or 9 (“the loss of benefit provisions”) of the Fraud Act(25) that benefit ceases to be payable or falls to be reduced as a result of the person—
 - (a) being convicted of an offence; or
 - (b) 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.

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.
- (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(26); and
 - (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.

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—

(25) 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.

(26) Section 1A was inserted by section 51 of the 2012 Act.

- (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))(27) 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.

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”)(28) 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)(29) 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(30) 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(31), a contribution is treated as paid on a date which falls on or before the date on which the decision was made.

(27) [S.I. 2010/1907](#).

(28) [S.I. 2001/769](#). Regulation 5 was amended by [S.I. 2008/1554](#) and [S.I. 2002/2366](#).

(29) [S.I. 2001/769](#). Regulation 6 was amended by [S.I. 2002/2366](#).

(30) [S.I. 2001/1004](#). Regulation 60 was amended by [S.I. 2002/2366](#) and [S.I. 2007/1056](#).

(31) 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⁽³²⁾ may be revised at any time if it contains an error to which the claimant did not materially contribute.

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.

CHAPTER 3

PROCEDURE AND EFFECTIVE DATE

Procedure for making an application for a revision

20.—(1) The Secretary of State may treat an application for a supersession under section 10 of the 1998 Act as an application for a revision under section 9 of that Act.

(2) The following paragraph applies where the Secretary of State, in order to consider all the issues raised by the application, requires further evidence or information from a person who has applied for a revision (“the applicant”).

(3) The Secretary of State must notify the applicant that—

- (a) the further evidence or information specified in the notification is required;
- (b) if the applicant provides the relevant evidence or information within one month of the date of notification or such longer period as the Secretary of State may allow, the decision may be revised taking such evidence or information into account; and
- (c) if the applicant does not provide such evidence or information within that period, the decision may be revised using such evidence or information as was submitted with the application for revision.

⁽³²⁾ See section 80(6) of the 2012 Act for the meaning of “negative determination”.

Effective date of a revision

21. Where, on a revision under section 9 of the 1998 Act, the Secretary of State decides that the date from which the decision under section 8 or 10 of that Act (“the original decision”) took effect was wrong, the revision takes effect from the date from which the original decision would have taken effect had the error not been made.

PART 3

SUPERSESIONS

CHAPTER 1

GROUND S FOR SUPERSESSION

Introduction

22. Subject to regulation 32 (decisions which may not be superseded), the Secretary of State may make a decision under section 10 (“a superseding decision”) of the 1998 Act in any of the cases and circumstances set out in this Chapter.

Changes of circumstances

23.—(1) The Secretary of State 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 32, 33 or 34 of the Claims and Payments Regulations 2013, 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 Secretary of State, 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 Secretary of State to act on the Secretary of State’s 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 (decisions against which no appeal lies) to the 1998 Act or prescribed in regulation 50(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 universal credit decision may be superseded where, since the decision was made, the Secretary of State has—

- (a) received medical evidence from a healthcare professional or other person approved by the Secretary of State; or
- (b) made a determination that the claimant is to be treated as having limited capability for work in accordance with regulation 16, 21, 22 or 29 of the Employment and Support Allowance Regulations 2013 or 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”, “personal independence payment decision” and “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 (regulation of health professions, social workers, other care workers etc.) of the Health Act 1999⁽³³⁾.

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) (sanctions)⁽³⁴⁾ of the 2007 Act;
- (b) section 6J(1) (higher-level sanctions) or 6K(1) (other sanctions)⁽³⁵⁾ of the Jobseekers Act; or
- (c) section 26(1) (higher-level sanctions) or 27(1) (other sanctions) of the 2012 Act.

(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.

⁽³³⁾ 1999 c. 8. Section 60(1) was amended by section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17), by sections 111 and 127 of, and paragraph 1 of Schedule 8 and paragraph 10 of Schedule 10 to, the Health and Social Care Act 2008 (c. 14) (“the 2008 Act”), by sections 209, 210, 230 and 231 of, and paragraph 16 of Schedule 15 to, the Health and Social Care Act 2012 (c. 7) (“the Social Care Act 2012”), by article 48(3) of, and paragraph 8(a) of Schedule 4 to, S.I. 2002/254. Subsection (2) was amended by sections 111 and 116 of, and paragraphs 1 and 3 of Schedule 8 and Schedule 15 to, the 2008 Act, by S.I. 2010/1621 and by the Social Care Act 2012, section 209. Subsections (2ZA) to (2ZF) were inserted by section 209 of the Social Care Act 2012, section 209. Subsections (2A) and (2B) were inserted by section 111 of, and paragraph 1 of Schedule 8 to, the 2008 Act.

⁽³⁴⁾ Section 11J was inserted by section 57 of the 2012 Act.

⁽³⁵⁾ Sections 6J and 6K were inserted by section 49 of the 2012 Act.

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 6B, 7 or 9 of the Fraud Act (loss of benefit provisions)(36).

Contributions cases

29. The Secretary of State 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 2001 (treatment of late paid 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;
- (b) regulation 6 of those Regulations (treatment of contributions 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 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.—(1) A decision in relation to universal credit which adopts a determination made under the Rent Officers Order 2013 may be superseded where, in consequence of a rent officer's redetermination made in under that Order, the amount which represents rent for the purposes of calculating the housing costs element in universal credit is reduced.

Tribunal decisions

31. The Secretary of State may supersede a decision of the First-tier Tribunal or Upper Tribunal which—

- (a) was made in ignorance of, or was based upon a mistake as to, some material fact; or
- (b) in a case where section 26(5) (appeals involving issues that arise in other cases) of the 1998 Act applies, was made in accordance with section 26(4)(b) of that Act(37).

CHAPTER 2

SUPERSEDING DECISIONS: LIMITATIONS AND PROCEDURE

Decisions which may not be superseded

32. A decision which may be revised under section 9 of the 1998 Act may not be superseded under Chapter 1 of this Part unless—

- (a) circumstances arise in which the Secretary of State may revise the decision under Part 2; and

(36) Section 6B was inserted by section 24(1) of the 2009 Act. Section 6B was 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 2007 Act.

