
DRAFT STATUTORY INSTRUMENTS

2013 No.

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

PART 3

SUPERSESIONS

CHAPTER 1

GROUNDINGS 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 Subject to regulation 32 (decisions which may not be superseded), the Secretary of State may make a decision under section 10 ("a superseding decision") of the 1998 Act in any of the cases and circumstances set out in this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- (a) there has been a relevant change of circumstances since the decision to be superseded had effect or, in the case of an advance award under regulation 32, 33 or 34 of the Claims and Payments Regulations 2013, since it was made; or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the Secretary of State, other than one to which regulation 25 (decisions against which no appeal lies) refers, may be superseded where—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on the Secretary of State's own initiative, more than one month after the date of notification of the decision to be superseded or after the expiry of such longer period as may have been allowed under regulation 6 (late application for a revision).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no appeal lies) to the 1998 Act or prescribed in regulation 50(2) (decisions which may or may not be appealed) may be superseded.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employment and support allowance decision, a personal independence payment decision or universal credit decision may be superseded where, since the decision was made, the Secretary of State has—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⁽¹⁾.

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)⁽²⁾ of the 2007 Act;
- (b) section 6J(1) (higher-level sanctions) or 6K(1) (other sanctions)⁽³⁾ 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.

(1) 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.

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

(3) 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)(4).

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(5).

(4) 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.

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