(37) Section 26(4) and (5) were amended by [S.I. 2008/2833](#).

- (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 of this Part or are ones where a superseding decision may be made in accordance with regulation 33(3).

Procedure for making an application for a supersession

33.—(1) The Secretary of State may treat an application for a revision under section 9 of the 1998 Act, or a notification of a change of circumstances, as an application for a supersession under section 10 of that Act.

(2) The following paragraph applies where the Secretary of State, in order to consider all the issues raised by the application, requires further evidence or information from a person who has applied for a supersession (“the applicant”).

(3) The Secretary of State must notify the applicant that—

- (a) the further evidence or information specified in the notification is required;
- (b) if the applicant provides the relevant evidence or information within one month of the date of notification or such longer period as the Secretary of State may allow, the decision may be superseded taking such information or evidence into account; and
- (c) if the applicant does not provide such evidence or information within that period, the decision to be superseded may be superseded taking into account only such evidence or information as was submitted with the application for a supersession.

CHAPTER 3

EFFECTIVE DATES FOR SUPERSESIONS

Introduction

34. This Chapter and Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) contains exceptions to the provisions of section 10(5) of the 1998 Act as to the date from which a decision under section 10 of that Act which supersedes an earlier decision takes effect.

Effective dates: Secretary of State decisions

35.—(1) Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) 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 Secretary of State 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 section 27 of the 1998 Act (restrictions on entitlement to benefit in certain cases of error)(38) 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 Secretary of State's own initiative in accordance with regulation 26(1) that embodies a determination that the claimant has—

- (a) limited capability for work; or
- (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 entitlement 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 2013 (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; or
- (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 regulation 28(1) (period for which the LCW or LCWRA element is not to be included) of the Universal Credit Regulations 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 Secretary of State's own initiative) or the application for a supersession was made.

(10) A superseding decision to which regulation 27(1) (sanctions cases: reduction in an award) applies takes effect from the beginning of the period specified in—

- (a) regulation 54 of the Employment and Support Allowance Regulations 2013, where the decision relates to the start of a reduction in the amount of an employment and support allowance;

(38) 1998 c. 14. Section 27(1) and (3) was amended by S.I. 2008/2833. Section 27(7) was amended by the 2002 Act, section 11, Schedule 1, Part 2, by the Constitutional Reform Act 2005 (c. 4), section 40(4) and Schedule 9, paragraph 64, by the 2007 Act, section 28 and by Schedule 3, paragraph 17, by the 2012 Act, sections 31 and 91 and Schedule 2, paragraphs 43 and 47, Schedule 9, paragraphs 37 and 41 and by S.I. 2011/1043. Section 27(10) was amended by S.I. 2008/2833.

- (b) regulation 56 of the Employment and Support Allowance Regulations 2013, where the decision relates to ending the suspension of a such a reduction where a fraud penalty ceases to apply;
 - (c) regulation 22 of the Jobseeker's Allowance Regulations 2013, where the decision relates to the start of a reduction in the amount of a jobseeker's allowance;
 - (d) regulation 24 of the Jobseeker's Allowance Regulations 2013, where the decision relates to ending the suspension of such a reduction where a fraud penalty ceases to apply;
 - (e) regulation 106 of the Universal Credit Regulations, where the decision relates to the start of a reduction in the amount of universal credit;
 - (f) regulation 108 of the Universal Credit 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) (sanctions cases: suspension and termination of a reduction) applies takes effect from the beginning of the period specified in—
- (a) regulation 56 of the Employment and Support Allowance Regulations 2013, where the decision relates to the start of a suspension where a fraud penalty applies;
 - (b) regulation 57 of the Employment and Support Allowance Regulations 2013, where the decision relates to the termination of a reduction in the amount of an employment and support allowance;
 - (c) regulation 24 of the Jobseeker's Allowance Regulations 2013, where the decision relates to the start of a suspension where a fraud penalty applies;
 - (d) regulation 25 of the Jobseeker's Allowance Regulations 2013, where the decision relates to the termination of a reduction in the amount of a jobseeker's allowance;
 - (e) regulation 108 of the Universal Credit Regulations, where the decision relates to the start of a suspension where a fraud penalty applies;
 - (f) regulation 109 of the Universal Credit 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 provisions) applies takes effect from the date prescribed for the purposes of section 6B or 7 of the Fraud Act⁽³⁹⁾.
- (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 Secretary of State.

Effective dates for superseding decisions where changes notified late

36.—(1) For the purposes of regulation 35(1) (effective dates: Secretary of State 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 Secretary of State 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.

⁽³⁹⁾ Section 6B was inserted by section 24(1) of 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, 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.

- (2) The first condition is that an application is made to the Secretary of State 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 Part 2 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 Secretary of State 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 Secretary of State 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 Secretary of State 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 must be taken of the fact that the applicant or any person acting for them 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 must be taken of the fact that the Upper Tribunal 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 cases

- 37.—**(1) This paragraph applies where—
- (a) the Secretary of State supersedes a decision of the First-tier Tribunal or the Upper Tribunal 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) (tribunal 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 First-tier Tribunal or the Upper Tribunal 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 Secretary of State 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 in the Tribunal's decision took or was to take effect.

(4) Where the Secretary of State supersedes a decision of the First-tier Tribunal or the Upper Tribunal in accordance with regulation 31(b) (tribunal decisions), the decision takes effect—

- (a) if the decision relates to personal independence payment, from the date on which the decision of the First-tier Tribunal or the Upper Tribunal would have taken effect had it been decided in accordance with the determination of the Upper Tribunal or the court in the appeal referred to in section 26(1)(b) of the 1998 Act;
- (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 Tribunal'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 Tribunal's decision would have taken effect had it been so decided.

(5) Paragraph (6) applies where—

- (a) the Upper Tribunal, or the court as defined in section 27(7) (restrictions on entitlement to benefit in certain cases of error) of the 1998 Act, determines an appeal as mentioned in subsection (1)(a) of that section ("the relevant determination");
- (b) the Secretary of State makes a decision of the kind specified in subsection (1)(b) of that section;
- (c) there is an appeal against the relevant determination;
- (d) after the Secretary of State's decision, payment is suspended in accordance with regulation 44 (suspension in prescribed cases); and
- (e) on appeal a court, within the meaning of section 27, reverses the relevant determination in whole or part.

(6) A consequential decision by the Secretary of State under section 10 of the 1998 Act which supersedes an earlier decision of the Secretary of State under paragraph (5)(b) takes effect from the date on which the earlier decision took effect.

PART 4

OTHER MATTERS RELATING TO DECISION- MAKING

Correction of accidental errors

38.—(1) An accidental error in a decision of the Secretary of State, or in any record of such a decision, may be corrected by the Secretary of State at any time.

(2) Such a correction is to be treated as part of that decision or of that record.

(3) The Secretary of State must give written notice of the correction as soon as practicable to the person to whom the decision was given.

(4) In calculating the time within which an application may be made under regulation 5 (revision on any grounds) for a decision to be revised, no account is to be taken of any day falling before the day on which notice of the correction was given.

Determinations on incomplete evidence

39.—(1) The following provisions of this regulation apply for the purposes of a decision under section 8 or 10 of the 1998 Act.

(2) Where—

(a) a determination falls to be made by the Secretary of State concerning the matter mentioned in paragraph (3); and

(b) it appears to the Secretary of State that the Secretary of State is not in possession of all of the evidence or information which is relevant for the purposes of the determination,

the Secretary of State must make the determination on the assumption that the relevant evidence or information which is not in the Secretary of State's possession is adverse to the claimant.

(3) The matter is whether, for the purposes of regulation 45 (relevant education) of the Jobseeker's Allowance Regulations 2013 a person is by virtue of that regulation to be treated as receiving relevant education.

(4) Where—

(a) a determination falls to be made by the Secretary of State as to what costs are to be included in claimant's award of universal credit under section 11 (housing costs) of the 2012 Act; and

(b) it appears to the Secretary of State that the Secretary of State is not in possession of all of the evidence or information which is relevant for the purposes of the determination,

the Secretary of State may make the determination on the assumption that the costs to be included in the claimant's award under that section are those that the Secretary of State is able to determine using such evidence or information as is in the Secretary of State's possession.

(5) Where, in the case of personal independence payment—

(a) a determination falls to be made by the Secretary of State as to whether a person meets the condition in section 85(2) (care home residents where the costs of qualifying services are borne out of local or public funds) of the 2012 Act; and

(b) it appears to the Secretary of State that, having made reasonable enquiries, the Secretary of State is not in possession of all of the evidence or information which is or could be relevant for the purposes of the determination,

the Secretary of State may make the determination using such information or evidence as is in the Secretary of State's possession.

Determinations as to limited capability for work

40.—(1) Where, in relation to an award of an employment and support allowance, the Secretary of State makes a determination (including a determination made following a change of circumstances) whether a person—

(a) has or does not have limited capability for work; or

(b) is to be treated as having or not having limited capability for work,

which is embodied in or necessary to a decision under Chapter 2 of Part 1 of the 1998 Act (decisions and appeals) or on which such a decision is based, that determination is to be conclusive for the purposes of any further decision relating to such an allowance.

(2) Paragraph (1) applies to determinations made in relation to universal credit as it applies in the case of an employment and support allowance.

(3) Where, in relation to any purpose for which Part 1 (employment and support allowance) of the 2007 Act or Part 1 (universal credit) of the 2012 Act applies, a determination falls to be made as to whether a person—

- (a) is, or is to be treated as, having or not having limited capability for work; or
- (b) is terminally ill,

that issue is to be determined by the Secretary of State, notwithstanding the fact that any other matter falls to be determined by another authority.

Effect of alterations affecting universal credit

41.—(1) Subject to paragraph (3), an alteration in the amount of a person's employed earnings (within the meaning of regulation 55(1) of the Universal Credit Regulations) made in accordance with Chapter 2 of Part 6 (earned income) of the Universal Credit Regulations in consequence of information provided to the Secretary of State by HMRC is prescribed for the purposes of section 159D(1)(b)(vi) (effect of alterations affecting universal credit) of the Administration Act⁽⁴⁰⁾.

(2) For the purposes of this regulation, "alteration" means an increase or decrease in such earnings.

(3) Where the person disputes the figure used in accordance with regulation 55 (employed earnings) of the Universal Credit Regulations to calculate employed earnings in relation to any assessment period, the Secretary of State must—

- (a) inform the person that they may request that the Secretary of State gives a decision in relation to the amount of universal credit payable in relation to that assessment period; and
- (b) where such a decision is requested, give it within 14 days of receiving the request or as soon as practicable afterwards.

(4) Paragraph (3) does not affect the validity of anything done under section 159D(2) or (3) of the Administration Act in relation to the person's award.

(5) A decision made in accordance with paragraph (3) takes effect on the date on which the alteration under section 159D(2) or (3) came into force in relation to the person.

Issues for HMRC

42.—(1) Where, on consideration of any claim or other matter, it appears to the Secretary of State that an issue arises which, by virtue of section 8 of the Transfer Act, falls to be decided by an officer of HMRC, the Secretary of State must refer that issue to HMRC.

(2) Where—

- (a) the Secretary of State has decided any claim or other matter on an assumption of facts—
 - (i) which appeared to the Secretary of State not to be in dispute, but
 - (ii) concerning which, had an issue arisen, that issue would have fallen, by virtue of section 8 of the Transfer Act, to be decided by HMRC;
- (b) an application for a revision or supersession is made, or an appeal is brought, in relation to that claim or other matter; and

⁽⁴⁰⁾ Section 159D was inserted by section 31 of, and paragraph 23 of Schedule 2 to, the 2012 Act.

- (c) it appears to the Secretary of State on receipt of that application or appeal that such an issue arises,

the Secretary of State must refer that issue to HMRC.

(3) Pending the final decision of any issue which has been referred to HMRC in accordance with paragraph (1) or (2), the Secretary of State may—

- (a) determine any other issue arising on consideration of the claim, application or other matter,
- (b) seek a preliminary opinion from HMRC on the issue referred and decide the claim, application or other matter in accordance with that opinion; or
- (c) defer making any decision on the claim, application or other matter.

(4) On receipt by the Secretary of State of the final decision of an issue which has been referred to HMRC under paragraph (1) or (2), the Secretary of State must—

- (a) in a case where the Secretary of State made a decision under paragraph (3)(b), decide whether to revise the decision under section 9 of the 1998 Act or to supersede it under section 10 of that Act;
- (b) in a case to which paragraph (3)(a) or (c) applies, decide the claim, application or other matter in accordance with the final decision of the issue so referred.

(5) In this regulation—

- (a) “final decision” means the decision of HMRC under section 8 (decisions by officers of Board) of the Transfer Act or the determination of any appeal in relation to that decision; and
- (b) “the Transfer Act” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999⁽⁴¹⁾.

Appeals raising issues for HMRC

43.—(1) This regulation applies where—

- (a) a person has appealed to the First-tier Tribunal and it appears to the First-tier Tribunal that an issue arises which, by virtue of section 8 of the Transfer Act, falls to be decided by HMRC; and
- (b) the tribunal has required the Secretary of State to refer that issue to HMRC.

(2) Pending the final decision of any issue which has been referred to HMRC in accordance with paragraph (1), the Secretary of State may revise the decision under appeal under section 9 of the 1998 Act, or make a further decision under section 10 of that Act superseding that decision, in accordance with the Secretary of State’s determination of any issue other than one which has been so referred.

(3) On receipt by the Secretary of State of the final decision of an issue which has been referred to HMRC in accordance with paragraph (1), the Secretary of State must consider whether the decision under appeal ought to be revised or superseded under the 1998 Act, and—

- (a) if so, revise it or make a further decision which supersedes it; or
- (b) if not, invite the First-tier Tribunal to determine to appeal.

(4) In this regulation, “final decision” and “Transfer Act” have the same meaning as in regulation 42 (issues for HMRC).

⁽⁴¹⁾ 1999 c. 2. Section 8(1) was amended by the Employment Act 2002 (c. 22) (“the Employment Act”), section 9(1) and (2), the Work and Families Act 2006 (c. 18) (“the 2006 Act”), section 11 and Schedule 1, paragraph 46, by the Child Support, Pensions and Social Security Act 2000 (c. 19), sections 77(5), 76(6) and 85 and Schedule 9, Part 8(1). Subsection (3) was amended by section 9 of the Employment Act and by section 11 of, and paragraph 46 of Schedule 1 to, the 2006 Act. Subsection (4) was repealed by the Welfare Reform and Pensions Act 1999 (c. 30), section 88 and Schedule 13, Part 6.

PART 5

SUSPENSION

Suspension in prescribed cases

44.—(1) The Secretary of State may suspend, in whole or part, payment of any benefit to a person (“P”) in the circumstances described in paragraph (2).

(2) The circumstances are where—

(a) it appears to the Secretary of State that—

- (i) an issue arises whether the conditions for entitlement to the benefit are or were fulfilled;
- (ii) an issue arises whether a decision relating to an award of the benefit should be revised under section 9 or superseded under section 10 of the 1998 Act,
- (iii) an issue arises whether any amount of benefit paid to P is recoverable under or by virtue of section 71ZB, 71ZG or 71ZH(42) of the Administration Act,
- (iv) the last address notified to the Secretary of State of P is not the address at which P resides,

(b) an appeal is pending in P’s case against a decision of the First-tier Tribunal, the Upper Tribunal or a court; or

(c) an appeal is pending against a decision given by the Upper Tribunal or a court in a different case and it appears to the Secretary of State that, if the appeal were to be decided in a particular way, an issue would arise as to whether the award of any benefit to P (whether the same benefit or not) ought to be revised or superseded.

(3) For the purposes of section 21(2)(c) (suspension in prescribed circumstances)(43) of the 1998 Act, where an appeal against the decision has not been brought or an application for permission to appeal against the decision has not been made but the time for doing so has not yet expired, an appeal is pending in the circumstances described in paragraph (4).

(4) The circumstances are where a decision of the First-tier Tribunal, the Upper Tribunal or a court has been made and the Secretary of State—

(a) is awaiting receipt of that decision; or

(b) in the case of a decision of the First-tier Tribunal, is considering whether to apply for a statement of reasons for the decision or has applied for such a statement and is awaiting receipt; or

(c) has received that decision or, if it is a decision of the First-tier Tribunal has received the statement of reasons for it, and is considering whether to apply for permission to appeal, or where permission to appeal has been granted, is considering whether to appeal.

(5) Where payment of any benefit is suspended as the result of paragraph (2)(b) or (c), the Secretary of State must, as soon as reasonably practicable, give written notice to P of any proposal to—

(a) request a statement of the reasons for a tribunal decision;

(b) apply for permission to appeal; or

(c) make an appeal.

(42) Sections 71ZB, 71ZG and 71ZH were inserted by section 105 of the 2012 Act.

(43) Section 21 was amended by [S.I. 2008/2833](#) and by sections 18 and 26 of, and paragraph 32 of Schedule 7 and Schedule 10 to, the Contributions Act 1999.

Provision of information or evidence

45.—(1) This regulation applies where the Secretary of State requires information or evidence from a person mentioned in paragraph (2) (“P”) in order to determine whether a decision awarding a benefit should be revised under section 9 of the 1998 Act or superseded under section 10 of that Act.

(2) The persons are—

- (a) a person in respect of whom payment of any benefit has been suspended in the circumstances set out in regulation 44(2)(a) (suspension in prescribed cases);
- (b) a person who has made an application for a decision of the Secretary of State to be revised or superseded;
- (c) a person from whom the Secretary of State requires information or evidence under regulation 38(2) (evidence and information in connection with an award) of the Claims and Payments Regulations 2013;
- (d) a person from whom the Secretary of State requires documents, certificates or other evidence under regulation 31(3) (evidence and information) of the Jobseeker's Allowance Regulations 2013;
- (e) a person whose entitlement to an employment and support allowance or universal credit is conditional on their having, or being treated as having, limited capability for work.

(3) The Secretary of State must notify P of the requirements of this regulation.

(4) P must either—

- (a) supply the information or evidence within—
 - (i) a period of 14 days beginning with the date on which the notification under paragraph (3) was given or sent to P or such longer period as the Secretary of State allows in that notification, or
 - (ii) such longer period as P satisfies the Secretary of State is necessary in order to comply with the requirements, or
- (b) satisfy the Secretary of State within the period applicable under sub-paragraph (a)(i) that either—
 - (i) the information or evidence does not exist, or
 - (ii) it is not possible for P to obtain it.

(5) In relation to a person to whom paragraph (2)(d) refers, paragraph (4)(a)(i) has effect as if for “14 days” there were substituted “7 days”.

(6) The Secretary of State may suspend the payment of a benefit, in whole or part, to any person to whom paragraph (2)(b), (c), (d) or (e) applies who fails to satisfy the requirements of paragraph (4).

(7) In this regulation, “evidence” includes evidence which a person is required to provide in accordance with regulation 2 (evidence of incapacity for work, limited capability for work and confinement) of the Social Security (Medical Evidence) Regulations 1976(44).

Making of payments which have been suspended

46. The Secretary of State must pay a benefit which has been suspended where—

- (a) in a case where regulation 44(2)(a) (suspension in prescribed cases) applies, the Secretary of State is satisfied that the benefit is properly payable and that there are no outstanding issues to be resolved;

(44) S.I. 1976/615. Regulation 2 was amended by S.I. 1987/409, 1994/2975, 1999/3109, 2001/2931, 2008/1554 and by S.I. 2010/137.

- (b) in a case to which regulation 45(6) (provision of information or evidence) applies, the Secretary of State is satisfied that the benefit is properly payable and that the requirements of regulation 45(4) have been satisfied;
- (c) in a case to which regulation 44(2)(b) (suspension in prescribed cases) applies, the Secretary of State—
 - (i) does not, in the case of a decision of the First-tier Tribunal, apply for a statement of the reasons for that decision within the period specified under the Tribunal Procedure Rules;
 - (ii) does not, in the case of a decision of the First-tier Tribunal, the Upper Tribunal or a court, make an application for permission to appeal or (where permission to appeal is granted) make the appeal within the time prescribed for the making of such application or appeal;
 - (iii) withdraws an application for permission to appeal or withdraws the appeal; or
 - (iv) is refused permission to appeal, in circumstances where it is not open to the Secretary of State to renew the application for permission or to make a further application for permission to appeal;
- (d) in a case to which regulation 44(2)(c) (suspension in prescribed cases) applies, the Secretary of State, in relation to the decision of the Upper Tribunal or a court in a different case—
 - (i) does not make an application for permission to appeal or (where permission to appeal is granted) make the appeal within the time prescribed for the making of such application or appeal;
 - (ii) withdraws an application for permission to appeal or withdraws the appeal;
 - (iii) is refused permission to appeal, in circumstances where it is not open to the Secretary of State to renew the application for permission or to make a further application for permission to appeal.

PART 6

TERMINATION

Termination for failure to furnish information or evidence

47.—(1) This regulation applies where payment of a benefit to a person (“P”) has been suspended in full under—

- (a) regulation 44 (suspension in prescribed cases) and P subsequently fails to comply with a requirement for information or evidence under regulation 45 (provision of information or evidence) and more than one month has elapsed since the requirement was made; or
- (b) regulation 45(6) and more than one month has elapsed since the first payment was suspended.

(2) In a case to which this regulation applies, except where entitlement ceases on an earlier date other than under this regulation, the Secretary of State must decide that P ceases to be entitled to that benefit with effect from the date on which the payment of the benefit was suspended.

Termination in the case of entitlement to alternative benefits

48.—(1) This paragraph applies where an award of a jobseeker’s allowance (“the existing benefit”) exists in favour of a person and, if that award did not exist and a claim was made by

that person for an employment and support allowance (“the alternative benefit”), an award of the alternative benefit would be made on that claim.

(2) This paragraph applies where an award of an employment and support allowance (“the existing benefit”) exists in favour of a person and, if that award did not exist and a claim was made by that person for a jobseeker’s allowance (“the alternative benefit”), an award of the alternative benefit would be made on that claim.

(3) In a case where paragraph (1) or (2) applies, if a claim for the alternative benefit is made, the Secretary of State may bring to an end the award of the existing benefit if satisfied that an award of the alternative benefit will be made.

(4) Where the Secretary of State brings an award of the existing benefit to an end under paragraph (3), the Secretary of State must end the award on the day immediately preceding the first day on which an award of the alternative benefit takes effect.

(5) Where an award of a jobseeker’s allowance is made in accordance with this regulation, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days) does not apply.

(6) Where an award of an employment and support allowance is made in accordance with this regulation, paragraph 2 (waiting days) of Schedule 2 (supplementary provisions) to the 2007 Act does not apply.

PART 7

APPEALS

Other persons with a right of appeal

49. In addition to the claimant, but subject to regulation 7 (consideration of revision before appeal), the following persons have the right of appeal under section 12(2) of the 1998 Act—

- (a) any person appointed by the Secretary of State under regulation 56 (payments on death) of the Claims and Payments Regulations 2013 to proceed with the claim of a person who claimed benefit and subsequently died;
- (b) any person appointed by the Secretary of State under regulation 57 (persons unable to act) of those Regulations to act on behalf of another;
- (c) any person claiming personal independence payment on behalf of another under section 82(5) of the 2012 Act (terminal illness); and
- (d) in the case of a decision under section 71ZB, 71ZG or 71ZH of the Administration Act to recover any amount paid by way of benefit, any person from whom such an amount is recoverable, but only if their rights, duties or obligations are affected by that decision.

Decisions which may or may not be appealed

50.—(1) An appeal lies against a decision set out in Schedule 2 (decisions against which an appeal lies).

(2) No appeal lies against a decision set out in Schedule 3 (decisions against which no appeal lies).

(3) In paragraph (2) and Schedule 3, “decision” includes a determination embodied in or necessary to a decision.

Notice of a decision against which an appeal lies

51.—(1) This regulation applies in the case of a person (“P”) who has a right of appeal under the 1998 Act or these Regulations.

(2) The Secretary of State must—

- (a) give P written notice of the decision and of the right to appeal against that decision; and
- (b) inform P that, where that notice does not include a statement of the reasons for the decision, P may, within one month of the date of notification of that decision, request that the Secretary of State provide a written statement of the reasons for that decision.

(3) If the Secretary of State is requested under paragraph (2)(b) to provide a written statement of reasons, the Secretary of State must provide such a statement within 14 days of the request or as soon as practicable afterwards.

Appeals against decisions which have been revised

52.—(1) An appeal against a decision of the Secretary of State does not lapse where—

- (a) the decision is revised under section 9 of the 1998 Act before the appeal is decided; and
- (b) the decision of the Secretary of State as revised is not more advantageous to the appellant than the decision before it was revised.

(2) In a case to which paragraph (1) applies, the appeal must be treated as though it had been brought against the decision as revised.

(3) The Secretary of State must inform the appellant that they may, within one month of the date of notification of the decision as revised, make further representations as to the appeal.

(4) After the end of that period, or within that period if the appellant consents in writing, the appeal to the First-tier Tribunal must proceed, except where—

- (a) the Secretary of State further revises the decision in light of further representations from the appellant; and
- (b) that decision is more advantageous to the appellant than the decision before it was revised.

(5) Decisions which are more advantageous for the purpose of this regulation include those where—

- (a) the amount of any benefit payable to the appellant is greater, or any benefit is awarded for a longer period, as a result of the decision;
- (b) the decision would have resulted in the amount of benefit in payment being greater but for the operation of any provision of the Administration Act or the Contributions and Benefits Act restricting or suspending the payment of, or disqualifying a claimant from receiving, some or all of the benefit;
- (c) as a result of the decision, a denial or disqualification for the receipt of any benefit is lifted, wholly or in part;
- (d) the decision reverses a decision to pay benefit to a third party instead of to the appellant;
- (e) in consequence of the decision, benefit paid is not recoverable under section 71ZB, 71ZG or 71ZH of the Administration Act(45) or regulations made under any of those sections, or the amount so recoverable is reduced; or
- (f) a financial gain accrued or will accrue to the appellant in consequence of the decision.

Decisions involving issues that arise on appeal in other cases

53.—(1) For the purposes of section 25(3)(b) of the 1998 Act (prescribed cases and circumstances in which a decision may be made on a prescribed basis)(46)—

(45) Sections 71ZB, 71ZG and 71ZH were inserted by section 105 of the 2012 Act.

(46) Section 25 was amended by S.I. 2008/2833.

- (a) a prescribed case is a case in which the claimant would be entitled to the benefit to which the decision relates, even if the other appeal referred to in section 25(1)(b) of the 1998 Act were decided in a way which is the most unfavourable to the claimant; and
 - (b) the prescribed basis on which the Secretary of State may make the decision is as if—
 - (i) the other appeal referred to in section 25(1)(b) of the 1998 Act had already been decided; and
 - (ii) that appeal had been decided in a way which is the most unfavourable to the claimant.
- (2) For the purposes of section 25(5)(c) of the 1998 Act (appeal treated as pending against a decision in a different case, even though an appeal against the decision has not been brought or an application for permission to appeal against the decision has not been made but the time for doing so has not yet expired), the prescribed circumstances are that the Secretary of State—
- (a) certifies in writing that the Secretary of State is considering appealing against that decision; and
 - (b) considers that, if such an appeal were to be decided in a particular way—
 - (i) there would be no entitlement to benefit in that case; or
 - (ii) the appeal would affect the decision in that case in some other way.

Appeals involving issues that arise in other cases

54. For the purposes of section 26(6)(c) of the 1998 Act (appeal is treated as pending against a decision in a different case, even though an appeal against the decision has not been brought or an application for permission to appeal has not been made but the time for doing so has not yet expired) the prescribed circumstances are that the Secretary of State—

- (a) certifies in writing that the Secretary of State is considering appealing against that decision; and
- (b) considers that, if such an appeal were already decided, it would affect the determination of the appeal referred to in section 26(1)(a) of the 1998 Act.

Consequential amendments

55.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999⁽⁴⁷⁾ are amended as follows.

(2) In the heading to regulation 1 (citation, commencement and interpretation) for “and interpretation”, substitute “, application and interpretation”.

(3) After regulation 1(2), insert—

“(2A) In so far as these Regulations relate to—

- (a) an employment and support allowance payable under the Welfare Reform Act, they apply only in so far as the Act has effect apart from the amendments made by Schedule 3 and Part 1 of Schedule 14 to the Welfare Reform Act 2012 (“the 2012 Act”) (removing references to an income-related allowance);
- (b) a jobseeker’s allowance payable under the Jobseekers Act 1995, they apply only in so far as the Act has effect apart from the amendments made by Part 1 of Schedule 14 to the 2012 Act (removing references to an income-based allowance).

(2B) These Regulations do not apply to universal credit (within the meaning of Part 1 of the Welfare Reform Act 2012) or personal independence payment (within the meaning of Part 4 of that Act).”.

(47) S.I. 1999/991.

Signed by authority of the Secretary of State for Work and Pensions.

Name
Parliamentary Under-Secretary of State
Department for Work and Pensions

Date

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 to 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 Secretary of State 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 Secretary of State 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—

- (a) section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc.)⁽⁴⁸⁾ ;
- (b) section 59A (hospital direction) of the Criminal Procedure (Scotland) Act 1995⁽⁴⁹⁾; or
- (c) section 136 (transfer of prisoners for treatment for mental disorder) of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁵⁰⁾,

⁽⁴⁸⁾ 1983. c. 20. Section 45A was inserted by section 46 of the Crime (Sentences) Act 1997 (c.43). Section 45A was amended by paragraph 39 of Schedule 37 to the Criminal Justice Act 2003 (c.44) and sections 4 and 10 of, and paragraph 9 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007 (c.12). Section 47 was amended by section 4 of, and paragraph 10 of Schedule 1 and Schedule 11 to, the Mental Health Act 2007, paragraphs 97 and 98 of Schedule 16 to the Armed Forces Act 2006 (c.52), paragraph 18 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c.28) and Schedule 6 to the Crime (Sentences) Act 1997. S.I. 1999/672 transferred functions under sections 45A and 47 to the National Assembly for Wales.

⁽⁴⁹⁾ 1995 c. 46. Section 59A was inserted by section 6(1) of the Crime and Punishment (Scotland) Act 1997 (c.48) and substituted by paragraph 8(6) of Schedule 4 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

⁽⁵⁰⁾ 2003 asp 13.

ceases, or is expected to cease, to be detained in a hospital (as defined in the Act, or the Act of the Scottish Parliament, to which the person is subject) 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.

7. In the case of an employment and support allowance decision where the Secretary of State is satisfied that, in relation 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 they are 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 Secretary of State's own initiative, the decision takes effect from the beginning of the benefit week in which the Secretary of State 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 between Saturday and Sunday.

PART 2

PERSONAL INDEPENDENCE PAYMENT

12. Subject to the following provisions of this Part and to 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 Secretary of State is satisfied that, in relation to such a decision, the claimant—

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No. 381*

- (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 they first satisfied the conditions of entitlement to that rate or within such longer period as may be allowed by 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 Secretary of State 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 Secretary of State's own initiative, the decision takes effect from the date on which the Secretary of State 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 section 78(1) and (2) (daily living component) or section 79(1) and (2) (mobility component) of the 2012 Act.

PART 3

UNIVERSAL CREDIT

20. Subject to the following paragraphs 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 61 (information for calculating earned income) of the Universal Credit Regulations applies, where—

- (a) the relevant change of circumstances is that the person's employed earnings are reduced; and
- (b) the person provides such information for the purposes of calculating those earnings at such times as the Secretary of State 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 Secretary of State 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 Secretary of State 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 the Secretary of State 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 2002(51); and
- (b) has made an advance claim for an award of state pension credit,

(51) 2002 c. 16.

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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 Secretary of State to make or to cease making a hardship payment takes effect in accordance with regulation 117 (period of hardship payments) of the Universal Credit Regulations.

28. In the case of a claimant who makes an application for a supersession which contains an express statement that they are 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 Secretary of State's own initiative, it takes effect from the first day of the assessment period in which the Secretary of State commenced action with a view to supersession.

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 their 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 61(1) (cases where mobility component of personal independence payment not payable) of the Claims and Payments Regulations 2013.

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 force 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 50(1)

DECISIONS AGAINST WHICH AN APPEAL LIES

A decision as to whether a person is entitled to a benefit for which no claim is required by virtue of regulation 6, 7 or 9(6) and (7) of the Claims and Payments Regulations 2013.

SCHEDULE 3

Regulation 50(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 2013—

- (a) regulation 18 (special provisions where it is certified that a woman is expected to be confined or where she has been confined);
- (b) regulation 25 (interchange with claims for other benefits);
- (c) regulation 37 (evidence and information in connection with a claim);
- (d) regulation 46 (direct credit transfer);
- (e) regulation 47 (payment of universal credit);
- (f) regulation 48 (payment of personal independence payment);
- (g) regulation 49 (days for payment of personal independence payment);
- (h) regulation 50(1) (payment of personal independence payment at a daily rate between periods in hospital or other accommodation);
- (i) regulation 51 (payment of an employment and support allowance);
- (j) regulation 52 (payment of a jobseeker's allowance);
- (k) regulation 55, except a decision under paragraph (4) (extinguishment of right to payment if payment is not obtained within the prescribed period);
- (l) regulation 56 (payments on death);
- (m) regulation 57 (persons unable to act);
- (n) regulation 58 (payment to another person on the claimant's behalf);
- (o) regulation 59 (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) (jobseeker's allowance determinations on incomplete evidence) of these Regulations.

Other Decisions relating to Universal Credit

3. A decision in default of a nomination under regulation 21(4) (assessment periods) of the Universal Credit Regulations.

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4. A decision in default of an election under regulation 29 (award to include the carer element) of the Universal Credit Regulations.

5. A decision as to the amount of universal credit to which a person is entitled, where it appears to the Secretary of State 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 160C(2) (implementation of increases in universal credit due to attainment of a particular age) of the Administration Act⁽⁵²⁾.

6. So much of a decision as adopts a decision of a rent officer under an order made by virtue of section 122 of the Housing Act 1996⁽⁵³⁾ (decisions of rent officers for the purposes of universal credit).

Suspension

7. A decision of the Secretary of State relating to suspending payment of benefit, or to the payment of a benefit which has been suspended, under Part 5 (suspension) of these Regulations.

Decisions Depending on Other Cases

8. A decision of the Secretary of State in accordance with section 25 or 26 of the 1998 Act (decisions and appeals depending on other cases).

Expenses

9. A decision of the Secretary of State whether to pay travelling expenses under section 180 of the Administration Act⁽⁵⁴⁾.

Deductions

10. A decision of the Secretary of State under the Fines (Deductions from Income Support) Regulations 1992⁽⁵⁵⁾, other than a decision whether benefit is sufficient for a deduction to be made.

11. Any decision of the Secretary of State under the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990⁽⁵⁶⁾, the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989⁽⁵⁷⁾ or the Council Tax (Deductions from Income Support) Regulations 1993⁽⁵⁸⁾, except a decision—

- (a) whether there is an outstanding sum due of the amount sought to be deducted;
- (b) whether benefit is sufficient for the deduction to be made; or
- (c) on the priority of the deductions.

⁽⁵²⁾ Section 160C was inserted by section 31 of, and paragraphs 3 and 24 of Schedule 2 to, the 2012 Act.

⁽⁵³⁾ 1996 c. 52. Section 122 was amended by section 217 of, and paragraph 60 of Schedule 7 to, the Local Government Act 2003 (c. 26), by sections 40 and 67 of, and paragraph 12 of Schedule 5 and Schedule 8 to, the 2007 Act and by sections 3, 31, 34 and 147 of, and paragraph 36 of Schedule 2, paragraph 13 of Schedule 4 and Schedule 14 to, the 2012 Act.

⁽⁵⁴⁾ Relevant amendments were made to section 180 by section 41 of, and paragraphs 71 of Schedule 2 to, the Jobseekers Act 1995 (c. 18) ("the 1995 Act"), by section 33 of, and paragraph 9 of Schedule 3 to, the Social Security (Recovery of Benefits) Act 1997 (c. 27), by section 86 of, and paragraph 108 of Schedule 7 to, the 1998 Act, by section 28 of, and paragraph 10 of Schedule 3 to, the 2007 Act, and by sections 31 and 91 of, and paragraphs 3, 7 and 28 of Schedule 2 and paragraphs 7 and 28 of Schedule 9 to, the 2012 Act.

⁽⁵⁵⁾ S.I. 1992/2182.

⁽⁵⁶⁾ S.I. 1990/545.

⁽⁵⁷⁾ S.I. 1989/507.

⁽⁵⁸⁾ S.I. 1993/494.

Loss of Benefit

12.—(1) In the circumstances referred to in sub-paragraph (2), a decision of the Secretary of State that a sanctionable benefit as defined in section 6A(1) of the Fraud Act(59) is not payable (or is to be reduced) pursuant to section 6B, 7 or 9 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 6B(1) of the Fraud Act)(60) 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

13. In the case of personal independence payment, a decision of the Secretary of State under the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988(61), except a decision of the Secretary of State under the following provisions of those Regulations—

- (a) regulation 5, as to the offsetting of a prior payment against a subsequent award(62);
- (b) regulation 11(1), as to whether a payment in excess of entitlement has been credited to a bank or other account(63);
- (c) regulation 13, as to the sums to be deducted in calculating recoverable amounts(64).

14. A decision of the Secretary of State under the Social Security (Payments on Account of Benefit) Regulations 2013(65), except a decision under regulation 10 (bringing payments on account of benefit into account) of those Regulations.

15. A decision of the Secretary of State under the Social Security (Overpayments and Recovery) Regulations 2013(66), except a decision of the Secretary of State 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).

(59) Section 6A was inserted by section 24 of the 2009 Act. Relevant amendments were made to subsection (1) by sections 91, 117 and 147 of, and paragraphs 45 and 46 of Schedule 9 and Schedule 14 to, the 2012 Act.

(60) Section 6B was inserted by section 24 of the 2009 Act. Section 6B was amended by section 113(8) of the 2012 Act and by the 2009 and 2012 Acts, from a date to be appointed.

(61) S.I. 1988/664.

(62) Relevant amending instruments are S.Is. 1999/3178, 2005/15512006/516, 2000/3120 and S.I. 2010/840.

(63) Relevant amending instruments are S.I. 2005/34 and S.I. 2012/757.

(64) A relevant amending instrument is S.I. 2012/645.

(65) S.I. 2013/XXXX.

(66) S.I. 2013/XXXX.

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Reciprocal Agreements

16. A decision of the Secretary of State made in accordance with an Order made under section 179 (reciprocal agreements with countries outside the United Kingdom) of the Administration Act⁽⁶⁷⁾.

European Community Regulations

17. An authorisation given by the Secretary of State in accordance with Article 22(1) or 55(1) of Council Regulation (EEC) No 1408/71 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

18. A decision of the Secretary of State relating to the up-rating of benefits under Part 10 (review and alteration of benefits) of the Administration Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about decision-making and appeals in the case of an employment and support allowance and a jobseeker's allowance, as those benefits have effect as amended by the Welfare Reform Act 2012 (which removes references to an income-related employment and support allowance and income-based jobseeker's allowance), personal independence payment and in the case of universal credit.

Part 1 contains provisions relating to citation, commencement, application and interpretation. It also contains provisions relating to the service of notices or documents and the use of electronic communications.

Parts 2 and 3 and Schedule 1 provide for the circumstances in which the Secretary of State may revise or supersede decisions, when such decisions take effect and related procedural matters. Part 2 also makes provision for persons to be required to apply for a decision to be revised before they may be permitted to appeal (regulation 7).

Part 4 contains miscellaneous provisions relating to decisions of the Secretary of State. This includes correcting accidental errors, determinations on incomplete evidence and additional cases where no superseding decision needs to be made in the case of alterations affecting universal credit (regulation 41).

(67) Section 179(3) was amended by section 86 of, and paragraph 107 of Schedule 7 to, the 1998 Act, by section 41 of, and paragraph 70 of Schedule 2 to, the 1995 Act, by section 18 of, and paragraph 15 of Schedule 7 to, the Contributions Act 1999, by S.I. 1999/671, by section 14 of, and paragraphs 8 and 21 of Schedule 2 to, the 2002 Act, by section 28 of, and paragraph 10 of Schedule 3 to, the 2007 Act, and by sections 31 and 91 of, and paragraphs 7 and 27 of Schedule 9 and paragraphs 3 and 27 of Schedule 2 to, the 2012 Act. Relevant amendments were made to subsection (4) by section 86 of, and paragraph 107 of Schedule 7 to, the 1998 Act, by section 41 of, and paragraph 70 of Schedule 2 to, the 1995 Act, by section 18 of, and paragraph 15 of Schedule 7 to, the Contributions Act 1999, by section 28 of, and paragraph 10 of Schedule 3 to, the 2007 Act, and by sections 31, 91 and 147 of, and paragraphs 3 and 27 of Schedule 2, paragraphs 7 and 27 of Schedule 9 and Schedule 14 to, the 2012 Act. Relevant amendments to subsection (5) were made by section 41 of, and paragraph 70 of Schedule 2 to, the 1995 Act, by section 60 of, and Schedule 6 to, the Tax Credits Act, by section 28 of, and paragraph 10 of Schedule 3 to, the 2007 Act, by S.I. 2011/2425 and by sections 31 and 147 of, and paragraphs 3 and 27 of Schedule 2 and Schedule 14 to, the 2012 Act.

Part 5 of the Regulations makes provision for the suspension of benefit and Part 6 deals with termination of benefit.

Part 7 and Schedules 2 and 3 concern appeals. Part 7 makes provision for additional persons to have a right of appeal and for decisions (additional to those listed in the Social Security Act 1998) against which there is or is not a right of appeal. It also makes provision in relation to decisions and appeals involving issues that arise on appeal in other cases.

This Part also contains consequential amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) concerning the application of those Regulations to universal credit, personal independence payment, an employment and support allowance and a jobseeker's allowance.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.